

Minnesota Attorney General: Administrative Rules Proceedings

Copyright Notice:

This material may be protected by copyright law (U.S. Code, Title 17). Researchers are liable for any infringement. For more information, visit www.mnhs.org/copyright.

Version 3
August 20, 2018

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

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

DATE: 2/26/1980

Attn: DALE H. BUSACKER

FROM : JOANNE E. HINDERAKER
Special Assistant
Attorney General

PHONE: 296-4692

SUBJECT: Rules as Approved In the Matter of the Proposed Adoption of Rules of the Department of Revenue Relating to an Income Tax Energy Credit (13 MCAR § 1.6020).

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

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

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

Directly following the approved rules is a complete set of required documents and transcript which must be retained with the rules by you or your agency.

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

JEH/bw
Enclosure
cc: Duane Harves
Susan Robertson

STATE OF MINNESOTA
DEPARTMENT OF REVENUE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF REVENUE RELATING TO AN INCOME TAX ENERGY CREDIT (13 MCAR SECTION 1.6020)	SUPPLEMENTAL FINDINGS OF FACT AND ORDER ADOPTING RULES

This order adopts and supplements the Findings of Fact and Order Adopting Rules which I issued on February 1, 1980 in this matter.

Three additional changes have been made in this rule. Two changes have been made on page 6 to provide a clear and certain reference to the law that is being adopted. For this reason, reference is made to Section 290.06, subd. 14 of Minnesota Statutes in lines 1 and 16 of page 6.

The word "may" was changed to "will" in the second paragraph of page 11. This change in the rule is made to remove the possibility of discretion on the part of the Department. If the materials meet the requirements for thermal mass, these materials should and will qualify as a storage element.

State of Minnesota
Department of Revenue

February 25, 1980

CLYDE E. ALLEN, JR.
Commissioner of Revenue

STATE OF MINNESOTA
DEPARTMENT OF REVENUE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF REVENUE RELATING TO AN INCOME TAX ENERGY CREDIT (13 MCAR SECTION 1.6020)	FINDINGS OF FACT AND ORDER ADOPTING RULES

The above-entitled matter came on for hearing before Jon L. Lunde, a hearing examiner appointed by the Chief Hearing Examiner, on the 17th day of December, 1979, at 9:00 a.m. in Room 83, State Office Building, 435 Park Street, St. Paul, Minnesota, after proper notice required by Minnesota Statutes, Section 15.0412 was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

Having now, therefore, reviewed the record of the hearing, including the exhibits and written materials submitted before the close of the record, the report of the Hearing Examiner, and materials submitted directly to me following my receipt of the hearing record, I now adopt as my findings of fact in this matter, the Findings of Fact of the Hearing Examiner except those findings concerning cooperatives contained in the second paragraph of Section 8 of the Findings of Fact (page 4 of the Hearing Examiner's Opinion). A cooperative is the same type of residential property ownership as a condominium or as a townhouse. Minnesota Statutes, Section 273.133, subd. 1 provides that a person owning a cooperative unit qualifies for homestead assessment for property tax purposes and also qualifies for the state paid homestead credit. Each unit is designated by a legal description. Property taxes assessed against the homestead of a person living in a cooperative qualify as property taxes and not as rent for purpose of the property tax refund credit (see Minnesota Statutes, Section 290A.04, subd. 12, third paragraph). A cooperative is treated as a homestead for property tax purposes and should qualify as a homestead for the energy credit on the same basis as a single family dwelling, condominium or a townhouse.

Now, Therefore, It Is Ordered that these rules identified as rules of the Department of Revenue relating to an Income Tax Energy Credit as published at State Register, Volume 4, Number 19, pages 772 through 775, November 12, 1979, (4 S.R. 772-775) are adopted this 1st day of February, 1980, pursuant to authority vested in me by Minnesota Statutes, Section 290.52 and Laws of 1979, Ch. 303, Article V, Section 2.

State of Minnesota
Department of Revenue

CLYDE E. ALLEN, JR.
Commissioner of Revenue

Rule 13 MCAR Sec. 1.6020 Energy Credit (All New Material)

A. - General provisions

1. Residence.

For purposes of this credit, a building or dwelling unit must be the taxpayer's principal residence. The term "principal residence" is defined as that residence which would qualify for the non-recognition of gain on the sale and the rollover of that gain when a new principal residence is purchased except that no ownership requirement is imposed. The period for which a building or a dwelling unit is treated as the principal residence of the taxpayer includes the 30 day period ending on the first day on which it would (but for this sentence) be treated as the taxpayer's principal residence. The term "building" includes a single family dwelling, duplex, condominium unit, townhouse, cooperative unit, and any other residential building containing six dwelling units or less. A condominium unit, a townhouse, or a cooperative unit which is used by a taxpayer as his principal residence will each qualify separately for purposes of this credit regardless of how many units are in the building. A taxpayer who buys or rents a residential unit in a condominium, townhouse or a cooperative need only buy or rent that unit and not the entire physical structure to qualify for this credit.

Individuals who rent a dwelling unit as their residence can claim this credit. The dwelling unit, except in the case of the rental of a condominium, townhouse, or cooperative unit, must be located in a building that contains six dwelling units or less.

If less than 80 percent of the use of a building or dwelling unit is for use as the taxpayer's principal residence, only that portion of the expenditures for that building or dwelling unit which is properly allocable for use as the taxpayer's principal residence shall be taken into account. A swimming pool shall be treated as a use which is not for residential purposes. ~~This allocation provision does~~ These provisions on residence do not apply to biomass conversion equipment.

2. A taxpayer must actually purchase the equipment or earth sheltered dwelling to qualify for this credit. The expenses connected with the leasing of equipment or the leasing of an earth sheltered dwelling do not qualify for this credit. If the taxpayer received a refund from the seller or the manufacturer of equipment on which the taxpayer claimed this credit, the amount of expenditures that were allowable for this credit must be reduced by the amount of the refund that was received. The taxpayer will need to file an amended income tax return if the refund that was received would require a reduction in the energy credit which had already been claimed. Expenditures will qualify even though they are paid for as the result of a federal or state grant, but only to the extent that the grant was included in federal adjusted gross income. Each dollar of expenditure which qualifies for this credit may be used only one time for purposes of computing this credit.

3. A contractor can receive this credit on a building that he has constructed if he is the first individual to use the building or dwelling unit as his principal residence.

4. For purposes of this credit, a taxpayer is entitled to use only the first $10,000 of renewable energy source expenditures. The $10,000 of expenditures to which the taxpayer is entitled includes the expenditures that he personally made, and the proportionate share of expenditures to which he is entitled as a partner in a partnership, as a shareholder in a Subchapter S corporation, as a tenant shareholder in a cooperative housing corporation, as a member of a condominium management association, or as a shareholder in a family farm corporation. No taxpayer shall be allowed to claim a total amount of more than $2,000 in total energy credits for all years.

