

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 773

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 1-8-82
DATE FOR REVIEW 1-18-82
DATE DUE 1-22-82

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

Approved 1-20-82 Disapproved _____ Returned to Agency _____

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

Date filed w/Secretary of State 1-21-82 Revisor approved 1/11/82 disapproved 1/11/82

✓ Rule as Adopted

✓ Rule as Proposed see SR

✓ Order Adopting 1.8.82 Date combined with F of F

✓ Notice of Intent to Solicit Outside Opinion SR. 1.29.79

✓ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
_____ Sufficiency

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

✓ Mailing list Certificate

✓ Publication in State Register
10.5.81 At least 30/[redacted] days prior to [redacted]/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 combined with Order Adopting

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

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

✓ Certificate of Compliance w/Rulemaking Procedures

✓ Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General — not in AG suggested form but substantially complies

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : CLYDE E. ALLEN, JR.
Commissioner of Revenue

DATE: January 20, 1982

ATTN : Dale H. Busacker, Income Tax Division

FROM : Ted A. Martinez
Special Assistant Attorney General

PHONE: 296-0315

SUBJECT: In the Matter of the Proposed Adoption of a Rule of the Department of Revenue Governing Practice of Attorneys, Accountants, Agents and Preparers Before the Department of Revenue. (13 MCAR Section 1.6101)
Repeal Income Tax Rule 2052(4)

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.

Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

TAM:drw

January 11, 1982
AR0038ST

OFFICE OF THE REVISOR OF STATUTES

Certificate of Approval of Adopted Rules

Agency: Department of Revenue, Income Tax Division

Rule Numbers: 13 MCAR S 1.6101; repealing 2052(4)

Rule Title: Adopted Rule Governing Practice of Attorneys, Accountants, Agents and Preparers before the Department of Revenue (13 MCAR S 1.6101); and Adopted Repeal of Income Tax Rule 2052 (4)

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
Jan. 20 1982
WARREN SPANNAUS, ATTORNEY GENERAL
BY Ted H. Martinez
SPECIAL ASSISTANT ATTORNEY GENERAL

Name: Ann L. Bateson
Ann L. Bateson
Title: Deputy Revisor

Phone: 296-1536

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JAN 21 1982
Joan Anderson Growe
Secretary of State 9:25 A.M.

Department of Revenue

Income Tax Division

Adopted Rule Governing Practice of Attorneys, Accountants, Agents and Preparers before the Department of Revenue (13 MCAR S 1.6101); and Adopted Repeal of Income Tax Rule 2052(4)

Rule as Adopted

13 MCAR S 1.6101 Practice of attorneys, accountants, agents, and preparers before the Department of Revenue.

A. Practice defined. The term "practice" comprehends all matters connected with the presentation by an attorney, accountant, agent, or preparer to the Department of Revenue or any of its employees, upon filing an executed power of attorney, of a client's rights, privileges, or liabilities under Minn. Stat. ch. 290 or 290A, and the rules thereunder. Practice includes the preparation and filing of necessary documents, correspondence with and communication to the Department of Revenue, and the representation of a client at conferences, hearings, and meetings. However, the preparation and signing of a tax return, the appearance of an individual as a witness for a taxpayer, and the furnishing of information at the request of the Department of Revenue or any of its employees do not, of and by themselves, constitute practice before the department, unless these acts are coupled with the presentation of a client's case at conferences, hearings, or meetings. For purposes of this rule, the term "practice" is synonymous with "representation."

B. Scope of representation pursuant to power of attorney.

1. When authorized by the taxpayer through a written power of attorney, an attorney, accountant, agent, or preparer may appear as the taxpayer's representative, with or without the taxpayer, before an employee of the Department of Revenue with respect to the tax liability of the taxpayer for the type of tax and taxable year or period authorized in the power of attorney.

2. For purposes of this rule, a power of attorney grants

authority to deal with any of the following: original or amended individual income tax returns; property tax refund returns; fiduciary income tax returns; partnership returns of income; corporation income tax returns, including returns of small business corporations, life insurance companies, banks, and savings and loan associations; employer's income tax withholding returns or deposits; claims for refund; and estimated tax declarations.

3. A taxpayer representative may inspect only those state records, files, or documents which are either specifically listed, or directly or indirectly connected with matters specifically listed, in a power of attorney.

4. If the taxpayer is not present, a person presenting a power of attorney shall present identification satisfactory to the department employee.

C. Persons ineligible to practice. Any person who is:

1. Under disbarment or suspension from practice before the Department of Revenue;

2. An employee of the Department of Revenue;

3. Under disbarment or suspension from practice as an attorney, certified public accountant, or licensed public accountant in the State of Minnesota; or

4. Under disbarment or suspension from practice before the Internal Revenue Service shall be ineligible to appear as a taxpayer representative under this rule. However, with regard to 3. and 4., a granting of reinstatement to practice as an attorney, certified public accountant, or licensed public accountant, or a granting of reinstatement to practice before the Internal Revenue Service shall automatically reinstate a person's eligibility to practice before the Department of Revenue.

D. Standards of ethics and conduct.

1. No attorney, accountant, agent, or preparer acting as a taxpayer representative shall neglect or refuse to submit records or information in any matter before the Department of Revenue, upon proper and lawful request by a duly authorized

employee of the Department of Revenue, unless the taxpayer representative has a good faith belief that the information or testimony is privileged. No taxpayer representative shall interfere, or attempt to interfere, with any proper and lawful efforts by the Department of Revenue or its employees to obtain information relative to any matter before the Department of Revenue. Insisting upon a subpoena shall not be a violation of this paragraph.

2. Each taxpayer representative shall exercise due diligence in regard to all of the following:

a. Preparing, assisting in the preparation of, approving, and filing returns, documents, affidavits, and any other papers relating to Department of Revenue matters to the extent of participation;

b. Determining the correctness of representations made by him to the Department of Revenue; and

c. Determining the correctness of representations made by him to clients with reference to any matter administered by the Department of Revenue.

3. Each taxpayer representative shall exercise good faith in determining the correctness of representations made by clients to him with reference to any matter administered by the Department of Revenue when the preparer or agent has reasonable grounds to believe the client's representations are false or inaccurate.

4. No taxpayer representative shall unreasonably delay the prompt disposition of any matter before the Department of Revenue.

5. Where there is a conflict between this rule and a code of conduct which is promulgated by another agency or branch of government, that code of conduct shall control. The taxpayer representative must disclose to the department that there is a conflict.

E. Incompetent conduct. Incompetent conduct, for which any attorney, accountant, agent, or preparer shall be subject to disbarment or suspension from practice before the Department of

Revenue, means the failure by an attorney, accountant, agent, or preparer, after due warning has been given by the Commissioner of Revenue pursuant to G.3., to:

1. Demonstrate the familiarity with the income tax statutes, rules, and forms necessary to enable the practitioner to properly apply, discuss, or complete them, and thus to render adequate services in connection with a taxpayer's case before the Department of Revenue; or

2. Exercise due diligence as required in D.2. The standard used for determining failure to exercise due diligence shall be the common law standard of reasonableness used in determining negligence.

F. Disreputable conduct. Disreputable conduct, for which any attorney, accountant, agent, or preparer shall be subject to disbarment or suspension from practice before the Department of Revenue, includes any conduct violative of D. In addition, the following acts or events constitute disreputable conduct:

1. Conviction of any criminal offense under a state or federal tax statute, or conviction of any crime involving dishonesty or breach of trust;

2. Preparing or filing for oneself or another a false or fraudulent Minnesota income tax return or other statement on which Minnesota income taxes or a refund thereof may be based, knowing it is false or fraudulent;

3. Willful failure to prepare or file a Minnesota income tax return for oneself or another in violation of the applicable income tax statutes or rules;

4. Willful failure to prepare and file an amended Minnesota income tax return for oneself, knowing that a material error or omission was made on the original return;

5. Willful failure to recommend to a client that an amended Minnesota income tax return be prepared and filed, knowing that a material error or omission was made on the original return;

6. Advising a client or a prospective client to adopt a Minnesota income tax evasion plan which is not legal, knowing

that the plan is not legal;

7. Giving false testimony or information in any proceeding before the Department of Revenue, or before any tribunal authorized to pass upon Minnesota income tax matters, knowing it is false;

8. Filing any false or fraudulently altered document, affidavit, or power of attorney in any case or other proceeding before the Department of Revenue, or procuring the filing thereof, knowing it is false or fraudulently altered;

9. Using, with intent to deceive, false representations to procure employment in any case or proceeding before the Department of Revenue, including, but not limited to:

a. Misrepresentations regarding eligiblity to practice before the Department of Revenue;

b. Specific material misrepresentations regarding experience or education, whether general or specialized, as an income tax return preparer;

c. Guaranteeing the payment of any tax refund or the allowance of any tax credit; or

d. Representing to a client that the attorney, accountant, agent, or preparer can improperly obtain special consideration or action from the Department of Revenue or an employee thereof, or that he has improper access to sources of information within the Department of Revenue which are otherwise private, confidential, or nonpublic;

10. Approving for filing, or advising or aiding in the preparation of, a false or fraudulent Minnesota income tax return prepared by some other person, knowing the return is false or fraudulent;

11. Misappropriation of, or failure to properly and promptly remit, funds received from a client for the purpose of paying taxes or other obligations due the State of Minnesota;

12. Endorsement or negotiation of a client's check in payment of a refund of any tax, credit, penalty, or interest administered by the Commissioner of Revenue, without the client's prior endorsement. The preceding sentence shall not

apply when the full amount of the check is deposited in the taxpayer's bank account for the benefit of the taxpayer;

13. Charging a client a fee based upon a percentage of the refund that the client is eligible to receive from the State of Minnesota, unless representation of the client reaches the contested stage, either in a formal administrative hearing or a court proceeding;

14. Attempting to influence, or offering or agreeing to attempt to influence, the official action of any employee of the Department of Revenue by the use of threats, false accusations, duress, or coercion, by the offer of any special inducement or promise of advantage, or by the bestowing of any gift, favor, or thing of value;

15. In connection with practice before the Department of Revenue, making false accusations or statements knowing them to be false, or circulating or publishing slanderous or libelous matter concerning the Department of Revenue or any of its employees;

16. Knowingly aiding and abetting another person to practice before the Department of Revenue during a period of disbarment or suspension of the other person;

17. For purposes of 1. through 16., the phrases "income tax" and "income tax return" include all matters referred to in B.2.

G. Disbarment and suspension procedures.

1. Authority to disbar or suspend. Pursuant to Minn. Stat. S 290.52, the Commissioner of Revenue, after due notice and opportunity for hearing, may suspend or disbar from further practice before the Department of Revenue any attorney, accountant, agent, or preparer who: is shown to be incompetent or disreputable; refuses to comply with the provisions of this rule; or in any manner willfully and knowingly defrauds, deceives, or misleads any taxpayer with respect to a claim or prospective claim involving the Department of Revenue.

2. Violation of rule. Any attorney, accountant, agent, or preparer shall be subject to disbarment or suspension from

practice before the Department of Revenue for violation of any of the provisions contained in this rule.

3. Notification of violation of rule and issuance of warning. Whenever the Commissioner of Revenue has sufficient grounds to believe that any attorney, accountant, agent, or preparer has violated a provision of this rule, he shall notify the practitioner in writing of the specific violation which has been committed. The notification shall contain a warning to the practitioner that if the violation continues, or if any other violations are committed, the commissioner shall commence a proceeding for disbarment or suspension of the practitioner.

4. Commencement of disciplinary proceeding. Whenever the Commissioner of Revenue has sufficient grounds to believe that any attorney, accountant, agent, or preparer has failed to comply with a warning by continuing to violate any provision of this rule, he shall commence a proceeding for disbarment or suspension of the attorney, accountant, agent, or preparer. The commissioner's Notice of and Order for Hearing shall set forth the specific violations which the practitioner has committed, both prior and subsequent to the commissioner's warning, and shall make a recommendation as to the specific disciplinary action to be taken against the practitioner. The entire proceeding shall be governed by the procedure for contested case proceedings as provided in Minn. Stat. SS 15.0411-15.0426 and in 9 MCAR SS 2.201-2.299.

5. Voluntary suspension. An attorney, accountant, agent, or preparer, in order to avoid the commencement or conclusion of a disciplinary proceeding, may, by agreement with the Commissioner of Revenue, consent to suspension from practice before the Department of Revenue. The Commissioner of Revenue shall then suspend the practitioner in accordance with the disciplinary guideline set forth in 6.

6. Disciplinary guideline for violation of rule. Upon completion of the hearing in a contested case proceeding for disciplinary action brought by the Commissioner of Revenue against an attorney, accountant, agent, or preparer, if the

hearing examiner finds that the practitioner has committed the violations specified in the commissioner's Notice of and Order for Hearing, and that disciplinary action is appropriate, the commissioner shall:

a. Suspend the practitioner from practicing before the Department of Revenue for a period of up to one year, if the proceeding brought against the practitioner is the first proceeding in which disciplinable misconduct has been found;

b. Suspend the practitioner for a period of up to five years if the proceeding brought against the practitioner is the second proceeding in which the disciplinable misconduct has been found; or

c. Disbar the practitioner from practicing before the Department of Revenue if the proceeding brought against the practitioner is at least the third proceeding in which disciplinable misconduct has been found.

For purposes of a., b., and c., a voluntary suspension pursuant to 5. is a proceeding in which disciplinable misconduct has been found. The commissioner shall base his decision as to disciplinary action on all the facts before him, along with any extenuating circumstances he deems relevant.

7. Effect of disbarment or suspension. If the commissioner's order against an attorney, accountant, agent, or preparer is for disbarment, the practitioner shall not thereafter be permitted to practice before the Department of Revenue, except to represent himself. Similarly, if the commissioner's order against an attorney, accountant, agent, or preparer is for suspension, the practitioner shall not thereafter be permitted to practice before the Department of Revenue during the period of suspension, except to represent himself. The disbarment or suspension of an individual, where the individual was employed by a firm or organization at the time his violation of this rule occurred, shall not affect the right of other members of the firm or organization to practice before the department.

8. Petition for reinstatement. If there has been a

material change in circumstances after suspension or disbarment, a suspended or disbarred attorney, accountant, agent, or preparer may petition, in writing, the Commissioner of Revenue for reinstatement to practice before the Department of Revenue. The petition must be supported with documentation or testimony from a responsible third party as to the fitness, character and ability of the practitioner to resume practice. The commissioner shall review the petition and make his determination within 30 days as to whether the practitioner shall be reinstated. If the petition is granted by the commissioner, the practitioner may resume practice. If the petition is denied by the commissioner, no further petitions may be brought by the practitioner during the remainder of the suspension period, or for a period of five years if the practitioner has been disbarred.

Repealer. Income tax rule 2052(4) is repealed.

January 11, 1982
AR0038ST

OFFICE OF THE REVISOR OF STATUTES
Disapproval of Form of Rules

_____ The form of the attached rules is not approved. The revisor requests the changes described below before the rules will be approved.

Page 4, line 23, correct the misspelling of "thereof"

Page 5, line 2, correct the misspelling of "information"

Page 8, line 17, indent the paragraph as it was indented in the State Register

Steven C. Cross
Revisor of Statutes

Name: Ann L. Bateson
Ann L. Bateson

Title: Deputy Revisor

Phone: 296-1536

- -

_____ The changes requested by the revisor are approved by the agency.

_____ The changes requested by the revisor are not approved by the agency

_____
Agency's Representative

- -

_____ The attorney general agrees that the changes requested by the revisor are form changes, not substantive changes.

_____
Assistant Attorney General

Department of Revenue

Income Tax Division

Adopted Rule Governing Practice of Attorneys, Accountants, Agents and Preparers before the Department of Revenue (13 MCAR S 1.6101); and Adopted Repeal of Income Tax Rule 2052(4)

Rule as Adopted

13 MCAR S 1.6101 Practice of attorneys, accountants, agents, and preparers before the Department of Revenue.

A. Practice defined. The term "practice" comprehends all matters connected with the presentation by an attorney, accountant, agent, or preparer to the Department of Revenue or any of its employees, upon filing an executed power of attorney, of a client's rights, privileges, or liabilities under Minn. Stat. ch. 290 or 290A, and the rules thereunder. Practice includes the preparation and filing of necessary documents, correspondence with and communication to the Department of Revenue, and the representation of a client at conferences, hearings, and meetings. However, the preparation and signing of a tax return, the appearance of an individual as a witness for a taxpayer, and the furnishing of information at the request of the Department of Revenue or any of its employees do not, of and by themselves, constitute practice before the department, unless these acts are coupled with the presentation of a client's case at conferences, hearings, or meetings. For purposes of this rule, the term "practice" is synonymous with "representation."

B. Scope of representation pursuant to power of attorney.

1. When authorized by the taxpayer through a written power of attorney, an attorney, accountant, agent, or preparer may appear as the taxpayer's representative, with or without the taxpayer, before an employee of the Department of Revenue with respect to the tax liability of the taxpayer for the type of tax and taxable year or period authorized in the power of attorney.

2. For purposes of this rule, a power of attorney grants

authority to deal with any of the following: original or amended individual income tax returns; property tax refund returns; fiduciary income tax returns; partnership returns of income; corporation income tax returns, including returns of small business corporations, life insurance companies, banks, and savings and loan associations; employer's income tax withholding returns or deposits; claims for refund; and estimated tax declarations.

3. A taxpayer representative may inspect only those state records, files, or documents which are either specifically listed, or directly or indirectly connected with matters specifically listed, in a power of attorney.

4. If the taxpayer is not present, a person presenting a power of attorney shall present identification satisfactory to the department employee.

C. Persons ineligible to practice. Any person who is:

1. Under disbarment or suspension from practice before the Department of Revenue;

2. An employee of the Department of Revenue;

3. Under disbarment or suspension from practice as an attorney, certified public accountant, or licensed public accountant in the State of Minnesota; or

4. Under disbarment or suspension from practice before the Internal Revenue Service shall be ineligible to appear as a taxpayer representative under this rule. However, with regard to 3. and 4., a granting of reinstatement to practice as an attorney, certified public accountant, or licensed public accountant, or a granting of reinstatement to practice before the Internal Revenue Service shall automatically reinstate a person's eligibility to practice before the Department of Revenue.

D. Standards of ethics and conduct.

1. No attorney, accountant, agent, or preparer acting as a taxpayer representative shall neglect or refuse to submit records or information in any matter before the Department of Revenue, upon proper and lawful request by a duly authorized

employee of the Department of Revenue, unless the taxpayer representative has a good faith belief that the information or testimony is privileged. No taxpayer representative shall interfere, or attempt to interfere, with any proper and lawful efforts by the Department of Revenue or its employees to obtain information relative to any matter before the Department of Revenue. Insisting upon a subpoena shall not be a violation of this paragraph.

2. Each taxpayer representative shall exercise due diligence in regard to all of the following:

a. Preparing, assisting in the preparation of, approving, and filing returns, documents, affidavits, and any other papers relating to Department of Revenue matters to the extent of participation;

b. Determining the correctness of representations made by him to the Department of Revenue; and

c. Determining the correctness of representations made by him to clients with reference to any matter administered by the Department of Revenue.

3. Each taxpayer representative shall exercise good faith in determining the correctness of representations made by clients to him with reference to any matter administered by the Department of Revenue when the preparer or agent has reasonable grounds to believe the client's representations are false or inaccurate.

4. No taxpayer representative shall unreasonably delay the prompt disposition of any matter before the Department of Revenue.

5. Where there is a conflict between this rule and a code of conduct which is promulgated by another agency or branch of government, that code of conduct shall control. The taxpayer representative must disclose to the department that there is a conflict.

E. Incompetent conduct. Incompetent conduct, for which any attorney, accountant, agent, or preparer shall be subject to disbarment or suspension from practice before the Department of

Revenue, means the failure by an attorney, accountant, agent, or preparer, after due warning has been given by the Commissioner of Revenue pursuant to G.3., to:

1. Demonstrate the familiarity with the income tax statutes, rules, and forms necessary to enable the practitioner to properly apply, discuss, or complete them, and thus to render adequate services in connection with a taxpayer's case before the Department of Revenue; or

2. Exercise due diligence as required in D.2. The standard used for determining failure to exercise due diligence shall be the common law standard of reasonableness used in determining negligence.

F. Disreputable conduct. Disreputable conduct, for which any attorney, accountant, agent, or preparer shall be subject to disbarment or suspension from practice before the Department of Revenue, includes any conduct violative of D. In addition, the following acts or events constitute disreputable conduct:

1. Conviction of any criminal offense under a state or federal tax statute, or conviction of any crime involving dishonesty or breach of trust;

2. Preparing or filing for oneself or another a false or fraudulent Minnesota income tax return or other statement on which Minnesota income taxes or a refund thereof may be based, knowing it is false or fraudulent;

3. Willful failure to prepare or file a Minnesota income tax return for oneself or another in violation of the applicable income tax statutes or rules;

4. Willful failure to prepare and file an amended Minnesota income tax return for oneself, knowing that a material error or omission was made on the original return;

5. Willful failure to recommend to a client that an amended Minnesota income tax return be prepared and filed, knowing that a material error or omission was made on the original return;

6. Advising a client or a prospective client to adopt a Minnesota income tax evasion plan which is not legal, knowing

that the plan is not legal;

7. Giving false testimony or infomation in any proceeding before the Department of Revenue, or before any tribunal authorized to pass upon Minnesota income tax matters, knowing it is false;

8. Filing any false or fraudulently altered document, affidavit, or power of attorney in any case or other proceeding before the Department of Revenue, or procuring the filing thereof, knowing it is false or fraudulently altered;

9. Using, with intent to deceive, false representations to procure employment in any case or proceeding before the Department of Revenue, including, but not limited to:

a. Misrepresentations regarding eligiblity to practice before the Department of Revenue;

b. Specific material misrepresentations regarding experience or education, whether general or specialized, as an income tax return preparer;

c. Guaranteeing the payment of any tax refund or the allowance of any tax credit; or

d. Representing to a client that the attorney, accountant, agent, or preparer can improperly obtain special consideration or action from the Department of Revenue or an employee thereof, or that he has improper access to sources of information within the Department of Revenue which are otherwise private, confidential, or nonpublic;

10. Approving for filing, or advising or aiding in the preparation of, a false or fraudulent Minnesota income tax return prepared by some other person, knowing the return is false or fraudulent;

11. Misappropriation of, or failure to properly and promptly remit, funds received from a client for the purpose of paying taxes or other obligations due the State of Minnesota;

12. Endorsement or negotiation of a client's check in payment of a refund of any tax, credit, penalty, or interest administered by the Commissioner of Revenue, without the client's prior endorsement. The preceding sentence shall not

apply when the full amount of the check is deposited in the taxpayer's bank account for the benefit of the taxpayer;

13. Charging a client a fee based upon a percentage of the refund that the client is eligible to receive from the State of Minnesota, unless representation of the client reaches the contested stage, either in a formal administrative hearing or a court proceeding;

14. Attempting to influence, or offering or agreeing to attempt to influence, the official action of any employee of the Department of Revenue by the use of threats, false accusations, duress, or coercion, by the offer of any special inducement or promise of advantage, or by the bestowing of any gift, favor, or thing of value;

15. In connection with practice before the Department of Revenue, making false accusations or statements knowing them to be false, or circulating or publishing slanderous or libelous matter concerning the Department of Revenue or any of its employees;

16. Knowingly aiding and abetting another person to practice before the Department of Revenue during a period of disbarment or suspension of the other person;

17. For purposes of 1. through 16., the phrases "income tax" and "income tax return" include all matters referred to in B.2.

G. Disbarment and suspension procedures.

1. Authority to disbar or suspend. Pursuant to Minn. Stat. S 290.52, the Commissioner of Revenue, after due notice and opportunity for hearing, may suspend or disbar from further practice before the Department of Revenue any attorney, accountant, agent, or preparer who: is shown to be incompetent or disreputable; refuses to comply with the provisions of this rule; or in any manner willfully and knowingly defrauds, deceives, or misleads any taxpayer with respect to a claim or prospective claim involving the Department of Revenue.

2. Violation of rule. Any attorney, accountant, agent, or preparer shall be subject to disbarment or suspension from

practice before the Department of Revenue for violation of any of the provisions contained in this rule.

3. Notification of violation of rule and issuance of warning. Whenever the Commissioner of Revenue has sufficient grounds to believe that any attorney, accountant, agent, or preparer has violated a provision of this rule, he shall notify the practitioner in writing of the specific violation which has been committed. The notification shall contain a warning to the practitioner that if the violation continues, or if any other violations are committed, the commissioner shall commence a proceeding for disbarment or suspension of the practitioner.

4. Commencement of disciplinary proceeding. Whenever the Commissioner of Revenue has sufficient grounds to believe that any attorney, accountant, agent, or preparer has failed to comply with a warning by continuing to violate any provision of this rule, he shall commence a proceeding for disbarment or suspension of the attorney, accountant, agent, or preparer. The commissioner's Notice of and Order for Hearing shall set forth the specific violations which the practitioner has committed, both prior and subsequent to the commissioner's warning, and shall make a recommendation as to the specific disciplinary action to be taken against the practitioner. The entire proceeding shall be governed by the procedure for contested case proceedings as provided in Minn. Stat. SS 15.0411-15.0426 and in 9 MCAR SS 2.201-2.299.

5. Voluntary suspension. An attorney, accountant, agent, or preparer, in order to avoid the commencement or conclusion of a disciplinary proceeding, may, by agreement with the Commissioner of Revenue, consent to suspension from practice before the Department of Revenue. The Commissioner of Revenue shall then suspend the practitioner in accordance with the disciplinary guideline set forth in 6.

6. Disciplinary guideline for violation of rule. Upon completion of the hearing in a contested case proceeding for disciplinary action brought by the Commissioner of Revenue against an attorney, accountant, agent, or preparer, if the

hearing examiner finds that the practitioner has committed the violations specified in the commissioner's Notice of and Order for Hearing, and that disciplinary action is appropriate, the commissioner shall:

a. Suspend the practitioner from practicing before the Department of Revenue for a period of up to one year, if the proceeding brought against the practitioner is the first proceeding in which disciplinable misconduct has been found;

b. Suspend the practitioner for a period of up to five years if the proceeding brought against the practitioner is the second proceeding in which the disciplinable misconduct has been found; or

c. Disbar the practitioner from practicing before the Department of Revenue if the proceeding brought against the practitioner is at least the third proceeding in which disciplinable misconduct has been found.

For purposes of a., b., and c., a voluntary suspension pursuant to 5. is a proceeding in which disciplinable misconduct has been found. The commissioner shall base his decision as to disciplinary action on all the facts before him, along with any extenuating circumstances he deems relevant.

7. Effect of disbarment or suspension. If the commissioner's order against an attorney, accountant, agent, or preparer is for disbarment, the practitioner shall not thereafter be permitted to practice before the Department of Revenue, except to represent himself. Similarly, if the commissioner's order against an attorney, accountant, agent, or preparer is for suspension, the practitioner shall not thereafter be permitted to practice before the Department of Revenue during the period of suspension, except to represent himself. The disbarment or suspension of an individual, where the individual was employed by a firm or organization at the time his violation of this rule occurred, shall not affect the right of other members of the firm or organization to practice before the department.

8. Petition for reinstatement. If there has been a

material change in circumstances after suspension or disbarment, a suspended or disbarred attorney, accountant, agent, or preparer may petition, in writing, the Commissioner of Revenue for reinstatement to practice before the Department of Revenue. The petition must be supported with documentation or testimony from a responsible third party as to the fitness, character and ability of the practitioner to resume practice. The commissioner shall review the petition and make his determination within 30 days as to whether the practitioner shall be reinstated. If the petition is granted by the commissioner, the practitioner may resume practice. If the petition is denied by the commissioner, no further petitions may be brought by the practitioner during the remainder of the suspension period, or for a period of five years if the practitioner has been disbarred.

Repealer. Income tax rule 2052(4) is repealed.

Department of Labor and Industry
Prevailing Wage Division

Notice of Prevailing Wage Rates for Highway Construction

Minn. Stat. § 177.44 requires the Commissioner of Labor and Industry to certify at least once a year, the prevailing wage rates for highway construction under contracts based on bids as provided for in Minn. Stat. § 161.32. Title 8, Minnesota Code of Agency Rules, Section 1.8010 (8 MCAR § 1.8010) requires notice of those certifications to be published in the *State Register*.

On January 22, 1979, the Commissioner certified wage rates for highway construction for 12 counties in Minnesota. Those counties are: Lac Qui Parle, Chippewa, Kandiyohi, Meeker, Yellow Medicine, Renville, McLeod, Lincoln, Lyon, Redwood, Pipestone and Murray.

