

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1028

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 5-14-84
DATE FOR REVIEW 5-25-84
DATE DUE 6-4-84

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

Approved 6-4-84 Disapproved Returned to Agency

Resubmitted Due
Approved Disapproved Returned to Agency

Date filed w/Secretary of State 6-5-84 Revisor approved 5/15/84 disapproved

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✓ Rule as Adopted

✓ Rule as Proposed see SR.

✓ Order Adopting 4.25.84 Date

✓ Notice of Intent to Solicit Outside Opinion 11.28.83

✓ Order for rulemaking
3.9.84 date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

✓ Affidavit of Mailing Notice or rulemaking
2.2.84 At least 30 days prior to hearing/~~adoption~~
Affidavit Mailing, Small Biz

✓ Mailing list Certificate

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

✓ Hearing Examiner's Report

N/A Chief Hearing Examiner's Report(s)
Approving H.E.'s Report
✓ Approving agency action

✓ Agency's Findings of Fact adopts HE's F of F - neither document explicitly justifies each change from rules as proposed

N/A LCRAR Report or agency Affidavit

✓ Certificate of Board's Resolution Adopting Rules

N/A Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness
Supplemental SONR

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

SF-00006-02

DEPARTMENT ATTORNEY GENERAL

STATE OF MINNESOTA
Office Memorandum

TO : STEVE KEEFE
Commissioner/Labor & Industry

DATE: 6/4/84

Attn: Kathleen L. Winters
Spec. Assist. Att. General

FROM : LARRY D. STARNS
Special Assistant
Attorney General

PHONE: 297-3493

LDS

SUBJECT: In the Matter of the Proposed Adoption of Rules Implementing Provisions of the Employee Right-to-Know Act of 1983 Governing Trade Secrets and Employees' Conditional Right to Refuse to Work.

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;

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

LDS: (sa)

AG copy.

Department of Labor and Industry
Occupational Safety and Health Division

Adopted Rules Implementing the Provisions of the Employee Right-to-Know Act of 1983 Governing Trade Secrets and Employees' Conditional Right to Refuse to Work

Rules as Adopted

Chapter Seventeen: Trade Secrets

8 MCAR S 1.7220 Trade secret registration.

A. Registration. A manufacturer or employer who believes that all or part of the information required under the Employee Right to Know Act, Laws of Minnesota 1983, chapter 316, is a trade secret as defined in Minnesota Statutes, section 325C.01, subdivision 5, may register the information with the commissioner as trade secret information. Information ~~so required which is certified~~ which has been classified for national security purposes by appropriate officials of the United States ~~as necessarily kept secret for national defense purposes~~ may also be registered with the commissioner provided the commissioner has been granted necessary security clearance and duly authorized to receive such classified information. HE

B. Formulations and procedures. Formulations or procedures are trade secrets and need not be registered to be considered trade secrets.

C. Required information. Trade secret registration of the name of a hazardous substance must include the following information:

1. the name or names of the ~~hazardous~~ substance including any generic or chemical name, trade name, commonly used name, and the American Chemical Society's Chemical Abstract Service (CAS) number for that substance; HE

2. a brief description of why it is a trade secret; and

3. the name of a person who can be contacted for additional information relevant to the trade secret. HE

D. Expiration of registration. A registration expires two years after its filing date unless the registration is renewed. The commissioner shall notify registrants of an impending expiration date.

E. Classification of data. Trade secret information that is registered with the commissioner or other information reported to or otherwise obtained by the commissioner or a representative of the commissioner in connection with any inspection or proceeding under Minnesota Statutes, chapter 182 which contains or might reveal a trade secret is nonpublic or private data as defined in Minnesota Statutes, section 13.02, subdivisions 9 and 12. Information that is classified as nonpublic or private, except that which is secret for national ~~defense~~ security purposes, may be disclosed to other officers or employees carrying out Minnesota Statutes, chapter 182, when relevant in any proceeding under this chapter, or when otherwise required in order to comply with federal law or regulation but only to the extent required by the federal law or regulation. The commissioner must protect nonpublic or private information by establishing security procedures to prevent its unauthorized use or disclosure. Nothing in this chapter may be construed as limiting rights, objectives, or remedies regarding trade secrets covered under Minnesota Statutes, chapter 325C, or the obligations applicable to classified information under rules and regulations of the United States for protecting classified information.

F. Disclosure. If the commissioner determines that disclosure of nonpublic or private information is essential to protect employees from imminent danger or ~~otherwise to protect the health and safety of employees~~ when necessary to expedite provision of medical services to an employee, he must notify the appropriate manufacturer or employer of his decision by telephone or certified mail and timely disclose the information only to the extent necessary and only to the people necessary to aid in efforts to alleviate the danger.

G. Determination by commissioner. On the request of a

manufacturer, employer, employee, or employee representative, deemed by the commissioner to have a legitimate health or safety interest in the information, the commissioner must determine whether information registered pursuant to the requirements of this chapter or otherwise reported to or obtained by the commissioner is a trade secret as defined in Minnesota Statutes, section 325C.01, subdivision 5. If the commissioner determines that information is not a trade secret ~~and should be disclosed to the public~~, the commissioner must notify the registering manufacturer or employer of the decision by certified mail. The registering manufacturer or employer has 15 days after receipt of notification to provide the commissioner by certified mail with a complete justification and statement of the grounds on which the information is a trade secret. The commissioner must review his determination of whether information should be protected as a trade secret within 15 days after receipt of the justification and statement, or if no justification and statement is filed, within 30 days of the original notice, and must notify the appropriate manufacturer or employer and any party who has requested the information of that determination by certified mail. If the commissioner determines that the information is not a trade secret, the final notice must also specify a date, not sooner than 15 days after the date of mailing of the final notice, when the information shall be ~~available~~ disclosed to the ~~public~~ requesting party. Prior to the date specified in the final notice, the registering manufacturer or employer may institute an action for a declaratory judgment as to whether the information is subject to protection as a trade secret.

Chapter Nineteen:
Discrimination Against Employees

8 MCAR S 1.7240 Authority and background.

Minnesota Statutes, sections 182.654, subdivisions 9 and 11, and 182.669 prohibit discrimination against an employee because the employee exercised any rights granted under the act on the employee's behalf or on behalf of others. Any employee

who believes that he or she has been discharged or discriminated against by any person because the employee exercised any right authorized by the act as described in 8 MCAR S 1.7243, may file a discrimination complaint with the commissioner of the Department of Labor and Industry.

8 MCAR S 1.7241 Purpose and scope.

The rules in this chapter implement Minnesota Statutes, sections 182.654, subdivisions 9 and 11, and 182.669 and set forth general policies for enforcement of the discrimination provisions of the act.

8 MCAR S 1.7243 Protected activities.

A. [Unchanged.]

B. Refusal to work under unsafe conditions.

1. [Unchanged.]

2. If an employee has a choice between not performing assigned tasks or subjecting himself to serious injury or death arising from a hazardous condition in the workplace, an employee acting in good faith may refuse to work if there is no reasonable alternative. The condition must be so hazardous that a reasonable person would conclude that there is a real danger of death or serious injury and that there is insufficient time to eliminate the danger through enforcement procedures. The employee must, where possible, request the employer to correct the hazardous condition. An employer may not discharge or discipline an employee who refuses to perform assigned tasks under these conditions. An employee who has refused in good faith to perform assigned tasks and who has not been reassigned to other tasks by the employer must, in addition to retaining a right to continued employment, be paid for the tasks which would have been performed if:

a. the employee requests, within 24 hours of the refusal, <u>excluding weekends and state holidays,</u> the commissioner to inspect and determine the nature of the hazardous condition; and

b. the commissioner determines that the employee, by

performing the assigned tasks, would have been placed in imminent danger of death or serious physical harm.

3. An employee who has been assigned to work with a hazardous substance, harmful physical agent, or infectious agent, under conditions which are inconsistent with the training or information provided by the employer under 8 MCAR SS 1.7206 and 1.7207, and who, after notifying the employer of the hazardous condition, has refused in good faith to perform assigned tasks and who has not been reassigned to other tasks, been provided the required training, or had the hazardous condition promptly abated, by the employer shall, in addition to retaining a right to continued employment, receive pay for the tasks which would have been performed if:

a. the employee requests, within 24 hours of the refusal, excluding weekends and state holidays, the commissioner to inspect and determine if a hazardous condition exists; and

b. the commissioner determines that the employer has failed to provide the training required under 8 MCAR S 1.7206 prior to the employee's initial assignment to a workplace if the employee may be routinely exposed to a hazardous substance, harmful physical agent, or infectious agent and the employer has failed to provide the information required under 8 MCAR SS 1.7206 and 1.7207 after a request within a reasonable period of time, but not to exceed 24 hours, of the request.

C.-F. [Unchanged.]

8 MCAR S 1.7245 Claim procedures.

A. Who may file. A complaint alleging discrimination under Minnesota Statutes, sections 182.654, subdivisions 9 and 11, and 182.669 may be filed by an employee or an authorized employee representative.

B.-D. [Unchanged.]

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JUN 5 1984
Joan Anderson Growe
Secretary of State
9:34 AM

APPROVED AS TO LEGALITY
June 4, 1984
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY John D. Jones
SPECIAL ASSISTANT ATTORNEY GENERAL

RECEIVED
FEB 10 1984
ADMINISTRATIVE
HEARINGS

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

OCCUPATIONAL SAFETY & HEALTH DIVISION

In the Matter of the Proposed Adoption of Rules Implementing Provisions of the Employee Right-to-Know Act of 1983 Governing Trade Secrets and Employees' Conditional Right to Refuse to Work.

STATEMENT OF NEED AND REASONABLENESS

On December 29, 1970, Congress passed the Williams-Steiger Occupational Safety and Health Act of 1970 for the purpose of assuring so far as possible every working man and woman in the nation safe and healthful working conditions and to preserve human resources. Section 18 of that Act provided guidelines for states to assume responsibility for development and enforcement of Occupational Safety and Health Standards under an approved State Plan. One criterion that must be met for State Plan approval provides for the development and enforcement of safety and health standards which are at least as effective in providing safe and healthful employment and places of employment as the standards promulgated under the federal Occupational Safety and Health Act of 1970.

Minnesota submitted a plan for the development and enforcement of state occupational safety and health standards to the Federal Occupational Safety and Health Administration (hereinafter: "Federal OSHA") on November 9, 1972. The plan included mandated changes in Minnesota's occupational safety and health program to bring it into full conformity with Section 18 of the Occupational Safety and Health Act of 1970. The Department of Labor and Industry was designated as the state agency to administer the plan.

The Commissioner of Labor and Industry adopted Federal OSHA Standards promulgated prior to October 1972 (effective in Minnesota in February 1973). The state plan also included a provision that the commissioner would continue to

adopt Federal OSHA Standards and retain those Minnesota Standards not covered by Federal Standards in accordance with Section 18 of the Act. The Minnesota Legislature passed the "Occupational Safety and Health Act of 1973" (Laws 1973, Chapter 732) on May 24, 1973.

The Employee Right-to-Know Act was enacted by the 1983 Legislature and incorporated into the Minnesota Occupational Safety and Health Act. As such, the Employee Right-to-Know Act will be enforced as part of the Minnesota OSHA Program.

Authority to adopt the above-captioned rules is in Minnesota Statutes section 182.657. This section requires the Commissioner of Labor and Industry to adopt rules deemed necessary to carry out the responsibilities of Laws 1973, Chapter 732.

The purpose of the Employee Right-to-Know Act is to ensure that employees receive necessary information concerning hazards in their workplaces. The occurrence of illness resulting from workplace exposure to hazardous substances is an indication of the need for an Employee Right-to-Know Statute. The most comprehensive figures on the problem were compiled by the United States Bureau of Labor Statistics (BLS) in an annual survey of approximately 200,000 industrial facilities entitled, "Occupational Injuries and Illnesses in the United States by Industry." BLS reported approximately 162,000 new cases of occupational illness in 1977, and 143,500 new cases in 1978. These figures do not include the number of workers totally disabled from occupational illness due to chemical exposures who have left the workforce.

An analysis of the survey reveals that 57.9 percent of occupational illnesses in 1977 and 60.5 percent in 1978 fell into categories of illnesses most likely to be related to chemical exposures. The percentages do not include malignant and benign tumors. This amounts to a total of more than 174,000

illnesses in those two years, many of which are attributable to exposures that might have been avoided through communication of hazardous substance information. (Federal Register, Volume 47, No. 54, dated March 19, 1982).

The number of such incidents can be decreased. Implementation of the Employee Right-to-Know Act will insure that employees receive information they need to protect themselves.

The Employee Right-to-Know Act requires the Commissioner of Labor and Industry to adopt standards and rules to further clarify certain provisions of the Act and to make the Act enforceable. To accomplish this task, the Department of Labor and Industry assembled two task forces--one task force was charged with the responsibility of developing standards governing hazardous substances and harmful physical agents (designated the Hazardous Substance Task Force); the second task force was charged with the responsibility of developing standards concerning infectious agents (designated the Hospital Task Force). Both task forces were involved in developing the trade secret and right to refuse to work rules. Each task force was comprised of approximately 12 members with approximately equal representation of labor, management, and experts in the field. Members of the Hazardous Substances Task Force included:

Employee Representatives:

Tobey Lapakko, Director of Consumer Affairs, Minnesota AFL-CIO

Richard Johnson, President of Minnesota State Firefighters Association

Russell Trout, Oil,Chemical and Atomic Workers Union, District 6

Ernie Schultz, Trustee of Teamsters Local 1145 and Director of Health and Welfare

Employer Representatives:

Jeff Peterson, Manager of State Legislative Affairs, Economics Laboratory, Inc.

Mary Kay Zagaria, Corporate Occupational Health Consultant, Control Data Corp.

Mitchell Bergner, Supervisor of Occupational Health Programs, Honeywell, Inc.

Dr. Paul Willard, Manager of Product Regulatory Toxicology, 3M Company

Public Experts:

Dr. Roger Luckman, Associate Professor of Medicine, University of Minnesota and St. Paul Ramsey Medical Center, Occupational Medicine Dept.

Dr. Vincent Garry, Director of the Environmental Pathology Lab, University of Minnesota; and Assistant Professor of Lab Medicine and Pathology, School of Public Health, University of Minnesota

Dr. Faye Thompson, Assistant Professor of Environmental Health and Assistant Director of Environmental Health and Safety, University of Minnesota

David Senjem, Environmental Safety Coordinator, Mayo Clinic

Members of the Hospital Task Force included:

Employee Representatives:

Diane Rossmiller Holman, Education Coordinator, Virginia Regional Medical Center

Jan Cuccia, Business Representative, Service Employees International Union--(SEIU--Local 113) Hospital and Nursing Home Employees Union.

Martha Cole, registered nurse, adult nurse practitioner, and business representative with SEIU Local 113.

Employer Representatives:

Michael Myers, Administrator, St. Mary's Hospital--Rochester

Dick Culbertson, Senior Associate Director and Chief Operating Officer, St. Paul Ramsey Medical Center; Associate Professor of Public Health, University of Minnesota (representing the Minnesota Hospital Association).

Barbara Lawrence, Director of Personnel, St. Paul Ramsey Medical Center

Physician's Representative:

Dr. Constance N. Pries, Board Certified Specialist in Occupational Medicine, Airport Medical Clinic

"Expert" Representatives:

Nora Beall, Laboratory and Infection Control Specialist, Minnesota Department of Health

Dr. Don Vesley, Professor and Director, Department of Environmental Health and Safety, University of Minnesota

James Lauer, Bio-safety Officer, University of Minnesota

Ivan Russell, Director of the Occupational Safety and Health Division, served as chairman of both committees and the Department of Labor and Industry and the Occupational Health Section of the Minnesota Department of Health provided staff support. Each task force held five meetings during which time all aspects of the Employee Right-to-Know Legislation were discussed. These task forces were instrumental in developing the proposed rules governing the trade secrets and employees' conditional right to refuse to work provisions of the Employee Right-to-Know Act. The meetings also resulted in the Employee Right-to-Know Standards governing hazardous substances, harmful physical agents, infectious agents, training programs, labeling, criteria for technically qualified individuals, and availability of information which were the subject of a public hearing held on December 15, 1983.

Chapter Seventeen of the Occupational Safety and Health Rules, 8 MCAR SS 1.7001-1.7319, is intended to implement the trade secret provisions of the Employee Right-to-Know Act. The Minnesota Legislature, in considering passage of the Occupational Safety and Health Act of 1973, realized the necessity and importance of protecting trade secrets for Minnesota employers. Therefore, the Occupational Safety and Health Act (Laws 1973, chapter 732, section 19) contained provisions for the protection of trade secrets. Those provisions were amended by the Employee Right-to-Know Act of 1983 to protect the specific chemical identity information for hazardous substances while providing proper protection for exposed employees (Laws 1983, chapter 316, section 27). It is essential to protect trade secret information because the economic well-being of the employer, as well as its employees, may be dependent upon the protection of such information; once lost, its value as a trade secret cannot be recaptured. Therefore, these rules are intended to provide a balance in order to accommodate both the health interests of the employees in limited trade secret disclosure while protecting the economic interest of trade secret protection. The proposed rule defines the

circumstances under which a specific hazardous substance identity must be disclosed and allows the use of confidentiality restrictions that are necessary to protect the value of the trade secret to the manufacturer or employer.

It is important to note that Occupational Safety and Health Standard, 1910.20 "Access to Employee Exposure and Medical Records," which was adopted by Minnesota OSHA on January 18, 1982 (8 MCAR SS 1.7230-1.7232), requires the disclosure of all chemical identities, levels of exposure and health status data regarding "toxic substances" to employees and their designated representatives regardless of any trade secret claims. It is permitted, however, for the employer to condition access to such information on the signing of confidentiality agreements and to withhold any trade secret process or percentage of mixture information. Therefore, access to trade secret information is available to an employee if that information is vital to the employee's health.

Proposed rule, 8 MCAR S 1.7220 "Trade secret registration," implements section 27 of the Employee Right-to-Know Act (Laws 1983, chapter 316). Paragraph A of this rule allows a manufacturer or employer who believes that all or part of the information required under the Employee Right-to-Know Act is trade secret information to register that information with the Commissioner of Labor and Industry.

"Trade secret" is defined in Minnesota Statute section 325C.01 to mean:

> "...information, including a formula, pattern, compilation, program, device, method, technique, or process, that:
> (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and

(ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy."

Paragraph A of the rule further allows information certified by appropriate officials of the United States as secret for national defense purposes to also be registered as trade secret information with the Commissioner of Labor and Industry.

This rule is necessary because, although the Employee Right-to-Know Act requires disclosure of hazardous substance information to employees, it may be essential to the economic well-being of the employer to keep some of the information secret. Often, employers and manufacturers rely heavily on their ability to maintain the secrecy of valuable product formulas painstakingly developed over long periods of time and at great expense. These secret formulas are the primary assets of the industry and are an essential part of a company's continuing earning power.

This rule is reasonable because allowing a manufacturer or employer to register trade secret information with the Commissioner of Labor and Industry will prevent the inappropriate release of such information. It is also reasonable because it expands the trade secret provisions of the Occupational Safety and Health Act of 1973 (Minnesota Statutes section 182.668) to allow advance registration of trade secret information.

Paragraph B of 8 MCAR S 1.7220 indicates that the registration by employers or manufacturers of formulations or procedures is not mandatory. This rule is necessary to reduce the amount of information that an employer must file with the commissioner and to reduce the amount of information the Department will be required to safeguard. It is reasonable because many procedures and formulations are trade secrets and deserve automatic protection.

Paragraphs A and B are a reasonable protection of employer interests. The proposed rule provides greater trade secret protection than previously existed under OSHA law with a minimum of paperwork.

Paragraph C outlines the information that must be included in a trade secret registration of hazardous substance information. The information required is the name of the hazardous substance, a brief description of why it is a trade secret, and the name of a person who can be contacted for additional information. This rule is necessary to assure that basic information is received by the commissioner. This rule is reasonable because it requires only basic information from the employer while providing the commissioner with the name of a contact person should more information become necessary in order to make a determination.

Paragraph D of this rule imposes a two-year expiration date on registrations. This rule is necessary to reduce the possibility that information that is no longer a trade secret remains protected and, therefore, inaccessible to employees under normal circumstances. This rule is reasonable because it provides the employer and manufacturer with a "reminder" to review previous filings and determine whether or not the information need be registered as a trade secret any longer. The two-year period is long enough to adequately protect employers and to prevent any burden of constant re-registration. The information may be re-registered as described in Paragraph C if necessary.

Paragraph E governs the classification of trade secret information registered with the commissioner or other information reported to or otherwise obtained by the commissioner or his representative in connection with any inspection or other proceeding under Minnesota Statutes, chapter 182. This

data is classified as nonpublic or private data as defined by the "Data Privacy Act," Minnesota Statutes, section 13.02, subdivisions 9 and 12.

Section 13.02, subdivision 9, defines "nonpublic data" as:

> "...data not on individuals which is made by statute or federal law: (a) not public; and (b) accessible to the subject, if any, of the data."

Section 13.02, subdivision 12, defines "private data on individuals" as: "...data which is made by statute or federal law: (a) not public; and (b) accessible to the individual subject of that data."

Paragraph E further allows the disclosure of this data, with the exception of national defense trade secret information, to other officers or employees who must carry out the responsibilities of Minnesota Statutes, chapter 182, if it is relevant or required in order to comply with federal law or regulation. Most importantly, this paragraph charges the commissioner with the responsibility of protecting nonpublic and private information in a secure manner.

This rule is necessary to assure proper safeguarding of trade secret information. The commissioner has established procedures to safeguard trade secret information; those procedures are outlined in Occupational Safety and Health Division Operating Policy #117. This rule is necessary because trade secret information may be required by the Department of Labor and Industry to comply with federal requirements. An Occupational Safety and Health Investigator conducting an inspection under the provisions of chapter 182 may need to be aware of trade secret information in order to assure employee safety at the worksite. Additionally, an Occupational Safety and Health Investigator may come upon information in the course of an inspection that the employer wishes classified and protected as a trade secret. The rule is necessary to limit the disclosure of trade secret information to only those Department of Labor and Industry employees

who have a genuine need to know in order to carry out their responsibilities under Minnesota Statutes chapter 182.

This rule is reasonable because it allows the disclosure of information to only those persons who must know of its existence in order to carry out their responsibilities, while at the same time, protecting the interests of the employer who has filed the data. The rule is reasonable in that it requires the commissioner to establish safeguards to protect the registered trade secret information.

Paragraph F, which specifies the circumstances under which the commissioner may reveal trade secret information, has been amended from the proposed rule:

"F. Disclosure. If the commissioner determines that disclosure of nonpublic or private information is essential to protect employees from imminent danger ~~or otherwise to protect the health and safety of employees,~~ or when necessary to expedite provision of medical services to an employee(s), he must notify the appropriate manufacturer or employer of his decision by certified mail and timely disclose the information to alleviate the danger."

This amendment is reasonable and necessary to clarify the actual intent of the rule. The commissioner is restricted to disclosing trade secret information only in imminent danger situations or when a treating physician requires the information in order to make a medical diagnosis and provide treatment to an employee who has been exposed to the trade secret substance. The rule is also necessary to assure that the employer or manufacturer receives notification of the commissioner's decision to disclose the trade secret information.

Paragraph G specifies the guidelines to be used by the commissioner in determining whether information registered by an employer under the provisions of this chapter is actually trade secret information. The rule requires the determination to be made using the trade secret definition found in Minnesota Statutes, section 325C.01, subdivision 5. The rule requires the commissioner to notify the employer or manufacturer of his determination. Should the commissioner determine that the information is not a trade secret, the manufacturer or employer is allowed 15 days in which to provide the commissioner justification for the trade secret registration. The commissioner is mandated to review his determination in light of the justification statement from the employer within 15 days of the commissioner's receipt of the justification. If no justification is received, the requesting party and the appropriate employer or manufacturer must be notified by certified mail of the Commissioner's determination within 30 days of the original request. If it is determined that the information is not a trade secret, the final notice must include a date on which the information will be made available. The date of release must be at least 15 days after the date of mailing the final notice. During the 15-day period, the employer or manufacturer may file for a declaratory judgment in district court to require the commissioner to register the information as a trade secret.

This rule is necessary to provide a short, definite time frame during which the commissioner must register or reject information as a trade secret. The rule is necessary to provide the employer or manufacturer with a means to challenge an adverse decision from the commissioner. The rule is necessary to assure that the requesting party receives an expeditious response to the request.

The rule is reasonable because the 15-day time periods allow sufficient time for the employer to respond to the commissioner's initial decision and for the commissioner to review his initial determination and the employer's justification

statement. The rule is reasonable in that a maximum of 30 days for a final response allows sufficient time for the commissioner to analyze all information submitted by the employer while not impeding the release of information that is determined not to be trade secret information.

Rules 8 MCAR SS 1.7240, 1.7241, 1.7243 and 1.7245 are found in Chapter Nineteen: "Discrimination Against Employees" of the Minnesota Occupational Safety and Health Rules. These rules implement the discrimination provisions of the Occupational Safety and Health Act and were adopted by the Department of Labor and Industry on January 18, 1982. The proposed amendments to these rules incorporate provisions of the Employee Right-to-Know Act.

The amendments to 8 MCAR SS 1.7240, 1.7241 and 1.7245 are non-substantive changes to incorporate subdivision designations that were added to the Occupational Safety and Health Act, Minnesota Statutes chapter 182, by the Employee Right-to-Know Act. These changes are housekeeping in nature and merely bring these rules up-to-date.