5. The increase in the basis of property because of expenditures which qualify for this credit shall be reduced by the amount of the energy credit that was claimed for that property.

6. A shareholder in a family farm corporation is allowed to claim this credit for any of the expenditures that qualify for ~~one-of the-four-parts-of~~ this credit~~,-notwithstanding-the-fact-that-an earlier-provision-of-the-law-limits-three-of-the-four-parts-of this-credit-to-individual-taxpayers~~. A <u>family farm</u> partnership will be treated as an individual taxpayer and expenditures that qualify for the energy credit which are made by the <u>family farm</u> partnership, may be claimed by the <u>family farm</u> partners as joint owners. ~~For-purposes-of-this-credit,-an-electing-small-business corporation-will-qualify-as-a-corporation-and-not-as-a-partnership.~~ <u>A partnership, which is not a family farm partnership, will not be treated as an individual taxpayer.</u>

7. A shareholder of a family farm corporation is allowed to claim this credit in the same manner as a joint owner of property that otherwise qualified for the credit. All joint owners will be treated as one taxpayer (and so qualify for only one $2,000 energy credit) with the same taxable year. Each joint owner will be allowed, with respect to the expenditures, a credit for that taxable year in an amount, which bears the same ratio to the total amount allowable, as the amount of the expenditures made by the joint owner during the taxable year bears to the aggregate of the expenditures made by all joint owners during the taxable year. If a Subchapter S or a family farm corporation makes the expenditure, the expenditure may be divided among the shareholders based on the percentage of their stock ownership in the corporation.

8. The Department of Revenue, ~~on behalf of a requesting~~ upon the written request of a taxpayer, shall furnish the Energy Agency with a copy of the energy credit form that has been completed by the taxpayer so that the taxpayer and the Department of Revenue may receive technical advice and assistance from the Energy Agency and so that the Energy Agency may compile information on the use of this credit.

9. The energy credit, pollution control credit and feedlot pollution control credit shall be applied after all other nonrefundable credits. If the expenditures otherwise qualify, the taxpayer may elect which credit (including the carryforward) will be used. This election may be amended at any time before the expiration

of the statute of limitations. If an expenditure otherwise qualifies the taxpayer may claim both the energy credit and the feedlot pollution control credit or pollution control credit on that property but the energy credit must be used first and the expenditures allowable for the feedlot pollution control credit or pollution control credit must be reduced by the expenditures that have been used for the energy credit.

10. As used in this rule, the term "R" value is the measure of resistance to heat flow through a material or the reciprocal of the heat flow through a material expressed in British thermal units per hour per square foot per degree ~~Farenheit~~ Fahrenheit at 75 degrees ~~Farenheit~~ Fahrenheit mean temperature. The term "U" value is the thermal transmission of heat in unit time through unit area of a particular body or assembly, including its boundary films divided by the difference between the environmental temperatures on either side of the body or assembly; ($Btu/Hr \cdot Ft^2 \cdot F^o$). Also the reciprocal of total R-Value.

B. - Piggybacked federal renewable energy source credit

Any expenditure that qualifies for the federal renewable energy source credit, including expenditures for labor costs, geothermal energy, wind energy for electricity, renewable energy used to heat water, and any other expenditures which are allowable for the federal credit, would also be allowable for purposes of the state piggybacked credit provided that the building is located in Minnesota and does not contain more than six dwelling units. Expenditures that are allowable are only those that were allowable on the date that the legislature

has specified in section 290.06, subd. 14 for purposes of adopting the federal credit provisions. If an expenditure qualifies for both the federal energy conservation credit and for the federal renewable energy source credit and the taxpayer used the expenditure for the federal conservation credit, the taxpayer can use that expenditure for the state piggybacked federal renewable energy source credit provided that the expenditure otherwise qualifies.

C. - Earth sheltered dwelling units

Expenditures that qualify for the credit for earth sheltered dwellings include material, labor and other construction costs (except interest) incurred to construct the dwelling. The structure of the earth sheltered dwelling unit must meet the standards of the Minnesota building code even though the code may not be in effect in that area. The earth sheltered dwelling unit's structure must also comply with all three tests which are contained in clause (b)(1)-(3) of ~~the law~~ section 290.06, subd. 14 and which are as follows:

"(1) 80 percent or more of the roof* area is covered with a minimum depth of 12 inches of earth; and

(2) 50 percent or more of the wall area is covered with a minimum depth of 12 inches of earth; and

(3) Those portions of the structure not insulated with a minimum of seven feet of earth shall have additional insulation;"

---

*A computer typing error was made here in the final copy of the conference committee report on H.F. 1495 (Laws 1979, Chapter 303). The law contains the word "wall" and not the word "roof." However, it is clear that this was a technical mistake and the Department is proposing a law change to the 1980 legislature.

The roof area contained in clause (b)(1) that must be covered with earth means that area of the roof that is above the area used for residential living which is heated. The roof area that must be covered with earth does not include the roof area for a garage, unless the garage is heated. For clause (b)(2) the term "wall" means the exterior walls of the residential living area. The walls of a garage are not included in this definition. If a garage is attached to the exterior walls at the residential living area, that area of the exterior wall of the residential living area that is part of the attached garage is not counted in the area of the wall that must be covered with earth. The wall must be covered with a minimum horizontal depth of 12 inches (30 cm) of earth. The term "structure" contained in clause (b)(3) means the exterior walls and roof as defined for clauses (b)(1) and (2). In clause (b)(3) the additional insulation that will be required is the amount of insulation that is needed to equal the following requirements:

1. All of the components of the wall below grade to 7 vertical feet (2.1 m) below grade must have at least a combined minimum R value of 11.50 $F^{o} \cdot Hr \cdot Ft^{2}/Btu$ (2.03 $m^{2} \cdot K/W$), not including the thermal resistance of the earth. Insulation below grade which extends out from the wall may be included in the combined R value.

2. The wall which is above grade and which is not covered with a minimum of 7 horizontal feet (2.1 m) of earth and which is not part of a collection aperture of a passive solar system, as defined in part E.2., must meet the following criteria:
   a. The opaque wall area may not exceed a maximum U value of 0.0555 $Btu/Hr \cdot Ft^{2}F^{o}$ (0.315 $W/m^{2}K$).

b. The glazing area must not exceed a maximum U value of 0.47 Btu/Hr·Ft^2·F^o (2.7 W/m^{2}K) and must not exceed a maximum area which is more than 10% of the floor area of the room in which it is installed. The maximum glazing area for a room shall be reduced by the amount of collection aperture glazing, as defined in part E.2., installed in that room. Glass doors shall be considered as glazing area.

c. The doors must not exceed a maximum U value of 0.40 Btu/Hr·Ft^2·F^o (2.3 W/m^2·K).