A copy of the determined wage rates may be obtained by writing to the Department of Labor and Industry, Prevailing Wage Division, 444 Lafayette Road, St. Paul, Minnesota 55101.

A check or money order for $5.00, payable to the Department of Labor and Industry, must accompany each request to cover the cost of copying and mailing.

R. Bruce Swanson
Deputy Commissioner

Department of Natural Resources

Notice of Change of Hearing Date for the Proposed Rules Concerning Dam Safety

Notice is hereby given of a change of date for the public hearing on proposed rules concerning dam safety, pursuant to Laws of 1978, ch. 779, published at *State Register*, Volume 3, Number 28, p. 1397, January 15, 1979. The hearing originally was scheduled for February 12, 1979, at 10:00 a.m. in the Weyerhaeuser Room of the Minnesota Historical Society, 690 Cedar St., St. Paul, MN. It has been rescheduled for March 1, 1979 at 10:00 a.m. in the same location.

Department of Revenue
Income Tax Division

Notice of Intent to Solicit Outside Opinions Regarding Rules of the Income Tax Division

The Income Tax Division of the Department of Revenue is beginning to examine its current rules governing individual, fiduciary, partnership, and corporate income taxes along with small business corporations and withholding with the intention of:

1. Identifying those existing rules which are no longer valid because of law changes and court decisions.

2. Establishing areas of priority for drafting new rules in the areas listed above along with property tax refunds.

3. Actual drafting of new rules.

The Department invites interested persons or groups to provide information, comments, and advice on the subject in writing or orally to Dale Busacker, Attorney, Income Tax Division, Department of Revenue, Centennial Office Building, St. Paul, Minnesota 55145 or (612) 296-3436.

It is anticipated that the income tax rules will be categorized and amended section by section.

Written statements will be made part of the public hearing record.

Office of the Secretary of State
Administration Division

Open Appointment Process: Notice of Openings on State Agencies — Application Procedures

Pursuant to Laws of 1978, ch. 592, the legislature has implemented an Open Appointment process by which the public is informed of openings on state multi-member agen-

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

In the Matter of the Proposed Adoption of a Rule of the Department of Revenue Governing Practice of Attorneys, Accountants, Agents and Preparers Before the Department of Revenue. (13 MCAR Section 1.6101) Repeal Income Tax Rule 2052(4)

ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT PUBLIC HEARING

IT IS ORDERED this 17th day of September, 1981 that Notice of Intent to Adopt Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the Department of Revenue for that purpose and be published in the State Register.

STATE OF MINNESOTA

Clyde E. Allen, Jr.
Commissioner of Revenue

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

INCOME TAX DIVISION

In the Matter of the Proposed Adoption of a Rule Governing Practice of Attorneys, Accountants, Agents and Preparers Before the Department of Revenue. (13 MCAR Section 1.6101) Repeal Income Tax Rule 2052(4).

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

Notice is hereby given that the Department of Revenue proposed to adopt the above-entitled rule and repeal the existing rule without a public hearing. The Commissioner has determined that the proposed adoption of this rule and repeal of this rule 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:

Mr. Dale H. Busacker
Attorney, Income Tax Division
Minnesota Department of Revenue
Centennial Office Building
St. Paul, Minnesota 55145
(612) 296-3439

Authority for the adoption of these rules is contained in Minnesota Statutes section 290.52. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from Mr. Busacker 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 Mr. Busacker.

The general purpose of this rule is to regulate the practice of attorneys, accountants, agents and preparers (hereinafter referred to as "tax practitioners") before the Department of Revenue. Specifically, the rule is needed (1) to implement the authority which is granted to the Commissioner of Revenue to suspend or disbar tax practitioners, by providing a uniform procedure for such suspension or disbarment; (2) to provide ethical standards of behavior governing

practice before the Department; (3) to set minimum standards of competency for those who practice; (4) to define what is disreputable conduct; and (5) to define the nature and scope of practice before the Department of Revenue.

The existing Income Tax Rule 2052(4) is repealed because this new rule will supersede it and make it unnecessary.

Copies of this Notice and the proposed rules are available and may be obtained by contacting Mr. Busacker.

September 17, 1981

State of Minnesota

Clyde E. Allen, Jr.
Commissioner of Revenue

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

INCOME TAX DIVISION

IN THE MATTER OF the proposed adoption of a rule governing Practice of Attorneys, Accountants, Agents and Preparers Before the Department of Revenue (13 MCAR Section 1.6101 Repeal Income Tax Rule 2052(4)).

AFFIDAVIT

Mary Lacho, being first duly sworn, deposes and says:

That on the 28th day of September, 1981, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the Notice of Hearing in the matter of the proposed adoption of a rule governing practice of attorneys, accountants, agents and preparers before the Department of Revenue by depositing in the United States mail at the City of St. Paul, a true and correct copy of the Notice, properly enveloped, with postage prepaid, to all persons and associations at the address listed on the attached list received from the Department of Revenue.

Mary Lacho

Subscribed and sworn to before me this 28th day of September, 1981.

Diane C. Walsh

DIANE C. WALSH
NOTARY PUBLIC MINNESOTA
My Commission Expires July 27, 1985
RAMSEY COUNTY

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

INCOME TAX DIVISION

IN THE MATTER OF THE PROPOSED ADOPTION OF A RULE OF THE INCOME TAX DIVISION GOVERNING PRACTICE OF ATTORNEYS, ACCOUNTANTS, AGENTS AND PREPARERS BEFORE THE DEPARTMENT OF REVENUE. (13 MCAR SECTION 1.6101, REPEAL INCOME TAX RULE 2052(4).)

AFFIDAVIT

Dale H. Busacker, being first duly sworn, deposes and says:

That on the 24th day of September, 1981 at the City of St. Paul, County of Ramsey, State of Minnesota, he personally received the list of persons, associations and other interested groups who had registered with the Department of Revenue for the purpose of receiving notice of public hearing on proposed rules. A copy of this list is attached.

Dale H. Busacker

Subscribed and sworn to before me
this 29th day of September, 1981.

Diane C. Walsh

DIANE C. WALSH
NOTARY PUBLIC - MINNESOTA
My Commission Expires July 27, 1985
RAMSEY COUNTY

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

In the Matter of the Proposed Adoption of a Rule of the Income Tax Division Governing Practice of Attorneys, Accountants, Agents and Preparers Before the Department of Revenue. (13 MCAR Section 1.6101, Repeal Income Tax Rule 2052(4).)

CERTIFICATE OF COMPLETENESS AND ACCURACY

I hereby certify that the attached 15 sheets constitute the complete list of persons, associations and other interested groups who, as of 8:00 o'clock A.M., this 24th day of September, 1981, have requested, pursuant to Minn. Stat. Section 15.0412, subd. 4, that their names be placed on file with the Department of Revenue for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

STATE OF MINNESOTA
CLYDE E. ALLEN, JR.
COMMISSIONER OF REVENUE

By Dorothy A McClung
Dorothy McClung, Attorney
Commissioner's Staff

MAILING LIST FOR OFFICIAL NOTICE OF AGENCY RULEMAKING

INDEP. BANKERS OF MN
Attn: Norbert McCrady, Exec. V.P.
327 Plymouth Building
12 South 6th Street
Minneapolis, MN 55402

Paul M. Leegard
Personnel Administrator
White Motor-Hopkins
130 - 9th Avenue South
Hopkins, MN 55343

Advocate for the Blind
1821 University Avenue, Rm. 389S
St. Paul, MN 55104

Peter S. Popovich
Peterson, Popovich, Knutson
and Flynn,
314 Minnesota Building
St. Paul, MN 55101

James C. Shipman
Executive Director
Association of MN Counties
2305 Ford Parkway
St. Paul, MN 55116

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Certified Public Accountants
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St. Paul, MN 55104

Kent E. Eklund, Commissioner
MN Dept. of Economic Development
480 Cedar Street
St. Paul, MN 55101

Richard C. Buske
MN Dept. of Economic Development
480 Cedar Street
St. Paul, MN 55101

Charles Schaffer
MN Dept. of Economic Development
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St. Paul, MN 55101

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Legis. Comm. to Review
Admin. Rules
Room 430, State Office Bldg.
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City of Winona
City Hall
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MN Manufactured Housing Assoc.
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Little Canada, MN 55117

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Moss, Flaherty, Clarkson &
Fletcher
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Ste. 811, 200 W. Superior St.
Duluth, MN 55802

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Program, Inc.
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Attn. Russ Serbus

Springsteel Resort and Marina, Inc.
Warroad, MN 56763
Attn. Dick Soderberg

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Luverne, MN 56156

The Estenson Company
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Attn: K. D. Olstad

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Duluth, MN 55805

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Operations Manager

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Golden Valley, MN 55427

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Cedar, MN 55011

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Pipestone Cooperative Ass'n
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Pipestone, MN 56164

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IA 51347

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St. Paul, MN 55117

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SP:B2

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STATE REGISTER

STATE OF MINNESOTA



VOLUME 6, NUMBER 14

October 5, 1981

Pages 549-612

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		
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
18	Monday Oct 19	Monday Oct 26	Monday Nov 2

*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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Cover graphic: *Minnesota State Capitol*, ink drawing by Ric James.

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NOTICE

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

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

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Issues 14-25, inclusive
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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 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Office of Administrative Hearings

Proposed Permanent Rules Relating to Workers' Compensation

Notice of Hearing

Notice is hereby given that a public hearing will be held pursuant to the provisions of Minn. Stat. § 15.0412, subd. 4, in the above-entitled matter commencing at 9:00 a.m. on Thursday, November 5, 1981, at Room 83 of the State Office Building, 435 Park Street, St. Paul, Minnesota. The hearing will continue until all interested persons have an opportunity to be heard. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Peter C. Erickson, Hearing Examiner, Office of Administrative Hearings, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, (612/296-8118), either before the hearing or within five (5) working days after the public hearing ends. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed twenty (20) calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052, and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

Notice is hereby given that twenty-five (25) days prior to the hearing a statement of need and reasonableness will be available for review at the Office of Administrative Hearings. Copies of this statement of need and reasonableness may also be purchased at a cost of twenty cents per page. The statement of need and reasonableness will include the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rules.

The agency's authority to adopt the proposed rules is contained in Minn. Laws of 1981, chapter 346, § 5 (amending Minn. Stat. 1980, § 15.052, subd. 4).

The purpose of the proposed rules is to establish procedures for the conduct of the hearing process relating to contested workers' compensation hearings. The rules contain sections relating to: general authority and definitions; joinder of parties; pleadings including content of petitions and responsibilities of attorneys in initiating contested matters; settlement judge review and settlement conferences; expedited procedures for hearings where employees have been given notice of the employer's intent to discontinue benefits; answers to the petitions; service of documents; definitions of the various types of hearings; notice of hearings; continuances; intervention; consolidation; disqualification of compensation judges; prehearing procedures; discovery; petitions for contribution or reimbursement; subpoenas; the hearing itself; production of medical evidence; rights of parties; witnesses; rules of evidence; contents of the record; provisions relating to transcripts of hearings; disruptions of

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.

hearings; compensation judge decisions; rehearing; settlements; attorney fees; taxation of costs and disbursements; second injury law; expedited procedures for other hearings; temporary orders; removal and return of exhibits; and the permanent partial disability panel.

The office estimates that the cost to local bodies of implementing this rule for the two years immediately following its adoption will not exceed $100,000 within the meaning of Minn. Stat. § 15.0412, subd. 7.

The permanent rules will supercede the agency's temporary rules which were effective on August 19, 1981.

Copies of the proposed rules are now available and at least one free copy may be obtained by writing to: Duane R. Harves, Chief Hearing Examiner, Minnesota Office of Administrative Hearings, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104. Additional copies will be available at the hearing. If you have any questions on the content of the proposed rules, you should contact Duane R. Harves at (612) 296-8100.

Any person may request notification of the date on which the hearing examiner's report will be available, after which date the office may not take any final action on the rules for a period of five (5) 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 office. 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 (5) days after he/she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11, as any individual:

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

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

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

September 21, 1981.

Duane R. Harves
Chief Hearing Examiner

Rules as Proposed (all new material)

9 MCAR § 2.301 Scope and purpose. The procedures contained in 9 MCAR §§ 2.301-2.326 shall govern all hearings required to be conducted pursuant to the provisions of the Minnesota workers' compensation laws, Minn. Stat. ch. 82 and the Minnesota Administrative Procedure Act, Minn. Stat. §§ 15.0411-15.052, as those provisions might apply.

9 MCAR § 2.302 General authority and definitions.

A. Assignment or transfer of cases. The chief hearing examiner has full responsibility for the assignment of cases for trial to the compensation judges. The chief hearing examiner may transfer to another compensation judge the proceedings on any case in the event of the death, extended absence, or disqualification of the compensation judge to whom it has been assigned, and may otherwise reassign such cases if necessary to expedite the proceedings if no oral testimony has been received in the cases.

B. Authority of compensation judges. In any case which has been regularly assigned to him or her for trial, a compensation judge shall have full power, jurisdiction and authority to hear and determine all issues of fact and law presented to him or her and to issue such interlocutory and final orders, findings, decisions and awards as may be necessary to the full adjudication of the case.

C. Definitions. For the purposes of 9 MCAR §§ 2.301-2.326, the following terms have meanings given them.

1. "Calendar judge" means a workers' compensation judge from the Office of Administrative Hearings.
2. "Chief hearing examiner" means the Chief Hearing Examiner of the Office of Administrative Hearings.
3. "Commissioner" means the Commissioner of the Department of Labor and Industry.
4. "Compensation judge" means a workers' compensation judge from the Office of Administrative Hearings.

5. "Division" means the Workers' Compensation Division of the Department of Labor and Industry.

6. "Petition" means a claim filed by or on behalf of an injured or deceased employee, employer or insurer which initiates a contested workers' compensation case requiring assignment for hearing.

7. "Petitioner" means the injured employee, an heir or dependent of a deceased employee or a party filing on their behalf or an employer or insurer.

8. "Settlement judge" means a workers' compensation judge from the Department of Labor and Industry.

9 MCAR § 2.303 Joinder of parties.

A. Request. Upon a motion of any party or upon his or her own motion, a settlement or calendar judge may order the joinder of additional parties necessary for the full adjudication of the case. A party not present or represented at the time of joinder shall forthwith be served by the party requesting joinder with copies of the order of joinder and all pleadings in the case.

B. Service. Any party requesting joinder of additional parties shall serve a copy of the request on all existing parties, and the party to be joined, and file the original with proof of service with the settlement or calendar judge no later than ten days prior to the pretrial or settlement conference, unless the judge allows a shorter time when the moving party has shown that the party is a necessary party, that the moving party was unable, through due diligence, to previously ascertain the name of or necessity of joining the party, and that the joinder is necessary to a full and final determination of the rights or liabilities of all persons. When this request is served on the party to be joined, it shall be accompanied by copies of all pleadings and the notice of the date, time and place set for a settlement conference or prehearing conference.

C. Affidavit. When a party requests joinder less than ten days prior to the pretrial or settlement conference date, the request shall include an affidavit of the requesting party stating the facts necessary to show cause why the lesser time should be allowed.

D. Delay. In cases where the settlement or calendar judge has denied the joinder because of the requesting party's failure to meet the ten-day time requirement, the case shall not be stricken, continued or otherwise delayed for the purposes of joinder, unless the attorney for the employee or dependent consents to it.

E. Contents of motion. All motions for joinder shall contain at least the following:

1. The party to be joined and its insurer, if any;

2. The date and nature of the claimed personal injury or impairment;

3. The detailed circumstances, in affidavit form, showing that the party to be joined is a necessary party;

4. The supporting medical opinions relied upon, if applicable;

5. If the party to be joined is the special compensation fund, the detailed circumstances, in affidavit form, showing the specific basis claimed for joinder, including the date of registration of prior impairment or injury where applicable.

F. Objection. A party contesting joinder under 9 MCAR § 2.303 may do so by objection filed with the settlement or calendar judge within ten days of service, requesting a hearing thereon; otherwise, an ex parte order may be issued granting or denying this joinder.

9 MCAR § 2.304 Commencement of proceedings; petitions; responsibilities of attorneys; notice to third parties.

A. Commencement of proceedings. Original proceedings for the adjudication of compensation rights and liabilities are commenced by the service of a petition as provided by Minn. Stat. § 176.305. Any petition filed on behalf of an employee or his or her dependents shall certify that prior notice of intention to initiate proceedings has been sent to the adverse party, pursuant to Minn. Stat. § 176.271, subd. 2, and the date of that notice. Supporting medical reports shall be attached to the petition.

B. Consolidation of claims. Claims by several employees arising out of the same accident may be consolidated in one proceeding only by consent of all parties or by order on appropriate motion.

C. Contents of petitions. A petition shall contain the following information which shall be in the sequence listed in 1.-21.

1. Title. The title of the case shall include the petitioner's name, the employer's name and address, the insurer's name and address, the division's record number and the employee's social security number;

2. The petitioner's address;

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3. The date of the alleged personal injury or onset of occupational disease;

4. The place of employment on the date of the alleged injury or disease;

5. The employee's weekly wage at the time of the alleged injury or disease;

6. A statement that the injury or disease arose out of and in the course of the employment;

7. A statement which specifies the nature and extent of the alleged injury or disease, including the percentage of disability, if known, attaching a copy of all medical reports;

8. The date on which the employer was first given notice of the alleged injury or disease and the manner in which the notice was given;

9. The name and address of the employer's insurer on the date of the alleged injury or disease or if the employer was self-insured, a statement to that effect;

10. A detailed listing of the dates of the alleged disability, stating whether each date was for temporary total, temporary partial, permanent total, or permanent partial disability;

11. A detailed list of the medical benefits alleged to be owing, giving the names, addresses, dates of treatment or purchase of drugs, or other compensable items;

12. The names and addresses of any third parties who have paid disability, medical or other benefits to the employee as a result of the alleged injury or disease, listing the dates and amounts of the payments, and the relevant claim number or policy number;

13. A statement that attorney's fees are or are not requested;

14. A statement that the employer and insurer were notified, as required by Minn. Stat. § 176.271, subd. 2, that a proceeding would be instituted and stating the relief sought, giving the date of the notice and attaching a copy of the notice;

15. A signature and attestation by the employee;

16. The name, address and telephone number of the employee's attorney unless the employee is representing himself or herself;

17. A statement that a settlement or prehearing conference is or is not requested and, if so, the requested location for the conference;

18. A statement indicating the number of lay and medical witnesses expected to be called as witnesses and the anticipated length of their testimony;

19. A statement specifying the principal issues to be resolved at hearing;

20. A statement that the employee is or is not presently receiving workers' compensation benefits and, if the employee is, the amounts and the name and address of the paying party; and

21. The requested location for the regular hearing.

D. Heading of petition. Unless otherwise provided by law, all requests for action by the commissioner, a settlement, calendar or compensation judge after the filing of a petition shall contain the title and appropriate identification number of the case and shall indicate the type of action requested.

E. Responsibilities of attorneys; notice to third parties. All attorneys representing employees, employers, or any other parties to a workers' compensation proceeding shall inquire of their clients at the time the proceeding is commenced, and again within five days of receipt of a notice of prehearing conference, as to whether any third party, other than the workers' compensation insurer, has paid wage loss benefits or treatment expense to the employee or in the employee's behalf.

If inquiry discloses that any third party, such as an insurer or a welfare department, has made any such payments, the attorney discovering that fact shall then have the duty to place the third party on written notice, within five days, of its right to petition for intervention and reimbursement. The written notice shall have attached to it a copy of 9 MCAR § 2.310 and also a copy of all pleadings in the case and a copy of all notices and all orders of the workers' compensation division of the department of labor and industry and of the office of administrative hearings served in the case to date, and shall specifically advise that:

1. The employee has commenced a proceeding to recover workers' compensation benefits, and that under Minn. Stat. § 176.361 and 9 MCAR § 2.310 the third party has the right to petition for intervention and reimbursement of payments made for treatment and wage loss;

2. The name and address of all parties to the proceeding and the names and addresses of their attorneys;

3. The name of the third party's insured, the nature of the payments made, and any identifying claim and policy number;

4. Any failure of the third party to comply with any provisions of 9 MCAR § 2.310 shall result in a denial of the claim for reimbursement unless the compensation judge determines that the error or omission is merely technical.

Failure of an employee's attorney to comply in a timely manner with this rule shall be taken into consideration as an additional significant factor in determining the attorney's fee under Minn. Stat. § 176.081.

Failure of an attorney representing an employer and insurer to comply in a timely manner with this rule shall be taken into consideration for purposes of determining whether a penalty shall be assessed against the employer and insurer under Minn. Stat. § 176.225 for unreasonable or vexatious delay.

Where inquiry by the attorney for the injured employee at the time a proceeding is commenced discloses information that a third party has made payments, the employee's claim petition shall not be accepted for filing and the proceeding shall not be considered commenced unless the claim petition is accompanied by a proof of service of written notice upon the third party, unless the time for commencing an action under the statute of limitations in Minn. Stat. § 176.151 has run. The written notice shall be in the form prescribed by 1.-4.

9 MCAR § 2.305 Settlement judge review and settlement conferences.

A. Referral. Upon the filing of a petition, the commissioner, within ten days, shall refer the matter to a settlement judge who shall review the filing to determine whether a settlement conference is appropriate.

B. Disposition. If a settlement conference has been requested or is deemed appropriate by the settlement judge, he or she shall notify all parties of the date, time and place where the settlement conference will be conducted. The settlement conference shall be completed within 60 days of the date of referral of the petition by the commissioner. If a settlement conference has not been requested or is deemed to be inappropriate, the settlement judge shall certify the matter to the chief hearing examiner.

C. Retention of jurisdiction. If the settlement conference cannot be concluded within 60 days, the settlement judge shall certify the matter to the chief hearing examiner; provided, however, that with the consent of the petitioner or his or her representative, the settlement judge may retain jurisdiction for an additional 60 days for purposes of receiving a full settlement of all issues.

D. Settlement alternatives not precluded. Nothing contained in this rule shall preclude any party from requesting that a settlement conference be scheduled at any time prior to a hearing by a compensation judge, nor shall it prohibit the chief hearing examiner or calendar judge from setting a settlement conference on his or her own motion once the matter has been received from the commissioner.

E. Attendance. At any settlement conference conducted before a settlement, calendar or compensation judge, all parties shall attend and shall, if they are a representative of a party, be authorized to reach a full settlement on all or any issues in the case.

F. Matters agreed upon. If, following a settlement conference, a settlement has not been reached but the parties have reached agreement on any facts, legal or medical issues, or levels of benefits, the settlement, calendar or compensation judge presiding over the settlement conference shall, if he or she approves of those matters agreed upon, issue an order confirming and approving those matters agreed upon. The order shall be binding on any compensation judge who may subsequently be assigned to hear the case. Issues once agreed upon and approved may be reopened by the compensation judge only upon motion of any party on the basis of newly discovered evidence which was not reasonably discoverable at the earlier time.

9 MCAR § 2.306 Notice of intention to discontinue compensation payments.

A. Contents. A notice of intention to discontinue compensation filed pursuant to Minn. Stat. § 176.241, shall contain the following information:

1. The name and home address of the person whose compensation would be discontinued;

2. The file number previously assigned by the division and the office of administrative hearings;

3. The name and address of the attorney, if any, who represented the employee during previous proceedings;

4. A description of the prior order, if any, under which compensation was being paid and the name of the person issuing the order;

5. The date the compensation is proposed to be discontinued;

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6. A complete list of facts supporting the discontinuance which shall be prepared with sufficient specificity to allow the employee to prepare an objection without the necessity of requesting additional information;

7. If the proposed discontinuance is based on medical evidence, copies of all medical reports bearing on the employee's physical condition at the time of the proposed discontinuance;

8. A statement which shall read as follows:

NOTICE

You have the right to object to this proposed discontinuance. If you intend to object, you must prepare a written objection and file it with the Commissioner of the Minnesota Department of Labor and Industry, Fifth Floor, Space Center Building, 444 Lafayette Road, St. Paul, Minnesota 55101. You may contact (employer) or (insurer) regarding the discontinuance and the procedures related to the filing of an objection. If you file an exemption, it may be mailed or personally delivered to the Department of Labor and Industry at the address listed above. An objection must contain your full name, address and telephone number, the name of the employer and insurer, the date of this notice and the file number listed on this notice.

9. The name and address of the employer and insurer;

10. The name, address and telephone number of the attorney representing the employer or insurer; and

11. The name, address and telephone number of the person filing the notice.

B. Objections.

1. Any objection to the proposed discontinuance shall be in writing, shall be filed with the commissioner, and shall contain the following information:

a. The name, address and telephone number of the employee;

b. The name, address and telephone number of the person filing the objection, if it is not the employee;

c. The name of the employer and insurer;

d. The date of the notice of discontinuance; and

e. The file numbers which were listed on the notice of discontinuance.

2. When an objection has been filed or where it appears to the commissioner that the right to compensation may not have terminated, the matter shall be referred to the chief hearing examiner who shall set the matter for hearing on a priority basis not less than 30 nor more than 75 days from the date of the receipt of the matter from the commissioner.

3. Any objection filed more than 120 days after service of a notice to discontinue shall be treated as a claim petition and shall not be heard on a priority basis.

C. Petitions for discontinuance. When an employer or insurer petitions the commissioner for an order allowing discontinuance of benefits but has chosen not to discontinue payments until after a final determination, the petitioner shall be entitled to a hearing on the same priority basis as set forth in B.2. Petitions filed under this provision shall contain the same information as required for a notice of discontinuance.

9 MCAR § 2.307 Answers.

A. Service and filing. An answer to each petition shall be served and filed within 20 days after service of the application unless a waiver has been obtained pursuant to Minn. Stat. § 176.321, subd. 3.

B. Proof of service. The answer shall be accompanied by proof of service upon the opposing parties.

C. Contents. The answer shall contain the following:

1. Specific responses to allegations regarding the date and nature of the injury, the employment status, notice, wage, relationship of the injury to employment, insurance, benefits paid, matters in dispute, affirmative defenses and additional matters as deemed necessary by the answering party;

2. Any medical report upon which the answer is based, if available;

3. If a medical examination by a doctor chosen by the employer or insurer has not already been completed, the date, time and place for the exam which shall be scheduled to take place within 75 days from the date of service of the notice of intention to initiate proceedings. Any request for an extension of time for scheduling the examination shall be subject to the approval of the calendar or settlement judge, whichever has jurisdiction of the matter at the time the request is made.

9 MCAR § 2.308 Service.

A. Service by state. The commissioner, the chief hearing examiner, and settlement, calendar or compensation judges shall serve all notices, findings, orders, decisions or awards upon the parties or their attorneys or agents of record by first class mail at their addresses of record or by personal service.

B. Service by parties. A party may accomplish service of any document either by first class mail or by personal service. Service of any document required to be served by a party may be served by the party's attorney or authorized agent. Upon filing of the document served, it shall be accompanied by an affidavit or proof of service which shall be in the form acceptable to the district courts.

C. Service by mail. Service of all documents and pleadings may be made by first class United States mail upon all parties to a proceeding whether residents of the same city, town or otherwise. Computation of time in such instances shall be in accordance with the provisions of Minn. Stat. § 645.15.

9 MCAR § 2.309 Hearings.

A. Definition of hearing. For the purposes of 9 MCAR §§ 2.301-2.326, a hearing may be called a settlement conference, a prehearing conference, or a regular hearing. Nothing contained herein is intended to change the statutory requirement that hearings, as defined by statute, be conducted by compensation judges from the office of administrative hearings.

1. A settlement conference is a hearing conducted by a settlement judge. It is for the primary purpose of providing assistance to the parties in resolving disputes and securing a settlement of all issues and for the secondary purpose of assisting the parties in narrowing the issues and of expediting preparation and trial of the matter. The conference may be conducted by telephone and in the cases where the location of the settlement conference would require any party to travel more than 50 miles to attend, it shall be conducted by telephone unless all parties agree otherwise. Written notice of this hearing shall be given at least 20 days prior to the date of the hearing.

2. A prehearing conference may be required whether or not a settlement conference has been held and may be conducted by telephone. The purposes of a prehearing conference are to ascertain if there are genuine disputes requiring resolution by a calendar or compensation judge, to provide assistance to the parties in resolving disputes, to narrow the issues, and to expedite preparation and trial if a regular hearing is necessary. A prehearing conference is conducted by a calendar or compensation judge. It shall be conducted by telephone if the location set for the prehearing conference would require any party to travel more than 50 miles to attend. Written notice of this hearing shall be given at least 20 days prior to the date of the hearing.