8 MCAR S 1.7243 "Protected activities" is amended to incorporate the provisions of the Employee Right-to-Know Act which allow an employee to refuse to work under certain conditions and to be paid for the work that was not done if those conditions are met. Paragraph B.2. of this rule allows an employee who believes that s/he is exposed to an imminent danger to refuse to work if:

1) the employee requests, within 24 hours of the refusal, the Commissioner of Labor and Industry to inspect and determine the nature of the hazardous condition; and
2) the commissioner determines that the employee would have been placed in imminent danger of death or serious physical harm had the task been performed.

If these conditions are met, the employee will retain a right to continued employment and be paid for the tasks which would have been performed. The employer has the option of reassigning the employee to another task.

Paragraph B.3. of 8 MCAR S 1.7243 allows an employee who has been assigned to work with a hazardous substance, harmful physical agent, or infectious agent and who has not been trained as required by 8 MCAR S 1.7206 or provided with the information required in 8 MCAR S 1.7207, to refuse to perform the assigned task. The employee retains the right to continued employment and to receive pay for the task not performed if:

1) the employee requests, within 24 hours of the refusal, the commissioner to inspect and determine if a hazardous condition exists; and
2) the commissioner determines that the employer has failed to provide the training required under 8 MCAR S 1.7206 prior to the employee's initial assignment to a workplace if the employee may be routinely exposed to a hazardous substance, harmful physical agent, or infectious agent and the employer has failed to provide the information required under 8 MCAR SS 1.7206 and 1.7207 after a request within a reasonable period of time, but not to exceed 24 hours, of the request.

The employer has the option of re-assigning the employee to another task.

The rule is both reasonable and necessary because its requirements are identical to the statute. The rule is included to aid understanding of the two different grounds for a refusal to work.

Section 9 of the Act amends Minnesota Statutes 182.653, by adding subdivision 4b which exempts small businesses from the hazardous substances and harmful physical agent provisions of the Employee Right-to-Know Act. Because the Employee Right-to-Know Act does not define "small businesses," the task forces

adopted the statutory definition of "small business" found at Minnesota Statutes section 645.445. That definition reads as follows:

"645.445 Small Business; Definitions.

Subdivision 1. Wherever the term "small business" is used in Minnesota Statutes or in any rule or program established thereunder, the definitions contained in this section shall apply unless the context clearly indicates that a different meaning is intended or required.

Subdivision 2. "Small business" means a business entity organized for profit, including but not limited to any individual, partnership, corporation, joint venture, association or cooperative, which entity:

(a) Is not an affiliate or subsidiary of a business dominant in its field of operation; and

(b) Has 20 or fewer full-time employees or not more than the equivalent of $1,000,000 in annual gross revenues in the preceding fiscal year.

Subdivision 3. "Dominant in its field of operation" means having more than 20 full-time employees and more than $1,000,000 in annual gross revenues.

Subdivision 4. "Affiliate or subsidiary of a business dominant in its field of operation" means a business which is at least 20 percent owned by a business dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalent, of a business dominant in that field of operation."

The statute governing small business considerations in rulemaking contains a different definition of "small business." Small Business Considerations in Rulemaking, H.F. No. 491, chapter 188, subdivision 1 (1983) states:

"For purposes of this section, "small business" means a business entity, including its affiliates, that (a) is independently owned and

operated; (b) is not dominant in its field; and (c) employs fewer than 50 full-time employees or has gross annual sales of less than $4,000,000. For purposes of a specific rule, an agency may define small business to include more employees if necessary to adapt the rule to the needs and problems of small businesses."

Chapter 188 further requires an agency to consider five points to reduce the impact a rule will have on small businesses. The impact of the proposed rules on an employer is dependent on whether the employer utilizes hazardous substances in the workplace, the possibility that any hazardous substance used by the employer is considered a trade secret, the number and quantity of hazardous substances used in the facility, and the quantity and quality of training provided to employees relative to hazardous substances.

To comply with the requirements of Chapter 188, the Department of Labor and Industry considered the five points noted in the chapter relative to the impact of these rules on employers who employ 21 to 50 employees:

a) Establishment of less stringent compliance or reporting requirements for small businesses.

The rules require less stringent compliance because small business, as defined by Minnestoa Statutes section 645.445 (1982), exempts employers with fewer than 20 employees and less than the equivalent of $1,000,000 in annual gross revenues in the preceding year.

The small businesses that remain to be considered are those employing fewer than 50 employees and earning less than $4,000,000 annually.

The Occupational Safety and Health Act has been in existence since 1973 and has provided for trade secret protection for all employers regardless of size. This provision has not been extensively used by small business. Small businesses will not be affected by this proposed rule governing trade secrets

unless that business wishes to register trade secret information with the commissioner. The registration procedures are very simple and require a minimum of information. Therefore, less stringent requirements for the remaining non-exempt small businesses are deemed unnecessary.

The Occupational Safety and Health Act has provided all employees with the right to refuse to work under imminent danger conditions since its passage in 1973. An imminent danger situation is a serious, potentially life threatening situation. The right to refuse to work with a hazardous substance, harmful physical agent, or infectious agent as proposed in 8 MCAR S 1.7243 B.3. is an extension of that basic right to refuse to work under imminent danger conditions.

Employers of more than 20 full-time employees are subject to the requirements of this rule. However, the employer will only be affected if hazardous substances, harmful physical agents, or infectious agents are present in the workplace and the employer fails to provide employees with the required training and/or information. If proper training and/or information is provided, an employee cannot legitimately refuse to work under this rule.

Exemption of even some small business from the conditional right to refuse to work provisions is a generous compromise in view of the fundamental purpose of the Occupational Safety and Health Act to preserve human resources.

b) Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small business.

This consideration is inapplicable to the registration of trade secret information. The trade secret registration rule does not include a schedule or deadline. Businesses may register trade secret information whenever they deem it necessary.

Since employees have had the right to refuse to work under imminent danger conditions since the Occupational Safety and Health Act was passed in 1973, this rule merely extends that right to cover working with hazardous substances,

harmful physical agents and infectious agents without proper training and/or information. The employee's right to refuse to work becomes effective, by statute, on July 1, 1984. The department is without authority to extend the effective date.

c) Consolidation or simplification of compliance or reporting requirements for small businesses.

As stated previously, the requirements for registering trade secrets are already very simple. The department does not believe it can consolidate or simplify them any further. The registration provisions are already so simple that they should not deter small business from registering trade secrets.

All businesses, regardless of size, have been subject to the refusal to work under imminent danger condition provisions of the Occupational Safety and Health Act since 1973. The proposed rule extends that provision to cover the refusal of an employee to work with a hazardous substance, harmful physical agent, or infectious agent if the employee has not received proper training or information. Neither the existing rule nor the proposed rule require the employer to submit any written report or information.

d) Establishment of performance standards for small businesses to replace design or operational standards required in the rule.

The proposed rule governing trade secrets is a specification standard in that it specifies the information that must be submitted for trade secret registration and provides time frames for the commissioner to register or reject the information as a trade secret and for the employer to appeal an adverse decision. The time frames are reasonable and should not cause any undue hardship on small businesses who choose to register trade secret information.

The rule governing an employee's right to refuse to work with a hazardous substance, harmful physical agent, or infectious agent if proper training and/or

information is not provided is a performance standard to the extent that employers have the option of reassigning the employee. The remaining requirements of the rule place responsibility on the employee and commissioner rather than on the employer.

e) Exemption of small businesses from any or all requirements of the rule.

As stated above, employers with fewer than 20 employees and less than $1,000,000 in annual gross sales are exempt from the rules.

In summary, the Minnesota Legislature passed the Employee Right-to-Know Act with the intent of assuring that employees who work with hazardous substances, harmful physical agents, and infectious agents are provided with necessary training and information to prevent serious illness or death. The Act explicitly allows an employee who is assigned to work with these substances or agents and who has not received the appropriate training or information to refuse to work with the substance or agent until the training and/or information is provided. Conditions are placed on this right to refuse to work to prevent an employee from indiscriminately refusing to work under other than extreme conditions. The proposed rules implement these provisions in an efficacious manner.

Although the Employee Right-to-Know Act requires that employees receive information concerning the substances or agents with which they work, the Legislature recognized the importance of securing trade secret information for employers. Thus, the Act included provisions for the registration of trade secret information with the Commissioner of Labor and Industry with safeguards to secure that information from inappropriate release. The proposed rules implement these provisions in an effective and simple manner.

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

OCCUPATIONAL SAFETY & HEALTH DIVISION

In the Matter of the Proposed Adoption of Rules Implementing Provisions of the Employee Right-to-Know Act of 1983 Governing Trade Secrets and Employees' Conditional Right to Refuse to Work.

SUPPLEMENTAL STATEMENT OF NEED AND REASONABLENESS

The following housekeeping changes have been made in the proposed rules:

8 MCAR § 1.7220, paragraph G., is amended as follows:

G. Determination by commissioner. On the request of a manufacturer, employer, employee, or employee representative, the commissioner must determine whether information registered pursuant to the requirements of this chapter or otherwise reported to or obtained by the commissioner...

This change is necessary to correct an inadvertent omission of the word, "employer," in the first sentence of this proposed rule. The term, "manufacturer or employer" is used throughout this rule. This amendment makes this statement consistent with the other provisions of the rule and clarifies the intent of this rule.

8 MCAR § 1.7243, paragraph B, sections 2.a. and 3.a., are amended as follows:

2.a. the employee requests, within 24 hours of the refusal (excluding weekends and state holidays), the commissioner to inspect and determine the nature of hazardous condition; and...

3.a. the employee requests, within 24 hours of the refusal (excluding weekends and state holidays), the commissioner to inspect and determine if a hazardous condition exists; and...

This change is necessary to clarify the intent of this rule. The term, "24 hours," is unclear and needs to be defined. The 24-hour period is intended to refer to only work hours when a representative cf the Department of Labor and Industry, Occupational Safety and Health Division, will be available to receive an employee's report of unsafe conditions and refusal to work. Since this 24-hour time period was not intended to include weekends or state holidays, the rule is amended to reflect this intent.

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Proposed Adoption
of Rules Implementing Provisions of
the Employee Right-to-Know Act of 1983
Governing Trade Secrets and Employees'
Conditional Right to Refuse to Work.

ORDER ADOPTING RULES

The above-entitled matter came on for hearing before Hearing Examiner Peter Erickson on the Ninth day of March, 1984 at 9:00 a.m. in Conference Room D, 5th Floor, Veteran's Service Building, St. Paul, Minnesota, after proper notice required by Minnesota Statutes section 14.14 was served upon all persons, associations, and other interested groups registered with the State Department of Labor and Industry for that purpose.

After affording interested persons an opportunity to present written and oral data, statements, and arguments, hearing all of the testimony, considering all of the evidence adduced and upon the records, files, and proceedings herein and applicable statutory standards or criteria, and confirming the need for and reasonableness of the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED that these rules identified as Minnesota Occupational Safety and Health Codes, Chapter Seventeen: Trade Secrets and Chapter Nineteen: Discrimination Against Employees are adopted this Twenty-fifth day of April, 1984, pursuant to authority vested in me by Minnesota Statutes section 182.657 (1982).

STATE OF MINNESOTA
Department of Labor and Industry

Steve Keefe

STEVE KEEFE, Commissioner

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT Labor and Industry

Office Memorandum

TO: Attorney General

DATE: May 14, 1984

FROM: Ivan W. Russell, Director
Occupational Safety & Health Division

PHONE: 6-4532

SUBJECT: Rules Governing Trade Secrets and Employees' Conditional Right to Refuse to Work

As required by the Administrative Procedures Act and the Rules of the Attorney General, we are submitting the attached adopted rules for final approval.

If further information is required, or if documentation is not complete, please contact Ms. Patricia Lorentz at 297-3254.

IWR/pl

STATE OF MINNESOTA DEPARTMENT OF LABOR AND INDUSTRY

OCCUPATIONAL SAFETY & HEALTH DIVISION

In the Matter of the Proposed Adoption
of Rules Implementing the Provisions
of the Employee Right-to-Know Act of 1983
Governing Trade Secrets and Employees'
Conditional Right to Refuse to Work.

AMENDMENTS TO PROPOSED RULES AS PUBLISHED

8 MCAR § 1.7220 Trade secret registration.

F. Disclosure. If the commissioner determines that disclosure of nonpublic or private information is essential to protect employees from imminent danger ~~or otherwise to protect the health and safety of employees,~~ or when necessary to expedite provision of medical services to an employee(s), he must notify the appropriate manufacturer or employer of his decision by certified mail and timely disclose the information to alleviate the danger.

G. Determination by commissioner. On the request of a manufacturer, employer, employee, or employee representative, the commissioner must determine whether information registered pursuant to the requirements of this chapter or otherwise reported to or obtained by the commissioner...

8 MCAR § 1.7243 B. Refusal to work under unsafe conditions.

2.a. the employee requests, within 24 hours of the refusal (excluding weekends and state holidays), the commissioner to inspect and determine the nature of hazardous condition; and...

3.a. the employee requests, within 24 hours of the refusal (excluding weekends and state holidays), the commissioner to inspect and determine if a hazardous condition exists; and...

SF-00006-02

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT Labor and Industry - OSHD

TO : FILE: Proposed Rules Implementing Trade Secrets and Employees' Conditional Right to Refuse to Work

DATE: Dec. 12, 1983

FROM : Ivan W. Russell, Director

PHONE:

RECEIVED
FEB 10 1984
ADMINISTRATIVE HEARINGS

SUBJECT: Response to Notice of Intent

On November 28, 1983, the Department of Labor and Industry, Occupational Safety and Health Division published, in the State Register, a notice of "Outside Opinion Sought on New Rules Governing Trade Secrets and Employees' Conditional Right to Refuse Work." (S.R. 1269) The notice announced that information and comments would be accepted until 4:30 p.m. on December 9, 1983.

No written or oral comments were received.

IWR/pl

program, the firm, likewise, provides energy cost savings due to the energy conserving measures. As a pre-condition to concluding shared-savings and guaranteed-savings contracts with the State, a firm is required to collect certain data for the accurate determination of the State's anticipated energy cost savings. Collection of the data can be accomplished through a detailed engineering audit comparable to the Minnesota Maxi Audit. The Audit may be limited to specific building systems such as the boilers. By virtue of the Audit, the firm is apprised of the size and type of buildings involved, the nature of the energy consuming equipment, the patterns and type of fuel used, and other factors that may influence energy consumption. The basis for determining savings can be an energy audit or through use of metering instruments. The energy service firm is required to determine which alternative fuel system is needed to produce the energy savings (BTU savings and energy cost savings).

Department of Energy and Economic Development Community Development Division

Notice of Opening Date for Submission of Applications for Economic Development Projects Under the Community Development Block Grant Program

The State of Minnesota, Department of Energy and Economic Development, under the Housing and Community Development Act of 1974, as amended, is pleased to invite the submission of applications for grant funds as provided for in 10 MCAR §§ 1.500-1.565, as amended. Applications may be submitted at any time during the year beginning December 18, 1983. The Commissioner reserves the right to close the application period when all available funds have been awarded.

Applications should be submitted to the Department of Energy and Economic Development, Community Development Division, 940 American Center Building, 150 Kellogg Boulevard, St. Paul, Minnesota 55101.

Applications will be considered for funding from only the 1984 grant year. As provided for in 10 MCAR §§ 1.500, the Department is not liable for grants until funds are received from the United States Department of Housing and Urban Development.

Department of Labor and Industry Occupational Safety and Health Division

Outside Opinion Sought on New Rules Governing Trade Secrets and Employees' Conditional Right to Refuse Work

Notice is hereby given that the State Department of Labor and Industry, Occupational Safety and Health Division, is seeking information or opinions from sources outside the agency in preparing to promulgate new rules governing trade secrets and employees' conditional right to refuse to work. The promulgation of these rules is authorized by the "Employees' Right-to-Know Act of 1983" (Laws of Minnesota 1983, Chapter 316), which requires the agency to adopt rules to implement the provisions of this Act governing trade secrets and the conditional right of employees to refuse to work.

The State Department of Labor and Industry, Occupational Safety and Health Division, requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to:

Steve Keefe, Commissioner
Department of Labor and Industry
444 Lafayette Road
St. Paul, Minnesota 55101

Oral statements will be received during regular business hours over the telephone at (612) 296-2342 and in person at the above address.

All statements of information and comment shall be accepted until 4:30 p.m., December 9, 1983. Any written material received by the State Department of Labor and Industry, Occupational Safety and Health Division shall become part of the record in the event that the rules are promulgated.

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Proposed Adoption of Rules Implementing the Provisions of the Employee Right-to-Know Act of 1983 Governing Trade Secrets and Employees' Conditional Right to Refuse to Work.

ORDER FOR HEARING

IT IS ORDERED this 5th day of January, 1984, that a public hearing on the proposed rules captioned above be held in the Veterans' Service Building, Room D-Fifth Floor, 20 West 12th Street, St. Paul, Minnesota on March 9, 1984, commencing at 9:00 a.m., and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard.

IT IS FURTHER ORDERED, that notice of said hearing be given to all persons who have registered their names with the State Department of Labor and Industry for that purpose and be published in the STATE REGISTER.

IT IS FURTHER ORDERED, that notice will be given to small businesses through direct notification of representative associations and publication of notice in trade publications likely to be obtained by small businesses.

STATE OF MINNESOTA

Steve Keefe

Steve Keefe
Commissioner of Labor & Industry

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ADMINISTRATIVE
HEARINGS

In the Matter of the Proposed Adoption of Rules of the State Department of Labor and Industry Implementing Provisions of the Employee Right-to-Know Act of 1983 Governing Trade Secrets and Employees' Conditional Right to Refuse to Work.

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Patricia Lorentz, being first duly sworn, deposes and says:

That on the Second day of February, 1984, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing and Rules as Proposed by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, to all persons and associations who have requested that their names be placed on file with the Department of Labor and Industry for the purpose of receiving notice of the proposed adoption of rules by the Occupational Safety and Health Division.

Patricia Lorentz
Patricia Lorentz

Subscribed and sworn to before me this
2nd day of February, 1984.

Jacalyn K. Brueggeman
Notary Public

JACALYN K. BRUEGGEMAN
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES MAY 18, 1990

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY
OCCUPATIONAL SAFETY & HEALTH DIVISION

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ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Adoption of Rules Implementing the Provisions of the Employee Right-to-Know Act of 1983 Governing Trade Secrets and Employees' Conditional Right to Refuse to Work.

NOTICE OF HEARING

A public hearing concerning the proposed rules will be held at the Veterans' Service Building (Room D, Fifth Floor), 20 West 12th Street, St. Paul, Minnesota (Capitol Complex) on Friday, March 9, 1984 commencing at 9:00 a.m. The proposed rules may be modified as a result of the hearing process. The proposed rules will have an impact on small businesses; the quantitative and qualitative impact of the proposed rules is dependent upon whether the business utilizes hazardous substances in the workplace, the possibility that any hazardous substance utilized by the business is a trade secret, and the quantity and quality of employee training provided by the small business relative to the hazardous substances being used. Therefore, the department urges those who are potentially affected in any manner by the proposed rules to participate in the hearing process.

All interested or affected persons will have an opportunity to participate concerning the proposed rules. 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 the hearing examiner: Mr. Peter Erickson, Office of Administrative Hearings, Fourth Floor Summit Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415 (Telephone: 612/341-7606) either before the hearing or within five working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a period not to exceed 20 calendar days. The rule hearing procedures are governed by Minn. Stat. S 14.05 - 14.36 (1982) and by 9 MCAR SS 2.101-2.113 (Minnesota Code of Agency Rules). If you have any questions about the procedures, 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 agency and at the Office of Administrative Hearings. This Statement of Need and Reasonableness will include a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

The agency's authority to adopt the proposed rules is contained in Minn. Stat. S 182.657.

The proposed rule designated 8 MCAR S 1.7220 implements provisions of the Employee Right-to-Know Act of 1983 (Laws of Minnesota 1983, Chapter 316) governing trade secrets. This rule will allow an employer who believes that all or part of the information required under the Employee Right-to-Know Act is a trade secret as defined in Minn. Stat. S 325C.01, subdivision 5, to register that information as a trade secret with the commissioner of the Department of Labor and Industry. This rule also contains provisions governing the classification of such data and conditions of disclosure.

The proposed rules designated 8 MCAR SS 1.7240, 1.7241, 1.7243, and 1.7245 amend the rules of the Department of Labor and Industry governing discrimination against employees and implement provisions of the Employee Right-to-Know Act of 1983 concerning employees' conditional right to refuse to work.

The proposed rules are included as part of this notice. In addition, copies of the proposed rule are now available and at least one free copy may be obtained by writing to the Occupational Safety and Health Division, Department of Labor and Industry, 444 Lafayette Road, St. Paul, Minnesota 55101, or by calling (612) 297-3254. Additional copies will be available at the hearing.

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

Minn. Stat. Ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. S 10A.01, subd. 11 (1982) 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.

The hearing attendance is estimated at 50 and is expected to last one day.

Steve Keefe
Commissioner of Labor and Industry

January 5, 1984

Chapter Seventeen:

Trade Secrets

8 MCAR S 1.7220 Trade secret registration.

A. Registration. A manufacturer or employer who believes that all or part of the information required under the Employee Right to Know Act, Laws of Minnesota 1983, chapter 316, is a trade secret as defined in Minnesota Statutes, section 325C.01, subdivision 5, may register the information with the commissioner as trade secret information. Information so required which is certified by appropriate officials of the United States as necessarily kept secret for national defense purposes may also be registered with the commissioner.

B. Formulations and procedures. Formulations or procedures are trade secrets and need not be registered to be considered trade secrets.

C. Required information. Trade secret registration of the name of a hazardous substance must include the following information:

1. the name of the hazardous substance;

2. a brief description of why it is a trade secret; and

3. the name of a person who can be contacted for additional information.

D. Expiration of registration. A registration expires two years after its filing date unless the registration is renewed.

E. Classification of data. Trade secret information that is registered with the commissioner or other information reported to or otherwise obtained by the commissioner or a representative of the commisioner in connection with any inspection or proceeding under Minnesota Statutes, chapter 182 which contains or might reveal a trade secret is nonpublic or private data as defined in Minnesota Statutes, section 13.02, subdivisions 9 and 12. Information that is classified as nonpublic or private, except that which is secret for national defense purposes, may be disclosed to other officers or employees carrying out Minnesota Statutes, chapter 182, when relevant in any proceeding under this chapter, or when otherwise required in

order to comply with federal law or regulation but only to the extent required by the federal law or regulation. The commissioner must protect nonpublic or private information by establishing security procedures to prevent its unauthorized use or disclosure.

F. Disclosure. If the commissioner determines that disclosure of nonpublic or private information is essential to protect employees from imminent danger or otherwise to protect the health and safety of employees, he must notify the appropriate manufacturer or employer of this decision by certified mail and timely disclose the information to alleviate the danger.

G. Determination by commissioner. On the request of a manufacturer, employee, or employee representative, the commisioner must determine whether information registered pursuant to the requirements of this chapter or otherwise reported to or obtained by the commissioner is a trade secret as defined in Minnesota Statutes, section 325C.01, subdivision 5. If the commissioner determines that information is not a trade secret and should be disclosed to the public, the commissioner must notify the manufacturer or employer of the decision by certified mail. The manufacter or employer has 15 days after receipt of notification to provide the commissioner by certified mail with a complete justification and statement of the grounds on which the information is a trade secret. The commissioner must review his determination of whether information should be protected as a trade secret within 15 days after receipt of the justification and statement, or if no justification and statement is filed, within 30 days of the original notice, and must notify the appropriate manufacturer or employer and any party who has requested the information of that determination by certified mail. If the commissioner determines that the information is not a trade secret, the final notice must also specify a date, not sooner than 15 days after the date of mailing of the final notice, when the information shall be available to the public. Prior to the date specified in the final notice, the manufacturer or employer may institute an action for a declaratory judgment as to whether the information is subject to protection

as a trade secret.

Chapter Nineteen:

Discrimination Against Employees

8 MCAR S 1.7240 Authority and background.

~~Minn. Stat. SS~~ Minnesota Statutes, sections 182.654, ~~subd.~~ subdivisions 9 and 11, and 182.669 prohibit discrimination against an employee because the employee exercised any rights granted under the act on the employee's behalf or on behalf of others. Any employee who believes that he or she has been discharged or discriminated against by any person because the employee exercised any right authorized by the act as described in 8 MCAR S 1.7243, may file a discrimination complaint with the commissioner of the Department of Labor and Industry.

8 MCAR S 1.7241 Purpose and scope.

The rules in this chapter implement ~~Minn. Stat. S~~ Minnesota Statutes, sections 182.654, subdivisions 9 and 11, and 182.669 ~~of the act~~ and set forth general policies for enforcement of the discrimination provisions of ~~Minn. Stat. S 182.669~~ the act.

8 MCAR S 1.7243 Protected activities.

A. (Unchanged)

B. Refusal to work under unsafe conditions.

1. (Unchanged)

2. If an employee has a choice between not performing assigned tasks or subjecting himself to serious injury or death arising from a hazardous condition in the workplace, an employee acting in good faith may refuse to work if there is no reasonable alternative. The condition must be so hazardous that a reasonable person would conclude that there is a real danger of death or serious injury and that

there is insufficient time to eliminate the danger through enforcement procedures. The employee must, where possible, request the employer to correct the hazardous condition. An employer may not discharge or discipline an employee who refuses to perform assigned tasks under these conditions. ~~However, an employer is not required to pay employees for tasks not performed.~~ An employee who has refused in good faith to perform assigned tasks and who has not been reassigned to other tasks by the employer must, in addition to retaining a right to continued employment, be paid for the tasks which would have been performed if:

a. the employee requests, within 24 hours of the refusal, the commissioner to inspect and determine the nature of hazardous condition; and

b. the commissioner determines that the employee, by performing the assigned tasks, would have been placed in imminent danger of death or serious physical harm.