3. Roof/ceiling

a. A roof/ceiling which is covered with less than 7 vertical feet (2.1 m) but with 12 vertical inches (30 cm) or more of earth may not exceed a maximum U value of 0.045 Btu/Hr·Ft^2·F^o (0.25 W/m^2·K), not including the thermal resistance of the earth.

b. A roof/ceiling which is covered with less than 12 vertical inches (30 cm) of earth may not exceed a maximum U value of 0.027 Btu/Hr·Ft^2·F^o (0.15 W/m^2·K), not including the thermal resistance of the earth.

D. - Biomass conversion equipment

The term "biomass conversion equipment" means equipment which is located in Minnesota and which is (1) equipment for the production of gaseous fuels from biomass sources by biological or physical-chemical processes. To qualify for the credit, the gaseous energy produced shall sustain combustion, by itself, in air. Examples of the types of equipment that qualify for the credit are methane digestors, and destructive

distillation equipment. (2) Equipment for the production of liquid fuels from biomass sources by biological or physical-chemical processes. To qualify for the credit, the liquid fuel produced shall sustain combustion, by itself, in air, and shall contain ethanol or methanol.

The gaseous energy or liquid fuels produced by the equipment shall not be sold or offered for sale.

The term "biomass sources" means wood, wood residues, agricultural crops, agricultural crop residues, other plant materials, human or animal manure, and food processing waste.

A taxpayer who is a corporation (including an electing small business corporation), ~~a bank,~~ a partnership, a trust or an estate may claim the credit for biomass conversion equipment.

E. - Passive solar energy system

1. General.

The term "passive solar energy system" means a system which utilizes the building or an attached building (such as a greenhouse) and its operable components to heat and cool the building or a portion thereof by utilizing the sun's energy by means of conduction, convection, radiation or evaporation.

A system shall include collection aperture and storage element designed to store heat from solar radiation, and it may include control, distribution or retention elements.

Only the cost of equipment, materials, and devices which are integral parts of a passive solar energy system and the actual cost of labor for system installation are eligible expenditures. Expenditures for equipment, materials, or devices which are a part of the conventional (nonrenewable energy) heating, cooling, or insulation system of the building are not eligible for the credit. The entire expenditure for each integral component and associated labor costs is eligible for the credit unless indicated below.

To qualify for the credit, a passive solar energy system must reasonably be expected to remain in operation for at least five years.

2. Collection aperture.

The term "collection aperture" means a. Double glazing material ~~installed-in-walls-which-face~~ facing south, plus or minus 30 degrees, installed in exterior walls, and fully exposed to the sun for at least four hours on December 21, during which time the sun must pass through an imaginary vertical plane drawn perpendicular to the glazing. The area of glazing shall exceed the lesser of 15 percent of the floor area of the room in which the glazing is installed or 8 percent of the floor area of the habitable rooms within the dwelling unit. The entire expenditure for glazing shall qualify for the credit. b. Double glazing material installed in a roof which is elevated at an angle of at least 45 degrees from horizontal and which faces the south, plus or minus 30 degrees. Such glazing shall be fully exposed to direct solar radiation for at least four hours on December 21. A taxpayer who has installed both a wall and a roof collection aperture may qualify.

3. Storage element.

The term "storage element" means thermal mass in the form of water, masonry, brick, rock, concrete or other material with heat storage performance equivalent to or better than that of any of these forms of thermal mass. The thermal mass must be installed within the insulated shell of the building or attached building and it must be insulated from the earth by materials with at least an R value of 6.5 $F^{o} \cdot Hr \cdot Ft^{2}/Btu$ (1.1 $m^{2} \cdot K/W$). The thermal mass must have a storage capacity of at least 15 Btu per degree Fahrenheit per square foot (300 $kJ/K \cdot m^{2}$) of aperture area. The thermal mass shall be situated so that at least half of it is completely exposed to the sun's direct radiation for four hours on December 21. The exposed half of the thermal mass must not be shielded from direct solar radiation by hangings, rugs, carpet, furniture, etc. Thermal mass which is heated by forced convection can also qualify. An example would be that of a system in which a blower forces solar air from a collection area through a rock bed, when the rock bed has been insulated to prevent heat loss into the earth or outside air.

The entire amount of the expenditures and labor costs allocable to qualifying thermal mass will be allowed. Concrete slab floors uninsulated from the earth and swimming pools do not qualify as a storage element for purposes of this credit. Stone and masonry materials used in fireplace construction, which meet the above requirements for thermal mass, ~~may~~ <u>will</u> qualify as a storage element. The flues and other mechanical devices of a fireplace do not qualify.

4. Control and distribution element.

The term "control and distribution element" means fans, exhausts, vents, dampers, sensors, controllers, air ducts, louvers or other equipment when used exclusively to facilitate the distribution of solar heat.

5. Retention element.

The term "retention element" means movable insulation which is installed to reduce heat loss through the collection aperture of the passive solar energy system at night. All of the movable insulation installed on that collection aperture must have a combined R value of at least 4 $F^{o} \cdot Hr \cdot Ft^{2}/Btu$ (0.7 $m^{2}K/W$). Awnings and overhangs shall not be considered retention elements.

6. Miscellaneous.

The Commissioner of Revenue will require drawings, photographs, or other descriptions of a passive solar energy system from any taxpayer claiming the credit for a passive solar energy system. If the taxpayer consents, the Commissioner may consult with the Director of the Minnesota Energy Agency to secure an evaluation of the drawings, photographs, or other descriptions to determine if the system qualifies for the energy credit.

A taxpayer who has installed or is planning to install a passive solar energy system which he or she feels may achieve passive solar energy performance better than a system designed according to the criteria contained in this rule may request an advisory opinion

by submitting an architectural drawing, a detailed operational description of the system and performance calculations to the Director of the Energy Agency. On the basis of this information, the Director may decide that the entire system and its integral components or some part thereof qualifies for the credit. The taxpayer shall furnish the Department of Revenue with a copy of the Director's Opinion when claiming this credit.