3. A regular hearing is a hearing set for the purpose of receiving evidence and is conducted by a compensation judge.

B. Notice of hearing. Notice of the time and place for hearing shall be provided to all parties to a case as required by 9 MCAR § 2.308 A., except that oral or written notification of the date, time and place for a regular hearing which is given to the parties by a settlement, calendar or compensation judge at the time of a settlement or prehearing conference shall be sufficient notice. Each attorney receiving notice of the hearing date at a settlement or prehearing conference shall be responsible for notifying each party the attorney represents of the hearing date. When a written notice is required, it shall be given at least five days prior to the date of hearing, except:

1. When notice is waived by all parties;
2. When a different time is expressly agreed to by all parties; or
3. When the notice is governed by contrary law or rule.

C. Continuances.

1. Requests for continuances are inconsistent with the requirement that workers' compensation proceedings be expeditious and are, therefore, not favored and will be granted only upon a clear showing of good cause. The parties are expected to submit for decision all matters in controversy at a single hearing and to produce at the hearing all necessary evidence, including witnesses, documents, medical reports, payroll statements and all other matters considered essential in the proof of a party's claim or defense.

2. When a continuance is to be requested prior to the hearing date, the party requesting the continuance shall have first

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contacted all other parties to determine whether mutual agreement to the continuance can be reached and, if the continuance be granted, the availability of all parties for hearing at future specific dates. When all parties are in agreement with the request for continuance and have agreed to a date for a future hearing, which date has been approved by the compensation, calendar or settlement judge before whom the matter is pending, and when the continuance request is made no less than ten working days prior to the hearing date,the continuance shall be granted.

3. If all parties have not agreed to a continuance, requests for continuances shall be made to the compensation, calendar or settlement judge before whom the matter is pending. When made more than ten working days prior to the hearing date, the request shall be in writing in the form of a motion for continuance and shall be served on all parties. If less than ten working days remain prior to the hearing date, notice of the motion may be made orally. A hearing on the motion shall be conducted only if ordered by the settlement, compensation or calendar judge to whom the motion is made.

4. Good cause shall not include:

a. When an insurer retains more than one counsel on its own payroll who practice in the field of workers' compensation law, unavailability of the counsel assigned to the case because of engagement in another court or otherwise unless all such counsel are committed elsewhere;

b. When a law firm consists of more than one member who practice in the field of workers' compensation law, unavailability of the counsel assigned to the case because of engagement in another court or otherwise unless all such counsel are committed elsewhere;

c. Unavailability of an individual law practitioner because of engagement in another court, if he has failed to notify the judge in charge of the trial court calendar of that court that he has been assigned to a date and time certain in a workers' compensation case;

d. Unavailability of a medical or other witness if the witness' deposition could have been taken between the time of receipt of the notice of the hearing date and the date of the hearing.

9 MCAR § 2.310 Intervention.

A. Motion. Any person desiring to intervene in a workers' compensation case as a party shall submit a timely motion to intervene to the settlement judge unless the matter has been referred to the chief hearing examiner for assignment, in which case the motion shall be submitted to the compensation judge to whom the case has been assigned or to the calendar judge if the case has not yet been assigned. The motion shall be served on all parties either personally or by first class mail. Timeliness will be determined by the settlement, calendar or compensation judge in each case based on circumstances at the time of filing. The motion shall show how the moving party's legal rights, duties or privileges may be determined or affected by the case, shall set forth the grounds and purposes for which intervention is sought and shall indicate the moving party's statutory right to intervene if one should exist. The motion shall be accompanied by the following, if applicable:

1. An itemization of disability payments showing the period during which the payments were or are being made, the weekly or monthly rate of the payments and the amount of reimbursement claimed;

2. A summary of the medical or treatment payments, broken down by medical or treatment creditor, showing the total bill submitted, the period of treatment covered by that bill, the amount of payment on that bill, and to whom the payment was made;

3. Copies of all medical or treatment bills on which some payment was made;

4. Copies of the worksheets or other information setting forth how the payments on medical or treatment bills were calculated;

5. A copy of the relevant policy or contract provisions upon which the claim for reimbursement is based;

6. A proposed order allowing intervention with sufficient copies to serve on all parties;

7. A proof of service;

8. At the option of the intervenor, a proposed stipulation which states that all of the payments for which reimbursement is claimed are related to the injury or condition in dispute in the case and that, if the petitioner is successful in proving the compensability of the claim, it is agreed that the sum be reimbursed to the intervenor.

B. Stipulation. When the person serving the motion for intervention has included a proposed stipulation, all parties shall either execute and return the signed stipulation to the intervenor or serve upon the intervenor and all other parties specific and detailed objections to any payments made by the intervenor which are not conceded to be correct and related to the injury or condition the employee has asserted is compensable. If a party has not returned the signed stipulation or filed objections within 20 days of service of the motion, the intervenor's right to reimbursement for the amount sought shall be deemed to have been established without the necessity of the intervenor participating further in the proceedings.

C. Attendance by intervenor. Unless a stipulation has been signed and filed or the intervenor's right to reimbursement has otherwise been established, the intervenor shall attend all settlement or prehearing conferences and shall attend the regular hearing if ordered to do so by the compensation judge.

D. Order. If an objection to intervention remains following settlement and prehearing conferences, the calendar judge shall enter an order ruling on the intervention which order shall be binding on the compensation judge to whom the case is assigned for a regular hearing.

E. Presentation of evidence by intervenor. Unless a stipulation has been signed and filed or the intervenor's right to reimbursement has otherwise been established, at the regular hearing on the claim petition where intervention has been granted, the intervenor shall present evidence in support of his or her claim after the petitioner has rested, unless otherwise ordered by the compensation judge, in order that the issue of intervention may be promptly determined with no undue delay that may prejudice the rights of the original parties.

F. Effects of noncompliance with rule. Failure to comply with any provision of this rule shall result in a denial of the claim for reimbursement unless the compensation judge determines that the error or mistake is merely technical.

G. Failure of attorney to respond. Failure by the employee's attorney to submit a timely response which also complies otherwise with this rule shall be a significant additional factor to be taken into consideration under Minn. Stat. § 176.081 in determining the amount of the attorney's fees. Failure by an attorney representing an employer or insurer to submit a timely response which also complies otherwise with the requirements of this rule shall be taken into consideration for purposes of determining whether a penalty shall be assessed against the employer or insurer under Minn. Stat. § 176.225 for unreasonable or vexatious delay.

9 MCAR § 2.311 Consolidation.

A. Authorization. Consolidation of two or more related cases may be ordered for the purpose of receiving evidence. Consolidation may be ordered upon motion by any party to the calendar or compensation judge or upon the calendar or compensation judge's own motion if the calendar or compensation judge determines:

1. That separate cases present substantially the same issues of fact and law;

2. That a holding in one case would affect the rights of the parties in the other case; and

3. That the consolidation would not substantially prejudice any party.

Notwithstanding the requirements of this rule, the parties may stipulate and agree to such consolidation.

B. Receipt of evidence. Under consolidation, all documentary evidence previously received in an individual case shall be reintroduced in the consolidated proceedings under a master file if the compensation judge assigned to try the case designates one file as a master file. When so adduced, the evidence shall be deemed part of the record of each of the several consolidated cases. Evidence received subsequent to the order of consolidation shall be similarly received with like force and effect.

C. Notice of order. Following the granting of an order for consolidation, the calendar or compensation judge shall forthwith serve on all parties and the commissioner a copy of the order for consolidation. The order shall contain, among other things:

1. A description of the cases for consolidation;

2. The reasons for consolidation;

3. Notification of a consolidated prehearing conference if one has been requested.

D. Objection to consolidation.

1. Motion for severance. Any party may object to consolidation by filing with the appropriate judge, and serving upon all parties at least seven days prior to the regular hearing in the case, a motion for severance from consolidation, setting forth the petitioner's name and address, the title of his case prior to consolidation, and the reasons for his petition.

2. Determination. If the appropriate judge finds that consolidation would prejudice the party moving for severance, the judge shall order such severance or other relief as he or she deems necessary.

E. Service of pleadings and decisions. Separate pleadings shall be filed and separate findings, orders, decisions and awards will be made and filed in each case consolidated for hearing.

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9 MCAR § 2.312 Disqualification.

A. Procedures. A compensation judge shall withdraw from participation in a case at any time if the judge deems himself or herself disqualified, prejudiced or biased for any reason. Proceedings to disqualify a compensation judge shall be initiated by the filing of a motion for disqualification supported by affidavit or declaration under penalty of perjury stating in detail facts establishing grounds for disqualification of the compensation judge to whom a case or proceeding has been assigned. If the compensation judge assigned to hear the matter and the grounds for disqualification are known, the motion for disqualification shall be filed with the chief hearing examiner not more than ten days after the moving party has received notice of the assignment of the judge to the hearing. In no event shall any such motion be entertained after the swearing of the first witness. The motion shall be determined by the chief hearing examiner or his designee. The fact that a compensation judge has previously determined a similar case contrary to the interests of the moving party in the pending case shall not be grounds for disqualification.

B. Affidavit for reassignment. The petitioner and parties responding a petition shall be entitled to reassignment of a regular hearing to another compensation judge in accordance with the provisions of this section. Proceedings for a reassignment shall be instituted by the filing of an affidavit under penalty of perjury in substantially the following form:

State of Minnesota
County of _____

_____, being duly sworn, deposes and says: That (s)he is (a party) (attorney for a party) to the above entitled case; that affiiant believes that (s)he cannot have a (fair) (expeditious) (inexpensive) (unencumbered) (impartial) trial before the workers' compensation judge (before whom the case is pending) (to whom the case is assigned).

_____

Subscribed and sworn to before me
this _____ day of _____, 19_____

_____

Notary Public
My commission expires _____

If the compensation judge assigned to hear the case is known, the affidavit shall be filed not more than five working days after receipt of the notice of regular hearing and be directed to the attention of the chief hearing examiner. A copy of the affidavit shall be served on all other parties or their attorneys at the same time the affidavit is filed. In no event shall any such affidavit be entertained after the swearing of the first witness at a regular hearing.

Upon the filing of an affidavit for reassignment in accordance with the provisions of this section, without any further act or proof, the chief hearing examiner shall assign the case or proceeding to another compensation judge. Upon reassignment a new notice of regular hearing shall be served. Under no circumstances shall more than one such reassignment be made in any one case or proceeding pursuant to the affidavit of any one party; provided, however, that one additional reassignment may be made upon petition of a party on the other side. The petition by the other party shall be filed in the manner and time hereinbefore provided.

Unless required because of the unavailability of a compensation judge to hear the case, no continuance shall be granted by reason of an affidavit filed under this section. If a continuance is necessary, another regular hearing will be scheduled as early as possible.

Consolidated cases are to be considered as one case within the meaning of this section. This section is not applicable to settlement or pretrial conferences.

9 MCAR § 2.313 Prehearing procedures.

A. Requirement. All cases shall be subject to a settlement conference or a prehearing conference whenever possible, at which all parties shall attend or be represented, unless a settlement judge or calendar judge orders otherwise. If parties are represented by attorneys, the attorneys shall bring with them their appointment calendars. If a party is not represented by an attorney, the party shall appear personally and shall be prepared to arrange agreeable dates for the regular hearing. Parties or their attorneys attending a settlement or prehearing conference must have authority to settle their respective claims.

B. Settlement discussions. Prior to any settlement or prehearing conference, the parties shall discuss the possibility of settlement if they deem that a reasonable basis for settlement exists. Parties or attorneys appearing at settlement or prehearing conference shall be prepared to participate in settlement discussions.

C. Conference procedures. At the settlement or prehearing conference:

1. All parties shall be prepared to state the issues;

2. All parties shall state the names, and addresses if known, of all witnesses they intend to call;

3. All parties shall give notice of any amendments to pleadings that may still be necessary;

4. All parties shall file copies of all medical reports not already on file. Reports of medical examinations completed after any settlement conference or prehearing conference shall be filed as soon as available prior to the regular hearing;

5. Each party shall state what exhibits, including photographs, motion picture films, video tapes and documentary evidence, are intended to be used at the hearing, and copies of these exhibits shall be made available to opposing counsel no later than ten days prior to the date of the regular hearing; provided, however, that if any party requests showing of motion picture films or video tapes prior to the regular hearing, it shall pay the expense for the showing and may tax this expense in the same manner as other disbursements;

6. If the employee plans to introduce hospital records into evidence, the employee or his attorney shall bring to the settlement or prehearing conference written authorizations for opposing counsel to examine those records if the authorizations have not previously been provided;

7. If the employee is claiming medical or other treatment expenses, the employee or the attorney shall state those expenses at the time of the settlement or prehearing conference, and shall furnish opposing counsel with copies of itemized bills for such expenses at least ten days prior to the settlement or prehearing conference;

8. If the employee is claiming temporary total disability, the employee or attorney shall state at the settlement or prehearing conference the dates of time lost from work;

9. If the employee is claiming temporary partial disability, the employee or attorney shall state the dates of the claim, the approximate amount of the claim, and the names and addresses of the employers for whom the employee worked during the period of the claim; authorizations to permit opposing counsel to confirm wages earned in those employments shall have been furnished at least ten days prior to the scheduled settlement or prehearing conference; and, an itemized breakdown of the claim for temporary partial disability shall be submitted to the compensation judge and opposing counsel at least ten days prior to the time of the regular hearing;

10. The parties or their attorneys shall state whether payment for disability benefits, on medical or treatment expenses, or on funeral expenses has been made by any party other than the workers' compensation carrier. If payment has been made, the name and address of the party making payment shall be furnished to the settlement or calendar judge, together with any identifying policy or claim numbers;

11. If a dispute exists on the wage rate at the time of the injury, the attorney for the employer and insurer shall furnish to opposing counsel at least ten days prior to the settlement or prehearing conference, copies of the relevant wage records of the employee;

12. The attorney for the employee or dependents shall furnish to the settlement or calendar judge a copy of his retainer agreement with the employee or dependents and shall state the amount of retainer fee paid. He shall be prepared at the time of hearing or settlement to show the reasonableness of any attorney's fees or costs, in accordance with Minn. Stat. § 176.081.

D. Prehearing statement. At the time a case is first set for a settlement or prehearing conference, if the information is not already on file, the settlement judge or calendar judge may order the parties to complete, serve on each other and file a prehearing statement which shall contain any of the items in C. which the settlement or calendar judge deems appropriate. In making a determination on the requirement of the preparation of prehearing statements, the settlement or calendar judge shall take into consideration the number of parties involved in the case, the nature and extent of the medical issues, and the nature, extent and type of disability claimed.

E. Evidence not disclosed at conference. Evidence, or other matters listed in C. which have not been disclosed at the prehearing conference shall not be allowed to be presented at the regular hearing unless it can be shown to the compensation judge that the evidence or other matters offered were discovered subsequent to the prehearing conference, were not discoverable through the exercise of due diligence prior to that time, and that the other parties have been advised of the evidence or other matters prior to the trial and have had an opportunity for review.

F. Temporary orders. Any insurer or self-insurer voluntarily agreeing to pay benefits pursuant to Minn. Stat. § 176.91, subd. 1, shall file a formal petition for temporary order.

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1. The petition shall contain the following:

a. Name of the employer and its insurer or self-insured consenting to payment of compensation benefits and medical expenses;

b. The dispute involved, including the name and address of other employer and its workers' compensation insurer, if known, that may be liable for workers' compensation benefits and the date of the alleged injury while working for the employer;

c. The beginning date of the employee's present disability, and the compensation rate that the insurer or self-insurer will voluntarily pay;

2. The original petition for temporary order, with proof of service on all necessary parties, shall be filed with the division, the office, or the court of appeals, depending upon where the matter is pending;

3. The petition for temporary order shall be accompanied by a prepared formal order that should be substantially in the following form:

The undersigned having examined the foregoing petition for temporary order and the compensation files and records herein, and it appearing that a temporary order for payment of compensation benefits should be issued pending a final determination, as provided by Minn. Stat. § 176.191, subd. 1;

NOW, THEREFORE, IT IS HEREBY ORDERED, that (name of insurer or self-insured) having consented to payment of compensation benefits pursuant to Minn. Stat. § 176.191 shall pay to (name), employee, compensation at the weekly rate of $(amount), during the period of employee's disability, beginning (date), and shall also pay reasonable medical expenses related to employee's said disability.

IT IS FURTHER ORDERED, that following a final determination of liability and if it has been determined that some other employer or insurer is liable for all or part of the compensation paid pursuant to this temporary order, then the division, the compensation judge, or Court of Appeals shall order the parties held liable to reimburse (name of paying party) for all or part of the compensation paid pursuant to this temporary order, for which the other parties are held liable, including interest at the rate of five percent per annum.

Dated at ....., Minnesota
this .....day of.....

(WORKERS' COMPENSATION DIVISION)
(COMPENSATION JUDGE)
(COURT OF APPEALS)

.....
By .....

The original and sufficient copies of the order to make service upon all neccessary parties, and any attorneys representing them, shall be filed.

G. Payment of benefits by special compensation fund. An employee seeking payment of benefits by the special compensation fund pursuant to Minn. Stat. § 176.191, subd. 2, shall file a formal petition for temporary order.

1. The petition shall contain the following:

a. A statement that written demand for payment pursuant to Minn. Stat. § 176.191, subd. 1, has been made against all employers and insurers party to the claim and that the payment demanded has been refused:

b. The names and addresses of all employers and insurers or self-insurers who are parties to the claim;

c. A statement as to the dispute involved and the dates of all alleged injuries while working for each employer;

d. The beginning date of the employee's present disability, the compensation rate applicable for each injury date, the proposed compensation rate to be paid by the special compensation fund, and an itemization of all medical expenses requested to be paid pursuant to the temporary order;

2. The original of the petition for temporary order, with proof of service on all necessary parties, shall be filed with the division, the office, or the court of appeals, depending upon where the matter is pending;

3. The petition for temporary order shall be accompanied by a prepared formal order that should be substantially in the following form:

The undersigned having examined the foregoing petition for temporary order and the compensation files and records herein, and it appearing that a temporary order for payment of compensation benefits should be issued pending a final determination, as provided by Minn. Stat. § 176.191, subd. 2;

NOW, THEREFORE, IT IS HEREBY ORDERED that the State Treasurer, as custodian of the special compensation fund, shall, pursuant to Minn. Stat. § 176.191, subd. 2, pay to (name), employee, compensation at the weekly rate of $(amount), during the period of employee's disability, beginning (date), and shall also pay reasonable medical expenses related to the employee's said disability.

IT IS FURTHER ORDERED, that following a final determination of liability and if it has been determined that one or more employers or insurers are liable for all or part of the compensation paid pursuant to this temporary order, then the division, the compensation judge or Court of Appeals shall order the parties held liable to reimburse the State Treasurer, as custodian of the special compensation fund, for all or part of the compensation paid pursuant to this temporary order, for which the other parties are held liable, including interest at the rate of 12 percent per annum.

Dated at ....., Minnesota
this .....day of .....

(WORKERS'S COMPENSATION DIVISION)
(COMPENSATION JUDGE)
(COURT OF APPEALS)

.....
By .....

The original and sufficient copies of the order to make service upon all necessary parties, and any attorneys representing them, shall be filed.

H. Necessary parties. For the purpose of this rule, the following shall be deemed necessary parties:

1. The employee or dependents;

2. All insurers or self-insured named in the petition for temporary order;

3. Any employer who is uninsured or whose insurer for the date of the alleged injury in that employment is unknown;

4. The state treasurer, as custodian of the special compensation fund, if the petition is made pursuant to Minn. Stat. § 176.191, subd. 2.

I. Answer. Within ten days after being served with a copy of the petition for temporary order and order, employers or their insurers, other than paying party, or the state treasurer, as custodian of the special compensation fund, may file a verified answer to the petition in accordance with the provisions of Minn. Stat. § 176.321.

J. Circumstances of nonapproval of temporary orders. Temporary orders, as a general rule, shall not be approved if made contingent upon the waiver by the employee of his rights to claim an additional award pursuant to Minn. Stat. § 176.225, or to have fees for his attorney assessed against the employer and insurer in addition to compensation pursuant to Minn. Stat. § 176.191 or 176.081, subd. 8.

K. Effect of filing. The filing of a petition for temporary order shall not cause the matter to be placed on the trial calendar, unless accompanied by a petition for contribution or reimbursement.

9 MCAR § 2.314 Discovery.

A. Demand. Each party shall, within 30 days of a demand by another party, disclose or furnish the following:

1. The names and addresses of all witnesses that a party intends to call at the regular hearing. All witnesses unknown at the time of the disclosure shall be disclosed as soon as they become known if a prior demand has been made.

2. Any relevant written or recorded statements made by witnesses on behalf of a party. The demanding party shall be permitted to inspect and reproduce any such statements which reproduction shall be at the expense of the party requesting reproduction. Any party unreasonably failing upon demand to make the disclosure required by this rule, upon proper motion made to the compensation judge at the time of trial, may be foreclosed from presenting any evidence at the hearing through witnesses not disclosed or through witnesses whose statements are not disclosed.

3. Medical privilege shall be deemed waived as to the injuries or conditions alleged in the petition by the filing of the petition alleging injury or occupational disease. Medical authorizations shall be furnished, upon demand, to adverse parties. Likewise, any and all medical reports shall be provided, upon demand, to all adverse parties. Upon demand, the petitioner shall

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disclose the names and addresses of all persons who have treated the petitioner in the past for injuries or conditions identical or similar to those alleged in the petition, the dates of the treatment, and shall provide medical authorization for each.

B. Depositions. Pursuant to the provisions of Minn. Stat. § 176.411, subd. 2, depositions may be taken in the manner which the law provides for depositions in civil actions in the district courts for the state, except where a compensatibn judge orders otherwise. When a party has objected to the taking of a deposition, the party requesting the deposition shall bring a motion before the settlement, compensation or calendar judge, before whom the case is pending at the time of the motion, who shall determine whether the deposition should go forward. The settlement, compensation or calendar judge shall order the deposition to proceed if the judge finds that the request for the taking of the deposition has been shown to be needed for the proper presentation of a party's case, is not for purposes of delay, that unusual or extraordinary circumstances exist which compel extensive discovery, or that the issues or amounts in controversy are significant enough to warrant extensive discovery.

Depositions for the purpose of preserving testimony or for presenting medical testimony due to the unavailability of the doctor shall be allowed. Unless, for good cause shown, the party taking the deposition has obtained the permission of the calendar judge, or compensation judge if the case has been assigned for hearing, to take the deposition subsequent to the hearing, it shall be taken sufficiently in advance of the hearing so that the deposition is filed prior to the regular hearing or, at the latest, on the day of the regular hearing.

The original copy of any deposition taken for purposes of presenting testimony in the case shall be filed with the settlement judge if the case is still pending before the settlement judge or with the office of administrative hearings if the matter has been referred to the chief hearing examiner for assignment. The original copy of any deposition taken solely for purposes of discovery shall be sealed and filed as in the case of evidentiary depositions but shall not be reviewed or utilized in any fashion by the compensation judge unless the deposition shall be formally entered as evidence in the case.

C. Motions for additional discovery. Upon the motion of any party, the settlement, compensation or calendar judge having jurisdiction at the time of the motion may order discovery of any other relevant material or information, recognizing all privileges recognized at law. The judge may order any means of discovery available pursuant to the rules of civil procedure for the district courts of the state of Minnesota provided that the request for such discovery can be shown to be needed for the proper presentation of a party's case, is not for purposes of delay, and that the issues or amounts in controversy are significant enough to warrant extensive discovery.

D. Penalties. Upon the failure of a party to reasonably comply with 9 MCAR §§ 2.301-2.326 relating to discovery or with an order of a settlement, compensation or calendar judge made pursuant to this rule, upon a motion properly made at the time of the hearing, the compensation judge assigned to the regular hearing may make a further order as follows:

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

2. An order refusing to allow the party failing to comply to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence.

E. Proprietary information. When a party is asked to reveal material which that party considers to be proprietary information or trade secrets, he or she shall bring the matter to the attention of the appropriate judge, who shall make such protective orders as are reasonable and necessary or as otherwise provided by law.

9 MCAR § 2.315 Petitions for contribution or reimbursement.

A. Contents. Petitions for contribution or reimbursement shall set forth in detail the allegations showing the basis of the claim for contribution or reimbursement against the additional employer or insurer named,therein, or of the claim for reimbursement against the state treasurer, custodian of the special compensation fund. The petition shall be supported by medical evidence, and shall be signed and verified. The original petition shall be filed with the settlement judge if the matter is pending before the division or with the chief hearing examiner if the matter has been referred for assignment, together with proof of service upon the employee or his attorney and all additional parties named in it.

B. Filing. In all cases where a claim petition or other form of action is pending, a petition for contribution or reimbursement shall be filed no later than ten days prior to a settlement or prehearing conference, and copies of all pleadings, including any notice of settlement or prehearing conference shall be served upon the additional employers or insurers by the party bringing the petition. In cases where no action is pending, the filing of the petition for contribution or reimbursement with the division shall initiate proceedings.

C. Answer. Within 20 days after being served with a copy of a petition for contribution or reimbursement, employers or their insurers, other than the petitioning party, may file a verified answer to the petition in accordance with the provisions of Minn. Stat. § 176.321 and, if not already set for settlement or prehearing conference, the matter shall be set for a settlement or prehearing conference in accordance with these rules.

D. Notice to employee. The employee shall be notified of all of the proceedings and should be represented by an attorney of his or her choice. A copy of all motions or answers shall be duly served upon the employee, the employee's attorney, or both in accordance with Minn. Stat. § 176.321.

9 MCAR § 2.316 Subpoenas. Subpoenas may be obtained without charge from the workers' compensation division or the office of administrative hearings. The name and address and telephone number of the party or attorney requesting service of the subpoena shall be included on the subpoena before service is made. When service is made, service and witness fees shall be tendered in accordance with Minn. Stat. § 357.22.

Upon motion promptly made, and in any event at or before the time specified in the subpoena for compliance with it, the calendar judge or compensation judge, if the case has been assigned for regular hearing, may quash or modify the subpoena if the judge finds that it is unreasonable or oppressive.

9 MCAR § 2.317 The hearing.

A. Notice. A place, date and time certain will be assigned to each case. Notice of the hearing will be given as soon as the assigned date is known, but shall be given at least five days in advance of the hearing. The notice will include the place of hearing and the amount of time allowed for the hearing. Cases will be set for one location only, which shall be that most convenient for the petitioner, and adequate time will be allowed so that the case may be completely heard in one setting. In the event that an additional hearing date is required, it shall be set by agreement of all parties and the compensation judge. If the parties cannot agree, the compensation judge shall set the hearing as provided herein.

B. Availability of medical witnesses. As soon as the parties are apprised of the date scheduled for hearing, they shall immediately notify all medical witnesses in writing and arrange for their presence or for the taking of their deposition pursuant to 9 MCAR § 2.314 B.

C. Medical reports. The production of medical evidence in the form of written reports, by stipulation of the parties, is encouraged. These reports should include:

1. The date of the examination;
2. The history of the injury;
3. The patient's complaints;
4. The source of all facts set forth in the history and complaints;
5. Findings on examination;
6. Opinion as to the extent of disability and work limitations, if any;
7. The cause of the disability and, if applicable, whether the work injury was a substantial contributing factor toward the disability;
8. The medical treatment indicated;
9. Opinion as to whether or not permanent disability has resulted from the injury and whether or not the condition has stabilized. If stabilized, a description of the disability with a complete evaluation; and
10. The reason or reasons for the opinion or opinions.

D. Rights of parties. All parties shall have the right to present evidence, to cross-examine witnesses, and to present rebuttal testimony.

E. Witnesses. Any party may be a witness or may present witnesses on his behalf at the hearing. All oral testimony at the hearing shall be under oath or affirmation. At the request of a party or upon his own motion for good cause, the compensation judge may exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses.

F. Rules of evidence.

1. Pursuant to Minn. Stat. § 176.411, subd. 1, the compensation judge is bound neither by the common law or statutory rules of evidence nor by technical or formal rules of pleading or procedure.

2. Evidence must be offered to be considered. All evidence to be considered in the case, including all records and

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documents in the possession of any party, or a true and correct photocopy thereof, shall be offered and made a part of the record in the case. No other factual information or evidence shall be considered in the determination of the case. Any independent investigation by the compensation judge pursuant to the provisions of Minn. Stat. § 176.391, subd. 1, shall be part of the record provided all parties are aware of the investigation and have had an opportunity to participate in it.

3. Documentary evidence. Documentary evidence in the form of copies of excerpts may be received or incorporated by reference upon agreement of the parties or if ordered by the compensation judge.

4. Notice of facts. The compensation judge may take notice of judicially cognizable facts but shall do so on the record and with the opportunity for any party to contest the facts so noticed.

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

G. The record.

1. The compensation judge shall maintain the official record, other than the stenographic notes of a hearing reporter if one was used, in each case until the issuance of the judge's final order.