3. An employee who has been assigned to work with a hazardous substance, harmful physical agent, or infectious agent, under conditions which are inconsistent with the training or information provided by the employer under 8 MCAR SS 1.7206 and 1.7207, and who has refused in good faith to perform assigned tasks and who has not been reassigned to other tasks by the employer shall, in addition to retaining a right to continued employment, receive pay for the tasks which would have been performed if:

a. the employee requests, within 24 hours of the refusal, the commissioner to inspect and determine if a hazardous condition exists; and

b. the commissioner determines that the employer has failed to provide the training required under 8 MCAR S 1.7206 prior to the employee's initial assignment to a workplace if the employee may be routinely exposed to a hazardous substance, harmful physical agent, or infectious agent and the employer has failed to provide the information required under 8 MCAR SS 1.7206 and 1.7207 after a request within a reasonable period of time, but not to exceed 24 hours, of the request.

C. - F. (Unchanged)

8 MCAR S 1.7245 Claim procedures.

A. Who may file. A complaint alleging discrimination under ~~Minn. Stat. S~~ Minnesota Statutes, sections 182.654, subdivision 9 and 11, and 182.669 may be filed by an employee or an authorized employee representative.

B. - D. (Unchanged).

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ADMINISTRATIVE
HEARINGS

In the Matter of the Proposed Adoption of Rules of the State Department of Labor and Industry Implementing Provisions of the Employee Right-to-Know Act of 1983 Governing Trade Secrets and Employees' Conditional Right to Refuse to Work.

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

Patricia Lorentz, being first duly sworn, deposes and says:

That on the Third day of February, 1984, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing and Rules as Proposed along with a request for publication of the information by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, to all associations and groups on the attached list who represent the interests of small businesses in Minnesota.

Patricia Lorentz
Patricia Lorentz

Subscribed and sworn to before me this
6th day of February, 1984.

Cheryl J. Schaar
Notary Public

CHERYL J. SCHAAR
NOTARY PUBLIC-MINNESOTA
WASHINGTON COUNTY
MY COMMISSION EXPIRES SEPTEMBER 21, 1988

STATE OF MINNESOTA
DEPARTMENT OF LABOR AND INDUSTRY
444 LAFAYETTE ROAD
SAINT PAUL 55101

TELEPHONE:
(612) 296-6107

IN REPLY REFER TO

(612) 296-2116
PHONE

February 2, 1984

RECEIVED
FEB 10 1984
ADMINISTRATIVE
HEARINGS

Ladies and Gentlemen:

Two provisions of the Employee Right-to-Know Act will be the subject of a public hearing on March 9, 1984. The provisions govern trade secrets and employees' conditional right to refuse to work. These proposed rules may have an impact on employers who do not meet the definition of "small business" and who use hazardous substances in the workplace. Therefore, to assure that as many employers as possible are made aware of the proposed rules, we are forwarding a copy of the Notice of Hearing and Rules as Proposed to you with the request that you include this information in your next bulletin or notice to your members.

The Employee Right-to-Know Act exempts employers who meet the definition of "small business" from the requirements governing hazardous substances or harmful physical agents. A "small business" is defined as: "...a business entity organized for profit, including any individual, partnership, corporation, joint venture, association or cooperative which has 20 or fewer full-time employees, or equivalent full-time employees (part-time employees' work time combined to total 2,000 hours or the equivalent of one full-time employee) during the preceding fiscal year or not more than $1,000,000 in annual gross revenues in the preceding fiscal year, and which is not an affiliate or subsidiary of a business having more than 20 full-time, or equivalent full-time, employees and more than $1,000,000 in annual gross revenues." Employers who do not meet this definition of "small business" must comply with the requirements of the Employee Right-to-Know Act if hazardous substances or harmful physical agents are present in their workplaces.

Your assistance in circulating this notice is appreciated.

Very truly yours,

DEPARTMENT OF LABOR AND INDUSTRY

Ivan W. Russell, Director
Occupational Safety & Health Division

IWR/pl

Make Our State
MINNESOTA
The Safest State

80S

AN EQUAL OPPORTUNITY EMPLOYER

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY
OCCUPATIONAL SAFETY & HEALTH DIVISION

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ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Adoption of Rules Implementing the Provisions of the Employee Right-to-Know Act of 1983 Governing Trade Secrets and Employees' Conditional Right to Refuse to Work.

NOTICE OF HEARING

A public hearing concerning the proposed rules will be held at the Veterans' Service Building (Room D, Fifth Floor), 20 West 12th Street, St. Paul, Minnesota (Capitol Complex) on Friday, March 9, 1984 commencing at 9:00 a.m. The proposed rules may be modified as a result of the hearing process. The proposed rules will have an impact on small businesses; the quantitative and qualitative impact of the proposed rules is dependent upon whether the business utilizes hazardous substances in the workplace, the possibility that any hazardous substance utilized by the business is a trade secret, and the quantity and quality of employee training provided by the small business relative to the hazardous substances being used. Therefore, the department urges those who are potentially affected in any manner by the proposed rules to participate in the hearing process.

All interested or affected persons will have an opportunity to participate concerning the proposed rules. 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 the hearing examiner: Mr. Peter Erickson, Office of Administrative Hearings, Fourth Floor Summit Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415 (Telephone: 612/341-7606) either before the hearing or within five working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a period not to exceed 20 calendar days. The rule hearing procedures are governed by Minn. Stat. S 14.05 - 14.36 (1982) and by 9 MCAR SS 2.101-2.113 (Minnesota Code of Agency Rules). If you have any questions about the procedures, 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 agency and at the Office of Administrative Hearings. This Statement of Need and Reasonableness will include a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

The agency's authority to adopt the proposed rules is contained in Minn. Stat. S 182.657.

The proposed rule designated 8 MCAR S 1.7220 implements provisions of the Employee Right-to-Know Act of 1983 (Laws of Minnesota 1983, Chapter 316) governing trade secrets. This rule will allow an employer who believes that all or part of the information required under the Employee Right-to-Know Act is a trade secret as defined in Minn. Stat. S 325C.01, subdivision 5, to register that information as a trade secret with the commissioner of the Department of Labor and Industry. This rule also contains provisions governing the classification of such data and conditions of disclosure.

The proposed rules designated 8 MCAR SS 1.7240, 1.7241, 1.7243, and 1.7245 amend the rules of the Department of Labor and Industry governing discrimination against employees and implement provisions of the Employee Right-to-Know Act of 1983 concerning employees' conditional right to refuse to work.

The proposed rules are included as part of this notice. In addition, copies of the proposed rule are now available and at least one free copy may be obtained by writing to the Occupational Safety and Health Division, Department of Labor and Industry, 444 Lafayette Road, St. Paul, Minnesota 55101, or by calling (612) 297-3254. Additional copies will be available at the hearing.

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

Minn. Stat. Ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. S 10A.01, subd. 11 (1982) 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.

The hearing attendance is estimated at 50 and is expected to last one day.

Steve Keefe
Commissioner of Labor and Industry

January 5, 1984

Chapter Seventeen:

Trade Secrets

8 MCAR S 1.7220 Trade secret registration.

A. Registration. A manufacturer or employer who believes that all or part of the information required under the Employee Right to Know Act, Laws of Minnesota 1983, chapter 316, is a trade secret as defined in Minnesota Statutes, section 325C.01, subdivision 5, may register the information with the commissioner as trade secret information. Information so required which is certified by appropriate officials of the United States as necessarily kept secret for national defense purposes may also be registered with the commissioner.

B. Formulations and procedures. Formulations or procedures are trade secrets and need not be registered to be considered trade secrets.

C. Required information. Trade secret registration of the name of a hazardous substance must include the following information:

1. the name of the hazardous substance;

2. a brief description of why it is a trade secret; and

3. the name of a person who can be contacted for additional information.

D. Expiration of registration. A registration expires two years after its filing date unless the registration is renewed.

E. Classification of data. Trade secret information that is registered with the commissioner or other information reported to or otherwise obtained by the commissioner or a representative of the commisioner in connection with any inspection or proceeding under Minnesota Statutes, chapter 182 which contains or might reveal a trade secret is nonpublic or private data as defined in Minnesota Statutes, section 13.02, subdivisions 9 and 12. Information that is classified as nonpublic or private, except that which is secret for national defense purposes, may be disclosed to other officers or employees carrying out Minnesota Statutes, chapter 182, when relevant in any proceeding under this chapter, or when otherwise required in

order to comply with federal law or regulation but only to the extent required by the federal law or regulation. The commissioner must protect nonpublic or private information by establishing security procedures to prevent its unauthorized use or disclosure.

F. Disclosure. If the commissioner determines that disclosure of nonpublic or private information is essential to protect employees from imminent danger or otherwise to protect the health and safety of employees, he must notify the appropriate manufacturer or employer of this decision by certified mail and timely disclose the information to alleviate the danger.

G. Determination by commissioner. On the request of a manufacturer, employee, or employee representative, the commisioner must determine whether information registered pursuant to the requirements of this chapter or otherwise reported to or obtained by the commissioner is a trade secret as defined in Minnesota Statutes, section 325C.01, subdivision 5. If the commissioner determines that information is not a trade secret and should be disclosed to the public, the commissioner must notify the manufacturer or employer of the decision by certified mail. The manufacter or employer has 15 days after receipt of notification to provide the commissioner by certified mail with a complete justification and statement of the grounds on which the information is a trade secret. The commissioner must review his determination of whether information should be protected as a trade secret within 15 days after receipt of the justification and statement, or if no justification and statement is filed, within 30 days of the original notice, and must notify the appropriate manufacturer or employer and any party who has requested the information of that determination by certified mail. If the commissioner determines that the information is not a trade secret, the final notice must also specify a date, not sooner than 15 days after the date of mailing of the final notice, when the information shall be available to the public. Prior to the date specified in the final notice, the manufacturer or employer may institute an action for a declaratory judgment as to whether the information is subject to protection

as a trade secret.

Chapter Nineteen:

Discrimination Against Employees

8 MCAR S 1.7240 Authority and background.

~~Minn. Stat. SS~~ Minnesota Statutes, sections 182.654, ~~subd.~~ subdivisions 9 and 11, and 182.669 prohibit discrimination against an employee because the employee exercised any rights granted under the act on the employee's behalf or on behalf of others. Any employee who believes that he or she has been discharged or discriminated against by any person because the employee exercised any right authorized by the act as described in 8 MCAR S 1.7243, may file a discrimination complaint with the commissioner of the Department of Labor and Industry.

8 MCAR S 1.7241 Purpose and scope.

The rules in this chapter implement ~~Minn. Stat. S~~ Minnesota Statutes, sections 182.654, subdivisions 9 and 11, and 182.669 ~~of the act~~ and set forth general policies for enforcement of the discrimination provisions of ~~Minn. Stat. S 182.669~~ the act.

8 MCAR S 1.7243 Protected activities.

A. (Unchanged)

B. Refusal to work under unsafe conditions.

1. (Unchanged)

2. If an employee has a choice between not performing assigned tasks or subjecting himself to serious injury or death arising from a hazardous condition in the workplace, an employee acting in good faith may refuse to work if there is no reasonable alternative. The condition must be so hazardous that a reasonable person would conclude that there is a real danger of death or serious injury and that

there is insufficient time to eliminate the danger through enforcement procedures. The employee must, where possible, request the employer to correct the hazardous condition. An employer may not discharge or discipline an employee who refuses to perform assigned tasks under these conditions. ~~However, an employer is not required to pay employees for tasks not performed.~~ An employee who has refused in good faith to perform assigned tasks and who has not been reassigned to other tasks by the employer must, in addition to retaining a right to continued employment, be paid for the tasks which would have been performed if:

a. the employee requests, within 24 hours of the refusal, the commissioner to inspect and determine the nature of hazardous condition; and

b. the commissioner determines that the employee, by performing the assigned tasks, would have been placed in imminent danger of death or serious physical harm.

3. An employee who has been assigned to work with a hazardous substance, harmful physical agent, or infectious agent, under conditions which are inconsistent with the training or information provided by the employer under 8 MCAR SS 1.7206 and 1.7207, and who has refused in good faith to perform assigned tasks and who has not been reassigned to other tasks by the employer shall, in addition to retaining a right to continued employment, receive pay for the tasks which would have been performed if:

a. the employee requests, within 24 hours of the refusal, the commissioner to inspect and determine if a hazardous condition exists; and

b. the commissioner determines that the employer has failed to provide the training required under 8 MCAR S 1.7206 prior to the employee's initial assignment to a workplace if the employee may be routinely exposed to a hazardous substance, harmful physical agent, or infectious agent and the employer has failed to provide the information required under 8 MCAR SS 1.7206 and 1.7207 after a request within a reasonable period of time, but not to exceed 24 hours, of the request.

C. - F. (Unchanged)

8 MCAR S 1.7245 Claim procedures.

A. Who may file. A complaint alleging discrimination under ~~Minn. Stat. S~~ Minnesota Statutes, sections 182.654, subdivision 9 and 11, and 182.669 may be filed by an employee or an authorized employee representative.

B. - D. (Unchanged).

SMALL BUSINESS REPRESENTATIVE ORGANIZATIONS

Midway Civic & Commerce Association
1761 University Avenue
St. Paul, MN 55101

West 7th Street Federation
900 Albion Avenue
St. Paul, MN 55116

National Association of Women Business Owners
45 East 4th Street
St. Paul, MN 55101

Independent Business Association of Minnesota
6813 Southdale Road
Minneapolis, MN 55435

National Alliance of Business, Inc.
Lumber Exchange Building
425 Hennepin Avenue
Minneapolis, MN 55401

Minnesota Association of Commerce and Industry
480 Cedar
St. Paul, MN 55101

Minnesota Association of Cooperatives
55 Sherburne
St. Paul, MN 55103

Associated General Contractors of Minnesota
Kellogg Square Bldg.
St. Paul, MN 55101

Minnesota State Builders Association
666 Transfer Road
Roseville, MN 55114

Minnesota Indian Contractors Association
432 South Wabasha St.
St. Paul, MN 55107

Independent Construction Truck Owners
555 North Wabasha St.
St. Paul, MN 55102

Minnesota Transport Services Association
Griggs-Midway Building
1821 University Avenue
St. Paul, MN 55101

Minnesota Safety Council
555 Wabasha - Suite 102
St. Paul, MN 55102

Minnesota Retail Merchants Assoc.
Metro Square Building
121 - 7th Street East
St. Paul, MN 55101

Minnesota Food Retailers Assoc.
555 Wabasha
St. Paul, MN 55102

Cleaning Equipment Manufacturers Association
6043 Hudson Road
Woodbury, MN 55119

Minnesota Restaurant Assoc., Inc.
2001 University Ave. West
St. Paul, MN 55104

Minnesota Service Station Assoc.
2700 Rice
St. Paul, MN 55113

Minnesota Asphalt Pavement Assoc.
555 Wabasha
St. Paul, MN 55102

Minnesota Automobile Dealers Asso
277 University Avenue
St. Paul, MN 55101

Minnesota Dakotas Retail Hardware Assoc.
3033 Excelsior Blvd.
Minneapolis, MN 55416

Mn. Assoc. of Plumbing-Heating and Cooling Contractors
100 East 14th St.
Minneapolis, MN 55403

Minnesota Drywall Contractors Association
7000 - 57th Ave. No.
Minneapolis, MN 55428

Minnesota Concrete and Masonry Contractors Association
6509 Walker
Minneapolis, MN 55426

Employers Association of Greater Minneapolis
9400 Golden Valley Road
Minneapolis, MN 55427

RECEIVED
FEB 10 1984
ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Adoption of Rules Implementing Provisions of the Employee Right-to-Know Act of 1983 Governing Trade Secrets and Employees' Conditional Right to Refuse to Work.

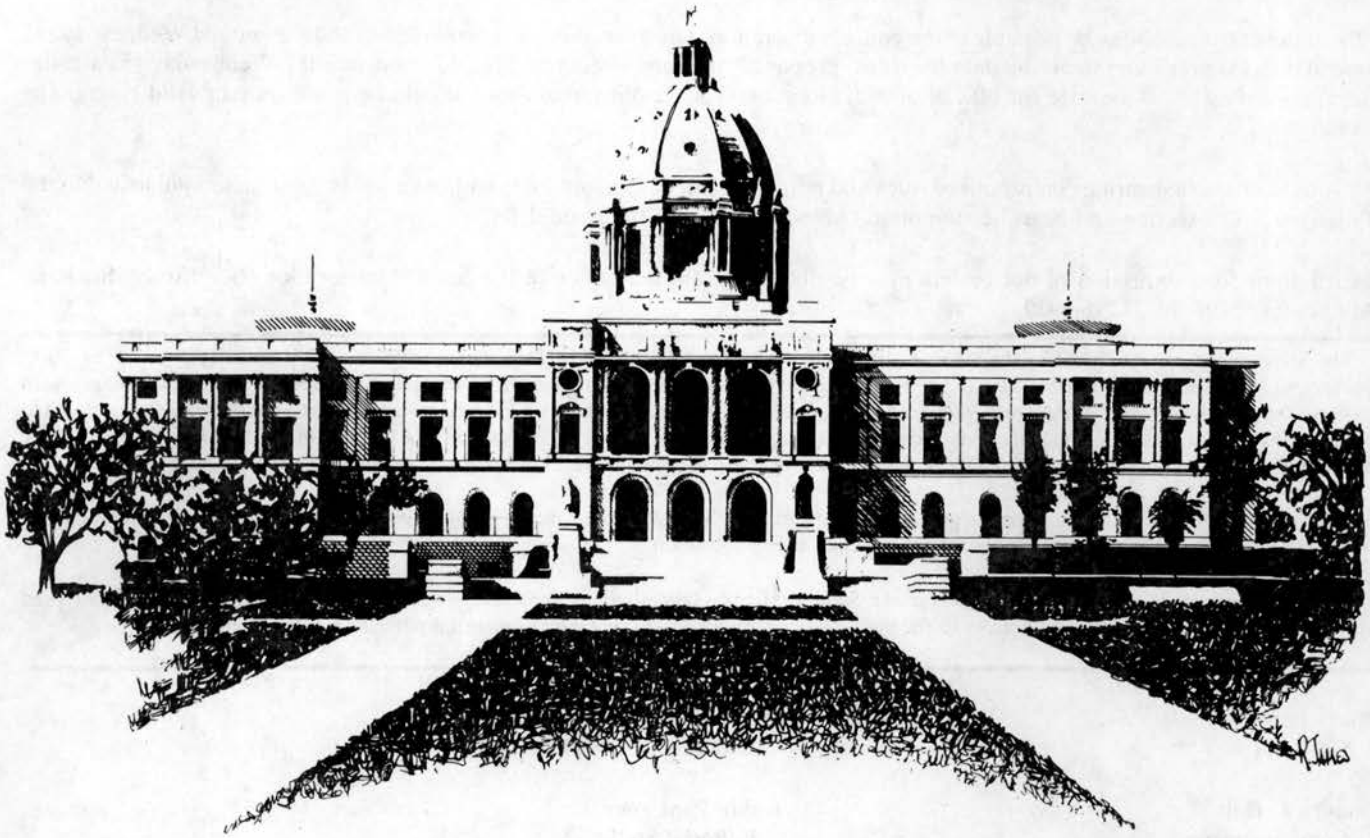
I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minnesota Statute 14.14, subdivision 1 (1982), that their names be placed on file with and maintained by the Department of Labor and Industry for the purpose of receiving notice of the proposed adoption of rules by the Occupational Safety and Health Division is accurate and complete as of 8:00 a.m., this Second day of February, 1984.

Patricia Lorenty

RECEIVED
FEB 10 1984
ADMINISTRATIVE
HEARINGS

STATE REGISTER

STATE OF MINNESOTA



VOLUME 8, NUMBER 32

February 6, 1984

Pages 1803-1852

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 8		
33	Monday Jan 30	Monday Feb 6	Monday Feb 13
34	Monday Feb 6	Monday Feb 13	Monday Feb 20
35	Monday Feb 13	Monday Feb 20	Monday Feb 27
36	Monday Feb 20	Monday Feb 27	Monday Mar 5

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

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

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

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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*.

Rudy Perpich
Governor

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Commissioner
Department of Administration

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Public Documents Division

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Circulation Manager

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

State agencies must publish notice of their rulemaking action in the *State Register*. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a **NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION.** 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* and filed with the Secretary of State before September 15, 1982, are published in the *Minnesota Code of Agency Rules 1982 Reprint*. ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES filed after September 15, 1982, will be included in a new publication, *Minnesota Rules*, scheduled for publication in spring of 1984. In the MCAR AMENDMENT AND ADDITIONS listing below, the rules published in the *MCAR 1982 Reprint* are identified with an asterisk. Proposed and adopted TEMPORARY RULES appear in the *State Register* but are not published in the *1982 Reprint* due to the short-term nature of their legal effectiveness.

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

Issues 1-13, inclusive
Issues 14-25, inclusive
Issue 26, cumulative for 1-26
Issue 27-38, inclusive
Issue 39, cumulative for 1-39
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12 MCAR §§ 2.04601-2.04606 [Temp] (proposed) 1817
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PROPOSED RULES

Pursuant to Minn. Stat. of 1980, §§ 14.21, 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 §§ 14.13-14.20 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. § 14.29, 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.

Department of Labor and Industry Cable Communications Board

Proposed Rules Governing the Provision by Cable Companies Granted Access to Multiple Dwelling Complexes of Equipment with Sufficient Channel Capacity so as to Allow for Service by Alternative Providers

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Cable Communications Board proposes to adopt the above-entitled rules without a public hearing. The Cable Communications Board has determined that the adoption of these rules will not be controversial in nature and has elected to follow the procedures set forth in Minnesota Statutes section 14.21 to 14.26 (1982).

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 substantial change in the proposed language.

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.

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 14.13 to 14.20 (1982).

It is requested, but not required, that if a person wishes to object to a rule, they state in their objection the rule and the number which corresponds to the rule.

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

W. D. Donaldson, Executive Director
Cable Communications Board
500 Rice Street
Saint Paul, Minnesota
(612) 296-2545.

Authority for the adoption of these rules is contained in Minnesota Statutes sections 238.05 and 238.06 (1982) and in Subdivision 10, Section 5, Chapter 329, Laws 1983. 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 W. D. Donaldson, Executive Director, Cable Communications Board, 500 Rice Street, Saint Paul, Minnesota 55103, upon request.

Earlier rules on this subject were proposed by the Board under the noncontroversial rules procedure of M.S. 14.21 to 14.28 and published in the *State Register* on November 7, 1983 on pages 1069-1071. Upon receipt of 7 objections to the rule in that form, the Board on December 9, 1983 withdrew the rule for the purpose of making modifying amendments as authorized by M.S. 14.05, Subd. 3. On January 13, 1984 the Board approved the proposed rules in the modified form shown below and directed that they be adopted under the non-controversial procedures.

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 W. D. Donaldson, Executive Director, Cable Communications Board, 500 Rice Street, Saint Paul, Minnesota 55103.

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

Comments are due not later than 4:30 P.M. March 7, 1984.

Copies of this Notice and the proposed rules are available and may be obtained by contacting W. D. Donaldson, Executive Director, Cable Communications Board, 500 Rice Street, Saint Paul, Minnesota 55103.

W. D. Donaldson
Executive Director of
Cable Communications Board

Rules as Proposed (all new material)

4 MCAR § 4.260 Definitions.

A. Scope. The terms used in 4 MCAR §§ 4.260-4.263 have the meanings given them in this rule.

B. Alternative providers. "Alternative providers" means other providers of television programming or cable communications services.

C. Association member. "Association member" means an individual owner of a cooperatively owned multiple dwelling complex.

D. Other providers of television programming or cable communications services. "Other providers of television programming or cable communications services" means operators of master antenna television systems (MATV), satellite master antenna television systems (SMATV), multipoint distributions systems (MDS), and direct broadcast satellite systems (DBS).

4 MCAR § 4.261 Conditions for access by alternative providers.

A. Channel capacity. Cable companies granted access to a multiple dwelling complex under Minnesota Statutes, section 238.25 shall provide equipment with sufficient channel capacity to be used by alternative providers of television programming or cable communications services.

B. Technical plan approval. The cable communications company shall determine the technical plan best suited for providing

the necessary channel capacity sufficient to allow access to other providers. The plan must be submitted to the property owner for approval. The owner's approval may not be unreasonably withheld. No additional compensation for evaluation of the plan may be paid or given to the property owner over and above that permitted under Minnesota Statutes, section 238.24, subdivision 8.

C. Duplicate connections. The cable communications company is not required to provide equipment for connecting more than one television receiver in one dwelling unit within the multiple dwelling complex. However, the company may provide duplicate connections at its discretion.

4 MCAR § 4.262 Reimbursement.

A. Providing alternative service. Other providers of television programming or cable communications services shall notify the cable communications company when a resident or association member occupying a dwelling unit in a multiple dwelling complex requests the services provided for by 4 MCAR §§ 4.260-4.263. After reaching agreement with the alternative service provider for reimbursement to be paid for use of the equipment, the cable communications company shall make available the equipment necessary to provide the alternative service without unreasonable delay.

B. Reimbursement determination. The amount to be reimbursed must be determined under Minnesota Statutes, section 238.24, subdivision 10. The reimbursed amount must be paid in one installment for each instance of requested use. The payment may not be refunded upon subscriber cancellation of the alternative service.

C. Financial records made available. The cable communications company, upon written request, shall make available to the alternative provider financial records supporting the reimbursement cost requested.

4 MCAR § 4.263 Appeals to board.

An interested or affected person may appeal an action taken by another person under 4 MCAR §§ 4.261 and 4.262 to the board using the procedure in 4 MCAR §§ 4.003-4.016.

