

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1057

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 8-3
DATE FOR REVIEW
DATE DUE 8-17

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

Approved 8/16/84 (LDS) Disapproved Returned to Agency

Resubmitted Due
Approved Disapproved Returned to Agency

Date filed w/Secretary of State 8-20 Revisor approved 8/3/84 disapproved

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✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 8.1.84 Date

✓ Notice of Intent to Solicit Outside Opinion SR. 2.13.84

✓ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
? Sufficiency incorrectly states AG review period does not state how long rules will be effective

✓ Affidavit of Mailing Notice or rulemaking
6.26.84 At least ~~30~~ 20 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate as of 6.11.84, 2 wks before mailing

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

N/A Hearing Examiner's Report

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

Agency's Findings of Fact

LCRAR Report or agency Affidavit

Certificate of Board's Resolution Adopting Rules

Order Approving Incorporation by Reference

Statement of Need and Reasonableness

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

N/A 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 : ARTHUR C. ROEMER
Commissioner of Revenue

DATE: 8/16/84

ATTN : LUCI A. MITCHELL, Legal Research Attorney

FROM : LARRY D. STARNS
Special Assistant
Attorney General

PHONE: 297-3493

SUBJECT: IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE STATE OF MINNESOTA GOVERNING THE VALUATION AND ASSESSMENT OF RAILROAD OPERATING PROPERTY

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.

LDS:dw
Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

AG copy.

Department of Revenue

Property Equalization Division

Adopted Emergency Rules Relating to Railroads

Emergency Rules as Adopted

8105.0100 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** As used in this chapter, the following words, terms, and phrases have the meanings given to them by this part. Some of the words, terms, and phrases are defined by statute but are included here for completeness.

Subp. 2. **Allocation.** "Allocation" means the process by which a fair and reasonable portion of each railroad's total unit value is assigned to Minnesota for purposes of taxation.

Subp. 3. **Apportionment.** "Apportionment" means the process of distributing that portion of the railroad's unit value which has been allocated to Minnesota after deducting exempt and nonoperating property to the various counties and taxing districts in which the railroad company operates.

Subp. 4. **Assessment/sales ratio.** "Assessment/sales ratio" means the ratio derived by dividing the estimated market value of a property by its adjusted selling price and used as a measure of the level of estimated market value to real or true market value.

Subp. 5. **Book depreciation.** "Book depreciation" means the depreciation shown by a railroad company on its corporate books and allowed the company by the Interstate Commerce Commission.

Subp. 6. **Capitalization rate.** "Capitalization rate" means an anticipated rate of return from an investment, a rate at which income is processed (capitalized) to indicate the probable capital value. This rate is usually expressed as a percentage.

Subp. 7. **Equalization.** "Equalization" means the adjustment of the estimated market value of railroad operating property to the apparent assessment/sales ratio of commercial and industrial property.

Subp. 8. **Exempt property.** "Exempt property" means

property which is nontaxable for ad valorem tax purposes by statutes. Examples of such property are approved pollution control equipment for which an exemption has been granted and personal property otherwise exempt from taxation under Minnesota Statutes, chapter 272.

Subp. 9. **ICC.** "ICC" means the Interstate Commerce Commission.

Subp. 10. **Mainline track.** "Mainline track" means all track reported to the ICC by the respondent railroad as main line.

Subp. 11. **Nonoperating property.** "Nonoperating property" means all property owned by a railroad company which does not fall under the definition of operating property. Nonoperating property includes real property which is leased or rented or available for lease or rent to any person which is not a railroad company. Vacant land is presumed to be available for lease or rent if it has not been used as operating property for a period of at least one year preceding the valuation date. It also includes: (a) land which is not necessary and integral to the performance of railroad transportation services and which is not used on a regular and continual basis in the performance of these services; and (b) that portion of a general office building and its proportionate share of land which is not used for railway operations or purposes.

Subp. 12. **Obsolescence allowance.** "Obsolescence allowance" means the adjustment to be made to the gross cost indicator of value to reflect the loss of economic usefulness or value because of causes other than physical deterioration.

Subp. 13. **Operating property.** "Operating property" means all property owned or used on a regular and continual basis by a railroad company in the performance of railroad transportation services, including without limitation franchises, rights-of-way, bridges, trestles, shops, docks, wharves, buildings, and structures.

Subp. 14. **Original cost.** "Original cost" means the amount paid for an asset as recorded on the railroad's books in

accordance with ICC accounting rules and regulations.

Subp. 15. **PUC.** "PUC" means the Minnesota Public Utilities Commission.

Subp. 16. **Railroad company.** "Railroad company" means a company which as a common carrier operates a railroad or a line or lines of railway situated within or partly within Minnesota.

Subp. 17. **Restated cost.** "Restated cost" means the cost of an asset recorded on a railroad's books after adjusting the amount from a retirement-replacement-betterment accounting basis to a depreciation accounting basis, in accordance with Code of Federal Regulations, title 49, part 1201 (effective January 1, 1983).

Subp. 18. **Structure.** "Structure" means all coal and ore wharves or docks, station houses, depots, shops, office buildings, and all other buildings with a restated cost of over $10,000.

Subp. 19. **System.** "System" means the total tangible property, real and personal, of a company which is used in its railroad operations in all states in which it operates.

Subp. 20. **Unit value.** "Unit value" means the value of the system of a railroad company taken as a whole without any regard to the value of its component parts.

Subp. 21. **Weighting.** "Weighting" means the confidence or reliability given to a factor or indicator. It is usually expressed as a portion of 100 percent.

8105.0200 [Emergency] GENERAL PROCEDURES.

Laws of Minnesota 1979, chapter 303, article VII (called the Omnibus Tax Bill) codified as Minnesota Statutes, sections 270.80 to 270.90, eliminated the gross earnings tax on Minnesota railroads and replaced it with an ad valorem tax on all railroad operating property. The article also charges the commissioner of revenue with the responsibility of developing rules, both emergency and permanent, which will implement the provisions of the law dealing with the ad valorem method of taxing railroads. Subsequently, Laws of Minnesota 1984, chapter 502, article 9 gave additional instructions to the commissioner regarding the

? non-rule

method of valuing railroad property and the equalization of these valuations. This article also gives the commissioner the authority to promulgate emergency rules in order to implement these valuation and equalization procedures.

The methods, procedures, indicators of value, capitalization rates, weighting percents, allocation factors, and apportionment standards and equalization methods will be used as described in this chapter for 1984 and subsequent years.

8105.0300 [Emergency] REPORTS REQUIRED.

Subpart 1. **Reports to be filed.** The data used in the valuation, allocation, and apportionment processes will be drawn from reports submitted to the Department of Revenue by the railroad companies. These reports are to be filed with the commissioner on or before April 30 of each year and shall include:

A. the Minnesota Department of Revenue annual railroad report;

B. the annual report to the Interstate Commerce Commission;

C. the annual report to the Minnesota Public Utilities Commission;

D. the annual stockholders report; and

E. other commonly accepted sources of railroad income, expense, capitalization, and debt and stock values such as Standard and Poor's Stock Guide, Standard and Poor's Statistical Service, Moody's Transportation Manual, and Transportation Statistics in the United States, compiled by the Interstate Commerce Commission.

Subp. 2. **Reports examination.** Periodic examination of the supporting data for these reports will be made by the Department of Revenue. The commissioner shall, upon written application from the railroad, extend the filing date 30 days.

Subp. 3. **Failure to file.** In the event any railroad company fails to file the required reports, the commissioner shall make a valuation according to the commissioner's best judgment based on available information.

Other sources of pertinent information may be consulted only when necessary to make the valuation, allocation, and apportionment required by parts 8105.0100 to 8105.0600 [Emergency]. Said sources will, when applicable, be used uniformly and will be commonly accepted sources of data for which they are consulted. Questions unique to the valuation of a particular railroad may be resolved by consulting the books and records of the particular railroad involved.

8105.0400 [Emergency] VALUATION.

Subpart 1. **In general.** The Minnesota legislature has said that railroads may be valued using the unit basis of estimating value. Consequently for 1984 the commissioner has chosen to use this method. The approaches to value which will be used in determining the estimated unit value of railroad operating property are cost, capitalized income, and stock and debt except as provided in subparts 4 and 6. It is the decision of the commissioner of revenue that for 1984 and subsequent years the value of railroad property will be determined using these three approaches to value, where applicable, in the manner provided for in this part until such time or conditions warrant a change in either methods or procedures.

Subp. 2. **Cost approach to valuation.** The cost factor that will be considered in the railroad valuation method is the restated cost of the railroad system, plus the restated cost of construction work in progress on the assessment date. The railroad system shall be considered to be made up of the following ICC accounts: all road and equipment accounts, including leased equipment accounts; all general expenditures; and other elements of investment and railroad property owned and leased to others as well as railroad property leased from others. Book depreciation and obsolescence shall be allowed as a deduction from the restated cost of the railroad's assets enumerated above.

If any railroad is not required by the ICC to restate the cost of its assets in accordance with Code of Federal Regulations, title 49, part 1201, the commissioner will make an

estimate based upon the best available information of the impact of this restatement on the railroad's assets.

Obsolescence will be calculated through the use of the "Blue Chip Method." This method compares the railroad being appraised with the best railroads in the country, the so-called blue chip railroads. A five-year average rate of return will be calculated for the railroad under appraisal. This rate of return is computed by dividing the subject's net railroad operating income each year for each of the most recent five years preceding the assessment, by the railroad's net investment in railroad property for each corresponding year. The resulting five rates of return are then averaged using a simple arithmetic average to arrive at a five-year average rate of return. An example of this computation is as follows:

XYZ Railroad

Year	Net Railroad Operating Income	Net Investment	Indicated Rate of Return
19XX	$2,700,000	$31,500,000	8.57%
19XX	$2,900,000	$32,000,000	9.06%
19XX	$3,100,000	$33,500,000	9.25%
19XX	$3,300,000	$34,000,000	9.70%
19XX	$3,530,700	$35,000,000	10.08%
		Total	46.66%
Five-year Average Rate of Return			9.33%

A study will then be made of the major railroads operating within the United States for the same five-year period using such informational sources as Standard and Poor's Statistical Service, Moody's Transportation Manual, and Transportation Statistics in the United States. Each year the railroad with the highest rate of return will be selected as the blue chip railroad. The resulting five rates of return will then be averaged to find the five-year average blue chip rate of return. An example of this process is as follows:

Year	Railroad	Rate of Return
19XX	ABC	10.50%
19XX	FGH	10.27%
19XX	JKL	10.85%
19XX	MNO	11.02%
19XX	XYZ	10.08%
	Total	52.72%
Five-year Average Blue Chip Rate of Return		10.54%

The five-year rate of return for the railroad under

appraisal will be compared to the five-year average blue chip rate of return. The deviation of the subject railroad's rate of return from the blue chip railroads' rate of return is the amount of indicated obsolescence. The following example illustrates the computation.

XYZ Railroad 5-year Average Rate of Return	9.33%
Blue Chip 5-year Average Rate of Return	10.54%
Indicated Obsolescence 1 - (9.33% ÷ 10.54%)	11.50%

The obsolescence percentage will then be applied to the road accounts of the subject railroad, excluding land, after the allowance for depreciation has been deducted. In no instance shall the allowance for obsolescence exceed 50 percent. The following example illustrates how the cost indicator of value is computed and how the allowance for obsolescence is applied.

XYZ Railroad

Account		Amount
Road		$24,000,000
Equipment -- Owned and Leased		9,000,000
Construction Work in Progress		4,500,000
General Expenditures		1,823,000
Gross Cost Indicator		39,323,000
Less Depreciation		10,000,000
Net Cost Indicator		$29,323,000
Road	$24,000,000	
Less Land	1,000,000	
Adjusted Road	23,000,000	
Adjusted Road		$23,000,000
Depreciation on Road		7,000,000
Net Road		16,000,000
Obsolescence Percent		11.5%
Obsolescence Amount		1,840,000
Adjusted Cost Indicator of Value		$27,483,000

This cost indicator of value computed in accordance with this part will bear a weighting of 15 percent of the total unit value estimate of the railroad's property, except in the case of bankrupt railroads, or railroads with no income to be capitalized, as provided for in subpart 6, or railroads not meeting the criteria for use of the stock and debt approach to value as specified in subpart 4. These railroads will be valued using a 40 percent weighting for the cost indicator of value.

Subp. 3. **Income approach to valuation.** The income indicator of value will be calculated by averaging the net railway operating income, as determined by the ICC, of the railroad for the most recent five years preceding the

assessment. This average income shall be capitalized by applying to it a capitalization rate which will be computed by using the band of investment method. This method will consider:

A. the capital structure of railroads, including capital surplus and retained earnings;

B. the cost of debt or interest rate paying particular attention to imbedded debt of railroads;

C. the yield on preferred stock of railroads; and

D. the yield on common stock of railroads.

For 1984 this capitalization rate will be 14.6 percent. This rate will be recalculated each year using the method described in this subpart.

An example of a computation of the capitalized income approach to value is as follows:

XYZ Railroad

Year	Net Railway Operating Income
19XX	$ 2,700,000
19XX	2,900,000
19XX	3,100,000
19XX	3,300,000
19XX	3,530,750
Total	$15,530,750
Average	$ 3,106,150

Five-year average Net Railway Operating Income Capitalized at 14.6 percent (3,106,150 ÷ 14.6 percent) equals $21,275,000.

The income indicator of value computed in accordance with this part shall be weighted 60 percent of the total estimated unit value of the railroad's property except in the case of bankrupt railroads or railroads having no net operating income as provided for in subpart 6.

Subp. 4. **Stock and debt approach to valuation.** The stock and debt approach to value is the third method which will be used to estimate the unit value of the railroad operating property. This approach to value is based on the accounting principle: assets = liabilities + equity. Therefore, when the value of a company's liabilities (debt) is found and this added to the worth of its stock, a value can be established for its assets (property).

The use of this approach to value will be limited to only those railroads meeting qualifications in items A to C:

A. The stock of the railroad must be traded on either the New York or American Stock Exchange.

B. The bonds of the railroad must be traded or have a rating by either Standard and Poor's or Moody's rating services.

C. If the railroad is part of a diversified company, the value of the railroad portion of the total stock price must be able to be separated on an earnings basis using the following method:

XYZ Railroad

XYZ railroad is wholly owned by ABC Industries Inc.

Net Earnings of ABC Industries	$5,200,500
Net Earnings of XYZ Railroad	$2,600,250
Percent of XYZ net earnings to total conglomerate earnings	50%
Value of share of ABC Industries stock	$ 100
XYZ Railroad portion of stock value	$ 50

If a railroad has no net earnings, and is part of a conglomerate, then the stock and debt indicator of value will not be used.

The value of the stock used in the stock and debt method shall be an average of the month-ending stock prices for the 12 months immediately preceding the assessment date of January 2. The value of the bonds, equipment obligations, and conditional sales contracts, and other long-term debts shall also be an average of the cost of money quotes for the 12 months immediately preceding the assessment date of January 2. The source for these stock and bond prices shall be Standard and Poor's Stock Guide or other applicable financial service.

An illustration of a computation of the stock and debt approach to value is as follows:

XYZ Railroad Company

Shares of Common Stock issued x Average price for preceding year	1,000,000 x $12 = $12,000,000
Shares of Preferred Stock x Average price for preceding year	100,000 x $15 = $ 1,500,000
Rate and face value of bonds x Average price for class of bonds for preceding year	
A rated 8% bonds	$10,000,000 x 99% of par = $ 9,900,000

Stock and Debt Indicator of Value $23,400,000

After the gross stock and debt indicator of value has been computed, an allowance will be made for the effect, if any, of revenue from other than railway operations included in this indicator of value. This allowance shall be based on the ratio of a five-year average of net revenue from railway operations, as determined by the ICC, to a similar five-year average of income available for fixed charges as determined by the ICC. The five-year average will be the most recent five years preceding the assessment date. An example of this computation is as follows:

XYZ Railroad Company

Year	Net Revenue from Railway Operations	Income Available for Fixed Charges
19XX	$ 3,000,000	$ 3,500,000
19XX	4,000,000	4,300,000
19XX	5,200,000	5,700,000
19XX	6,000,000	6,800,000
19XX	5,200,000	5,400,000
	$23,400,000	$25,700,000
Average	$ 4,680,000	$ 5,140,000

Ratio $4,680,000 ÷ $5,140,000 = 91%

Gross Stock and Debt Indicator of Value	$23,400,000
Ratio of Operating to Non-carrier Earnings	91%
Net Stock and Debt Indicator of Value	$21,300,000

The stock and debt indicator of value computed in accordance with this part will bear a weighting of 25 percent of the total unit value of the railroad's property, except in the case of bankrupt railroads, railroads in bankruptcy proceedings, or railroads with no income to be capitalized, as provided for in subpart 6. If no stock and debt indicator of value is computed, the weighting of 25 percent which would have been applied to this indicator of value will be placed on the cost indicator of value.

Subp. 5. **Unit value computation.** The estimated unit value of the railroad property will be the total of the three weighted indicators of value. The following is an example of the computation of the unit value.

XYZ Railroad

Valuation Approach	Value	Weighting	
Cost indicator of value	$27,483,000	15%	$ 4,122,500

Income indicator of value	21,275,000	60%	12,765,000
Stock and debt indicator of value	21,300,000	25%	5,325,000
		Unit Value	$22,212,500

The weighting shown above may vary from railroad to railroad, as provided in subparts 2 to 4, depending on the conditions and circumstances involved in each valuaton. For example, a railroad with no outstanding stock would not have a computation for a stock and debt indicator of value and, therefore, the cost indicator of value would be weighted 40 percent.

Subp. 6. **Railroads operating at a loss, bankrupt railroads involved in federal bankruptcy proceedings, and railroads adjudged bankrupt by a federal court.** Railroads which are involved in federal bankruptcy proceedings, adjudged bankrupt, or railroads having no net railway operating income will be valued using the cost and stock and debt approaches to value. If the stocks or bonds of such railroads are not traded, or do not meet the other requirements for use of the stock and debt indicator of value, then these railroads will be valued using the cost approach to value only.

8105.0500 [Emergency] ALLOCATION.

Subpart 1. **In general.** After the estimated unit value of the railroad property has been determined, the portion of value which is attributable to Minnesota must be established. This is accomplished through the use of certain allocation factors. Each of the factors in the allocation method shows a relationship between the railroad system operations in all states and its Minnesota operations. These relationships are expressed in a percentage figure. These percentages are then added and an average is computed. The resulting average of the factors, multiplied by the unit value, yields the Minnesota portion of the railroad property which will, after the adjustments described in parts 8105.0600 [Emergency] and 8105.0800 [Emergency], be subject to ad valorem tax in Minnesota.

Subp. 2. **Allocation factors.** The factors to be considered in making allocations of unit values to Minnesota for railroad

companies are:

A. miles of railroad track operated in Minnesota divided by miles of railroad track operated in all states;

B. ton miles of revenue freight transported in Minnesota divided by ton miles of revenue freight transported in all states;

C. gross revenues from transportation operations within Minnesota divided by gross revenues from transportation operations in all states; and

D. cost of road property in Minnesota divided by the cost of road property in all states.

The following example illustrates the allocation method to be applied to the unit value of railroad property.

XYZ Railroad

Minnesota miles of track	100	
Total miles of track	500	= 20%
Minnesota ton miles of revenue freight	2,200,000	
Total ton miles of revenue freight	9,000,000	= 24%
Minnesota gross transportation revenue	$10,000,000	
Total gross transportation revenues	$40,000,000	= 25%
Minnesota Cost of Road Property	2,990,000	
Total Cost of Road Property	13,000,000	= 23%
Total		92%
Minnesota Percent of Unit Value		23%
Total Unit Value ($22,212,500 x 23%) = Minnesota Portion of Unit Value		$5,108,875

8105.0600 [Emergency] ADJUSTMENTS FOR NONFORMULA ASSESSED PROPERTY OR EXEMPT PROPERTY.

After the Minnesota portion of the unit value of the railroad company is determined, property which is either exempt from taxation, such as pollution control equipment and personal property, or classified as nonoperating will be deducted from the Minnesota portion of the unit value to the extent that it has been included in the computation of this value.

Property which has been included in the computation of the unit value but has been defined as nonoperating property will be valued by the local assessor. The Minnesota portion of the unit

value will be reduced by the restated cost of this property. Only nonoperating property located within Minnesota will be eligible for this exclusion.

The railroad company shall have the responsibility to submit to the commissioner of revenue, in the form required by the commissioner, such schedules of nonoperating property as the commissioner may require.

In addition to nonoperating property which will be valued and assessed locally, a deduction from the Minnesota portion of the unit value will be made for personal property. The unit value method presupposes that the value of any one portion of the unit is interdependent upon all other elements of the unit; therefore, it is extremely difficult to make a separation of this value into real and personal property.

A percentage of the Minnesota portion of the unit value after deducting nonoperating and exempt property will be excluded as personal property. This percentage will be computed in the following way:

A. The following ICC accounts for property within Minnesota will be totaled:

(1) that portion of coal and ore wharves determined to be personal property;

(2) communication equipment;

(3) signals and interlockers;

(4) roadway machines;

(5) shop machinery;

(6) power plant machines; and

(7) equipment, allocated to Minnesota on the basis of car and locomotive miles in Minnesota compared to total system car and locomotive miles.

B. The total of these accounts will then be divided by the total of the Minnesota road, equipment, leased property, general expenditures, construction work in progress, and other elements of investment accounts. The resulting percentage will be used to determine the personal property amount of the Minnesota portion of the unit value. This portion will not be

taxable for ad valorem purposes.

C. The following is an illustration of the computation for the personal property exclusion.

XYZ Railway

Personal Property Account		Amount in Minnesota
Coal and Ore Wharves		$ 189,200
Communication Equipment		100,000
Signals and Interlockers		200,000
Roadway Machines		200,000
Shop Machinery		100,000
Power Plant Machinery		100,000
* Equipment -- Owned and Leased		2,250,000
		3,139,200
* Total Equipment Account	$9,000,000	
Car and Locomotive Miles in Minnesota	1,000,000	
Total Car and Locomotive Miles	4,000,000	
Ratio of Minnesota to Total	25%	
Minnesota Allocated Equipment Account	$2,250,000	

Restated Cost Account		Amount in Minnesota
Road		$2,990,000
Equipment -- Owned and Leased		2,250,000
Construction Work in Progress		800,000
General expenditures		500,000
		$6,540,000
Minnesota Personal Property Accounts	$3,139,200	
Minnesota Restated Cost	$6,540,000	
Ratio of Personal Property to Cost	48%	
Minnesota portion of unit value		5,108,875
Personal Property exclusion at 48%		2,452,260
Taxable Minnesota Portion of Unit Value		$2,656,615

8105.0700 [Emergency] APPORTIONMENT.

Subpart 1. **In general.** After the taxable Minnesota portion of the railroad's unit value has been determined, this value must be distributed to the various counties and taxing districts in which the railroad operates. This distribution will be accomplished by the commissioner of revenue through the use of certain apportionment components. Each of the components in the apportionment method is a reflection of the property owned or used by the railroad within a particular taxing district. The figures making up these components will be developed on information submitted by the railroad companies in annual reports filed with the commissioner, and information

supplied to the commissioner by the various county auditors and assessors.

Subp. 2. **Apportionment components.** There are three components which will be used in the distribution of the value of railroad property to the various taxing districts. They are railroad operating land, miles of track, and railroad operating structures with a restated cost of $10,000 or more.

Subp. 3. **Railroad operating land.** The information for the computation of this apportionment component will be based on information submitted by both the railroads and the various county auditors and assessors. The railroad companies shall file with the commissioner of revenue each year, in conjunction with their annual reports required by part 8105.0300 [Emergency], subpart 1, the number of acres of railroad operating land owned or used by them in each taxing district in which they operate. The county auditor shall also be required to submit to the commissioner of revenue a report showing the number of acres of railroad operating land, detailed by owning railroad, in each taxing district within the county. If either the railroads or the auditors find that it is administratively impracticable to submit this information, the commissioner shall make an estimate of the number of acres of railroad operating land within each taxing district based on the best information available. Such information would usually consist of the miles of railroad track within the taxing district and the normal width of the right-of-way used by the railroad. In addition, information relative to the current estimated market value of all land within the respective taxing districts will be obtained from the county or city assessors by a review of the abstract of assessment of real and personal property which the various assessors are required to submit yearly to the commissioner of revenue in compliance with Minnesota Statutes, section 273.061, subdivision 9. A review will also be made of the abstract of assessment of exempt real property which is submitted to the commissioner of revenue by the various assessors in compliance with Minnesota Statutes, section 273.18.

The computation for the railroad operating land apportionment component will be accomplished annually in the following manner:

A. The average estimated market value per taxable acre within a specific taxing district will be calculated by dividing the estimated market value of all taxable land within the taxing district as indicated by the most recent abstract of assessment of real and personal property by the number of taxable acres within the taxing district. The number of acres within a taxing district will be obtained from the most recent statistics available from the Land Management Information Center, State Planning Agency. The total number of acres will be adjusted to allow for nontaxable or exempt acres by subtracting these nontaxable or exempt acres from the total acres. The number of nontaxable or exempt acres will be obtained from the most recent abstract of assessment of exempt real property. The following example illustrates this calculation.

Estimated Market Value of All Taxable Land Within Taxing District		$200,000
Total Area of Taxing District	210 Acres	
Nontaxable or Exempt Acres	10 Acres	
Taxable Acres Within Taxing District		200
Average Estimated Market Value per Acre		$ 1,000

B. This average estimated market value per taxable acre is then applied to the number of acres of railroad operating land within the taxing district to compute a gross railroad operating land component within the taxing district. The following example illustrates this computation:

Average Estimated Market Value Per Acre	$1,000
Acres of Railroad Operating Land	x 5
Gross Railroad Operating Land Component	$5,000

C. This railroad operating land component will then be adjusted. This adjustment is achieved by striking a ratio between the system unit value for all Minnesota railroads, as described in part 8105.0400 [Emergency], subpart 5, to the total of investment in railway property used in transportation service as defined by the ICC for all railroads operating in Minnesota. This relationship will be computed annually and will then be

applied to the gross railroad operating land component to arrive at the adjusted railroad operating land component. This adjusted land value will then be used as one element of the apportionment computation.

The following is an example of how the adjusted railroad operating land component is to be computed:

Railroad	System Unit Value	Net Investment in Railway Property Used in Transportation Services
ABC Railway	$20,000,000	$ 40,000,000
FGH Railway	5,256,000	8,000,000
JKL Railroad	2,000,000	4,780,830
MNO Railroad	50,000,000	90,000,000
XYZ Railroad	22,212,500	25,000,000
	$99,468,500	$165,780,830

Total System Unit Value ($99,468,500) ÷ Total Net Investment in Railway Property Used in Transportation Services ($165,780,830) = 60%

Gross Railroad Operating Component Within the Taxing District	$5,000
Adjustment Factor	60%
Adjusted Railroad Operating Land Component	$3,000

Subp. 4. **Miles of track.** The information for the apportionment component will be based on information submitted by the railroads to the commissioner of revenue in conjunction with the annual report required by part 8105.0300 [Emergency], subpart 1. Each railroad will be required to list the miles of track they own in each taxing district within Minnesota. The track must be separated into two classes, main line track and all other track.

In order to make the miles of track in each taxing district compatible with the other apportionment components, the miles must be converted to dollars. This conversion will be computed annually. The conversion will be accomplished by adding together the following ICC accounts for each railroad's net investment in Minnesota: account 3, grading; account 8, ties; account 9, rails; account 11, ballast. The total of these accounts will then be divided by the number of miles of track operated by the respective railroads within Minnesota to obtain a cost per mile figure. This will be used as the average cost

per mile for track within Minnesota.