2. The record in a compensation case shall contain:

a. All pleadings, motions and orders, including the judgment roll and the entire record from any previous hearing which is relevant to the issues under consideration;

b. Evidence received or considered unless, through agreement of the parties or by order of the compensation judge, custody of an exhibit is given to one of the parties;

c. Those parts of the official file on the matter at the division which the compensation judge incorporates;

d. Offers of proof, objections and rulings thereon;

e. The compensation judge's order;

f. All memoranda or data submitted by any party in connection with the case;

g. A transcript of the hearing, if one was prepared; and

h. The audio-magnetic recording tapes, if that device was used to record the hearing.

3. The transcript.

a. The chief hearing examiner shall direct that the verbatim record of a hearing shall be transcribed if requested by any person. If a transcription is made, except as provided in c., the chief hearing examiner shall require the requesting person and other persons who request copies of the transcript to pay a reasonable charge for them if transcribed by the office. If transcribed by someone other than the office, the person requesting the transcription or a copy shall be liable to the person preparing the transcript for the charge.

b. Charges for transcripts prepared by the office shall be set by the chief hearing examiner, with the approval of the Department of Finance, and all moneys received for transcripts prepared by the office shall be payable to the State Treasurer, Office of Administrative Hearings Account.

c. Pursuant to the provisions of Minn. Stat. § 176.421, subd. 4, clause (3), a party may petition the chief hearing examiner for an order directing that a transcript be prepared, for purposes of appeal to the Court of Appeals, at no cost to the appellant. A petition filed under this provision shall include the following:

(1) Title of the case;

(2) Case identification numbers;

(3) Name, address and telephone number of the attorney representing the appellant;

(4) A sworn affidavit from the appellant which shall include:

(a) Appellant's monthly personal income from all sources including income from trusts, bonds, and savings certificates;

(b) A list, at market value, of all stocks, bonds, savings certificates or other certificates of indebtedness held by the appellant and the appellant's spouse if residing in the same household;

(c) If residing in the same household, the monthly personal income from all sources for appellant's spouse;

(d) A statement of the monthly expenses for the appellant's household;

(e) If the appellant owns any rental property, a statement showing the appellant's equity in the property and the monthly income and expense for the property;

(f) If the appellant owns outright or is purchasing the property in which he or she resides, a statement showing the market value of the property, the appellant's equity in the property, and the present monthly payments, if any.

H. Continuances during the hearing. If it appears in the interests of justice that further testimony should be received, the compensation judge, in his or her discretion, may continue the hearing to a future date and oral notice on the record shall be sufficient if given at the time of the original hearing. Otherwise, the notice of the date for the continued hearing shall be in writing and served on all parties.

I. Hearing procedure.

1. Compensation judge conduct. The compensation judge shall not communicate, directly or indirectly, in connection with any issue of fact or law with any party concerning any pending case, except upon notice and opportunity for all parties to participate.

2. Unless the compensation judge determines that the substantial rights of the parties will be ascertained better in some other manner, the hearing shall be conducted substantially in the following manner:

a. After opening the hearing, the compensation judge shall, unless all parties are represented by counsel, state the procedural rules for the hearing;

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

c. If the compensation judge requests opening statements, the party with the burden of proof shall proceed first. All other parties shall make such statements in a sequence determined by the compensation judge;

d. After any opening statements, the party with the burden of proof shall begin the presentation of evidence. That party shall be followed by the other parties in a sequence determined by the compensation judge;

e. Cross-examination of witnesses shall be conducted in a sequence determined by the compensation judge;

f. When all parties and witnesses have been heard, if the compensation judge believes that legal issues remain unresolved, opportunity may be afforded to present final argument, in a sequence determined by the compensation judge. Final argument may, in the discretion of the compensation judge, be in the form of written memoranda or oral argument, or both. Oral final argument shall not be recorded, unless requested by a party or upon the order of the compensation judge. Written memoranda shall, when allowed, be submitted simultaneously or sequentially and within such time periods as the compensation judge shall prescribe. Final arguments shall be limited to legal issues only;

g. After final argument, if any, the hearing shall be closed or continued if ordered by the compensation judge. If continued, it shall be either continued to a certain time and day, which shall be announced at the time of the hearing and made a part of the record, or continued to a date to be determined later, which must be upon not less than 15 days written notice to the parties;

h. The record of the case shall be closed upon receipt of the final written memorandum, transcript, if any, or late-filed exhibits which the parties and the compensation judge have agreed should be received into the record, whichever occurs last.

J. Disruption of hearing.

1. Cameras. No television, newsreel, motion picture, still or other camera, and no mechanical recording devices, other than those provided by the office of administrative hearings, shall be operated in the hearing room during the course of the hearing unless permission is obtained from the compensation judge and then subject to such conditions as the compensation judge may impose to avoid disruption of the hearing.

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2. Other conduct. Pursuant to and in accordance with the provisions of Minn. Stat. § 624.72, no person shall interfere with the free, proper and lawful access to or egress from the hearing room. No person shall interfere with the conduct of, disrupt or threaten interference with or disruption of the hearing. In the event of interference or disruption or threat thereof, the compensation judge shall read this rule to those persons causing the interference or disruption and thereafter proceed as the judge deems appropriate.

9 MCAR § 2.318 The compensation judge's decision.

A. Basis for the decision.

1. The record. No factual information or evidence which is not a part of the record shall be considered by the compensation judge in the determination of the case.

2. Administrative notice. The compensation judge may take administrative notice of general, technical or scientific facts within the judge's specialized knowledge in conformance with the requirements of Minn. Stat. § 15.0419, subd. 4 provided that notice of the taking of such administrative notice is given and opportunity has been provided to all parties to rebut the facts sought to be noticed.

B. Compensation judge decisions.

1. Following the close of the record, the compensation judge shall prepare his or her decision and, upon completion, shall immediately file it with the commissioner who shall serve it on all parties as required by Minn. Stat. § 176.281.

2. The compensation judge's decision shall contain the following:

a. The date and location of the hearing and the compensation judge's name;

b. Appearances by parties, if pro se, or their attorneys, giving the full name and mailing address, including zip code, of each;

c. The date on which the record of the hearing closed;

d. A notice of the right of parties to appeal and how the appeal can be perfected;

e. Findings of fact, conclusions and a determination on each issue raised. In cases involving a multiplicity of issues, the compensation judge may organize the decision by major subissues if the judge determines that organizing the decision in that manner will aid the reader in understanding the contents of it.

C. Readability. Compensation judge decisions shall be clear and concise and shall be written in a prose style which can be read and understood by persons of average intelligence. English rather than Latin terms shall be used unless it is necessary to utilize the Latin terminology.

D. Proposed decision filed by party. Any party may file a proposed decision with the compensation judge before the record is closed. Any proposed decision submitted shall conform to the provisions of these rules, shall be served on all other parties and shall be in a form which would allow the compensation judge to sign and issue the decision if it is acceptable.

9 MCAR § 2.319 Rehearing. When a compensation judge has issued his or her findings, conclusions and decision, the judge's jurisdiction over the case shall end, except for taxation of disbursements or awarding of attorney's fees, unless the matter is rereferred to the compensation judge by the court of appeals and the chief hearing examiner for supplemental findings, taking of additional testimony, rehearing, or other action; provided that compensation judges may correct clerical errors in decisions at any time prior to appeal.

9 MCAR § 2.320 Settlements.

A. Stipulations. Stipulations for settlement are allowed pursuant to Minn. Stat. § 176.521 and shall conform to that section and to the requirements of this rule.

B. Filing. All stipulations for settlement shall be filed within 30 days of the date the settlement was negotiated.

C. Approval. Stipulations for settlement shall be filed with and approved by the commissioner or the commissioner's designee if the case has not been referred to the chief hearing examiner.

Stipulations for settlement reached and agreed upon subsequent to the referral of the case to the chief hearing examiner shall be filed with and subject to approval by the compensation judge assigned to hear the case or the calendar judge if the matter has not yet been assigned.

D. Contents. Stipulations for settlement shall contain the following information;

1. A brief statement of all of the admitted material facts;

2. A detailed statement of the matters in dispute, setting forth the contentions of the parties, supported by all medical reports or other documents in the possession of each party pertaining to each issue;

3. The weekly wage and compensation rate of the employee;

4. An itemization of the sums, if any, previously paid by the employer and insurer;

5. A statement that all medical or treatment expenses have been paid by the employer and insurer, or an itemization of the expenses which have not been paid by the employer and insurer, indicating which payments, if any, have been made by the employee. The stipulation shall specifically state whether any third party has paid any of the expenses and, if payments have been made, shall include the name and address of the third party together with any identifying claim or policy number;

6. The number of weeks and rate of compensation and, in cases of permanent partial disability, the percentage loss or loss of use upon which the compromise agreement is based;

7. Where applicable, the amount payable by the employer and insurer to the workers' compensation division for the benefit of the special compensation fund;

8. Where applicable, a statement that the employee has been fully advised of the provisions of Minn. Stat. §§ 176.132 and 176.645, and the effect of the settlement upon any future claims for supplementary benefits or adjustment of benefits;

9. Where applicable, a statement that the employee is claiming or waiving his or her right to make application for an award of attorney's fees against the employer or insurer pursuant to Minn. Stat. §§ 176.081, subd. 7 or 8, 176.135 or 176.191.

E. Attorney's fees detailed. Stipulations for settlement of cases in which the employee or dependents have engaged the services of an attorney shall be accompanied by a statement of the amount of attorney's fees requested and an itemization of the costs incurred, specifying who will be responsible for payment of each cost, and shall provide sufficient information to show the reasonableness of the requested fees and costs in accordance with Minn. Stat. § 176.081. If no fees are requested, the stipulation shall so state.

F. Medical reports. Stipulations for settlement shall be accompanied by copies of all medical reports in the possession of the parties which have not previously been filed.

G. Award. The parties involved in the settlement shall submit an award on stipualtion prepared for signature by the applicable judge and sufficient copies thereof for all parties to be served if the settlement is approved.

H. Copy to client. The attorney representing the employee or dependents shall furnish a copy of the stipulation for settlement to his or her client at the time the client signs the stipulation.

I. Signatures. Stipulations for settlement shall be signed by all parties as required by Minn. Stat. § 176.521.

J. Payment. The employer and insurer shall make payments pursuant to an award on stipualtion within 14 days from the date the award on stipulation is served.

9 MCAR § 2.321 Attorney fees.

A. Authorization. Whenever an employer or insurer receives notice that an attorney is representing an employee or dependent, 25 percent of the compensation, not including medical expense, shall be withheld pending an order determining the reasonable value of any claim for legal services or disbursements pursuant to Minn. Stat. § 176.081. Written notice that the compensation is being withheld shall immediately be mailed to the employee or dependents, the attorney and the division at its Saint Paul office.

B. Application. In applicable cases, the filing of a claim petition or an objection to discontinuance of compensation shall constitute an application for the award of attorney fees against the employer and insurer pursuant to Minn. Stat. § 176.081, subd. 7.

Application for determination and approval of any claim for legal services or disbursements may be filed by the employer or insurer, the employee or dependents or the attorney. Application for attorney fees shall be by written petition. Any application shall disclose the amount of compensation withheld, the total fees or disbursements previously paid to said attorney or his associates and, if filed by the attorney for the employee or dependents, the amount of any retainer fee paid. Applications filed by attorneys shall contain sufficient information to show the reasonableness of the requested fees in accordance with Minn. Stat. § 176.081, subd. 5.

A separate application is not necessary if filed as part of a stipulation for settlement as provided in these rules.

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C. Filing. Applications under this rule shall be filed with the commissioner unless the case has been referred to the chief hearing examiner for assignment, in which case it shall be filed with the compensation judge assigned to hear the case or the calendar judge if no assignment has been made.

9 MCAR § 2.322 Taxation of costs and disbursements.

A. Service of request. Service of the request for taxation of costs and disbursements shall be made upon the other parties, or their attorneys, by the taxing party.

B. Service of objection. An opposing party has five working days from the date of service upon him in which to serve and file a formal objection to taxation or allowance, with admission or proof of service upon the other parties.

C. Hearing. If requested, a time for hearing before the compensation judge who heard the case shall be fixed. A notice thereof shall be given to the parties by the compensation judge.

9 MCAR § 2.323 Second injury law.

A. Application. Application for registration of physically impaired employees shall be in a format prescribed by the division and submitted pursuant to rules of the commissioner.

B. Hearing. Should the commissioner deem the application unacceptable prior to the subsequent injury, the applicant may, within 60 days following receipt of notice of rejection, petition to the division, in writing, for hearing upon the application. A copy of the petition shall be served by the applicant upon the state treasurer, custodian of the special compensation fund, and upon the attorney general. Upon receipt of the petition, the commissioner shall refer the matter to the chief hearing examiner for hearing which hearing shall be conducted by a compensation judge as provided by Minn. Stat. § 176.411, with right of appeal.

C. Referral. If a dispute arises following the notice of intention to claim reimbursement under Minn. Stat. § 176.131, subd. 6, the commissioner shall refer the matter to the chief hearing examiner who shall assign the matter to a compensation judge for hearing which hearing shall be conducted as provided by Minn. Stat. § 176.411, with right of appeal.

9 MCAR § 2.324 Other hearings. Pursuant to the provisions of Minn. Stat. § 15.052, subd. 3, all hearings not discussed herein but required to be conducted by a compensation judge of the office of administrative hearings shall be conducted in substantial compliance with these rules provided, however, that in any dispute wherein an immediate hearing is necessary in order to carry out the purpose and intent of the Minnesota workers' compensation law, the notice of hearing shall be given not less than five working days prior to the hearing date. The chief hearing examiner shall provide expedited assignment of compensation judges to these hearings and shall assign compensation judges to the hearings in a manner which will allow the compensation judge's decision to be issued immediately upon conclusion of the hearing or as soon thereafter as may be reasonable and practical.

9 MCAR § 2.325 Permanent partial disability panel.

A. Notification to administrator. Upon receipt of a file from the commissioner, if the chief hearing examiner, or a calendar or compensation judge if the case has been assigned to them, determines from a review of the file that permanent partial disability is a significant issue to be determined in the case, the chief hearing examiner shall immediately notify the administrator of the workers' compensation court of appeals if the employee resides in a county selected by the court of appeals pursuant to the provisions of Minn. Stat. § 176.152, subd. 7.

B. Questions to panel. When the administrator of the workers' compensation court of appeals notifies the chief hearing examiner of the names and addresses of the members of the permanent partial disability panel, the compensation judge, or the chief hearing examiner in cases in which a compensation judge has not yet been assigned, shall submit written questions to the panel. A copy of the questions shall be served on all parties at the same time.

Hearing. When the chief hearing examiner or compensation judge receives the report of the panel, the case shall be set for a regular hearing as soon as practicable.

D. Disputes relating to payment of panel members. Disputes relating to the payment of the fees of panel members arising pursuant to the provisions of Minn. Stat. § 176.152, subd. 6, shall be brought to the attention of the compensation judge assigned to hear the case no later than 20 days prior to the date of the hearing. The parties disputing the fee shall notify the compensation judge, in writing, of the intent to dispute the fee, stating therein the specific facts relied upon in disputing the fee. A copy of this notification shall be served on all other parties and the members of the panel at the same time as it is filed with the compensation judge. At the hearing, the dispute shall be determined as other issues in the case.

9 MCAR § 2.326 Exhibits: removal and return.

A. Requests for removal. All requests for permission to remove any exhibit or document from the official file must be made to the compensation judge to whom the file has been assigned or to the supervisor of the docket section of the office.

B. Return without consent or notice. Upon the expiration of the time in which to appeal, all exhibits or other documentary evidence may be returned to their source of origin without the consent of the parties or notice thereto, upon order of the

compensation judge. A copy of the letter of transmittal of the exhibits or documents shall remain in the file as part of the record of the case.

C. Request for return. Upon expiration of the time in which to appeal, exhibits or other documentary evidence shall be returned to their source upon the request of the party which introduced the evidence into the record. A request for return of exhibits or documents shall be made in writing to the compensation judge, shall contain the title and appropriate identification number of the case in which they were entered into evidence, and shall identify the exhibits or documents requested. A telephone number of the person making the request shall be included with the request.

Department of Agriculture
Agronomy Services Division

Proposed Rules Governing Storage and Handling of Liquid and Dry Commercial Fertilizer

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Department of Agriculture proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Agriculture 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, subdivision 4h (1980).

Persons interested in these rules shall have 30 days to submit comment 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 (1980).

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to: Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-1486. 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 modification is desired.

Authority for the adoption of these rules is contained in the Minnesota Fertilizer, Soil Amendment and Plant Amendment Law, Minn. Stat. §§ 17.711 to 17.729, as amended by Laws of 1981, ch. 214. Additionally, a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available upon request from: Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-1486.

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 a 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 Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-1486.

The purpose of the Minnesota Fertilizer, Soil Amendment and Plant Amendment Law is to regulate the sale and handling of fertilizers and soil conditioners within the State of Minnesota. Presently, no rules exist which govern the storage and handling of liquid and dry commercial fertilizers. Proper storage and handling of liquid and dry commercial fertilizers benefits public health and safety by helping to reduce the number and severity of fertilizer spills which could adversely affect ground and surface water quality.

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

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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, (612) 296-5615.

Copies of this notice and the proposed rules are available and may be obtained by contacting Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, Minnesota 55107, (612) 296-1486.

September 17, 1981

Mark W. Seetin
Commissioner of Agriculture

Rules as Proposed (all new material)

3 MCAR § 1.0325 Liquid fertilizers.

A. Authority and purpose. This rule is adopted by the Commissioner of Agriculture pursuant to Minn. Stat. § 17.725, to govern the storage and handling of liquid commercial fertilizer used for agricultural purposes.

B. Definitions. For the purpose of this rule, the terms defined in this rule, and the terms defined in Minn. Stat. § 17.713, have the meanings given them.

1. "Appurtenances" means valves, pumps, fittings and metering or dispensing devices.

2. "Department" means the Department of Agriculture.

3. "Incident" means a flood, fire, tornado, transportation accident, storage container rupture or leak or other release of liquid fertilizer, whether accidental or not, which is likely to cause adverse effects on the environment.

4. "Liquid commercial fertilizer" means mixed fertilizer or fertilizer materials distributed in a nonpackage form.

5. "Responsible party" means the person who has direct custody or control of liquid fertilizer at the time of an incident.

6. "Safeguard" means a facility, device or system or a combination of any of them designed to prevent the escape or movement of a substance or solution from the place it is stored or kept under conditions which might result in the pollution of any state waters.

7. "Storage container" means a tank in which commercial fertilizer is stored. This does not include delivery equipment unless the delivery equipment is used for storage.

C. Approval of facility and equipment. A person beginning construction of a new liquid fertilizer storage facility or modifying an existing liquid fertilizer storage facility shall first obtain the approval of the Commissioner of Agriculture or his designee. The application shall be made on forms provided by the commissioner. The application shall be approved when inspection of the facility and review of the application demonstrates that the proposed facility satisfies the requirements of this rule and provides safeguards to prevent hazards to people's lives, adjoining property or the environment.

At any time, the commissioner may review approved facilities where it appears that existing safeguards are not sufficient to prevent hazards to people's lives, adjoining property or the environment. Upon determination by the commissioner that hazards to people's lives, adjoining property or the environment do exist, the commissioner may withdraw approval or require additional mitigation measures to be taken.

D. Exceptions. Parts F.1. and G.3. shall not apply to facilities and equipment governed by this rule which were established prior to the date of adoption of this rule unless the existing facility, without modification, would result in a hazard to people's lives, adjoining property or the environment.

E. Variances. Upon receipt of a written request, the department may grant a variance from a provision of this rule. A variance will be granted when the request shows that compliance with this rule would cause unnecessary hardship to the requester and that the requested use would not constitute a hazard to people's lives, adjoining property or the environment. The department shall set forth in writing its reasons for granting or denying a requested variance.

F. Equipment.

1. Adequate provisions shall be made to protect all exposed piping from physical damage that might result from moving machinery, equipment and vehicles.

2. Main valves shall be located as near to the storage container as possible and shall be either closed and made inoperative when the facility is unattended or protected against tampering by adequate fencing.

3. Appurtenances shall be inspected, properly maintained, protected against rust and painted to prevent corrosion or failure.

G. Storage containers.

1. Storage containers shall be inspected, properly maintained, protected against rust and painted to prevent corrosion or failure.

2. Storage container areas shall be kept free of clutter and ignitible materials including weeds and long dry grass.

3. Persons storing liquid fertilizers in storage containers of a rated capacity of 500 gallons or more shall provide safeguards for containment equal to the amount of the largest single storage container.

H. Markings.

1. Each storage container shall be labeled in a clearly legible and conspicuous manner with the appropriate grade or guaranteed analysis of the contents of the storage container.

2. An identification sign shall be displayed in a clearly legible and conspicuous manner stating the name, address and telephone number of the nearest agent, representative or owner of the storage facility.

I. Incidents. A person involved in or responsible for an incident shall report the incident to the department. The department shall immediately notify other appropriate state agencies. The responsible party shall take appropriate action to contain or clean up the incident. The department shall be the lead state agency for making decisions involving the clean-up or containment operations and may initiate those operations if it appears necessary. By initiating clean-up or containment operations, the department shall not be deemed to assume any liability for costs in addition to that prescribed or imposed by law.

3 MCAR § 1.0326 Dry fertilizers.

A. Authority and purpose. This rule is adopted by the Commissioner of Agriculture pursuant to Minn. Stat. § 17.725 to regulate the storage and handling of dry commercial fertilizer used for agricultural purposes.

B. Definitions. For the purpose of this rule, the terms defined in this part, and the words defined in Minn. Stat. § 17.713, have the meanings given them.

1. "Department" means the Department of Agriculture.

2. "Dry commercial fertilizer" means both mixed fertilizer and fertilizer materials distributed in a nonpackage form.

3. "Incident" means a flood, fire, tornado, transportation accident or other event causing a release of dry fertilizer, whether accidental or not, which is likely to cause adverse effects on the environment.

4. "Responsible party" means the person who has direct custody or control of the dry fertilizer at the time of an incident.

5. "Storage container" means a tank or bin in which commercial fertilizer is stored. This does not include delivery equipment unless the delivery equipment is used for storage.

C. Approval of facility and equipment. A person beginning construction of a new dry fertilizer storage facility or modifying an existing dry fertilizer storage facility shall first obtain the approval of the Commissioner of Agriculture or his designee. The application shall be made on forms provided by the commissioner. The application shall be approved when inspection of the facility and review of the application demonstrates that the proposed facility satisfies the requirements of this rule and provides safeguards to prevent hazards to people's lives, adjoining property or the environment.

At any time, the commissioner may review approved facilities where it appears that existing safeguards are not sufficient to prevent hazards to people's lives, adjoining property or the environment. Upon determination by the commissioner that hazards to people's lives, adjoining property or the environment do exist, the commissioner may withdraw approval or require additional mitigation measures to be taken.

D. Exceptions. Part G. shall not apply to facilities and equipment governed by this rule which were established prior to the date of adoption of this rule unless the existing facility, without modification, would result in a hazard to people's lives, adjoining property or the environment.

E. Variances. Upon receipt of a written request, the department may grant a variance from a provision of this rule. A variance will be granted when the request shows that compliance with this rule would cause unnecessary hardship to the

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requester and that the requested use would not constitute a hazard to people's lives, adjoining property or the environment. The department shall set forth in writing its reasons for granting or denying a requested variance.

F. Equipment. Equipment shall be maintained in good operating order.

G. Operations. Dry commercial fertilizer facilities shall be operated to allow the unloading, storage, mixing and loading of the bulk materials in a manner which will prevent avoidable amounts of particulate matter from leaving the premises.

H. Storage containers. Storage containers shall be maintained to prevent major cross contamination of various dry commercial fertilizer ingredients and materials. Storage container areas shall be kept free of clutter and ignitible materials including weeds and long dry grass.

I. Markings. Each storage container shall be labeled in a clearly legible and conspicuous manner with the appropriate grade or guaranteed analysis of its contents.

J. Outside fertilizer storage. Outside fertilizer storage piles shall not be located in areas subject to floods or where surface water runoff could enter storm sewers, sanitary sewers or other state waters.

K. Incidents. A person involved in or responsible for an incident shall report the incident to the department. The department shall immediately notify other appropriate state agencies. The responsible party shall take appropriate action to contain or clean up the incident. The department shall be the lead state agency for making decisions involving clean-up or containment operations and may initiate those operations if it appears necessary. By initiating clean-up or containment operations, the department shall not be deemed to assume any liability for costs in addition to that prescribed or imposed by law.

Department of Commerce
Securities and Real Estate Division

Proposed Rule SDiv 2030 (Cheap Stock), Relating to the Minnesota Securities Act

Notice of Intent to Amend Rule without a Hearing

Notice is hereby given that, pursuant to her authority under Minn. Stat. § 80A.25 (1980), the Commissioner of Securities and Real Estate intends to amend Rule SDiv 2030 (Cheap Stock), relating to the Minnesota Securities Act (Minn. Stat. ch. 80A). The commissioner desires that the proposed rule be amended without a public hearing in accordance with Minn. Stat. § 15.0412, subd. 4h (1980).

A free copy of the proposed rule may be obtained from the commissioner's office. Those interested in submitting comment pertaining to the proposed rule may do so within 30 days of publication of this notice in the *State Register*. Additionally, if during the 30-day comment period, seven or more persons make a written request for a hearing on the proposed rule, the commissioner will hold a public hearing in accordance with Minn. Stat. § 15.0412, subdivisions 4 to 4g (1980). A request for a copy of the proposed rule, all comments, any requests for a hearing and all questions regarding the proposed rule should be directed to:

Mr. Daniel W. Hardy
Assistant to the Commissioner
Securities and Real Estate Division
Department of Commerce
500 Metro Square Building
Saint Paul, Minnesota 55101
Telephone: (612) 296-5689

The proposed rule may be modified by the commissioner if the modifications are supported by the data and views submitted during the 30-day comment period, provided the modifications do not result in substantial change.

The commissioner has prepared a statement of need and reasonableness which contains a summary of the evidence justifying both the need for, and the reasonableness of, the proposed rule. The statement of need and reasonableness is available for inspection by the public, during regular business hours, at the above address.

If no hearing is required, the commissioner will submit to the Attorney General the proposed rule and notice as published in the *State Register*, the rule as proposed for adoption, any written comments received by the commissioner during the 30-day comment period, and the statement of need and reasonableness for the rule. On the same day these materials are submitted to the Attorney General the commissioner will notify any person who has requested that the commissioner inform him or her of when these materials have been submitted to the Attorney General. Any person wishing to be so notified should contact Mr. Hardy at the address listed above.

A copy of the existing rule and proposed changes follows this notice.

Finally, Minn. Stat. ch. 10A.03 (1980) requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1980) as any individual:

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

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

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

August 26, 1981

Mary Alice Brophy
Commissioner of Securities and Real Estate

Rule as Proposed

SDiv 2030 Cheap stock.

~~(a) The amount of "cheap stock" allowable, based upon the "fair value of the equity investment" as defined in SDiv 2029(b), shall not exceed three times the first 10 percent of equity investment and two times any further equity investment to a maximum number of shares of cheap stock allowable of 90 percent of the total number of shares to be outstanding after the proposed offering.~~

A. Quantity. The quantity of cheap stock, expressed as a percentage of the total number of shares to be outstanding after the proposed offering, shall not exceed the percentages in Exhibit SDiv 2030 A.-1., depending on the "fair value of the equity investment" as defined in SDiv 2029 (b).

Exhibit SDiv 2030 A.-1.
Maximum Amount of Cheap Stock Outstanding

Minimum Investment	Cheap Stock
5%	15%
10%	30%
15%	40%
20%	50%
30%	70%
40%	90%

~~(b)~~ B. Definition. Cheap stock means securities:

~~(1)~~ 1. Issued in consideration of property tangible or intangible, or services, the value of which has not been reasonably established, or

~~(2)~~ 2. Issued at a price substantially less than the public offering price of the securities and which cannot be justified with reference to the existence of an active public market for such securities. Securities issued at a price substantially less than the public offering price of the securities means:

~~(aa)~~ a. Securities issued for less than ~~66⅔%~~ percent of the public offering price if the securities were issued less than one year prior to registration~~;~~;

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~~(bb)~~ b. Securities issued for less than 50~~%~~ percent of the public offering price if the securities were issued more than one year but less than two years prior to registration;

~~(cc)~~ c. Securities issued for less than 33⅓~~%~~ percent of the public offering price if the securities were issued more than two years but less than three years prior to registration.

In the case of unexercised options, or other securities convertible into the same class of security as that proposed to be offered, the aggregate of the cash amount paid and the cash amount required to be paid pursuant to the conversion or exercise privilege shall be divided by the number of shares issuable upon conversion or exercise to determine whether the securities were "issued at a price substantially less than the public offering price."