The original use of the passive solar energy system must begin with the taxpayer who claims the credit. Expenses for normal maintenance on the passive solar energy system do not qualify for the credit. Replacement expenditures of a capital nature to replace all or part of the passive solar energy system do qualify for the energy credit provided that the taxpayer must add these expenditures to the other expenditures that he had already claimed for the energy credit. Those passive solar energy system expenditures which exceed a reasonable cost amount, which serve no additional passive solar function, or which serve a purely aesthetic function, shall not be allowed.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
FEB 2 5 1980
Secretary of State

APPROVED AS TO FORM AND LEGALITY

FEB 26 1980 19

WARREN SPANNAUS, ATTORNEY GENERAL

BY Joanne Hindeleber

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
FEB 26 1980
Joan Anderson Growe
Secretary of State

3:38 PM

ADMIN 1000 (Rev. 1/78)
SF-00006-01

Our File No: 574

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

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

DATE: February 22, 1980

Attn: DALE H. BUSACKER

FROM : JOANNE E. HINDERAKER JEH
Special Assistant
Attorney General

PHONE: 296-4692

SUBJECT: In the Matter of the Proposed Adoption of Rules of the Department of Revenue Relating to an Income Tax Energy Credit (13 MCAR § 1.6020).

As I have indicated to Mr. Dale Busacker in our telephone conversation today, the rules in the above-captioned matter have not been approved for the following reason:

Rule 1.6020 E. 3. states "Stone and masonry materials used in fireplace construction, which meet the above requirements for thermal mass, may qualify as a storage element." If the stone and masonry materials meet the thermal mass requirements it appears to this office that such materials must qualify as a storage element. However the use of the words "may qualify" in the rule submitted to this office suggests that the Department has unbridled discretion to determine whether or not materials meeting such criteria will "qualify." The rule is unacceptable in this form. I recommend that the word "may" be changed to "shall."

While not a fatal defect the rule at § 1.6020 B. and C. makes indirect references to Minn. Stat. § 290.06 Subd. 14 without citing the statute. Specifically the rule states "Expenditures that are allowable are only those that were allowable on the date that the legislature has specified for purposes of adopting the federal credit provisions"; and at § C. the rule refers to "three tests which are contained in clause (b)(1)-(3) of the law." A specific citation to the statutory provision alluded to in the rule would aid the reader in cross referencing to the statute.

Upon making any changes in the rules pursuant to this memorandum, this file may be resubmitted to this office with three (3) copies of the rule as amended and an Amended Order Adopting Rules. Prior to the resubmission to this office, however, this office recommends that you contact the Chief Hearing Examiner's Office regarding any changes made subsequent to his review.

Please contact me if you have any questions regarding the rules.

JEH/bw
Encl.
cc: Duane Harves
Susan Robertson

Our file #574
Joannie

2/11 Tom Overton advised, [illegible]
2/11 Dale Busaker advised - will send HE rept
2/14 HE rept. rec'd.

Permanent Rule X

Temporary Rule _____

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 2/6/80 DUE DATE 2/26/80

Resubmitted and Received 2/26/80

a. Returned to Agency w/o Filing w/Secretary of State 2/22/80
b. Approved 2/26/80 Date Sent Back to Agency 2/22/80
2/26/80

---

1. Rules as Adopted ✓
2. Rules as Proposed See 4SR 771 11/12/79
3. Certificate of Board's Authorizing Resolution, where applicable N/A
4. Order for Hearing ✓
5. Notice of Hearing ✓
   Sufficiency ✓
6. Secretary of State's List ✓ (one copy only)
7. Certificate of Acquisition of Secretary of State's List ✓
8. Secretary of State's Certification of Delivery of Secretary of State's List to Agency ✓
9. Affidavit of Mailing ✓
   At least 30 days prior to hearing ✓ 11/12/79
10. Publication in State Register ✓
    At least 30 days prior to hearing ✓
11. Statement of Need and Evidence ✓
12. Hearing Examiner's Report ✓
13. Agency's Findings of Fact ✓
14. Certificate of Board's Resolution Adopting Rules, where applicable N/A
15. Order Adopting ✓
16. Report of Chief Hearing Examiner ✓
17. Order Approving Incorporation by Reference, where applicable ✓
18. Certificate of Compliance with Rulemaking Procedures ✓
19. Copy of Notice of Intent to Solicit Outside Opinion, where applicable ✓ 3 SR 2276 6/25/79
20. Petition by Public, where applicable N/A

A-6 working copy

STATE OF MINNESOTA
DEPARTMENT OF REVENUE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF REVENUE RELATING TO AN INCOME TAX ENERGY CREDIT (13 MCAR SECTION 1.6020)	FINDINGS OF FACT AND ORDER ADOPTING RULES

The above-entitled matter came on for hearing before Jon L. Lunde, a hearing examiner appointed by the Chief Hearing Examiner, on the 17th day of December, 1979, at 9:00 a.m. in Room 83, State Office Building, 435 Park Street, St. Paul, Minnesota, after proper notice required by Minnesota Statutes, Section 15.0412 was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

Having now, therefore, reviewed the record of the hearing, including the exhibits and written materials submitted before the close of the record, the report of the Hearing Examiner, and materials submitted directly to me following my receipt of the hearing record, I now adopt as my findings of fact in this matter, the Findings of Fact of the Hearing Examiner except those findings concerning cooperatives contained in the second paragraph of Section 8 of the Findings of Fact (page 4 of the Hearing Examiner's Opinion). A cooperative is the same type of residential property ownership as a condominium or as a townhouse. Minnesota Statutes, Section 273.133, subd. 1 provides that a person owning a cooperative unit qualifies for homestead assessment for property tax purposes and also qualifies for the state paid homestead credit. Each unit is designated by a legal description. Property taxes assessed against the homestead of a person living in a cooperative qualify as property taxes and not as rent for purpose of the property tax refund credit (see Minnesota Statutes, Section 290A.04, subd. 12, third paragraph). A cooperative is treated as a homestead for property tax purposes and should qualify as a homestead for the energy credit on the same basis as a single family dwelling, condominium or a townhouse.

Now, Therefore, It Is Ordered that these rules identified as rules of the Department of Revenue relating to an Income Tax Energy Credit as published at State Register, Volume 4, Number 19, pages 772 through 775, November 12, 1979, (4 S.R. 772-775) are adopted this 1st day of February, 1980, pursuant to authority vested in me by Minnesota Statutes, Section 290.52 and Laws of 1979, Ch. 303, Article V, Section 2.

State of Minnesota
Department of Revenue

Clyde E. Allen, Jr.
CLYDE E. ALLEN, JR.
Commissioner of Revenue

Rule 13 MCAR Sec. 1.6020 Energy Credit (All New Material)

A. - General provisions

1. Residence.

For purposes of this credit, a building or dwelling unit must be the taxpayer's principal residence. The term "principal residence" is defined as that residence which would qualify for the non-recognition of gain on the sale and the rollover of that gain when a new principal residence is purchased except that no ownership requirement is imposed. The period for which a building or a dwelling unit is treated as the principal residence of the taxpayer includes the 30 day period ending on the first day on which it would (but for this sentence) be treated as the taxpayer's principal residence. The term "building" includes a single family dwelling, duplex, condominium unit, townhouse, cooperative unit, and any other residential building containing six dwelling units or less. A condominium unit, a townhouse, or a cooperative unit which is used by a taxpayer as his principal residence will each qualify separately for purposes of this credit regardless of how many units are in the building. A taxpayer who buys or rents a residential unit in a condominium, townhouse or a cooperative need only buy or rent that unit and not the entire physical structure to qualify for this credit.