The following is an example of how the average cost per mile of track in Minnesota will be computed:

Railroad	Total of Accounts #3, 8, 9, 11	Mileage Operated in Minnesota
ABC Railway	$ 4,000,000	154
FGH Railway	800,000	42
JKL Railroad	500,000	20
MNO Railroad	7,450,000	290
XYZ Railroad	2,500,000	104
	$15,250,000	610

Total cost of track ($15,250,000) ÷ Total miles operated (610) = Average Cost per Mile of Track $25,000.

An additional calculation is necessary to adjust this average cost per mile of track to allow for weighting. Main line track shall be weighted at 1.5 times the cost of all other track; thus, if the average cost per mile of track is $25,000, main line track would be worth more than $25,000 per mile, while all other track would be worth less. The calculation for the average cost of both main line and all other track shall be made annually on an industry basis.

The calculation to determine the average cost per mile of main line track and the average cost per mile of all other track will be computed in the following manner:

A. Total mileage operated will be multiplied by the average cost per mile to arrive at a total track cost.

B. Total mileage operated will be separated into the two types of track, main line and all other track.

C. Main line track will be multiplied by 1.5 to arrive at adjusted main line miles.

D. Adjusted main line miles will be added to all other track miles to arrive at adjusted total track miles.

E. Total track cost will be divided by adjusted total track miles to arrive at the cost per mile of all other track.

F. The cost per mile of main line track will be computed by multiplying the cost per mile of all other track by 1.5.

An illustration of this computation is as follows:

Mileage	Main Line	All other

Railroad	Operated	Miles	Track Miles
ABC Railway	154	96	58
FGH Railway	42	10	32
JKL Railroad	20	15	5
MNO Railroad	290	132	158
XYZ Railroad	104	52	52
	610	305	305

Total Mileage Operated		610
Average Cost Per Mile of Track		$ 25,000
Total Track Cost		$15,250,000
Main Line Miles	305	
Weighting Factor	1.5	
Adjusted Main Line Miles		457.5
Other Track Miles		305.0
Adjusted Total Track Miles		762.5
Total Track Cost		$15,250,000
Adjusted Total Track Miles		762.5
Average Cost Per Mile of Other Track		$ 20,000
Average Cost Per Mile of Other Track		$ 20,000
Weighting Factor		1.5
Average Cost Per Mile of Main Line Track		$ 30,000

After the per mile cost figures for main line and all other track are obtained, these per mile cost figures would be multiplied by the length of each type of track in a particular taxing district to obtain the value of the trackage in that district. The same cost figures will be used for all railroads operating in Minnesota.

Subp. 5. **Structures.** The information for the computation of this apportionment component will be based on statements submitted by the railroads. These schedules shall be submitted annually to the commissioner of revenue in conjunction with the annual report required by part 8105.0300 [Emergency], subpart 1. The schedules shall show the location, by taxing district, of all operating structures owned by the reporting railroad within Minnesota with a restated cost of $10,000 or more. The schedules shall list a description of the structure and the railroad's current restated cost investment in the structure as it appears in the appropriate ICC account.

An example of this listing is as follows:

XYZ Railroad

Taxing District	Description	Restated Cost
St. Paul, S.D. #625	Office Building	$400,000
Minneapolis, S.D. #1	Depot	20,000
Fridley, S.D. #16	Yard Tower	200,000

Anoka, S.D. #11	Engine and Car Shop	250,000
	Total	$870,000

Subp. 6. **Apportionment computation.** After the three apportionment components have been calculated for each taxing district in which the railroad operates, the apportionment of the railroad's taxable Minnesota portion of the unit value can begin. This apportionment is accomplished by totaling the value of the land, track, and structure components as developed in subparts 3 to 5 for each taxing district, then finding the sum of these totals for all the taxing districts in which the subject railroad operates. The taxable Minnesota portion of the railroad's unit value is divided by this total value of the three apportionment components for all taxing districts in which the railroad operates in order to arrive at a percentage. This resulting percentage is then applied to the total value of the three apportionment components for each specific taxing district. The figure produced by this multiplication process is the taxing district's share of the railroad's taxable Minnesota portion of the unit value. It is important to note that no more value can be distributed to the various taxing districts than that produced by the valuation process described in parts 8105.0100 to 8105.0600 [Emergency].

The example in part 8105.9900 [Emergency] illustrates the apportionment process.

8105.0800 [Emergency] EQUALIZATION.

Subpart 1. **In general.** After the apportionment of value referred to in part 8105.0700 [Emergency] has been made, the railroad property values must be equalized to coincide with the assessment levels of commercial and industrial property within each respective county receiving a share of the apportioned railroad value. This equalization will be accomplished through the use of an assessment/sales ratio.

Subp. 2. **Assessment/sales ratio computation.** Each year the sales ratio section of the Minnesota Department of Revenue, Property Equalization Division, prepares a comprehensive assessment/sales ratio study commonly known as the Minnesota Tax

Court study. This study is used by the tax court to ensure that equalization is given to the various plaintiffs who appear before it concerning ad valorem tax matters. The study is conducted in many parts. The portions which will be used for purposes of this part are known as the "County Nine Month Commercial and Industrial Sales Ratio."

This nine-month commercial and industrial sales ratio is computed through an analysis of the certificates of real estate value filed by the buyers and/or sellers of commercial or industrial property within each county. The information contained on this certificate of real estate value is compiled pursuant to requests, standards, and methods set forth by the Minnesota Tax Court and the Minnesota Department of Revenue. The most recent nine-month commercial and industrial study available will be used for purposes of this part.

The median commercial and industrial sales ratio from this study will be used as a basis to estimate the current year commercial and industrial median ratio for each county.

The process used to estimate this current year median ratio will be as follows.

The State Board of Equalization abstract of market value will be examined. This statistical compilation, commonly called the mini-abstract, is filed each year by every county assessor, with the Property Equalization Division of the Department of Revenue. The abstract is a listing of the current estimated market values, together with other information for the various classes of property -- residential, agricultural, commercial, industrial, recreational, and so forth -- within each particular county. The current estimated market value of commercial and industrial property within each county will be taken from this abstract. The amount of the value of new commercial and industrial construction ("new" meaning since the last assessment period) will also be taken from the abstract. The value of new construction will then be deducted from the estimated market value, resulting in a net estimated current year market value for commercial and industrial property within

the county. This current year value will be compared to the previous year's estimated market value for commercial and industrial property within the county and the difference between the two values noted. This difference will be divided by the previous year's estimated market value for commercial and industrial property to find the percentage of increase, or decrease, in assessment levels for each year. This percent of change will be applied to the most recent commercial and industrial median ratio to estimate the current year's commercial and industrial median ratio. An example of this calculation for a typical county is shown below.

1984 Estimated Market Value for Commercial and Industrial Property	$12,000,000
Less New Construction	1,500,000
1984 Net Estimated Market Value for Commercial and Industrial Property	10,500,000
1983 Estimated Market Value for Commercial and Industrial Property	10,000,000
Difference 1983 vs 1984 Estimated Market Value	500,000
Percent of change (500,000 ÷ 10,000,000)	5%
1983 Median Commercial and Industrial Ratio	88%
1984 Estimated Median Commercial and Industrial Ratio (88% x 105%)	92.4%

The same calculation is performed for each Minnesota county which contains operating railroad property. However, if there are five or fewer valid sales of commercial and industrial property within a county during the nine-month study period, it is the commissioner's decision that these few sales are insufficient to form the basis for a meaningful commercial and industrial ratio. Therefore, the median assessment/sales ratio to be used for purposes of the above computation will not be the median commercial and industrial ratio but will be the median ratio of all property classes within the county. This median ratio of all property is computed in the same manner using the same procedures and standards as the commercial and industrial ratio. In addition, the computation described above will not be performed using the commercial and industrial estimated market value but will use the estimated market value for all property within the county. All other aspects of the calculations are identical except for this substitution.

Subp. 3. **Application of estimated current year median assessment/sales ratio.** After the estimated current year median ratio has been calculated pursuant to subpart 2, it is used to adjust the apportioned estimated market value of operating railroad property to the apparent assessment level of commercial and industrial property in each county. This is done by factoring or multiplying the estimated market value of the railroad property by the estimated sales ratio to arrive at the equalized market value of operating railroad property. No adjustment will be made if the estimated current year sales ratio is within five percent of the assessment level of operating railroad property. An example of this adjustment is as follows:

	Estimated Market Value* of Railroad Operating Property	Estimated Current Year Median Sales Ratio	Equalized Estimated Market Value of Railroad Operating Property
County A	$100,000	85%	$ 85,000
County B	250,000	88%	220,000
County C	300,000	90%	270,000
County D	150,000	92%	138,000
County E	100,000	95%	100,000**

* For purposes of this example, assume that railroad property is assessed at 100 percent of market value.

** No adjustment made because Estimated Current Year Median Sales Ratio is within five percent of Assessment Level on Operating Railroad Property.

All railroads operating within a particular county will be equalized at the same percentage.

These equalized estimated market values of operating railroad property will be certified to the county assessor denoting specific railroads and taxing districts pursuant to Minnesota Statutes, section 270.87.

1 8105.9900 [Emergency] EXAMPLE OF APPORTIONMENT PROCESS.

Taxing District	LAND COMPONENT: Aver. E.M.V. Per Acre	# of R.R. Opr. Acres	Gross R.R. Land Component	Adj. R.R. Land Component @ 60%
St. Paul, S.D. #625	$19,000	50	$ 950,000	570,000
Minneapolis, S.D. #1	20,000	80	1,600,000	960,000
Fridley, S.D. #16	15,000	95	1,425,000	855,000
Coon Rapids, S.D. #11	13,000	70	910,000	546,000
Anoka, S.D. #11	12,000	20	240,000	144,000
Ramsey, S.D. #11	10,000	60	600,000	360,000
Elk River, S.D. #728	6,000	5	30,000	18,000
Elk River Twsp., S.D. #728	2,000	20	40,000	24,000
Big Lake, S.D. #727	3,000	4	12,000	7,200
Big Lake Twsp., S.D. #727	1,000	100	100,000	60,000
			$5,907,000	$3,544,200

TRACK COMPONENT: Miles of Main Line	Value of Main Line @ $30,000 Mile	Miles of all other Track	Value of All Other Track @ $20,000	Total Track Component	Structures At Restated cost	STRUCTURES: Total of 3 Components	% of 3 Components to Unit Value*	Taxing Dist. Portion of Unit Value
8	$ 240,000			$ 240,000	$400,000	$1,210,000	37.87%	$ 458,285
12	360,000			360,000	20,000	1,340,000	37.87%	507,522
6	180,000	20	$ 400,000	580,000	200,000	1,635,000	37.87%	619,253
9	270,000			270,000	-----	816,000	37.87%	309,059
4	120,000			120,000	250,000	514,000	37.87%	194,677
11	330,000			330,000	-----	690,000	37.87%	261,336
2	60,000			60,000	-----	78,000	37.87%	29,542
		8	160,000	160,000	-----	184,000	37.87%	69,690
		4	80,000	80,000	-----	87,200	37.87%	33,027
		20	400,000	400,000	-----	460,000	37.87%	174,224
	$1,560,000		$1,040,000	$2,600,000	$870,000	$7,014,200		$2,656,615

*Taxable Minn. Portion of Unit Value / Total of 3 Components for All Taxing Districts = $2,656,615 / $7,014,200 = 37.87%

SP:N12

APPROVED AS TO LEGALITY

August 16, 19 84

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY _____
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
AUG 20 1984
Joan Anderson Growe
Secretary of State

10:01 AM

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

P.O. Box 64446

St. Paul, Minnesota 55164

Telephone: (612) 296-5134

August 3, 1984

Office of the Attorney General
204 State Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55155

Re: Adoption of a Temporary Rule Relating to the Valuation and Assessment of Railroads

Dear Sir or Madam:

In accordance with Minn. Stat. Section 14.32, I enclose the following documents for your review:

1. Temporary Rule as Adopted (original and 3 copies).
2. Order Adopting Temporary Rules (2 copies).
3. Notice of Intent to Solicit Outside Opinions.
4. Order for Suspension of Permanent Rules and Publication of Temporary Rules.
5. Notice of Intent to Suspend Permanent Rules and to Adopt Temporary Rules.
6. Affidavit of Mailing (Notice of Intent to Suspend Permanent rules and to Adopt Temporary Rules).
7. Certificate of Completeness and Accuracy (Mailing List attached).
8. Rule as Proposed.
9. Copy of the State Register, Volume 9, Number 2, July 9, 1984, in which the temporary rule was published.
10. Written Comments on the rule.
11. Statement of Compliance with Rulemaking Procedures.

Please note that there were no changes from the rules as proposed to the rules as adopted and that no one requested to be notified when these rules were submitted to the Attorney General for review.

If you have any questions please contact me.

Sincerely yours,

GERALD D. GARSKI, Manager
State Assessed Properties
Property Equalization Division

GDG:mgs

AN EQUAL OPPORTUNITY EMPLOYER

Emergency Rules as Proposed (all new material)

8105.0100 [Emergency] DEFINITIONS.

Subpart 1. Scope. As used in this chapter, the following words, terms, and phrases have the meanings given to them by this part. Some of the words, terms, and phrases are defined by statute but are included here for completeness.

Subp. 2. Allocation. "Allocation" means the process by which a fair and reasonable portion of each railroad's total unit value is assigned to Minnesota for purposes of taxation.

Subp. 3. Apportionment. "Apportionment" means the process of distributing that portion of the railroad's unit value which has been allocated to Minnesota after deducting exempt and nonoperating property to the various counties and taxing districts in which the railroad company operates.

Subp. 4. Assessment/sales ratio. "Assessment/sales ratio" means the ratio derived by dividing the estimated market value of a property by its adjusted selling price and used as a measure of the level of estimated market value to real or true market value.

Subp. 5. Book depreciation. "Book depreciation" means the depreciation shown by a railroad company on its corporate books and allowed the company by the Interstate Commerce Commission.

Subp. 6. Capitalization rate. "Capitalization rate" means an anticipated rate of return from an investment, a rate at which income is processed (capitalized) to indicate the probable capital value. This rate is usually expressed as a percentage.

Subp. 7. Equalization. "Equalization" means the adjustment of the estimated market value of railroad operating property to the apparent assessment/sales ratio of commercial and industrial property.

Subp. 8. Exempt property. "Exempt property" means property which is nontaxable for ad valorem tax purposes by statutes. Examples of such property are approved pollution control equipment for which an exemption has been granted and personal property otherwise exempt from taxation under Minnesota Statutes, chapter 272.

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Subp. 9. ICC. "ICC" means the Interstate Commerce Commission.

Subp. 10. Mainline track. "Mainline track" means all track reported to the ICC by the respondent railroad as main line.

Subp. 11. Nonoperating property. "Nonoperating property" means all property owned by a railroad company which does not fall under the definition of operating property. Nonoperating property includes real property which is leased or rented or available for lease or rent to any person which is not a railroad company. Vacant land is presumed to be available for lease or rent if it has not been used as operating property for a period of at least one year preceding the valuation date. It also includes: (a) land which is not necessary and integral to the performance of railroad transportation services and which is not used on a regular and continual basis in the performance of these services; and (b) that portion of a general office building and its proportionate share of land which is not used for railway operations or purposes.

Subp. 12. Obsolescence allowance. "Obsolescence allowance" means the adjustment to be made to the gross cost indicator of value to reflect the loss of economic usefulness or value because of causes other than physical deterioration.

Subp. 13. Operating property. "Operating property" means all property owned or used on a regular and continual basis by a railroad company in the performance of railroad transportation services, including without limitation franchises, rights-of-way, bridges, trestles, shops, docks, wharves, buildings, and structures.

Subp. 14. Original cost. "Original cost" means the amount paid for an asset as recorded on the railroad's books in accordance with ICC accounting rules and regulations.

Subp. 15. PUC. "PUC" means the Minnesota Public Utilities Commission.

Subp. 16. Railroad company. "Railroad company" means a company which as a common carrier operates a railroad or a line

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or lines of railway situated within or partly within Minnesota.

Subp. 17. **Restated cost.** "Restated cost" means the cost of an asset recorded on a railroad's books after adjusting the amount from a retirement-replacement-betterment accounting basis to a depreciation accounting basis, in accordance with Code of Federal Regulations, title 49, part 1201 (effective January 1, 1983).

Subp. 18. **Structure.** "Structure" means all coal and ore wharves or docks, station houses, depots, shops, office buildings, and all other buildings with a restated cost of over $10,000.

Subp. 19. **System.** "System" means the total tangible property, real and personal, of a company which is used in its railroad operations in all states in which it operates.

Subp. 20. **Unit value.** "Unit value" means the value of the system of a railroad company taken as a whole without any regard to the value of its component parts.

Subp. 21. **Weighting.** "Weighting" means the confidence or reliability given to a factor or indicator. It is usually expressed as a portion of 100 percent.

8105.0200 [Emergency] GENERAL PROCEDURES.

Laws of Minnesota 1979, chapter 303, article VII (called the Omnibus Tax Bill) codified as Minnesota Statutes, sections 270.80 to 270.90, eliminated the gross earnings tax on Minnesota railroads and replaced it with an ad valorem tax on all railroad operating property. The article also charges the commissioner of revenue with the responsibility of developing rules, both emergency and permanent, which will implement the provisions of the law dealing with the ad valorem method of taxing railroads. Subsequently, Laws of Minnesota 1984, chapter 502, article 9 gave additional instructions to the commissioner regarding the method of valuing railroad property and the equalization of these valuations. This article also gives the commissioner the authority to promulgate emergency rules in order to implement these valuation and equalization procedures.

The methods, procedures, indicators of value,

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capitalization rates, weighting percents, allocation factors, and apportionment standards and equalization methods will be used as described in this chapter for 1984 and subsequent years.

8105.0300 [Emergency] REPORTS REQUIRED.

Subpart 1. Reports to be filed. The data used in the valuation, allocation, and apportionment processes will be drawn from reports submitted to the Department of Revenue by the railroad companies. These reports are to be filed with the commissioner on or before April 30 of each year and shall include:

A. the Minnesota Department of Revenue annual railroad report;

B. the annual report to the Interstate Commerce Commission;

C. the annual report to the Minnesota Public Utilities Commission;

D. the annual stockholders report; and

E. other commonly accepted sources of railroad income, expense, capitalization, and debt and stock values such as Standard and Poor's Stock Guide, Standard and Poor's Statistical Service, Moody's Transportation Manual, and Transportation Statistics in the United States, compiled by the Interstate Commerce Commission.

Subp. 2. Reports examination. Periodic examination of the supporting data for these reports will be made by the Department of Revenue. The commissioner shall, upon written application from the railroad, extend the filing date 30 days.

Subp. 3. Failure to file. In the event any railroad company fails to file the required reports, the commissioner shall make a valuation according to the commissioner's best judgment based on available information.

Other sources of pertinent information may be consulted only when necessary to make the valuation, allocation, and apportionment required by parts 8105.0100 to 8105.0600 [Emergency]. Said sources will, when applicable, be used uniformly and will be commonly accepted sources of data for

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which they are consulted. Questions unique to the valuation of a particular railroad may be resolved by consulting the books and records of the particular railroad involved.

8105.0400 [Emergency] VALUATION.

Subpart 1. In general. The Minnesota legislature has said that railroads may be valued using the unit basis of estimating value. Consequently for 1984 the commissioner has chosen to use this method. The approaches to value which will be used in determining the estimated unit value of railroad operating property are cost, capitalized income, and stock and debt except as provided in subparts 4 and 6. It is the decision of the commissioner of revenue that for 1984 and subsequent years the value of railroad property will be determined using these three approaches to value, where applicable, in the manner provided for in this part until such time or conditions warrant a change in either methods or procedures

Subp. 2. Cost approach to valuation. The cost factor that will be considered in the railroad valuation method is the restated cost of the railroad system, plus the restated cost of construction work in progress on the assessment date. The railroad system shall be considered to be made up of the following ICC accounts: all road and equipment accounts, including leased equipment accounts; all general expenditures; and other elements of investment and railroad property owned and leased to others as well as railroad property leased from others. Book depreciation and obsolescence shall be allowed as a deduction from the restated cost of the railroad's assets enumerated above.

If any railroad is not required by the ICC to restate the cost of its assets in accordance with Code of Federal Regulations, title 49, part 1201, the commissioner will make an estimate based upon the best available information of the impact of this restatement on the railroad's assets.

Obsolescence will be calculated through the use of the "Blue Chip Method." This method compares the railroad being appraised with the best railroads in the country, the so-called

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blue chip railroads. A five-year average rate of return will be calculated for the railroad under appraisal. This rate of return is computed by dividing the subject's net railroad operating income each year for each of the most recent five years preceding the assessment, by the railroad's net investment in railroad property for each corresponding year. The resulting five rates of return are then averaged using a simple arithmetic average to arrive at a five-year average rate of return. An example of this computation is as follows:

XYZ Railroad

Year	Net Railroad Operating Income	Net Investment	Indicated Rate of Return
19XX	$2,700,000	$31,500,000	8.57%
19XX	$2,900,000	$32,000,000	9.06%
19XX	$3,100,000	$33,500,000	9.25%
19XX	$3,300,000	$34,000,000	9.70%
19XX	$3,530,700	$35,000,000	10.08%
		Total	46.66%
Five-year Average Rate of Return			9.33%

A study will then be made of the major railroads operating within the United States for the same five-year period using such informational sources as Standard and Poor's Statistical Service, Moody's Transportation Manual, and Transportation Statistics in the United States. Each year the railroad with the highest rate of return will be selected as the blue chip railroad. The resulting five rates of return will then be averaged to find the five-year average blue chip rate of return. An example of this process is as follows:

Year	Railroad	Rate of Return
19XX	ABC	10.50%
19XX	FGH	10.27%
19XX	JKL	10.85%
19XX	MNO	11.02%
19XX	XYZ	10.08%
	Total	52.72%
Five-year Average Blue Chip Rate of Return		10.54%

The five-year rate of return for the railroad under appraisal will be compared to the five-year average blue chip rate of return. The deviation of the subject railroad's rate of return from the blue chip railroads' rate of return is the amount of indicated obsolescence. The following example illustrates the computation.

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XYZ Railroad 5-year Average Rate of Return	9.33%
Blue Chip 5-year Average Rate of Return	10.54%
Indicated Obsolescence 1 - (9.33% ÷ 10.54%)	11.50%

The obsolescence percentage will then be applied to the road accounts of the subject railroad, excluding land, after the allowance for depreciation has been deducted. In no instance shall the allowance for obsolescence exceed 50 percent. The following example illustrates how the cost indicator of value is computed and how the allowance for obsolescence is applied.

XYZ Railroad

Account		Amount
Road		$24,000,000
Equipment -- Owned and Leased		9,000,000
Construction Work in Progress		4,500,000
General Expenditures		1,823,000
Gross Cost Indicator		39,323,000
Less Depreciation		10,000,000
Net Cost Indicator		$29,323,000
Road	$24,000,000	
Less Land	1,000,000	
Adjusted Road	23,000,000	
Adjusted Road		$23,000,000
Depreciation on Road		7,000,000
Net Road		16,000,000
Obsolescence Percent		11.5%
Obsolescence Amount		1,840,000
Adjusted Cost Indicator of Value		$27,483,000

This cost indicator of value computed in accordance with this part will bear a weighting of 15 percent of the total unit value estimate of the railroad's property, except in the case of bankrupt railroads, or railroads with no income to be capitalized, as provided for in subpart 6, or railroads not meeting the criteria for use of the stock and debt approach to value as specified in subpart 4. These railroads will be valued using a 40 percent weighting for the cost indicator of value.

Subp. 3. **Income approach to valuation.** The income indicator of value will be calculated by averaging the net railway operating income, as determined by the ICC, of the railroad for the most recent five years preceding the assessment. This average income shall be capitalized by applying to it a capitalization rate which will be computed by using the band of investment method. This method will consider:

A. the capital structure of railroads, including capital surplus and retained earnings;

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B. the cost of debt or interest rate paying particular attention to imbedded debt of railroads;

C. the yield on preferred stock of railroads; and

D. the yield on common stock of railroads.

For 1984 this capitalization rate will be 14.6 percent. This rate will be recalculated each year using the method described in this subpart.

An example of a computation of the capitalized income approach to value is as follows:

XYZ Railroad

Year	Net Railway Operating Income
19XX	$ 2,700,000
19XX	2,900,000
19XX	3,100,000
19XX	3,300,000
19XX	3,530,750
Total	$15,530,750
Average	$ 3,106,150

Five-year average Net Railway Operating Income Capitalized at 14.6 percent (3,106,150 ÷ 14.6 percent) equals $21,275,000.

The income indicator of value computed in accordance with this part shall be weighted 60 percent of the total estimated unit value of the railroad's property except in the case of bankrupt railroads or railroads having no net operating income as provided for in subpart 6.

Subp. 4. **Stock and debt approach to valuation.** The stock and debt approach to value is the third method which will be used to estimate the unit value of the railroad operating property. This approach to value is based on the accounting principle: assets = liabilities + equity. Therefore, when the value of a company's liabilities (debt) is found and this added to the worth of its stock, a value can be established for its assets (property).

The use of this approach to value will be limited to only those railroads meeting qualifications in items A to C:

A. The stock of the railroad must be traded on either the New York or American Stock Exchange.

B. The bonds of the railroad must be traded or have a

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rating by either Standard and Poor's or Moody's rating services.

C. If the railroad is part of a diversified company, the value of the railroad portion of the total stock price must be able to be separated on an earnings basis using the following method:

XYZ Railroad

XYZ railroad is wholly owned by ABC Industries Inc.

Net Earnings of ABC Industries	$5,200,500
Net Earnings of XYZ Railroad	$2,600,250
Percent of XYZ net earnings to total conglomerate earnings	50%
Value of share of ABC Industries stock	$ 100
XYZ Railroad portion of stock value	$ 50

If a railroad has no net earnings, and is part of a conglomerate, then the stock and debt indicator of value will not be used.

The value of the stock used in the stock and debt method shall be an average of the month-ending stock prices for the 12 months immediately preceding the assessment date of January 2. The value of the bonds, equipment obligations, and conditional sales contracts, and other long-term debts shall also be an average of the cost of money quotes for the 12 months immediately preceding the assessment date of January 2. The source for these stock and bond prices shall be Standard and Poor's Stock Guide or other applicable financial service.

An illustration of a computation of the stock and debt approach to value is as follows:

XYZ Railroad Company

Shares of Common Stock issued x Average price for preceding year	1,000,000 x $12 = $12,000,000
Shares of Preferred Stock x Average price for preceding year	100,000 x $15 = $ 1,500,000
Rate and face value of bonds x Average price for class of bonds for preceding year	
A rated 8% bonds	$10,000,000 x 99% of par = $ 9,900,000
Stock and Debt Indicator of Value	$23,400,000

After the gross stock and debt indicator of value has been computed, an allowance will be made for the effect, if any, of revenue from other than railway operations included in this indicator of value. This allowance shall be based on the ratio

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of a five-year average of net revenue from railway operations, as determined by the ICC, to a similar five-year average of income available for fixed charges as determined by the ICC. The five-year average will be the most recent five years preceding the assessment date. An example of this computation is as follows:

XYZ Railroad Company

Year	Net Revenue from Railway Operations	Income Available for Fixed Charges
19XX	$ 3,000,000	$ 3,500,000
19XX	4,000,000	4,300,000
19XX	5,200,000	5,700,000
19XX	6,000,000	6,800,000
19XX	5,200,000	5,400,000
	$23,400,000	$25,700,000
Average	$ 4,680,000	$ 5,140,000

Ratio $4,680,000 ÷ $5,140,000 = 91%

Gross Stock and Debt Indicator of Value	$23,400,000
Ratio of Operating to Non-carrier Earnings	91%
Net Stock and Debt Indicator of Value	$21,300,000

The stock and debt indicator of value computed in accordance with this part will bear a weighting of 25 percent of the total unit value of the railroad's property, except in the case of bankrupt railroads, railroads in bankruptcy proceedings, or railroads with no income to be capitalized, as provided for in subpart 6. If no stock and debt indicator of value is computed, the weighting of 25 percent which would have been applied to this indicator of value will be placed on the cost indicator of value.