~~(c)~~ C. Exclusions. Cheap stock does not include:

~~(1)~~ 1. Securities which have been outstanding more than three years at the time of the proposed registration, provided that the issuer ~~of~~ or its predecessors have been in active, continuous business operation for more than three years immediately prior to the proposed registration;

~~(2)~~ 2. Securities of an issuer which ~~(a)~~ had earnings during the final year prior to registration or ~~(b)~~ had earnings during two of the three fiscal years prior to registration, as determined in accordance with generally accepted accounting principles, after taxes and excluding extraordinary income, if such earnings are in an amount equal to 4 four percent of the proposed public offering price on all outstanding shares of the same class at the date of application for registration; or

~~(3)~~ 3. Securities previously issued pursuant to a registration under Minn. Stat. ch. 80A.

Department of Revenue
Income Tax Division

Proposed Rule Governing Practice of Attorneys, Accountants, Agents and Preparers before the Department of Revenue (13 MCAR § 1.6101); and Proposed Repeal of Income Tax Rule 2052(4)

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Department of Revenue proposed to adopt the above-entitled rule and repeal the existing rule without a public hearing. The commissioner has determined that the proposed adoption of this rule and repeal of this rule will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, § 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, § 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:

Mr. Dale H. Busacker
Attorney, Income Tax Division
Minnesota Department of Revenue
Centennial Office Building
St. Paul, Minnesota 55145
(612) 296-3439

Authority for the adoption of these rules is contained in Minnesota Statutes, § 290.52. Additionally, a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from Mr. Busacker 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 Mr. Busacker.

The general purpose of this rule is to regulate the practice of attorneys, accountants, agents and preparers (hereinafter referred to as "tax practitioners") before the Department of Revenue. Specifically, the rule is needed (1) to implement the authority which is granted to the Commissioner of Revenue to suspend or disbar tax practitioners, by providing a uniform procedure for such suspension or disbarment; (2) to provide ethical standards of behavior governing practice before the department; (3) to set minimum standards of competency for those who practice; (4) to define what is disreputable conduct; and (5) to define the nature and scope of practice before the Department of Revenue.

The existing Income Tax Rule 2052(4) is repealed because this new rule will supersede it and make it unnecessary.

Copies of this notice and the proposed rules are available and may be obtained by contacting Mr. Busacker.

September 17, 1981

Clyde E. Allen, Jr.
Commissioner of Revenue

Rule as Proposed (all new material)

13 MCAR § 1.6101 Practice of attorneys, accountants, agents, and preparers before the Department of Revenue.

A. Practice defined. The term "practice" comprehends all matters connected with the presentation by an attorney, accountant, agent, or preparer to the Department of Revenue or any of its employees, upon filing an executed power of attorney, of a client's rights, privileges, or liabilities under Minn. Stat. ch. 290 or 290A, and the rules thereunder. Practice includes the preparation and filing of necessary documents, correspondence with and communication to the Department of Revenue, and the representation of a client at conferences, hearings, and meetings. However, the preparation and signing of a tax return, the appearance of an individual as a witness for a taxpayer, and the furnishing of information at the request of the Department of Revenue or any of its employees do not, of and by themselves, constitute practice before the department, unless these acts are coupled with the presentation of a client's case at conferences, hearings, or meetings. For purposes of this rule, the term "practice" is synonymous with "representation."

B. Scope of representation pursuant to power of attorney.

1. When authorized by the taxpayer through a written power of attorney, an attorney, accountant, agent, or preparer may appear as the taxpayer's representative, with or without the taxpayer, before an employee of the Department of Revenue with respect to the tax liability of the taxpayer for the type of tax and taxable year or period authorized in the power of attorney.

2. For purposes of this rule, a power of attorney grants authority to deal with any of the following: original or amended individual income tax returns; property tax refund returns; fiduciary income tax returns; partnership returns of income; corporation income tax returns, including returns of small business corporations, life insurance companies, banks, and savings and loan associations; employers income tax withholding returns or deposits; claims for refund; and estimated tax declarations.

3. A taxpayer representative may inspect only those state records, files, or documents which are either specifically listed, or directly or indirectly connected with matters specifically listed in a power of attorney.

4. If the taxpayer is not present, a person presenting a power of attorney shall present identification satisfactory to the department employee.

C. Persons ineligible to practice. Any person who is:

1. Under disbarment or suspension from practice before the Department of Revenue;

2. An employee of the Department of Revenue;

3. Under disbarment or suspension from practice as an attorney, certified public accountant, or licensed public accountant in the State of Minnesota; or

4. Under disbarment or suspension from practice before the Internal Revenue Service shall be ineligible to appear as a taxpayer representative under this rule. However, with regard to 3. and 4., a granting of reinstatement to practice as an attorney, certified public accountant, or licensed public accountant, or a granting of reinstatement to practice before the Internal Revenue Service shall automatically reinstate a person's eligibility to practice before the Department of Revenue.

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D. Standards of ethics and conduct.

1. No attorney, accountant, agent, or preparer acting as a taxpayer representative shall neglect or refuse to submit records or information in any matter before the Department of Revenue, upon proper and lawful request by a duly authorized employee of the Department of Revenue, unless the taxpayer representative has a good faith belief that the information or testimony is privileged. No taxpayer representative shall interfere, or attempt to interfere, with any proper and lawful efforts by the Department of Revenue or its employees to obtain information relative to any matter before the Department of Revenue. Insisting upon a subpoena shall not be a violation of this paragraph.

2. Each taxpayer representative shall exercise due diligence in regard to all of the following:

a. Preparing, assisting in the preparation of, approving, and filing returns, documents, affidavits, and any other papers relating to Department of Revenue matters;

b. Determining the correctness of representations made by him to the Department of Revenue; and

c. Determining the correctness of representations made by him to clients with reference to any matter administered by the Department of Revenue.

3. Each taxpayer representative shall exercise good faith in determining the correctness of representations made by clients to him with reference to any matter administered by the Department of Revenue when the preparer or agent has reasonable grounds to believe the client's representations are false or inaccurate.

4. No taxpayer representative shall unreasonably delay the prompt disposition of any matter before the Department of Revenue.

E. Incompetent conduct. Incompetent conduct, for which any attorney, accountant, agent, or preparer shall be subject to disbarment or suspension from practice before the Department of Revenue, means the failure by an attorney, accountant, agent, or preparer, after due warning has been given by the Commissioner of Revenue pursuant to G.3., to:

1. Demonstrate the familiarity with the income tax statutes, rules, and forms necessary to enable the practitioner to properly apply, discuss, or complete them, and thus to render adequate services in connection with a taxpayer's case before the Department of Revenue; or

2. Exercise due diligence as required in D.2. The standard used for determining failure to exercise due diligence shall be the common law standard of reasonableness used in determining negligence.

F. Disreputable conduct. Disreputable conduct, for which any attorney, accountant, agent, or preparer shall be subject to disbarment or suspension from practice before the Department of Revenue, includes any conduct violative of D. In addition, the following acts or events constitute disreputable conduct:

1. Conviction of any criminal offense under a state or federal tax statute, or conviction of any crime involving dishonesty or breach of trust;

2. Preparing or filing for himself or another a false or fraudulent Minnesota income tax return or other statement on which Minnesota income taxes or a refund thereof may be based, knowing it is false or fraudulent;

3. Willful failure to prepare or file a Minnesota income tax return for himself or another in violation of the applicable income tax statutes or rules;

4. Willful failure to prepare or file an amended Minnesota income tax return for himself or another, knowing that a material error or omission was made on the original return;

5. Suggesting to a client or a prospective client an illegal plan for evading Minnesota income taxes or the payment thereof, knowing the plan is illegal;

6. Giving false testimony or information in any proceeding before the Department of Revenue, or before any tribunal authorized to pass upon Minnesota income tax matters, knowing it is false;

7. Filing any false or fraudulently altered document, affidavit, or power of attorney in any case or other proceeding before the Department of Revenue, or procuring the filing thereof, knowing it is false or fraudulently altered;

8. Using, with intent to deceive, false representations to procure employment in any case or proceeding before the Department of Revenue, including, but not limited to:

a. Misrepresentations regarding eligibility to practice before the Department of Revenue;

b. Specific material misrepresentations regarding experience or education, whether general or specialized, as an income tax return preparer;

c. Guaranteeing the payment of any tax refund or the allowance of any tax credit; or

d. Representing to a client that the attorney, accountant, agent, or preparer can improperly obtain special consideration or action from the Department of Revenue or an employee thereof, or that he has improper access to sources of information within the Department of Revenue which are otherwise private, confidential, or nonpublic;

9. Approving for filing, or advising or aiding in the preparation of, a false or fraudulent Minnesota income tax return prepared by some other person, knowing the return is false or fraudulent;

10. Misappropriation of, or failure to properly and promptly remit, funds received from a client for the purpose of paying taxes or other obligations due the State of Minnesota;

11. Endorsement or negotiation of a client's check in payment of a refund of any tax, credit, penalty, or interest administered by the Commissioner of Revenue, without the client's prior endorsement. The preceding sentence shall not apply when the full amount of the check is deposited in the taxpayer's bank account for the benefit of the taxpayer;

12. Charging a client a fee based upon a percentage of the refund that the client is eligible to receive from the State of Minnesota, unless representation of the client reaches the contested stage, either in a formal administrative hearing or a court proceeding;

13. Attempting to influence, or offering or agreeing to attempt to influence, the official action of any employee of the Department of Revenue by the use of threats, false accusations, duress, or coercion, by the offer of any special inducement or promise of advantage, or by the bestowing of any gift, favor, or thing of value;

14. In connection with practice before the Department of Revenue, making false accusations or statements knowing them to be false, or circulating or publishing slanderous or libelous matter concerning the Department of Revenue or any of its employees;

15. Knowingly aiding and abetting another person to practice before the Department of Revenue during a period of disbarment or suspension of the other person;

16. For purposes of 1. through 15., the phrases "income tax" and "income tax return" include all matters referred to in B.2.

G. Disbarment and suspension procedures.

1. Authority to disbar or suspend. Pursuant to Minn. Stat. § 290.52, the Commissioner of Revenue, after due notice and opportunity for hearing, may suspend or disbar from further practice before the Department of Revenue any attorney, accountant, agent, or preparer who: is shown to be incompetent or disreputable; refuses to comply with the provisions of this rule; or in any manner willfully and knowingly defrauds, deceives, or misleads any taxpayer with respect to a claim or prospective claim involving the Department of Revenue.

2. Violation of rule. Any attorney, accountant, agent, or preparer shall be subject to disbarment or suspension from practice before the Department of Revenue for violation of any of the provisions contained in this rule.

3. Notification of violation of rule and issuance of warning. Whenever the Commissioner of Revenue has sufficient grounds to believe that any attorney, accountant, agent, or preparer has violated a provision of this rule, he shall notify the practitioner in writing of the specific violation which has been committed. The notification shall contain a warning to the practitioner that if the violation continues, or if any other violations are committed, the commissioner shall commence a proceeding for disbarment or suspension of the practitioner.

4. Commencement of disciplinary proceeding. Whenever the Commissioner of Revenue has sufficient grounds to believe that any attorney, accountant, agent, or preparer has failed to comply with a warning by continuing to violate any provision of this rule, he shall commence a proceeding for disbarment or suspension of the attorney, accountant, agent, or preparer. The commissioner's Notice of and Order for Hearing shall set forth the specific violations which the practitioner has committed, both prior and subsequent to the commissioner's warning, and shall make a recommendation as to the specific disciplinary action to be taken against the practitioner. The entire proceeding shall be governed by the procedure for contested case proceedings as provided in Minn. Stat. §§ 15.0411-15.0426 and in 9 MCAR §§ 2.201-2.299.

5. Voluntary suspension. An attorney, accountant, agent, or preparer, in order to avoid the commencement or conclusion of a disciplinary proceeding, may, by agreement with the Commissioner of Revenue, consent to suspension from

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practice before the Department of Revenue. The Commissioner of Revenue shall then suspend the practitioner in accordance with the disciplinary guideline set forth in 6.

6. Disciplinary guideline for violation of rule. Upon completion of the hearing in a contested case proceeding for disciplinary action brought by the Commissioner of Revenue against an attorney, accountant, agent, or preparer, if the hearing examiner finds that the practitioner has committed the violations specified in the commissioner's Notice of and Order for Hearing, and that disciplinary action is appropriate, the commissioner shall:

a. Suspend the practitioner from practicing before the Department of Revenue for a period of up to one year, if the proceeding brought against the practitioner is the first proceeding in which disciplinable misconduct has been found;

b. Suspend the practitioner for a period of up to five years if the proceeding brought against the practitioner is the second proceeding in which the disciplinable misconduct has been found; or

c. Disbar the practitioner from practicing before the Department of Revenue if the proceeding brought against the practitioner is at least the third proceeding in which disciplinable misconduct has been found.

For purposes of a., b., and c., a voluntary suspension pursuant to 5. is a proceeding in which disciplinable misconduct has been found. The commissioner shall base his decision as to disciplinary action on all the facts before him, along with any extenuating circumstances he deems relevant.

7. Effect of disbarment or suspension. If the commissioner's order against an attorney, accountant, agent, or preparer is for disbarment, the practitioner shall not thereafter be permitted to practice before the Department of Revenue, except to represent himself. Similarly, if the commissioner's order against an attorney, accountant, agent, or preparer is for suspension, the practitioner shall not thereafter be permitted to practice before the Department of Revenue during the period of suspension, except to represent himself. The disbarment or suspension of an individual, where the individual was employed by a firm or organization at the time his violation of this rule occurred, shall not affect the right of other members of the firm or organization to practice before the department.

8. Petition for reinstatement. If there has been a material change in circumstances after suspension or disbarment, a suspended or disbarred attorney, accountant, agent, or preparer may petition, in writing, the Commissioner of Revenue for reinstatement to practice before the Department of Revenue. The petition must be supported with documentation or testimony from a responsible third party as to the fitness, character and ability of the practitioner to resume practice. The commissioner shall review the petition and make his determination within 30 days as to whether the practitioner shall be reinstated. If the petition is granted by the commissioner, the practitioner may resume practice. If the petition is denied by the commissioner, no further petitions may be brought by the practitioner during the remainder of the suspension period, or for a period of five years if the practitioner has been disbarred.

Repealer. Income Tax rule 2052(4) is repealed.

Department of Revenue

Proposed Rules Governing Valuation and Assessment of Electric, Gas Distribution, and Pipeline Companies (Utility Companies)

Notice of Hearing

Notice is hereby given that a public hearing will be held pursuant to Minnesota Statutes, § 15.0412, subdivision 4, in the above-entitled matter in the Conference Room, 500 Rice Street, St. Paul, Minnesota on November 4, 1981, commencing at 10 a.m. and continuing until all persons or representatives of associations or other interested groups have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Jon Lunde, Office of Administrative Hearings, Room 300, 1745 University Avenue, Saint Paul, Minnesota, 55104, telephone (612) 296-5938, either before the hearing or within five working days after the close of the hearing. The hearing examiner may extend this time limit for a longer period; however, the extension cannot exceed 20 calendar days.

The rule hearing procedure is governed by Minnesota Statutes, §§ 15.0411 to 15.0417 and 15.052, and by 9 MCAR §§ 2.101 to 2.113 (Minnesota Code of Agency Rules). Any questions about procedure may be directed to the hearing examiner, Jon Lunde.

The proposed rules if adopted will effectively amend the current rules of the Department of Revenue relating to ad valorem (property) taxes imposed on utilities. The present rules deal generally with the valuation, allocation and apportionment of

property of electric, gas distribution, pipeline and cooperative electric companies. The proposed rules if adopted would: define certain terms; require utilities to report the cost of leased property; modify the cost approach to value by allowing electric companies an additional 1% depreciation, and gas distribution and pipeline companies an additional 2½% depreciation on the original cost of the companies' assets; increase the study period to be used when computing the "average cost per kilowatt of installed capacity" for steam and gas turbine generating plants; permit an allowance for pollution control equipment and an allowance for obsolescence to be conducted from the value added to the cost approach to value due to the computation of the "average cost per kilowatt of installed capacity" factor; detail the computation of these two allowances; modify the income approach to value by increasing the capitalization rate by 0.5%; specify the types of utilities that are to be valued on a "cost only" method; provide for the utilization of "obsolescence allowances" if a utility meets certain standards and detail the methods to be used to calculate these allowances; specify certain standards to be met by utilities in the retirement of property; require a utility to report certain information on property costs whenever a new taxing district is established; modify the base to be used for the apportionment of utility property to the various taxing districts; and eliminate the example section of the rules while incorporating the examples into the body of the rules.

One free copy of this notice and the proposed rules may be obtained by writing to G. D. Garski, Manager of State Assessed Property, Property Equalization Division, Second Floor, Centennial Office Building, Saint Paul, Minnesota, 55145, telephone (612) 296-5131. Additional copies will be available at the door on the date of the hearing.

The agency's authority to promulgate the proposed rules is contained in Minnesota Statutes, §§ 270.06 and 270.11, subdivisions 1 and 6.

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 Hearing Examiners. This statement of need and reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the statement of need and reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

Notice: The proposed rule is subject to change as a result of the rule hearing process. The agency therefore strongly urges those who are potentially affected in any manner by the substance of the proposed rule to participate in the rule hearing process.

Please be advised that Minnesota Statutes, chapter 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes, § 10A.01, subdivision 11 (Supp. 1979) as any individual:

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

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

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 40 State Office Building, Saint Paul, Minnesota, 55155, telephone (612) 296-5615.

Notice: Any person may request notification of the date on which the hearing examiner's report will be available, after which date the 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).

Clyde E. Allen, Jr.
Commissioner of Revenue

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Rules as Proposed

Chapter One: Valuation and Assessment of Electric, Gas Distribution, and Pipeline Companies (Utility Companies)

13 MCAR § 1.0001 Introduction. On October 19, 1973, the Minnesota Supreme Court in Independent School District No. 99, et al. v. Commissioner of Taxation, 297 Minn. 378, ruled that in estimating the market value of utility properties for ad valorem tax purposes, the assessing authorities must consider every element and factor affecting market value. The assessment formula used to value operating utility property since 1962, based solely on the original cost less limited depreciation and commonly known as the "Hatfield Formula," was thus invalidated as a rule of general application.

These ~~regulations~~ rules are promulgated to fill that void and reflect the manner in which the value of utility property will be estimated by utilizing data relating to the cost of the property and the earnings of the company owning or utilizing the property.

Since the Commissioner of Revenue is by statute the assessor of some of the utility property in the State of Minnesota and has supervisory powers ~~of~~ over all assessments of property, and may raise or lower values pursuant to Minn. Stat. ~~,~~ § 270.11, he will estimate the valuation of the entire system of a utility company operating within the state. The entire system will be valued as a unit instead of valuing the component parts, and the resulting valuation will be "allocated" or assigned to each state in which the utility company operates. Finally, by the process of apportionment, the portion allocated to Minnesota will be distributed to the various taxing districts within the state. ~~All~~ Most of the data used in the valuation, allocation, and apportionment process will be drawn from reports submitted to the Department of Revenue by the utility companies. These reports will include Minnesota Department of Revenue Annual Utility Reports (UTL Forms), Annual Reports to the Federal Energy Regulatory Commission and Annual Reports to the Interstate Commerce Commission. Periodic examinations of the supporting data for these reports will be made by the Department of Revenue.

The methods, procedures, indicators of value, capitalization rates, weighting percents, and allocation factors will be used as described in 13 MCAR §§ 1.0003~~-1.0007~~ 1.0006 for ~~1979~~ 1982 and subsequent years, or until, in the opinion of the Commissioner of Revenue, different conditions justify a change.

As in all property valuations the Commissioner of Revenue reserves the right to exercise his judgment whenever the circumstances of a valuation estimate dictate the need for it.

13 MCAR § 1.0002 Definitions. As used in this chapter, the following words, terms and phrases shall have the meanings given to them by this ~~regulation~~ rule, except where the context clearly indicates a different meaning.

A. Allocation. "Allocation" means the process of dividing the unit value of a utility company among the states in which the utility operates.

B. Apportionment. "Apportionment" means the process of distributing that portion of the utility company's unit value which has been allocated to Minnesota to the various taxing districts in which the utility company operates.

C. Book depreciation. "Book depreciation" means the depreciation shown by a utility company on its corporate books, and allowed the company by various regulatory agencies.

D. Capitalization rate. "Capitalization rate" means the relationship of income to capital investment or value, expressed as a percentage.

E. Electric company. "Electric company" means any company engaged in the generation, transmission, or distribution of electric power, excluding cooperatives and municipal corporations.

F. Gas distribution company. "Gas distribution company" means any company engaged in the distribution of natural or synthetic gas, excluding the cooperatives and municipal corporations.

G. Installed capacity. "Installed capacity" means the number of kilowatts a power plant is capable of producing as shown by the nameplates affixed to the generators by the manufacturer.

H. Integrated company. "Integrated company" means any company engaged in two or more utility operations within Minnesota, such as electric distribution and gas distribution, within the framework of one corporate structure.

I. Major generating plant. "Major generating plant" means any steam-electric power plant capable of generating 25,000 KW (Kilowatts) or more; or any hydro-electric, internal combustion, or gas turbine power ~~plan~~ plant capable of generating 10,000 KW or more.

J. Net operating earnings. "Net operating earnings" means earnings from the system plant of the utility after the deduction of operating expenses, depreciation, and taxes, but before any deduction for interest.

K. Non-formula assessed property. "Non-formula assessed property" means property of a utility which is valued by the local or county assessor rather than by the Commissioner of Revenue.

L. Operating property. "Operating property" means any property, owned or leased, except land that is directly associated

with the generation, transmission, or distribution of electricity, natural gas, gasoline, petroleum products, or crude oil. Examples of operating property include, but are not limited to, substations, transmission and distribution lines, generating plants, and pipelines. Land, garages, warehouses, office buildings, pole yards, radio communication towers, and parking lots are examples of non-operating property.

M. Pipeline company. "Pipeline company" means any company engaged in the transmission of natural gas, gasoline, petroleum products, or crude oil via a fixed line of pipes.

N. Standard factor. "Standard factor" means the number used as the basis of comparison when measuring the degree or amount of obsolescence inherent in the property (generating plant) being valued.

O. System plant. "System plant" means the total tangible property, real and personal, of a company which is used in its utility operations in all states in which it operates.

P. Throughput. "Throughput" means the amount of product measured in barrels, gallons, or cubic feet which passes through a pipeline.

~~O.~~ Q. Unit value. "Unit value" means the value of the system plant of a utility company taken as a whole without any regard to the value of its component parts.

~~P.~~ R. Weighted pipe line miles. "Weighted pipe line miles" means the product obtained by multiplying the number of miles of each size of a pipeline by the diameter in inches of each size. Example: a 6 mile pipeline ~~having~~ 3 miles ~~with a~~ of which is 10 ~~inch~~ inches in diameter and 3 miles ~~with a~~ of which is 30 ~~inch~~ inches in diameter would have a weighted miles product of 120.

13 MCAR § 1.0003 Valuation.

A. General. Because of the unique character of public utiltiy companies, such as being subject to stringent government regulations over operations and earnings, the traditional approaches to valuation estimates of property (cost, capitalized income and market) must be modified when utility property is valued. Consequently, for the ~~1979~~ 1982 and subsequent assessment years, until economic and technological factors dictate a change, the value of utility company property will be estimated in the manner provided in this chapter.

B. Market approach. Market value implies a price for which an entire public utility enterprise might reasonably change hands between willing and informed buyers and sellers. The term presupposes a market of normal activity, no urgency to buy or sell on the part of either the buyer or seller, and continued operation of the utility as a single entity. Public utility property is seldom transferred as a whole unit under these circumstances. Consequently, after consideration of this approach, it has been decided that valuation of utility properties by this approach is speculative and unreliable and will not be employed as a method of valuation for utility property at this time.

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

Depreciation, however, shall not exceed the prescribed percentage of cost: for electric companies, ~~18~~ 19 percent; for gas distribution companies, ~~45~~ 47.5 percent; pipeline companies, ~~45~~ 47.5 percent.

~~When valuing electric company property the "average cost per kilowatt of installed capacity" will also be considered. Any excess of average cost per kilowatt of installed capacity over the actual cost of production plan (except land) multiplied by the kilowatts of installed capacity will be added to the original cost of the plant, and reduced by the same rate of depreciation applicable to the original cost. The average cost per kilowatt of installed capacity is computed by averaging the construction costs of production plant (except land) for major generating plants in the Continental U.S. by type of plant, as shown in the latest issues of the United States Department of Energy publications, Hydro-Electric Plant Construction Cost and Annual Production Expenses and Steam-Electric Plan Construction Cost and Annual Production Expenses and Gas Turbine Electric Plant Construction Cost and Annual Production Expenses. Average cost per kilowatt of installed capacity will be determined~~

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~~after excluding, federally constructed, multi-purpose projects, and nuclear electric generating plants. The periods to be used for computing the average will be as follows: hydroelectric plants, 15 years; steam electric plants; 10 years; gas turbine plants, 10 years.~~

~~The following examples illustrate this procedure. In both examples assume that the study of the most recent construction data available from Federal Power Commission publications indicates that the average cost per kilowatt of installed capacity in a fossil fuel steam plant is $150 per kilowatt. Each of the two plants is of this type.~~

~~1. Plant~~	~~#1~~		~~#2~~	
~~2. Installed capacity~~	~~100,000~~	~~KW~~	~~50,000~~	~~KW~~
~~3. Year in Service~~	~~1960~~		~~1940~~	
~~4. Cost of Plant~~	~~$15,200,000~~		~~$3,500,000~~	
~~5. Cost per KW~~	~~$152~~		~~$70~~	
~~6. Average cost per KW~~	~~$150~~		~~$150~~	
~~7. Excess (line 6-5)~~			~~$80~~	
~~8. Additional value (line 7 × 2)~~			~~$4,000,000~~	
			~~$4,000,000~~	

A modification to the cost approach to value will be considered by the commissioner when valuing electric utility property. The original cost of an electric utility's major generating plants will be increased if the cost of the plant falls below a certain standard. The standard to be used will be a national average of the cost per kilowatt of installed capacity. The cost per kilowatt of installed capacity is the total construction cost of the generating plant divided by the number of kilowatts the plant is capable of producing. The national average to be used will be computed by totaling the construction costs, excluding the cost of land, for major generating plants within the 48 contiguous United States. The total cost of the plants will be divided by the total generating capacity of the same plants to arrive at an average cost per kilowatt of installed capacity. A separate average will be computed for each of the following types of plants: gas turbine, hydro-electric, and steam-electric. The plants used in the calculation will exclude federally constructed, multi-purpose projects, and nuclear electric generating plants. The information used to compute the average will be drawn from the latest issues of the following United States Department of Energy publications: Hydro-Electric Plant Construction Cost and Annual Production Expenses, Steam-Electric Plant Construction Cost and Annual Production Expenses, and Gas Turbine Electric Plant Construction Cost and Annual Production Expenses.

The plants which will be used in the computation of the national average will be those plants built during the most recent 15 years included in the above named publications.

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

Steam-Electric Generating Plants

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

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

The national average cost per kilowatt of installed capacity will be compared to the specific cost per kilowatt of installed capacity for each of the major generating plants owned by the utility being valued. If the national average cost per kilowatt is greater than the subject plant cost, the subject plant will have additional dollars incorporated into its cost in order to raise its cost per kilowatt to the national average. If the subject plant's cost per kilowatt equals or exceeds the national average, no cost will be added.

The following example illustrates this procedure:

XYZ Utility
Steam-Electric Generating Plants

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

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

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

Steam-Electric Plants Within Minnesota

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

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Total cost of approved pollution control equipment ($6,670,000) divided by total plant cost ($66,700,000) equals 10% ratio of pollution control equipment expenditures to total expenditures for generating plant construction.

XYZ Utility
Steam-Electric Plant #2

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

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

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

An example of this obsolescence allowance computation is shown below.

Hydro-Electric Plants

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

XYZ Utility
Hydro-Electric Plant #4

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

Hydro-electric plant #4 plant factor (45%) divided by standard plant factor (50%) equals 90%. Therefore, hydro-electric plant #4 deviates from the standard by 10%, or is 10% obsolete.

The obsolescence allowance for steam-electric generating plants will be computed annually using two indicators. The first

indicator will be the plant factor. The plant factor for steam-electric plants will be computed and applied in the same manner as the computation specified for hydro-electric plants above. The only difference will be that the information used for the computation will be drawn from the latest Steam-Electric Plant Construction Cost and Annual Production Expenses publication rather than the Hydro-Electric Plant publication. Plant factors of the ten best steam-electric generating plants within the 15 year study period will be averaged. This average will be compared to the most recent three year average plant factor for the subject plant. The subject plant's deviation from the standard plant factor is the amount of indicated obsolescence.