Individuals who rent a dwelling unit as their residence can claim this credit. The dwelling unit, except in the case of the rental of a condominium, townhouse, or cooperative unit, must be located in a building that contains six dwelling units or less.

If less than 80 percent of the use of a building or dwelling unit is for use as the taxpayer's principal residence, only that portion of the expenditures for that building or dwelling unit which is properly allocable for use as the taxpayer's principal residence shall be taken into account. A swimming pool shall be treated as a use which is not for residential purposes. ~~This allocation provision does~~ These provisions on residence do not apply to biomass conversion equipment.

2. A taxpayer must actually purchase the equipment or earth sheltered dwelling to qualify for this credit. The expenses connected with the leasing of equipment or the leasing of an earth sheltered dwelling do not qualify for this credit. If the taxpayer received a refund from the seller or the manufacturer of equipment on which the taxpayer claimed this credit, the amount of expenditures that were allowable for this credit must be reduced by the amount of the refund that was received. The taxpayer will need to file an amended income tax return if the refund that was received would require a reduction in the energy credit which had already been claimed. Expenditures will qualify even though they are paid for as the result of a federal or state grant, but only to the extent that the grant was included in federal adjusted gross income. Each dollar of expenditure which qualifies for this credit may be used only one time for purposes of computing this credit.

OK see Ag's comment

3. A contractor can receive this credit on a building that he has constructed if he is the first individual to use the building or dwelling unit as his principal residence.

4. For purposes of this credit, a taxpayer is entitled to use only the first $10,000 of renewable energy source expenditures. The $10,000 of expenditures to which the taxpayer is entitled includes the expenditures that he personally made, and the proportionate share of expenditures to which he is entitled as a partner in a partnership, as a shareholder in a Subchapter S corporation, as a tenant shareholder in a cooperative housing corporation, as a member of a condominium management association, or as a shareholder in a family farm corporation. No taxpayer shall be allowed to claim a total amount of more than $2,000 in total energy credits for all years.

5. The increase in the basis of property because of expenditures which qualify for this credit shall be reduced by the amount of the energy credit that was claimed for that property.

6. A shareholder in a family farm corporation is allowed to claim this credit for any of the expenditures that qualify for ~~one-of the-four-parts-of~~ this credit~~,-notwithstanding-the-fact-that-an earlier-provision-of-the-law-limits-three-of-the-four-parts-of this-credit-to-individual-taxpayers~~. A family farm partnership will be treated as an individual taxpayer and expenditures that qualify for the energy credit which are made by the family farm partnership, may be claimed by the family farm partners as joint owners. ~~For-purposes-of-this-credit,-an-electing-small-business corporation-will-qualify-as-a-corporation-and-not-as-a-partnership.~~ A partnership, which is not a family farm partnership, will not be treated as an individual taxpayer.

7. A shareholder of a family farm corporation is allowed to claim this credit in the same manner as a joint owner of property that otherwise qualified for the credit. All joint owners will be treated as one taxpayer (and so qualify for only one $2,000 energy credit) with the same taxable year. Each joint owner will be allowed, with respect to the expenditures, a credit for that taxable year in an amount, which bears the same ratio to the total amount allowable, as the amount of the expenditures made by the joint owner during the taxable year bears to the aggregate of the expenditures made by all joint owners during the taxable year. If a Subchapter S or a family farm corporation makes the expenditure, the expenditure may be divided among the shareholders based on the percentage of their stock ownership in the corporation.

8. The Department of Revenue, ~~on behalf of a requesting~~ upon the written request of a taxpayer, shall furnish the Energy Agency with a copy of the energy credit form that has been completed by the taxpayer so that the taxpayer and the Department of Revenue may receive technical advice and assistance from the Energy Agency and so that the Energy Agency may compile information on the use of this credit.

9. The energy credit, pollution control credit and feedlot pollution control credit shall be applied after all other nonrefundable credits. If the expenditures otherwise qualify, the taxpayer may elect which credit (including the carryforward) will be used. This election may be amended at any time before the expiration

of the statute of limitations. If an expenditure otherwise qualifies the taxpayer may claim both the energy credit and the feedlot pollution control credit or pollution control credit on that property but the energy credit must be used first and the expenditures allowable for the feedlot pollution control credit or pollution control credit must be reduced by the expenditures that have been used for the energy credit.

10. As used in this rule, the term "R" value is the measure of resistance to heat flow through a material or the reciprocal of the heat flow through a material expressed in British thermal units per hour per square foot per degree ~~Farenheit~~ Fahrenheit at 75 degrees ~~Farenheit~~ Fahrenheit mean temperature. The term "U" value is the thermal transmission of heat in unit time through unit area of a particular body or assembly, including its boundary films divided by the difference between the environmental temperatures on either side of the body or assembly; ($Btu/Hr \cdot Ft^2 \cdot F^o$). Also the reciprocal of total R-Value.

B. - Piggybacked federal renewable energy source credit

Any expenditure that qualifies for the federal renewable energy source credit, including expenditures for labor costs, geothermal energy, wind energy for electricity, renewable energy used to heat water, and any other expenditures which are allowable for the federal credit, would also be allowable for purposes of the state piggybacked credit provided that the building is located in Minnesota and does not contain more than six dwelling units. Expenditures that are allowable are only those that were allowable on the date that the legislature

290.06 Subd 14 (a) Vogue
HE 197

has specified for purposes of adopting the federal credit provisions. If an expenditure qualifies for both the federal energy conservation credit and for the federal renewable energy source credit and the taxpayer used the expenditure for the federal conservation credit, the taxpayer can use that expenditure for the state piggybacked federal renewable energy source credit provided that the expenditure otherwise qualifies.

C. - Earth sheltered dwelling units

Expenditures that qualify for the credit for earth sheltered dwellings include material, labor and other construction costs (except interest) incurred to construct the dwelling. The structure of the earth sheltered dwelling unit must meet the standards of the Minnesota building code even though the code may not be in effect in that area. The earth sheltered dwelling unit's structure must also comply with all three tests which are contained in clause (b)(1)-(3) of the law and which are as follows:

290.06

290.06 Subd 14 HE 198

"(1) 80 percent or more of the roof* area is covered with a minimum depth of 12 inches of earth; and

(2) 50 percent or more of the wall area is covered with a minimum depth of 12 inches of earth; and

(3) Those portions of the structure not insulated with a minimum of seven feet of earth shall have additional insulation;"

---

*A computer typing error was made here in the final copy of the conference committee report on H.F. 1495 (Laws 1979, Chapter 303). The law contains the word "wall" and not the word "roof." However, it is clear that this was a technical mistake and the Department is proposing a law change to the 1980 legislature.