Subp. 5. **Unit value computation.** The estimated unit value of the railroad property will be the total of the three weighted indicators of value. The following is an example of the computation of the unit value.

XYZ Railroad

Valuation Approach	Value	Weighting	
Cost indicator of value	$27,483,000	15%	$ 4,122,500
Income indicator of value	21,275,000	60%	12,765,000
Stock and debt indicator of value	21,300,000	25%	5,325,000
		Unit Value	$22,212,500

The weighting shown above may vary from railroad to railroad, as provided in subparts 2 to 4, depending on the conditions and circumstances involved in each valuaton. For

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example, a railroad with no outstanding stock would not have a computation for a stock and debt indicator of value and, therefore, the cost indicator of value would be weighted 40 percent.

Subp. 6. Railroads operating at a loss, bankrupt railroads involved in federal bankruptcy proceedings, and railroads adjudged bankrupt by a federal court. Railroads which are involved in federal bankruptcy proceedings, adjudged bankrupt, or railroads having no net railway operating income will be valued using the cost and stock and debt approaches to value. If the stocks or bonds of such railroads are not traded, or do not meet the other requirements for use of the stock and debt indicator of value, then these railroads will be valued using the cost approach to value only.

8105.0500 [Emergency] ALLOCATION.

Subpart 1. In general. After the estimated unit value of the railroad property has been determined, the portion of value which is attributable to Minnesota must be established. This is accomplished through the use of certain allocation factors. Each of the factors in the allocation method shows a relationship between the railroad system operations in all states and its Minnesota operations. These relationships are expressed in a percentage figure. These percentages are then added and an average is computed. The resulting average of the factors, multiplied by the unit value, yields the Minnesota portion of the railroad property which will, after the adjustments described in parts 8105.0600 [Emergency] and 8105.0800 [Emergency], be subject to ad valorem tax in Minnesota.

Subp. 2. Allocation factors. The factors to be considered in making allocations of unit values to Minnesota for railroad companies are:

A. miles of railroad track operated in Minnesota divided by miles of railroad track operated in all states;

B. ton miles of revenue freight transported in Minnesota divided by ton miles of revenue freight transported in all states;

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C. gross revenues from transportation operations within Minnesota divided by gross revenues from transportation operations in all states; and

D. cost of road property in Minnesota divided by the cost of road property in all states.

The following example illustrates the allocation method to be applied to the unit value of railroad property.

XYZ Railroad

Minnesota miles of track	100	
Total miles of track	500	= 20%
Minnesota ton miles of revenue freight	2,200,000	
Total ton miles of revenue freight	9,000,000	= 24%
Minnesota gross transportation revenue	$10,000,000	
Total gross transportation revenues	$40,000,000	= 25%
Minnesota Cost of Road Property	2,990,000	
Total Cost of Road Property	13,000,000	= 23%
Total		92%
Minnesota Percent of Unit Value		23%
Total Unit Value ($22,212,500 x 23%) = Minnesota Portion of Unit Value		$5,108,875

8105.0600 [Emergency] ADJUSTMENTS FOR NONFORMULA ASSESSED PROPERTY OR EXEMPT PROPERTY.

After the Minnesota portion of the unit value of the railroad company is determined, property which is either exempt from taxation, such as pollution control equipment and personal property, or classified as nonoperating will be deducted from the Minnesota portion of the unit value to the extent that it has been included in the computation of this value.

Property which has been included in the computation of the unit value but has been defined as nonoperating property will be valued by the local assessor. The Minnesota portion of the unit value will be reduced by the restated cost of this property. Only nonoperating property located within Minnesota will be eligible for this exclusion.

The railroad company shall have the responsibility to submit to the commissioner of revenue, in the form required by the commissioner, such schedules of nonoperating property as the

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commissioner may require.

In addition to nonoperating property which will be valued and assessed locally, a deduction from the Minnesota portion of the unit value will be made for personal property. The unit value method presupposes that the value of any one portion of the unit is interdependent upon all other elements of the unit; therefore, it is extremely difficult to make a separation of this value into real and personal property.

A percentage of the Minnesota portion of the unit value after deducting nonoperating and exempt property will be excluded as personal property. This percentage will be computed in the following way:

A. The following ICC accounts for property within Minnesota will be totaled:

(1) that portion of coal and ore wharves determined to be personal property;

(2) communication equipment;

(3) signals and interlockers;

(4) roadway machines;

(5) shop machinery;

(6) power plant machines; and

(7) equipment, allocated to Minnesota on the basis of car and locomotive miles in Minnesota compared to total system car and locomotive miles.

B. The total of these accounts will then be divided by the total of the Minnesota road, equipment, leased property, general expenditures, construction work in progress, and other elements of investment accounts. The resulting percentage will be used to determine the personal property amount of the Minnesota portion of the unit value. This portion will not be taxable for ad valorem purposes.

C. The following is an illustration of the computation for the personal property exclusion.

XYZ Railway

Personal Property Account	Amount in Minnesota
Coal and Ore Wharves	$ 189,200

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Communication Equipment			100,000
Signals and Interlockers			200,000
Roadway Machines			200,000
Shop Machinery			100,000
Power Plant Machinery			100,000
* Equipment -- Owned and Leased			2,250,000
			3,139,200
* Total Equipment Account	$9,000,000		
Car and Locomotive Miles in Minnesota	1,000,000		
Total Car and Locomotive Miles	4,000,000		
Ratio of Minnesota to Total		25%	
Minnesota Allocated Equipment Account	$2,250,000		

Restated Cost Account	Amount in Minnesota
Road	$2,990,000
Equipment -- Owned and Leased	2,250,000
Construction Work in Progress	800,000
General expenditures	500,000
	$6,540,000

Minnesota Personal Property Accounts	$3,139,200		
Minnesota Restated Cost	$6,540,000		
Ratio of Personal Property to Cost		48%	
Minnesota portion of unit value			5,108,875
Personal Property exclusion at 48%			2,452,260
Taxable Minnesota Portion of Unit Value			$2,656,615

8105.0700 [Emergency] APPORTIONMENT.

Subpart 1. In general. After the taxable Minnesota portion of the railroad's unit value has been determined, this value must be distributed to the various counties and taxing districts in which the railroad operates. This distribution will be accomplished by the commissioner of revenue through the use of certain apportionment components. Each of the components in the apportionment method is a reflection of the property owned or used by the railroad within a particular taxing district. The figures making up these components will be developed on information submitted by the railroad companies in annual reports filed with the commissioner, and information supplied to the commissioner by the various county auditors and assessors.

Subp. 2. Apportionment components. There are three components which will be used in the distribution of the value of railroad property to the various taxing districts. They are railroad operating land, miles of track, and railroad operating

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structures with a restated cost of $10,000 or more.

Subp. 3. **Railroad operating land.** The information for the computation of this apportionment component will be based on information submitted by both the railroads and the various county auditors and assessors. The railroad companies shall file with the commissioner of revenue each year, in conjunction with their annual reports required by part 8105.0300 [Emergency], subpart 1, the number of acres of railroad operating land owned or used by them in each taxing district in which they operate. The county auditor shall also be required to submit to the commissioner of revenue a report showing the number of acres of railroad operating land, detailed by owning railroad, in each taxing district within the county. If either the railroads or the auditors find that it is administratively impracticable to submit this information, the commissioner shall make an estimate of the number of acres of railroad operating land within each taxing district based on the best information available. Such information would usually consist of the miles of railroad track within the taxing district and the normal width of the right-of-way used by the railroad. In addition, information relative to the current estimated market value of all land within the respective taxing districts will be obtained from the county or city assessors by a review of the abstract of assessment of real and personal property which the various assessors are required to submit yearly to the commissioner of revenue in compliance with Minnesota Statutes, section 273.061, subdivision 9. A review will also be made of the abstract of assessment of exempt real property which is submitted to the commissioner of revenue by the various assessors in compliance with Minnesota Statutes, section 273.18.

The computation for the railroad operating land apportionment component will be accomplished annually in the following manner:

A. The average estimated market value per taxable acre within a specific taxing district will be calculated by dividing the estimated market value of all taxable land within

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the taxing district as indicated by the most recent abstract of assessment of real and personal property by the number of taxable acres within the taxing district. The number of acres within a taxing district will be obtained from the most recent statistics available from the Land Management Information Center, State Planning Agency. The total number of acres will be adjusted to allow for nontaxable or exempt acres by subtracting these nontaxable or exempt acres from the total acres. The number of nontaxable or exempt acres will be obtained from the most recent abstract of assessment of exempt real property. The following example illustrates this calculation.

Estimated Market Value of All Taxable Land Within Taxing District		$200,000
Total Area of Taxing District	210 Acres	
Nontaxable or Exempt Acres	10 Acres	
Taxable Acres Within Taxing District		200
Average Estimated Market Value per Acre		$ 1,000

B. This average estimated market value per taxable acre is then applied to the number of acres of railroad operating land within the taxing district to compute a gross railroad operating land component within the taxing district. The following example illustrates this computation:

Average Estimated Market Value Per Acre	$1,000
Acres of Railroad Operating Land	x 5
Gross Railroad Operating Land Component	$5,000

C. This railroad operating land component will then be adjusted. This adjustment is achieved by striking a ratio between the system unit value for all Minnesota railroads, as described in part 8105.0400 [Emergency], subpart 5, to the total of investment in railway property used in transportation service as defined by the ICC for all railroads operating in Minnesota. This relationship will be computed annually and will then be applied to the gross railroad operating land component to arrive at the adjusted railroad operating land component. This adjusted land value will then be used as one element of the apportionment computation.

The following is an example of how the adjusted railroad operating land component is to be computed:

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Railroad	System Unit Value	Net Investment in Railway Property Used in Transportation Services
ABC Railway	$20,000,000	$ 40,000,000
FGH Railway	5,256,000	8,000,000
JKL Railroad	2,000,000	4,780,830
MNO Railroad	50,000,000	90,000,000
XYZ Railroad	22,212,500	25,000,000
	$99,468,500	$165,780,830

Total System Unit Value ($99,468,500) ÷ Total Net Investment in Railway Property Used in Transportation Services ($165,780,830) = 60%

Gross Railroad Operating Component Within the Taxing District	$5,000
Adjustment Factor	60%
Adjusted Railroad Operating Land Component	$3,000

Subp. 4. **Miles of track.** The information for the apportionment component will be based on information submitted by the railroads to the commissioner of revenue in conjunction with the annual report required by part 8105.0300 [Emergency], subpart 1. Each railroad will be required to list the miles of track they own in each taxing district within Minnesota. The track must be separated into two classes, main line track and all other track.

In order to make the miles of track in each taxing district compatible with the other apportionment components, the miles must be converted to dollars. This conversion will be computed annually. The conversion will be accomplished by adding together the following ICC accounts for each railroad's net investment in Minnesota: account 3, grading; account 8, ties; account 9, rails; account 11, ballast. The total of these accounts will then be divided by the number of miles of track operated by the respective railroads within Minnesota to obtain a cost per mile figure. This will be used as the average cost per mile for track within Minnesota.

The following is an example of how the average cost per mile of track in Minnesota will be computed:

Railroad	Total of Accounts #3, 8, 9, 11	Mileage Operated in Minnesota
ABC Railway	$ 4,000,000	154
FGH Railway	800,000	42
JKL Railroad	500,000	20

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MNO Railroad	7,450,000	290
XYZ Railroad	2,500,000	104
	$15,250,000	610

Total cost of track ($15,250,000) ÷ Total miles operated (610) = Average Cost per Mile of Track $25,000.

An additional calculation is necessary to adjust this average cost per mile of track to allow for weighting. Main line track shall be weighted at 1.5 times the cost of all other track; thus, if the average cost per mile of track is $25,000, main line track would be worth more than $25,000 per mile, while all other track would be worth less. The calculation for the average cost of both main line and all other track shall be made annually on an industry basis.

The calculation to determine the average cost per mile of main line track and the average cost per mile of all other track will be computed in the following manner:

A. Total mileage operated will be multiplied by the average cost per mile to arrive at a total track cost.

B. Total mileage operated will be separated into the two types of track, main line and all other track.

C. Main line track will be multiplied by 1.5 to arrive at adjusted main line miles.

D. Adjusted main line miles will be added to all other track miles to arrive at adjusted total track miles.

E. Total track cost will be divided by adjusted total track miles to arrive at the cost per mile of all other track.

F. The cost per mile of main line track will be computed by multiplying the cost per mile of all other track by 1.5.

An illustration of this computation is as follows:

Railroad	Mileage Operated	Main Line Miles	All other Track Miles
ABC Railway	154	96	58
FGH Railway	42	10	32
JKL Railroad	20	15	5
MNO Railroad	290	132	158
XYZ Railroad	104	52	52
	610	305	305
Total Mileage Operated			610
Average Cost Per Mile of Track			$ 25,000

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Total Track Cost			$15,250,000
Main Line Miles	305		
Weighting Factor	1.5		
Adjusted Main Line Miles			457.5
Other Track Miles			305.0
Adjusted Total Track Miles			762.5
Total Track Cost			$15,250,000
Adjusted Total Track Miles			762.5
Average Cost Per Mile of Other Track		$	20,000
Average Cost Per Mile of Other Track		$	20,000
Weighting Factor			1.5
Average Cost Per Mile of Main Line Track		$	30,000

After the per mile cost figures for main line and all other track are obtained, these per mile cost figures would be multiplied by the length of each type of track in a particular taxing district to obtain the value of the trackage in that district. The same cost figures will be used for all railroads operating in Minnesota.

Subp. 5. **Structures.** The information for the computation of this apportionment component will be based on statements submitted by the railroads. These schedules shall be submitted annually to the commissioner of revenue in conjunction with the annual report required by part 8105.0300 [Emergency], subpart 1. The schedules shall show the location, by taxing district, of all operating structures owned by the reporting railroad within Minnesota with a restated cost of $10,000 or more. The schedules shall list a description of the structure and the railroad's current restated cost investment in the structure as it appears in the appropriate ICC account.

An example of this listing is as follows:

XYZ Railroad

Taxing District	Description	Restated Cost
St. Paul, S.D. #625	Office Building	$400,000
Minneapolis, S.D. #1	Depot	20,000
Fridley, S.D. #16	Yard Tower	200,000
Anoka, S.D. #11	Engine and Car Shop	250,000
	Total	$870,000

Subp. 6. **Apportionment computation.** After the three apportionment components have been calculated for each taxing district in which the railroad operates, the apportionment of the railroad's taxable Minnesota portion of the unit value can

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begin. This apportionment is accomplished by totaling the value of the land, track, and structure components as developed in subparts 3 to 5 for each taxing district, then finding the sum of these totals for all the taxing districts in which the subject railroad operates. The taxable Minnesota portion of the railroad's unit value is divided by this total value of the three apportionment components for all taxing districts in which the railroad operates in order to arrive at a percentage. This resulting percentage is then applied to the total value of the three apportionment components for each specific taxing district. The figure produced by this multiplication process is the taxing district's share of the railroad's taxable Minnesota portion of the unit value. It is important to note that no more value can be distributed to the various taxing districts than that produced by the valuation process described in parts 8105.0100 to 8105.0600 [Emergency].

The example in part 8105.9900 [Emergency] illustrates the apportionment process.

8105.0800 [Emergency] EQUALIZATION.

Subpart 1. **In general.** After the apportionment of value referred to in part 8105.0700 [Emergency] has been made, the railroad property values must be equalized to coincide with the assessment levels of commercial and industrial property within each respective county receiving a share of the apportioned railroad value. This equalization will be accomplished through the use of an assessment/sales ratio.

Subp. 2. **Assessment/sales ratio computation.** Each year the sales ratio section of the Minnesota Department of Revenue, Property Equalization Division, prepares a comprehensive assessment/sales ratio study commonly known as the Minnesota Tax Court study. This study is used by the tax court to ensure that equalization is given to the various plaintiffs who appear before it concerning ad valorem tax matters. The study is conducted in many parts. The portions which will be used for purposes of this part are known as the "County Nine Month Commercial and Industrial Sales Ratio."

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This nine-month commercial and industrial sales ratio is computed through an analysis of the certificates of real estate value filed by the buyers and/or sellers of commercial or industrial property within each county. The information contained on this certificate of real estate value is compiled pursuant to requests, standards, and methods set forth by the Minnesota Tax Court and the Minnesota Department of Revenue. The most recent nine-month commercial and industrial study available will be used for purposes of this part.

The median commercial and industrial sales ratio from this study will be used as a basis to estimate the current year commercial and industrial median ratio for each county.

The process used to estimate this current year median ratio will be as follows.

The State Board of Equalization abstract of market value will be examined. This statistical compilation, commonly called the mini-abstract, is filed each year by every county assessor, with the Property Equalization Division of the Department of Revenue. The abstract is a listing of the current estimated market values, together with other information for the various classes of property -- residential, agricultural, commercial, industrial, recreational, and so forth -- within each particular county. The current estimated market value of commercial and industrial property within each county will be taken from this abstract. The amount of the value of new commercial and industrial construction ("new" meaning since the last assessment period) will also be taken from the abstract. The value of new construction will then be deducted from the estimated market value, resulting in a net estimated current year market value for commercial and industrial property within the county. This current year value will be compared to the previous year's estimated market value for commercial and industrial property within the county and the difference between the two values noted. This difference will be divided by the previous year's estimated market value for commercial and industrial property to find the percentage of increase, or

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decrease, in assessment levels for each year. This percent of change will be applied to the most recent commercial and industrial median ratio to estimate the current year's commercial and industrial median ratio. An example of this calculation for a typical county is shown below.

1984 Estimated Market Value for Commercial and Industrial Property	$12,000,000
Less New Construction	1,500,000
1984 Net Estimated Market Value for Commercial and Industrial Property	10,500,000
1983 Estimated Market Value for Commercial and Industrial Property	10,000,000
Difference 1983 vs 1984 Estimated Market Value	500,000
Percent of change (500,000 ÷ 10,000,000)	5%
1983 Median Commercial and Industrial Ratio	88%
1984 Estimated Median Commercial and Industrial Ratio (88% x 105%)	92.4%

The same calculation is performed for each Minnesota county which contains operating railroad property. However, if there are five or fewer valid sales of commercial and industrial property within a county during the nine-month study period, it is the commissioner's decision that these few sales are insufficient to form the basis for a meaningful commercial and industrial ratio. Therefore, the median assessment/sales ratio to be used for purposes of the above computation will not be the median commercial and industrial ratio but will be the median ratio of all property classes within the county. This median ratio of all property is computed in the same manner using the same procedures and standards as the commercial and industrial ratio. In addition, the computation described above will not be performed using the commercial and industrial estimated market value but will use the estimated market value for all property within the county. All other aspects of the calculations are identical except for this substitution.

Subp. 3. Application of estimated current year median assessment/sales ratio. After the estimated current year median ratio has been calculated pursuant to subpart 2, it is used to adjust the apportioned estimated market value of operating railroad property to the apparent assessment level of commercial and industrial property in each county. This is done by

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factoring or multiplying the estimated market value of the railroad property by the estimated sales ratio to arrive at the equalized market value of operating railroad property. No adjustment will be made if the estimated current year sales ratio is within five percent of the assessment level of operating railroad property. An example of this adjustment is as follows:

	Estimated Market Value* of Railroad Operating Property	Estimated Current Year Median Sales Ratio	Equalized Estimated Market Value of Railroad Operating Property
County A	$100,000	85%	$ 85,000
County B	250,000	88%	220,000
County C	300,000	90%	270,000
County D	150,000	92%	138,000
County E	100,000	95%	100,000**

* For purposes of this example, assume that railroad property is assessed at 100 percent of market value.

** No adjustment made because Estimated Current Year Median Sales Ratio is within five percent of Assessment Level on Operating Railroad Property.

All railroads operating within a particular county will be equalized at the same percentage.

These equalized estimated market values of operating railroad property will be certified to the county assessor denoting specific railroads and taxing districts pursuant to Minnesota Statutes, section 270.87.

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1 8105.9900 [Emergency] EXAMPLE OF APPORTIONMENT PROCESS.

	LAND COMPONENT				TRACK COMPONENT						STRUCTURES		
Taxing District	Aver. E.M.V. Per Acre	# of R.R. Opr. Acres	Gross R.R. Land Component	Adj. R.R. Land Component @ 60%	Miles of Main Line	Value of Main Line @ $30,000 Mile	Miles of all other Track	Value of All Other Track @ $20,000	Total Track Component	Structures At Restated cost	Total of 3 Components	% of 3 Components to Unit Value*	Taxing Dist. Portion of Unit Value
St. Paul, S.D. #625	$19,000	50	$ 950,000	570,000	8	$ 240,000			$ 240,000	$400,000	$1,210,000	37.87%	$ 458,285
Minneapolis, S.D. #1	20,000	80	1,600,000	960,000	12	360,000			360,000	20,000	1,340,000	37.87%	507,522
Fridley, S.D. #16	15,000	95	1,425,000	855,000	6	180,000	20	$ 400,000	580,000	200,000	1,635,000	37.87%	619,253
Coon Rapids, S.D. #11	13,000	70	910,000	546,000	9	270,000			270,000	-----	816,000	37.87%	309,059
Anoka, S.D. #11	12,000	20	240,000	144,000	4	120,000			120,000	250,000	514,000	37.87%	194,677
Ramsey, S.D. #11	10,000	60	600,000	360,000	11	330,000			330,000	-----	690,000	37.87%	261,336
Elk River, S.D. #728	6,000	5	30,000	18,000	2	60,000			60,000	-----	78,000	37.87%	29,542
Elk River Twsp., S.D. #728	2,000	20	40,000	24,000			8	160,000	160,000	-----	184,000	37.87%	69,690
Big Lake, S.D. #727	3,000	4	12,000	7,200			4	80,000	80,000	-----	87,200	37.87%	33,027
Big Lake Twsp., S.D. #727	1,000	100	100,000	60,000			20	400,000	400,000	-----	460,000	37.87%	174,224
			$5,907,000	$3,544,200		$1,560,000		$1,040,000	$2,600,000	$870,000	$7,014,200		$2,656,615

SP:N12

*Taxable Minn. Portion of Unit Value / Total of 3 Components for All Taxing Districts = $2,656,615 / $7,014,200 = 37.87%

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OFFICE OF THE REVISOR OF STATUTES

Proposed Rule

RD556

Agency: Department of Revenue

Division:

Agency Contact: Wayne Gerwing 296-5144

Minnesota Rules: Parts 8105.0100 to 8105.9900

Title: Proposed Emergency Rules Relating to Railroads

Type of Rules: Emergency

Incorporations by Reference: None

Steven C. Cross
Revisor of Statutes

Janet C. Rahm
Assistant Revisor
Phone: 296-0952
Date: June 19, 1984

STATE OF MINNESOTA
DEPARTMENT OF REVENUE

In the Matter of the Proposed Adoption of Rules of the State of Minnesota Governing the Valuation and Assessment of Railroad Operating Property

ORDER ADOPTING TEMPORARY RULES

The above-entitled matter was published in the State Register on July 9, 1984, as a proposed temporary rule pursuant to Minnesota Statutes, sections 14.29 to 14.36. After affording interested and affected persons an opportunity to submit written data and views within 20 days of the publication date, reviewing and considering the data and views, and determining that the above-captioned rules are needed and reasonable,

NOW, THEREFORE, IT IS ORDERED that these rules identified as Minnesota Department of Revenue Temporary Rules Governing the Valuation and Assessment of Railroad Operating Property are adopted this 1st day of August, 1984, pursuant to authority vested in me by Minnesota Statutes, section 270.84, subdivision 1.

STATE OF MINNESOTA

Arthur C. Roemer
Commissioner of Revenue

DEPARTMENT OF REVENUE
PROPERTY EQUALIZATION DIVISION

NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION REGARDING PROPOSED RULES GOVERNING THE VALUATION AND ASSESSMENT OF RAILROADS

Notice is hereby given that the State Department of Revenue is seeking information or opinions from sources outside the agency in preparing to promulgate revised rules governing The Valuation of Railroads. The promulgation of these rules is authorized by Minnesota Statutes section 270.81, which requires the agency to adopt rules governing the taxation and assessment of railroad company property.

The State Department of Revenue requests information and comments concerning the specific subject matter of these revised rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statement should be addressed to:

Wayne Gerwing
Property Equalization Division
Minnesota Department of Revenue
Centennial Office Building
St. Paul, Minnesota 55145

Oral statements will be received during regular business hours over the telephone at 612-296-5144 and in person at the above address.

All statements of information and comment shall be accepted until April 1, 1984. Any written material received by the State Department of Revenue shall become part of the record in the event that the rules are promulgated.

February 1, 1984

Lyle H. Ask, Director
Property Equalization Div.

STATE REGISTER

STATE OF MINNESOTA



VOLUME 8, NUMBER 33

February 13, 1984

Pages 1853-1888

Department of Revenue
Property Equalization Division

Outside Opinion Sought Regarding Proposed Rules Governing the Valuation and Assessment of Railroads

Notice is hereby given that the State Department of Revenue is seeking information or opinions from sources outside the agency in preparing to promulgate revised rules governing The Valuation of Railroads. The promulgation of these rules is authorized by Minnesota Statutes section 270.81, which requires the agency to adopt rules governing the taxation and assessment of railroad company property.

The State Department of Revenue requests information and comments concerning the specific subject matter of these revised rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statement should be addressed to:

Wayne Gerwing
Property Equalization Division
Minnesota Department of Revenue
Centennial Office Building
St. Paul, Minnesota 55145

Oral statements will be received during regular business hours over the telephone at 612-296-5144 and in person at the above address.

All statements of information and comment shall be accepted until April 1, 1984. Any written material received by the State Department of Revenue shall become part of the record in the event that the rules are promulgated.

February 1, 1984

Lyle H. Ask, Director
Property Equalization Div.

STATE CONTRACTS

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

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

Commodities contracts with an estimated value of $5,000 or more are listed under the Procurement Division, Department of Administration. All bids are open for 7-10 days before bidding deadline. For bid specifics, time lines, and other general information, contact the appropriate buyers at the indicated phone numbers as soon as possible. If the specific buyer is not available, contact Barbara Jolly or Harvey Leach at 296-3779.

Department of Administration
Procurement Division

Commodities Contracts Currently Open for Bidding

Item	Ordering Division	Delivery Point	Contact Person
New electric shavers, parts & labor for repair	various	various	Harvey/Barb 296-2779
Specialty gases	various	various	Don 296-3777
Rubbish disposal contract	Military Affairs	Duluth MN	Jim 296-3778

STATE OF MINNESOTA
DEPARTMENT OF REVENUE

In the Matter of the Proposed Suspension of Permanent Rules and the Adoption of Temporary Rules of The State Department of Revenue Governing the Valuation and Assessment of Railroads

ORDER FOR SUSPENSION OF PERMANENT RULES AND PUBLICATION OF TEMPORARY RULES

IT IS ORDERED this 13th day of June, 1984 that the rules of the Department of Revenue Chapter 8105 of Minnesota Rules entitled "Ad Valorem: Valuation and Assessment of Railroads" be suspended until further notice.

IT IS FURTHER ORDERED that the proposed temporary rules in the above entitled matter be published in the State Register.