Department of Health
Health Systems Division

Proposed Temporary Rule Governing the Relocation of Residents from Nursing Homes and Certified Boarding Care Homes, 7 MCAR § 1.801

Notice of Intent to Adopt a Temporary Rule

The State Department of Health proposes to adopt the above-entitled temporary rule to implement Laws of Minnesota 1983, Chapter 199, section 5, subdivision 4. Persons interested in this rule have until February 27, 1984, to submit written comments. The proposed temporary rule may be modified if the modifications are supported by the data and views submitted to the agency and do not result in substantial change in the proposed language. Written comments should be sent to:

H. Michael Tripple
Minnesota Department of Health
Survey and Compliance Section
P.O. Box 9441
717 Delaware Street Southeast
Minneapolis, Minnesota 55440
Telephone Number: (612) 623-5448

Upon adoption of the temporary rule by the Department of Health, the proposed temporary rule as published and any modifications will be submitted to the attorney general for review as to form and legality.

This temporary rule shall be effective upon the approval of the attorney general. Failure of the attorney general to approve or disapprove the rule within five working days, as provided in Minnesota Statutes § 14.33 (1982), is approval.

As soon as practicable thereafter, notice of the attorney general's decision shall be published in the *State Register* and the adopted rule shall also be published in the manner as provided for adopted rules in Minnesota Statutes § 14.18.

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.

In accordance with Laws of Minnesota 1983, chapter 199, section 16, this temporary rule shall be effective up to 360 days after July 1, 1983, and may be continued in effect for two additional periods of 180 days each if the Commissioner of Health gives notice of continuation of each additional period by publishing notice in the *State Register* and mailing the same notice to all persons registered with the commissioner to receive notice of rulemaking proceedings. This temporary rule shall not be effective 720 days after July 1, 1983, without following the procedures in Minnesota Statutes, §§ 14.13 to 14.20.

This temporary rule will not result in any increased expenditure to local public bodies. Nor will it result in a fiscal impact in excess of $100,000 annually. See Minnesota Statutes § 14.11, subdivision 1 and § 15.065.

The temporary rule establishes the procedures to be followed by a nursing home or certified boarding care home in the event that relocation of some or all of the residents becomes necessary. The provisions contained in the rule are designed to ensure that proper and sufficient notice is given to residents and other affected parties and to require that the necessary assistance is provided to residents to properly prepare for the relocation. The following information is being provided to comply with the provisions of Minnesota Statute § 144A.29, subdivision 4 which requires that each rule promulgated by the Department contain a short statement of anticipated costs and benefits to be derived from the provisions of the rule. The development of this temporary rule is necessitated as the result of a mandate given to the Interagency Board for Quality Assurance to develop a resident relocation plan. See Laws 1983, Chapter 199, section 5, subdivision 4. Thus, the promulgation of this rule will assure compliance with that mandate. A major benefit of this rule is the fact that specific procedures are being adopted to govern the relocation process. Prior to this time, the Department has only been able to provide recommendations to a facility required to relocate residents. While those recommendations were based on provisions of the licensure rules and the Bill of Rights, the establishment of this rule will now provide a concise and readily identifiable set of standards to be followed by a facility. The Department believes that the placement of the relocation procedure in one rule will help to assure that the necessary steps are taken to safeguard the health, safety, and well-being of residents during the relocation process.

Among other requirements, the proposed temporary rule provides for timely notification to residents and family members which is essential for the appropriate and careful planning of the move to another health care facility. The rule also requires that facility staff actively participate in this process and also take any steps which might be needed to assure that there are no interruptions of the residents' care. Careful planning prior to the actual relocation of a resident is essential in order to minimize the risk or degree of "transfer trauma" that can result due to relocation. The Department believes that any costs associated with this rule will be minimal. The rule does not add to the facility's responsibility to appropriately plan for and participate in the discharge or transfer of a resident; rather, the rule combines these responsibilities in a format which can be readily followed in the event relocation of residents is necessary. A number of existing licensure rules address a facility's responsibility in the discharge and transfer process and since these responsibilities are already in place, the Department does not believe that any new responsibility is imposed on the facility.

For example, MHD 45 (h)(5)(aa) already requires the development of resident transfer procedures; MHD 48 (a)(3) requires that pertinent information relative to the care of a resident accompany that resident on discharge or transfer; MHD 49 (c)(1) requires that a resident's medical record contains information on the condition of the resident at the time of discharge or transfer; and MHD 50 (f)(13) requires that the Director of Nursing Service participate in the discharge and transfer planning for residents. While some costs will be associated with the relocation of residents from a facility, it is the Department's position that those costs are a part of the facility's current responsibility to appropriately care for residents and are not "new costs" which will be incurred only as a result of the promulgation of this rule. Any costs will, of course, vary depending upon the number of residents to be relocated, e.g., costs associated with the mailing of the required notices. For these reasons, it is not possible for the Department to specifically delineate the costs associated with this rule.

A copy of this notice and the proposed temporary rule may be obtained by contacting Marlene Randall at the Minnesota Department of Health, telephone number: (612) 623-5474.

Temporary Rule as Proposed (all new material)

7 MCAR § 1.801 [Temporary] Procedures governing relocation of residents from nursing homes and certified boarding care homes.

A. Definitions.

1. Relocation. The term "relocation" means a situation when residents are to be discharged from a nursing home or certified boarding care home as the result of the closing of the facility or the curtailment, reduction, or change of operations or services offered there.

2. Nursing home. A "nursing home" is a facility licensed pursuant to Minnesota Statutes, section 144A.01, subdivision 5.

3. Certified boarding care home. A "certified boarding care home" is a facility licensed pursuant to Minnesota Statutes, sections 144.50 to 144.56 and certified as an intermediate care facility as defined in United States Code, title 42, section 1396d, as amended through December 31, 1982.

4. Facility. For the purposes of 7 MCAR § 1.801 [Temporary], "facility" refers to a nursing home or certified boarding care home.

5. Service offered in the facility. "Service offered in the facility" includes participation in the medicare and/or medicaid programs pursuant to United States Code, title 42, sections 1395 et seq., and 1396 et seq., as amended through December 31, 1982.

B. Notice to the Department of Health.

1. The licensee of the facility shall notify the Department of Health, in writing, at least 90 days prior to the cessation or the curtailment, reduction, or change of operations or services which would result in the relocation of residents.

2. The written notice shall include the information in a.-c.:

a. the date of the closing, curtailment, reduction, or change of operations or services;

b. the number of residents to be relocated; and

c. the names and telephone numbers of the persons in the nursing home responsible for coordinating the relocation of residents.

C. Facility responsibilities.

1. The licensee of the facility and facility staff shall cooperate with representatives from the department of health and from the social service agency for the county in which the facility is located in planning for the relocation of residents.

2. The administrator of a facility shall establish an interdisciplinary team which shall be responsible for coordinating and planning the steps necessary to relocate the residents. The interdisciplinary team shall consist of members involved in providing direct care services to residents.

3. The facility shall send written notices in a.-c. at least 60 days in advance of the date by which the relocation of residents is to be completed.

a. Notice shall be sent to the resident who will be relocated and to the individual responsible for the resident's care. This notice must include the name, address, and telephone number of the individual in the facility to be contacted for assistance and further information; the social service agency for the county in which the facility is located; and the area long-term care ombudsman, provided under section 307(a)(12) of the Older Americans Act, United States Code, title 42, section 3027, as amended through December 31, 1982.

b. Notice shall be sent to the social service agency for the county in which the facility is located. This notice must include the name of each resident to be relocated, the name, address, and telephone number of the individual responsible for the resident's care, and the name and telephone number of the individual in the facility to be contacted for further information.

c. Notice shall be sent to the attending physician of the resident to be relocated. The resident's attending physician shall be requested to furnish any medical information needed to update the resident's medical records and to prepare transfer forms and discharge summaries. This written notice must include the name and telephone number of the individual in the facility to be contacted for further information.

4. A list of available beds to which the resident can be relocated must be prepared. This list must contain the name, address, and telephone number of the facility, the certification level of the available beds, the type of services available, and the number of beds that are available. This list must be made available to the resident, the individual responsible for the resident's care, the area long-term care ombudsman, and the county social service agency.

5. The facility shall conduct small group meetings for the residents and the individuals responsible for the care of the residents to notify them of the steps being taken in arranging for the transfer. Individual residents shall be assisted as necessary.

6. The inventory of the resident's personal possessions must be updated and a copy of the final inventory provided to the resident, the individual responsible for the resident's care, or both. A final accounting of personal funds held in the facility must be completed in accordance with the provisions of 7 MCAR § 1.048 A.8.d. Arrangements must be made for the transfer of the resident's possessions and personal funds.

7. Unless it is medically inadvisable, as documented by the attending physician in the resident's care record, the resident shall be assisted in making site visits to facilities to which they may be transferred.

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8. All administrative duties must be completed prior to the actual relocation of the resident. Personnel in the facility to which the resident will be moved shall be provided with the information necessary to provide care and services to the resident, in accordance with 7 MCAR § 1.048 A.3. (MHD 48(a)(3)).

9. Unless otherwise agreed to by the resident or the individual responsible for the resident's care, at least a 14-day notice shall be provided to a resident prior to the actual relocation.

10. The resident shall be assisted in making arrangements for transportation to the new facility.

11. There must not be a disruption in the provision of meals, medications, or treatments of the resident during the relocation process.

12. If not previously notified, the resident's attending physician shall be informed of the new location of the resident within 24 hours after the actual relocation.

13. Commencing the week following the relocation notice to the Department of Health, the facility shall provide weekly written status reports to the Department of Health as to the progress being made in arranging for the relocation. The initial status report must include the relocation plan developed by the facility, the identity of the interdisciplinary team members, and a schedule for the completion of the various elements of the plan. Subsequent status reports must note the progress being made, any modifications to the relocation plan, any change of interdisciplinary team members, and must include the names of residents who have been relocated during the time period covered by the report. Once relocation has been completed, a listing of the residents who have been relocated and the identity of the facilities or other locations to which the residents were moved must be provided to the Department of Health.

Higher Education Coordinating Board

Proposed Adoption of Rules Governing State Scholarships and Grants-in-Aid and Part-Time Student Grants

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Higher Education Coordinating Board proposes to adopt the above-entitled rules without a public hearing. The Executive Director has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes Section 14.21-14.28 (1982). These proposed rules do not include a change in the definition of student dependency.

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 14.13-14.15 (1982).

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

Rose Herrera Hamerlinck
Minnesota Higher Education Coordinating Board
400 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
612/296-9681

Authority for the adoption of these rules is contained in Minnesota Statutes Sections 136A.111, subd. 2 (1982). 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 Rose Herrera Hamerlinck, Higher Education Coordinating Board, 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 Rose Herrera Hamerlinck, Higher Education Coordinating Board.

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

Copies of this Notice and the proposed rules are available and may be obtained by contacting Rose Herrera Hamerlinck at the above address.

David Longanecker
Acting Executive Director
Minnesota Higher Education Coordinating Board

Rules as Proposed

5 MCAR § 2.2101 Scope.

Rules 5 MCAR §§ 2.2101-2.2106 govern state scholarships and grants-in-aid.

5 MCAR § 2.2102 Eligible schools.

Annually ~~by July 31,~~ the board shall adopt by resolution a list of schools at which a state scholarship or grant-in-aid may be used. To be eligible a school must meet the following requirements:

1.-3. [Unchanged]

5 MCAR § 2.2103 Application dates and student eligibility.

A.-B. [Unchanged]

C. Eligibility for initial grant-in-aid. To be eligible for an initial grant-in-aid a student must be an eligible student, as defined in 5 MCAR § 2.0100 D., and all of the following:

1.-3. [Unchanged]

4. if applying for a nursing grant, is enrolled or will be enrolled in a program leading to licensure as a registered nurse or a licensed practical nurse;

5. If under 17 years old, a recipient must have a high school diploma or the equivalent.

D. [Unchanged]

5 MCAR § 2.2104 Ranking applicants.

A. [Unchanged]

B. Priority of classes of applicants. Applicants renewing scholarships shall be given first priority. Applicants renewing grants-in-aid shall be given second priority. Applicants for initial scholarships shall be given third priority. Applicants for initial grants-in-aid shall be given fourth priority. Awards shall be made on a funds available basis. Once an award is made it shall not be withdrawn in order to award an applicant of higher priority.

C. [Unchanged]

5 MCAR § 2.2105 Awards.

A. Monetary awards. ~~Scholarship and grant-in-aid awards range from a minimum of $100 to a maximum of $1,400 but may not exceed one-half of financial need. If a federal Pell grant and a state scholarship or grant-in-aid exceeds 75 percent of financial need, the state scholarship or grant-in-aid must be reduced so that the combination of the two awards does not exceed 75 percent of financial need. The state scholarship or grant-in-aid must be further reduced if additional gift assistance, in combination with a federal Pell grant and a state scholarship or grant-in-aid, exceeds 100 percent of financial need.~~ The amount of a scholarship or grant-in-aid financial stipend shall not exceed an applicant's cost of attendance, as defined in Minnesota Statutes, section 136.121, subdivision 6, after deducting the following:

1. a contribution by the applicant of at least 50 percent of the cost of attending the institution of the applicant's choosing;

2. a contribution by the applicant's parents, as determined by a standardized need analysis; and

3. an estimate of the amount of a federal Pell grant award for which the applicant is eligible.

The minimum financial stipend shall be $100.

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B.-C. [Unchanged]

5 MCAR § 2.2106 Method of payment.

A.-C. [Unchanged]

5 MCAR § 2.2204 Eligible students.

A. Determination of eligibility. A school shall determine if a student is eligible for a part-time student grant. To be eligible a student must be an eligible student as defined in 5 MCAR § 2.0100 D.2., 3., 5., and 6., except that the student need not be a full-time student~~, and all of the following~~. The student must be:

1. ~~is~~ pursuing a program or course of study leading to a degree, diploma, or certificate; and
2. ~~is not eligible~~ ineligible for state or federal financial aid, other than a Pell grant; and
3. ~~is not reimbursed~~ unreimbursed for tuition and fees by any source other than a Pell grant; and
4. ~~demonstrates~~ in financial need.

B.-C. [Unchanged]

Department of Labor and Industry Occupational Safety and Health Division

Proposed Adoption of Rules Implementing the Provisions of the Employee Right-to-Know Act of 1983 Governing Trade Secrets and Employees' Conditional Right to Refuse to Work

Notice of Hearing

A public hearing concerning the proposed rules will be held at the Veterans' Service Building (Room D, Fifth Floor), 20 West 12th Street, St. Paul, Minnesota 55155 (Capitol Complex) on Friday, March 9, 1984 commencing at 9:00 a.m. The proposed rules may be modified as a result of the hearing process. The proposed rules will have an impact on small businesses; the quantitative and qualitative impact of the proposed rules is dependent upon whether the business utilizes hazardous substances in the workplace, the possibility that any hazardous substance utilized by the business qualifies as a trade secret, and the quantity and quality of employee training provided by the small business relative to the hazardous substances being used. Therefore, the department urges those who are potentially affected in any manner by the proposed rules to participate in the hearing process.

All interested or affected persons will have an opportunity to participate concerning the proposed rules. 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 the hearing examiner: Mr. Peter Erickson, Office of Administrative Hearings, Fourth Floor Summit Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415 (Telephone: 612/341-7606) either before the hearing or within five working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a period not to exceed 20 calendar days. The rule hearing procedures are governed by Minn. Stat. § 14.05-14.36 (1982) and by 9 MCAR §§ 2.101-2.113 (Minnesota Code of Agency Rules). If you have any questions about the procedures, 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 agency and at the Office of Administrative Hearings. This Statement of Need and Reasonableness will include a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

The agency's authority to adopt the proposed rules is contained in Minn. Stat. § 182.657.

The proposed rule designated 8 MCAR § 1.7220 implements provisions of the Employee Right-to-Know Act of 1983 (Laws of Minnesota 1983, Chapter 316) governing trade secrets. This rule will allow an employer who believes that all or part of the information required under the Employee Right-to-Know Act is a trade secret as defined in Minn. Stat. § 325C.01, subdivision 5, to register that information as a trade secret with the commissioner of the Department of Labor and Industry. This rule also contains provisions governing the classification of such data and conditions of disclosure.

The proposed rules designated 8 MCAR §§ 1.7240, 1.7241, 1.7243, and 1.7245 amend the rules of the Department of Labor and Industry governing discrimination against employees and implement provisions of the Employee Right-to-Know Act of 1983 concerning employees' conditional right to refuse to work.

The proposed rules are included as part of this notice. In addition, copies of the proposed rule are now available and at least one free copy may be obtained by writing to the Occupational Safety and Health Division, Department of Labor and Industry, 444 Lafayette Road, St. Paul, Minnesota 55101, or by calling (612) 297-3254. Additional copies will be available at the hearing.

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

Minn. Stat. Ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1982) 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.

The hearing attendance is estimated at 50 and is expected to last one day.

Steve Keefe
Commissioner of Labor and Industry

Rules as Proposed

Chapter Seventeen:
Trade Secrets

8 MCAR § 1.7220 Trade secret registration.

A. Registration. A manufacturer or employer who believes that all or part of the information required under the Employee Right to Know Act, Laws of Minnesota 1983, chapter 316, is a trade secret as defined in Minnesota Statutes, section 325C.01, subdivision 5, may register the information with the commissioner as trade secret information. Information so required which is certified by appropriate officials of the United States as necessarily kept secret for national defense purposes may also be registered with the commissioner.

B. Formulations and procedures. Formulations or procedures are trade secrets and need not be registered to be considered trade secrets.

C. Required information. Trade secret registration of the name of a hazardous substance must include the following information:

1. the name of the hazardous substance;

2. a brief description of why it is a trade secret; and

3. the name of a person who can be contacted for additional information.

D. Expiration of registration. A registration expires two years after its filing date unless the registration is renewed.

E. Classification of data. Trade secret information that is registered with the commissioner or other information reported to or otherwise obtained by the commissioner or a representative of the commissioner in connection with any inspection or proceeding under Minnesota Statutes, chapter 182 which contains or might reveal a trade secret is nonpublic or private data as

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defined in Minnesota Statutes, section 13.02, subdivisions 9 and 12. Information that is classified as nonpublic or private, except that which is secret for national defense purposes, may be disclosed to other officers or employees carrying out Minnesota Statutes, chapter 182, when relevant in any proceeding under this chapter, or when otherwise required in order to comply with federal law or regulation but only to the extent required by the federal law or regulation. The commissioner must protect nonpublic or private information by establishing security procedures to prevent its unauthorized use or disclosure.

F. Disclosure. If the commissioner determines that disclosure of nonpublic or private information is essential to protect employees from imminent danger or otherwise to protect the health and safety of employees, he must notify the appropriate manufacturer or employer of his decision by certified mail and timely disclose the information to alleviate the danger.

G. Determination by commissioner. On the request of a manufacturer, employee, or employee representative, the commissioner must determine whether information registered pursuant to the requirements of this chapter or otherwise reported to or obtained by the commissioner is a trade secret as defined in Minnesota Statutes, section 325C.01, subdivision 5. If the commissioner determines that information is not a trade secret and should be disclosed to the public, the commissioner must notify the manufacturer or employer of the decision by certified mail. The manufacturer or employer has 15 days after receipt of notification to provide the commissioner by certified mail with a complete justification and statement of the grounds on which the information is a trade secret. The commissioner must review his determination of whether information should be protected as a trade secret within 15 days after receipt of the justification and statement, or if no justification and statement is filed, within 30 days of the original notice, and must notify the appropriate manufacturer or employer and any party who has requested the information of that determination by certified mail. If the commissioner determines that the information is not a trade secret, the final notice must also specify a date, not sooner than 15 days after the date of mailing of the final notice, when the information shall be available to the public. Prior to the date specified in the final notice, the manufacturer or employer may institute an action for a declaratory judgment as to whether the information is subject to protection as a trade secret.

8 MCAR § 1.7240 Authority and background.

~~Minn. Stat. §§~~ Minnesota Statutes, sections 182.654, ~~subd.~~ subdivisions 9 and 11, and 182.669 prohibit discrimination against an employee because the employee exercised any rights granted under the act on the employee's behalf or on behalf of others. Any employee who believes that he or she has been discharged or discriminated against by any person because the employee exercised any right authorized by the act as described in 8 MCAR § 1.7243, may file a discrimination complaint with the commissioner of the Department of Labor and Industry.

8 MCAR § 1.7242 Purpose and scope.

The rules in this chapter implement ~~Minn. Stat. §~~ Minnesota Statutes, sections 182.654, subdivisions 9 and 11, and 182.669 ~~of the act~~ and set forth general policies for enforcement of the discrimination provisions of ~~Minn. Stat. § 182.669~~ the act.

8 MCAR § 1.7243 Protected activities.

A. [Unchanged.]

B. Refusal to work under unsafe conditions.

1. [Unchanged.]

2. If an employee has a choice between not performing assigned tasks or subjecting himself to serious injury or death arising from a hazardous condition in the workplace, an employee acting in good faith may refuse to work if there is no reasonable alternative. The condition must be so hazardous that a reasonable person would conclude that there is a real danger of death or serious injury and that there is insufficient time to eliminate the danger through enforcement procedures. The employee must, where possible, request the employer to correct the hazardous condition. An employer may not discharge or discipline an employee who refuses to perform assigned tasks under these conditions. ~~However, an employer is not required to pay employees for tasks not performed~~ An employee who has refused in good faith to perform assigned tasks and who has not been reassigned to other tasks by the employer must, in addition to retaining a right to continued employment, be paid for the tasks which would have been performed if:

a. the employee requests, within 24 hours of the refusal, the commissioner to inspect and determine the nature of the hazardous condition; and

b. the commissioner determines that the employee, by performing the assigned tasks, would have been placed in imminent danger of death or serious physical harm.

3. An employee who has been assigned to work with a hazardous substance, harmful physical agent, or infectious agent, under conditions which are inconsistent with the training or information provided by the employer under 8 MCAR §§ 1.7206 and 1.7207, and who has refused in good faith to perform assigned tasks and who has not been reassigned to other tasks by the

employer shall, in addition to retaining a right to continued employment, receive pay for the tasks which would have been performed if:

a. the employee requests, within 24 hours of the refusal, the commissioner to inspect and determine if a hazardous condition exists; and

b. the commissioner determines that the employer has failed to provide the training required under 8 MCAR § 1.7206 prior to the employee's initial assignment to a workplace if the employee may be routinely exposed to a hazardous substance, harmful physical agent, or infectious agent and the employer has failed to provide the information required under 8 MCAR §§ 1.7206 and 1.7207 after a request within a reasonable period of time, but not to exceed 24 hours, of the request.

C.-F. [Unchanged.]

8 MCAR § 1.7245 Claim procedures.

A. Who may file. A complaint alleging discrimination under ~~Minn. Stat. §~~ Minnesota Statutes, sections 182.654, subdivisions 9 and 11, and 182.669 may be filed by an employee or an authorized employee representative.

B.-D. [Unchanged.]

Department of Public Welfare
Minnesota Board on Aging

Proposed Temporary Rule Governing the Relocation of Nursing Home Residents (12 MCAR §§ 2.04601-2.04606, Temporary)

Notice of Intent to Adopt Temporary Rules

The State Department of Public Welfare proposes to adopt the above-entitled temporary rules to implement Laws of Minnesota 1983, chapter 199, section 16.

Persons interested in these rules have until February 27, 1984 to submit written comments. The proposed temporary 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. Written comments should be sent to:

Sharon Zoesch
Minnesota Board on Aging
Department of Public Welfare
Suite 204, Metro Square Building
St. Paul, MN 55155
612/296-7465

Upon adoption of the temporary rules, this notice, all written comments received, and the adopted temporary rules will be delivered to the Attorney General and to the Revisor of Statutes for review as to form and legality.

The adopted temporary rules will not become effective without the Attorney General's approval and the Revisor of Statute's certification of the rule's form.

As required by the Administrative Procedures Act, Minnesota Statutes, chapter 14, these temporary rules shall be in effect for up to 180 days following their adoption and may be continued in effect for an additional 180 days if the Commissioner gives notice of continuation by publishing notice in the *State Register* and mailing the same notice to all persons registered with the Commissioner to receive notice of rulemaking proceedings. The temporary rules shall not be effective 360 days after their effective date without following the procedures in Minnesota Statutes, sections 14.13 to 14.20.

12 MCAR §§ 2.04601-2.04606 (Temporary) govern the responsibilities of local social service agencies in the relocation of nursing home residents or certified boarding care home residents as a result of the closing of a facility, loss of or change in

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certification, termination of receivership, or termination of the facility's Medical Assistance provider agreement. Provisions in these rules include definition of terms, establishment of a relocation committee, identification of alternative resources, provision of relocation assistance to residents, and county status reports on relocation activities.

These temporary rules will not result in additional state or county expenditures. If a relocation becomes necessary, existing staff will carry out the activities in this rule.

Copies of this notice and the proposed temporary rules may be obtained by contacting Lois Cosgrove (612/296-2543).

Leonard W. Levine
Commissioner

Temporary Rules as Proposed (all new material)

12 MCAR § 2.04601 [Temporary] Authority and applicability.

A. Authority.

1. Laws of Minnesota 1983, chapter 199, section 5, subdivision 4, authorizes the commissioner of public welfare to implement a resident relocation plan that instructs the local social services agency for the county in which a long-term care facility is located of procedures to follow to ensure that the needs of residents are met during a relocation.

2. Laws of Minnesota 1983, chapter 199, section 16, requires that the commissioner of public welfare promulgate temporary and permanent rules to implement the provisions of Laws of Minnesota 1983, chapter 199, including a resident relocation plan.

B. Applicability. Rules 12 MCAR §§ 2.04601-2.04606 [Temporary] govern the services that local social service agencies are required to provide for the benefit of residents of long-term care facilities when there are relocations. Individuals should consult 7 MCAR § 1.801 [Temporary] for information regarding the responsibilities of long-term care facilities.