The roof area contained in clause (b)(1) that must be covered with earth means that area of the roof that is above the area used for residential living which is heated. The roof area that must be covered with earth does not include the roof area for a garage, unless the garage is heated. For clause (b)(2) the term "wall" means the exterior walls of the residential living area. The walls of a garage are not included in this definition. If a garage is attached to the exterior walls at the residential living area, that area of the exterior wall of the residential living area that is part of the attached garage is not counted in the area of the wall that must be covered with earth. The wall must be covered with a minimum horizontal depth of 12 inches (30 cm) of earth. The term "structure" contained in clause (b)(3) means the exterior walls and roof as defined for clauses (b)(1) and (2). In clause (b)(3) the additional insulation that will be required is the amount of insulation that is needed to equal the following requirements:

1. All of the components of the wall below grade to 7 vertical feet (2.1 m) below grade must have at least a combined minimum R value of 11.50 $F^{o} \cdot Hr \cdot Ft^{2}/Btu$ (2.03 $m^{2} \cdot K/W$), not including the thermal resistance of the earth. Insulation below grade which extends out from the wall may be included in the combined R value.

2. The wall which is above grade and which is not covered with a minimum of 7 horizontal feet (2.1 m) of earth and which is not part of a collection aperture of a passive solar system, as defined in part E.2., must meet the following criteria:

   a. The opaque wall area may not exceed a maximum U value of 0.0555 $Btu/Hr \cdot Ft^{2}F^{o}$ (0.315 $W/m^{2}K$).

b. The glazing area must not exceed a maximum U value of 0.47 Btu/Hr·Ft^2·F^o (2.7 W/m^{2}K) and must not exceed a maximum area which is more than 10% of the floor area of the room in which it is installed. The maximum glazing area for a room shall be reduced by the amount of collection aperture glazing, as defined in part E.2., installed in that room. Glass doors shall be considered as glazing area.

c. The doors must not exceed a maximum U value of 0.40 Btu/Hr·Ft^2·F^o (2.3 W/m^2·K).

3. Roof/ceiling

a. A roof/ceiling which is covered with less than 7 vertical feet (2.1 m) but with 12 vertical inches (30 cm) or more of earth may not exceed a maximum U value of 0.045 Btu/Hr·Ft^2·F^o (0.25 W/m^2·K), not including the thermal resistance of the earth.

b. A roof/ceiling which is covered with less than 12 vertical inches (30 cm) of earth may not exceed a maximum U value of 0.027 Btu/Hr·Ft^2·F^o (0.15 W/m^2·K), not including the thermal resistance of the earth.

D. - Biomass conversion equipment

The term "biomass conversion equipment" means equipment which is located in Minnesota and which is (1) equipment for the production of gaseous fuels from biomass sources by biological or physical-chemical processes. To qualify for the credit, the gaseous energy produced shall sustain combustion, by itself, in air. Examples of the types of equipment that qualify for the credit are methane digestors, and destructive

distillation equipment. (2) Equipment for the production of liquid fuels from biomass sources by biological or physical-chemical processes. To qualify for the credit, the liquid fuel produced shall sustain combustion, by itself, in air, and shall contain ethanol or methanol.

The gaseous energy or liquid fuels produced by the equipment shall not be sold or offered for sale.

The term "biomass sources" means wood, wood residues, agricultural crops, agricultural crop residues, other plant materials, human or animal manure, and food processing waste.

A taxpayer who is a corporation (including an electing small business corporation), ~~a bank,~~ a partnership, a trust or an estate may claim the credit for biomass conversion equipment.

E. - Passive solar energy system

1. General.

The term "passive solar energy system" means a system which utilizes the building or an attached building (such as a greenhouse) and its operable components to heat and cool the building or a portion thereof by utilizing the sun's energy by means of conduction, convection, radiation or evaporation.

A system shall include collection aperture and storage element designed to store heat from solar radiation, and it may include control, distribution or retention elements.

Only the cost of equipment, materials, and devices which are integral parts of a passive solar energy system and the actual cost of labor for system installation are eligible expenditures. Expenditures for equipment, materials, or devices which are a part of the conventional (nonrenewable energy) heating, cooling, or insulation system of the building are not eligible for the credit. The entire expenditure for each integral component and associated labor costs is eligible for the credit unless indicated below.

To qualify for the credit, a passive solar energy system must reasonably be expected to remain in operation for at least five years.

2. Collection aperture.

The term "collection aperture" means a. Double glazing material ~~installed-in-walls-which-face~~ facing south, plus or minus 30 degrees, installed in exterior walls, and fully exposed to the sun for at least four hours on December 21, during which time the sun must pass through an imaginary vertical plane drawn perpendicular to the glazing. The area of glazing shall exceed the lesser of 15 percent of the floor area of the room in which the glazing is installed or 8 percent of the floor area of the habitable rooms within the dwelling unit. The entire expenditure for glazing shall qualify for the credit. b. Double glazing material installed in a roof which is elevated at an angle of at least 45 degrees from horizontal and which faces the south, plus or minus 30 degrees. Such glazing shall be fully exposed to direct solar radiation for at least four hours on December 21. A taxpayer who has installed both a wall and a roof collection aperture may qualify.

3. Storage element.

The term "storage element" means thermal mass in the form of water, masonry, brick, rock, concrete or other material with heat storage performance equivalent to or better than that of any of these forms of thermal mass. The thermal mass must be installed within the insulated shell of the building or attached building and it must be insulated from the earth by materials with at least an R value of 6.5 $F^{o} \cdot Hr \cdot Ft^{2}/Btu$ (1.1 $m^{2} \cdot K/W$). The thermal mass must have a storage capacity of at least 15 Btu per degree Fahrenheit per square foot (300 $kJ/K \cdot m^{2}$) of aperture area. The thermal mass shall be situated so that at least half of it is completely exposed to the sun's direct radiation for four hours on December 21. The exposed half of the thermal mass must not be shielded from direct solar radiation by hangings, rugs, carpet, furniture, etc. Thermal mass which is heated by forced convection can also qualify. An example would be that of a system in which a blower forces solar air from a collection area through a rock bed, when the rock bed has been insulated to prevent heat loss into the earth or outside air.