STATE OF MINNESOTA

Arthur C. Roemer
COMMISSIONER OF REVENUE

SP:N45

DEPARTMENT OF REVENUE
PROPERTY EQUALIZATION DIVISION

In the Matter of the Proposed Suspension of Permanent Rules and the Adoption of Temporary Rules of The State of Minnesota Governing the Valuation and Assessment of Railroads

NOTICE OF INTENT TO SUSPEND PERMANENT RULES AND TO ADOPT TEMPORARY RULES

Notice is hereby given that the State Department of Revenue, Property Equalization Division, proposes to suspend Minnesota Rules 8105.0100 to 8105.9900 entitled "Ad Valorem Tax: Valuation and Assessment of Railroads." This suspension is made pursuant to Findings of Fact, Conclusions of Law and Order for Judgment issued by the Minnesota Tax Court on November 13, 1983 in the matter of the Soo Line Railroad Company vs. the Commissioner of Revenue. This Order reads in part... "Regulations of the Commissioner of Revenue that do not conform to the statutes do not have the force and effect of law and will be disregarded." Additionally, in his memorandum attached to this Order, Judge Carl A. Jenson states, "The evidence produced at the trial of this matter indicated the Rules 13 MCAR ¢1.0024 (now re-codified into MR 8105) adopted by the Commissioner of Revenue to determine valuation of railroad property do not properly reflect the valuation and to the extent that they conflict with this decision, the rules are overruled."

Rather than speculate on which part of the rules do not conform to the statutes and which rules do not properly reflect the valuation of railroad property, the Commissioner of Revenue now proposes to suspend Minnesota Rules Chapter 8105.

Acting under authority given to him by the Minnesota Legislature in Laws of 1984, Chapter 502, Article 9, Section 2, the Commissioner of Revenue proposes to adopt a temporary rule governing the valuation and assessment of railroads which will replace the suspended rule. The adoption of this rule will follow the procedures set forth in Minnesota Statutes, section 14.29 to 14.36.

This notice of intent to adopt temporary rules will be mailed to all interested parties registered with the Department of Revenue and a certified copy of the mailing list together with an affidavit of mailing will be submitted to the Attorney General for his review prior to adoption of the rule. Additionally the notice of intent to adopt a temporary rule together with the rule itself is being published in the State Register.

All interested persons shall have 20 days to submit, in writing, data and comments on the proposed temporary rule. Persons who wish to submit such comments should direct them to:

Wayne J. Gerwing
Property Equalization Division
Minnesota Department of Revenue
Centennial Office Building
P. O. Box 64446
St. Paul, MN 55164
(612) 296-5144

SP:N45

The proposed temporary rules may be modified if the modifications are supported by the data and views submitted to the agency.

Upon completion of the 20-day comment period, this Notice, the proposed temporary rule, all written comments received, a copy of the agency's findings of fact and conclusions setting forth the reasons for changes between the rule as proposed and the rule as adopted (if applicable), the final temporary rule as adopted, the order adopting, and any other pertinent or required documents will be submitted to the Attorney General for review as to form and legality.

Within five working days the Attorney General will either approve or disapprove the proposed temporary rule. The temporary rule shall become effective upon approval of the Attorney General; failure of the Attorney General to approve or disapprove a rule within five working days is deeemed approval. The final adopted temporary rule will be published in the State Register.

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 rule as proposed for adoption should submit a written statement of such request to Wayne Gerwing at the address listed above.

Additional copies of this Notice and the proposed rule are available and may be obtained by contacting Wayne Gerwing.

STATE OF MINNESOTA

Arthur C. Roemer

COMMISSIONER OF REVENUE

SP:N45

In the Matter of the Proposed
Suspension of Permanent Rules and
the Adoption of Temporary Rules of
The State of Minnesota Governing
the Valuation and Assessment of
Railroads

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Wayne J. Gerwing, being first duly sworn deposes and says:

That on the 26th day of June, 1984, at the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Intent to Suspend Permanent Rules and to Adopt Temporary Rules 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 have requested that their names be placed on file with the State of Minnesota for the purpose of receiving notice of the proposed adoption of rules by this Department.

Wayne J. Gerwing

Subscribed and sworn to before me
this 26th day of June, 1984.

Patricia Zentzis

PATRICIA ZENTZIS
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES APRIL 19, 1989

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

PROPERTY EQUALIZATION DIVISION

IN THE MATTER OF THE PROPOSED SUSPENSION OF PERMANENT RULES AND THE ADOPTION OF TEMPORARY RULES OF THE STATE OF MINNESOTA GOVERNING THE VALUATION AND ASSESSMENT OF RAILROAD'S

CERTIFICATE OF COMPLETENESS AND ACCURACY

I hereby certify that the attached pages number 1 through 28 consisting of 329 typewritten names and addresses constitute the complete list of persons, associations and other interested groups who, as of 8 o'clock a.m., this 11th day of June, 1984, have requested pursuant to Minn. Stat. Section 14.14, subd. 1, that their names be placed on file with the Department of Revenue for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

STATE OF MINNESOTA
ARTHUR C. ROEMER
COMMISSIONER OF REVENUE

BY: Donna L Walbridge
Donna Walbridge
Commissioner's Staff

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

Mr. Bruce Akerman
1300 N.W. Bank Building
Minneapolis, MN 55402

Mr. Allard, C.P.A.
201 West Burnsville Parkway
Suite 130M
Burnsville, MN 55337

American Legion Club
Box 183
Hill City, MN 55748

Anderson & Peterson, LPAs
Dodge Professional Building
Moose Lake, MN 55767

David J. Anderson
Certified Public Accountant
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Minneapolis, MN 55441

Dwight C. Anderson, C.P.A.
Box 2924
Fargo, ND 58108

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Certified Public Accountants
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Forest Lake, MN 55025

Anderson, Keszler & Associates
Accountants and Auditors
1202 23rd Street So., Box 2924
Fargo, ND 58108

Arrowhead Accounting Service
Box 240
Coleraine, MN 55722

Arsenal Sand & Gravel Co., Inc.
P. O. Box 12707
New Brighton, MN 55112

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

Ausmus Furniture & Carpet
Hinckley,
MN 55037

Auto-Soler Co.
5101 Fulton Industrial Blvd. SW
Atlanta, GA 30336
Attn: H. Ensign, General Accountant

Wesley L. Bahl
P. O. Box 822
Faribault, MN 55021

Bankers Service Company
1918 W. County Rd. C.
Roseville, MN 55113
Attn: Glenn Thomasen

Bauer Built, Inc.
P. O. Box 248
Durand, WI 54736
Attn: Calvin Jacks, Jr.
Operations Manager

Bemidji Area Chamber of Commerce
P. O. Box 806
Bemidji, MN 56601
Attn: Bookkeeper

T. A. Bengtson
Rural Route 2, Box 90
Waterville, MN 56096

L. T. Bensen & Associates
5315 France Avenue North
Minneapolis, MN 55429

Benson Tax Service
3109 Bloomington Ave. S.
Minneapolis, MN 55407
Attn: Peter J. Benson

Benusa T.V. & Appliance, Inc.
109 7th Avenue South
St. Cloud, MN 56301

Best & Flanagan
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Minneapolis, MN 55402
Attn: James C. Diracles

Gary D. Blackford, Esq.
Popham, Haik, et al
4355 IDS Center
Minneapolis, MN 55402

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Boehlke & Son, Inc.
Box 86
Buffalo Lake, MN 55314

Oscar J. Boldt Construction Co.
P. O. Box 419
Appleton, WI 54912
Attn: Kathy L. Baumann

Bondhus Corporation
Lois M. Payne
Box 667
Monticello, MN 55362

Borowicz, Holmgren, Loberg & Co.
Certified Public Accountants
151 West 126th Street
Burnsville, MN 55337

Boulay, Heutmaker, Zibell & Co.
6800 France Avenue South
Minneapolis, MN 55435

Briggs & Morgan, P.A.
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St. Paul, MN 55101
Attn: Jerome A. Geis, Esq.

Broeker, Hartfeldt, Hedges & Grant
Attorneys at Law
2850 Metro Drive-Suite 800
Minneapolis, MN 55420
Attn: John M. Broeker

Broeker, Hartfeldt, Hedges & Grant
Attorneys at Law
2850 Metro Drive, Suite 800
Minneapolis, MN 55420
Attn: Angus M. Vaughan
Legal Assistant

Business and Financial Services
P. O. Box 365
Cannon Falls, MN 55009

Butler Manufacturing Company
BMA Tower, Penn Valley Park
Kansas City, MO 64141

Byerly's
7171 France Avenue So.
Edina, MN 55435
Attn: Don Hoekstra, Accts. Mgr.

C.A.P. Cooperative Oil Ass'n.
P. O. Box 38
Kettle River, MN 55757

CCSI
P. O. Box 1082
St. Cloud, MN 56302

Caldwell, Taylor & Brown, Ltd.
540 Shelard Plaza North
300 South County Road 18
Minneapolis, MN 55426

Carlisle Accounting Service
14645 Cameo Avenue
Rosemount, MN 55068

Daniel R. Cartier
Post Office Box 41245
10601 Olson Memorial Highway
Plymouth, MN 55441

CCH Computax Inc.
P. O. Box 92938
Worldway Postal Center
Los Angeles, CA 90009
Attn: John Koffroth, Tax Specialist

Chicago, Milwaukee, St. Paul
and Pacific Railroad Comapny
516 W. Jackson Blvd.
Chicago, IL 60608
Attn: Manager-Tax Accounting

Mrs. Laudine Christ
Rural Route #1, Box 90
Wells, MN 56097

City of Apple Valley
George E. Ballenger, Finance Dir.
14200 Cedar Avenue South
Apple Valley, MN 55124

Commercial Tally, Inc.
E K Williams & Co.
WestGate Mall
St. Cloud, MN 56301

Concrete Sectional Culvert Company
P. O. Box 1429
Fargo, ND 58102

County Flower Shop
Audrey Van Klompenburg
Route 3, Box 218
Montevideo, MN 56265

Country Furniture
D. J. Meyer Inc.
Lake Park, MN 56554

Crest Electronic
Simon at Third
Dassel, MN 55325
Attn: Carol A. Chap, Office Manager

Custom Printing, Inc.
P. O. Box 1010
1913 2nd Street S.W.
Rochester, MN 55901

Dacotah Paper Co.
1401 - 5th Avenue North
P. O. Box 2727
Fargo, ND 58108

Dan Blank Accounting
213 N. 1st Street
P. O. Box 530
Montevideo, MN 56265

Dayton's
700 on the Mall
Minneapolis, MN 55402
Attn: J.E. Wahl, Property Accounting

Dayton's - Advertising
700 Nicollet Mall
Minneapolis, MN 55402
Attn: Mr. Edward Hannasch

DDD Motel Corporation
111 Range Street
North Mankato, MN 56001
Attn: Shirley Miller, Bookkeeper

Dean's Towing & Auto Parks
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Brainerd, MN 56401

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St. Louis Park, MN 55416

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Washington, D.C. 20007

Lorraine DeMill
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Hibbing, MN 55746

The Denesen Company, Inc.
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Minneapolis, MN 55408
Attn: R. L. Earlywine

Denny's North Star
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Hill City, MN 55748

Bob Dietrick, Treasurer
City of Excelsior
339 Third Street
Excelsior, MN 55331

Department of Economic Assistance
Client Resources Unit
A-1200 Government Center
Minneapolis, MN 55487
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Richfield, MN 55423

Director Staff Services
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Bloomington, MN 55431
Attn: Lyle R. Olson

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P. O. Box 2608, Station M
Calgary, Canada T2P 2M7
Attn: K. D. Olstad

Dome Pipeline Corporation
P. O. Box 200
Calgary, Alberta
Canada T2P 2H8

Drug Fair, Inc.-Star Drug-Witte Drug
Industrial Park Road
Iowa City, IA 52240

E.A.T. Inc.
K-Bob Cafe & Riverside Deli
109 South 5th Avenue
Princeton, MN 55371

E. I. du Pont de Nemours & Co.
State, Excise & Employment Taxes Sec.
Room 1346 Farmers Bank Bldg.
1007 Market Street
Wilmington, DE 19898

The Estenson Company
101 East Main
Luverne, MN 56156

Ernst & Whinney
1400 Pillsbury Center
Minneapolis, MN 55402

Ernst & Whinney
1400 Pillsbury Center
Minneapolis, MN 55402
Attn: Anthony M. Schelonka

Esterbrooks, Lo[illegible], Scott & Signorelli, Ltd.
307 Lonsdale Building
Duluth, MN 55802

FAB Pipe, Inc.
701 County Road 83
Shakopee, MN 55379

Fabri-Centers of America, Inc.
23550 Commerce Park Road
Beachwood, OH 44122
Attn: David Essi, Jr.
Tax Department

Donald M. Fahrenkamp
P. O. Box 305
4769 Dakota Street
Prior Lake, MN 55372

Farmers Exchange Cooperative
Lake Park
IA 51347

First Northwestern Bank
110 E. 3rd Street
Box 579
Thief River Falls, MN 56701

Firstbank Financial Corporation
100 Federal Street
Boston, MA 02110
Attn: Renato R. Te, Accounting Officer

Firstmiss Inc.
P. O. Box 328
Ft. Madison, IA 52627
Attn. Financial/Tax Accountant

John Henry Foster Co., Inc.
3748 Minnehaha Ave.
Minneapolis, MN 55406
Attn: Edward H. Mayhew

John Henry Foster Co., Inc.
10740 Midwest Industrial Blvd.
St. Louis, MO 63132
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1800 Northwestern Financial Center
7900 Xerxes Avenue South
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Gavin Law Building
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General Mills, Inc.
c/o R. D. Mueller, Tax Manager
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Minneapolis, MN 55440

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15½ N. Federal
Mason City, IA 50401

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9803 Logan Avenue South
Bloomington, MN 55431

Goodall Rubber Company
P. O. Box 8237
Trenton, NJ 08650
Attn: G. E. Hamilton, Tax Manager

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Rockford, MN 55373

Grace Home, Inc.
Graceville, MN 56240

Grain Terminal Association
Tax & Patron Equities Department
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St. Paul, MN 55164

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Attn: Mary Olmscheid

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Attn: Richard Fretland

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Rochester, MN 55901

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Duluth, MN 55806
Attn: Karen Habert

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Attn: Betty Jane Hackbarth

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Attn: John L. Larson, Accountant

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Hutchinson, MN 55350
Attn: Jim Drahos

Hayssen Manufacturing Company
P. O. Box 571
Sheboygan, WI 53081
Attn: L. H. Volz

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St. Louis MO 63141

Heart of America
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Attn: Ms. Sonya H. Stenulson

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Attn: Gerald C. Knudson

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Honeywell Plaza, MN 12-4184
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Attn: Robert H. Dillon
Director, Tax Admin.

Honeywell Inc.
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Attn: Mr. W. C. Viitala
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125-133 W. Bridge St.
Owatonna, MN 55060

Human Service Agency
Wright Co. Courthouse
Buffalo, MN 55313
Attn: Janice M. Devens, Director

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

Inryco, Inc.
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Chicago, IL 60680

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Inter-City Gas Building
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Winnepeg Manitoba Canada
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International Business Machines Corp.
Armonk, NY 10504
Attention: J. J. Nash

International Research & Evaluation
Research Publication Division
21098 IRE Control Center
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Interstate Power Company
President
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Public Accountant
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Mankato, MN 56001
Attn: Linda Miller

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Minneapolis, MN 55404

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St. Paul, MN 55101

Kern, Paganski, Hirschfeld & Company
c/o Don Meyer
1400 St. Germain
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Zumbrota, MN 55992

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Schweitzer, Rubin, Gottlieb & Karon
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Minneapolis, MN 55402

R. L. Kuehmichel & Co.
2437 Park Avenue South
Minneapolis, MN 55404

Kuhlman Corporation
P. O. Box 288
Birmingham, MI 48012
Attn: Walter Meissner

Mr. George J. Kurvers
1010 London Road
St. Paul, MN 55118

Laclede Steel Company
Equitable Building
St. Louis, MO 63102
Attn. D. K. Shipley

Lake Acct. & Mgmt. Services, Inc.
1207 Constance Blvd. N.E.
Ham Lake, MN 55303

Lake City Gas, Inc.
211 East Lyon Avenue
Lake City, MN 55041

Lake Superior Industrial Bureau
828 First National Bank Building
Duluth, MN 55802
Attention: Alfred E. France, President

Lakeland Federal Savings & Loan Ass'n.
P. O. Box 646
928 Lake Avenue
Detroit Lakes, MN 56501

Land O'Lakes, Inc.
P. O. Box 116
Minneapolis, MN 55440
Attn: Tom Jordan, Tax Dept.

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1800 First Bank Place West
Minneapolis, MN 55402
Attn: Mr. John M. Gendler

LARSON, ALLEN, WEISHAIR & CO.
Certified Public Accountants
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Attention: David A. Krahn, CPA

Robert Laude
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Wadena, MN 56482

Legal Aid Clinic
Law School
190 Law Building
229 19th Avenue South
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Admin. Rules
B-46 Capitol
St. Paul, MN 55155
Attn: Kathleen P. Burek, Exec. Dir.

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650 - 25th Avenue S.E.
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Attn: Janet Labardee

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Attn: Eugene Keating

Lindquist & Vennum
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Lockmasters Alarm & Safe Co.
2409 Chicago Avenue
Minneapolis, MN 55404
Attn: James A. Matesky

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10 North Central Avenue
Buffalo, MN 55313

Lowy Enterprises, Inc.
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New Brighton, MN 55112

Lu's Bookkeeping Service
1527 Oxford Street
Worthington, MN 56187
Attn: Luella W. Gaiser

3M
3M Center, Tax Division
220-13W
St. Paul, MN 55144
Attn: G. F. Blissenbach, Income Tax Spec.

Mackall, Crounse & Moore
Law Offices
1600 TCF Tower
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Minneapolis, MN 55402
Attn: Mr. Thomas F. Dougherty

Daniel L. Maher
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Marcus Construction Co., Inc.
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Attn. Russ Serbus

Mark Management Company
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Attn: Sandra A. Mariotti
Director of Accounting

Helen Marks, C.P.A.
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Mason Shoe Mfg. Co.
Accounting Department
21 E. Grand Avenue
Chippewa Falls, WI 54729

Maurices, Inc.
105 W. Superior Street
Duluth, MN 55802
Attn: John Kubow

McCough Construction Co., Inc.
2737 North Fairview Avenue
St. Paul, MN 55113
Attn. John A. Shea

W. B. Meier Co.
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White Bear Lake, MN 55110
Attn: Donna M. Plan, Bookkeeper

John C. Merrill
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STATE REGISTER

STATE OF MINNESOTA



VOLUME 9, NUMBER 2

July 9, 1984

Pages 81-128

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 9		
3	Friday June 29	Monday July 9	Monday July 16
4	Monday July 9	Monday July 16	Monday July 23
5	Monday July 16	Monday July 23	Monday July 30
6	Monday July 23	Monday July 30	Monday Aug 6

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

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

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

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

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

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

The PROPOSED RULES section contains:

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

The ADOPTED RULES section contains:

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

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

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

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

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

Issues 1-13, inclusive
Issues 14-25, inclusive
Issue 26, cumulative for 1-26
Issues 27-38, inclusive
Issue 39, cumulative for 1-39
Issues 40-51, inclusive
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Providing for Waiving Time Limits for Processing Permits for Custom Aerial Applicators of Herbicides

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

WHEREAS, unprecedented frequency and volume of spring rainfall this year has been of damaging consequence to thousands of acres of food and fiber crops throughout most of the State of Minnesota; and

WHEREAS, millions of acres of new field crops in Minnesota pose the additional damage threat from severe weed infestations stimulated by the repeated rains and accompanying hot, humid temperatures; and

WHEREAS, the muddy conditions of these farm fields have and will continue to prevent the timely ground application of herbicides for weed control; and

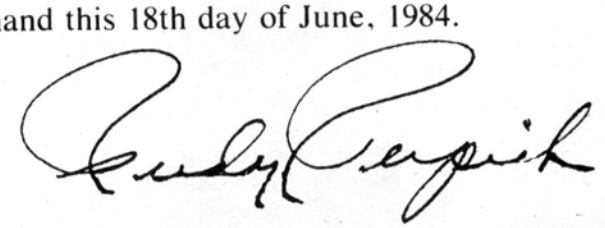
WHEREAS, it is urgent that Minnesota farmers have swift availability of the services of properly licensed, equipped, and experienced aircraft and pilots for aerial application of registered herbicides; and

WHEREAS, the normal processing of aeronautics permits and equipment testing for such aerial herbicide applications would result in undue and costly delays impacting upon Minnesota farmers and upon the rural economy as well.

NOW, THEREFORE, I am exercising the special authority granted me as the Governor of the State of Minnesota to declare a thirty day limited emergency, thus waiving the procedural delays for the processing of the proper permits by the Aeronautics Division of the Minnesota Department of Transportation so that the services of properly equipped custom aerial applicators of approved herbicides licensed by the Minnesota Department of Agriculture may immediately be available to Minnesota farmers.

This Order is effective beginning June 18, 1984, and shall remain in force for thirty days after that date.

IN TESTIMONY WHEREOF, I have set my hand this 18th day of June, 1984.



PROPOSED RULES

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

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

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

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

Department of Agriculture
Dairy Industries Division

Proposed Emergency Rules Governing Manufactured Grade Milk Reimbursement Program

Notice of Intent to Amend Emergency Rules

Notice is hereby given that the Minnesota Department of Agriculture proposes to amend the above entitled emergency rules. The Commissioner of Agriculture will follow the procedures set forth in Minnesota Statutes, sections 14.29-14.36 in amending these rules.

Persons interested in these emergency rules shall have 25 days from the date the rules are published in the *State Register* to submit comments on the proposed amendments. The proposed amendments may be modified if the modifications are supported by the data and views submitted to the department.

Persons who wish to submit oral or written comments should submit the comments to: Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, Minnesota 55107, (612) 296-1486.

Authority to adopt this rule is contained in Minnesota Statutes, section 32.417. The Commissioner is authorized by this section to adopt emergency rules for administration of the manufacturing grade milk investment reimbursement program. The investment reimbursement program is intended to help can producers meet federal and state certification requirements for manufacturing grade milk by providing financial assistance.

The Minnesota Department of Agriculture is amending the rules administering the investment reimbursement program for dairy producers who upgrade their facilities to meet the 1983 Milk Quality Standards. The Department finds it is necessary to make changes in the existing rules to allow for extended time to apply and to change the process of application to reflect actual conditions in the dairy industry. The Department is of the opinion that the magnitude of changes necessary for many dairy producers who ship milk in cans has not been fully understood, and therefore, additional time to apply is necessary.

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

In accordance with Laws of Minnesota Statutes, Section 32.417, these emergency rules will be effective until July 1, 1985.

One free copy of this notice and the proposed emergency rules may be obtained by contacting Mr. Heil. Persons who wish to be notified by mail that the proposed emergency rule has been submitted to the Attorney General or who wish to receive a copy of the emergency rule as adopted should also contact Mr. Heil.

June 25, 1984

Jim Nichols
Commissioner of Agriculture

Emergency Rules as Proposed

3 MCAR § 1.1340 [Emergency] Purpose; authority.

Rules 3 MCAR §§ 1.1340-1.1348 [Emergency] are prescribed by the commissioner pursuant to ~~Laws of Minnesota 1983, chapter 232, section 2~~ Minnesota Statutes, section 32.417, in order to establish an application process and payment procedures for investment reimbursements to aid limited resource producers in meeting certification requirements so that they may continue as producers of manufacturing grade milk.

3 MCAR § 1.1341 [Emergency] Definitions.

A. Scope. As used in 3 MCAR §§ 1.1340-1.1348 [Emergency], the terms in this rule have the meanings given them.

B. Applicant. "Applicant" means a can producer who is a resident.

C. Application. "Application" means an information survey, financial information, an inspection report, a reimbursement request, and investment expenditure receipts submitted by a person to the commissioner for the purpose of obtaining an investment reimbursement.

D. Can producer. "Can producer" means a person who produces manufacturing grade milk for sale in cans.

E. Certification. "Certification" means the determination by the commissioner that a can producer's facility complies with standards.

F. Commissioner. "Commissioner" means the commissioner of agriculture or commissioner's designee.

G. Dairy sanitarian. "Dairy sanitarian" means an employee of the department responsible for departmental dairy inspection activities in an area of Minnesota.

H. Department. "Department" means the Department of Agriculture.

I. Eligible applicant. "Eligible applicant" means a can producer who meets the criteria in 3 MCAR § 1.1342 [Emergency] A. and B.

J. Facility. "Facility" means equipment, building, or a portion of a building which is necessary in the production of manufacturing grade milk and is owned or operated by the can producer.

K. Hardship. "Hardship" means unforeseen circumstances which preclude the applicant from meeting a deadline stated in 3 MCAR §§ 1.1344-1.1348 [Emergency].

L. Investment expenditure. "Investment expenditure" means the cost of capital improvements or equipment installed for the purpose of conforming to standards.

M. Investment reimbursement. "Investment reimbursement" means a partial refund of investment expenditures.

N. Labor. "Labor" means a person hired for the modification of a facility and for which a receipt or other evidence of an investment expenditure is available.

O. Limited resource producer. "Limited resource producer" means a can producer whose yearly net income is less than ~~$6,000 and whose net worth is not in excess of $75,000~~ $9,000.

P. Manufacturing grade milk. "Manufacturing grade milk" means milk produced for processing and manufacturing into products for human consumption but not subject to the grade A requirements of Minnesota Statutes, chapter 32 and 3 MCAR §§ 1.1149-1.1154.

Q. Modification. "Modification" means a change in the production facility required for certification of the facility.

R. Net income. "Net income" means federally adjusted gross income ~~minus taxes~~.

S. ~~Net worth. "Net worth" means the sum of all assets minus all liabilities of the applicant and the applicant's spouse, if applicable, determined using generally accepted accounting principles.~~

~~T. Noncertifiable. "Noncertifiable" means unable to meet standards for the production of manufacturing grade milk.~~

~~U.~~ Persons. "Person" means an individual, partnership, family farm, family farm corporation, or authorized farm corporation engaged in manufacturing grade milk production.

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.

~~V.~~ T. Plant representative. "Plant representative" means a field service employee or other employee of a receiving dairy plant who is responsible for quality control.

~~W.~~ U. Qualified applicant. "Qualified applicant" means an eligible applicant who is determined a limited resource producer in accordance with 3 MCAR § 1.1344 [Emergency] F.

~~X.~~ V. Resident. "Resident" means a person who was producing manufacturing grade milk in Minnesota in cans, for sale, on or before June 2, 1983.

~~Y.~~ W. Standards. "Standards" means the recommended federal standards for manufacturing grade milk as adopted by Minnesota.

3 MCAR § 1.1342 [Emergency] Eligibility.

A. Residency. An applicant must be a resident currently engaged in the production of ~~manufacturing grade milk for sale in cans.~~

B. ~~Noncertifiable. An applicant's facilities must be noncertifiable.~~

~~C.~~ Financial need. An applicant must be a limited resource producer.

3 MCAR § 1.1343 [Emergency] Notice of available funds.

The commissioner shall publish notice of the availability of investment reimbursement funds in the *State Register* and mail the notice to can producers of record on or before ~~February 1~~ July 30, 1984. The notice must contain at least the following: the purpose of the investment reimbursement program; the method of applying for the investment reimbursement; the criteria for eligibility; a statement of expenditures not eligible for reimbursement as stated in 3 MCAR § 1.1346 [Emergency] C.; a statement of when investment reimbursements will be made and the deadlines for filing application documents; and a statement that the maximum allowable investment reimbursement is $100 for the first $500 or fraction thereof, and ten percent of the next $2,000 of net investment expenditures.