12 MCAR § 2.04602 [Temporary] Definitions.

A. Scope of definitions. As used in 12 MCAR §§ 2.04601-2.04606 [Temporary] the following terms have the meanings given them.

B. Certified boarding care home. "Certified boarding care home" means a facility licensed under Minnesota Statutes, sections 144.50 to 144.56 and certified as an intermediate care facility as defined in United States Code, title 42, section 1396d, as amended through December 31, 1982, but excluding facilities for the mentally retarded as defined in United States Code, section 1396(d), as amended through December 31, 1982.

C. County relocation committee. "County relocation committee" means those staff persons of the local social service agency designated by the county social service director to serve as the relocation committee in a county.

D. Facility. "Facility" means a long-term care facility.

E. Local social service agency. "Local social service agency" means the local agency under the authority of the human services board or board of county commissioners which is responsible for social services.

F. Long-term care facility. "Long-term care facility" means a nursing home or a certified boarding care home.

G. Nursing home. "Nursing home" means a facility defined under Minnesota Statutes, section 144A.01, subdivision 5.

H. Relocation. "Relocation" means a situation when residents are to be discharged from a nursing home or certified boarding care home as a result of the closing of the facility, loss of or change in certification, termination of receivership, or termination of the facility's medical assistance provider agreement.

I. Resident. "Resident" means a person admitted to a long-term care facility.

J. Responsible county. "Responsible county" means the county where the facility from which the residents will be discharged is located.

12 MCAR § 2.04603 [Temporary] Relocation planning.

A. Relocation committee. The director of the local social service agency in each county shall designate appropriate staff as the county relocation committee. Staff designated as the county relocation committee shall be knowledgeable about the needs of long-term care residents, and the local resources available to meet those needs including medicaid and medicare.

B. Alternative resources. The county relocation committee shall develop a procedure to identify and monitor the current availability of alternative resources which may be used if the relocation of residents of a long-term care facility is necessary. These resources shall include at least the following:

1. a list of unoccupied beds in other facilities within the county and in neighboring counties; this list shall contain the following information about each facility:

a. the name, address, and telephone number of the facility;

b. the certification level of the available beds;

c. the type of services available within the facility; and

d. the number of beds that are available;

2. a list of alternative placements which includes swing beds in hospitals and foster care placement;

3. a list of the community and in-home health and social services which may be used on a temporary basis;

4. a list of the possible transportation resources;

5. a list of possible volunteer resources; and

6. the name, address, and telephone number of the appropriate regional ombudsman from the Minnesota Board on Aging Long-Term Care Ombudsman Program.

12 MCAR § 2.04604 [Temporary] Procedure upon notification.

The local social service agency and its county relocation committee shall initiate the procedures provided in 12 MCAR §§ 2.04605-2.04606 [Temporary] immediately upon receipt of written notification of the need for relocation from the income maintenance bureau of the Department of Public Welfare.

12 MCAR § 2.04605 [Temporary] Relocation assistance.

A. Resident information. Upon receiving written notice of the needs to relocate residents, the county relocation committee shall obtain from the facility the name of each resident to be relocated, the name and addresses of either a family member or the individual legally responsible for the resident's care, and the name and telephone number of the individual in the facility to be contacted for further information. This information shall be obtained at least 60 days before the date by which relocation is to be accomplished.

B. Coordination of relocation. The county relocation committee shall designate one of its members to act as a liaison to the individual in the facility responsible for coordinating the relocation of residents. The county designee shall meet with the appropriate facility staff to coordinate the relocation assistance offered by the county relocation committee with the relocation responsibilities of the facility. This coordination shall include participating, as requested, in any group meetings of residents and families to explain the steps being taken in arranging for the relocation of residents.

C. Offer of assistance. The county relocation committee shall provide a written offer of relocation assistance to each resident to be relocated and to their family member, and if applicable, to the person legally responsible for their care. The written offer of assistance shall contain at least the following information:

1. the name and telephone number of the individual to contact to request further information or assistance; and

2. an explanation of the relocation services offered by the county relocation committee.

D. Relocation services. The county relocation committee shall arrange for or provide the following minimum services for residents to be relocated as necessary to ensure placement or other appropriate alternative care:

1. Accurate and up-to-date information about the alternative arrangements for the appropriate care of the resident including all the resources identified in 12 MCAR § 2.04603 [Temporary] B.

2. Assistance in choosing among the available alternatives.

3. Counseling to enable the resident to adjust to the relocation.

4. Assistance in preparing the resident for the actual move which includes:

a. providing written information about the new facility to the resident;

b. providing an opportunity for each resident to visit the new facility to learn the physical layout, meet other residents and staff, and learn about the program and activities; and

c. encouraging a visit by staff and residents from the new facility to the resident prior to the actual relocation, if a site visit by the resident is not possible.

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5. Assistance in making arrangements for transportation as necessary.

6. Assurance that someone accompanies the resident during the actual move.

7. A follow-up visit to the resident within 30 days of the relocation. The follow-up visit includes interviewing or on-site observation of the resident or both, discussion with appropriate staff, and review of pertinent medical or social records to:

a. assess the adjustment of each resident to the new living environment; and

b. recommend appropriate services or methods to meet any special needs of each resident arising out of relocation.

12 MCAR § 2.04606 [Temporary] Reporting.

A. Initial report. The local social services agency shall submit a written report to the social services division of the Department of Public Welfare within one week from the date of receipt of the written notice of the need to relocate residents. The initial report shall contain the following information:

1. the names and phone numbers of the county relocation committee members;

2. a description of the procedure developed to identify and monitor the availability of the resources which may be used to meet the needs of the residents to be relocated; and

3. a timetable for the completion of the relocation process.

B. Status reports. During a relocation process the county relocation committee shall provide weekly status reports to the social services division of the Department of Public Welfare. The status reports shall include:

1. the number of individuals who have relocated during the week;

2. the date of each individual discharge;

3. the new placement of each individual relocated; and

4. identification of any specific problems which arise concerning the relocation process.

C. Summary report. The county relocation committee shall provide a summary report to the social services division of the Department of Public Welfare within 60 days of the completion of each facility relocation process. The report shall include:

1. the number of residents relocated;

2. the medical assistance identification number of each medical assistance recipient relocated;

3. the date of each resident's discharge;

4. the new placement of each resident;

5. the status of each resident at the time of the follow-up visit; and

6. the identification of problems encountered during the relocation process.

D. Submission of summary report. One copy of the summary report shall be submitted to the social service division of the Department of Public Welfare. A second copy of this report shall be submitted to the income maintenance bureau of the Department of Public Welfare.

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.13-14.28 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. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under § 14.18.

Department of Commerce

Adopted Temporary Rules Governing Self-Insurance Plan Administrators

The temporary rules proposed and published at *State Register*, Volume 8, Number 20, pages 1102-1106, November 14, 1983 (8 S.R. 1102) are adopted with the following modifications:

Temporary Rules as Adopted

4 MCAR § 1.9261 [Temporary] Authority.

Rules 4 MCAR §§ 1.9260-1.9269 [Temporary] are adopted under the authority of Minnesota Statutes, section ~~60A.28~~ 60A.23, subdivision 8, clause (5).

4 MCAR § 1.9262 [Temporary] Definitions.

The following definitions apply in 4 MCAR §§ 1.9260-1.9269 unless the context clearly indicates a different meaning.

F. Services or risk management services. "Services" or "risk management services" includes~~, but is not limited to,~~ accounting and record retention, actuarial in conjunction with the other services, claims administration, general administration, insurance, legal, loss control and safety, rehabilitation, risk management and analysis, and other services related to the establishment and maintenance of a program of self-insurance.

Department of Health

Adopted Amendments to Rules Relating to Services for Children With Handicaps

The rules proposed and published at *State Register*, Volume 8, Number 10, pages 358-362, September 5, 1983 (8 S.R. 358) are adopted as proposed.

Department of Labor and Industry Workers' Compensation Division

Adopted Amendments to Temporary Rules of the State Department of Labor and Industry Governing Workers' Compensation Permanent Partial Disability Schedule

The rules proposed and published at *State Register*, Volume 8, Number 14, pages 562-595, October 3, 1983 (8 S.R. 562) and Volume 8, Number 23, pages 1296-1337, December 5, 1983 (8 S.R. 1296) are adopted with the following modifications:

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8 MCAR § 1.9017 [Temporary] Musculo-skeletal schedule; joints.

E. Knee:

2. Procedures or conditions:

~~n.~~ r. proximal tibial osteotomy, flexion to 90 degrees, extension to 0 degrees, 5 percent.

8 MCAR § 1.9025 [Temporary] Pre-existing impairments.

D. Where the pre-existing disability and the subsequent permanent partial disability affect more than one member, apportionment must be determined as follows:

2. Combine the percentages obtained in 1. in the manner set forth in Minnesota Statutes, section 176.105, subdivision 4, clause (c). Prior to the next application of the formula, the result of an application of the formula must be stated as a decimal, not as a percentage, that is rounded up or down to four decimal places.

Department of Public Welfare
Bureau of Income Maintenance

Extension of Proposed Temporary Rules Governing Reimbursement Methodology for Hospital Inpatient Care Provided Under the Medical Assistance and General Assistance Medical Care Programs 12 MCAR §§ 2.05401-2.05403 (Temporary)

Notice of Continuation of Temporary Rules

Notice is hereby given that the above-entitled temporary rules which were effective on October 1, 1983 and published in the *State Register* on October 24, 1983 are continued in effect for an additional 180 days according to Minnesota Statutes, section 14.35.

This means that the above-entitled temporary rules will be in effect until September 24, 1984 unless they are superseded by permanent rules or legislative action.

January 18, 1984

Leonard W. Levine
Commissioner of Public Welfare

Department of Public Welfare
Bureau of Income Maintenance

Extension of Proposed Temporary Rules Governing the General Assistance Program and Notification and Referral to the Minnesota Emergency Employment Development Act Program 12 MCAR §§ 2.05501-2.05509 (Temporary) and 12 MCAR § 2.04422 (Temporary)

Notice of Continuation of Temporary Rules

Notice is hereby given that the above-entitled temporary rules which were effective on October 1, 1983 and published in the *State Register* on October 17, 1983 are continued in effect for an additional 180 days according to Minnesota Statutes, section 14.35.

This means that the above-entitled temporary rules will be in effect until September 24, 1984 unless they are superseded by permanent rules or legislative action.

January 18, 1984

Leonard W. Levine
Commissioner of Public Welfare

Department of Public Welfare
Bureau of Social Services

Extension of Proposed Temporary Rules Governing Child Day Care Sliding Fees, 12 MCAR § 2.164 (Temporary)

Notice of Continuation of Temporary Rules

Notice is hereby given that the above-entitled temporary rules which were effective on August 31, 1983 and published in the *State Register* on October 3, 1983 are continued in effect for an additional 180 days according to Minnesota Statutes, section 14.35.

This means that the above-entitled temporary rules will be in effect until August 24, 1984 unless they are superseded by permanent rules or legislative action.

January 18, 1984

Leonard W. Levine
Commissioner of Public Welfare

Minnesota Racing Commission

In the Matter of the Adoption of Rules of the Minnesota Racing Commission Governing Class A License Application, Class A License Criteria, Class B License Application, Class B License Criteria, Class A and Class B License Procedures, Revocation and Suspension of Licenses, Assessment of Penalties, Facilities and Security Modifications, Medical Services, Care of Horses, Approval of Contracts

The rules proposed and published at *State Register*, Volume 8, Number 20, pages 1162-1185, November 14, 1983 (8 S.R. 1162) are adopted with the following modifications:

Rules as Adopted

4 MCAR § 15.002 Applicant's affidavit.

An application for a Class A license must include, on a form prepared by the commission, an affidavit of the chief executive officer ~~or~~ of a major financial participant ~~as~~ in the applicant setting forth:

4 MCAR § 15.003 Disclosure of ownership and control.

An applicant for a Class A license must disclose:

E. If a nonindividual record or beneficial holder of an ownership or other voting interest of five percent or more in the applicant is identified pursuant to C.9. or 10. or D.6. or 7., the applicant makes its best effort to disclose the information required by those clauses as to record or beneficial holders of an ownership or other voting interest of five percent or more in that nonindividual holder. The disclosure required by those clauses must be repeated, in turn, until all indirect individual record and beneficial holders of ownership or other voting interests in applicant are so identified. The term "best effort," as used in this and subsequent sections of these rules, means an active and serious attempt which is made in good faith, and goes beyond due diligence, to provide the information required to be disclosed. When an applicant is unable, despite its best effort, to provide the information required, it shall explain fully and document its inability to do so;

G. any agreements or understandings which the applicant or any individual or entity identified pursuant to this rule has entered into regarding ownership or ~~control of the sponsorship or management of horse racing~~ operation of applicant's horse racing facility, and copies of any written agreements;

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4 MCAR § 15.004 Disclosure of character information.

An applicant for a Class A license must make its best effort, as defined in 4 MCAR § 15.003 E., to disclose whether the applicant or any individual or other entity identified pursuant to 4 MCAR §§ 15.003 or 15.010 B. or C. has:

4 MCAR § 15.005 Disclosure of improvements and equipment.

An application for a Class A license must disclose with respect to the pari-mutuel horse racing facility it will own and operate:

K. a description of the parking, giving detailed attention to access to parking from surrounding streets and highways. Number of parking spaces available ~~for the~~, distinguishing between public and other; a description of the road surface on parking areas and the distance between parking and the grandstand; and a road map of the area showing the relationship of parking to surrounding streets and highways;

4 MCAR § 15.006 Disclosure of development process.

An applicant for a Class A license must disclose with regard to development of its horse racing facility:

~~6.~~ G. whether the site has been acquired or leased by applicant. If so, the applicant must provide the documentation. If not, the applicant must disclose what actions the applicant must take in order to use the site.

4 MCAR § 15.008 Disclosure of financial plan.

An applicant for a Class A license must disclose with regard to its financial plan:

A. the financial projections for the development period and each of the first five racing years, with separate schedules based upon the number of racing days and types of pari-mutuel betting the applicant requires to break even and the optimum number of racing and types of betting applicant seeks each year. The commission will utilize financial projections in deciding whether to issue Class A licenses. Neither acceptance of a license application nor issuance of a license shall bind the commission as to matters within its discretion, including, but not limited to, assignment of racing days and designation of types of permissible pari-mutuel pools. The disclosure must include:

1. the following assumptions and support for them:

   v. federal taxes;

2. the following profit and loss elements:

   b. total operating expenses, including anticipated expenses for:

      (17) federal and state income taxes;

4 MCAR § 15.010 Disclosure of management.

An applicant for a Class A license must disclose with regard to the development, ownership, and operation of its pari-mutuel horse racing facility:

E. description of the applicant's security plan, including:

3. specific plans to discover persons at the horse racing facility who have been convicted of a felony, had a license suspended, revoked, or denied by the commission or by the horse racing authority of another jurisdiction or are a threat to the integrity of racing in Minnesota;

4 MCAR § 15.016 Personal information and authorization for release.

In an application for a Class A license the applicant must make its best effort, as defined in 4 MCAR § 15.003 E., to include the following with respect to each individual identified pursuant to 4 MCAR § 15.003 as an applicant, partner, director, officer, other policymaker, or holder of a direct or indirect record or beneficial ownership interest or other voting interest or control of five percent or more in the applicant and each individual identified pursuant to 4 MCAR § 15.010 B. or C.;

B. an authorization for release of personal information, on a form prepared by the commission, signed by the individual and providing that he or she:

3. releases authorized providers and users of the information from any liability under state or federal data privacy law.

4 MCAR § 15.017 Class A license criteria.

The commission may issue a Class A license if it determines on the basis of all the facts before it that: the applicant is financially able to operate a racetrack; issuance of a license will not create a competitive situation that will adversely affect racing and the public interest; the racetrack will be operated in accordance with all applicable laws and rules; and the issuance of the license will not adversely affect the public health, safety, and welfare. In making the required determinations, the commission must consider the following factors and indices:

A. the integrity of the applicant, its partners, directors, officers, policymakers, managers, and holders of ownership or other voting interests or control, including~~, but not limited to~~:

8. any other indices related to integrity which the commission deems crucial to its decision making as long as the same indices are considered with regard to all applicants;

C. the quality of physical improvements and equipment in applicant's facility, including~~, but not limited to~~:

14. any other indices related to quality which the commission deems crucial to its decision making as long as the same indices are considered with regard to all applicants;

E. financial ability to develop, own, and operate a pari-mutuel horse racing facility successfully, including~~, but not limited to~~:

8. any other indices related to financial ability which the commission deems crucial to its decision making as long as the same indices are considered with regard to all applicants;

F. status of governmental actions required by the applicant's facility, including~~, but not limited to~~:

5. any other indices related to status of governmental actions which the commission deems crucial to its decision making as long as the same indices are considered with regard to all applicants;

G. management ability of the applicant, including~~, but not limited to~~:

8. any other indices related to management ability which the commission deems crucial to its decision making as long as the same indices are considered with regard to all applicants;

J. impact of facility, including~~, but not limited to~~:

6. any other indices related to impact which the commission deems crucial to its decision making as long as the same indices are considered with regard to all applicants;

L. effects on competition, including~~, but not limited to~~:

2. minimum and optimum number of racing days sought by the applicant;

3. any other indices of the impact of competition which the commission deems crucial to decision making as long as the same indices are considered with regard to all applicants.

The commission also must consider any other information which the applicant discloses and is relevant and helpful to a proper determination by the commission.

4 MCAR § 15.019 Applicant's affidavit.

An application for a Class B license must include, on a form prepared by the commission, an affidavit of the chief executive officer of or a major financial participant ~~as~~ in the applicant setting forth:

4 MCAR § 15.020 Disclosure of ownership and control.

An applicant for a Class B license must disclose:

E. if a nonindividual record or beneficial holder of an ownership or other voting interest of five percent or more in the applicant is identified pursuant to C.9. or 10. or D.6. or 7., the applicant must make its best effort, as defined in 4 MCAR § 15.003 E., to disclose the information required by those clauses as to record or beneficial holders of an ownership or other voting interest of five percent or more in that nonindividual holder. The disclosure required by those clauses must be repeated, in turn, until all indirect individual record and beneficial holders of ownership or other voting interests in the applicant are so identified;

G. any agreements or understandings which the applicant or any individual or entity identified pursuant to this rule has entered into regarding ~~ownership or control of the~~ applicant's sponsorship or management of horse racing, and copies of any written agreements;

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4 MCAR § 15.021 Disclosure of character information.

An applicant for a Class B license must make its best effort, as defined in 4 MCAR § 15.003 E., to discuss whether the applicant or any individual or other entity identified pursuant to 4 MCAR § 15.020 or 15.027 B. or C. has:

4 MCAR § 15.022 Disclosure of improvements and equipment.

An application for a Class B license must disclose with respect to the facility at which it will sponsor and manage pari-mutuel horse racing:

K. a description of the parking, giving detailed attention to access to parking from surrounding streets and highways. Number of parking spaces available ~~for the~~, distinguishing between public and other; a description of the road surface on parking areas and the distance between parking and the grandstand; and a road map of the area showing the relationship of parking to surrounding streets and highways;

4 MCAR § 15.025 Disclosure of financial plan.

An applicant for a Class B license must disclose with regard to its financial plan:

A. financial projections for any development period in each of the first or next three racing years, with separate schedules based upon the number of racing days and types of pari-mutuel betting the applicant requires to break even and the optimum number of racing and types of betting applicant seeks each year. The commission will utilize financial projections in deciding whether to issue Class B licenses. Neither acceptance of a license application nor issuance of a license shall bind the commission as to matters within its discretion, including, but not limited to, assignment of racing days and designation of types of permissible pari-mutuel betting pools. The disclosure must include:

1. the following assumptions and support for them:

   u. debt service~~.~~;

   v. federal taxes;

2. the following profit and loss elements:

   b. total operating expenses, including anticipated expenses for:

      (17) federal and state income taxes;

4 MCAR § 15.027 Disclosure of management.

An applicant for a Class B license must disclose with regard to its management of pari-mutuel horse racing:

E. a description of the applicant's security plan, including:

3. specific plans to discover persons at the horse racing facility who have been convicted of a felony, had a license suspended, revoked, or denied by the commission or by the horse racing authority of another jurisdiction, or are a threat to the integrity of racing in Minnesota;

J. a description of the applicant's plan for pari-mutuel betting, including number of line divisions, windows, selling machines, and clerks; use or duties of each; and accounting procedures, including its proposed system of internal audit and supervisory controls;

4 MCAR § 15.033 Personal information and authorization for release.

In an application for a Class B license the applicant must make its best effort, as defined in 4 MCAR § 15.003 E., to include the following with respect to each individual identified pursuant to 4 MCAR § 15.020 as an applicant, partner, director, officer, other policymaker or holder of a direct or indirect record or beneficial ownership interest or other voting interest or control of five percent or more in the applicant and each individual identified pursuant to 4 MCAR § 15.027 B. or C.:

B. an authorization for release of personal information, on a form prepared by the commission, signed by the individual and providing that he or she:

3. releases authorized providers and users of the information from any liability under state or federal data privacy law.

4 MCAR § 15.034 Class B license criteria.

The commission may issue a Class B license if it determines on the basis of all the facts before it that: the applicant is fit to sponsor and manage horse racing; issuance of a license will not create a competitive situation which will adversely affect racing and the public interest; the racetrack will be operated in accordance with all applicable laws and rules; and issuance of a license will not adversely affect the public health, safety, and welfare. In making the required determinations, the commission must consider the following factors and indices:

A. the integrity of the applicant, its partners, directors, officers, policymakers, managers, and holders of ownership or other voting interests or control, including~~, but not limited to~~:

8. any other indices related to integrity which the commission deems crucial to decision making as long as the same indices are considered with regard to all applicants;

C. the quality of physical improvements and equipment applicant will use, including~~, but not limited to~~:

14. any other indices related to quality which the commission deems crucial to decision making as long as the same indices are considered with regard to all applicants;

D. financial ability to sponsor and manage pari-mutuel horse racing successfully, including~~, but not limited to~~:

7. any other indices related to financial ability which the commission deems crucial to decision making as long as the same indices are considered with regard to all applicants;

F. management ability of the applicant, including~~, but not limited to~~:

11. any other indices related to management which the commission deems crucial to its decision making as long as the same indices are considered with regard to all applicants;

J. effects on competition, including~~, but not limited to~~:

2. minimum and optimum number of racing days sought by the applicant;

3. any other indices related to effects on competition which the commission deems crucial to decision making as long as the same indices are considered with regard to all applicants.

The commission also must consider any other information which the applicant discloses and is relevant and helpful to a proper determination by the commission.

4 MCAR § 15.035 Class A and B license application disclosures.

An applicant for a Class A or B license in its disclosures must:

B. make its best effort, as defined in 4 MCAR § 15.003 E., to provide all information required to be disclosed;

C. provide only information relevant to disclosures requested by the commission;

D. upon request of the commission or its agents, provide copies of any documents used in the preparation of its application.

4 MCAR § 15.040 Deadlines for submission of Class A and B license applications.

Deadlines for submission of a Class A or B license application are as follows:

A. applications for a Class A license to own and operate a racetrack in the seven-county metropolitan area must be received by the commission's designee before 5:00 p.m. on the 14th day, as computed pursuant to Minnesota Statutes, section 645.15, after these rules become effective or on ~~January 15~~ March 1, 1984, whichever is later. The designee must deliver investigation fees to the commission promptly upon receipt. The designee must retain and safeguard until the deadline with seals intact all applications received. Promptly after the deadline, the designee must deliver the applications to the commission for opening;

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

OFFICIAL NOTICES

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

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

Department of Commerce

Outside Opinion Sought Regarding Proposed Rules Relating to Automobile Insurance Nonrenewals Including the Impact of the Rules on Small Businesses

Notice is hereby given that the Department of Commerce is seeking information or opinions from persons outside the agency in preparing to promulgate new rules governing automobile insurance nonrenewals. Promulgation of these rules is authorized by Minnesota Statutes, section 65B.17, subd. 2.

Outside opinion is also being solicited as to how these rules will affect small businesses as defined by Minnesota Laws 1983, ch. 188, codified as Minnesota Statutes § 14.115, subd. 1.

The Department of Commerce requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing to: William Kyle, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101, (612) 296-6944.

All statements of information and comment shall be accepted until March 7, 1984. Any written material received by the Department of Commerce shall become part of the record in the event that the rules are promulgated.

Michael A. Hatch
Commissioner of Commerce

Department of Commerce

Outside Opinion Sought Regarding Proposed Rules Relating to Self-Insurance Plan Administrators Including the Impact of the Rules on Small Businesses

Notice is hereby given that the Department of Commerce is seeking information or opinions from persons outside the agency in preparing to promulgate new rules governing self-insurance plan administrators. Promulgation of these rules is authorized by Minnesota Statutes, section 60A.23, subd. 8.

Outside opinion is also being solicited as to how these rules will affect small businesses as defined by Minnesota Laws 1983, ch. 188, codified as Minnesota Statutes § 14.115, subd. 1.

The Department of Commerce requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing to: Rose Ortiz, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101, (612) 297-4017.

All statements of information and comment shall be accepted until March 7, 1984. Any written material received by the Department of Commerce shall become part of the record in the event that the rules are promulgated.

Michael A. Hatch
Commissioner of Commerce

Ethical Practices Board

Request for Advisory Opinion Re: Hennepin County Disclosure Law—Administration

The Minnesota State Ethical Practices Board solicits opinions and comments to the following request for an advisory opinion which will be discussed at its March 9, 1984 Board meeting. Written comments concerning the opinion request should be forwarded to arrive at the Board's office prior to February 24, 1984.