The entire amount of the expenditures and labor costs allocable to qualifying thermal mass will be allowed. Concrete slab floors uninsulated from the earth and swimming pools do not qualify as a storage element for purposes of this credit. Stone and masonry materials used in fireplace construction, which meet the above requirements for thermal mass, may qualify as a storage element. The flues and other mechanical devices of a fireplace do not qualify.

4. Control and distribution element.

The term "control and distribution element" means fans, exhausts, vents, dampers, sensors, controllers, air ducts, louvers or other equipment when used exclusively to facilitate the distribution of solar heat.

5. Retention element.

The term "retention element" means movable insulation which is installed to reduce heat loss through the collection aperture of the passive solar energy system at night. All of the movable insulation installed on that collection aperture must have a combined R value of at least 4 $F^{o} \cdot Hr \cdot Ft^{2}/Btu$ (0.7 $m^{2}K/W$). Awnings and overhangs shall not be considered retention elements.

6. Miscellaneous.

The Commissioner of Revenue will require drawings, photographs, or other descriptions of a passive solar energy system from any taxpayer claiming the credit for a passive solar energy system. If the taxpayer consents, the Commissioner may consult with the Director of the Minnesota Energy Agency to secure an evaluation of the drawings, photographs, or other descriptions to determine if the system qualifies for the energy credit.

A taxpayer who has installed or is planning to install a passive solar energy system which he or she feels may achieve passive solar energy performance better than a system designed according to the criteria contained in this rule may request an advisory opinion

by submitting an architectural drawing, a detailed operational description of the system and performance calculations to the Director of the Energy Agency. On the basis of this information, the Director may decide that the entire system and its integral components or some part thereof qualifies for the credit. The taxpayer shall furnish the Department of Revenue with a copy of the Director's Opinion when claiming this credit.

The original use of the passive solar energy system must begin with the taxpayer who claims the credit. Expenses for normal maintenance on the passive solar energy system do not qualify for the credit. Replacement expenditures of a capital nature to replace all or part of the passive solar energy system do qualify for the energy credit provided that the taxpayer must add these expenditures to the other expenditures that he had already claimed for the energy credit. Those passive solar energy system expenditures which exceed a reasonable cost amount, which serve no additional passive solar function, or which serve a purely aesthetic function, shall not be allowed.

original rules (uncorrected)

Rule 13 MCAR Sec. 1.6020 Energy Credit (All New Material)

A. - General provisions

1. Residence.

For purposes of this credit, a building or dwelling unit must be the taxpayer's principal residence. The term "principal residence" is defined as that residence which would qualify for the non-recognition of gain on the sale and the rollover of that gain when a new principal residence is purchased except that no ownership requirement is imposed. The period for which a building or a dwelling unit is treated as the principal residence of the taxpayer includes the 30 day period ending on the first day on which it would (but for this sentence) be treated as the taxpayer's principal residence. The term "building" includes a single family dwelling, duplex, condominium unit, townhouse, cooperative unit, and any other residential building containing six dwelling units or less. A condominium unit, a townhouse, or a cooperative unit which is used by a taxpayer as his principal residence will each qualify separately for purposes of this credit regardless of how many units are in the building. A taxpayer who buys or rents a residential unit in a condominium, townhouse or a cooperative need only buy or rent that unit and not the entire physical structure to qualify for this credit.

Individuals who rent a dwelling unit as their residence can claim this credit. The dwelling unit, except in the case of the rental of a condominium, townhouse, or cooperative unit, must be located in a building that contains six dwelling units or less.

If less than 80 percent of the use of a building or dwelling unit is for use as the taxpayer's principal residence, only that portion of the expenditures for that building or dwelling unit which is properly allocable for use as the taxpayer's principal residence shall be taken into account. A swimming pool shall be treated as a use which is not for residential purposes. ~~This allocation provision does~~ These provisions on residence do not apply to biomass conversion equipment.

2. A taxpayer must actually purchase the equipment or earth sheltered dwelling to qualify for this credit. The expenses connected with the leasing of equipment or the leasing of an earth sheltered dwelling do not qualify for this credit. If the taxpayer received a refund from the seller or the manufacturer of equipment on which the taxpayer claimed this credit, the amount of expenditures that were allowable for this credit must be reduced by the amount of the refund that was received. The taxpayer will need to file an amended income tax return if the refund that was received would require a reduction in the energy credit which had already been claimed. Expenditures will qualify even though they are paid for as the result of a federal or state grant, but only to the extent that the grant was included in federal adjusted gross income. Each dollar of expenditure which qualifies for this credit may be used only one time for purposes of computing this credit.

3. A contractor can receive this credit on a building that he has constructed if he is the first individual to use the building or dwelling unit as his principal residence.

4. For purposes of this credit, a taxpayer is entitled to use only the first $10,000 of renewable energy source expenditures. The $10,000 of expenditures to which the taxpayer is entitled includes the expenditures that he personally made, and the proportionate share of expenditures to which he is entitled as a partner in a partnership, as a shareholder in a Subchapter S corporation, as a tenant shareholder in a cooperative housing corporation, as a member of a condominium management association, or as a shareholder in a family farm corporation. No taxpayer shall be allowed to claim a total amount of more than $2,000 in total energy credits for all years.

5. The increase in the basis of property because of expenditures which qualify for this credit shall be reduced by the amount of the energy credit that was claimed for that property.

6. A shareholder in a family farm corporation is allowed to claim this credit for any of the expenditures that qualify for ~~one of the four parts of~~ this credit~~, notwithstanding the fact that an earlier provision of the law limits three of the four parts of this credit to individual taxpayers~~. A family farm partnership will be treated as an individual taxpayer and expenditures that qualify for the energy credit which are made by the family farm partnership, may be claimed by the family farm partners as joint owners. ~~For purposes of this credit, an electing small business corporation will qualify as a corporation and not as a partnership.~~ A partnership, which is not a family farm partnership, will not be treated as an individual taxpayer.

7. A shareholder of a family farm corporation is allowed to claim this credit in the same manner as a joint owner of property that otherwise qualified for the credit. All joint owners will be treated as one taxpayer (and so qualify for only one $2,000 energy credit) with the same taxable year. Each joint owner will be allowed, with respect to the expenditures, a credit for that taxable year in an amount, which bears the same ratio to the total amount allowable, as the amount of the expenditures made by the joint owner during the taxable year bears to the aggregate of the expenditures made by all joint owners during the taxable year. If a Subchapter S or a family farm corporation makes the expenditure, the expenditure may be divided among the shareholders based on the percentage of their stock ownership in the corporation.

8. The Department of Revenue, ~~on behalf of a requesting~~ upon the written request of a taxpayer, shall furnish the Energy Agency with a copy of the energy credit form that has been completed by the taxpayer so that the taxpayer and the Department of Revenue may receive technical advice and assistance from the Energy Agency and so that the Energy Agency may compile information on the use of this credit.