The second indicator which will be used to compute an obsolescence allowance for steam-electric generating plants will be a thermal efficiency factor. The source of information for this computation will also be the latest issue of the United States Department of Energy's publication, Steam-Electric Plant Construction Cost and Annual Production Expenses. Thermal efficiency for a generating plant is measured by the number of British thermal units (B.T.U.) required to produce one kilowatt hour. This efficiency rating can be obtained by dividing the number of kilowatt hours produced by a generating plant by the number of B.T.U.'s needed to produce this power. The number of B.T.U.'s used can be obtained by multiplying the units of fuel burned by the generating plant—tons of coal, gallons of oil, or cubic feet of gas—by the average B.T.U. content of the fuel unit. The standard thermal efficiency factor will be computed by averaging the thermal efficiency factor of the ten most efficient steam-electric generating plants within the 15 year study period used to compute the average cost per kilowatt of installed capacity. This standard thermal efficiency factor will then be compared to the thermal efficiency factor of the subject plant. The amount the subject plant deviates from the standard is the amount of obsolescence indicated by this factor.

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

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

Steam-Electric Generating Plants

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

XYZ Utility Company
Steam-Electric Plant #2

Net Generations kwh (Millions)	BTU's Used (Millions)	BTU's per kwh
2,000	21,600,000	10,800

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

XYZ Utility Company
Steam-Electric Plant #2

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

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

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

1. Utility Plant (Cost)	$200,000,000
2. Construction in Progress	5,500,000
3. Additional Value From Average Cost per K.W. Computation	2,000,000
4. Total Plant	207,500,000
5. Non-Depreciable Plant (Land, Intangibles, C.W.I.P.)	17,500,000
6. Depreciable Plant	190,000,000
7. Depreciation (Maximum 19%)	36,100,000
8. Total Cost Indicator of Value	171,400,000

D. Income approach to valuation. The income indicator of value will be estimated by weighting the net operating earnings of the utility company for the most recent three years as follows: most recent year, 40 percent; previous year, 35 percent; and final year, 25 percent. After considering, as far as possible, all conditions that may exist in the future that may affect the present annual return, including risk, life expectancy of the property, and cost of money, the capitalization rates used to compute value for the assessment will be: electric companies, ~~8.00~~ 8.5 percent; gas distribution companies, ~~8.25~~ 8.75 percent; and pipeline companies ~~8.50~~ 9 percent. The income indicator of value computed in accordance with this ~~regulation~~ rule will be weighted for each class of utility company as follows: electric companies, 15 percent; gas distribution companies, 25 percent; and pipeline companies, 25 percent.

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

	1980	1981	1982
1. Net Operating Income	$ 468,000	$ 385,700	$ 450,000
2. Capitalized Income @ 9%	5,200,000	4,285,600	5,000,000
3. Weighting Factor	25%	35%	40%
4. Weighted Capitalized Income	1,300,000	1,500,000	2,000,000
5. Total Income Indicator of Value			4,800,000

E. Unit value computation. The unit value of the utility company will be the total of the weighted ~~indicator~~ indicators of value.

The following is an example of the computation of the unit value for a pipeline company:

1. Cost Indicator of Value	$5,000,000 ×	75% =	$3,750,000
2. Income Indicator of Value	$4,800,000 ×	25% =	$1,200,000
3. Unit Value of Pipeline Company		100%	$4,950,000

F. ~~Valuation of utility property of cooperatives. Cooperative associations shall have their utility property valued on the basis of historical cost only since they do not operate on the tradition profit making basis. Depreciation will be allowed as a deduction from cost at increments of 2.5 percent per year but the maximum shall not exceed 25 percent of property used in the generation, transmission or distribution of electric power.~~ Valuation of utility property of cooperatives and other non-common carrier or non-regulated utilities. Cooperative associations and other types of utilities which do not operate in the traditional profit making mode, are not common carriers, or are non-regulated, will have their utility property valued on the basis of historical cost only. Depreciation will be allowed as a deduction from the historical cost in increments of 2.5 percent per year, but the maximum depreciation allowed shall not exceed 25 percent of the cost of the utility operating property. Additions to existing utility property will be depreciated 2.5 percent per year until they reach the 25 percent maximum. Retirements of utility property will be deducted from the cost basis at the appropriate depreciation level of the retired property.

The following example illustrates this process for an electric cooperative association:

1. Cost of Substation	$1,000,000
2. Value 1st year @ 97.5%	975,000
3. Value 2nd year @ 95%	950,000
4. Value 3rd year @ 92.5%	925,000
5. Value 4th year @ 90%	900,000
6. Value 5th year @ 87.5%	875,000
7. Value 6th year @ 85%	850,000
8. Value 7th year @ 82.5%	825,000
9. Value 8th year @ 80%	800,000
10. Value 9th year @ 77.5%	775,000
11. Value 10th year @ 75%	750,000
12. Value 11th and succeeding years at 75%	750,000

G. Obsolescence allowances. The commissioner may adjust the value calculated pursuant to this rule through the use of an obsolescence allowance. This allowance is intended to be used in order to recognize the effect the curtailment or termination of a pipeline's source of supply may have on its value. In order for a pipeline or a gas distribution company to be eligible for such an allowance they must meet certain criteria or standards. These standards are listed below. It is mandatory that standards 1, 2 and 3 be met by the utility. It is highly desirable that standards 4 and 5 also be met.

1. The utility must adequately demonstrate, to the satisfaction of the commissioner, that its source of supply for gas or oil will be terminated within the next ten years.

2. The utility must be at, or above, the maximum depreciation allowance as specified by C.

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

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

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

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

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

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

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Year	Throughput in Barrels
1977	1,200,000
1978	1,300,000
1979	1,150,000
1980	1,100,000
1981	1,050,000
	5,800,000 Total
	1,160,000 Average Throughput

1. 1982 Throughput	1,000,000 Barrels
2. Percent of 1982 Throughput to 5 Year Average Throughput	86%
3. Cost Indicator of Value	$6,300,000
4. Cost Indicator Adjusted for Obsolescence	$5,418,000

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

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

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

	1979	1980	1981
1. Net Operating Earnings	$1,320,000	$1,000,000	$800,000
2. Weighting	25%	35%	40%
3. Weighted Net Operating Earnings	$330,000	$350,000	$320,000
4. Total Weighted Net Operating Earnings		$1,000,000	
5. Terms of years until major assets are fully depreciated			8
6. Capitalization rate pursuant to 13 MCAR § 1.0003 D.			9%
7. Capitalization rate converted to term of 8 years			18.0674%
8. Capitalized Income/Income Indicator of Value			$5,534,831

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

H. Retirements. Utility operating property may be retired from the utility system while still in place if certain criteria are met:

1. The property must be physically disconnected from the utility system. In the case of electrical plants, the

disconnection or dismantling of wires, cables, connectors, or transformers would constitute physical disconnection. In the case of pipelines, the disconnection of pipes, valves, or fittings would be evidence of physical disconnections.

2. An affidavit of retirement should be filed by the utility with the commissioner at least 30 days prior to the assessment date. This affidavit should indicate the facility being retired and the date it was taken out of service.

The utility should make every effort to inform the commissioner of pending major retirements. The commissioner in turn shall notify the county assessor of impending major retirements as soon as this information becomes available to the department.

Utility property which is retired in place shall continue to be taxed for ad valorem purposes; however, its market value shall not be determined on the basis of its value as utility operating property.

If a utility should choose to temporarily retire a facility pending the development of an alternate fuel, greater demand, increased source of supply or some other valid reason, the cost of this facility must be transferred to the appropriate regulatory agency's account entitled "Held for Future Use." Standby facilities will not be considered to be temporarily retired unless their costs are carried in this account. Temporarily retired utility facilities will be valued taking into account a number of factors including: age of the facility, type of facility, amount of maintenance and additional costs needed to restore the facility to operational status, length of retirement, and earning potential of the facility. In no instance shall a temporarily retired facility be valued lower than if the facility were considered non-operating utility property.

13 MCAR § 1.0004 Allocation.

A. General. After the unit value of the utility property has been estimated, the portion of value which is attributable to Minnesota must be determined. This process of dividing the unit value of a utility company among the states in which the utility operates is called allocation. Each of the factors in the allocation formula is assigned a weighted percentage to denote the relative importance assigned to that factor. The resulting sum of the weighted factors multiplied by the unit value yields the valuation of the utility property which will, after the adjustments described in 13 MCAR § 1.0005, be subject to ad valorem tax in the State of Minnesota.

The factors to be considered in making allocations of unit value to Minnesota for the utility companies and the weight assigned to each factor for each class are specified in this ~~regulation~~ rule.

B. Electric companies. The original cost of the utility property located in Minnesota divided by the total original cost of the property in all states of operation is weighted at 90 percent. Gross revenue derived from operations in Minnesota divided by gross operations revenue from all states is weighted at ten percent.

The following example illustrates this formula, assuming a unit value of $20,000,000.

1. Minnesota Plant Cost	~~($115,000,000)~~	x .90 = 50.49%
2. System Plant Cost	~~($205,000,000)~~	
3. Minnesota Gross Revenue	~~(40,000,000)~~	x .10 = 3.8%
4. System Gross Revenue	~~($105,000,000)~~	
5. Total Percentage Allocable to Minnesota		54.29%
6. Unit Value of System Plant		$20,000,000
7. Amount of Value Allocable to Minnesota		$10,858,000

C. Gas distribution companies. The allocation of value of gas distribution companies shall be made considering the same factors as are used to determine the allocation of value of electric companies. The weight given to the original cost factor will be 75 percent, and gross revenue shall be weighted 25 percent.

D. Pipeline companies. In addition to the cost factor and the gross revenue factor, the factor of weighted pipeline miles shall be considered in allocating the value of pipeline companies. Weighted pipeline miles means the number of miles of pipeline multiplied by the diameter of the pipe, measured in inches. To illustrate, a pipeline 6 miles long has 3 miles of pipe with a diameter of 10 inches and 3 miles of pipe with a diameter of 30 inches. The weighted pipeline miles is 120.

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3 miles × 10″ diameter = 30
3 miles × 30″ diameter = 90
Weighted pipeline miles = 120

The following example ~~illustrate~~ illustrates the allocation of value of property of a pipeline company and the weights given to each factor~~:~~:

1. Minnesota Plant Cost	~~($13,500,000)~~	x .75 =	25.76%
2. System Plant Cost	~~($39,300,000)~~		
3. Minnesota Gross Revenue	~~($ 2,980,000)~~	x .05 =	1.60%
4. System Gross Revenue	~~($ 9,300,000)~~		
5. Minnesota Weighted Pipeline Miles	~~(9,500)~~	x .20 =	7.01%
6. System Weighted Pipeline Miles	~~(27,100)~~		
7. Total Percentage Allocable to Minnesota			34.37%

13 MCAR § 1.0005 Adjustments for non-formula assessed or exempt property.

A. After the Minnesota portion of the unit value of the utility company is determined, any property which is non-formula assessed or which is exempt from ad valorem tax, will be deducted from the Minnesota portion of the unit value. Only that qualifying property located within the State of Minnesota may be excluded.

B. The following properties will be valued by the local or county assessor and, therefore, the formula provided herein for the valuation of utility property will not be applicable for such property~~:~~:

1. Land;
2. Non-operating property;
3. Rights of way.

C. The Minnesota portion of the unit value will be reduced by the original cost of ~~these items except that~~ land and rights of way. In the case of non-operating property, the deduction shall be original cost, less the rate of depreciation applicable in the valuation process pursuant to 13 MCAR § 1.0003.

D. A deduction from the Minnesota portion of the unit value shall also be made for property, real or personal, which is exempt from ad valorem tax. For instance, pollution control equipment for which an exemption has been granted is exempt. A deduction from the Minnesota portion of the unit value shall be made at original cost, less the applicable rate of depreciation used in the valuation process pursuant to 13 MCAR § 1.0003. The value of personal property, such as office machinery and vehicles, which is not taxed, shall also be excluded from the Minnesota portion of the unit value. The deduction shall be at original cost less the applicable rate of depreciation utilized in the valuation process.

The following example illustrates how these items are deducted from the Minnesota portion of the unit value.

1. Minnesota Portion of Unit Value		$5,000,000
2. Excludable Items—Nondepreciable		
a. Land Assessed Locally		3,000
b. Land Rights		1,000
3. Excludable Items—Depreciable		
a. General Plant Items	$10,000	
b. Pollution Control Equipment	10,000	
c. Gross Depreciable Items	20,000	
d. Depreciated at 25%	5,000	
e. Net Depreciable Exlucable Items		15,000
4. Total Excludable Items		20,000
5. Minnesota Apportionable Value		4,980,000

E. The utility company shall have the burden of proof to establish that the value of any property should be excluded from the

Minnesota portion of the unit value. Accordingly, the utility company shall have the responsibility to submit, in the form required by the Commissioner of Revenue, such schedules of exempt or non-formula assessed property as he may require.

13 MCAR § 1.0006 Apportionment.

A. After the unit valuation of the utility company has been allocated to the State of Minnesota and has been adjusted pursuant to 13 MCAR § 1.0005, the determined amount shall be apportioned or distributed to the taxing districts in Minnesota in which the company operates. This apportionment will be made by the Commissioner of Revenue on the basis of information submitted by the utility companies in annual reports filed with the commissioner.

B. The following information must be submitted for each taxing district:

1. The market value of the company's operating property by classification, as reflected in the last assessment, including the cost of leased taxable property.

2. The original cost of the company's operating property by classification, including the cost of leased taxable property.

3. The original cost of any new additions since the last assessment, including work in progress on the assessment date.

4. The market value of any retirements made after the last assessment, as reflected in that assessment.

5. The original cost of any retirements made after the last assessment.

6. Whenever a new taxing district is established, the information submitted by the utility companies for the taxing district must be submitted in the same form as enumerated in 1.-5. If the utility, because of administrative difficulty, is forced to make estimates of values and costs for property within new taxing districts, these estimates must be approved by the commissioner.

C. The total market value of each company's operating utility property in Minnesota shall be divided by the ~~larger~~ greater of:

1. The last market value of ~~each~~ the company's operating utility property in each taxing district, plus original cost of new construction, reduced by the last market value of property retired since the last assessment.

2. The original cost ~~x 75 percent~~ together with any additional cost computed in accordance with 13 MCAR § 1.0003 C. of ~~each~~ the company's operating utility property in each taxing district plus original cost of new construction reduced by the original cost of property retired since the last assessment multiplied by the percentage as specified below.

For the 1982 assessment year the original costs shall be multiplied by 77.5%.

For the 1983 assessment year the original costs shall be multiplied by 80%.

For the 1984 assessment year the original costs shall be multiplied by 82.5%.

For the 1985 assessment year the original costs shall be multiplied by 85%.

For the 1986 assessment year the original costs shall be multiplied by 87.5%.

For the 1987 assessment year the original costs shall be multiplied by 90%.

For the 1988 assessment year the original costs shall be multiplied by 92.5%.

For the 1989 assessment year the original costs shall be multiplied by 95%.

For the 1990 assessment year the original costs shall be multiplied by 97%.

For the 1991 assessment year the original costs shall be multiplied by 100%.

D. For this purpose, the last market value and the last assessment shall mean the latest assessment immediately prior to the current assessment. The portion of unit value to be assigned to each taxing district will be the resulting percentage multiplied by the Minnesota portion of the unit value, as adjusted pursuant to ~~13 MCAR § 1.0006~~ this rule.

~~E. If the market value of any parcel of property assessed pursuant to this chapter is increased, the increase entered on the assessment books shall be subject to the limitation provided in Minn. Stat. § 273.11, Subd. 2. The amount of decrease in~~

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~~market value of such property, exclusive of property retired or destroyed since the last assessment, shall not exceed ten percent of the value in the preceding assessment.~~

Repealer. Rule 13 MCAR § 1.0007 is repealed.

Department of Natural Resources

Migratory Waterfowl Sanctuary Order No. 29

Regulations Designating Certain Waters as Migratory Waterfowl Feeding and Resting Areas during the Open Season for the Year 1981

Petitions having been filed with the Commissioner of Natural Resources of the State of Minnesota by the number of petitioners required by law, who assert that they are licensed resident Minnesota hunters, and that certain designated waters constitute substantial feeding and resting grounds for migratory waterfowl, I, Joseph N. Alexander, Commissioner of Natural Resources, pursuant to authority vested in me by law, having duly investigated and considered said matter and having found said assertions as to said waters hereinafter described to be correct, and that it is in the best interests of proper game management to have the same set aside as migratory waterfowl feeding and resting areas, prescribe the following regulations relating thereto:

Section 1. All waters on Upper Rice Lake in Clearwater County, Bear Lake in Freeborn County, Squaw Lake in Itasca County, South Heron Lake in Jackson County, and Lake Johanna in Pope County are hereby designated as migratory waterfowl feeding and resting areas and shall be duly posted as such.

Sec. 2. All of Lake Christina in Grant and Douglas Counties except that part lying southerly of a straight line described as follows: Beginning at the easterly terminus of the north line of Government Lot 3, Section 12, Township 130 North, Range 41 West, at the water's edge of Lake Christina; thence easterly to the water's edge at the northwesterly point of the Peninsula of Government Lot 1, Section 8, Township 130 North, Range 40 West, that projects into said lake, is hereby designated as a migratory waterfowl feeding and resting area and shall be duly posted as such.

Sec. 3. All that portion of Marsh Lake in Big Stone, Lac qui Parle and Swift Counties lying easterly and southeasterly of a line beginning at that point where the west section line of Section 10, Township 120 North, Range 44 West, meets the lake water line; thence southeasterly approximately 370 rods to the southwest corner of Egret Island located in Section 15, Township 120 North, Range 44 West; thence southeasterly approximately 340 rods to a point where the east section line of Section 22, Township 120 North, Range 44 West, intersects the water line of south shore of the lake, is hereby designated as a migratory waterfowl feeding and resting area and shall be posted as such.

Sec. 4. All that portion of Lake Lizzie in Ottertail County lying in Sections 3, 4, 5, 6, 7, 8 and 9, Township 136 North, Range 42 West, is hereby designated as a migratory waterfowl feeding and resting area and shall be posted as such.

Sec. 5. When so posted, it shall be unlawful for any person, other than uniformed Natural Resources officers and other agents of the Commissioner in the performance of their official duties, or disabled or handicapped persons who, under permit of the Commissioner, may use electric motors of not over 24 pounds of thrust, to use upon said Upper Rice, Bear, Squaw, South Heron, Johanna, or upon such parts of Christina, Marsh, and Lizzie Lakes designated as feeding and resting areas, any kind of motor-propelled boat, raft, watercraft or aircraft during the open migratory waterfowl season.

Dated at Saint Paul, Minnesota, this 16th day of September, 1981.

Joseph N. Alexander, Commissioner
Department of Natural Resources

Department of Natural Resources

Game Refuge Order No. 410

Order Establishing the Glendalough Statutory Waterfowl Refuge, Douglas County

TO WHOM IT MAY CONCERN:

WHEREAS, a petition having the required number of signatures has been presented to the Director of the Division of Fish and Wildlife, State of Minnesota, requesting that the following described lands in Ottertail County Minnesota be established as a state waterfowl refuge.

Southwest ¼ of Northwest ¼, Government Lots 1, 2, 3, 4, 5 and 7 (except that part of said Government Lot 5 lying east of the private road as presently located on said Government Lot 5) of Section 13, Township 133, Range 40;

Government Lots 1 and 2 of Section 14, Township 133, Range 40;

Government Lots 1, 2, 3, 4, 5, 6 and 7 (including that part of said Government Lot 4 platted as Highland Park Beach) of Section 18, Township 133, Range 39.

WHEREAS, all of the owners, lessees or persons in possession of the above described lands have joined in said petition; and

WHEREAS, it has been found that public interest would be best served by the establishment of this waterfowl refuge;

NOW, THEREFORE, UNDER AUTHORITY OF MINNESOTA STATUTES 1981, SECTION 99.25, SUBDIVISIONS 3 AND 6A, IT IS ORDERED THAT THE ABOVE DESCRIBED AREA BE AND IS ESTABLISHED AS A STATUTORY WATERFOWL REFUGE TO BE KNOWN AS THE GLENDALOUGH STATUTORY WATERFOWL REFUGE, OTTERTAIL COUNTY, MINNESOTA. THIS ORDER BECOMES EFFECTIVE UPON DUE PUBLICATION THEREOF AND COMPLETION OF POSTING IN ACCORDANCE WITH LAW.

Dated at Saint Paul, Minnesota
this 9th day of September, 1981.

Joseph N. Alexander, Commissioner
Department of Natural Resources
By: Jerome Kuehn, Acting Director
Division of Fish and Wildlife

Department of Natural Resources

Commissioner's Order No. 2105

Amending Commissioner's Order No. 2100 Regulating the Taking of Certain Furbearers

Pursuant to authority vested in me by law, I, Joseph N. Alexander, Commissioner of Natural Resources, hereby prescribe the following amendments to Commissioner's Order No. 2100 regulating the taking of certain furbearers.

Section 1. Sec. 3, paragraph b., of Commissioner's Order No. 2100 is amended to read as follows:

b. Bag Limits. Residents may possess raccoon without limit. Any person who is not a resident of Minnesota may not take or possess more than eight raccoon per season.

Sec. 2. Sec. 6, paragraph e., Sec. 7, paragraph d., and Sec. 8, paragraph b.3., are all deleted.

Sec. 3. Sec. 9 of Commissioner's Order No. 2100 is amended to read as follows:

No person shall place, set, or operate a trap unless his or her name and either address or driver's license number is etched legibly onto the trap or onto a metal tag no less than 30 gauge in thickness which is welded, brazed or soldered to the trap or affixed to the trap with a tightly twisted wire or solid metal ring.

Sec. 4. Sec. 14 of Commissioner's Order No. 2100 is amended to read as follows:

Each lynx, bobcat, fisher and otter mut be presented, by the person taking it, to a conservation officer for registration before the pelt is sold, but in no event more than 48 hours after the season closes. The pelt shall have been removed from the carcass and the carcass shall be surrendered to the conservation officer. Each fisher shall be skinned so that one front foot remains intact and attached to the pelt.

Sec. 5. Sec. 20 of Commissioner's Order No. 2100 is amended to read as follows:

No person shall be accompanied by a dog or dogs while engaged in tending or setting traps for protected wild animals, unless such dog or dogs are harnessed and attached to a sled or securely tethered to a tree or other permanent device with a leash of no more than 15 feet in length.

Except as provided herein, all provisions of Commissioner's Order No. 2100 shall remain in full force and effect.

Dated at Saint Paul, Minnesota, this 16th day of September, 1981.

Joseph N. Alexander
Commissioner of Natural Resources

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Department of Natural Resources

Commissioner's Order No. 2107

Amending Commissioner's Order No. 2102 Regulating Hunting and Trapping in State Game Refuges, Public Hunting Grounds, Wildlife Management Areas, National Wildlife Refuges and State Parks

Pursuant to authority vested in me by law, I, Joseph N. Alexander, Commissioner of Natural Resources, hereby prescribe the following amendments to Commissioner's Order No. 2102 regulating hunting and trapping in State Game Refuges, Public Hunting Grounds, Wildlife Management Areas, National Wildlife Refuges and State Parks.

Section 1. Sec. 1. Subd. 2 of Commissioner's Order No. 2102 is amended to read as follows:

Trapping is authorized by permit only, issued by the Area Manager, on the following public hunting grounds: Carlos Avery in Anoka and Chisago Counties; Hubbel Pond in Becker County; Red Lake in Beltrami and Lake of the Woods Counties: Talcot Lake in Cottonwood and Murray Counties; Mille Lacs in Mille Lacs and Kanabec Counties; Lac qui Parle in Big Stone, Lac qui Parle, Swift and Chippewa Counties; Orwell in Ottertail County; Roseau River in Roseau County; Thief Lake in Marshall County; Rothsay in Wilkin County; and Whitewater in Olmsted, Wabasha and Winona Counties. If the Area Manager determines that the number of trapping permits issued must be limited in order to avoid undo depletion of the furbearer resource or to prevent excessive crowding of trappers, he may establish any practicable method, including a drawing, for impartially determining the persons who may trap. The Area Manager may reject the application for a trapping permit from any trapper who has failed to submit a trapping report for the previous trapping season.

Sec. 2. Sec. 1. Subd. 7 of Commissioner's Order No. 2102 is amended to read as follows:

Hunting on certain portions of Lac qui Parle, Thief Lake, Elm Lake, Roseau River and Talcot Lake Wildlife Management Areas is controlled as specified in Section 3.

Sec. 3. Sec. 2. Subd. 5 of Commissioner's Order No. 2102 is amended to read as follows:

The hunting of migratory waterfowl adjacent to certain segments of the Rochester, Roseau River, Lac qui Parle, and Talcot Lake Game Refuges is controlled as specified in Section. 3.

Sec. 4. Sec. 2 of Commissioner's Order No. 2102 is amended by adding a new Subd. called Subd. 6 to read as follows:

The Fox Lake Game Refuge, in Martin County, is open to the taking of Canada geese from October 3 to October 7, 1981, both dates inclusive, within the established goose regulations for the zone in which it is located.

Sec. 5. Sec. 3. Subd. 1 of Commissioner's Order No. 2102 is amended by adding a new paragraph called j. to read as follows:

On the Talcot Lake Game Refuge and Sanctuary in Cottonwood County, the controlled hunting zone shall include the area 200 yards out from the following described boundary:

Beginning along County State Aid Highway (CSAH) 7, Cottonwood County at the center of Sec. 17, Township 105 North, Range 38 West; thence south along CSAH 7 to State Trunk Highway (STH) 62; thence west along STH 62 to the intersection with the Township Road at the northwest corner of Section 32, Township 105 North, Range 38 West.

Sec. 6. Sec. 3 of Commissioner's Order No. 2102 is amended by adding a new Subdivision, called Subd. 7, to read as follows:

Within the Talcot Lake controlled hunting zone the following regulations shall apply to waterfowl hunters during the open goose season.

a. Hunting station occupancy is limited to no more than three persons.

b. The resident wildlife manager or the area wildlife manager may limit all persons hunting at all hunting stations within a controlled hunting zone or at any hunting station within a zone to one day of hunting in every eight if he determines that such is necessary to provide for the equitable allocation of hunting opportunities. After making such a determination, the manager shall daily stamp the small game hunting license or firearms safety certificate of every person at each restricted hunting station with the date of such person's hunt. Persons with licenses stamped pursuant to this paragraph may hunt at any restricted station on the day stamped but shall not occupy any such station for the next seven days. Stations subject to the restrictions imposed by this paragraph shall be so posted. The manager shall remove any such restriction when he determines that it is no longer necessary for the purpose specified above.

c. No persons shall occupy a shooting station within the controlled hunting zone except when their vehicles are occupying numbered parking stalls in a designated parking lot in the controlled hunting zone.

d. Hunters shall hunt only at the designated hunting stations having numbers corresponding to their parking stall number.

e. No person shall park in or otherwise occupy any parking stall in the designated parking lot or occupy any designated hunting station during any two consecutive days.

f. No person shall occupy a designated hunting station or park in or otherwise occupy the designated parking lot in the controlled hunting zone during the period from 10:00 P.M. until 5:00 A.M. the following day.

g. No trailers of any kind shall be allowed in the designated parking lot.

h. All guns must be unloaded and cased except within 10 feet of a hunting station.

i. A hunting party shall vacate its shooting station and leave the controlled hunting zone after the daily limit of Canada geese has been taken.

Except as provided herein, all provisions of Commissioner's Order No. 2102 shall remain in full force and effect.

Dated at Saint Paul, Minnesota, this 16th day of September, 1981.

Joseph N. Alexander, Commissioner
Department of Natural Resources

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 15.0412, subd. 4, have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

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

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

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 15.0412, subd. 5. Notice of his decision will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under subd. 4.

Department of Agriculture
Plant Industry Division

Adopted Rules Governing Seed Potato Certification (3 MCAR §§ 1.0127-1.0135) and Repeal of Agr 121-126

The rules published and proposed at *State Register*, Volume 5, Number 48, pp. 1913-1922, June 1, 1981 (5 S.R. 1913) are now adopted, with the following modifications:

Rules as Adopted

3 MCAR § 1.0127 Purpose and authority. Rules 3 MCAR §§ 1.0127-1.0135 provide standards for the inspection, certification, production, and marketing of certified seed potatoes in the State of Minnesota. The authority to adopt these rules is contained in Minn. Stat. § 21.118 ~~(1980)~~.