3 MCAR § 1.1344 [Emergency] Application procedure.

A. Information survey. An information survey must be completed and submitted ~~prior to the filing of the financial data form.~~ The applicant must request that a plant representative conduct the information survey and submit results to the department on or before ~~May 1, 1984~~ April 1, 1985. The information survey must be completed on forms provided by the department and must contain at least the following:

1. the producer's name and address, including county, township, and section;
2. the date and time of survey;
3. the size of the dairy herd and amount of daily production;
4. the frequency of milk pickups and the name and address of the receiving dairy plant;
5. production and marketing intentions after July 1, 1985;
6. the producer's intent to apply for an investment reimbursement; and
7. ~~the availability of a milkhouse or milkroom;~~
8. ~~the size and location of a milkhouse or milkroom, if any;~~
9. ~~the type of construction of the milkhouse or milkroom including lighting, walls, and ceiling construction, floor construction, doors, windows, and screen construction, and the adequacy of sewage disposal;~~
10. ~~construction plans, if any, for a milkhouse or milkroom including location, size, construction materials, and potential builder;~~
11. ~~the condition of milking utensils and equipment;~~
12. ~~the type and size of a milk cooler and its operating conditions;~~
13. ~~the number and condition of cans;~~
14. ~~the total number of cans needed for proper storage of milk;~~
15. ~~the type of barn including size and arrangement;~~
16. ~~the adequacy of lighting, ventilation, floor, gutters, walls, ceilings, pens and alleyways, yard, and loafing area;~~
17. ~~the water supply type, location, and quality; and~~

~~18.~~ any other information determined by the commissioner to be reasonably related to the certification process for manufacturing grade milk.

B. ~~Preliminary~~ Review. Based on the information survey, the commissioner shall determine eligible applicants using the criteria in 3 MCAR § 1.1342 [Emergency] A. ~~and B.~~

C. ~~Notification of eligible applicants. The commissioner shall notify all eligible applicants on or before June 1, 1984.~~

~~D.~~ Financial information. On or before ~~June 1, 1984~~ April 1, 1985, an eligible applicant must submit to the department ~~the following financial information:~~

~~1.~~ a copy of the eligible applicant's federal income tax return for ~~1983~~ the previous year or a written, signed, and notarized statement declaring that the eligible applicant did not file a return for ~~1983: and~~ the previous year.

~~2. a completed net worth statement, in the form set forth in Exhibit 3 MCAR § 1.1344 [Temporary] D.2.-1.~~

Exhibit 3 MCAR § 1.1344 [Emergency] D.2.-1. (side 1) [see Repealer.]

Exhibit 3 MCAR § 1.1344 [Emergency] D.2.-1 (side 2) [see Repealer.]

~~E.~~ D. Incomplete financial information. In the event that incomplete financial information is received, the department shall notify the eligible applicant, specifying the deficiencies. The eligible applicant shall have until ~~July 1, 1984~~ April 1, 1985, or 15 days from the postmarked date of the notice, whichever is later, to complete the financial information. If the financial information is not completed in the prescribed time, the eligible applicant will not be considered for an investment reimbursement unless the eligible applicant shows hardship in accordance with 3 MCAR § 1.1347 [Emergency].

~~F.~~ E. Determination ~~and notification~~ of qualified applicants. The commissioner shall review the financial information submitted by the eligible applicant and determine whether the eligible applicant is a limited resource producer. If the eligible applicant is a limited resource producer, the eligible applicant is qualified ~~and the commissioner shall notify the qualified applicant by mail on or before August 1, 1984.~~

3 MCAR § 1.1345 [Emergency] Certification.

A. Certification inspection. On completion of all facility modifications, the qualified applicant shall notify the plant representative. The plant representative shall review the modifications and determine if the modified facility is ready for a certification inspection. If it is ready, the plant representative shall notify the dairy sanitarian to arrange for a certification inspection of the facility.

B. Inspection report. An inspection report must evidence all modifications and is the basis for determining the can producer's compliance with standards. The dairy sanitarian shall give the original of the inspection report to the qualified applicant, retain one copy, and send one copy each to the plant representative and the commissioner.

3 MCAR § 1.1346 [Emergency] Request for payment.

A. Submission of request for payment. After the completion of a successful certification inspection, the qualified applicant must file with the department a request for payment accompanied by all receipts for investment expenditures, dated and signed, if applicable. These materials must be received by the commissioner on or before April ~~1~~ 15, 1985.

B. Request for payment. The request for payment must be a typed or legibly printed letter containing the following:

1. the qualified applicant's name and address;
2. the date of the request;
3. the date of the certification inspection; and
4. a brief statement requesting payment for investment expenditures under the manufacturing grade milk investment reimbursement program.

C. Receipts for investment expenditures. The qualified applicant may submit receipts for all investment expenditures made for the facility modification with the exception of the following items:

1. bulk tank unit;
2. hose port and concrete pad;

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3. milk lines;

4. milk pumps;

5. pressurized hot water systems;

6. a waste disposal system more elaborate than one necessary to handle waste associated with the cleaning of milk handling equipment; and

7. labor costs in excess of ten percent of the total investment reimbursement approved by the commissioner.

D. Incomplete requests or receipts. In the event that a request or a receipt is incomplete, the department shall return the request or receipt to the qualified applicant specifying the deficiencies. The applicant shall have until April ~~1~~ 15, 1985, or 15 days from the postmarked date of the notice, whichever is later, to complete the request or receipt, unless the qualified applicant shows hardship in accordance with 3 MCAR § 1.1347 [Emergency].

3 MCAR § 1.1347 [Emergency] Hardship.

Late financial information, request for payment, or receipt for investment expenditures may not be considered by the commissioner unless the eligible or qualified applicant shows hardship causing the delay. Any claim of hardship must be submitted in writing to the department. The commissioner shall evaluate and determine the reasonableness of any claim of hardship.

3 MCAR § 1.1348 [Emergency] Approval; payment.

A. Verification; approval. All requests and receipts for investment reimbursements submitted in support of an application are subject to verification and approval by the commissioner.

B. Schedule for payments. After the commissioner's approval, investment reimbursements must be made for investment expenditures in accordance with ~~Laws of Minnesota 1983, chapter 232, section 2~~ Minnesota Statutes, section 32.417. All investment reimbursements must be made by June 30, 1985.

Repealer. Exhibit 3 MCAR § 1.1344 [Emergency] D.2.-1 (side 1) and Exhibit 3 MCAR § 1.1344 [Emergency] D.2.-1 (side 2) are repealed.

Department of Energy and Economic Development

Proposed Rules Governing Tax Credit Certification

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Department of Energy and Economic Development proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Energy and Economic Development has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to utilize the provisions of Minn. Stat. §§ 14.21 to 14.28.

Persons interested in these rules shall have 30 days to submit comments in support of or in opposition to the rules. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change.

No public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period. In the event a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. §§ 14.14, subd. 1.

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

Charles A. Schaffer, Director
Program of Business Information
MN Dept. of Energy & Economic Development
900 American Center
150 East Kellogg Boulevard
St. Paul, MN 55101
612/296-0617

Any person requesting a public hearing should state his/her name and address, identify the portion of the proposed rule addressed, the reason for the request and any change proposed and send this information to the above address.

Authority for adoption of these rules is contained in Minn. Stat. § 116J.035 Subd. 2 as amended by Chapter 604, Laws of Minnesota 1984. Additionally, a statement of need and reasonableness describing the need for and reasonableness of each provision and identifying the data and information relied upon to support the proposed rules has been prepared and is available upon request.

You are hereby advised, pursuant to *Laws of Minnesota 1983*, Chapter 188, Small Business Considerations in Rulemaking, that the proposed rules will have a beneficial impact on some small businesses in Minnesota. The tax credits are intended to stimulate the growth and success of small businesses through encouragement of transfer of technology to small businesses, equity investment in small business and contributions to small business assistance offices.

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:

Charles A. Schaffer, Director
Program of Business Information
MN Dept. of Energy & Economic Development
900 American Center Building
150 East Kellogg Boulevard
St. Paul, MN 55101
612/296-0617

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 Charles A. Schaffer at the above address.

Mark B. Dayton
Commissioner
MN Dept. of Energy & Economic Development

Rules as Proposed (all new material)

4351.0100 DEFINITIONS.

Subpart 1. Scope. For purposes of this chapter, the following terms have the meanings given them.

Subp. 2. Business entity. For purposes of certification as a qualified small business, "business entity" means a business conducted for profit as a corporation, partnership, or proprietorship, except an entity engaged primarily in providing licensed professional services and except an entity primarily engaged in farming as defined in Minnesota Statutes, section 290.09, subdivision 29, paragraph (a).

Subp. 3. Employee. For purposes of certification as a qualified small business, "employee" means any person who is permanently on the payroll of a business entity at the time the business entity seeks certification as a qualified small business. An employee is determined on an annualized full-time equivalent basis by dividing total payroll hours (excluding overtime) worked by all employees during the year by 2,080 hours.

Subp. 4. Subsidiary or affiliate. For purposes of certification as a qualified small business, a business entity is a "subsidiary" of a transferor or investor if the business entity is a corporation and the transferor or investor owns more than 50 percent of the value of the outstanding stock of the entity corporation, or the entity is not a corporation and the transferor or investor owns more than 50 percent of the value of the capital interest or the profit interest in the entity.

For purposes of certification as a qualified small business, a business entity is an "affiliate" of a transferor or investor if:

A. the business entity is a corporation and the transferor or investor owns more than 20 percent of the value of the outstanding stock of the entity corporation;

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B. the business entity is not a corporation and the transferor or investor owns more than 20 percent of the capital stock interest or the profit interest in the entity; or

C. other facts and circumstances indicate that the transferor or investor possesses effective control of the entity as evidenced by:

(1) contractual arrangements that provide for allocation of the entity's output to the transferor or investor or that require the purchase of inputs from the transferor or investor;

(2) a high percentage of the ownership by transferor or investor, but less than 50 percent, and fragmentation of the ownership of the other interests among various other individuals or entities;

(3) a majority of the membership of the entity's board of directors or other governing body is held by employees, directors, or owners of the transferor or investor; or

(4) other relevant factors.

A business entity is a subsidiary or affiliate of a transferor or investor if the entity and the transferor or investor are both subsidiaries or affiliates, or some combination thereof, of a common third party.

A separately incorporated franchise is not a subsidiary or affiliate.

Subp. 5. Commercial domicile. For purposes of certification as a qualified small business, "commercial domicile" means the state where the business entity maintains the principal office from which it manages and directs its business.

Subp. 6. Taxable year. For purposes of certification as a qualified small business, "taxable year" means the period for which the business entity filed its Minnesota income tax return. The period may be a calendar year, a fiscal year, or, in cases where returns for a fractional part of a year are permitted or required, the period for which the return is made.

Subp. 7. In operation. For purposes of certification as a qualified small business, "in operation" means performing the services or other business activities for which the entity was organized.

Subp. 8. Passive income. For purposes of certification as a qualified small business, "passive income" means gross receipts from royalties, rents, dividends, interest, annuities, and sales or exchanges of stock or securities.

Subp. 9. Engaged primarily in providing licensed professional services. For purposes of certification as a qualified small business, "engaged primarily in providing licensed professional services" means the business entity has as its primary purpose the rendering of personal service by a professional or professionals pursuant to a license or certificate issued to the professional by the state of Minnesota or similar laws of another state including but not limited to the practice of medicine and surgery, chiropractic, nursing, optometry, psychology, dentistry, pharmacy, podiatry, veterinary medicine, architecture, engineering, surveying or landscape architecture, accountancy, or law.

Subp. 10. Commissioner. For purposes of certification as a qualified small business and for purposes of certification as a small business assistance office, "commissioner" means the commissioner of energy and economic development or his or her designee.

Subp. 11. Audited financial statements. For purposes of certification as a small business assistance office, "audited financial statements" means financial statements on which a state licensed public accountant has delivered an opinion according to generally accepted auditing standards that the financial statements soundly and fairly present the business's financial data.

Subp. 12. Full-time professional employee or the equivalent. For purposes of certification as a small business assistance office, "full-time professional employee or the equivalent" means:

A. an individual who is on the payroll of a nonprofit corporation, who performs services directly related to the primary purpose of a nonprofit corporation, and who works at least 2,080 hours per year; or

B. a combination of professional employees who are on the payroll of the nonprofit corporation, who perform services directly related to the purpose of the nonprofit corporation, and who individually work fewer than 2,080 hours per year but who aggregately work at least 2,080 hours per year.

Subp. 13. Shared professional employee. For purposes of certification as a small business assistance office, a corporation "shares" a professional employee with another organization if the following criteria are met:

A. the "shared" employee performs services directly related to the primary purpose of the corporation;

B. the corporation pays the direct compensation and fringe benefits for the "shared" employee in proportion to the services received; and

C. the "shared" employee is employed by an organization (whether organized for profit or not and regardless of the business form in which it is organized) which trains or provides direct assistance to entrepreneurs, managers, inventors, and other individuals in the development, financing, and operation of businesses.

Subp. 14. Financing. For purposes of certification as a small business assistance office, "financing" means the making of market rate loans. Financing does not mean assisting with the securing of grants or contracts from public or private sources.

4351.0200 PURPOSE.

The purpose of this chapter is to provide notice of the procedures and criteria used by the commissioner of energy and economic development to certify a nonprofit corporation as a small business assistance office and to certify a business entity organized for profit as a qualified small business under Minnesota Statutes, section 290.069, subdivision 1, paragraphs (a) and (f).

4351.0300 COMPUTATION OF GROSS ANNUAL RECEIPTS.

For the purpose of certification as a qualified small business, gross annual receipts is determined by using the following computations (the forms and lines referenced relate to 1983 federal tax forms, or their equivalent forms and lines in the future):

A. For businesses filing a federal corporation income tax return, use the total income increased by the cost of goods sold and/or operations (IRS form 1120, the sum total of lines 11 and 2).

B. For businesses filing a federal income tax return for a chapter S corporation, use the sum of the total income, cost of goods sold and/or operations, and the long and short term net capital gain or losses. (IRS form 1120S, use line 9 and increase it by the amount on line 2. Increase this total by the amount on IRS schedule D, form 1120S, by the amounts on lines 1, 2, and 9.)

C. For businesses filing federal sole proprietorship or partnership interest returns, use the gross receipts or sales less returns or allowances plus other income (IRS from 1040 schedule C, use the total amounts on lines 1c and 4b.)

If form 1040 schedule D is filed, use the net short and long term capital gain or loss excluding any gain made on the sale of your home. (IRS form 1040 schedule D, line 6 less line 2 plus line 17 less line 10.)

If form 1040 schedule E is filed, use any rental income and any other business income (IRS from 1040 schedule E, lines 3, 27, 31, and 33.)

D. If an IRS form 1065 is filed, use the gross receipts or sales less returns or allowances (line 1c), plus ordinary income from other partnerships (line 4, only if positive amount), plus interest and dividends (line 5), plus gross rents (line 6a), plus income from royalties (line 7), plus any other income or loss (line 10).

4351.0400 CERTIFICATION AS SMALL BUSINESS ASSISTANCE OFFICE.

Subpart 1. Application. For a nonprofit corporation to be certified as small business assistance office under Minnesota Statutes, section 290.069, subdivision 1, paragraph (a), it must submit to the commissioner an application form provided by the commissioner along with a copy of the articles of incorporation; a copy of the designation by the Internal Revenue Service that the corporation is exempt from taxation under section 501(c) (3) of the Internal Revenue Code of 1954, as amended through December 15, 1983; the most recent audited financial statement; and a recent payroll abstract or the equivalent.

The application form must contain the corporate name, principal place of business of the corporation, and an affirmation made by an officer of the corporation affirming the following:

A. that the primary purpose of the corporation is to aid in the formation of new businesses which create jobs by training or providing other direct assistance to entrepreneurs, managers, inventors, and other individuals in the development, financing, and operation of qualified small businesses;

B. that the corporation provides audited financial statements to all contributors seeking the tax credit and to the commissioner of energy and economic development within 90 days following the close of the corporation's fiscal year;

C. that the corporation employs at least two full-time professional employees or the equivalent, or employs one full-time professional employee and shares a professional employee with another organization engaged in related activities including but not limited to providing development financing or other services to businesses; and

D. that the corporation is not engaged in providing financing or is not primarily engaged in arranging financing for businesses.

Subp. 2. Period of certification. The initial certification is for the calendar year beginning January 1, 1984. Application for certification for calendar year 1984 must be received by the commissioner not later than November 15, 1984.

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Subp. 3. Annual applications. A separate new application must be made for certification for each calendar year beginning January 1, 1985. Applications for certification for calendar years after 1984 must be received by the commissioner not later than November 15 of the calendar year for which the tax credit is sought.

Subp. 4. Decision to certify. Within 30 days of receipt of the application and information required in subpart 1, the commissioner shall determine whether to certify a nonprofit corporation as a small business assistance office. The commissioner shall certify the corporation for a calendar year if it has satisfied the conditions of Minnesota Statutes, section 290.069, subdivision 1, paragraph (a), clauses (1) to (4). If the commissioner denies certification, he or she shall provide the applicant with a statement of the reason for the denial.

4351.0500 CERTIFICATION AS QUALIFIED SMALL BUSINESS.

Subpart 1. Application. For a business entity to be certified as a qualified small business under Minnesota Statutes, section 290.069, subdivision 1, paragraph (f), it must submit to the commissioner an application form provided by the commissioner along with a copy of its three most recent individual or corporate federal income tax returns, a list of the entity's shareholders and their voting interest, a copy of the articles of incorporation and its amendments or partnership agreement if the business entity is a partnership, or a certificate of limited partnership when the business entity is a limited partnership, a recent payroll abstract or the equivalent, and any other information requested by the commissioner as reasonably needed to certify the business entity as a qualified small business.

The application must contain at a minimum the name and address of the business, the taxable year of the business, and an affirmation by an officer of the business affirming:

A. that the business entity is organized for profit as a corporation, partnership, or proprietorship (note that a qualified small business for purposes of equity investment credit must be organized as a corporation);

B. that the above named business entity is not engaged primarily in providing licensed professional services;

C. that the above named business entity is not primarily engaged in farming as defined in Minnesota Statutes, section 290.09, subdivision 29, paragraph (a);

D. that the business entity had in each of its three previous taxable years 20 or fewer employees determined on an annualized full-time equivalent basis and less than $1,000,000 in gross annual receipts;

E. that the business entity is not a subsidiary or an affiliate of a business entity which employs more than 20 employees determined on an annualized full-time equivalent basis or which had total gross receipts for the previous year of more than $1,000,000, computed by aggregating all of the employees and gross receipts of the business entities affiliated with the business;

F. that the business entity has its commercial domicile in Minnesota;

G. that the above named business entity:

(1) has been in operation for less than an entire year at the time of application for certification as a qualified small business, and does not engage in or intend to engage in a trade or business producing or likely to derive more than 20 percent of its gross receipts from passive income; or

(2) did not, during one or more of its three previous taxable years, derive more than 20 percent of its gross receipts from passive income. For a business entity which has been in operation three years or less, this clause is satisfied if (a) the amount of passive income received during its first taxable year was less than $3,000; and (b) the entity did not derive more than 20 percent of its gross receipts from passive income during either of the remaining taxable years; or

(3) is a sole proprietorship to which the provisions of subitems (1) and (2) do not apply; and

H. that the business entity is not engaged in a trade or business, the primary purpose of which is described in section 103(b)(6)(0) of the Internal Revenue Code of 1954, as amended through December 15, 1983.

Subp. 2. Period of certification. The initial certification is for the calendar year beginning January 1, 1984. Application for certification for calendar year 1984 must be received by the commissioner not later than November 15, 1984.

Subp. 3. Annual applications. A separate new application must be made for certification for each calendar year beginning January 1, 1985. Applications for certification for calendar years after 1984 must be received by the commissioner not later than November 15 of the calendar year for which the tax credit is sought.

Subp. 4. Decision to certify. Within 30 days of the receipt of the application and information required in subpart 1, the commissioner shall determine whether to certify a business entity organized for profit as a qualified small business. The commissioner shall certify the business entity if it has satisfied the conditions of Minnesota Statutes, section 290.069, subdivision 1, paragraph (f), clauses (1) to (5). If the commissioner denies certification, he or she shall provide the applicant with a written reason for the denial.

4351.0600 FALSE INFORMATION.

The commissioner shall deny or withdraw certification to a corporation or business entity that the commissioner determines has knowingly provided false, incomplete, or inaccurate information in the application or other documents required in part 4351.0400 or 4351.0500.

4351.0700 APPLICATION FORM FOR CERTIFICATION OF SMALL BUSINESS ASSISTANCE OFFICE.

APPLICATION FOR CERTIFICATION OF
SMALL BUSINESS ASSISTANCE OFFICE
Pursuant to Minnesota Statutes,
section 290.069, subdivision 1

Department of Energy and Economic Development

Date of application: _____

Name of business: _____

Address of business: _____

I _____ affirm that I am the _____ of the above named organization and affirm:

1. that the above named corporation is a nonprofit corporation under Minnesota Statutes, chapter 317 and is an exempt organization under section 501(c)(3) of the Internal Revenue Code, as amended through December 15, 1983;

2. that the above named corporation has as its primary purpose aiding in the formation of new businesses which create jobs in the state by training or providing other direct assistance to entrepreneurs, managers, inventors, and other individuals in the development, financing, and operation of qualified small businesses;

3. that the above named corporation will provide audited financial statements to all contributors and to the commissioner of energy and economic development within 90 days following the close of the corporation's fiscal year;

4. that the above named corporation employs at least two full-time professional employees or the equivalent, or employs one full-time professional employee and shares a professional employee with another organization engaged in related activities including but not limited to providing development financing or other services to businesses; and

5. that the above named corporation is not engaged in providing financing or is not primarily engaged in arranging financing for businesses.

Notary Seal

Signature: _____

Date: _____

4351.0800 APPLICATION FORM FOR CERTIFICATION AS A QUALIFIED SMALL BUSINESS.

APPLICATION FOR CERTIFICATION
AS A QUALIFIED SMALL BUSINESS
Pursuant to Minnesota Statutes,
section 290.069, subdivision 1

Department of Energy and Economic Development

Date of application: _____

Name of business: _____

Address of business: _____

Primary purpose of business: _____

I _____ affirm that I am the _____ of the above named business entity and affirm:

1. that the above named business entity is organized for profit as a corporation, partnership, or proprietorship (note that a qualified small business for purposes of equity investment credit must be organized as a corporation);

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2. that the above named business entity is not engaged primarily in providing licensed professional services;

3. that the above named business entity is not primarily engaged in farming as defined in Minnesota Statutes, section 290.09, subdivision 29, paragraph (a);

4. that the above named business entity had in each of its three previous taxable years 20 or fewer employees determined on an annualized full-time equivalent basis and less than $1.000.000 in gross annual receipts;

5. that the above named business entity is not a subsidiary or affiliate of a business entity with more than 20 employees or with total gross receipts for the previous year of more than $1.000.000, as computed by aggregating all the employees and all the gross receipts of the business entities affiliated with the business;

6. that the above named business entity has its commercial domicile in this state; and

7. that the above named business entity:

(a) has been in operation for less than an entire year at the time of application for certification as a qualified small business, and does not engage in or intend to engage in a trade or business producing or likely to derive more than 20 percent of its gross receipts from passive income; or

(b) did not, during one or more of its three previous taxable years, derive more than 20 percent of its gross receipts from passive income. For a business entity which has been in operation three years or less, this clause is satisfied if (i) the amount of passive income received during its first taxable year was less than $3,000; and (ii) the entity did not derive more than 20 percent of its gross receipts from passive income during either of the remaining taxable years; or

(c) is a sole proprietorship to which the provisions of clauses (a) and (b) do not apply; and

8. that the above named business entity is not engaged in a trade or business, the primary purpose of which is described in section 103(b)(6)(0) of the Internal Revenue Code of 1954, as amended through December 15, 1983.

Notary Seal

Signature: _____

Date: _____

Department of Revenue
Property Equalization Division

Proposed Emergency Rules Relating to Railroads

Notice of Intent to Suspend Permanent Rules and to Adopt Emergency Rules

Notice is hereby given that the State Department of Revenue, Property Equalization Division, proposes to suspend Minnesota Rules 8105.0100 to 8105.9900 entitled "Ad Valorem Tax: Valuation and Assessment of Railroads." This suspension is made pursuant to Findings of Fact, Conclusions of Law and Order for Judgment issued by the Minnesota Tax Court on November 13, 1983 in the matter of the Soo Line Railroad Company vs. the Commissioner of Revenue. This order reads in part . . . "Regulations of the Commissioner of Revenue that do not conform to the statutes do not have the force and effect of law and will be disregarded." Additionally, in his memorandum attached to this Order, Judge Carl A. Jensen states, "The evidence produced at the trial of this matter indicated the Rules 13 MCAR § 1.0024 (now recodified into MR 8105) adopted by the Commissioner of Revenue to determine valuation of railroad property do not properly reflect the valuation and to the extent that they conflict with this decision, the rules are overruled."

Rather than speculate on which part of the rules do not conform to the statutes and which rules do not properly reflect the valuation of railroad property, the Commissioner of Revenue now proposes to suspend Minnesota Rules Chapter 8105.

Acing under authority given by the Minnesota Legislature in Laws of 1984, Chapter 502, Article 9, Section 2, the Commissioner of Revenue proposes to adopt an emergency rule governing the valuation and assessment of railroads which will replace the suspended rule. The adoption of this rule will follow the procedures set forth in Minnesota Statutes, section 14.29 to 14.36.

This notice of intent to adopt emergency rules will be mailed to all interested parties registered with the Department of Revenue and a certified copy of the mailing list together with an affidavit of mailing will be submitted to the Attorney General for his review prior to adoption of the rule. Additionally the notice of intent to adopt an emergency rule together with the rule itself is being published in the *State Register*.

All interested persons shall have 20 days to submit, in writing, data and comments on the proposed emergency rule. Persons who wish to submit such comments should direct them to:

Wayne J. Gerwing
Property Equalization Division
Minnesota Department of Revenue
Centennial Office Building
P.O. Box 64446
St. Paul, MN 55164
(612) 296-5144

The proposed emergency rules may be modified if the modifications are supported by the data and views submitted to the agency.

Upon completion of the 20-day comment period, this Notice, the proposed emergency rule, all written comments received, a copy of the agency's findings of fact and conclusions setting forth the reasons for changes between the rule as proposed and the rule as adopted (if applicable), the final emergency rule as adopted, the order adopting, and any other pertinent or required documents will be submitted to the Attorney General for review as to form and legality.

Within five working days the Attorney General will either approve or disapprove the proposed emergency rule. The emergency rule shall become effective upon approval of the Attorney General: failure of the Attorney General to approve or disapprove a rule within five working days is deemed approval. The final adopted emergency rule will be published in the *State Register*.

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 rule as proposed for adoption should submit a written statement of such request to Wayne Gerwing at the address listed above.

Additional copies of this notice and the proposed rule are available and may be obtained by contacting Wayne Gerwing.

Arthur C. Roemer
Commissioner of Revenue

Emergency Rules as Proposed (all new material)

8105.0100 [Emergency] DEFINITIONS.

Subpart 1. Scope. As used in this chapter, the following words, terms, and phrases have the meanings given to them by this part. Some of the words, terms, and phrases are defined by statute but are included here for completeness.

Subp. 2. Allocation. "Allocation" means the process by which a fair and reasonable portion of each railroad's total unit value is assigned to Minnesota for purposes of taxation.

Subp. 3. Apportionment. "Apportionment" means the process of distributing that portion of the railroad's unit value which has been allocated to Minnesota after deducting exempt and nonoperating property to the various counties and taxing districts in which the railroad company operates.

Subp. 4. Assessment/sales ratio. "Assessment/sales ratio" means the ratio derived by dividing the estimated market value of a property by its adjusted selling price and used as a measure of the level of estimated market value to real or true market value.