Ms. Mary Ann McCoy, Executive Director
State Ethical Practices Board
41 State Office Building
St. Paul, MN 55155

Dear Ms. McCoy:

I am the official responsible for administration of the election laws for Hennepin County and am requesting an advisory opinion in regards to Chapter 362, Laws of 1980.

Kroening Volunteer Committee, a State principal campaign committee, made a one-time contribution of $300.00 to Citizens for Daugherty, a Minneapolis Alderman candidate. With this contribution, according to Section 6, they became a political fund and were required to file their committee with Hennepin County.

Since they do not anticipate contributing to another Hennepin County Chapter 362 candidate, they would like to terminate their reporting responsibility to Hennepin County. However, as an on-going State campaign committee they have a cash balance of over $100.00. According to Section 7, Subd. 4, they can not terminate and must continue to report to the State and to Hennepin County.

My question is, may we do an administrative termination on request by State committees who inadvertently contribute to a candidate who falls under Hennepin County Chapter 362 regulations?

Sincerely,

Vernon T. Hoppe, Director of Property Taxation
Hennepin County

Metropolitan Council and Metropolitan Health Planning Board

Public Hearings for the Joint Consideration of:

I. 1984-85 Application for Renewal of HSA Designation

II. 1984 Annual Implementation Plan

The Metropolitan Council and Metropolitan Health Planning Board will jointly hold a public hearing on Wednesday, February 29, 1984 at 7 p.m. in the Council Chambers of the Metropolitan Council, 300 Metro Square Building, St. Paul, Minnesota 55101 for the purpose of receiving written and oral comments on the 1984-85 Application for Renewal of the Metropolitan Council/Metropolitan Health Planning Board's HSA Designation and the 1984 Annual Implementation Plan. Copies of the 1984-85 HSA Application and the Annual Implementation Plan are available for public inspection beginning January 30, 1984 at the following locations:

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

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

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

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

Carver County Library—Chaska Branch
314 Walnut St.
Chaska, MN 55318

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

Hennepin County Library—Southdale Branch
7001 York Av.
Edina, MN 55435

Ramsey County Library—Roseville Branch
2180 N. Hamline Av.
Roseville, MN 55113

Scott County Library—Shakopee Branch
235 S. Lewis St.
Shakopee, MN 55379

Washington County Library—Park Grove Branch
7420—80th St. S.
Cottage Grove, MN 55106

Metropolitan Health Planning Board
300 Metro Square Bldg.
St. Paul, MN 55101

Copies of the Annual Implementation Plan, and Work Program and Budget for the Agency are available at no cost from the Metropolitan Council Public Information Office, 300 Metro Square Bldg., St. Paul, MN 55101, Telephone (612) 291-6464.

Persons wishing to speak at this public hearing may register in advance by contacting Debbie Conley at 291-6352. Those who register first will be scheduled to speak first. If you cannot attend, you are encouraged to send written comments to the Metropolitan Health Planning Board, up to 10 working days following this hearing. For further information contact the Metropolitan Health Planning Board at 291-6352.

Gerald J. Isaacs, Chairman
Metropolitan Council

Elaine Voss, Chairperson
Metropolitan Health Planning Board

Department of Natural Resources

Notice of Sale of State Peat Lease

Notice is hereby given that a lease sale to remove peat in swamp and school fund lands located in 2632 acres, more or less, of the Arlberg Bog, St. Louis County, Minnesota will be held before the State Executive Council at their regularly scheduled meeting, at 9:00 AM on March 7, 1984. At the time of the issuance of this notice, the meeting is scheduled to be held at 500 Rice Street, St. Paul, Minnesota.

The Commissioner of Natural Resources, Box 45, Centennial Office Building, St. Paul, Minnesota 55155, will receive sealed bids and applications for a lease to remove peat under the authority of Minnesota Statutes 1982, Section 92.50 up to the time specified below.

Each application and bid must be submitted in a bid envelope obtained from the Division of Minerals and each sealed bid envelope must be enclosed in another envelope and delivered to the Commissioner of Natural Resources, Attention: Division of Minerals, Box 45, Centennial Office Building, St. Paul, Minnesota 55155. Bids must be received by 9:00 AM on March 7, 1984 and no bids received after that time will be considered.

At the time specified for the lease sale, the Commissioner, together with the State Executive Council, will publicly open the bids and announce the amount of each bid separately. A lease will be awarded by the Commissioner, with approval of the State Executive Council, to the highest responsible bidder; but no bids will be accepted that do not equal or exceed the base royalty rates set forth in the prospectus. The right is reserved to the State, through the Executive Council, to reject any or all bids. All bids not accepted will become void.

In the absence of satisfactorily demonstrated past technical and financial competence to perform under similar circumstances, the Commissioner may require bidders to submit information relating to their technical and financial competence to perform under the State's lease to remove peat. If the Commissioner makes such a request of a bidder, the information shall be submitted within 30 days after the date of the Commissioner's request.

Application and bid forms, bid envelopes, instructions on how bids are to be submitted, and copies of the prospectus may be obtained from the Department of Natural Resources, Division of Minerals Office at Box 45, Centennial Office Building, St. Paul, Minnesota 55155, or Box 567, Hibbing, Minnesota 55746.

January 30, 1984

Joseph N. Alexander, Commissioner
Department of Natural Resources

Department of Public Welfare
Health Care Programs Division

Medicaid Demonstration Project: Notice of Provider Education Seminar

The Department of Public Welfare intends to contract with health care providers to provide health care services for Medical Assistance (MA) recipients on a prepaid basis. A demonstration project will be conducted in three counties to test the feasibility of MA prepayment. The Department is offering a provider education seminar for providers interested in participating in the project or in learning more about their possible role in the project. The metropolitan area counties which have tentatively been selected as demonstration sites are Hennepin and Anoka. Health care providers in these counties might find the seminar of particular interest.

Provider Education Seminar
February 7, 1984
8:30 a.m. to 12:00 p.m.
State Office Building
435 Park Avenue (just West of Capitol)
St. Paul, Minnesota
Room 81 (Auditorium, Ground Floor)

Providers attending the seminar will receive a packet of information describing the project, the capitation rates and the criteria for participation.

Providers who cannot attend, but would like to receive information on the project may contact:

Ms. Kathy Heuer
Health Care Programs Division
Space Center, 444 Lafayette Road
St. Paul, Minnesota 55101
Phone: (612) 297-4668

Department of Transportation

Notice of Possible Acquisition of Rail Line—Burlington Northern, Starbuck-to-Glenwood Line

The Commissioner of the Minnesota Department of Transportation is publishing this Notice to list a rail line for possible acquisition in the State Rail Bank Program. This Notice is published pursuant to Minnesota Statutes, section 222.63, subdivision 3, and in accordance with the rules governing the State Rail Bank, 14 MCAR § 1.4012. Information about the line proposed for acquisition is as follows:

1. The rail line is known as the Starbuck to Glenwood line, it is approximately 8 miles long and is owned by the Burlington Northern, Inc. (BN). The Department is proposing to acquire approximately 6 miles of this line from the grade crossing of Trunk Highway 28 and the line, to the City of Glenwood.

2. The line is located in Pope County.

3. The identified future use for the line is to relocate Trunk Highway 28.

4. The Glenwood to Starbuck line is a segment of the Starbuck to Villard line which was abandoned by BN on May 12 1981. The track structure has been removed from the property.

Written comments about the proposed acquisition of this abandoned line under the State Rail Bank Program should be sent to the Department of Transportation within 30 days of the publication of this Notice. Comments should be mailed to the following address:

Charles Sanft, Director
Rail Planning and Program Development Section
Minnesota Department of Transportation
810 Transportation Building
St. Paul, Minnesota 55155
612/296-1613

Richard P. Braun
Commissioner

State Board of Vocational-Technical Education

Notice of Intent to Prepare Lists for Future Rulemaking Proceedings

In accordance with Minnesota Law, 1980, Chapter 615, the Minnesota State Board of Vocational-Technical Education is establishing a list of persons to receive official notice of its rulemaking proceedings. The law requires each agency or department to establish and maintain such a list to replace the list currently maintained by the State Board of Education/State Board of Vocational Education.

If you wish to receive notice of rulemaking proceedings of the State Board of Vocational-Technical Education, please notify the board in writing. You will then receive notice of any rulemaking proceedings initiated after the date on which your request is received. Please note that this procedure will put you only on the list of the State Board of Vocational-Technical Education.

Please send your written request to:

Joseph P. Graba, State Director
State Board of Vocational-Technical Education
564 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
(612) 296-3995

Water Resources Board

Notice of Regular Meeting Date

Starting on February 10, 1984, the Minnesota Water Resources Board will hold a regular monthly meeting on the second Friday of each month beginning at 9:30 a.m. in its office at 555 Wabasha Street, Room 206, St. Paul, Minnesota 55102.

If you would like to receive meeting notices, contact Karen Schultz at (612) 296-2840.

Mel Sinn
Executive Director

STATE CONTRACTS

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

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

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

Request for Proposals for the Planning and Implementation of a Minnesota Wood Products Trade Show

The Minnesota Department of Energy and Economic Development/Governor's Council on Rural Development (Mn DEED/GCRD) is requesting proposals from qualified individuals interested in working with Mn DEED/GCRD on a project to design, plan, and implement a trade show to promote Minnesota's wood products.

The trade show will be held approximately in February, 1985. A professional trade show/conference consultant will be responsible for program planning.

Proposals are being requested to complete the following major activities.

A. Program Development

B. Coordination

C. Show Management

It is estimated that the cost of this activity need not approach but shall not exceed $11,500. Proposals should be received by Mn DEED/GCRD no later than 4:30 p.m. Friday, February 24, 1984. The formal Request for Proposals may be requested and inquiries should be directed to:

Jane Stevenson, Program Manager
Governor's Council on Rural Development
Department of Energy and Economic Development
100 Hanover Building
480 Cedar Street
St. Paul, Minnesota 55101
Phone: (612) 296-3591

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

Request for Proposals to Produce the Conference Proceedings Book from the Willmar Rural Women's Conference

The Minnesota Department of Energy and Economic Development/Governor's Council on Rural Development (Mn DEED/GCRD) is requesting proposals from qualified individuals interested in working with Mn DEED/GCRD on a project to produce the conference proceedings book from the Willmar rural women's conference, "Rural Women: An Untapped Resource."

The book will be produced as the primary record of this conference, which was held in May of 1982. It will be produced in sufficient quantities to provide each attendee of the conference with a copy, as well as complimentary copies to other programs around rural Minnesota which work with rural women interested in starting their own business. Proposals are being requested to complete the following major project activities:

A. Complete Rough Editing of the Transcript

B. Do Final Editing of the Manuscript

C. Select and Work with a Typesetter

D. Select and Work with a Printer

It is estimated that the cost of this activity need not approach but shall not exceed $20,000. Proposals should be received by Mn DEED/GCRD no later than 4:30 p.m. Friday, February 24, 1984. The formal Request for Proposals may be requested and inquiries should be directed to:

Jane Stevenson, Program Manager
Governor's Council on Rural Development
Department of Energy and Economic Development
100 Hanover Building
480 Cedar Street
St. Paul, Minnesota 55101
Phone: (612) 296-3591

Minnesota Housing Finance Agency Home Improvement Division

Request for Proposals for Engineer's/Architect's Consultation Services

The Minnesota Housing Finance Agency (MHFA) is seeking proposals from engineers and architects to perform energy design evaluations on between 20 and 50 passive solar homes.

The engineer/architect firm selected by the MHFA will conduct energy design analyses on passive solar homes to assess the cost effectiveness of the energy conserving features and use of solar energy on an annual basis. The firm selected must issue a certificate of cost effectiveness for each home design evaluated.

Proposals must include: (1) an outline of the evaluation method to be employed (in case commercially available software is to be used, a sample print-out should be attached); and (2) the cost for the energy design evaluation for each home design, on a sliding scale basis (if applicable), based on an assumption of between 20 to 50 designs.

The written proposals must be received no later than 4:30 p.m. on Monday, February 27, 1984. For more detailed information on the required contents of the proposal, please call Bradley Simenson at (612) 297-3122.

General inquiries and proposals should be sent to:

Bradley Simenson
Minnesota Housing Finance Agency
333 Sibley Street, Suite 200
St. Paul, Minnesota 55101
(612) 297-3122

Department of Public Welfare
Support Services Bureau

Request for Proposal for Services as Part of a Rulemaking Project

Notice is hereby given that the Support Services Bureau, Department of Public Welfare, is requesting proposals for services using research, writing and group process skills as an extension to its 1983 rulemaking demonstration project. This project is designed to gain approval of amendments to selected Department rules and to test the effectiveness of utilizing specialized skills on a centralized basis in the development and approval of rules.

The estimated amount of the contract is not to exceed $27,500.

The guidelines to be used in the preparation of a proposal and a detailed description of the project are available from the Manuals Section, Support Services Bureau, Department of Public Welfare. Deadline for receipt of proposals is 4:30 p.m., February 27, 1984. To obtain a copy of the detailed proposal, write or call:

Robert Hamper
Department of Public Welfare
Manuals Section
4th Floor, Centennial Bldg.
St. Paul, Minnesota 55155
(612) 296-2794

Department of Transportation
Division of Technical Services

Potential Availability of Contracts for a Variety of Highway Related Technical Activities

The Minnesota Department of Transportation (Mn/DOT) is planning an expanded highway program. To assist it with the development of this program, Mn/DOT may require the services of qualified consultants for work which may include but not be limited to:

Category A: Preliminary Design (Environmental Studies, Project Development Reporting and Geometric Layouts).

Category B: Detail Design & Plan Preparation

1. Highway
2. Lighting
3. Signing
4. Traffic Signals
5. Landscaping
6. Hydraulics

Category C: Field Surveys (Control, Design)

Category D: Soils & Foundation Investigations

Category E: Special Services

1. Land Use Study
2. Chemical Disposal or Recycle
3. Endangered Species
4. Building Condition Survey
5. Traffic Forecasting
6. Water
7. Air
8. Noise
9. Hydrologic
10. Vibration (Blasting, Pile Driving)
11. Expert Witness (Litigation-Testimony)
12. Audit Evaluation (Federal Procurement Regulations)

Category F: Construction

1. Management
2. Inspection
3. Staking

Those consultants who wish to be considered for any of the potential projects, please furnish the following information:

1. Federal Forms 254/255 and/or your brochure.
2. Indicate the category of activity in which you are qualified and wish to be considered (Example: B-1-5-6, C).
3. Indicate in which fields your key personnel are registered (Engineer, Architect, etc.).
4. Indicate whether or not you are an Equal Opportunity firm and have an Affirmative Action Plan.
5. Indicate if your firm is a certified minority owned firm.
6. Indicate if your firm qualifies as a Small Business Enterprise within the definition contained in M.S. 645.445.
7. Indicate if your firm qualifies as a Minnesota Resident within the definition contained in M.S. 16.072.

It is expected that a qualified reference list will be developed from the responses that will remain in effect until June 30, 1985.

This is not a request for proposal. All expressions of interest in being considered shall be delivered to the address indicated below not later than four o'clock (4:00) PM, February 27, 1984.

B. E. McCarthy, Director
Office of Consultant Engineering Services
Transportation Building, Room 612B
St. Paul, Minnesota 55155
Telephone: (612) 296-3051

SUPREME COURT

Decisions of the Court of Appeals Filed Wednesday, January 25, 1984

Compiled by Wayne O. Tschimperle, Clerk

C5-83-1904 Donald E. Montgomery, Appellant, v. American Hoist and Derrick Company, a Delaware Corporation, Respondent. District Court, Ramsey County.

Motion Denied. Popovich, C.J.

CX-83-1588 Elroy Smith, Relator, v. American Indian Chemical, Dependency Diversion Project, Respondent, and Commissioner of Economic Security, Respondent. Department of Economic Security.

A three day unexcused absence from work caused by an employee's incarceration for failure to pay a speeding ticket is misconduct disqualifying the employee from receiving unemployment compensation benefits.

Affirmed. Popovich, C.J.

CX-83-1283 Boulevard Del, Inc., Appellant, v. Marvin Stillman, Defendant & Third Party Plaintiff, Respondent, Arthur Mack, et al., Third Party Defendants. District Court, Hennepin County.

1. The district court lacked subject matter jurisdiction in vacating summary judgment when judgment had been entered, paid in full and satisfied of record.

2. The district court erred in vacating summary judgment where there was no evidence properly submitted to the court pursuant to Minn. R. Civ. P. 56.05 opposing summary judgment, and there was no affidavit submitted to the court pursuant to the Minn. R. Civ. P. 56.06 stating why a continuance was needed.

Reversed. Foley, J. Took no part, Segwick, J.

C9-83-1209 Loren R. Ortendahl, et al., Respondents, v. Loren L. Bergmann, et al., Appellants. District Court, Douglas County.

1. The trial court may clarify by parol evidence an ambiguous legal description but may not rewrite a purchase agreement to include in the description the property interests of a third party over objections of purchaser.

2. Vendors may not have specific performance of a purchase agreement when they cannot deliver marketable title as called for in the agreement.

Reversed. Foley, J.

C9-83-1579 Dale E. Hanka, Relator, v. The Hardware, Respondent, and Commissioner of Economic Security, Respondent. Department of Economic Security.

1. Where the commissioner, rather than the employer, disputes an employee's eligibility for benefits, the commissioner must assume the initial burden of proving that the employee has voluntarily terminated employment and is thus disqualified for benefits.

2. The evidence in this case does not reasonably support the commissioner's finding that an employer-employee relationship did not exist.

Remanded. Lansing, J.

C7-83-1676 State of Minnesota, Respondent, v. Charles David Pickett, Appellant. District Court, Hennepin County.

1. The trial court did not err in denying defendant's request for a dispositional departure.

2. Although the trial court erred in calculating the duration of the consecutive sentences imposed, the existence of aggravating circumstances justified the limited sentencing departure.

Affirmed. Sedgwick, J.

C9-83-1372 David Joseph Szczech, Respondent, v. Commissioner of Public Safety, Appellant. District Court, Hennepin County.

The Municipal Court retains jurisdiction to hear implied consent cases even if the hearing is not held within the statutory time limit of 60 days.

Minn. Stat. § 169.123(6) 1982), which requires that implied consent hearings "shall be held . . . no later than 60 days following the filing of a petition for review," is directory, not mandatory.

Reversed and remanded. Wozniak, J.

Decisions of the Supreme Court Filed Friday, January 27, 1984

Compiled by Wayne O. Tschimperle, Clerk

C1-83-1057 State of Minnesota, Respondent, v. Gordon Melvin Gale Broten, Jr., Appellant. District Court, Roseau County.

Trial court correctly concluded that aggravating circumstances were present justifying an upward durational departure: although trial court erred in computing defendant's criminal history score, defendant's sentence need not be reduced because the sentence imposed was still within the permissible range of departure from the presumptive sentence obtained by using the correct criminal history score.

Affirmed. Amdahl, C.J.

C6-82-1111 State of Minnesota, Respondent, v. Tommy E. Russell, Appellant. District Court, Hennepin County.

Defendants charged with theft who claim that they were victims of racially discriminatory enforcement failed to meet their burden of establishing a *prima facie* case of racially discriminatory impact and discriminatory intent.

Affirmed. Wahl, J.

C8-82-851 In Re the Marriage of: Mary Mae O'Brien, petitioner, Appellant, v. Jerome P. O'Brien, Respondent. District Court, Wright County.

This case is remanded to provide life insurance protection for an award of permanent spousal maintenance for the wife, but otherwise the trial court's decision with respect to division of property, spousal maintenance, child support, and other matters is affirmed as within the trial court's discretion.

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

C9-83-142 Michael Hafner, et al., Plaintiffs, v. David Thomas Iverson, Defendant and Third Party Plaintiff, Burlington Northern, Inc., defendant and third party plaintiff, Appellant, v. Collins Electric, third party defendant, Respondent. District Court, Ramsey County.

1. Superseding, intervening cause was not established as a matter of law and the case is, therefore, remanded for a new trial.

2. In an action for contribution brought by a third-party tort-feasor against the employer of the injured employee claimant under *Lambertson v. Cincinnati Corp.*, 312 Minn. 114, 257 N.W.2d 679 (1977), the employer is not entitled to assert the fellow-servant doctrine as a defense.

Reversed and remanded for a new trial. Simonett, J.

CX-82-1130, C1-82-1131, CX-82-1354 Northern States Power Company, Petitioner, Respondent, v. Minnesota Public Utilities Commission, Appellant (C1-82-1131), and Minnesota Department of Public Service, Intervenor, Appellant (C1-82-1131), Minnesota Office of Consumer Services, Intervenor, Appellant (CX-82-1130), City of St. Paul, et al., Intervenors-Respondents Below, Minnesota Public Interest Research Group, Intervenor, Appellant (CX-82-1354). District Court, Ramsey County.

The acceptance by the Federal Energy Regulatory Commission of a filed amended coordinating agreement between Minnesota and Wisconsin electrical power utilities established a wholesale rate which must be considered by the Minnesota Public Utilities Commission as an expense of power purchased in setting rates for Minnesota retail electric power purchases.

Affirmed. Kelley, J.

C5-82-1584, C2-82-1607, C3-83-7 City of Moorhead, Appellant (C5-82-1584, C2-82-1607), Konrad Olson, Peter Joseph Miller and FM Apartment Association, Appellants (C3-83-7), v. Minnesota Public Utilities Commission, Respondent, Minnesota Department of Public Service, Respondent, Northern States Power Company, Respondent, City of St. Paul, Respondent, St. Paul Area Chamber of Commerce, Respondent. District Court, Ramsey County.

1. A determination by the Minnesota Public Utilities Commission that a public utility in the business of distributing natural gas to consumers operated a non-integrated gas distribution system in the state was supported by substantial evidence.

2. In reviewing an order of the Minnesota Public Utilities Commission allocating the cost of gas purchased among classes of a non-integrated natural gas distribution system, the court will uphold the decision unless it is in excess of statutory authority, unjust, unreasonable or discriminatory.

3. Appellants have failed to demonstrate by clear and convincing evidence that an order of the Minnesota Public Utilities Commission resulted in arbitrary, unjust, unreasonable or discriminatory rates.

4. Bare allegations unsubstantiated by legal proof are insufficient to successfully establish procedural irregularity by an administrative agency in arriving at its decision.

Affirmed. Kelley, J.

C6-82-900 In Re Petition for Disciplinary Action Against Roman S. Tymiak, an Attorney at Law in the State of Minnesota. Supreme Court.

Disbarred. Per Curiam.

TAX COURT

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

State of Minnesota Tax Court

Tini Mechanical Contractors, Inc., Appellant, v. Commissioner of Revenue, Appellee, Docket No. 3708

Findings of Fact, Conclusions of Law and Order for Judgement

The above matter was tried by the Minnesota Tax Court, Judge Carl A. Jensen presiding, at the County Courthouse in the City of Duluth on October 25, 1983.

John Trenti of Trenti, Saxhaug, Berger, Roche, Stephenson, Richards & Aluni, Ltd. appeared on behalf of Appellant.

Thomas K. Overton, Special Assistant Attorney General, appeared on behalf of Appellee.

Briefs were subsequently submitted by the parties.

SYLLABUS

A steam heat main in the streets of the City of Virginia owned by the Public Utilities Commission is construed to be personal property included in Minn. Stat. § 272.03, subd. 2, which reads in part as follows:

"*Personal Property*. For the purposes of taxation, " includes:

* * *

"(5) All gas, electric, and water mains, pipes, conduits, subways, poles, and wires of gas, electric light, water, heat, or power companies, and all tracks, roads, bridges, conduits, poles and wires of street railway, plank road, gravel road, turnpike, and bridge companies;"

* * *

FINDINGS OF FACT

1. This is an appeal from an Order of the Commissioner of Revenue dated September 17, 1982, assessing a sales tax against Tini Mechanical Contractors, Inc., Appellant, for the period January 1, 1980, through February 28, 1982, in the amount of $45,810.60, which included tax of $37,615.11 and interest of $8,195.49, for the sales tax on steam heat pipe purchased by Tini from TPCO in the amount of $939,894.15 for resale and installation to the Public Utilities Commission of Virginia.

2. Tini was the successful bidder in a contract to install steam heat pipes in the streets of the City of Virginia for the Public Utilities Commission of the City of Virginia. The total contract price was $2,795,652, which included the pipe referred to in Item 1.

3. Tini did not pay sales tax to TPCO on the basis that the pipe was purchased for resale.

4. The pipe referred to in the Order of the Commissioner was sold to the Public Utilities Commission of the City of Virginia

for transmitting steam heat and continues to be personal property after installation in the streets of the City of Virginia as specifically provided by Minn. Stat. § 272.03, subd. 2, which reads in part as follows:

"*Personal Property*. For the purposes of taxation, "personal property" includes:

* * *

"(5) All gas, electric, and water mains, pipes, conduits, subways, poles, and wires of gas, electric light, water, heat, or power companies, and all tracks, roads, bridges, conduits, poles and wires of street railway, plank road, gravel road, turnpike, and bridge companies;"

5. The Public Utilities Commission of the City of Virginia is exempt from sales tax as a government agency, and there is no sales tax due on the sale of the pipe to said agency.

6. The pipe was purchased by Tini from TPCO for the purpose of resale, and this is not a taxable event.

7. The Order of the Commissioner assessing sales tax should be rescinded.

CONCLUSIONS OF LAW AND ORDER FOR JUDGMENT

1. The sale of steam heat pipe by Tini Mechanical Contractors, Inc., the Appellant, to the Public Utilities Commission of the City of Virginia was a sale of personal property to a tax exempt agency, and no sales tax is due thereon.

2. The Commissioner's Order of September 17, 1982, assessing sales tax against the Appellant in the amount of $45,810.60 is hereby rescinded.

IT IS SO ORDERED.