3 MCAR § 1.0128 Definitions. As used in 3 MCAR §§ 1.0127-1.0135, the following defintions apply unless the context clearly indicates otherwise.

D. "Inspected" has the meaning given it in Minn. Stat. § 21.111, subd. 2 ~~(1980~~.

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E. "Seed potatoes" has the meaning given it in Minn. Stat. § 21.111, subd. 5 ~~(1980)~~.

F. "Certified" has the meaning given it in Minn. Stat. § 21.111, subd. 3 ~~(1980)~~.

3 MCAR § 1.0129 General guidance. The provisions of this section govern the production of potatoes for use as certified seed potatoes.

A. Seed potato certification. In order to produce certified seed potatoes, a grower must comply with the following procedures:

1. Potatoes entered for certification shall be inspected while growing in the field and again after harvest at the time of shipment. Certification shall be based upon visual inspection by the commissioner of sample plants and tubers from each field and lot. Certificates shall be issued to show the varietal purity, freedom from disease, ~~and/or~~ and physical defects of the potatoes at the time of inspection.

D. Certified seed potato grades. Grades of certified seed potatotes are established according to the physical defects of the tubers. There are three grades used for shipping Minnesota certified seed potatoes.

2. The red tag certified seed potato grade is the second grade. This grade allows more physical defects of the tubers than the blue tag certified seed potato grade. It may be used by growers of Foundation certified, Approved certified, and Certified seed ~~potato growers~~ potatoes. The red tag grade may also be used for intrastate and interstate shipments of certified seed potatoes.

3 MCAR § 1.0130 Application and eligibility for inspection and certification. The following procedures shall govern:

A. Application for inspection.

1. All potatoes planted on a farm shall be eligible and shall be entered for certification.

2. Application for inspection shall be made before June 16 each year on forms furnished by the commissioner or a seed potato certification inspector. Applications postmarked after June 15 but before July 1 shall be charged a fifty cents per acre late registration fee. No applications shall be accepted that are postmarked later than June 30. The commissioner may extend the deadline due to special circumstances ~~affecting~~, such as natural disasters, which make it impractical or impossible for planting to be completed by the deadline and which affect an area or large number of growers.

5. No application for inspection shall be accepted from a grower in any community or county in which there is not sufficient acreage ~~to warrant the expense of an inspection~~ for the total inspection fee charges to cover the cost of wages and expenses of the inspectors providing the inspection service. Determination of sufficient acreage shall be made by the commissioner.

B. Seed potatoes eligible for Minnesota certification planting. A field shall not be inspected for certification unless both the seed potato variety and the particular lot planted have the authorization of the commissioner. ~~Any well established, named, commercial variety shall be considered for certification if the variety has been described as to vine and tuber characteristics in a journal recognized by the commissioner and in accordance with the recommendations of the Patoto Association of America~~ In considering seed potato varieties for authorization for certification planting, the commissioner shall consider scientific evidence and expert opinion. To be eligible for certification planting, seed potatoes shall be one of the following:

1. From Minnesota growers:

a. Foundation certified seed potatoes;

b. Approved certified seed potatoes; or

c. Certified seed potatoes. A grower may replant his own certified seed potatoes. The commissioner may authorize the planting of purchased certified seed potatoes if there is no source of Foundation certified or Approved certified seed potatoes available to the grower.

3 MCAR § 1.0135 Minnesota certified seed potato grades and tolerances.

A. Minnesota certified seed potato grades. Before becoming eligible for grading as certified seed potatoes, the requirements of 3 MCAR §§ 1.0130 and 1.0131 shall be met. In addition, Foundation certified seed potatoes shall meet the requirements of 3 MCAR § 1.0132. Approved certified seed potatoes shall meet the requirements of 3 MCAR § 1.0133. Grading and tagging or issuance of a bulk certificate are the final steps in the certification process.

1. Minnesota blue tag certified seed potato grade. To be graded as Minnesota blue tag certified seed potatoes, the potatoes shall meet the following requirements:

a. The potatoes shall be, at time of final inspection, one variety; fairly well-shaped; free from bacterial ring rot, powdery scab, freezing, black heart, and soft rot or wet breakdown; and free from injury by surface or pitted scab, and from

damage caused by dirt or other foreign matter, second growth, growth cracks, air cracks, cuts, shriveling, sprouts, pitted scab, surface scab, russet scab, dry rot, other diseases, insects or worms, external discoloration caused from loss of skin, mechanical or other means, and from serious damage caused by sunburn, hollow heart, or internal discoloration (other than hollow heart).

b. Size. For round or intermediate shaped varieties, the maximum size shall be not more than 12 ounces and, unless otherwise specified, the minimum size shall be not less than 1⅞ inches in diameter. For long varieties, the maximum size shall be not more than 14 ounces and, unless otherwise specified, the minimum size shall be not less than 1¾ inches in diameter. For all varieties, size "B", the minimum diameter shall be not less than 1½ inches and the maximum size shall be not more than 2¼ inches in diameter.

c. Lot tolerances. In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, are provided:

(1) For defects:

(a) 10% for potatoes seriously damaged by hollow heart;

(b) 10% for potatoes seriously damaged by sunburn;

(c) 5% for potatoes seriously damaged by internal discoloration (other than hollow heart);

(d) 8% for potatoes injured by (slight) scab;

(e) 10% for potatoes damaged by dirt or other foreign matter;

(f) 10% for potatoes damaged by sprouts; and

(g) 6% for potatoes which fail to meet the remaining requirements of the grade provided, that included in this amount not more than the following percentages shall be allowed for the following defects:

(i)	Soft rot, frozen, or wet breakdown	0.5%
(ii)	Damage by surface or pitted scab	2.0%
(iii)	Damage by dry ~~rots~~ rot	2.0%
(iv)	Late blight tuber rot	2.0%
(v)	Bacterial ring rot	0.0%
(vi)	Powdery scab	0.0%

State Board of Education
Department of Education
Special Services Division

Adopted Rules Governing Licensure Requirements for Head Varsity Coaches of Interscholastic Sports in Senior High Schools (5 MCAR § 1.0533)

The rules proposed and published at *State Register*, Volume 5, Number 34, pp. 1293-1295, February 23, 1981 (5 S.R. 1293) are now adopted with the following modifications:

Rules as Adopted

Chapter Twenty-Seven A: Licensure of Supervisory and Support; Issuance, Suspension, and Revocation

5 MCAR § 1.0533 D. Qualifications for licensure. All candidates recommended for licensure as a head varsity coach of interscholastic sports shall have satisfactorily completed a program approved by the Minnesota Board of Edueation consisting of ~~a maximum of~~ 12 ~~quarter or 9 semester~~ to 18 quarter hours or the equivalent containing components designed to provide candidates recommended for licensure with knowledge, skills, and understandings in all of the following areas:

5 MCAR § 1.0533 H. School district hardship situations. In cases where a local school district is unable to employ a licensed head varsity coach of interscholastic sports, the superintendent of such school district may request the Commissioner of Education to grant a provisional license for one school year, ~~and~~ renewable ~~for a maximum of one additional School year~~ upon

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application on a year to year basis to a teacher or a baccalaureate degreed person to serve as a head varsity coach of an interscholastic sport upon evidence submitted by the superintendent of schools that the following conditions have been met:

1. Evidence that the school district is unable to employ a licensed head varsity coach of interscholastic sports for the current school year, and

2. The person to be employed under such authorization holds a current, valid Minnesota teaching license~~, and~~ or a baccalaureate degree, and

3. The person to be employed under such authorization ~~is currently enrolled in a program approved by the Minnesota Board of Education leading to the licensure of head varsity coaches of interscholastic sports.~~ has experience in the sport and can demonstrate to the superintendent of schools that he/she has the fundamental knowledge and skills necessary for coaching the sport, and

4. Verification of completion of six quarter hours or 60 clock hours of instruction in first aid and the care and prevention of athletic injuries.

SUPREME COURT

Decisions Filed Friday, September 25, 1981

Compiled by John McCarthy, Clerk

810266/Sp. Mary Louise Wolk, *et al.*, Appellants, v. James De Cowski, *et al.*, Hennepin County.

Statute authorizing warranted interception of oral or wire communications must be interpreted strictly, with any doubt as to its scope being resolved against the state.

Reversed and remanded. Sheran, C. J.

51640/Sp. State of Minnesota v. Stanley Lloyd, Appellant. Hennepin County.

Trial court did not commit prejudicial error in its evidentiary rulings or instructions.

Affirmed. Otis, J.

51339 Bruce B. Bedeau v. John Mart, *et al.*, Lehigh Valley Railroad Co., *et al.*, Defendants and Lehigh Valley Railroad Company, defendant and third party plaintiff, Appellant, v. Mannix Construction, Inc., Maintenance of Way Division, third party defendant. Hennepin County.

Instructions relating to the contract provision, not objected to prior to their submission to the jury, become the law of the case.

Plaintiff may voluntarily dismiss his claims against certain defendants, with the trial court's approval, and the remaining defendant may not object unless such dismissal also has the effect of dismissing his claims against the codefendants.

In the absence of detailed findings explaining the basis of the trial court's decision to remit the verdict, this court is unable to determine the trial court's rationale, and a new trial is appropriate on the question of damages alone.

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

51795/Sp. In re the Marriage of: Pamela Nice-Peterson, petitioner, v. Perry W. Nice-Peterson, Appellant. Hennepin County.

A trial court is accorded broad discretion in its consideration and disposition of a motion to modify an award of child custody made incident to a judgment and decree of marital dissolution. Upon its consideration of affidavits submitted in support of the motion, Minn. Stat. § 518.185 (1980), the trial court shall review the documents and schedule an evidentiary hearing thereon if that review indicates a likelihood that the movant might establish the requisite change of circumstances upon which a modification may be based. *Peterson v. Peterson*, 308 Minn. 297, 308, 242 N.W.2d 88, 95 (1976).

Affirmed. Yetka, J.

51946/Sp. Donald C. Krupenny, Jr., Appellant, v. West Bend Mutual Insurance Company. Ramsey County.

A person who is injured in the course of loading or unloading a motor vehicle is not entitled to no-fault benefits unless the injury occurs while the person is occupying, entering or alighting from a motor vehicle. Minn. Stat. § 65B.43, subd. 3 (1980).

Affirmed. Yetka, J.

81-220/Sp. Randy A. Schultz, *et al.*, v. Thomas Stanton, *et al.*, etc., Appellants, Dennis V. Elwell, James E. Tatro, *et al.* Dakota County.

Reversed and remanded for trial on both the main action and claim for contribution. Yetka, J.

51272/Sp. Tamarac Inn, Incorporated, petitioner, v. The City of Long Lake, *et al.*, Appellants.

Denial of renewal of existing liquor licenses based on failure to complete a restaurant facility and complaints of liquor ordinance violations was arbitrary and capricious, where the restaurant was within days of completion and the ordinance violations were no more serious than those at a similarly situated establishment which was not denied renewal.

Affirmed. Scott, Dissenting, Otis, J.

51471/Sp. State of Minnesota v. Michael A. Morrison, Appellant. Hennepin County.

Evidence was sufficient to support the convictions, trial court did not err in evidentiary rulings or instructions, and defendant is not entitled to a reduction in sentence.

Affirmed. Scott, J.

52071/Sp. State of Minnesota v. Douglas Allen Dahms, Appellant. Faribault County.

Police officers executing a search warrant did not, as defendant contends, exceed the scope of the warrant, and therefore the trial court properly denied defendant's motion to suppress.

Police reports that certain items of property were stolen were not admissible under Minn. R. Evid. 803(6) and, without this evidence, the other evidence was insufficient to sustain four of defendant's convictions.

Evidence was sufficient to sustain all the other convictions except one, which is reduced.

Reversed in part, remanded for resentencing. Scott, J.

50556/Sp. Minnesota Federation of Teachers, Local 331, Petitioner, Appellant, v. Independent School District No. 361. Koochiching County.

Because it is reasonably debatable whether the controversy sought to be arbitrated is within the scope of the arbitration clause, the district court erred in dismissing a motion to compel arbitration made pursuant to Minn. Stat. 572.09 (1980).

Reversed and remanded. Scott, J. Conc. spec. Simonett, J.

81-272/Sp. The City of Minneapolis v. State of Minnesota, by William L. Wilson, Commissioner, Department of Human Rights. Hennepin County.

Anti-discrimination statute prohibits, among other things, discrimination against a white person because of his association with black people.

Evidence supports the hearing examiner's finding that police officer assaulted citizen.

Reversed. Scott, J.

50957/367 Reserve Mining Company v. State of Minnesota and Arthur C. Roemer, Commissioner of Revenue, Appellants. Lake County.

The taconite tailings tax statute, Minn. Stat. § 298.24, subd. 2 (1980), is not unconstitutional as a bill of attainder, as a violation of the separation of powers doctrine, or as an impairment of contract.

The taconite tailings tax is an excise tax subject to the limitations on taxation in the taconite amendment, Minn. Const. art. X, § 6.

Affirmed in part and reversed in part. Wahl, J. Took no part, Sheran, C. J.

51164/Sp. State of Minnesota, by Warren Spannaus, its Attorney General, petitioner, Appellant, v. Lutsen Resorts, Incorporated, *et al.*, Melvin LeRoy Lingwall, *et al.*, Horace A. Lamb, *et al.* Cook County.

Under these circumstances condemnation of an advertising device by the State pursuant to statute neither denies equal protection nor violation principles of equity.

Reversed and remanded. Wahl, J.

51639/Sp. The Minnesota Chemical Dependency Association, petitioner, Appellant, v. Minneapolis Commission on Civil Rights, Timothy Campbell, complainant. Hennepin County.

The determination by the Minneapolis Commission on Civil Rights that complainant was discriminated against on the basis of affectional preference in employment was unsupported by substantial evidence.

Reversed. Amdahl, J. Took no part, Wahl, J.

SUPREME COURT

51894/Sp. Dorothy Matson v. Charles D. Matson, Appellant. Washington County.

The Wisconsin judgment for support and maintenance arrearages is definite and certain and for a specific amount. Therefore, plaintiff was entitled to proceed under the Uniform Enforcement of Foreign Judgments Act, Minn. Stat. §§ 548.26-.33 (1980).

There is no merit to defendant's contention that the Wisconsin court lacked subject matter jurisdiction over the proceeding resulting in the judgment for arrearages.

The Wisconsin court retained continuing personal jurisdiction over defendant to enforce the support and maintenance provisions of the original divorce decree. Due process was satisfied by notice to defendant of the enforcement proceeding through personal service in Minnesota.

Affirmed and remanded for further proceedings. Amdahl, J.

51923 Joseph Lamb, petitioner, Appellant, v. Village of Bagley, State of Minnesota, by Marilyn McClure, Commissioner, Department of Human Rights. Clearwater County.

On this record the use of abusive racial epithets coupled with other disparate treatment constitutes, as a matter of law, impermissible discrimination on the basis of race by the respondent village against complainant, an American Indian employed as one of its police officers.

Reversed and remanded. Simonett, J.

Decision Filed Tuesday, September 22, 1981

81-766/Sp. State of Minnesota, Appellant, v. Michael James Wright. Ramsey County.

Trial court's sentencing departure in placing defendant on probation was based on substantial and compelling circumstances where the trial court reasonably concluded, on the basis of recommendations of a psychiatrist and the agent who prepared the presentence investigation report, that defendant was particularly unamenable to incarceration and particularly amenable to individualized treatment in a probationary setting consistent with the public safety.

Affirmed. 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 Administration
Bureau of Real Estate and Transportation

Notice of Request for Proposals for a Building Management Contract

The Department of Administration is requesting proposals for a five-year building management contract, provided funds are appropriated by the Legislature, for the Minnesota Government Services Center located at Fourth Avenue West and Second Street, Duluth, Minnesota.

Responders are to project the total costs of their management services and to detail each service category as requested in the Request for Proposals.

A Request for Proposals is to be obtained by calling or writing:

James L. Ware
Department of Administration
Plant Management Division G-28
50 Sherburne Avenue
Saint Paul, Minnesota 55155
Telephone: (612) 296-9901

Proposals must be submitted no later than 2:30 p.m., on November 30, 1981.

Department of Economic Security

Notice of Request for Proposals for Computer Consulting Services

Notice is hereby given that the Department of Economic Security is soliciting proposals from qualified consultants to certify the performance of computer software used by the Minnesota Community Action Data System. The system is a distributive computer system containing Fund Accounting and Client Components. The system uses the IBM S/34 and IBM 5285 terminals. The consultant is expected to perform the following tasks:

1. Assemble and review design and operating information.
2. Test and document the status of current system software.
3. Assess and certify the performance of the system.
4. Report findings and recommendations for solutions to problems—short and long term.

The estimated cost is $20,000. Due date for proposals is October 26, 1981. Expected date for completion of evaluation of proposals is November 21, 1981. Expected completion date of the project is December 31, 1981. This RFP does not obligate DES to complete the project and DES reserves the right to cancel the solicitation. Direct all inquiries to:

Tracy Page
Department of Economic Security
690 American Center Building
150 East Kellogg Boulevard
St. Paul, MN 55101
(612) 296-8062

Department of Education
Council on Quality Education

Notice of Request for Proposals to Study Small School Districts' Use of Low Power Television and Secure FCC Licenses

The Council on Quality Education is soliciting proposals related to a state study of the use of low power television (LPTV) in small rural school districts. It is anticipated that contracts will be let to survey the need for this technology, to determine needs for personnel and training in small school districts which set up LPTV transmission facilities, to develop cost estimates for equipment at these facilities, to prepare license applications for the Federal Communications Commission, and to manage and coordinate the above activities or contracts. Contracts for these efforts may be awarded separately or to a single qualified firm, agency, or individual. Spending for the overall study effort will not exceed $90,000. Contracts may be let as early as October 27, 1981.

The RFP's may be requested from and inquiries should be directed to:

Eugene Kairies, Coordinator
Council on Quality Education
Minnesota Department of Education
Division of Special Services
722 Capitol Square
550 Cedar Street
St. Paul, Minnesota 55101
(612) 296-5072

Water Planning Board

Notice of Request for Proposals for Assistance in Preparation of Local Planning Handbook for Use by County Officials in Local Water and Related Land Resources Planning

The "Special Study on Local Water Management" was approved by the Minnesota Water Planning Board in January 1981. The study was prepared pursuant to Laws of 1980, ch. 548. In this study, the board has recommended that counties be assigned the responsibility for coordinating local water management activities and for developing comprehensive water and related land resources plans. The purpose of this Request for Proposals is to assist the Water Planning Board by:

1. Determining the scope and detail of county plans which could be developed with existing information and resources.

2. Estimating county financial, technical, administrative, and information requirements for plan development.

This Request for Proposals does not obligate the state to complete the project and the state reserves the right to cancel the solicitation if it is considered to be in its best interest.

I. Scope of Project. This project will examine water and related land resources information, policies, plans, programs, and resources available within selected counties in order to assess the detail and scope which might be required in comprehensive water and related land resources plans prepared by counties. This background information is necessary for the preparation of the Local Planning Handbook (to be completed by board staff).

The assessment will determine the adequacy of existing information and resources for evaluating immediate and long-range needs and guiding solutions to problems relating to flood management; stormwater management; provision and conservation of water supplies; protection and enhancement of water quality and quantity; control or alleviation of soil erosion and siltation; and preservation of the natural and economic value of shorelands, public waters and wetlands, and water surfaces. The project should recognize the prevailing fiscal status constraints; the necessity of scaling plan requirements to need; and should assess the adequacy of existing information and resources in this light.

II. Project Tasks. An assessment of the adequacy of water and related land resources information, policies, plans, programs, and resources available within five to eight selected counties (including at least one county in the metropolitan area) will be made to determine the scope and detail possible in county plans. Determination of county financial, technical, administrative, and informational needs to complete county plans of the scope and detail possible will be made. This project will involve:

1. Selection of the counties in which assessments will be made, assuring an array of water management problems.

2. An inventory of existing information, policies, plans, programs, and resources relevant to comprehensive water and related land resources plan development.

3. An assessment of the adequacy of existing information and resources for development of comprehensive county water and related land resources plans.

4. Determination of the scope and detail possible using obtainable information and resources and design for a format for a hypothetical county plan.

5. Determination of county financial, technical, administrative, and informational needs for development of a county comprehensive water and related land resources plan of the scope and detail suggested to be possible in (4) above.

III. Department Contact. Prospective responders who have any questions regarding this Request for Proposals may call or write John Wells, Minnesota Water Planning Board, 600 American Center Building, 150 E. Kellogg Boulevard, St. Paul, Minnesota, 55101, (612) 297-2377. Please note: Other board personnel are not permitted to discuss the project with responders before the proposal submittal deadline.

IV. Submission of Proposals. All proposals must be sent to and received by John Wells at the above address no later than 4:30 p.m., October 28, 1981. Late proposals will not be accepted. There must be three copies of each proposal and they are to be sealed in a mailing envelope or package with the responder's name and address clearly written on the outside. Prices and terms of the proposal as stated must be valid for the length of the project.

V. Project Costs. The board has estimated that the cost of this project should not exceed $10,000 for professional services and expenses.

VI. Project Completion Date. The project shall be completed by March 31, 1982.

VII. Proposal Contents. The following will be considered minimum contents of the proposal:

1. A statement and discussion of the project objectives to demonstrate the responder's view of the nature of the project.

2. Identification and description of the deliverables related to each project task to be provided by the responder.

3. A description of the responder's background and experience, with particular emphasis on work with local and state government.

4. A detailed cost and work plan which identifies major tasks to be accomplished.

5. A description of the extent of the Water Planning Board's participation in the effort, as well as any other services to be provided by the board.

The description of the background and experience of the responder shall include identification of personnel who will conduct the project and an explanation of their training and work experience. No changes in the primary personnel assigned to the project will be permitted without specific written approval of the state project manager.

The detailed cost and work plan will be considered a scheduling and managing tool, as well as a basis for invoicing.

VIII. Evaluation. All proposals received by the deadline will be evaluated by representatives of the Water Planning Board. If deemed necessary, an interview may be included in the evaluation process. Factors upon which proposals will be judged include, but are not limited to the following:

1. Expressed understanding of project objectives.

2. Project work plan.

3. Project cost detail.

4. Qualifications of both company and personnel.

Experience of project personnel will be given greater weight than that of the firm. Evaluation and selection will be completed by November 6, 1981. Results will be sent immediately by mail to all responders.

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.

Minnesota Environmental Quality Board

Proposed Rules Governing the Environmental Review Program

Notice of Postponement of Public Hearing

Notice is hereby given that the public hearing on the proposed rules as noticed in the September 7, 1981 issue of the *State Register* at 6 S.R. 354 has been postponed. The agency will reschedule the hearing for a later date. The proposed rules as noticed in the same issue of the *State Register* at 6 S.R. 355 through 6 S.R. 393 are not affected by this postponement. The proposed rules as noticed will be the rules that are the subject of the public hearing.

Questions regarding this matter should be directed to Tom Rulland, (612) 296-2319 at the Environmental Quality Board, Room 100, Capitol Square Building, 550 Cedar Street, St. Paul, MN 55101.

Office of the Governor

Notice of Appointment of Department Head

In accordance with Minnesota Stat. § 15.06, notice is hereby given of the appointment of Valdis Vikmanis as Acting Commissioner of the Department of Finance on August 26, 1981.

Pollution Control Agency
Solid and Hazardous Waste Division

Notice of Intent to Solicit Outside Opinion Regarding Amendments to Rules Governing the Minnesota Waste Reduction and Source Separation Demonstration Grant Program

Notice is hereby given that the Minnesota Pollution Control Agency is seeking information or opinions from sources outside the agency in preparing to promulgate amendments to 6 MCAR § 4.6086 governing the administration of the Minnesota Source Separation and Waste Reduction Program. The promulgation of these rule amendments is authorized by Minn. Stat. §§ 115A.49 to 115A.54 which requires the agency to administer a solid waste management demonstration program. The rule amendments relate to incorporation of additional criteria to prioritize categories of eligible source separation and waste reduction demonstration project applications and to the incorporation of selection criteria to allow ranking of similar project applications in the same project category. Comments are especially sought concerning views on the types of projects which should have a high priority for funding.

The Minnesota Pollution Control Agency requests information and comments concerning the subject matter of these rule amendments. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to:

Donald J. Kyser
Waste Management Assistance Section
Solid and Hazardous Waste Division
Minnesota Pollution Control Agency
1935 West County Road B-2
Roseville, Minnesota 55113

Oral statements will be received during regular business hours over the telephone at (612) 297-2727 and in person at the above address.

All statements of information and comment shall be accepted until October 22, 1981. Any written material received by the Minnesota Pollution Control Agency shall become part of the record in the event that the rule amendments are promulgated.

Office of the Secretary of State

Notice of Vacancies in Multi-member State Agencies

Notice is hereby given to the public that vacancies have occurred in multi-member state agencies, pursuant to Minn. Stat. § 15.0597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul 55155-1299; (612) 296-7876. **Application deadline is October 27, 1981.**

PHYSICAL THERAPY COUNCIL has 1 vacancy for a licensed physician pursuant to Minn. Stat. § 148.67. The council advises the Board of Medical Examiners on all matters relating to physical therapy; registers physical therapists; and takes action against them. Members are appointed by the Board of Medical Examiners and receive $35 per diem plus expenses. For specific information contact the Physical Therapy Council, #352, 717 Delaware St. S.E., Minneapolis 55440; (612) 296-5534.

REHABILITATION REVIEW PANEL has 1 vacancy for a representative for employers pursuant to Minn. Stat. § 176.102, subd. 3. The panel reviews rehabilitation plans and rules; advises Commissioner of Labor and Industry. Members are appointed by the Governor. Compensation for members is governed by § 15.0575. For specific information contact Rehabilitation Review Panel, Space Center, 444 Lafayette Road, St. Paul 55101; (612) 297-2684.

OCCUPATIONAL SAFETY AND HEALTH ADVISORY COUNCIL has 1 vacancy for a management representative. The council advises the Department of Labor and Industry on administration of the state Occupational Safety and Health Act. Members are appointed by the Governor. Meetings are at the call of the chairperson and held at the Space Center Building. Members receive $35 per diem. For specific information contact Occupational Safety and Health Advisory Council, Space Center Building, 444 Lafayette Road, St. Paul 55101; (612) 296-6529.

POWER PLANT SITING ADVISORY COMMITTEE has 20 to 30 vacancies open for members to serve until June 30, 1982. The committee will consider the effectiveness of the Environmental Quality Board in carrying out the policies of the Power Plant Siting Act. This includes a consideration of a methodology and criteria to be used by the board in evaluating the Power Plant

Siting Program and an evaluation of the program. Six day-long (Saturday) meetings and some evening meetings will be held; members are compensated for expenses. Members are appointed by the board. (According to state law, no officer, agent or employee of a utility may serve on this committee). For specific information contact Sheldon Mains, Room 101, Capitol Square Building, 550 Cedar, St. Paul 55101; (612) 296-2757.

STATE EMPLOYEES SUGGESTION BOARD has 1 vacancy for a state officer or employee. The board manages a state employee suggestion system for approximately 30,000 classified and unclassified state employees in order to provide tangible and intangible savings to the state, increase employee morale, and increase the safety of the employees and public. Members are appointed by the Governor. Monthly meetings are held at the Administration Building. Members receive no compensation. For specific information contact the State Employees Suggestion Board, 203 Administration Building, St. Paul 55155; (612) 296-6798.

Department of Transportation

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

Notice is hereby given that the City Council of the City of Cloquet has made a written request to the Commissioner of Transportation for a variance from minimum design standards for street width along Doddridge Avenue between 7th Street and 14th Street.

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 16th day of September, 1981.

Richard P. Braun
Commissioner of Transportation

Department of Transportation

Amended Order and Notice of Street and Highway Routes Designated and Permitted to Carry the Gross Weights Allowed under Minn. Stat. § 169.832

Order No. 66058

Whereas, the Commissioner of Transportation has made his Order No. 65851, which has been amended by Orders 65929, 65932, and 65963, designating and permitting certain street and highway routes, or segments of routes, to carry the gross weights allowed under Minnesota Statutes § 169.832, and

Whereas, the commissioner has determined that the additional following routes, or segment of routes, should be designated to carry the gross weights allowed under Minnesota Statutes § 169.832, and

Whereas, amended order No. 65929 was in error describing the T. H. 63 route, and

Whereas, the *State Register* dated Monday, July 27, 1981 was also in error in describing the T.H. 63 route.