Subp. 5. Book depreciation. "Book depreciation" means the depreciation shown by a railroad company on its corporate books and allowed the company by the Interstate Commerce Commission.

Subp. 6. Capitalization rate. "Capitalization rate" means an anticipated rate of return from an investment, a rate at which income is processed (capitalized) to indicate the probable capital value. This rate is usually expressed as a percentage.

Subp. 7. Equalization. "Equalization" means the adjustment of the estimated market value of railroad operating property to the apparent assessment/sales ratio of commercial and industrial property.

Subp. 8. Exempt property. "Exempt property" means property which is nontaxable for ad valorem tax purposes by statutes.

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Examples of such property are approved pollution control equipment for which an exemption has been granted and personal property otherwise exempt from taxation under Minnesota Statutes, chapter 272.

Subp. 9. ICC. "ICC" means the Interstate Commerce Commission.

Subp. 10. Mainline track. "Mainline track" means all track reported to the ICC by the respondent railroad as main line.

Subp. 11. Nonoperating property. "Nonoperating property" means all property owned by a railroad company which does not fall under the definition of operating property. Nonoperating property includes real property which is leased or rented or available for lease or rent to any person which is not a railroad company. Vacant land is presumed to be available for lease or rent if it has not been used as operating property for a period of at least one year preceding the valuation date. It also includes: (a) land which is not necessary and integral to the performance of railroad transportation services and which is not used on a regular and continual basis in the performance of these services; and (b) that portion of a general office building and its proportionate share of land which is not used for railway operations or purposes.

Subp. 12. Obsolescence allowance. "Obsolescence allowance" means the adjustment to be made to the gross cost indicator of value to reflect the loss of economic usefulness or value because of causes other than physical deterioration.

Subp. 13. Operating property. "Operating property" means all property owned or used on a regular and continual basis by a railroad company in the performance of railroad transportation services, including without limitation franchises, rights-of-way, bridges, trestles, shops, docks, wharves, buildings, and structures.

Subp. 14. Original cost. "Original cost" means the amount paid for an asset as recorded on the railroad's books in accordance with ICC accounting rules and regulations.

Subp. 15. PUC. "PUC" means the Minnesota Public Utilities Commission.

Subp. 16. Railroad company. "Railroad company" means a company which as a common carrier operates a railroad or a line or lines of railway situated within or partly within Minnesota.

Subp. 17. Restated cost. "Restated cost" means the cost of an asset recorded on a railroad's books after adjusting the amount from a retirement-replacement-betterment accounting basis to a depreciation accounting basis, in accordance with Code of Federal Regulations, title 49, part 1201 (effective January 1, 1983).

Subp. 18. Structure. "Structure" means all coal and ore wharves or docks, station houses, depots, shops, office buildings, and all other buildings with a restated cost of over $10,000.

Subp. 19. System. "System" means the total tangible property, real and personal, of a company which is used in its railroad operations in all states in which it operates.

Subp. 20. Unit value. "Unit value" means the value of the system of a railroad company taken as a whole without any regard to the value of its component parts.

Subp. 21. Weighting. "Weighting" means the confidence or reliability given to a factor or indicator. It is usually expressed as a portion of 100 percent.

8105.0200 [Emergency] GENERAL PROCEDURES.

Laws of Minnesota 1979, chapter 303, article VII (called the Omnibus Tax Bill) codified as Minnesota Statutes, sections 270.80 to 270.90, eliminated the gross earnings tax on Minnesota railroads and replaced it with an ad valorem tax on all railroad operating property. The article also charges the commissioner of revenue with the responsibility of developing rules, both emergency and permanent, which will implement the provisions of the law dealing with the ad valorem method of taxing railroads. Subsequently, Laws of Minnesota 1984, chapter 502, article 9 gave additional instructions to the commissioner regarding the method of valuing railroad property and the equalizaton of these valuations. This article also gives the commissioner the authority to promulgate emergency rules in order to implement these valuation and equalization procedures.

The methods, procedures, indicators of value, capitalization rates, weighting percents, allocation factors, and apportionment standards and equalization methods will be used as described in this chapter for 1984 and subsequent years.

8105.0300 [Emergency] REPORTS REQUIRED.

Subpart 1. Reports to be filed. The data used in the valuation, allocation, and apportionment processes will be drawn from reports submitted to the Department of Revenue by the railroad companies. These reports are to be filed with the commissioner on or before April 30 of each year and shall include:

A. the Minnesota Department of Revenue annual railroad report;

B. the annual report to the Interstate Commerce Commission;

C. the annual report to the Minnesota Public Utilities Commission;

D. the annual stockholders report; and

E. other commonly accepted sources of railroad income, expense, capitalization, and debt and stock values such as Standard and Poor's Stock Guide, Standard and Poor's Statistical Service, Moody's Transportation Manual, and Transportation Statistics in the United States, compiled by the Interstate Commerce Commission.

Subp. 2. Reports examination. Periodic examination of the supporting data for these reports will be made by the Department of Revenue. The commissioner shall, upon written application from the railroad, extend the filing date 30 days.

Subp. 3. Failure to file. In the event any railroad company fails to file the required reports, the commissioner shall make a valuation according to the commissioner's best judgment based on available information.

Other sources of pertinent information may be consulted only when necessary to make the valuation, allocation, and apportionment required by parts 8105.0100 to 8105.0600 [Emergency]. Said sources will, when applicable, be used uniformly and will be commonly accepted sources of data for which they are consulted. Questions unique to the valuation of a particular railroad may be resolved by consulting the books and records of the particular railroad involved.

8105.0400 [Emergency] VALUATION.

Subpart 1. In general. The Minnesota legislature has said that railroads may be valued using the unit basis of estimating value. Consequently for 1984 the commissioner has chosen to use this method. The approaches to value which will be used in determining the estimated unit value of railroad operating property are cost, capitalized income, and stock and debt except as provided in subparts 4 and 6. It is the decision of the commissioner of revenue that for 1984 and subsequent years the value of railroad property will be determined using these three approaches to value, where applicable, in the manner provided for in this part until such time or conditions warrant a change in either methods or procedures.

Subp. 2. Cost approach to valuation. The cost factor that will be considered in the railroad valuation method is the restated cost of the railroad system, plus the restated cost of construction work in progress on the assessment date. The railroad system shall be considered to be made up of the following ICC accounts: all road and equipment accounts, including leased equipment accounts; all general expenditures; and other elements of investment and railroad property owned and leased to others as well as railroad property leased from others. Book depreciation and obsolescence shall be allowed as a deduction from the restated cost of the railroad's assets enumerated above.

If any railroad is not required by the ICC to restate the cost of its assets in accordance with Code of Federal Regulations, title 49, part 1201, the commission will make an estimate based upon the best available information of the impact of this restatement on the railroad's assets.

Obsolescence will be calculated through the use of the "Blue Chip Method." This method compares the railroad being appraised with the best railroads in the country, the so-called blue chip railroads. A five-year average rate of return will be calculated for the railroad under appraisal. This rate of return is computed by dividing the subject's net railroad operating income each year for each of the most recent five years preceding the assessment, by the railroad's net investment in railroad property for each corresponding year. The resulting five rates of return are then averaged using a simple arithmetic average to arrive at a five-year average rate of return. An example of this computation is as follows:

XYZ Railroad

Year	Net Railroad Operating Income	Net Investment	Indicated Rate of Return
19XX	$2,700,000	$31,500,000	8.57%
19XX	$2,900,000	$32,000,000	9.06%
19XX	$3,100,000	$33,500,000	9.25%
19XX	$3,300,000	$34,000,000	9.70%
19XX	$3,530,700	$35,000,000	10.08%
		Total	46.66%
Five-year Average Rate of Return			9.33%

A study will then be made of the major railroads operating within the United States for the same five-year period using such informational sources as Standard and Poor's Statistical Service, Moody's Transportation Manual, and Transportation

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Statistics in the United States. Each year the railroad with the highest rate of return will be selected as the blue chip railroad. The resulting five rates of return will then be averaged to find the five-year average blue chip rate of return. An example of this process is as follows:

Year	Railroad	Rate of Return
19XX	ABC	10.50%
19XX	FGH	10.27%
19XX	JKL	10.85%
19XX	MNO	11.02%
19XX	XYZ	10.08%
	Total	52.72%
Five-year Average Blue Chip Rate of Return		10.54%

The five-year rate of return for the railroad under appraisal will be compared to the five-year average blue chip rate of return. The deviation of the subject railroad's rate of return from the blue chip railroads' rate of return is the amount of indicated obsolescence. The following example illustrates the computation.

XYZ Railroad 5-year Average Rate of Return	9.33%
Blue Chip 5-year Average Rate of Return	10.54%
Indicated Obsolescence 1—(9.33% ÷ 10.54%)	11.50%

The obsolescence percentage will then be applied to the road accounts of the subject railroad, excluding land, after the allowance for depreciation has been deducted. In no instance shall the allowance for obsolescence exceed 50 percent. The following example illustrates how the cost indicator of value is computed and how the allowance for obsolescence is applied.

Account	XYZ Railroad	Amount
Road		$24,000,000
Equipment—Owned and Leased		9,000,000
Construction Work in Progress		4,500,000
General Expenditures		1,823,000
Gross Cost Indicator		39,323,000
Less Depreciation		10,000,000
Net Cost Indicator		$29,323,000
Road	$24,000,000	
Less Land	1,000,000	
Adjusted Road	23,000,000	
Adjusted Road		$23,000,000
Depreciation on Road		7,000,000
Net Road		16,000,000
Obsolescence Percent		11.5%
Obsolescence Amount		1,840,000
Adjusted Cost Indicator of Value		$27,483,000

This cost indicator of value computed in accordance with this part will bear a weighting of 15 percent of the total unit value estimate of the railroad's property, except in the case of bankrupt railroads, or railroads with no income to be capitalized, as provided for in subpart 6, or railroads not meeting the criteria for use of the stock and debt approach to value as specified in subpart 4. These railroads will be valued using a 40 percent weighting for the cost indicator of value.

Subp. 3. Income approach to valuation. The income indicator of value will be calculated by averaging the net railway operating income, as determined by the ICC, of the railroad for the most recent five years preceding the assessment. This average income shall be capitalized by applying to it a capitalization rate which will be computed by using the band of investment method. This method will consider:

A. the capital structure of railroads, including capital surplus and retained earnings;

B. the cost of debt or interest rate paying particular attention to imbedded debt of railroads;

C. the yield on preferred stock of railroads; and

D. the yield on common stock of railroads.

For 1984 this capitalization rate will be 14.6 percent. This rate will be recalculated each year using the method described in this subpart.

An example of a computation of the capitalized income approach to value is as follows:

XYZ Railroad

Year	Net Railway Operating Income
19XX	$ 2,700,000
19XX	2,900,000
19XX	3,100,000
19XX	3,300,000
19XX	3,530,750
Total	$15,530,750
Average	$ 3,106,150

Five-year average Net Railway Operating Income Capitalized at 14.6 percent (3,106,150 ÷ 14.6 percent) equals $21,275,000.

The income indicator of value computed in accordance with this part shall be weighted 60 percent of the total estimated unit value of the railroad's property except in the case of bankrupt railroads or railroads having no net operating income as provided for in subpart 6.

Subp. 4. Stock and debt approach to valuation. The stock and debt approach to value is the third method which will be used to estimate the unit value of the railroad operating property. This approach to value is based on the accounting principle: assets = liabilities + equity. Therefore, when the value of a company's liabilities (debt) is found and this added to the worth of its stock, a value can be established for its assets (property).

The use of this approach to value will be limited to only those railroads meeting qualifications in items A to C:

A. The stock of the railroad must be traded on either the New York or American Stock Exchange.

B. The bonds of the railroad must be traded or have a rating by either Standard and Poor's or Moody's rating services.

C. If the railroad is part of a diversified company, the value of the railroad portion of the total stock price must be able to be separated on an earnings basis using the following method:

XYZ Railroad

XYZ railroad is wholly owned by ABC Industries Inc.

Net Earnings of ABC Industries	$5,200,500
Net Earnings XYZ Railroad	$2,600,250
Percent of XYZ net earnings to total conglomerate earnings	50%
Value of share of ABC Industries stock	$ 100
XYZ Railroad portion of stock value	$ 50

If a railroad has no net earnings, and is part of a conglomerate, then the stock and debt indicator of value will not be used.

The value of the stock used in the stock and debt method shall be an average of the month-ending stock prices for the 12 months immediately preceding the assessment date of January 2. The value of the bonds, equipment obligations, and conditional sales contracts, and other long-term debts shall also be an average of the cost of money quotes for the 12 months immediately preceding the assessment date of January 2. The source for these stock and bond prices shall be Standard and Poor's Stock Guide or other applicable financial service.

An illustration of a computation of the stock and debt approach to value is as follows:

XYZ Railroad Company

Shares of Common Stock issued x Average price for preceding year	1,000,000 × $12 = $12,000,000
Shares of Preferred Stock x Average price for preceding year	100,000 × $15 = $ 1,500,000

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Rate and face value of bonds x
Average price for class of bonds
for preceding year

A rated 8% bonds $10,000,000 × 99% of par = $ 9,900,000

Stock and Debt Indicator of Value $23,400,000

After the gross stock and debt indicator of value has been computed, an allowance will be made for the effect, if any, of revenue from other than railway operations included in this indicator of value. This allowance shall be based on the ratio of a five-year average of net revenue from railway operations, as determined by the ICC, to a similar five-year average of income available for fixed charges as determined by the ICC. The five-year average will be the most recent five years preceding the assessment date. An example of this computation is as follows:

XYZ Railroad Company

Year	Net Revenue from Railway Operations	Income Available for Fixed Charges
19XX	$ 2,000,000	$ 3,500,000
19XX	4,000,000	4,300,000
19XX	5,200,000	5,700,000
19XX	6,000,000	6,800,000
19XX	5,200,000	5,400,000
	$23,400,000	$25,700,000
Average	$ 4,680,000	$ 5,140,000

Ratio $4,680,000 ÷ $5,140,000 = 91%

Gross Stock and Debt Indicator of Value	$23,400,000
Ratio of Operating to Non-Carrier Earnings	91%
Net Stock and Debt Indicator of Value	$21,300,000

The stock and debt indicator of value computed in accordance with this part will bear a weighting of 25 percent of the total unit value of the railroad's property, except in the case of bankrupt railroads, railroads in bankruptcy proceedings, or railroads with no income to be capitalized, as provided for in subpart 6. If no stock and debt indictor of value is computed, the weighting of 25 percent which would have been applied to this indicator of value will be placed on the cost indicator of value.

Subp. 5. Unit value computation. The estimated unit value of the railroad property will be the total of the three weighted indicators of value. The following is an example of the computation of the unit value.

XYZ Railroad

Valuation Approach	Value	Weighting	
Cost indicator of value	$27,483,000	15%	$ 4,122,500
Income indicator of value	21,275,000	60%	12,765,000
Stock and debt indicator of value	21,300,000	25%	5,325,000
		Unit Value	$22,212,500

The weighting shown above may vary from railroad to railroad, as provided in subparts 2 to 4, depending on the conditions and circumstances involved in each valuation. For example, a railroad with no outstanding stock would not have a computation for a stock and debt indicator of value and, therefore, the cost indicator of value would be weighted 40 percent.

Subp. 6. Railroads operating at a loss, bankrupt railroads involved in federal bankruptcy proceedings, and railroads adjudged bankrupt by a federal court. Railroads which are involved in federal bankruptcy proceedings, adjudged bankrupt, or railroads having no net railway operating income will be valued using the cost and stock and debt approaches to value. If the stocks or bonds of such railroads are not traded, or do not meet the other requirements for use of the stock and debt indicator of value, then these railroads will be valued using the cost approach to value only.

8105.0500 [Emergency] ALLOCATION.

Subpart 1. In general. After the estimated unit value of the railroad property has been determined, the portion of value which is attributable to Minnesota must be established. This is accomplished through the use of certain allocation factors. Each of the factors in the allocation method shows a relationship between the railroad system operations in all states and its Minnesota operations. These relationships are expressed in a percentage figure. These percentages are then added and an average is computed. The resulting average of the factors, multiplied by the unit value, yields the Minnesota portion of the railroad property which will, after the adjustments described in parts 8105.0600 [Emergency] and 8105.0800 [Emergency], be subject to ad valorem tax in Minnesota.

Subp. 2. Allocation factors. The factors to be considered in making allocations of unit values to Minnesota for railroad companies are:

A. miles of railroad track operated in Minnesota divided by miles of railroad track operated in all states;

B. ton miles of revenue freight transported in Minnesota divided by ton miles of revenue freight transported in all states;

C. gross revenues from transportation operations within Minnesota divided by gross revenues from transportation operations in all states; and

D. cost of road property in Minnesota divided by the cost of road property in all states.

The following example illustrates the allocation method to be applied to the unit value of railroad property.

XYZ Railroad

Minnesota miles of track	100	
		= 20%
Total miles of track	500	
Minnesota ton miles of revenue freight	2,200,000	
		= 24%
Total ton miles of revenue freight	9,000,000	
Minnesota gross transportation revenue	$10,000,000	
		= 25%
Total gross transportation revenues	$40,000,000	
Minnesota Cost of Road Property	2,990,000	
		= 23%
Total Cost of Road Property	13,000,000	
Total		92%
Minnesota Percent of Unit Value		23%
Total Unit Value ($22,212,500 × 23%) =		
Minnesota Portion of Unit Value		$5,108,875

8105.0600 [Emergency] ADJUSTMENTS FOR NONFORMULA ASSESSED PROPERTY OR EXEMPT PROPERTY.

After the Minnesota portion of the unit value of the railroad company is determined, property which is either exempt from taxation, such as pollution control equipment and personal property, or classified as nonoperating will be deducted from the Minnesota portion of the unit value to the extent that it has been included in the computation of this value.

Property which has been included in the computation of the unit value but has been defined as nonoperating property will be valued by the local assessor. The Minnesota portion of the unit value will be reduced by the restated cost of this property. Only nonoperating property located within Minnesota will be eligible for this exclusion.

The railroad company shall have the responsibility to submit to the commissioner of revenue, in the form required by the commissioner, such schedules of nonoperating property as the commissioner may require.

In addition to nonoperating property which will be valued and assessed locally, a deduction from the Minnesota portion of the unit value will be made for personal property. The unit value method presupposes that the value of any one portion of the unit is interdependent upon all other elements of the unit; therefore, it is extremely difficult to make a separation of this value into real and personal property.

A percentage of the Minnesota portion of the unit value after deducting nonoperating and exempt property will be excluded as personal property. This percentage will be computed in the following way:

A. The following ICC accounts for property within Minnesota will be totaled:

(1) that portion of coal and ore wharves determined to be personal property;

(2) communication equipment;

(3) signals and interlockers;

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(4) roadway machines;

(5) shop machinery;

(6) power plant machines; and

(7) equipment, allocated to Minnesota on the basis of car and locomotive miles in Minnesota compared to total system car and locomotive miles.

B. The total of these accounts will then be divided by the total of the Minneosta road, equipment, leased property, general expenditures, construction work in progress, and other elements of investment accounts. The resulting percentage will be used to determine the personal property amount of the Minnesota portion of the unit value. This portion will not be taxable for ad valorem purposes.

C. The following is an illustration of the computation for the personal property exclusion.

XYZ Railway

Personal Property Account		Amount in Minnesota
Coal and Ore Wharves		$189,200
Communication Equipment		100,000
Signals and Interlockers		200,000
Roadway Machines		200,000
Shop Machinery		100,000
Power Plant Machinery		100,000
* Equipment — Owned and Leased		2,250,000
		3,139,200
* Total Equipment Account	$9,000,000	
Car and Locomotive Miles in Minnesota	1,000,000	
Total Car and Locomotive Miles	4,000,000	
Ratio of Minnesota to Total	25%	
Minnesota Allocated Equipment Account	$2,250,000	

Restated Cost Account		Amount in Minnesota
Road		$2,990,000
Equipment — Owned and Leased		2,250,000
Construction Work in Progress		800,000
General expenditures		500,000
		$6,540,000
Minnesota Personal Property Accounts	$3,139,200	
Minnesota Restated Cost	$6,540,000	
Ratio of Personal Property to Cost	48%	
Minnesota portion of unit value		5,108,875
Personal Property exclusion at 48%		2,452,260
Taxable Minnesota Portion of Unit Value		$2,656,615

8105.0700 [Emergency] APPORTIONMENT.

Subpart 1. In general. After the taxable Minnesota portion of the railroad's unit value has been determined, this value must be distributed to the various counties and taxing districts in which the railroad operates. This distribution will be accomplished by the commissioner of revenue through the use of certain apportionment components. Each of the components in the apportionment method is a reflection of the property owned or used by the railroad within a particular taxing district. The figures making up these components will be developed on information submitted by the railroad companies in annual reports filed with the commissioner, and information supplied to the commissioner by the various county auditors and assessors.

Subp. 2. Apportionment components. There are three components which will be used in the distribution of the value of railroad property to the various taxing districts. They are railroad operating land, miles of track, and railroad operating structures with a restated cost of $10,000 or more.

Subp. 3. Railroad operating land. The information for the computation of this apportionment component will be based on information submitted by both the railroads and the various county auditors and assessors. The railroad companies shall file

with the commissioner of revenue each year, in conjunction with their annual reports required by part 8105.0300 [Emergency], subpart 1, the number of acres of railroad operating land owned or used by them in each taxing district in which they operate. The county auditor shall also be required to submit to the commissioner of revenue a report showing the number of acres of railroad operating land, detailed by owning railroad, in each taxing district within the county. If either the railroads or the auditors find that it is administratively impracticable to submit this information, the commissioner shall make an estimate of the number of acres of railroad operating land within each taxing district based on the best information available. Such information would usually consist of the miles of railroad track within the taxing district and the normal width of the right-of-way used by the railroad. In addition, information relative to the current estimated market value of all land within the respective taxing districts will be obtained from the county or city assessors by a review of the abstract of assessment of real and personal property which the various assessors are required to submit yearly to the commissioner of revenue in compliance with Minnesota Statutes, section 273.061, subdivision 9. A review will also be made of the abstract of assessment of exempt real property which is submitted to the commissioner of revenue by the various assessors in compliance with Minnesota Statutes, section 273.18.

The computation for the railroad operating land apportionment component will be accomplished annually in the following manner:

A. The average estimated market value per taxable acre within a specific taxing district will be calculated by dividing the estimated market value of all taxable land within the taxing district as indicated by the most recent abstract of assessment of real and personal property by the number of taxable acres within the taxing district. The number of acres within a taxing district will be obtained from the most recent statistics available from the Land Management Information Center, State Planning Agency. The total number of acres will be adjusted to allow for nontaxable or exempt acres by subtracting these nontaxable or exempt acres from the total acres. The number of nontaxable or exempt acres will be obtained from the most recent abstract of assessment of exempt real property. The following example illustrates this calculation.

Estimated Market Value of All Taxable Land Within Taxing District		$200,000
Total Area of Taxing District	210 Acres	
Nontaxable or Exempt Acres	10 Acres	
Taxable Acres within Taxing District		200
Average Estimated Market Value per Acre		$ 1,000

B. This average estimated market value per taxable acre is then applied to the number of acres of railroad operating land within the taxing district to compute a gross railroad operating land component within the taxing district. The following example illustrates this computation:

Average Estimated Market Value Per Acre	$1,000
Acres of Railroad Operating Land	x 5
Gross Railroad Operating Land Component	$5,000

C. This railroad operating land component will then be adjusted. This adjustment is achieved by striking a ratio between the system unit value for all Minnesota railroads, as described in part 8105.0400 [Emergency], subpart 5, to the total of investment in railway property used in transportation service as defined by the ICC for all railroads operating in Minnesota. This relationship will be computed annually and will then be applied to the gross railroad operating land component to arrive at the adjusted railroad operating land component. This adjusted land value will then be used as one element of the apportionment computation.

The following is an example of how the adjusted railroad operating land component is to be computed:

Railroad	System Unit Value	Net Investment in Railway Property Used in Transportation Services
ABC Railway	$20,000,000	$ 40,000,000
FGH Railway	5,256,000	8,000,000
JKL Railroad	2,000,000	4,780,830

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MNO Railroad	50,000,000	90,000,000
XYZ Railroad	22,212,500	25,000,000
	$99,468,500	$165,780,830

Total System Unit Value ($99,468,500) ÷ Total Net Investment in Railway Property Used in Transportation Services ($165,780,830) = 60%

Gross Railroad Operating Component Within the Taxing District	$5,000
Adjustment Factor	60%
Adjusted Railroad Operating Land Component	$3,000

Subp. 4. Miles of track. The information for the apportionment component will be based on information submitted by the railroads to the commissioner of revenue in conjunction with the annual report required by part 8105.0300 [Emergency], subpart 1. Each railroad will be required to list the miles of track they own in each taxing district within Minnesota. The track must be separated into two classes, main line track and all other track.

In order to make the miles of track in each taxing district compatible with the other apportionment components, the miles must be converted to dollars. This conversion will be computed annually. The conversion will be accomplished by adding together the following ICC accounts for each railroad's net investment in Minnesota: account 3, grading; account 8, ties; account 9, rails; account 11, ballast. The total of these accounts will then be divided by the number of miles of track operated by the respective railroads within Minnesota to obtain a cost per mile figure. This will be used as the average cost per mile for track within Minnesota.

The following is an example of how the average cost per mile of track in Minnesota will be computed:

Railroad	Total of Accounts #3, 8, 9, 11	Mileage Operated in Minnesota
ABC Railway	$ 4,000,000	154
FGH Railway	800,000	42
JKL Railroad	500,000	20
MNO Railroad	7,450,000	290
XYZ Railroad	2,500,000	104
	$15,250,000	610

Total cost of track ($15,250,000) ÷ Total miles operated (610) = Average Cost per Mile of Track $25,000.

An additional calculation is necessary to adjust this average cost per mile of track to allow for weighting. Main line track shall be weighted at 1.5 times the cost of all other track; thus, if the average cost per mile of track is $25,000, main line track would be worth more than $25,000 per mile, while all other track would be worth less. The calculation for the average cost of both main line and all other track shall be made annually on an industry basis.

The calculation to determine the average cost per mile of main line track and the average cost per mile of all other track will be computed in the following manner:

A. Total mileage operated will be multiplied by the average cost per mile to arrive at a total track cost.

B. Total mileage operated will be separated into the two types of track, main line and all other track.

C. Main line track will be multiplied by 1.5 to arrive at adjusted main line miles.

D. Adjusted main line miles will be added to all other track miles to arrive at adjusted total track miles.

E. Total track cost will be divided by adjusted total track miles to arrive at the cost per mile of all other track.

F. The cost per mile of main line track will be computed by multiplying the cost per mile of all other track by 1.5

An illustration of this computation is as follows:

Railroad	Mileage Operated	Main Line Miles	All other Track Miles
ABC Railway	154	96	58
FGH Railway	42	10	32
JKL Railroad	20	15	5

MNO Railroad	290	132	158
XYZ Railroad	104	52	52
	610	305	305

Total Mileage Operated		610
Average Cost Per Mile of Track		$ 25,000
Total Track Cost		$15,250,000
Main Line Miles	305	
Weighting Factor	1.5	
Adjusted Main Line Miles		457.5
Other Track Miles		305.0
Adjusted Total Track Miles		762.5
Total Track Cost		$15,250,000
Adjusted Total Track Miles		762.5
Average Cost Per Mile of Other Track		$ 20,000
Average Cost Per Mile of Other Track		$ 20,000
Weighting Factor		1.5
Average Cost Per Mile of Main Line Track		$ 30,000

After the per mile cost figures for main line and all other track are obtained, these per mile cost figures would be multiplied by the length of each type of track in a particular taxing district to obtain the value of the trackage in that district. The same cost figures will be used for all railroads operating in Minnesota.