January 20, 1984

By the Court,
Carl A. Jensen, Judge
Minnesota Tax Court

MEMORANDUM

Appellant, Tini Mechanical Contractors, Inc., entered into a contract on May 8, 1980, with the Public Utilities Commission of the City of Virginia, hereafter referred to as Commission. The contract provided that Tini would furnish and install a heat main in certain streets in the City of Virginia. The contract provided that the Commissioner would pay to Tini the sum of $2,795,652.

The furnishing of the pipe was included in the total contract price. Tini purchased the pipe from TPCO and according to the Appellee's audit, Tini paid $939,894.15 for the pipe. No sales tax was originally paid on the pipe purchase, and the Appellee has assessed a sales tax of $37,615.11 plus interest against Tini for the sales tax on the pipe purchase.

Tini contends that it sold the pipe to the Commission and that the Commission is exempt from sales tax so no sales tax is due.

Appellee contends that the pipe constituted an improvement to real property and that under the pertinent statutes, Tini is required to pay a sales tax on its purchase of pipe from TPCO.

The issue is whether or not the installation of the pipe should be considered an improvement to real property. If it is classified as an improvement to real property, then Tini is obligated to pay a sales tax on its purchase of the pipe even though the Commission is an exempt body. This is clearly stated in *County of Hennepin v. State of Minnesota*, 263 N.W 2nd 639 (Minn. 1978).

We have not been referred nor do we find any cases considering this specific situation.

The determination of this case rests on the interpretation of various statutes. The statutes involved are as follows:

"297A.01 DEFINITIONS.

"Subdivision 1. The following words, terms and phrases when used in sections 297A.01 to 297A.44 shall have the meanings ascribed to them in this section except where the context clearly indicates a different meaning.

* * *

"Subd. 3. A "sale" and a "purchase" includes, but is not limited to, each of the following transactions:

"(a) Any transfer of title or possession, or both, of tangible personal property, whether absolutely or conditionally. . . .

* * *

"Subd. 4. A "retail sale" or "sale at retail" means a sale for any purpose other than resale in the regular course of business. . . . Sales of building materials, supplies and equipment to owners, contractors, subcontractors or builders for the

erection of buildings or the alteration, repair or improvement of real property are "retail sales" or "sales at retail" in whatever quantity sold and whether or not for purpose of resale in the form of real property or otherwise. . . .

* * *

"Subd. 11. "Tangible personal property" means corporeal personal property of any kind whatsoever, including property which is to become a fixture or which is to lose its identity by incorporation in or attachment to real property.

"272.03. DEFINITIONS.

"Subdivision 1. *Real property*. (a) For the purposes of taxation, "real property" includes the land itself and all buildings, structures, and improvements or other fixtures on it, and all rights and privileges belonging or appertaining to it, and all mines, minerals, quarries, fossils, and trees on or under it.

"(b) A building or structure shall include the building or structure itself, together with all improvements or fixtures annexed to the building or structure, which are integrated with and of permanent benefit to the building or structure, regardless of the present use of the building, and which cannot be removed without substantial damage to itself or to the building or structure.

"(c) (i) The term real property shall not include tools, implements, machinery, and equipment attached to or installed in real property for use in the business or production activity conducted thereon, regardless of size, weight or method of attachment.

"(ii) The exclusion provided in clause (c) (i) shall not apply to machinery and equipment includable as real estate by clauses (a) and (b) even though such machinery and equipment is used in the business or production activity conducted on the real property if and to the extent such business or production activity consists of furnishing services or products to other buildings or structures which are subject to taxation under this chapter.

"Subd. 2. *Personal Property*. For the purposes of taxation, "personal property" includes:

* * *

"(5) All gas, electric, and water mains, pipes, conduits, subways, poles, and wires of gas, electric light, water, heat, or power companies, and all tracks, roads, bridges, conduits, poles and wires of street railway, plank road, gravel road, turnpike, and bridge companies;

* * *

"273.13. CLASSIFICATION OF PROPERTY.

"Subdivision 4. *Class III*. (a) Tools, implements and machinery of an electric generating, transmission or distribution system or a pipeline system transporting or distributing water, gas, or petroleum products or mains and pipes used in the distribution of steam or hot or chilled water for heating or cooling buildings, which are fixtures . . ."

In 1965 Minn. Stat. § 273.13, subd. 4, Class III, read in part as follows:

"273.13. Subdivision 4. *Class III*. All agricultural products, except as provided by class III(a) and Class III(d), stocks of merchandise of all sorts together with the furniture and fixtures used therewith, manufacturers' materials and manufactured articles, and all tools, implements and machinery, whether fixtures or otherwise. . . ."

Tini contends that under Minn. Stat. 272.03, subd. 2(5), that the pipe is always personal property and that the contract in effect was a sale of pipe by Tini to the Commission together with the installation of that pipe by Tini.

Appellee takes the position that the pipes are fixtures and that fixtures are realty. The Commissioner concluded that the pipes were an improvement to real estate and, in fact, became real property under the common law which generally indicates that anything affixed to the land is part of the realty. We hold that the old common law of fixtures does not apply in view of the statutory definitions.

There is some logic to both positions. The definition of pipe as personal property in 272.03, subd. 2(5), was the same before 1965 and after 1965.

Before 1965, 273.13, subd. 4, Class III, basically provided that all personal property was subject to assessment and tax was levied basically in the same way as the tax was levied on real estate.

After 1965, 273.13, subd. 4, Class III, was substantially changed so that most personal property was no longer subject to assessment and no longer subject to the taxes in the same manner as real estate.

However, after 1965, heat pipes of the kind involved here continued to be taxed but only if they are "fixtures". 273.13, subd. 4.

It is not exactly clear as to why it was necessary for the statute to define personal property to include such pipes as are involved here, but it may be that they were so defined to be sure that they would come within those items mentioned in 273.13, subd. 4, Class III, prior to 1967. If they had not been so defined, there might have been a question as to how they should be assessed since they are often on the public right-of-way and if they are considered part of the realty, there would have been some problems in levying the proper taxes.

We also find some problem in understanding the significance of the words "whether fixtures or otherwise" in 273.13, subd. 4, Class III, prior to 1967 and then after 1967, the comparable section indicates these items are covered "which are fixtures".

Appellee makes the point that the definition of personal property in 272.03, subd. 2(5) applies only to "power companies". Appellee states the following:

"By its own terms it does not apply to pipes of the City of Virginia."

We do not find this argument very persuasive. It appears to us that providing heat through mains is a non-governmental function and that the Public Utilities Commission must be considered to be a power company.

These statutes have been the subject of many Supreme Court and Tax Court cases. The most recent case to consider these statutes is *Zimpro, Inc. v. Commissioner of Revenue*, 339 N.W. 2d 736, November 4, 1983. That case reads in part as follows:

"Finally, if we adopt Appellant's argument, the sales tax statute and its interpretation would be transformed into an even more confusing quagmire. Appellant's assertions would require merchants to understand the common law of fixtures in order to determine whether a taxable transaction occurred for purposes of the sales and use tax. Although the sales and use tax statute does refer to fixtures, the type of property included within the statutory definition seems to be clearly and logically defined in Minn. Stat. § 272.03, subd. 1(c).

* * *

"Although the sales and use tax statute does refer to fixtures, the type of property included within the statutory definition seems to be clearly and logically defined in Minn. Stat. § 272.03, subd. 1(c). In addition, use of Chapter 272 definitions for sales and use tax purposes promotes certainty and consistency; determining whether a transaction is taxable under Chapter 297A would become more certain in contrast to a determination requiring reference to the uncertain law of fixtures."

Unfortunately, we do not find those definitions quite that clear and logical.

First, it appears that 272.03, subd. 1(c)(ii), does not apply in this case since that only applies where the equipment is "used in the business or production activity conducted on the real property". We are not here considering any activity conducted on the real property.

Minn. Stat. 272.03, subd. 1(a), states that real property includes "the land itself and all buildings, structures, and improvements or other fixtures on it". This does not provide much help since these pipes are subject to tax under 273.13, subd. 4, Class III(a), which specifically includes them if they are fixtures. This section does not classify such pipes either as real or personal property but simply as Class III property.

We then come back to the quagmire referred to by the Supreme Court in *Zimpro*, supra, as to what are fixtures and what is real estate. In addition, we are always confronted by the specific definition in 272.03, subd. 2(5), which specifically provides that such pipes are always personal property.

Another problem is that 297A.01, subd. 4, states that a retail sale occurs for the sale of supplies to contractors "for the erection of buildings or the alteration, repair or improvement of real property". These pipes are certainly not buildings and putting them in the street can hardly be considered an "improvement of real property".

The Commissioner in his brief on page 6 states the following:

"As applied to the case at hand, these principles yield the following result: if the buried heat main constructed by Tini Mechanical is personal property, the retail (taxable) sale is the sale of the completed heat main to the City of Virginia. In such case, no tax would be due because the city is exempt. Minn. Stat. § 297A.25, subd. 1(j)."

The Commissioner takes the position that Minn. Stat. § 272.03, subd. 2(5) does not include the Public Utilities Commission of the City of Virginia when it refers to

"gas, electric, electric light, water, heat, or power companies,"

The Commissioner's brief states on page 9 the following:

"Yet the statute expressly applies [to] only those owned by companies of specific types."

It appears to us that the Municipal Utilities Commission is included in the word "companies" as used in the statute. The supplying of steam heat is a non-governmental function, and it appears to us that no distinction can be drawn between the Public

Utilities Commision and private companies relative to this matter. If pipes are personal property for a private company, it appears to us that pipes are personal property for the Municipal Utilities Commission.

We conclude that the pipes are still personal property and their sale to the Public Utilities Commission of the City of Virginia is exempt from sales tax whether or not they were separated out in the contract. We construe the transaction as a sale of the pipe after it has been welded and insulated and that if a sales tax were due, it should probably be on the entire cost of the pipe including the labor necessary to connect it and insulate it but not including the excavation and refilling of the trench. We consider the excavation and refilling of the trench to be labor involved with the delivery of the pipe and this labor is not subject to sale tax.

We might also note that if the Public Utilities Commission had conducted its contract and bidding procedures in a particualr manner, the purchase of the pipe could have been made directly by the Public Utilities Commission from TPCO, and the Commissioner would undoubtedly then agree that no sales tax was due. We indicated in *Bemidji Community Hospital v. The Commissioner of Revenue*, Docket No. 3284 dated June 16, 1982, the following:

"We feel that it is unfortunate that under the statute exempt entities can be exempt from sales taxes on purchases of materials going into a building if the exempt entity makes the purchases and such material would be taxable if the purchases of the materials are made by the contractor. There is no doubt that that situation exists under the statute, and the Commissioner cannot change that by regulation. We feel that the statute should be clarified so that all exempt entities are treated in the same manner regardless of what kind of actions or paperwork are done."

There is no doubt that the Public Utilities Commission did not follow the necessary procedures in this case, but we find that it was not necessary to do so because the pipes never lost their character as personal property and the sale by Tini to the Municipal Utilities Commission was a tax exempt sale of personal property.

C.A.J.

State of Minnesota Tax Court
County of Hennepin, Regular Division

Donald P. Helgeson & Arline Helgeson, Petitioners, v. County of Hennepin. Respondent, File No. TC-2217

Findings of Fact, Conclusions of Law and Order for Judgement

The above petition came on for hearing on the 6th day of December, 1983, at the Hennepin County Government Center, before Judge Earl B. Gustafson.

Patrick Murray of Wildfang, Rude, McIntosh, Murray, Chartered, appeared on behalf of Petitioner.

Charles Sweetland, Assistant Hennepin County Attorney, appeared on behalf of Respondent.

The issue is whether Petitioners' Loring Green condominium apartment in Minneapolis should be classified for tax purposes as seasonal recreational property.

The Court, having heard and considered the evidence adduced and being fully advised, now makes the following:

FINDINGS OF FACT

1. Petitioners have sufficient interest in the property to maintain their petition; all statutory and jurisdictional requirements have been complied with, and the Court has jurisdiction over the subject matter of the action and the parties hereto.

2. The subject property is located in the City of Minneapolis at 1235 Yale Place described as follows:

"Condominium Apartment #1201, Loring Green, Minneapolis, Minnesota.
Property I.D. Nos. 27-029-24 24 0818 and 27-029-24 24 0633."

3. The taxes at issue are the real estate taxes on the subject property payable in the year 1982.

4. The assessment date in question is January 2, 1981.

5. Petitioners claim the subject property was improperly classified on the assessment date as "non-homestead residential" when it should have been classified as "seasonal recreational" class 3 property under Minn. Stat. § 273.13, Subd. 4(a).

6. The Petitioners' homestead is at Sartell near St. Cloud, Minnesota.

7. The subject property is a one-bedroom condominium apartment in Minneapolis at the south end of the Central Business District near Orchestra Hall.

8. Petitioners use the apartment principally in the late fall, winter and early spring for an average of two days a week.

9. The property is used by Petitioners as lodging while they engage in recreational and cultural pursuits in the Minneapolis area.

10. The property is not leased to any third parties nor used for any business purpose but rather for personal and family recreation and leisure.

11. The attached Memorandum is made a part of these Findings of Fact.

CONCULSIONS OF LAW

1. The classification of the subject property for taxes should be changed from non-homestead residential to class 3 "seasonal recreational" under Minn. Stat. § 273.13, Subd. 4(a).

2. Real estate taxes due and payable in 1982 and 1983 should be recomputed accordingly and refunds, if any paid to Petitioners as required by such computations, together with interest from the date or original payment.

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

January 23, 1984.

By the Court,
Earl B. Gustafson, Judge
Minnesota Tax Court

MEMORANDUM

Petitioners, Donald and Arline Helgeson, claim their condominium was improperly classified as non-homestead residential real estate. They contend that it should be classified as seasonal recreational property. Non-homestead residential real estate is assessed at a rate of 28% of market value while seasonal recreational property is assessed at a rate of 21%.

Typical non-homestead residential properties are duplexes or apartment buildings leased by the owner for rental income. Typical seasonal recreational properties are summer cottages or vacation homes not used for any commercial purpose.

Petitioners' home is in the St. Cloud area and has been given homestead status. They also own a condominium in the Loring Green complex located at 1235 Yale Place in Minneapolis which they use as a vacation home. Only the classification of the condominium is at issue.

Mr. Helgeson is the principal stockholder and Chairman of the Board of Jack Frost Farms, Inc., a poultry wholesale business that markets under the name of Golden Plump Chickens. He is no longer engaged in day-to-day management and therefore has time for frequent travel and skiing in the western mountains.

Petitioners have owned the condominium for two years. They use it as a place to stay when in the Twin Cities to enjoy the area's recreational and cultural benefits. Both Mr. and Mrs. Helgeson are physically active and when in Minneapolis pursue a number of recreational activities, both indoors and out-of-doors including jogging, biking, tennis, canoeing, swimming and roller skating. They also attend plays, concerts, art exhibitions and other cultural events.

Petitioners use their condominium intermittently throughout the year but less often in the summer than other seasons. No one other than Petitioners and their adult children use the property. It is not used for business purposes.

The statute applicable to this case is Minn. Stat. § 273.13, Subd. 4(a) which provides in pertinent part as follows:

"Except as provided in subdivision 5a, all real property *devoted to temporary and seasonal residential occupancy for recreational purposes* . . . shall be class 3 property and assessed accordingly." (Emphasis Added)

We feel the Petitioners' use of this property brings it within the plain meaning of the statute. Where the words of a statute are clear and free from ambiguity there is no necessity for "interpretation."

Petitioners' property is "devoted to temporary and seasonal residential occupancy for recreational purposes." It is not devoted to permanent homestead use, commercial use or any type of business use.

If this property were located in the north woods, the local assessor would have no problem. The typical lake cabin or hunting shack receives a class 3, "seasonal recreational" classification if the owner is a non-resident of the area who may use the property frequently or infrequently during different seasons of the year. Recreational use is assumed whether occupants actually do nothing more strenuous than read a book or meditate.

In *Otis Lodge, Inc. v. Commissioner of Taxation*, 295 Minn. 80, 206 N.W. 2d 3 (1972) the court indicated that the seasonal recreational classification in Minn. Stat. § 273.13, Subd. 4(a) was originally passed by the legislature to provide tax relief to

seasonal resorts. This purpose was subsequently extended to privately used property; the apparent rationale being that an owner who lives elsewhere and uses the property only occasionally for non-commercial purposes puts no burden on the local school system, requires limited governmental services and therefore, should be allowed to pay somewhat less in taxes.

Respondent properly points out troublesome language in the case of *Lilja v. County of Wright*, 307 Minn. 276, 239 N.W. 2d 465 (1976) which held duplex property in Monticello was not seasonal recreational where Petitioner lived in the Twin Cities and used the property for weekend relaxation and gardening. In that case the court concluded that no matter what the term recreational may mean in other factual situations, the activity of gardening was not "recreational" within the meaning of Minn. Stat. § 273.13, Subd. 4(a).

Without attempting to distinguish the facts of the *Lilja* case from the instant case, we are unwilling to extend its ruling any further by finding that jogging, biking, tennis, canoeing, swimming and roller skating are not recreational activities.

E.B.G.

State of Minnesota Tax Court
County of Itasca, Ninth Judicial District

In the Matter of Real Estate Taxes Payable in the Year 1982 and 1983, Steve Hecomovich, Petitioner, v. Itasca County, Respondent, File No. C-83-50

Findings of Fact, Conclusions of Law, Order for Judgment, and Memorandum

The above matter came on for trial at the Itasca County Courthouse at Grand Rapids, Minnesota, on August 11, 1983, beginning at 10 A.M. before the Honorable John Knapp, Chief Judge of the Minnesota Tax Court.

Appellant appeared Pro Se.

John P. Dimich, Itasca County Attorney, appeared for Respondent.

After having reviewed the evidence adduced at the trial and the files and records herein, the Court now makes the following:

FINDINGS OF FACT

1. The petition herein involves real property located in the City of Marble, Itasca County, Minnesota, described as follows:

"Lot 6, Block 5 of the City of Marble, Minnesota (Assessor's ID No. 165-010-505060)"

2. The property includes a fourplex frame apartment building in the City of Marble, Minnesota.

3. The petition was filed on January 11, 1983, and indicates that Petitioner intended to contest the taxes payable in calendar year 1983. At trial, however, the parties stipulated that the Court was to decide the estimated market value as of January 2, 1981, for taxes payable in 1982 as well as the estimated market value as of January 2, 1982, for taxes payable in 1983.

4. The Petitioner has sufficient interest in the property to maintain his petition; all statutory and jurisdictional requirements have been complied with, and the Court has jurisdiction over the subject matter of the action and the parties hereto.

5. As of January 2, 1981, the assessor's estimated market value of the subject property was $28,000 and as of January 2, 1982, the assessor's estimated market value of the subject property was $28,150.

CONCLUSIONS OF LAW

1. The Petitioner has failed to sustain the burden of proof to show that the property has been unfairly and unequally assessed in comparison to other properties in the assessment district.

2. The assessor's estimated market value of $28,000 for January 2, 1981, and $28,150 as of January 2, 1982, is hereby affirmed.

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

January 23, 1984.

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

MEMORANDUM

The Petitioner's chief contention is that the economic conditions on the Iron Range for the past years have not been reflected in the assessor's estimated market values based on the income approach. At trial he presented actual income and expense figures for 1982 and projected income and expense figures for 1983. The statement for 1982 showed a small profit and the projected statement for 1983 showed a loss due to vacancies which the Petitioner attributes to the economic situation on the Iron Range.

During trial, the Petitioner presented to the Court a list of properties which the Petitioner testified were sold during calendar years 1982 and 1983 at less than their estimated market value, but he presented no verification of the sales prices of the various properties and admitted that most of his information was hearsay. He admitted that he had not compared the alleged sales prices with the Certificates of Real Estate Value in the assessor's office.

During the trial, Mr. Alan Hovi, the Itasca County Assessor, testified on behalf of the Respondent. He testified that he was able to find only two Certificates of Real Estate Value for the nine alleged sales on the Petitioner's list. One of the certificates indicated that a warranty deed was given for a property sold on a contract for deed in 1978, and the second certificate indicated that it was a sale by a personal representative of an estate so neither one of them was considered to be an arms-length sale in 1982. It is entirely possible that real estate values in the City of Marble have dropped since the assessment date, but the evidence presented by the Petitioner was not sufficient to give the Court a basis for finding that the estimated market values as of the respective assessment dates was excessive.

The valuation determined by the assessor is presumed to be correct until the Petitioner presents substantial proof to the effect that the value is excessive. In this case the proof of value was not sufficient.

J.K.

State of Minnesota Tax Court
County of Lyon, Fifth Judicial District

Thomas R. & Josephine E. Halbach, Petitioners, v. County of Lyon, Respondent, File No. CV-83-976

Findings of Fact, Conclusions of Law, Order for Judgement and Memorandum

The above entitled matter came on for trial before the Honorable John Knapp, Chief Judge of the Minnesota Tax Court, at the Lyon County Courthouse at Marshall, Minnesota, on October 25, 1983, beginning at 10 A.M. Subsequent to trial both parties have submitted briefs in support of their positions.

Thomas R. Halbach, appeared Pro Se. Kathleen A. Kusz, Assistant Lyon County Attorney, appeared for Respondent.

The value of the subject property is not in issue herein. The only issue is whether or not the Petitioners are entitled to a homestead classification of the subject property for taxes payable in calendar year 1983.

Upon the Stipulation of Facts, the evidence adduced at the trial, and the files and records herein, the Court now makes the following:

FINDINGS OF FACT

1. Petitioners owned the property at 705 South 4th Street, Marshall, Minnesota until July 6, 1982. The contract for deed requires the Petitioners to pay any nonhomestead taxes for 1982.

2. Petitioner, Thomas Halbach, went to Chicago, Illinois on a temporary job assignment on December 31, 1980. The assignment was duly authorized under the Federal Interpersonnel Act of 1970, and the assignment was agreed to by the Agricultural Extension Service of the University of Minnesota and US-EPA. This assignment was for a temporary, limited, specific term. His family moved to a temporary apartment in Des Plaines, Illinois on January 4, 1981.

3. Prior to the temporary job assignment, the Petitioners had resided in the subject property for more than five years as their homestead. As of January 2, 1981, the subject property was classified as the homestead of the Petitioners.

4. On January 2, 1982, the City Assessor of the City of Marshall mailed to the Petitioners at Des Plaines, Illinois, a homestead declaration card covering the subject property. The card was signed by the Petitioners and returned to the assessor from Des Plaines, Illinois.

5. The city assessor denied homestead classification without giving a specific reason.

6. The Petitioners appealed to the City Board of Review, and were denied homestead classification, without being given a specific reason.

7. The Petitioners appealed the decision to the Lyon County Board of Equalization where they presented evidence indicating ownership, residence, specifics of the temporary employment and intent to return. The County Board denied the homestead classification.

8. The appeal herein was filed on May 23, 1983.

9. At the expiration of the temporary assignment in Chicago, Petitioner Thomas Halbach was unable to return to his previous job in Marshall because it was terminated on August 5, 1982, due to state budget cuts. He was then transferred to another city.

10. The Petitioners occupied the house at 705 South 4th Street a few days during 1982. They ate, slept, bathed, cleaned house, maintained the yard and visited with neighbors and friends.

11. In their absence, friends and neighbors cared for the property at the direction of the Petitioners.

12. The house was not rented, nor was any income derived from it, nor did Petitioners allow anyone else to occupy it during the time in issue.

13. The subject property was advertised for sale beginning in November of 1980.

14. The Petitioners filed Minnesota Income Tax Returns and paid taxes to the State of Minnesota in 1981 and 1982, in spite of the fact that Illinois income taxes would have been substantially lower.

15. The Petitioners insured their property as a home.

16. The Petitioners maintained their Minnesota car registration and their Minnesota drivers licenses at 705 South 4th Street, Marshall, Minnesota.

17. Most household goods and furniture were taken by the Petitioners to the temporary apartment in Des Plaines, Illinois, but a substantial number of items were left in the subject property.

18. The Petitioners were registered voters in Marshall, Minnesota, at all times relevant herein.

19. The Petitioners received most of their mail in Des Plaines, Illinois, but also had mail addressed to them at Marshall forwarded to them.

20. Petitioners maintained contacts with friends in Marshall. They also kept their insurance with an agent who was stationed at Marshall, Minnesota.

21. The Petitioner intended to return to the subject property at the end of the temporary assignment and continued to claim a homestead classification for the subject property throughout the period in issue herein.

22. As of January 2, 1982, the Petitioner, Thomas R. Halbach, had been on temporary assignment, out of the state for more than one year.

23. The Memorandum attached hereto is made a part of these findings.

CONCLUSIONS OF LAW

1. The Petitioners are entitled to a homestead classification of the subject property for calendar year 1983.

2. Real estate taxes due and payable in 1983 shall be recomputed accordingly and refunds, if any, paid to the Petitioners as required by such computations, together with interest and costs and disbursements herein.

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

January 23, 1984.

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

MEMORANDUM

Respondent contend that the Petitioners have presumptively abandoned their homestead rights pursuant to Minn. Stat. § 510.07. The Court rejects that argument. The Court is of the opinion that Chapter 510 relates only to the exemption of a house owned and occupied by a debtor from seizure or sale under legal process on account of any debt not lawfully charged to them in writing. Chapter 520 was never intended to be a guide for homestead classification for tax purposes.

In the case of *In Re Petition of Wolf Lake Camp, Inc. vs. County of Itasca*, 312 Minn. 424, 252 N.W. 2d. 261, the Minnesota Supreme Court held that the use to which land is put, not the inherent nature of the land itself, determines how real estate is to be classified. In that case the court said:

". . . First, the use to which the land is put, not the inherent nature of the land itself is controlling; that is, the test is what the land is devoted to, not what it can be devoted to . . ."