It is hereby ordered that Commissioner of Transportation Order No. 65851 is amended this date by adding the following designated streets and highway routes, or segments of routes as follows:

Trunk Highways

T. H. 63	—	From Olmstead County State Aid Highway 6 to Junction I-90. (Correction to Order No. 65929 and *State Register* of Monday, July 27, 1981).
T. H. 220	—	From North Dakota border at Breckenridge to Junction I-94
T. H. 28	—	From Cyrus to Glenwood, MN

City Streets

*Rosemount — Pine Bend Trail from Junction TH 55 to 1.5 miles East.
Hutchinson — Michigan St. between T.H. 7 and Arch St. (temporary)
Arch St. between Michigan St. and the Farmers Elevator (temporary)

*This segment of Pine Bend Trail was previously designated as a temporary route as per amended Order No. 65929, and *State Register* dated Monday, July 27, 1981, and is now being changed by this order to permanent seasonally posted status.

Dated this 25th day of September, 1981

Richard P. Braun
Commissioner of Transportation

STATE OF MINNESOTA

State Register and Public Documents Division
117 University Avenue
St. Paul, Minnesota 55155

ORDER FORM

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FOR LEGISLATIVE NEWS

Publications containing news and information from the Minnesota Senate and House of Representatives are available free to concerned citizens and the news media. To be placed on the mailing list, write or call the offices listed below:

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

Perspectives—Publication about the Senate. Contact Senate Information Office.

Weekly Wrap-Up—House committees, committee assignments of individual representatives, news on committee meetings and action, House action and bill introductions. Contact House Information Office, Room 8 State Capitol, St. Paul, MN, (612) 296-2146.

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

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

In the Matter of the Proposed Adoption of a Rule of the Department of Revenue Governing Practice of Attorneys, Accountants, Agents and Preparers Before the Department of Revenue. (13 MCAR Section 1.6101 and Proposed Repeal of Income Tax Rule 2052(4).

ORDER ADOPTING RULES
FINDINGS OF FACT
AND CONCLUSIONS

Notice of the Commissioner's intent to adopt the above-entitled rule and repeal Income Tax Rule 2052(4) without a public hearing was published in the State Register on October 5, 1981 and was sent by the United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes Section 15.0412, subdivision 4 on September 28, 1981. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, and receiving one written request for a public hearing within the 30-day comment period, I have reviewed and considered the comments, and have determined the need for and reasonableness of the above-captioned rules.

I have adopted changes to the rule as it was published in the State Register after making the following findings of fact and conclusions:

1. Several grammatical changes were made at the request of the revisor in Part B.2. and 3., and Part F.2., 3., and 4.

2. A change was made in Part D.2.a. to limit the taxpayer representative's responsibility to the extent of participation in the preparation, approval, and filing of returns, documents, affidavits, or other papers with the Department. This change was requested to clarify and restrict the rule.

3. The addition of clause 5. to Part D. was requested to specify how conflicts between this rule and other codes of conduct shall be resolved. This rule is made secondary to the other code of conduct; however, the representative must disclose that there is a conflict. This change was made to allow a professional code of conduct which regulates the actions of a professional person to control where there is a conflict because that code is more specific than the rule and a violation of that code would be grounds to prevent that person from continuing to act as a professional under that code. Disclosure is required so that the Department may examine the representative's basis for asserting that there is a conflict and to assist the professional in determining if there is, in reality, any conflict.

4. The change in Part F.4. and the addition of Part F.5. were the result of comments received from Mr. David Krahn in a letter dated October 14, 1981. I accept his comments that a "preparer should clearly have the responsibility for strongly recommending that an amended return be prepared and filed, but should have no responsibility for preparing the return if the taxpayer does not choose to employ the preparer for that purpose." The only change from Mr. Krahn's wording was to change himself to oneself in Part F.4., at the request of the revisor.

5. The change in renumbered Part F.6. was the result of concerns expressed by Mr. Mark Anderson in letters dated October 9 and December 8, 1981. I have adopted Mr. Anderson's request to make the language tighter by changing the wording from "suggesting to a client . . . an illegal plan" to "advising a client . . . to adopt". This makes the rule tighter in that it increases the level of intent and influence that the representative has exercised. However, I can't accept Mr. Anderson's request that this part of the rule apply only to criminal activity for I feel that is far too restrictive.

6. I have determined that each of these changes is needed and reasonable and that none of the changes make a substantive change in the rule as adopted from that which was proposed.

NOW, THEREFORE, IT IS ORDERED that the rule identified as 13 MCAR Section 1.6101 and the repeal of Income Tax Rule 2052(4) is adopted this 8th day of January, 1982 pursuant to authority vested in me by Minnesota Statutes Section 290.52.

State of Minnesota

Clyde E. Allen Jr.

Clyde E. Allen, Jr.
Commissioner

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

In the Matter of the Proposed
Adoption of a Rule Governing the
Practice of Attorneys, Accountants,
Agents and Preparers Before the
Department of Revenue
(13 MCAR Section 1.6101)

STATEMENT OF NEED
AND REASONABLENESS

This document has been prepared as a verbatim affirmative presentation of the facts necessary to establish the statutory authority, need for and reasonableness of the proposed new rule. It is prepared pursuant to Minn. Stat. Section 15.0412, Subd. 4h, and 9 MCAR Section 2.104.

A Notice of Intent to Solicit Outside Opinion regarding the proposed rule was published in the State Register on January 29, 1979. The proposed rule was submitted for comment to those people and organizations that requested it, to the members of the Commissioner's Advisory Committee, and to various legislative staff persons. A meeting was held on May 20, 1981, at which time the rule was discussed with several interested people. Suggestions and comments that were received have been duly considered.

Authority to Adopt the Rule

Minn. Stat. Section 290.52 specifically grants the Commissioner of Revenue the authority to prescribe rules and regulations governing the recognition of agents, attorneys, or other persons representing claimants before the Commissioner.

Introductory Statement

The general purpose of this rule, pursuant to the statutory authority cited above, is to regulate the practice of attorneys, accountants,

agents and preparers (hereinafter referred to, as a group, either as "tax practitioners" or as "taxpayer representatives") before the Department of Revenue. Specifically, the rule is needed (1) to implement the authority which is granted to the Commissioner of Revenue to suspend or disbar tax practitioners, by providing a uniform procedure for such suspension or disbarment; (2) to provide ethical standards of behavior governing practice before the Department; (3) to set minimum standards of competency for those who practice; and (4) to define the nature and scope of practice before the Department of Revenue.

From a policy standpoint, it has been the experience of the Department of Revenue that certain tax practitioners have conducted themselves in an unprofessional manner regarding their dealings both with taxpayers and with the Department. The ultimate victims of such practitioners are their clients, and the promulgation of this rule will enable the Commissioner of Revenue to ensure taxpayers of receiving adequate representation in matters before the Commissioner. Furthermore, by requiring both competency and reputability from those who practice before the Department of Revenue, an efficient administration of tax cases involving Department employees and taxpayer representatives will be facilitated.

Many of the provisions in this rule are patterned after Treasury Department Circular No. 230-Regulations Governing the Practice of Attorneys, Certified Public Accountants, and Enrolled Agents Before the Internal Revenue Service (hereinafter referred to as the "I.R.S. regulations on practice"), and the I.R.S. Conference and Practice Requirements. The Internal Revenue Service has had regulations governing practice before it since 1966, and the Treasury Department deemed it necessary at that time to establish an office devoted entirely to such

matters, headed by a Director of Practice. Since the I.R.S. has both experience and expertise in administering this area, it is reasonable, whenever possible, to incorporate applicable federal provisions and procedures into this rule.

Statement of Need and Reasonableness

A. Since this proposed rule only affects those individuals who practice before the Department of Revenue, a definition of practice is obviously needed to determine under what circumstances the rule applies. The definition in this paragraph is adapted from the definition of practice found in Section 10.2(a) of the I.R.S. regulations on practice. The three exceptions to the definition, set forth in its third sentence, are mentioned to inform those who are affected by this rule that the Commissioner does not have the statutory authority to regulate these specific activities, of and by themselves. The Commissioner does have such authority, however, when these activities are coupled with the representation of a client at conferences, hearings and meetings. The last sentence of this paragraph is necessary for clarification and continuity.

B.1. This paragraph is needed to affirm the longstanding policy of the Department of Revenue, that no one can practice before the Department without first obtaining a written power of attorney from his client, and that whatever authority a taxpayer representative has in connection with a client's case stems from the power of attorney. The Internal Revenue Service also has the same policy, as expressed in Sections 601.502(c) and 601.504(a) of the I.R.S. Conference and Practice Requirements. The obvious

justification for requiring a power of attorney, is that pursuant to Minn. Stat. Section 290.61, the information contained in a taxpayer's return is private. Any Department of Revenue employee who discusses a taxpayer's case with a representative having no power of attorney risks violation of this statute, which constitutes a gross misdemeanor.

B.2. Since not all the taxes administered by the Commissioner of Revenue come within the purview of this rule, this paragraph is necessary to explain that the rule applies to those tax returns or tax forms arising under the income tax or property tax refund laws.

B.3. This paragraph is necessary to ensure that no privacy violations are committed, and that the power of attorney forms submitted to the Department of Revenue by the taxpayer representatives are accurate and complete.

B.4. This paragraph also ensures that no privacy violations are committed. If the Department employee does not recognize the taxpayer representative, it is reasonable to require some type of identification from him.

C. Number 1. in this part is obviously needed to enforce this rule. Number 2. is based upon a similar provision, Section 10.3(f), in the I.R.S. regulations on practice, and is necessary to prevent conflicts of interest which might arise from the representation of a taxpayer by a Department employee. Number 3., disbarment or suspension from practice as an attorney or accountant, is based upon Section 10.51(g) of the I.R.S. regulations on practice. This provision is reasonable, because permitting a disbarred or suspended attorney or accountant to practice

before the Department of Revenue is tantamount to condoning the unauthorized practice of law or accountancy, contrary to the mandate of the appropriate state licensing authority which has disbarred or suspended the individual. Number 4., disbarment or suspension from practice before the I.R.S. is also reasonable, because (1) as stated above in the Introductory Statement, this rule is primarily based upon the I.R.S. regulations on practice, and (2) many of the issues involved in a taxpayer's state income tax return arise from federal tax law, and a tax practitioner who has been disbarred or suspended by the I.R.S. should not be allowed to argue federal tax issues before the Commissioner of Revenue. Finally, numbers 3. and 4. taken together are reasonable, because if the disbarred or suspended individual is reinstated as a lawyer or accountant, or is reinstated to practice before the I.R.S., such reinstatement automatically reinstates the individual's eligibility to practice before the Department of Revenue. Thus, duplication of the same administrative process by different agencies is avoided.

D.1. This paragraph is adapted from Section 10.20(a) of the I.R.S. regulations on practice. The ethical standard imposed by this paragraph is reasonable, because (1) a Department employee cannot properly audit or review a taxpayer's case without having all relevant records or information at hand, (2) the employee cannot abuse his authority, since his requests are limited to lawful requests for non-privileged, relevant information, and (3) the taxpayer representative is not prohibited from insisting upon a subpoena.

D.1. This paragraph is adapted from Section 10.22 of the I.R.S. regulations on practice. It is reasonable, because the phrase "due diligence" is not meant to encompass an occasional error by the practitioner, or a good faith difference of opinion with the Department of Revenue as to a particular tax issue. Rather, the failure to exercise due diligence means a course of repeated negligent conduct, thereby displaying a lack of the minimum care and conscientiousness one would normally expect from a tax practitioner in the course of his profession.

D.3. This paragraph is reasonable, because it does not require the tax practitioner to verify every statement made to him by a client regarding that client's tax case. Rather, it is only when the practitioner, based upon his tax knowledge and experience, believes his client's statements are in all likelihood false or inaccurate, that he is required to verify those statements.

D.4. This paragraph is based upon Section 10.23 of the I.R.S. regulations on practice. It it needed to prevent a tax practitioner from neglecting the cases he is handling with the Department of Revenue, and from taking on new cases when he is aware that his workload prevents him from concluding the new cases in a reasonable amount of time. A delay caused by circumstances beyond the practitioner's control is not an unreasonable delay.

E. This part is necessary to clarify what constitutes incompetent conduct. It is reasonable, because due warning must first be given by the Commissioner of Revenue, pursuant to G.3., before any type of conduct as a tax practitioner can be labelled as "incompetent." With regard to number 1., given the fact that

taxation is a specialized and complex area of the law and is constantly changing, it is clearly reasonable to expect any individual who practices before the Department to be familiar with the current income tax statutes, rules and forms. As further support for the reasonableness of number 1., the state licensing authorities for attorneys and certified public accountants have for some time required a minimum amount of continuing education credits from their licensed members, and the Internal Revenue Service requires a written tax examination to be taken by all applicants for enrollment to practice before the I.R.S. who are not attorneys or certified public accountants. With regard to number 2., the reasonableness of the due diligence requirement is discussed above in reference to D.2. Concerning the use of the common law standard of negligence, this standard can be applied to the failure to exercise due diligence by determining what a reasonable and prudent tax practitioner would have done (or not done) under the same or similar circumstances.

F. The first sentence of this paragraph is needed to enforce part D. of the rule. The second sentence is introductory.

F.1. This provision is taken from Section 10.51(a) of the I.R.S. regulations on practice. Its reasonableness can be divided into two parts. First, it is clearly reasonable to presume that an individual convicted of a state or federal tax crime is morally unfit to practice before the Department of Revenue. Second, since the professional relationship between a taxpayer representative and his client is founded, in large part, upon a mutual trust between the two, conviction of a crime involving

dishonesty or breach of trust also constitutes reasonable grounds for suspension or disbarment from practice.

F.2. The need for and reasonableness of this provision are obvious. An individual who prepares or files a false return, whether his own return or that of his client's, is clearly unfit to practice before the Department of Revenue.

F.3. The need for and reasonableness of this provision are again obvious, for the same reasons given in support of F.2., above. It should be noted that neither F.3. nor F.4., discussed below, applies where the tax practitioner prepares a return and then submits it directly to the taxpayer, for it then becomes the responsibility of the taxpayer to file the return with the Department.

F.4. This provision is reasonable, because it is the responsibility of the tax practitioner to prepare an accurate return for the taxpayer. Once the practitioner becomes aware that a material error or omission was made on the original return, whether resulting in additional tax or a refund of tax, it is incumbent upon him, as a professional, to correct the error or omission by preparing or filing an amended return.

F.5. The need for this provision is obvious. It is also reasonable, because it only includes plans which are clearly illegal, or have been litigated in court and ruled to be illegal. Tax planning of questionable or unresolved legality is not prohibited by this rule.

F.6. The need for and reasonableness of this provision, which describes actions tantamount to perjury in a court of law, are obvious.

F.7. The need for and reasonableness of this provision are also obvious. The phrase "procuring the filing thereof" refers to a situation where the taxpayer representative is instrumental in bringing about the act, but does not directly commit the act itself.

F.8. This provision is adapted from Section 10.51(c) of the I.R.S. regulations on practice. It is a necessary and reasonable exercise of the Commissioner of Revenue's specific statutory authority to regulate false or misleading advertising by tax practitioners. Such authority is found in Minn. Stat. Section 290.52, which states in part as follows: "Such commissioner may . . . suspend and disbar from further practice before him, any such person, agent, or attorney . . . who shall with intent to defraud, in any manner wilfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant, by words, circular, letter, or by advertisement." (Emphasis added.) Number a. is necessary to ensure continued compliance with the proposed rule following a disbarment or suspension from practice before the Department of Revenue. Number b. is reasonable, because it does not prohibit representations commonly referred to as "puffing"--that is, boasting about or slightly exaggerating one's expertise or ability as a tax return preparer. Number c. is reasonable, because such a guarantee constitutes a false assurance to the client that his claimed refund or tax credit will not be audited, reviewed or adjusted by the Department of Revenue. Number d. is reasonable, because it is directed at misrepresentations which have the effect of casting doubt upon the honesty and integrity of the Department of Revenue and its employees.

F.9. This provision is needed to explain that a tax practitioner cannot avoid responsibility under this rule for the preparation of a false return, when he is aware it is false, merely because its actual preparation was delegated by him to one of his employees or agents.

F.10. This provision is a duplication of Section 10.51(e) of the I.R.S. regulations on practice, and its need and reasonableness are obvious.

F.11. This paragraph is based upon Section 10.31 of the I.R.S. regulations on practice, and upon Section 6695(f) of the Internal Revenue Code. The Code provision prescribes a $500 civil penalty for each instance in which an income tax return preparer endorses or negotiates a client's refund check. F.11. is reasonable, because it does not prohibit the tax practitioner from endorsing or negotiating a client's refund check when the practitioner is a proper holder in due course of the check. Neither does it prohibit the practitioner from having the Department of Revenue mail a client's refund check to him, when the client, by means of a duly executed power of attorney, has authorized the practitioner to receive the check. However, a power of attorney cannot authorize a tax practitioner to endorse or negotiate a client's refund check. Since this procedure has been attempted in the past, this clause is needed to prohibit such improper use of the power of attorney form.

F.12. This provision is similar to Rule 302 of the Code of Professional Conduct governing accountants, found in 4 MCAR Section 6.150, and is needed and reasonable for several reasons. First, by charging a client a fee based upon a percentage of the cli-

ent's anticipated tax refund, the tax practitioner is confronted with an undue incentive to overstate the amount of his client's refund, contrary to the proper application and interpretation of the income tax laws. Second, there is no justifiable relationship between the amount of work which the tax practitioner performs for his client, and the amount of the client's tax refund. The amount of a refund is governed entirely by the income tax laws. Third, especially in regard to property tax refunds, which are often sizeable for those taxpayers with smaller incomes, contingent fees offer a tax practitioner the opportunity to charge more than his competitors for the same amount of work, because the poorer taxpayers may not have the funds to pay normal cash fees. Finally, the Department of Revenue has been contacted a number of times by taxpayers who have entered into contingent fee arrangements regarding their anticipated property tax refunds, complaining that they have been overcharged by the tax practitioner. This clause will enable the Department to take disciplinary action against a practitioner in response to such complaints.

F.13. This provision is based upon Section 10.51(f) of the I.R.S. regulations on practice, and is needed to ensure that the honest enforcement of the income tax laws by the Department of Revenue will not be disrupted or interfered with in any way.

F.14. This provision is adapted from Section 10.51(i) of the I.R.S. regulations on practice, and its need and reasonableness are obvious. The Commissioner cannot condone any conduct which impugns the honesty or integrity of the Department of Revenue or any of its employees.

F.15. This provision is based upon Section 10.51(h) of the I.R.S. regulations on practice. An example of the conduct proscribed by this clause is maintaining a partnership for the practice of law, accountancy, or other related professional service, with a person who is under disbarment or suspension from practice before the Department of Revenue. This example is taken from the text of the cited I.R.S. provision. F.15. is reasonable, because (1) it cannot be invoked by the Commissioner unless an individual has actual knowledge that a person with whom he is practicing has been disbarred or suspended, and (2) it prevents a disbarred or suspended individual from being afforded an undue opportunity to continue practicing before the Department, in direct violation of this rule.

F.16. This provision is needed for clarification, cross-reference, and continuity.

G.1. This paragraph, for purposes of introduction, clarification and continuity, summarizes the relevant portions of Minn. Stat. Section 290.52, giving the Commissioner statutory authority to disbar or suspend attorneys, accountants, agents or preparers from practicing before the Department of Revenue.

G.2. This paragraph is based upon Section 10.52 of the I.R.S. regulations on practice. It is needed for transition into the remainder of the rule, which deals with the actual procedure for disbarring or suspending an individual from practicing before the Department of Revenue.

G.3. This paragraph is reasonable on its face. Constitutional due process of law does not require any type of warning before legal action is commenced, so G.3. goes beyond due process of law in an attempt to be fair to the tax practitioner.

G.4. This paragraph is obviously needed to implement the Commissioner of Revenue's statutory authority to disbar or suspend a tax practitioner. It is reasonable, because the practitioner is guaranteed due process of law by means of a hearing in accordance with the Administrative Procedure Act, and the rules issued thererunder.

G.5. This paragraph is based upon Section 10.55(b) of the I.R.S. regulations on practice. G.5. is necessary, because it provides a means for disciplining a tax practitioner who admits to violating this rule and who waives his right to a hearing.

G.6. This paragraph is needed to provide the Commissioner of Revenue with a uniform guideline for disciplining a tax practitioner who has either voluntarily consented to suspension, or who, pursuant to hearing, has been found to violate the rule. By providing such a guideline, the Commissioner is prevented from making an arbitrary or capricious determination as to disciplinary action. The penalties provided in this paragraph are fair and reasonable, because a practitioner is not disbarred until his third proceeding in which disciplinable misconduct has been found or admitted to, and extenuating circumstances are considered in determining the severity of disciplinary action.

G.7. This paragraph is based upon Section 10.73 of the I.R.S. regulations on practice. The need and reasonableness of the first two sentences are obvious. The third sentence is needed to clarify the point, which is implicit throughout the rule, that this rule is intended to regulate individuals and not business entities by whom they may be employed.

G.8. This paragraph is needed to provide a suspended or disbarred taxpayer representative with the opportunity to petition for reinstatement to practice before the Department of Revenue. The Internal Revenue Service also has a provision for petitioning for reinstatement, which is Section 10.75 of the I.R.S. regulations on practice. The effort to be fair and reasonable to the practitioner becomes apparent when G.8. is compared to the more restrictive I.R.S. provision. Under Section 10.75, only those individuals who have been disbarred by the I.R.S. can petition for reinstatement, and a petition may not be made until five years have expired after disbarment. Individuals who have been suspended by the I.R.S. have no right to petition for reinstatement. In contrast, the only conditions to petitioning for reinstatement under G.8. are first, a material change must have occurred in the practitioner's circumstances, and second, oral or written support for the petition from responsible third parties is required. These conditions are necessary to prevent excessive or unjustified use of the petition process, which could occur if unsubstantiated petitions were allowed to be filed.

Repealer It is necessary and reasonable to repeal Income Tax Rule 2054(4) because (1) Rule 2052(4) and the proposed new rule both deal with the same subject matter, so the existing rule must be repealed to eliminate any conflicts with the proposed rule, and (2) the existing rule is inadequate in effecting the Commissioner of Revenue's statutory authority to regulate the practice of attorneys, accountants, agents and preparers before the Department of Revenue.

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

INCOME TAX DIVISION

In the Matter of the Proposed Adoption of a Rule of the Department of Revenue Governing Practice of Attorneys, Accountants, Agents and Preparers Before the Department of Revenue. (13 MCAR Section 1.6101) and Proposed Repeal of Income Tax Rule 2052(4)

Statement of Compliance With Rulemaking Procedures

I, Dale H. Busacker, Income Tax Division Attorney, 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 Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. There are no exceptions.

Dale H. Busacker

Dale H. Busacker

Dated: 8 January 1982

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

INCOME TAX DIVISION

In the Matter of the Proposed Adoption of a Rule of the Department of Revenue Governing Practice of Attorneys, Accountants, Agents and Preparers Before the Department of Revenue. (13 MCAR Section 1.6101) and Proposed Repeal of Income Tax Rule 2052(4).

AFFIDAVIT OF MAILING NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Mary Lacho, being first duly sworn, deposes and says:

That on the 8th day of January, 1982, in the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Submission to the Attorney General by depositing in the United States mail at City of St. Paul, a copy thereof properly enveloped, with postage prepaid, on the persons whose names are attached.

Mary Lacho

Mary Lacho

Subscribed and sworn to before me this 8th day of January, 1982.

Kathryn A. Kenney

KATHRYN A. KENNEY
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES NOVEMBER 8, 1988

STATE OF MINNESOTA
DEPARTMENT OF REVENUE
CENTENNIAL OFFICE BUILDING
SAINT PAUL, MINNESOTA 55145
PHONE: (612) 296-3439

January 8, 1982

Mr. Mark Anderson
MACI
200 Hanover Building
480 Cedar Street
St. Paul, Minnesota 55101

Re: In the matter of the Proposed Adoption of a Rule of the Department of Revenue Governing Practice of Attorneys, Accountants, Agents and Preparers Before the Department of Revenue. (13 MCAR Section 1.6101) and Proposed Repeal of Income Tax Rule 2052(4).

Dear Mr. Anderson:

I have today submitted the above-captioned rule along with the repeal of Income Tax Rule 2052(4) to the Attorney General for his approval.

Attached is a copy of the rule as submitted to the Attorney General which shows the changes that were made to the rule since it was published in the State Register. I have also attached a copy of the Commissioner's Order Adopting the Rule.

Sincerely,

Dale H. Busacker

Dale H. Busacker
Division Attorney
Income Tax Division

DHB/ml

Enclosure

AN EQUAL OPPORTUNITY EMPLOYER

STATE OF MINNESOTA
DEPARTMENT OF REVENUE
CENTENNIAL OFFICE BUILDING
SAINT PAUL, MINNESOTA 55145
PHONE: (612) 296-3439

January 8, 1982

Mr. Bernie Beaver
Boulay, Heutmaker, Zibell & Company
6800 France Avenue South
Minneapolis, Minnesota 55435

Re: In the Matter of the Proposed Adoption of a Rule of the Department of Revenue Governing Practice of Attorneys, Accountants, Agents and Preparers Before the Department of Revenue. (13 MCAR Section 1.6101) and Proposed Repeal of Income Tax Rule 2052(4).

Dear Mr. Beaver:

I have today submitted the above-captioned rule along with the repeal of Income Tax Rule 2052(4) to the Attorney General for his approval.

Attached is a copy of the rule as submitted to the Attorney General which shows the changes that were made to the rule since it was published in the State Register. I have also attached a copy of the Commissioner's Order Adopting the Rule.

Sincerely,

Dale H. Busacker

Dale H. Busacker
Division Attorney
Income Tax Division

DHB/ml

Enclosure

STATE OF MINNESOTA
DEPARTMENT OF REVENUE
CENTENNIAL OFFICE BUILDING
SAINT PAUL, MINNESOTA 55145
PHONE: (612) 296-3439

January 8, 1982

Mr. David Krahn
Larson, Allen, Weishair & Company
Shelard Tower, Suite 1560
600 South County Road 18
Minneapolis, Minnesota 55426

Re: In the Matter of the Proposed Adoption of a Rule of the Department of Revenue Governing Practice of Attorneys, Accountants, Agents and Preparers Before the Department of Revenue. (13 MCAR Section 1.6101) and Proposed Repeal of Income Tax Rule 2052(4).

Dear Mr. Krahn:

I have today submitted the above-captioned rule along with the repeal of Income Tax Rule 2052(4) to the Attorney General for his approval.

Attached is a copy of the rule as submitted to the Attorney General which shows the changes that were made to the rule since it was published in the State Register. I have also attached a copy of the Commissioner's Order Adopting the Rule.

Since you were the only person to request a hearing, none will be held. Please note that your suggestion was adopted in total.

Sincerely,

Dale H. Busacker

Dale H. Busacker
Division Attorney
Income Tax Division

DHB/ml

Enclosure

AN EQUAL OPPORTUNITY EMPLOYER

STATE OF MINNESOTA
DEPARTMENT OF REVENUE
CENTENNIAL OFFICE BUILDING
SAINT PAUL, MINNESOTA 55145
PHONE: (612) 296-3439

January 8, 1982

Office of Attorney General
5th Floor, State Office Building
St. Paul, Minnesota 55155

Re: Review of Rule Governing Practice of Attorneys, Accountants, Agents and Preparers Before the Department of Revenue.

Dear Sir or Madam:

In accordance with Minn. Stat. Section 15.0412, subd. 4h and 1 MCAR Section 1.203, I enclose the following documents for your review:

1. Rule as Adopted (original and three copies).
2. Rule as Adopted showing the changes that were made to the rule after it was published.
3. Order Adopting including Findings of Fact and Conclusions (two copies).
4. Notice of Intent to Solicit Outside Opinion.
5. Written material received pursuant to that Notice by agency prior to publication of proposed rule.
6. Order for Notice of Intent to Adopt a Rule Without Public Hearing and Repeal an Income Tax Rule.
7. Notice of Intent to Adopt a Rule and Repeal an Income Tax Rule Without Public Hearing.
8. Affidavit of Mailing (Notice of Intent to Adopt a Rule and Repeal an Income Tax Rule Without a Public Hearing).
9. Certificate of Completeness and Accuracy (Mailing List Certificate).
10. Rule as Proposed and as published in the October 5, 1981 State Register.
11. Statement of Need and Reasonableness.

12. Written comments on the proposed rule received by this agency.

13. Certificate of Compliance with Rulemaking Procedure.

14. Notice of Submission to the Attorney General.

15. Affidavit of Mailing Notice of Submission to the Attorney General.

As required under Minn. Stat. Section 15.0412, subd. 10, I have today submitted a copy of the rule as adopted to the Revisor for her approval.

Please contact the undersigned if there are any questions.

Sincerely,

Dale H. Busacker

Dale H. Busacker
Division Attorney
Income Tax Division

DHB/ml

Enclosures