Subp. 5. Structures. The information for the computation of this apportionment component will be based on statements submitted by the railroads. These schedules shall be submitted annually to the commissioner of revenue in conjunction with the annual report required by part 8105.0300 [Emergency], subpart 1. The schedules shall show the location, by taxing district, of all operating structures owned by the reporting railroad within Minnesota with a restated cost of $10,000 or more. The schedules shall list a description of the structure and the railroad's current restated cost investment in the structure as it appears in the appropriate ICC account.

An example of this listing is as follows:

XYZ Railroad

Taxing District	Description	Restated Cost
St. Paul, S.D. #625	Office Building	$400,000
Minneapolis, S.D. #1	Depot	20,000
Fridley, S.D. #16	Yard Tower	200,000
Anoka, S.D. #11	Engine and Car Shop	250,000
	Total	$870,000

Subp. 6. Apportionment computation. After the three apportionment components have been calculated for each taxing district in which the railroad operates, the apportionment of the railroad's taxable Minnesota portion of the unit value can begin. This apportionment is accomplished by totaling the value of the land, track, and structure components as developed in subparts 3 to 5 for each taxing district, then finding the sum of these totals for all the taxing districts in which the subject railroad operates. The taxable Minnesota portion of the railroad's unit value is divided by this total value of the three apportionment components for all taxing districts in which the railroad operates in order to arrive at a percentage. This resulting percentage is then applied to the total value of the three apportionment components for each specific taxing district. The figure produced by this multiplication process is the taxing district's share of the railroad's taxable Minnesota portion of the unit value. It is important to note that no more value can be distributed to the various taxing districts than that produced by the valuation process described in parts 8105.0100 to 8105.0600 [Emergency].

The example in part 8105.9900 [Emergency] illustrates the apportionment process.

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8105.0800 [Emergency] EQUALIZATION.

Subpart 1. In general. After the apportionment of value referred to in part 8105.0700 [Emergency] has been made, the railroad property values must be equalized to coincide with the assessment levels of commercial and industrial property within each respective county receiving a share of the apportioned railroad value. This equalization will be accomplished through the use of an assessment/sales ratio.

Subp. 2. Assessment/sales ratio computation. Each year the sales ratio section of the Minnesota Department of Revenue, Property Equalization Division, prepares a comprehensive assessment/sales ratio study commonly known as the Minnesota Tax Court study. This study is used by the tax court to ensure that equalization is given to the various plaintiffs who appear before it concerning ad valorem tax matters. The study is conducted in many parts. The portions which will be used for purposes of this part are known as the "County Nine Month Commercial and Industrial Sales Ratio."

This nine-month commercial and industrial sales ratio is computed through an analysis of the certificates of real estate value filed by the buyers and/or sellers of commercial or industrial property within each county. The information contained on this certificate of real estate value is compiled pursuant to requests, standards, and methods set forth by the Minnesota Tax Court and the Minnesota Department of Revenue. The most recent nine-month commercial and industrial study available will be used for purposes of this part.

The median commercial and industrial sales ratio from this study will be used as a basis to estimate the current year commercial and industrial median ratio for each county.

The process used to estimate this current year median ratio will be as follows.

The State Board of Equalization abstract of market value will be examined. This statistical compilation, commonly called the mini-abstract, is filed each year by every county assessor, with the Property Equalization Division of the Department of Revenue. The abstract is a listing of the current estimated market values, together with other information for the various classes of property — residential, agricultural, commercial, industrial, recreational, and so forth — within each particular county. The current estimated market value of commercial and industrial property within each county will be taken from this abstract. The amount of the value of new commercial and industrial construction ("new" meaning since the last assessment period) will also be taken from the abstract. The value of new construction will then be deducted from the estimated market value, resulting in a net estimated current year market value for commercial and industrial property within the county. This current year value will be compared to the previous year's estimated market value for commercial and industrial property within the county and the difference between the two values noted. This difference will be divided by the previous year's estimated market value for commercial and industrial property to find the percentage of increase, or decrease, in assessment levels for each year. This percent of change will be applied to the most recent commercial and industrial median ratio to estimate the current year's commercial and industrial median ratio. An example of this calculation for a typical county is shown below.

1984 Estimated Market Value for Commercial and Industrial Property	12,000,000
Less New Construction	1,500,000
1984 Net Estimated Market Value for Commercial and Industrial Property	10,500,00
1983 Estimated Market Value for Commerical and Industrial Property	10,000,000
Difference 1983 vs 1984 Estimated Market Value	500,000
Percent of change (500,000 ÷ 10,000,000)	5%
1983 Median Commercial and Industrial Ratio	88%
1984 Estimated Median Commercial and Industrial Ratio (88% × 105%)	92.4%

The same calculation is performed for each Minnesota county which contains operating railroad property. However, if there are five or fewer valid sales of commercial and industrial property within a county during the nine-month study period, it is the commissioner's decision that these few sales are insufficient to form the basis for a meaningful commercial and industrial ratio. Therefore, the median assessment/sales ratio to be used for purposes of the above computation will not be the median commercial and industrial ratio but will be the median ratio of all property classes within the county. This median ratio of all property is computed in the same manner using the same procedures and standards as the commercial and industrial ratio. In addition, the computation described above will not be performed using the commercial and industrial estimated market value but will use the estimated market value for all property within the county. All other aspects of the calculations are identical except for this substitution.

Subp. 3. Application of estimated current year median assessment/sales ratio. After the estimated current year median ratio has been calculated pursuant to subpart 2, it is used to adjust the apportioned estimated market value of operating railroad property to the apparent assessment level of commercial and industrial property in each county. This is done by factoring or multiplying the estimated market value of the railroad property by the estimated sales ratio to arrive at the equalized market value of operating railroad property. No adjustment will be made if the estimated current year sales ratio is within five percent of the assessment level of operating railroad property. An example of this adjustment is as follows:

	Estimated Market Value* of Railroad Operating Property	Estimated Current Year Median Sales Ratio	Equalized Estimated Market Value of Railroad Operating Property
County A	$100,000	85%	$ 85,000
County B	250,000	88%	220,000
County C	300,000	90%	270,000
County D	150,000	92%	138,000
County E	100,000	95%	100,000**

*For purposes of this example, assume that railroad property is assessed at 100 percent of market value.

**No adjustment made because Estimated Current Year Median Sales Ratio is within five percent of Assessment Level on Operating Railroad Property.

All railroads operating within a particular county will be equalized at the same percentage.

These equalized estimated market values of operating railroad property will be certified to the county assessor denoting specific railroads and taxing districts pursuant to Minnesota Statutes, section 270.87.

8105.9900 [Emergency] EXAMPLE OF APPORTIONMENT PROCESS.

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Taxing District	LAND COMPONENT: Aver. E.M.V. Per Acre	# of R.R. Opr. Acres	Gross R.R. Land Component	Adj. R.R. Land Component @ 60%	TRACK COMPONENT: Miles of Main Line	Value of Main Line @ $30,000 Mile	Miles of all other Track	Value of All Other Track @ $20,000	Total Track Component	STRUCTURES: Structures At Restated cost	Total of 3 Components	% of 3 Components to Unit Value *	Taxing Dist. Portion of Unit Value
St. Paul, S.D. #625	$19,000	50	$ 950,000	570,000	8	$ 240,000			$ 240,000	$400,000	$1,210,000	37.87%	$ 458,285
Minneapolis, S.D. #1	20,000	80	1,600,000	960,000	12	360,000			360,000	20,000	1,340,000	37.87%	507,522
Fridley, S.D. #16	15,000	95	1,425,000	855,000	6	180,000	20	$ 400,000	580,000	200,000	1,635,000	37.87%	619,253
Coon Rapids, S.D. #11	13,000	70	910,000	546,000	9	270,000			270,000	-----	816,000	37.87%	309,059
Anoka, S.D. #11	12,000	20	240,000	144,000	4	120,000			120,000	250,000	514,000	37.87%	194,677
Ramsey, S.D. #11	10,000	60	600,000	360,000	11	330,000			330,000	-----	690,000	37.87%	261,336
Elk River, S.D. #728	6,000	5	30,000	18,000	2	60,000			60,000	-----	78,000	37.87%	29,542
Elk River Twsp., S.D. #728	2,000	20	40,000	24,000			8	160,000	160,000	-----	184,000	37.87%	69,690
Big Lake, S.D. #727	3,000	4	12,000	7,200			4	80,000	80,000	-----	87,200	37.87%	33,027
Big Lake Twsp., S.D. #727	1,000	100	100,000	60,000			20	400,000	400,000	-----	460,000	37.87%	174,224
			$5,907,000	$3,544,200		$1,560,000		$1,040,000	$2,600,000	$870,000	$7,014,200		$2,656,615

SP:N12

*Taxable Minn. Portion of Unit Value / Total of 3 Components for All Taxing Districts = $2,656,615 / $7,014,200 = 37.87%

ADOPTED RULES

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

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

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

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

Department of Commerce

Extension of Adopted Emergency Rules Governing Self-Insurance Plan Administrators

The Commissioner of Commerce has determined that the emergency rules governing self-insurance plan administrators shall be continued in effect through January 5, 1985 or until permanent self-insurance plan administrator rules become effective, whichever occurs first. These emergency rules were originally adopted on January 17, 1984 to be effective through July 15, 1984.

Michael A. Hatch
Commissioner of Commerce

Energy and Economic Development Authority

Adopted Rules Governing Pilot Community Development Corporation Projects

The rules proposed and published at State Register, Volume 8, Number 38, pages 2049-2050, March 19, 1984 (8 S.R. 2049) are adopted as proposed.

Energy and Economic Development Authority

Adopted Rules Governing the Minnesota Energy and Economic Development Authority

The rules proposed and published at State Register, Volume 8, Number 38, pages 2055-2060, March 19, 1984 (8 S.R. 2055) are adopted with the following modifications:

Rules as Adopted

8300.0600 MISREPRESENTATION OF APPLICATION INFORMATION.

Subp. 2. **Authority's action.** If information provided to the authority by either the applicant or the financial institution contains a material misrepresentation or omission, the authority may:

~~1.~~ A. reject an application whether or not previously approved;

~~2.~~ B. refuse to provide financial assistance;

~~3.~~ C. make financial assistance provided by it immediately due and payable; or

~~4.~~ D. revoke any preliminary or final resolution prior to the provision of financial assistance or prior to the sale of the bonds approved by it.

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Housing Finance Agency

Adopted Rules Relating to Local Participation Home Improvement Loans

The rules proposed and published at State Register, Volume 8, Number 41, pages 2213-2214, April 9, 1984 (8 S.R. 2213) are adopted as proposed.

Department of Labor and Industry Occupational Safety and Health Division

Adoption by Reference of Occupational Safety and Health Standards

Pursuant to Minn. Stat. § 182.655 (1982) notice was duly published at State Register, Volume 8, Number 46, dated May 14, 1984 specifying the establishment and modification of certain Occupational Safety and Health Standards; specifically, the deletion of 1910.411 from the Commercial Diving Operations Standard; the revision of 1910.177, Servicing of Single Piece and Multi-Piece Rim Wheels; the revocation of advisory and repetitive standards; and the partial administrative stay of 1910.1043(m)(2)(ii) of the Occupational Exposure to Cotton Dust Standard.

No objections, comments or written requests for public hearing have been received; therefore, these Occupational Safety and Health Standards are adopted and are identical in every respect to their proposed form.

Steve Keefe
Commissioner of Labor and Industry

Department of Human Services (formerly Public Welfare)

Adopted Emergency Rules Governing Semi-Independent Living Services for Mentally Retarded Persons

The rules proposed and published at State Register, Volume 8, Number 38, pages 2106-2112, March 19, 1984 (8 S.R. 2106) are adopted with the following modifications:

Emergency Rules as Adopted

12 MCAR § 2.02002 [Temporary] Definitions.

C. Case management. "Case management" has the meaning given it in ~~12 MCAR § 2.185~~ Minnesota Rules, parts 9525.0010 to 9525.0100.

D. Client. "Client" means an adult who is mentally retarded, 18 years of age and older, and receiving semi-independent living services as provided in ~~12 MCAR § 2.018~~ 12 MCAR §§ 2.02001-2.02011 [Temporary].

I. Host county contract. "Host county contract" has the meaning given it in ~~12 MCAR § 2.160~~ Minnesota Rules, parts 9550.0100 to 9550.2900.

J. Individual program plan. "Individual program plan" has the meaning given it in ~~12 MCAR § 2.185~~ Minnesota Rules, parts 9525.0010 to 9525.0100.

K. Individual service plan. "Individual service plan" has the meaning given it in ~~12 MCAR § 2.185~~ Minnesota Rules, parts 9525.0010 to 9525.0100.

L. Interdisciplinary team. "Interdisciplinary team" has the meaning given it in ~~12 MCAR § 2.185~~ Minnesota Rules, parts 9525.0010 to 9525.0100.

N. Local matching money. "Local matching money" means local ~~actual cash revenues~~ money made available by a county board for the provision of semi-independent living services.

O. Local social service agency. "Local social service agency" has the meaning given it in ~~12 MCAR § 2.185~~ Minnesota Rules, parts 9525.0010 to 9525.0100.

P. Mentally retarded person. "Mentally retarded person" has the meaning given it in ~~12 MCAR § 2.185~~ Minnesota Rules, parts 9525.0010 to 9525.0100.

Q. Provider. "Provider" means an individual, organization, or agency providing semi-independent living services and meeting the requirements of 12 MCAR § 2.02004 [Temporary] and ~~12 MCAR § 2.018~~ Minnesota Rules, parts 9525.0500 to 9525.0660. For the purpose of these rules a provider may be a county board that provides semi-independent living services directly or a contractor of the county board.

R. Request for proposal. "Request for proposal" means a written proposal by the county board specifying the number and types of clients to be served, the amount and type of services to be provided based upon the identified needs of the clients, the client outcomes to be expected, the criteria for provider selection, and the service cost or budget limitations, if any.

U. Unit of service. A "unit of service" means one hour of staff time spent on the activities of developing, implementing, coordinating, ~~and~~ or evaluating a client's program plan. A unit of service is limited to:

1. direct contact activities involving direct contact with the client either face-to-face or over the phone directed at the attainment of the individual service plan goals and objectives;

2. collateral activities which means direct verbal or written contact with professionals or others relating to the client which is directed toward the attainment of the individual service plan goals and objectives; and

12 MCAR § 2.02003 [Temporary] Client eligibility.

A. Client eligibility. The county board may receive state reimbursement under 12 MCAR §§ 2.02001-2.02011 [Temporary] for a person who is:

1. determined to be mentally retarded in accordance with the procedures of ~~12 MCAR § 2.185~~ Minnesota Rules, parts 9525.0010 to 9525.0010; and is 18 years of age and older;

3. ~~eligible for~~ meets the categorical requirement of disability used in the Medical Assistance program. The person must have a current federal or state determination of disability by the Social Security Administration or a state disability determination by the Department of Public Welfare's medical review team.

B. Exceptions. Individual client exceptions to having a federal or state disability determination may be made when it is demonstrated that the person meets the criteria in A.1. and A.2. of this rule and the Mental Retardation Division approves the exception. Application for individual exceptions must be submitted in writing by the financially responsible county board to the mental retardation division. Individual exceptions will be reviewed and determined by the mental retardation division in consultation with the state medical review team within 30 days of the receipt of the county board's request unless additional information is required. In determining whether an exception will be allowed the Mental Retardation Division will consider whether the person would be placed into an ICF/MR within one year if semi-independent living services were not provided. The application for exception shall include a psychological report indicating the severity of mental retardation, a report on the client's social and adaptive behavior, and an assessment of the client's probability of placement into an ICF/MR within one year.

E. Transfers from ICF/MR. Any client taken from an ICF/MR and placed in a semi-independent living service is eligible to receive three consecutive years of semi-independent living services reimbursement regardless of ~~their~~ the medical assistance eligibility or disability status.

12 MCAR § 2.02004 [Temporary] Approved provider.

A. Approved provider. A provider is approved to receive state reimbursement from a responsible county board for semi-independent living services under 12 MCAR §§ 2.02001-2.02011 [Temporary] when:

1. the provider has a current license to provide semi-independent living services in accordance with Minnesota Statutes, sections 252.28 and 245.781, and ~~12 MCAR § 2.018~~ Minnesota Rules, parts 9525.0500 to 9525.0660;

2. the provider provides semi-independent living services to no more than eight clients per service site. More than eight

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clients may be served at a service site if fewer than 25 percent of the occupants of the building are receiving semi-independent living services. Service sites where more than four clients are served shall not be adjacent to or within any existing group residential facility or another semi-independent living services site where more than four clients are served. A provider licensed to provide semi-independent living services ~~on January 1, 1983~~ as of the effective date of these rules that is not in compliance with this provision~~,~~ shall sutmit a plan of compliance to the county board in which it is located by January 1, 1985. The plan of compliance shall not exceed two years and must be approved by the commissioner under the provisions of ~~12 MCAR § 2.185~~ Minnesota Rules, parts 9525.0010 to 9525.0100. The plan must provide for full compliance within two years of its submission; the provider is not approved to receive state reimbursement unless the commissioner approves the plan.

A county board may apply to the commissioner for an exception to 12 MCAR § 2.02004 [Temporary] A.2. based upon the lack of appropriate and adequate housing available to mentally retarded persons. The application for the exception shall demonstrate that the county proposal is based upon the individual program needs of the clients, assures that services are provided in the least restrictive setting, and avoids the excessive concentration of mentally retarded persons within any service site, town, municipality, or county of the state.

C. County board and provider contract. When a county board contracts for semi-independent living services, there must be a written host county contract between the county board and the semi-independent living services provider before they are eligible for state reimbursement provided under 12 MCAR §§ 2.02001-2.02011 [Temporary]. The contract must specify:

4. that services to be provided must be directed at the attainment of the goals and objectives of each client's individual service plan as authorized by the county of financial responsibility.

12 MCAR § 2.02005 [Temporary] Reimbursable services.

B. Authorization for services. Semi-independent living services shall be authorized by the financially responsible county board or its designee before the services are reimbursable. This authorization must indicate the amount and type of semi-independent living services to be provided, the service costs, and the expected client outcome or outcomes of providing semi-independent living services.

E. No preclusion or substitution for day programs or occupations. Semi-independent living services provided which preclude the client from participation in the appropriate day program or occupation, or provided as a substitute for the appropriate day program or occupation, shall not be reimbursed. This provision does not prohibit reimbursement of semi-independent living services provided to clients during the day who are working on a part-time basis or seeking employment.

12 MCAR § 2.02007 [Temporary] Use of state funds.

C. Rate of state reimbursement. The actual percentage of the total cost of semi-independent living services paid by the commissioner shall be the percentage of total expenditures for services budgeted by County Boards and approved by the commissioner for reimbursement for the grant period prorated against the state appropriations for the period. The commissioner shall work with county boards to adjust proposals as necessary to comply with Minnesota Statutes, section 252.275, subdivision 4. State reimbursement shall not be more than 95 percent or be less than 80 percent of the cost of semi-independent living services for eligible clients. Priority for funding shall be given to eligible clients who have received semi-independent living services in the previous grant period and continue to need services during the proposed grant period.

E. Case management and county administrative costs. Case management and county administrative costs are not reimbursable as semi-independent living services. If the county board is the provider of the services, the ~~actual~~ units of direct ~~semi-independent living~~ services provided by agency staff shall be reimbursed as defined in 12 MCAR § 2.02002 [Temporary]. Semi-independent living services provided by the case manager assigned to the client shall not be reimbursed under these rules.

12 MCAR § 2.02010 [Temporary] Reduction, termination, and return of grants.

A. Unnecessary funds. If the commissioner determines, in consultation with a county board, that the total grant award to that county will not be ~~earned~~ needed during the grant period, the commissioner may reduce the grant award by the amount determined not to be needed. The commissioner shall notify the affected county board within 30 days of the grant award reduction.

12 MCAR § 2.02011 [Temporary] Appeal process.

If the commissioner receives a written appeal from the county board within the 30-day-notice period, reconsideration by the commissioner in which the county board may state its reasons and present evidence, shall be provided before the grant is reduced, terminated, or is required to be repaid. The 30-day period begins when the county board receives the commissioner's notice ~~of~~ by certified mail.

Pollution Control Agency
Solid and Hazardous Waste Division

Adopted Amendment of Rules Governing Generators of, and the Identification, Transportation and Management of, Hazardous Waste

The rules proposed and published at State Register, Volume 8, Number 17, pages 732-958, October 24, 1983 (8 S.R. 732); Volume 8, Number 19, pages 1084-1086, November 7, 1983 (8 S.R. 1084); Volume 8, Number 21, page 1238, November 21, 1983 (8 S.R. 1238); and Volume 8, Number 27, pages 1576-1589, January 2, 1984 (8 S.R. 1576) are adopted with the following modifications:

Rules as Adopted

Chapter One: Definitions, References, Petitions, and Other Standards

6 MCAR § 4.9100 Definitions.

As used in 6 MCAR §§ 4.9100-4.9560 the following words shall have the meanings given them.

IIII. Surface impoundment or impoundment. "Surface impoundment" or "impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials which is designed to hold an accumulation of liquid wastes or wastes containing free liquids and which is not an injection well ~~or seepage facility~~. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons. Impoundments may be lined with man-made materials.

WWWW. Waste. "Waste" ~~means any discarded material including, but not limited to, solids, semisolids, sludges, liquids, gases, and their vapors, mists, or dusts~~ has the meaning given in Minnesota Statutes, section 116.06, subdivision 9a.

6 MCAR § 4.9102 Availability of references.

The documents referred to in 6 MCAR §§ 4.9100-4.9560 may be obtained by contacting the appropriate offices as listed in A.-H.

G. Test Methods for ~~the Evaluation of~~ Evaluating Solid Waste, Physical/Chemical Methods, publication number SW 846, ~~1980~~ First Edition, 1980 as updated by Revisions A (August 1980), B (July 1981), and C (February 1982) or Second Edition, 1982, of the Office of Solid Waste, United States Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460, available at the state of Minnesota Law Library and by subscription from the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402, (202) 783-3238; and

Chapter Two: Identification and Listing of Hazardous Waste

6 MCAR § 4.9129 Management of waste by use, reuse, recycling, and reclamation.

B. Requirements. A hazardous waste that is to be beneficially used, reused, or legitimately recycled or reclaimed is exempt from 6 MCAR §§ 4.9200-4.9560, and the agency's permitting requirements, except as specified in 1.-5. Hazardous waste must be transported in accordance with all applicable requirements in Minnesota Statutes, section 221.033 and Code of Federal Regulations, title 49, parts 171 to 179 (1983).

6 MCAR § 4.9131 Criteria for listing hazardous waste.

A. Criteria used by agency for listing hazardous waste. The agency shall list a waste as hazardous if:

3. the waste contains any of the toxic constituents listed in 6 MCAR § 4.9137 unless the agency concludes that the waste is not capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed, or otherwise managed. The agency shall consider the following factors when it makes this decision:

4. other factors ~~as may be appropriate~~ that are relevant to the agency's determination of whether the waste is capable

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of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

6 MCAR § 4.9132 Characteristics of hazardous waste.

D. Corrosivity.

1. A waste exhibits the characteristic of corrosivity if a representative sample of the waste has any of the following properties:

a. It is aqueous and has a pH less than or equal to 2.0 or greater than or equal to 12.5, as determined by a pH meter using either the test method in the Test Methods for ~~the Evaluation of~~ Evaluating Solid Waste, Physical/Chemical Methods issued by the United States Environmental Protection Agency, publication number SW 846 ~~(1980)~~ (First Edition, 1980 as updated by Revisions A (August 1980), B (July 1981), and C (February 1982) or Second Edition, 1982) also described in Methods for Chemical Analysis of Water and Waste issued by the Environmental Monitoring and Support Laboratory, publication number 600/7-79-020 (March 1979), or an equivalent test method approved by the director under the procedures set forth in 6 MCAR § 4 4.9104 A.; or

b. It is liquid and corrodes steel (SAE 1020) at a rate greater than 6.35 mm (0.250 inch) per year at a test temperature of 55 degrees Celsius (130 degrees Fahrenheit) as determined by the test method specified in National Association of Corrosion Engineers Standard TM-01-69 as standardized in Test Methods for ~~the Evaluation of~~ Evaluating Solid Waste, Physical/Chemical Methods, issued by the United States Environmental Protection Agency, publication number SW 846 (~~1980~~ First Edition, 1980 as updated by Revisions A (August 1980), B (July 1981), and C (February 1982) or Second Edition, 1982) or an equivalent test method approved by the director under the procedures set forth in 6 MCAR § 4.9104 A.

6 MCAR § 4.9133 Exemption from listing due to toxicity.

B. Factors to be considered. In demonstrating that a waste should be exempt from regulation under 6 MCAR §§ 4.9128-4.9560, the generator must present information related to the following factors:

7. other factors ~~required by the agency~~ that are relevant to the agency's determination of whether the waste is capable of posing a present or potential hazard to human health and the environment if the waste were to be improperly treated, transported, stored, disposed of, or managed under routine waste management methods.

Chapter Three: Standards Applicable to Generators of Hazardous Waste

6 MCAR § 4.9210 Special requirements for small quantity generators of hazardous waste.

E. Management requirements. A small quantity generator shall comply with the following requirements:

8. Transport hazardous waste in accordance with all applicable requirements of Minnesota Statutes, section ~~221.203~~ 221.033 and Code of Federal Regulations, title 49, parts 171 through 179 (1983).

6 MCAR § 4.9217 Record keeping.

D. Extension of retention period. The periods of retention referred to in A.-C. are extended automatically during the course of any unresolved enforcement action regarding the regulated activity ~~or as requested by the director~~.

6 MCAR § 4.9220 Additional reporting.

The director, ~~as he deems~~ when necessary to determine compliance with the requirements of 6 MCAR §§ 4.9100-4.9560, may require generators to furnish additional reports concerning the quantities and disposition of wastes identified or listed in 6 MCAR §§ 4.9128-4.9137.

Chapter Four: Standards Applicable to Transporters of Hazardous Waste

6 MCAR § 4.9254 Transportation of hazardous waste.

Hazardous waste shall be transported in accordance with all applicable requirements of Minnesota Statutes, section ~~221.203~~ 221.033 and Code of Federal Regulations, title 49, parts 171 through 179 (1983).

6 MCAR § 4.9258 Record keeping.

E. Extension of retention period. The periods of retention referred to in A.-D. are extended automatically during the course of any unresolved enforcement action regarding the regulated activity ~~or as requested by the director~~.

Chapter Five: Facility Standards

6 MCAR § 4.9295 Retention and disposition of records.

B. Retention of records. The retention period for all records required under 6 MCAR §§ 4.9280-4.9322 is three years and is extended automatically during the course of an unresolved enforcement action regarding the facility ~~or as requested by the agency~~.

6 MCAR § 4.9297 Ground water protection.

A. Scope. This rule applies as follows:

3. The agency may impose any or all of the requirements of B.-M. on the owner or operator of a facility that treats or stores hazardous waste in tanks or containers if it determines that the facility has the potential to adversely impact ground water quality. The agency shall specify in the facility permit which requirements of B.-M. shall apply.