In the instant case the only use to which the subject property was put was the homestead of the Petitioners. The property was not rented to others nor was it occupied by others. Even though the use was not extensive it was the exclusive use to which the property was put.

Respondent cites *Donaldson v. Lamprey*, 29 Minn. 18, 11 N.W. 119, in support of its argument to the effect that the Petitioners abandoned their right to a homestead classification. That case, however, did not involve the issue of a homestead classification for tax purposes. It involved the issue of whether or not the owner had lost his exemption from seizure or sale under what is now known as Chapter 510. In that case, the owner was held to have abandoned his homestead because he had acquired a new homestead elsewhere. In the instant case, the Petitioners did not acquire another homestead. The evidence clearly establishes that the Petitioners intended only a temporary stay in Illinois. They rented an apartment in Des Plaines for the duration of their stay in order that the family could be together.

In *Stone vs. County of Anoka*, District Ct. File No. 42752-1030 this Court held that Petitioners did not lose their right to homestead classification due to forced confinement in a nursing home.

It is very significant that the Petitioners paid income taxes to the State of Minnesota in 1981 and 1982 in spite of the fact that the income taxes in Illinois would have been significantly lower.

Minn. Stat. § 273.13, subd. 11, allows the assessor to require proof "by affidavit or otherwise of the facts upon which classification as a homestead may be determined. . . ." The fact that the card was mailed to Petitioners at Des Plaines, Illinois and returned to the assessor from that address is of no significance herein.

The only fact which appears to be in contradiction of their stated intention to occupy the premises as their homestead is the fact that they advertised the property for sale beginning in November of 1980. That fact alone, however, is not a sufficient basis to deny the homestead classification.

The Petitioners have asked this Court to assess punitive damages against the Respondent under the Civil Rights Act. That is a separate issue over which this Court has no jurisdiction. Such an action must be brought in a civil suit in state or federal district court. The only issue before this Court is the validity of the non-homestead classification.

J.K.

ERRATA

At *State Register*, Volume 8, Number 23, December 5, 1983, page 1347, under the Minnesota Housing Finance Agency's Adopted Temporary Rules Governing Energy Improvement Loan Insurance Program, MCAR §§ 3.180 to 3.184, correct the following:

"12 MCAR § ~~3.183~~ 3.184 [Temporary] Eligible improvements."

STATE OF MINNESOTA

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STATE OF MINNESOTA
DEPARTMENT OF LABOR AND INDUSTRY
Occupational Safety and Health Division

In the Matter of the Proposed Adoption of Rules Implementing the Provisions of the Employee Right-To-Know Act of 1983 Governing Trade Secrets and Employees' Conditional Right to Refuse Work.

FINDINGS OF FACT AND CONCLUSIONS

The above-entitled matter came on for hearing before Hearing Examiner Peter C. Erickson on the 9th day of March, 1984, at 9:00 a.m. in Conference Room D, Fifth Floor of the Veterans Service Building, St. Paul, Minnesota, after proper notice required by Minn. Stat. § 14.14 was served upon all persons, associations and other interested groups registered with the state Department of Labor and Industry for that purpose. Additionally, notice was published in the State Register, Volume 8, No. 32, published on February 6, 1984.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced upon the records, files and proceedings herein, I find the following:

1. The Commissioner adopts Hearing Examiner Peter C. Erickson's Findings of Fact, dated April 17, 1984, 1 through 10 and by this reference incorporates them into this document.

2. I agree with Hearing Examiner's Footnote 1, and have accordingly resubmitted the proposed rules to the Revisor of

Statutes Office for approval of the incorporation by reference of the American Chemical Society's Chemical Abstract Service. Certification of approval is submitted with our other exhibits.

CONCLUSIONS

1. The Commissioner adopts Hearing Examiner, Peter C. Erickson's Conclusions of Law, dated April 17, 1984, 1 through 7 and by this reference incorporates them into this document.

STATE OF MINNESOTA
Department of Labor and Industry

Steve Keefe
STEVE KEEFE, Commissioner

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

LI-84-006-PE

AFFIDAVIT OF SERVICE BY U.S. MAIL

Donna L. Day, being first duly sworn, hereby deposes and says that on the 17th day of April, 1984, at the City of Minneapolis, county and state aforementioned, she served the attached REPORT OF THE HEARING EXAMINER

OAH Docket No. LI-84-006-PE

by depositing in the United States mail at said City of Minneapolis, a true and correct copy thereof, properly enveloped, with first class postage prepaid, and addressed to the individuals named on the attached mailing list.

Donna L. Day
(Signature)

Subscribed and sworn to before me
this 17th day of April, 1984.

Sandra A. Haven
(Notary)

SANDRA A. HAVEN
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES AUGUST 21, 1990

HG-00059-01

SERVICE/MAILING LIST

OAH Docket No. LI-84-006-PE

Steve Keefe, Commissioner
Department of Labor and Industry
5th Floor, Space Center Building
444 Lafayette Road
St. Paul, MN 55101

Ms. Kathleen L. Winters
Special Assistant Attorney General
550 Space Center Building
444 Lafayette Road
St. Paul, MN 55101

LI-84-006-PE

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF LABOR AND INDUSTRY
OCCUPATIONAL SAFETY AND HEALTH DIVISION

In the Matter of the Proposed Adoption of Rules Implementing the Provisions of the Employee Right-to-Know Act of 1983 Governing Trade Secrets and Employees' Conditional Right to Refuse to Work

REPORT OF THE HEARING EXAMINER

The above-entitled matter came on for hearing before Hearing Examiner Peter C. Erickson of the State Office of Administrative Hearings at 9:00 a.m. on Friday, March 9, 1984, in Conference Room D, 5th Floor, Veterans Service Building, St. Paul, Minnesota. Kathleen L. Winters, Special Assistant Attorney General, 550 Space Center Building, 444 Lafayette Road, St. Paul, Minnesota 55101, appeared as counsel on behalf of the Department of Labor and Industry. Commissioner Steve Keefe and the Director of the Occupational Safety and Health Division, Ivan W. Russell, appeared and testified in support of the proposed rules on behalf of the Department. The hearing continued until all interested groups or persons had had an opportunity to testify concerning the adoption of the proposed rules.

This Report shall be available for review to all affected individuals upon request for at least five working days before the agency takes any further action on the rule(s). Pursuant to Minn. Stat. § 14.16 (1982), the Commissioner shall, if he proposes to adopt the rule as recommended herein, submit the rule, together with the complete hearing record to the Attorney General and shall be responsible for notifying persons who have indicated that they wish to be notified of such filing. If the Commissioner makes changes in the rule other than those recommended herein, he shall submit the rule with the complete hearing record to the Chief Hearing Examiner for a review of the changes prior to submitting it to the Attorney General for review.

Based upon all the testimony, exhibits, and written comments, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. On January 6, 1984, the Department filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules.
(b) The Order for Hearing.
(c) The Notice of Hearing proposed to be issued.
(d) A Statement of the number of persons expected to attend the hearing and estimated length of the Agency's presentation.

2. On February 6, 1984, a Notice of Hearing and a copy of the proposed rules were published at 8 State Register, Page 1805.

3. On February 2, 1984, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Department for the purpose of receiving such notice.

4. On February 10, 1984, the Department filed the following documents with the Hearing Examiner:

(a) The Notice of Hearing as mailed.
(b) The Agency's certification that its mailing list was accurate and complete.
(c) The Affidavit of Mailing the Notice to all persons on the Agency's list.
(d) The Statement of Need and Reasonableness.
(e) The names of Department personnel who will represent the Agency at the hearing together with the names of any other witnesses solicited by the Agency to appear on its behalf.
(f) A copy of the State Register containing the proposed rules.
(g) An Affidavit of Additional Notice sent to associations and groups who represent the interests of small businesses in Minnesota.
(h) All materials received following a Notice of Intent to Solicit Outside Opinion published at 8 State Register, Page 1269 (November 28, 1983).

The documents were available for inspection at the Office of Administrative Hearings from the date of filing to the date of the hearing.

5. The record remained open through March 26, 1984 for the receipt of written comments and statements. Pursuant to Minn. Stat. § 14.15, subd. 1 (1982), the Department filed its final submission on March 29, 1984 at which time the record was closed.

6. Statutory authority to promulgate the proposed rules is contained in Minn. Stat. § 182.657 (1982).

7. Proposed 8 MCAR § 1.7220 implements provisions of the Employee Right-to-Know Act of 1983 (1983 Laws, Chapter 316) governing trade secrets. The rule will allow an employer who believes that all or part of the information required under the Employee Right-to-Know Act is a trade secret as defined in Minn. Stat. § 325C.01 subd. 5, to register that information with the

Commissioner of the Department of Labor and Industry. The rule also contains provisions governing the classification of such data and conditions of disclosure.

Proposed 8 MCAR §§ 1.7240, 1.7241, 1.7243, and 1.7245 are amendments to the current rules of the Department which govern discrimination against employees. The amendments implement provisions of the Employee Right-to-Know Act concerning employees' conditional right to refuse to work.

The Hearing Examiner incorporates by reference the Department's Statement of Need and Reasonableness concerning the proposed rules. Except as modified below, the Hearing Examiner finds that the Department has demonstrated the need for and reasonableness of each section of the proposed rules by an affirmative presentation of facts in the record.

8. Subsequent to the hearing, the Department acceded to the requests of certain groups and/or individuals that the rules be amended. Those amendments and the amendments made by the Department to the rules at hearing read as follows:

Chapter Seventeen

Trade Secrets

8 MCAR § 1.7220 Trade secret registration.

A. Registration. A manufacturer or employer who believes that all or part of the information required under the Employee Right-to-Know Act, Laws of Minnesota 1983, chapter 316, is a trade secret as defined in Minnesota Statutes, section 325C.01, subdivision 5, may register the information with the commissioner as a trade secret information. [Information so required which is certified by appropriate officials of the United States as necessarily kept secret for national defense purposes may also be registered wth the commissioner]. Information which has been classified for national security purposes by appropriate officials of the United States may also be registered with the Commissioner provided the Commissioner has been granted necessary security clearance and duly authorized to receive such classified information.

B. Formulations and procedures. Formulations or procedures are trade secrets and need not be registered to be considered trade secrets.

C. Required information. Trade secret registration of the name of a hazardous substance must include the following information:

[1. the name of the hazardous substance;]

1. the name or names of the substance including any generic or chemical name, trade name, commonly used name, and the American Chemical Society's Chemical Abstract Service (CAS) number for that substance;

2. a brief description of why it is a trade secret; and

3. the name of a person who can be contacted for additional information relevant to the trade secret.

D. Expiraton of registration. A registration expires two yers after its filing date unless the registration is renewed. The commissioner shall notify registrants of an impending expiration date.

E. Classification of data. Trade secret information that is registered with the commissioner or other information reported to or otherwise obtained by the commissioner or a representative of the commissioner in connection with any inspection or proceeding under Minnesota Statutes, chapter 182 which contains or might reveal a trade secret is nonpublic or private data as defined in Minnesota Statutes, section 13.02, subdivisions 9 and 12. Information that is classified as nonpublic or private, except that which is secret for national [defense] security purposes, may be disclosed to other officers or employees carrying out Minnesota Statutes, chapter 182, when relevant in any proceeding under this chapter, or when otherwise required in order to comply with federal law or regulation but only to the extent required by the federal law or regulation. The commissioner must protect nonpublic or private information by establishing security procedures to prevent its unauthorized use or disclosure. Nothing in this chapter may be construed as limiting rights, objectives or remedies regarding trade secrets covered under Minnesota Statutes chapter 325C or the obligations applicable to classified information under rules and regulations of the United States for protecting classified information.

F. Disclosure. If the commissioner determines that disclosure of nonpublic or private information is essential to protect employees from imminent danger [or otherwise to protect the health and safety of employees,] or when necessary to expedite provision of medical services to an employee(s), he must notify the appropriate manufacturer or employer of this decision by telephone and/or certified mail and timely disclose the information only to the extent necessary and only to the people necessary to aid in efforts to alleviate the danger.

G. Determination by commissioner. On the request of a manufacturer, employer, employee, or employee representative, deemed by the commissioner to have a legitimate health or safety interest in the information, the commissioner must determine whether information registered pursuant to the requirements of this chapter or otherwise reported to or obtained by the commissioner is a trade secret as defined in Minnesota Statutes, section 325C.01, subdivision 5. If the commissioner determines that information is not a trade secret, the commissioner must notify the registering manufacturer or employer of the decision by certified mail. The registering manufacturer or employer has 15 days after recept of notification to provide the commissioner by certified mail with a complete justification and statement of the grounds on which the information is a trade secret. The commissioner must review his determination of whether information should be protected as a trade secret within 15 days after receipt of the justification and statement, or if no justification and statement is filed, within 30 days of the original notice, and must notify the appropriate manufacturer or employer and any party who has requested the information of that determination by certified mail. If the commissioner determines that the information is not a trade secret, the final notice must also specify a date, not sooner than 15 days after the date of mailing of the final notice, when the information shall be [available] disclosed to the [public] requesting party. Prior to the date specified in the final notice, the registering manufacturer or employer may institute an action for a declaratory judgment as to whether the information is subject to protection as a trade secret.

Chapter Nineteen:

Discrimination Against Employees

8 MCAR § 1.7240 Authority and background. (No changes).

8 MCAR § 1.7241 Purpose and scope. (No changes).

8 MCAR § 1.7243 Protected activities

* * *

B. Refusal to work under unsafe conditions.

2.a. the employee requests, within 24 hours of the refusal (excluding weekends and state holidays), the commissioner to inspect and determine the nature of hazardous condition; and . . .

* * *

3. An employee who has been assigned to work with a hazardous substance, harmful physical agent, or infectious agent, under conditions which are inconsistent with the training or information provided by the employer under 8 MCAR §§ 1.7206 and 1.7207, and who, after notifying the employer of the hazardous conditions, has refused in good faith to perform assigned tasks and who has not been reassigned to other tasks, been provided the required training, or had the hazardous condition promptly abated by the employer shall, in addition to retaining a right to continued employment, receive pay for the tasks which would have been performed if:

a. The employee requests, within 24 hours of the refusal (excluding weekends and state holidays), the commissioner to inspect and determine if a hazardous condition exists; and

b. the commissioner determines that the employer has failed to provide the training required under 8 MCAR § 1.7206 prior to the employee's initial assignment to a workplace if the employee may be routinely exposed to a hazardous substance, harmful physical gent, or infectious agent and the employer has failed to provide the information required under 8 MCAR § § 1.7206 and 1.7207 after a request within a reasonable period of time, but not to exceed 24 hours of the request.

* * *

8 MCAR § 1.7245 Claim procedures. (No changes).[1]

The Hearing Examiner finds that the need for and reasonableness of the adopted amendments has been demonstrated by an affirmative presentation of facts in the record. These amendments merely clarify the enunciated purpose and intent of the proposed rules and thus do not constitute substantial changes to the rules as published.

---

[1] Because the amendment to 8 MCAR § 1.7220C.1 which incorporates the American Chemical Society's Chemical Abstract service by reference was made subsequent to the initial certification of rule form by the revisor, this rule must be resubmitted to the revisor's office for approval pursuant to Minn. Stat. §§ 14.07, subd. 2 and 14.07, subd. 4 (1983 Supp.).

9. Several persons questioned the procedures that will be followed by the Department in accumulating and storing the trade secret registration information. The Department stated that it has adopted Minnesota Occupational Safety and Health Division Policy No. 117 to address the collection and storage issues. This policy is available to the public at the Department. The agency does not, however, propose to adopt this policy as part of the trade secret rules. The Hearing Examiner finds that this policy concerns "only the internal management of the agency" and need not be promulgated as a rule. Minn. Stat. § 14.02, subd. 4 (1982).

10. Several other suggestions for changes in the proposed rule were made either at the hearing or in written comments submitted to the Hearing Examiner which were not incorporated into the proposed rules by the Department. These suggestions have been addressed by the Department in its March 29, 1984 submission and reasons for the non-adoption were ennunciated. (Exh. A attached to this report). None of these suggestions or comments specifically address statutory authority, legality, procedural defects or the need for or reasonableness of the proposed rules, however. The Hearing Examiner has carefully considered all of the comments and finds that the Department has demonstrated the need for and reasonableness of the proposed rules, as amended above, by an affirmative presentation of facts in the record.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS

1. That the Department gave proper notice of the hearing in this matter.

2. That the Department has fulfilled the procedural requirements of Minn. Stat. §§ 14.14, subds. 1, 1a (1983 Supp.) and 14.14, subd. 2 (1982), and all other procedural requirements of law or rule.

3. That the Department has documented its statutory authority to adopt the proposed rules, and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 14.05, subd. 1 (1982), 14.15, subd. 3 (1983 Supp.) and 14.50 (i) and (ii) (1982).

4. That the Department has demonstrated the need for and reasonableness of the proposed rules by an affirmative presentation of facts in the record within the meaning of Minn. Stat. §§ 14.14, subd. 2 and 14.50 (iii) (1982).

5. That the additions and amendments to the proposed rules which were suggested by the Department after publication of the proposed rules in the State Register do not result in rules which are substantially different from the proposed rules as published in the State Register within the meaning of Minn. Stat. § 14.15, subd. 3 (1983 Supp.) and 9 MCAR §§ 2.110 A. and 2.111 (1980 Ed.).

6. That any Findings which might properly be termed Conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such.

7. That a finding or conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the Department from further modification of the rules based upon an examination of the public comments, provided that no substantial change is made from the proposed rules as originally published, and provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the proposed rules be adopted consistent with the Findings and Conclusions made above.

Dated this 17 day of April, 1984.

Peter C. Erickson

PETER C. ERICKSON
Hearing Examiner

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1 (1982), the agency is required to serve its final decision upon each party and the hearing examiner by first class mail.

Reported: Taped.

Exhibit A

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

ST. PAUL 55155

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

ADDRESS REPLY TO:
550 SPACE CENTER BLDG.
444 LAFAYETTE ROAD
ST. PAUL, MN 55101
TELEPHONE: (612) 296-6951

March 29, 1984

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ADMINISTRATIVE HEARINGS

Mr. Peter Erickson, Hearing Examiner
Office of Administrative Hearings
4th Floor - Summit Bank Building
310 - 4th Avenue South
Minneapolis, MN 55415

Subject: March 9, 1984 Public Hearing (Trade Secrets and Employee's Conditional Right to Refuse to Work.

Dear Mr. Erickson:

The Department of Labor and Industry has reviewed input taken during testimony at the March 9, 1984 public hearing as well as written comments from the following individuals and organizations:

Mr. Will Viitala, Honeywell, Inc.
Mr. William R. Cammack, Jr., President of C & H Chemicals, Inc.
Mr. David R. Volker, Regulatory Affairs, American Society of Safety Engineers
Mr. James Thill, Industrial Hygienist, Metalcasters of Minnesota
Mr. Thomas M. Dailey, Assistant General Counsel, Henkel Corporation
Ms. Rebecca P. Cornwall, Industrial Hygienist, Sperry Corporation

The Department agrees with several of the suggestions and the reasons for those suggestions. We have revised the proposed rule accordingly. Changes in the proposed rule are reflected in the enclosed copy of the rules. Only those changes made after the public hearing are underlined.

Some suggestions have not been incorporated in the revised rule:

Mr. William Ewert, 3M, St. Paul, suggested during the hearing that reference to the OSH Division Operating Policy #117 be included in paragraph E. of 8 MCAR § 1.7220. The Department does not believe that an incorporation by reference of an OSH Division Operating Policy is appropriate. The policy is available for public review if necessary.

Mr. James Thill, representing Metalcasters of Minnesota, suggested that a statement be added to 8 MCAR § 1.7243 B.2. which states: "The employer may investigate, conduct tests such as air sampling and/or training, etc., to determine whether an imminent danger exists. The employer may submit this data to the commissioner for use in the commissioner's determination of the conditions during the time of the complaint." The Department does not believe this statement is necessary. An employer may choose to perform such tests and make the results of those tests available to the commissioner. These tests are not mandatory nor does this statement cover other alternatives

available to the employer. Therefore, the statement is not included as part of this rule.

Mr. William R. Cammack, Jr., President of C & H Chemicals, Inc., suggested several changes to paragraph D of 8 MCAR § 1.7220. Some of those suggestions have been adopted. However, the Department did not adopt his suggestion that requirements for the disposition of information after expiration of the registration be included in this rule. Procedures for the disposition of trade secret information that is not re-registered is more appropriately included in OSH Division Operating Policy #117 on trade secret protection. The policy has been modified to require destruction of information whose registration has lapsed.

In addition, the Department did not adopt Mr. Cammack's suggestion that disclosure of information, as discussed in paragraph F., be restricted to the treating physician. In many cases, the treating physician is the person who will receive the information. However, other circumstances may exist that require disclosure of information to someone other than a treating physican. Incorporation of such a restriction is probably a substantial change.

Lastly, Mr. Cammack suggested that the terms "employer" and "manufacturer" be defined. These terms are defined in the Employee Right-to-Know Act and retain their statutory meaning in these rules.

Mr. Thomas Dailey, Henkel Corporation, suggested that the terminology used in paragraph B. of 8 MCAR § 1.7220 be consistent with Minnesota Statutes section 325C.01, subdivision 5. The terminology in paragraph B. is intentionally "different" from the terms used in section 325C in order to make a distinction between information that may be registered as a trade secret (as defined in section 325C) and information that need not be registered (formulations and/or procedures). Mr. Dailey's comments regarding paragraph B.2. of 8 MCAR § 1.7243 concern an existing provision of this rule that is not part of this rulemaking proceeding. Mr. Dailey's final comments concerning the possibility of an employee using even minor "inconsistencies" in training or information as a reason for refusing to work has not been adopted by the Department. We believe the requirement that an employee may only refuse to work "in good faith" is sufficiently restrictive and will prevent inappropriate use of this right by employees. Additionally, an employee's refusal to work because of hazardous conditions must be reviewed and verified by the commmissioner.

Mr. Will Viitala, Honeywell, Inc., suggested that paragraph D of 8 MCAR § 1.7220 be amended to allow trade secret registrations to remain valid until the submitter withdraws them, provides for commissioner query of the submitter approximately every two years, and requires automatic expiration of the trade secret registration within 30 days if the submitter does not respond. This suggestion is partially adopted by the Department; the amended rule

requires the commissioner to notify registrants of impending expiration dates. However, the 30-day response period and automatic expiration of registrations if a response is not received is a substantial change and is not adopted. The Department does agree with Mr. Viitala that disclosure of information to the "public" is not the intent of this rule; the revised rule refers to persons "deemed by the commissioner to have a legitimate health or safety interest in the information." Mr. Viitala's suggestion that rejected information not be disclosed if the employer has filed for a declaratory judgment is implicit in this rule and is clearly defined in OSH Division Operating Policy #117.

Ms. Rebecca P. Cornwall, Industrial Hygienist with Sperry Corporation, submitted comments on existing provision of 8 MCAR § 1.7243 that is not part of this rulemaking proceeding.

Very truly yours,

KATHLEEN L. WINTERS
Special Assistant
Attorney General

KLW:pl

STATE OF MINNESOTA
DEPARTMENT OF LABOR AND INDUSTRY
Occupational Safety and Health Division

In the Matter of the Proposed Adoption of Rules Implementing the Provisions of the Employee Right-To-Know Act of 1983 Governing Trade Secrets and Employees' Conditional Right to Refuse Work.

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Kathleen L. Winters, 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 rules, the Administrative Procedure Act, the Rules of the Office of Administrative Hearings and the Rules of the Attorney General have been followed.

Dated: April 25, 1984

KATHLEEN L. WINTERS

Subscribed and sworn to before me this 25th day of April, 1984.

Cheryl J. Schaar
Notary Public

CHERYL J. SCHAAR
NOTARY PUBLIC-MINNESOTA
WASHINGTON COUNTY
MY COMMISSION EXPIRES SEPTEMBER 21, 1988

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY
OCCUPATIONAL SAFETY AND HEALTH DIVISION

In the Matter of the Proposed Adoption of Rules Implementing Provisions of the Employee Right-to-Know Act of 1983 Governing Trade Secrets and Employees' Conditional Right to Refuse to Work.

AFFIDAVIT OF MAILING NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

PATRICIA LORENTZ, being first duly sworn, deposes and says:

That on the Fourteenth day of May, 1984, 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 State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who requested notice that the rules in the above-entitled matter have been submitted to the Attorney General.

Patricia Lorentz

Subscribed and sworn to before me
this 14th day of May, 1984.

Jacalyn K. Brueggeman
Notary Public

JACALYN K. BRUEGGEMAN
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES MAY 18, 1990

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY
OCCUPATIONAL SAFETY AND HEALTH DIVISION

In the Matter of the Proposed Adoption of Rules Implementing Provisions of the Employee Right-to-Know Act of 1983 Governing Trade Secrets and Employees' Conditional Right to Refuse to Work.

NOTICE OF SUBMISSION OF RULES TO ATTORNEY GENERAL

Notice is hereby given, that the above entitled rules, which came on for hearing before Hearing Examiner Peter Erickson on March 9, 1984, are being submitted today to the Attorney General for approval. These rules identified as Minnesota Occupational Safety and Health Codes, Chapter Seventeen: "Trade Secrets" and Chapter Nineteen: "Discrimination Against Employees" have been amended as recommended in Hearing Examiner Peter Erickson's Conclusions of Law dated April 17, 1984.

A copy of the final rules, as amended, may be obtained by contacting Ms. Patricia Lorentz, Occupational Safety & Health Division, Department of Labor and Industry, 444 Lafayette Road, St. Paul, MN 55101; phone: (612) 297-3254.

Date: 5/14/84

Steve Keefe

STEVE KEEFE
Commissioner of Labor & Industry