6 MCAR § 4.9308 Financial assurance for post-closure care.

The owner or operator of a facility subject to post-closure monitoring or maintenance requirements shall establish financial assurance for post-closure care of the facility. He or she shall choose from the options specified in A.-F.:

A. Post-closure trust fund. The following apply to post closure trust funds:

3. Payments into the trust fund must be made annually by the owner or operator over the term of the initial permit or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereafter referred to as the "pay-in period." The payments into the post-closure trust fund must be made as described in a. and b.:

b. If an owner or operator establishes a trust fund as specified in 6 MCAR § ~~4.9410~~ 4.9409 A., and the value of that trust fund is less than the current post-closure cost estimate when a permit is awarded for the facility, the amount of the current post-closure cost estimate still to be paid into the fund must be paid in over the pay-in period as defined in 3. Payments must continue to be made no later than 30 days after each anniversary date of the first payment made pursuant to 6 MCAR § ~~4.9410~~ 4.9409 A. The amount of each payment must be determined by this formula:

$$\text{next payment} = \frac{\text{CE-CV}}{\text{Y}}$$

where CE is the current post-closure cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

6 MCAR § 4.9320 Landfills.

D. Leak detection. If liquids are detected in the leak detection, collection, and removal system, the owner or operator shall notify the director of that fact in writing within seven days after detecting the liquids, and:

2. if the owner or operator can demonstrate to the director that the repair of the liner is not possible or feasible, he or she must begin to comply with the monitoring requirements of 6 MCAR § 4.9297 K.5. within a period of time specified in the permit.

The agency will specify in the permit all design and operating practices that are necessary to ensure that the requirements of 1. or 2. are satisfied.

Chapter Six: Interim Status Standards

6 MCAR § 4.9395 Retention and disposition of records.

B. Retention of records. The retention period for all records required under 6 MCAR §§ 4.9380-4.9422 is three years and is extended automatically during the course of any unresolved enforcement action regarding the facility ~~or as required by the director.~~

Chapter Eight:
County Regulation of Hazardous Waste Management

6 MCAR § 4.9560 Agency overview of county hazardous waste programs.

B. County ordinances.

2. The director may suspend a previously approved county ordinance or relevant portion thereof if that ordinance has

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been modified and is determined by the director to be inconsistent with the state hazardous waste rules. Upon suspension by the director, the matter must be placed on the agenda of the next month's regularly scheduled meeting of the agency board. The agency shall notify the county in writing of its decision to approve, suspend, modify, or deny the ordinance.

D. County actions.

4. A county with a hazardous waste ordinance approved by the agency shall submit to the agency a yearly summary of hazardous waste management in the county. The yearly summary shall be submitted by March 1 for the year that ended on the previous December 31. The summary shall contain:

g. any other information requested by the director that pertains to the county's hazardous waste program which was approved by the agency.

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 Economic Security

Outside Opinion Sought Regarding Rule Governing Allocations to Sheltered Workshops and Work Activity Programs Based Upon Evaluated Effectiveness

Notice is hereby given that the Department of Economic Security, Division of Vocational Rehabilitation, is seeking information or opinions from sources outside the Department in preparing to adopt a rule governing allocations to sheltered workshops and work activity programs, pursuant to Minnesota Statutes, section 14.10.

The adoption of the rule is authorized by Minnesota Laws, 1984, Chapter 627, which requires the Department to allocate funds to sheltered workshops and work activity programs based upon an evaluation of effectiveness.

The estimated total cost of the proposed rule to all local bodies in the state is not expected to exceed $100,000 annually in the next two years.

The proposed rule will have an impact on small businesses. This impact on small businesses will be considered as required by Minnesota Statutes, section 14.115.

The Department requests information and comments concerning the subject matter of the rule. Interested or affected persons or groups may submit statements of information in writing.

Written comments should be addressed to:

Roger Sorbel
Division of Vocational Rehabilitation
Third Floor, Space Center Building
444 Lafayette Road
St. Paul, Minnesota 55101

Any written material received by the Department shall become part of the rulemaking record to be submitted to the Administration Division of the Office of the Attorney General/Administration Law Judge in the event that the rule is adopted.

All statements of information and comment shall be accepted until 4:30 p.m. February 1, 1985.

Roger Sorbel
Legal Technician
Division of Vocational Rehabilitation
Department of Economic Security

Department of Economic Security

Outside Opinion Sought Regarding Rule Governing Fees for Certification for Federal Tax Credits

Notice is hereby given that the Department of Economic Security, Division of Vocational Rehabilitation, is seeking information or opinions from sources outside the Department in preparing to adopt a rule governing fees for certification under the Targeted Jobs Tax Credit Program, pursuant to Minnesota Statutes, section 14.10.

The adoption of the rule is authorized by Minnesota Laws 1984, Chapter 432, which permits the Department to collect fees from qualified rehabilitation consultants and approved vendors. The fees will be charged to cover the costs of certifying eligibility for Federal tax credits.

The estimated total cost of the proposed rule to all local bodies in the state is not expected to exceed $100,000 annually in the next two years.

The proposed rule will have an impact on small businesses. This impact on small businesses will be considered as required by Minnesota Statutes, section 14.115.

The Department requests information and comments concerning the subject matter of the rule. Interested or affected persons or groups may submit statements of information or comment orally or in writing.

Written comments should be addressed to:

Roger Sorbel
Division of Vocational Rehabilitation
Third Floor, Space Center Building
444 Lafayette Road
St. Paul, Minnesota 55101

Any written material received by the Department shall become part of the rulemaking record to be submitted to the Administration Division of the Office of the Attorney General in the event that the rule is adopted. Oral statements will be received during regular business hours over the telephone at (612) 297-3754 and in person at the above address.

All statements of information and comment will be accepted until 4:30 p.m. August 9, 1984.

Roger Sorbel
Legal Technician
Division of Vocational Rehabilitation
Department of Economic Security

Department of Economic Security

Outside Opinion Sought Regarding Rule Governing Fees for Services Provided to Qualified Injured Workers Under an Approved Rehabilitation Plan

Notice is hereby given that the Department of Economic Security, Division of Vocational Rehabilitation, is seeking information or opinions from sources outside the Department in preparing to adopt a rule governing fees for services provided to injured workers under an approved rehabilitation plan, pursuant to Minnesota Statutes, section 14.10.

The adoption of the rule is authorized by Minnesota Laws 1979, Chapter 336, section 3, and Minnesota Statutes, section 176.102, which permit the Department to collect fees for services provided by qualified rehabilitation consultants to injured workers. These fees will be paid by insurance carriers and employers on behalf of qualified injured workers.

The estimated total cost of the proposed rule to all local bodies in the state is not expected to exceed $100,000 annually in the next two years.

The proposed rule will have an impact on small businesses. This impact on small businesses will be considered as required by Minnesota Statutes, section 14.114.

The Department requests information and comments concerning the subject matter of the rule. Interested or affected persons or groups may submit statements of information or comment orally or in writing.

Written comments should be addressed to:

Roger Sorbel
Division of Vocational Rehabilitation
Third Floor, Space Center Building
444 Lafayette Road
St. Paul, Minnesota 55101

Any written material received by the Department shall become part of the rulemaking record to be submitted to the Administration Division of the Office of the Attorney General in the event that the rule is adopted. Oral statements will be received during regular business hours over the telephone at (612) 297-3754 and in person at the above address.

All statements of information and comment shall be accepted until 4:30 p.m. August 9, 1984.

Roger Sorbel
Legal Technician
Division of Vocational Rehabilitation
Department of Economic Security

Department of Labor and Industry Prevailing Wage Division

Notice of Prevailing Wage Rates for Commercial Construction

On June 27, 1984 the commissioner certified prevailing wage rates for the following Minnesota counties: Anoka, Carver, Dakota, Hennepin, Nicollet, Ramsey, Scott and Washington.

A copy of the determined wage rates for Minnesota counties may be obtained by writing to the State Register and Public Documents Division, 117 University Avenue, St. Paul, Minnesota 55155. The charges for the cost of copying and mailing are $.50 for the first county and $.30 for any subsequent copies of the same or other counties. For all 87 counties the charge is $25.00. A $1.50 handling charge must be included for each order. Minnesota sales tax of 6% must be added to all orders.

A check or money order payable to the State of Minnesota must accompany each request.

Steve Keefe, Commissioner
Department of Labor and Industry

Office of the Secretary of State

Notice of Vacancies in Multi-Member State Agencies

Notice is hereby given to the public that vacancies have occurred in multi-member state agencies, pursuant to Minn. Stat. § 15.0597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul 55155-1299; (612) 296-2805. Application deadline is July 31, 1984.

GOVERNOR'S RESIDENCE COUNCIL has 1 vacancy open for a public member. The council develops an overall restoration plan for the Governor's Residence and surrounding grounds; solicits contributions to maintain and improve the public areas of the building. Members are appointed by the Governor. Members receive no compensation. For specific information contact the Governor's Residence Council, 432 Summit Ave., St. Paul 55102; (612) 296-2961.

SOLID WASTE MANAGEMENT ADVISORY COUNCIL has 15 vacancies open immediately for 5 public members, 5 representatives of local government units, and 5 representatives of private solid waste management firms. Experience is desirable but not required in the following areas: state and municipal finance, solid waste collection, processing and disposal, and solid waste reduction and resource recovery. The council makes recommendations to the Waste Management Board on its solid waste management activities. Members are appointed for 2-year renewable terms by the chairperson of the Waste Management Board. The appointments will be for terms expiring 6/30/86. Meetings twice monthly in the metropolitan area; members are compensated for expenses. For specific information, contact Robert Dunn, Chairman, Waste Management Board, 7323 58th Ave. N., Crystal, MN 55428; (612) 536-0816.

REHABILITATION REVIEW PANEL has 1 vacancy open for an insurer member. The panel reviews rehabilitation plans and rules; advises the Commissioner of Labor and Industry. Members are appointed by the Commissioner of Labor and Industry. Members receive $35 per diem plus expenses. For specific information contact the Rehabilitation Review Panel, Space Center, 444 Lafayette Rd., St. Paul 55101; (612) 297-2684.

STATE CONTRACTS

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

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

Commodities contracts with an estimated value of $5,000 or more are listed under the Procurement Division, Department of Administration. All bids are open for 7-10 days before bidding deadline. For bid specifics, time lines, and other general information, contact the appropriate buyers by calling 296-2513. If the appropriate buyer is not available, contact Harvey Leach or Barbara Jolly at 296-3779.

Requisition #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount
27-151-41434	Purchase of Corvus System	Minneapolis Community College	Minneapolis	Contact buyer
26-071-13691 Rebid	Purchase of DEC Memory & Board	Mankato State University	Mankato	Contact buyer
26-071-14158, 778250	Admissions Brochure: "A Closer Look"	Mankato State University	Mankato	Contact buyer
27-156-43422, 778084	Normandale Community College Newspaper "The Journal"	Normandale Community College	Minneapolis	Contact buyer
79-000-42251	Furnish & Install Furnaces	Transportation	N. St. Paul	Contact buyer
55-303-10282	Dishwasher	Faribault State Hospital	Faribault	Contact buyer
26-176-02306, 778550	Class Schedule	Metro State University	St. Paul	Contact buyer
26-176-02305, 778549	1984-86 Catalog	Metro State University	St. Paul	Contact buyer
26-071-14147	Purchase of Tektronix Engineering Equipment	Mankato State University	Mankato	Contact buyer
29-000-35985	Install Monitoring Wells near Orr & Duxbury	Natural Resources—Forestry	Orr & Duxbury	Contact buyer
	Meat & Meat Products for Month of August 1984	Various	Various	Contact buyer
Contract	Coal	Various	Various	Contact buyer

Contact the receptionist at 296-2513 for referral to specific buyers.

State Board of Education

Contract for Consultant to State Board of Education Has Been Withdrawn

The contract notice appearing in Volume 8, Number 52, page 2785 of the *State Register* dated June 25, 1984 has been withdrawn.

Department of Human Services
Long Term Care Rates Management Division

Request for Proposals (RFP) for Property Appraisal Services

The Department of Human Services is requesting proposals to coordinate, conduct and monitor on-site property appraisals of all nursing homes and boarding care homes in the State of Minnesota participating in the Medical Assistance Program. The depreciated replacement cost method must be used to appraise buildings, land improvements, and attached fixtures related to

resident care in each nursing home and boarding care facility. Land and moveable equipment are not included in the appraisal. The appraisal value will in part determine for each facility the property-related payment rate, effective July 1, 1985.

The project will require the development and validation of standardized appraisal formats and procedures, training and supervision of field appraisers, establishment of quality control mechanisms and actual on-site appraisals of 465 long term care facilities. Procedures, methods and documentation must be consistent statewide and equitable for all facility types. The proposed plan must also include a strategy to identify and address legal issues which may arise from contested appraisals. The contract period is from August 15, 1984 through February 1, 1985 during which time all appraisals must be completed and documentation submitted to the State. The proposal should be comprised of a single bid and its total costs must not exceed $450,000.00.

The complete Request for Proposal (RFP) document which gives a detailed description of the project and guidelines for proposal preparation is available to interested persons. Requests for copies of the RFP document and proposals in response to the RFP should be directed to:

Sandra Strandberg
Department of Human Services
Division of Long Term Care Rates Management
Centennial Office Building, 4th Floor
St. Paul, Minnesota 55155

(612) 296-5724

Six copies of the proposal must be received by the LTC Rates Management office, Department of Human Services by Monday, July 30, 1984; *no later than 4:00 p.m.* The name and address of who prepared the proposal should be stated.

SUPREME COURT

Decisions of the Court of Appeals Filed Tuesday, June 26, 1984

Compiled by Wayne O. Tschimperle, Clerk

C8-84-76 Randy Wills, Petitioner, v. Red Lake Municipal Liquor Store, Trails End Bar, etc., and Oklee Municipal Liquor Store v. Sheldon Hodgson, Steve Larson. Beltrami County.

The trial court did not abuse its discretion by ordering a vocational evaluation as part of an adverse medical examination under Rule 35.01, Minnesota Rules of Civil Procedure.

Remanded for appropriate further proceedings. Popovich, C.J.

C2-84-199 Ronald Allen Ulven v. Commissioner of Public Safety, Appellant. Dakota County.

The trial court lacked jurisdiction to review the revocation of the driver's license when the petition for review was not filed within the 30-day statutory period.

Reversed. Popovich, C.J.

C2-84-25, C4-84-26 In the Matter of Dennis M. Skarsten, (C2-84-25) and In the Matter of James Paul Taylor (C4-84-26). Hennepin County.

The trial court properly admitted the report of a second examiner appointed pursuant to Minn. Stat. § 253B.07, subd. 3 (Supp. 1983) at appellants' commitment review hearing. A review hearing, held pursuant to 1983 Laws of Minnesota chapter 251, § 27, did not require initiation by petition.

Affirmed. Popovich, C.J.

C3-84-101 Allen Jeffrey Bernstein v. Commissioner of Public Safety, Appellant. Sibley County.

Minn. Stat. § 634.15 (1982) does not violate the state constitutional prohibition against laws embracing more than one subject.

Reversed. Foley, J.

C3-84-17 Howard Pfalzgraff, Relator, v. Commissioner of Economic Security. Department of Economic Security.

The Department of Economic Security did not err in computing relator's wage credits and weekly benefits in determining his eligibility for Federal Supplemental Compensation (FSC) benefits.

Relator was not prejudiced by the appeal tribunal chairman's reversal, upon his own motion and without notice to relator, of his initial determination on relator's eligibility for FSC benefits.

Affirmed. Foley, J.

C7-83-2006 In Re the Marriage of: Peggy L. Tieso, f/k/a Peggy Hansen, Petitioner, Appellant, v. Duane LeRoy Hansen. Hennepin County.

The trial court properly refused to return custody of the parties' child to the wife, and properly ordered an evidentiary hearing.

Affirmed. Wozniak, J.

C0-83-1986 In Re the Marriage of: Jerrilyn Sue Dammann, v. Leo Frederick Dammann, Appellant. Wabasha County.

Where no unfair hardship appears on the record, the trial court improperly invaded nonmarital assets of one spouse and distributed them to the other spouse.

Affirmed in part; reversed and remanded in part. Wozniak, J.

C2-84-221 State of Minnesota v. Michael C. Sellers, Appellant. Chisago County.

A Wisconsin police officer who first observed a traffic offense in Wisconsin, then followed defendant to Minnesota observing additional offenses in this state, can make a valid citizen's arrest in Minnesota.

Field sobriety tests administered by the Wisconsin officer, together with all evidence derived from the Minnesota stop, are admissible in evidence.

Affirmed. Sedgwick, J.

C9-84-135 State of Minnesota v. Ronald B. Hunter, Appellant. Ramsey County.

The state failed to prove that the trial court's order directing the state to disclose police reports will have a critical impact on the outcome of the trial, as required by *Webber*, so the discovery order must stand.

Affirmed as modified. Sedgwick, J.

C7-84-408 NCR Credit Corporation v. Park Rapids Leasing Associates v. NCR Corporation, Appellant. Hubbard County.

The agreement between the parties did not contain language evincing a clear intent to arbitrate the issue of fraud in the inducement of the contract.

Affirmed. Sedgwick, J.

C2-83-1567 In Re the Marriage of: Nancy L. Marshall v. Michael G. Marshall, Appellant. Hennepin County.

The trial court did not ignore or fail to give effect to the intention of the parties' agreements.

The trial court properly determined the time to value the marital assets.

The trial court did not abuse its discretion in determining the amount of child support and spousal maintenance.

The trial court did omit an asset of the parties.

Affirmed in part and remanded. Sedgwick, J.

C8-84-14 Kari Family Clinic of Chiropractic, P.A., Appellant, v. Gary A. Bohnen. Washington County.

Where a convenant not to compete is not made ancillary to the initial employment contract, it will not be sustained unless supported by independent consideration.

Affirmed. Sedgwick, J.

CX-84-175 In Re the Marriage of Linda M. Martenson f/k/a Linda M. Johnson v. Kenneth J. Johnson, Appellant. Anoka County.

The trial court's refusal to reduce child support and its award of child support arrearages and attorney's fees are not reviewable because an order denying a motion for amended findings is not an appealable order.

This court need not review modifications which govern child support while the obligor was on strike and after he returned to work for Greyhound, because these provisions will never become effective.

Affirmed. Lansing, J.

C6-84-433 In the Matter of Donald R. Martenies, Jr. Hennepin County.

The trial court properly committed appellant as a psychopathic personality under Minn. Stat. § 526.09 (1982).

Appellant's commitment to the Minnesota Security Hospital at St. Peter, as the least restrictive treatment facility, was proper, and his complaint that he will not receive adequate treatment there is unsubstantiated and premature.

Appellant's commitment as a psychopath pursuant to Minn. Stat. § 526.09 (1982) after imposition of prison sentence was proper.

Minn. Stat. § 526.09 (1982) is constitutional on its face and as here applied.

Affirmed. Huspeni, J.

C9-84-216 State of Minnesota, Appellant, v. Donald William Case. Hennepin County.

It was within the trial court's discretion, based on recommendations of the court psychologist and probation officer, to depart dispositionally from a presumptive sentence indicating commitment.

Affirmed. Nierengarten, J.

Dissenting, Wozniak, J.

C4-84-124 Joseph Draganosky, Appellant, v. Minnesota Board of Psychology, State of Minnesota. Board of Psychology.

This denial of a variance from the Minnesota Board of Psychology's requirements for licensure as a licensed consulting psychologist was arbitrary and capricious.

Reversed. Randall, J.

Decisions of the Supreme Court Filed Friday, June 29, 1984

Compiled by Wayne O. Tschimperle, Clerk

C4-83-596 Joseph Allen Novak, Appellant, v. State of Minnesota. Mower County.

Affidavit accompanying application for search warrant established probable cause to believe that search of petitioner's residence would result in the discovery of marijuana.

Affirmed. Peterson, J.

CX-83-957 Karen M. McNabb, Relator, v. Cub Foods. Department of Economic Security.

The employer knew or should have known its employee was being sexually harassed. The employee quit with good cause attributable to the employer and is entitled to unemployment compensation benefits.

The employer did not make a suitable offer of reemployment to the employee when the sexual harassment of the employee continued after her transfer to another store and the employer made no showing to reasonably satisfy the employee the harassment would terminate.

Reversed. Todd, J.

C3-83-248 State of Minnesota v. Craig D. Jackson, Appellant. Hennepin County.

Admission at trial of incriminating statements made by defendant to his jailer while in custody awaiting trial did not, under the totality-of-the-circumstances test, violate either the defendant's fifth or sixth amendment rights. Neither did the trial court err with respect to other evidentiary rulings of which defendant complains.

Because the trial court gave no reasons for its durational departure in sentencing for the second-degree murder conviction and because the departure may have been barred on an impermissible *Hernandez* calculation, we remand for resentencing for this conviction.

Affirmed but remanded for resentencing on the second-degree murder conviction. Simonett, J.

C5-82-385 State of Minnesota v. Joseph Donald Ture, Jr. Appellant. Sherburne County.

When an accused, represented by counsel on unrelated charges in a different jurisdiction, makes statements to investigating officers in connection with the unrelated criminal charge, with respect to which he is not represented by counsel, the statements made are not automatically suppressible under the sixth amendment of the United States Constitution.

Testimony given by a witness after undergoing hypnosis ordinarily is inadmissible in a criminal prosecution, but under the circumstances of this case admission of posthypnotic testimony was not prejudicial.

Evidence of other crimes of a similar nature close in time and space to the crime charged were admissible on the issues of identification, intent, common plan or scheme and motive.

Argument of a prosecutor that, in effect, vouches for the veracity of the state's witnesses and expresses an opinion of the accused's testimony and guilt, while improper, under the totality of the circumstances here existing was not so prejudicial as to require a new trial.

Where defendant is adjudged convicted of two counts of first-degree murder arising out of the same behavioral incident and involving the same victim, one must be vacated, and when adjudged convicted of two counts of kidnapping of the same victim arising out of the same continuous course of conduct, one must be vacated.

Sentencing a defendant to serve a mandatory life sentence consecutive to prior sentences on unrelated crimes was not error.

Affirmed in part and vacated in part. Kelley, J.

C7-82-1635, C7-83-88, C1-83-250 Joseph Donald Ture, Jr., petitioner, Appellant, v. State of Minnesota. Hennepin County.

Defendant was fairly tried on charges arising from a series of sex offenses, but he is entitled to vacation of one conviction and another sentence pursuant to Minn. Stat. §§ 609.04 and 609.035 (1982) and is entitled to a limited reduction of the duration of two of his three consecutive sentences.

Affirmed as modified. Kelley, J.

C9-83-335 In Re the Marriage of: Tanya B. Miller v. Richard N. Miller, Appellant. Hennepin County.

An equal division of marital property is appropriate in long standing marriages where both parties have made a substantial contribution to the acquisition and maintenance of the marital estate.

Under Minnesota law, spouses have a special ownership interest in marital property which vests when a dissolution action is commenced; the extent of the interest is determined by the court as part of the dissolution proceeding.

Under Minnesota law the distribution of marital property pursuant to a dissolution decree is a division of a common ownership by spouses in the property and is not a sale, exchange, transfer, or disposition of or a dealing in property.

Although it is within the discretion of the trial court to consider the tax consequences of the division of marital property, the court may not speculate about possible tax consequences.

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

Took no part, Todd, J.

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
County of Ramsey, Regular Division

Northern States Power Company, Appellant, v. Commissioner of Revenue, Appellee, Docket No. 3436

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

The above-entitled matter came before the Honorable John Knapp, Chief Judge of the Minnesota Tax Court, on stipulated facts. Briefs were submitted by each party in lieu of a hearing. At issue is the Minnesota tax consequence of certain contributions of stock made by Appellant under its employee stock ownership plan in taxable years 1976 and 1977.

Steven Z. Kaplan, Briggs and Morgan, appeared for Appellant.

Paul R. Kempainen, Special Assistant Attorney General, appeared for Appellee.

From the Stipulation of Facts and from the files and records herein, the Court makes the following:

FINDINGS OF FACT

1. Appellant, Northern States Power Company ("NSP"), is a corporation organized under the laws of Minnesota and has its principal place of business in Minneapolis. During the years at issue herein, NSP was an operating public utility engaged in the business of generating, transmitting, distributing and selling electricity.

2. The Appellee is the Commissioner of Revenue for the State of Minnesota (''Commissioner''). By his Order dated August 31, 1981, the Commissioner determined additional income tax liabilities against NSP for taxable years 1972 through 1977 in the total amount of $318,730.81, plus interest to the date of the Order in the amount of $81,122.33. Said Order included a determination with regard to certain claims for refund filed by NSP for taxable years 1974 through 1977, which claims were filed on February 9, 1979, and amended on July 31, 1979.

3. On or about October 12, 1981, NSP duly served and filed an appeal from the Commissioner's Order with the Minnesota Tax Court. In said appeal NSP raised two issues: (1) Whether certain sales of electricity to out-of-state power companies are Minnesota or non-Minnesota sales under Minn. Stat. § 290.19, subd. 1a; and (2) Whether the Commissioner properly disallowed NSP's claimed deductions for the contribution of common stock to an employee stock ownership plan during the years 1976 and 1977.

4. The parties have now resolved the first issue identified above, having to do with the characterization of electricity sales. Therefore, the only issue remaining to be decided by the Minnesota Tax Court is the deductibility of NSP's contributions to an employee stock ownership plan.

5. During the taxable year 1976, NSP had an employee stock ownership plan which was qualified under Section 401 of the Internal Revenue Code as confirmed by letter from the Internal Revenue Service (hereinafter, ''1976 ESOP'').

6. During the taxable year 1977 NSP had an employee stock ownership plan which was qualified under Section 401 of the Internal Revenue Code as confirmed by letter from the Internal Revenue Service (hereinafter, ''1977 ESOP'').

7. In 1976 and within 30 days after filing its federal income tax return for taxable year 1975, NSP contributed to its 1976 ESOP shares of its common stock having an aggregate value of $323,797.76. In 1977 and within 30 days after filing its federal income tax return for 1976, NSP contributed to its 1977 ESOP shares of its common stock having an aggregate value of $2,372,469.78. The amount of each of the foregoing contributions was equal to employee plan percentage credit as provided in Sections 46 (a) (2) (A) (iii) and 45 (a) (2) (E) of the Internal Revenue Code, and NSP elected to claim such credits on its returns for taxable years 1975 and 1976, respectively. Having elected to claim these contributions as credits on its returns, NSP was thereby precluded from also deducting the amounts of those credits as deductions on its federal returns for 1975 and 1976 in accordance with the provisions of Sections 48 (n) (5) of the Code.

8. On its Minnesota income tax returns for 1976 and 1977, NSP claimed deductions for the value of those shares of its common stock contributed to its 1976 and 1977 ESOP's, which were attributable to its Minnesota employees.

9. Upon audit, the Commissioner disallowed the deduction claimed by NSP for the contributions to its employee stock ownership plans. This disallowance was reflected in the Commissioner's Order dated August 31, 1981.

10. The Memorandum is made a part of these Findings.

CONCLUSIONS OF LAW

1. A Minnesota deduction for ESOP contributions made by an employer is available although the employer claimed an investment tax credit under Section 46 of the Internal Revenue Code rather than a deduction under Section 404 of the Code.

2. NSP is entitled to a Minnesota deduction for its ESOP contributions.

3. That portion of the Commissioner's Order dated August 31, 1981, relating to the disallowance of deductions for NSP's contributions to its ESOP, is in error and should be reversed.

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

June 25, 1984

By the Court,
John Knapp, Chief Judge
Minnesota Tax Court

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STATE OF MINNESOTA

DEPARTMENT OF REVENUE

PROPERTY TAX DIVISION

STATE ASSESSED PROPERTIES

IN THE MATTER OF THE PROPOSED ADOPTION OF TEMPORARY RULES GOVERNING THE VALUATION AND ASSESSMENT OF RAILROADS

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, LUCI A. MITCHELL, Legal Research Attorney, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Hearings, and the rules of the Attorney General have been followed. There are no exceptions.

Luci A. Mitchell

LUCI A. MITCHELL, Attorney

Dated: August 3, 1984