9. The energy credit, pollution control credit and feedlot pollution control credit shall be applied after all other nonrefundable credits. If the expenditures otherwise qualify, the taxpayer may elect which credit (including the carryforward) will be used. This election may be amended at any time before the expiration

of the statute of limitations. If an expenditure otherwise qualifies the taxpayer may claim both the energy credit and the feedlot pollution control credit or pollution control credit on that property but the energy credit must be used first and the expenditures allowable for the feedlot pollution control credit or pollution control credit must be reduced by the expenditures that have been used for the energy credit.

10. As used in this rule, the term "R" value is the measure of resistance to heat flow through a material or the reciprocal of the heat flow through a material expressed in British thermal units per hour per square foot per degree ~~Farenheit~~ Fahrenheit at 75 degrees ~~Farenheit~~ Fahrenheit mean temperature. The term "U" value is the thermal transmission of heat in unit time through unit area of a particular body or assembly, including its boundary films divided by the difference between the environmental temperatures on either side of the body or assembly; ($Btu/Hr \cdot Ft^2 \cdot F^o$). Also the reciprocal of total R-Value.

B. - Piggybacked federal renewable energy source credit

Any expenditure that qualifies for the federal renewable energy source credit, including expenditures for labor costs, geothermal energy, wind energy for electricity, renewable energy used to heat water, and any other expenditures which are allowable for the federal credit, would also be allowable for purposes of the state piggybacked credit provided that the building is located in Minnesota and does not contain more than six dwelling units. Expenditures that are allowable are only those that were allowable on the date that the legislature

has specified for purposes of adopting the federal credit provisions. If an expenditure qualifies for both the federal energy conservation credit and for the federal renewable energy source credit and the taxpayer used the expenditure for the federal conservation credit, the taxpayer can use that expenditure for the state piggybacked federal renewable energy source credit provided that the expenditure otherwise qualifies.

C. - Earth sheltered dwelling units

Expenditures that qualify for the credit for earth sheltered dwellings include material, labor and other construction costs (except interest) incurred to construct the dwelling. The structure of the earth sheltered dwelling unit must meet the standards of the Minnesota building code even though the code may not be in effect in that area. The earth sheltered dwelling unit's structure must also comply with all three tests which are contained in clause (b)(1)-(3) of the law and which are as follows:

"(1) 80 percent or more of the roof* area is covered with a minimum depth of 12 inches of earth; and

(2) 50 percent or more of the wall area is covered with a minimum depth of 12 inches of earth; and

(3) Those portions of the structure not insulated with a minimum of seven feet of earth shall have additional insulation;"

---

*A computer typing error was made here in the final copy of the conference committee report on H.F. 1495 (Laws 1979, Chapter 303). The law contains the word "wall" and not the word "roof." However, it is clear that this was a technical mistake and the Department is proposing a law change to the 1980 legislature.

The roof area contained in clause (b)(1) that must be covered with earth means that area of the roof that is above the area used for residential living which is heated. The roof area that must be covered with earth does not include the roof area for a garage, unless the garage is heated. For clause (b)(2) the term "wall" means the exterior walls of the residential living area. The walls of a garage are not included in this definition. If a garage is attached to the exterior walls at the residential living area, that area of the exterior wall of the residential living area that is part of the attached garage is not counted in the area of the wall that must be covered with earth. The wall must be covered with a minimum horizontal depth of 12 inches (30 cm) of earth. The term "structure" contained in clause (b)(3) means the exterior walls and roof as defined for clauses (b)(1) and (2). In clause (b)(3) the additional insulation that will be required is the amount of insulation that is needed to equal the following requirements:

1. All of the components of the wall below grade to 7 vertical feet (2.1 m) below grade must have at least a combined minimum R value of 11.50 $F^{o} \cdot Hr \cdot Ft^{2}/Btu$ (2.03 $m^{2} \cdot K/W$), not including the thermal resistance of the earth. Insulation below grade which extends out from the wall may be included in the combined R value.

2. The wall which is above grade and which is not covered with a minimum of 7 horizontal feet (2.1 m) of earth and which is not part of a collection aperture of a passive solar system, as defined in part E.2., must meet the following criteria:
   a. The opaque wall area may not exceed a maximum U value of 0.0555 $Btu/Hr \cdot Ft^{2}F^{o}$ (0.315 $W/m^{2}K$).

b. The glazing area must not exceed a maximum U value of 0.47 Btu/Hr·Ft^2·F^o (2.7 W/m^{2}K) and must not exceed a maximum area which is more than 10% of the floor area of the room in which it is installed. The maximum glazing area for a room shall be reduced by the amount of collection aperture glazing, as defined in part E.2., installed in that room. Glass doors shall be considered as glazing area.

c. The doors must not exceed a maximum U value of 0.40 Btu/Hr·Ft^2·F^o (2.3 W/m^2·K).

3. Roof/ceiling

a. A roof/ceiling which is covered with less than 7 vertical feet (2.1 m) but with 12 vertical inches (30 cm) or more of earth may not exceed a maximum U value of 0.045 Btu/Hr·Ft^2·F^o (0.25 W/m^2·K), not including the thermal resistance of the earth.

b. A roof/ceiling which is covered with less than 12 vertical inches (30 cm) of earth may not exceed a maximum U value of 0.027 Btu/Hr·Ft^2·F^o (0.15 W/m^2·K), not including the thermal resistance of the earth.

D. - Biomass conversion equipment

The term "biomass conversion equipment" means equipment which is located in Minnesota and which is (1) equipment for the production of gaseous fuels from biomass sources by biological or physical-chemical processes. To qualify for the credit, the gaseous energy produced shall sustain combustion, by itself, in air. Examples of the types of equipment that qualify for the credit are methane digestors, and destructive

distillation equipment. (2) Equipment for the production of liquid fuels from biomass sources by biological or physical-chemical processes. To qualify for the credit, the liquid fuel produced shall sustain combustion, by itself, in air, and shall contain ethanol or methanol.

The gaseous energy or liquid fuels produced by the equipment shall not be sold or offered for sale.

The term "biomass sources" means wood, wood residues, agricultural crops, agricultural crop residues, other plant materials, human or animal manure, and food processing waste.

A taxpayer who is a corporation (including an electing small business corporation), ~~a bank,~~ a partnership, a trust or an estate may claim the credit for biomass conversion equipment.

E. - Passive solar energy system

1. General.

The term "passive solar energy system" means a system which utilizes the building or an attached building (such as a greenhouse) and its operable components to heat and cool the building or a portion thereof by utilizing the sun's energy by means of conduction, convection, radiation or evaporation.

A system shall include collection aperture and storage element designed to store heat from solar radiation, and it may include control, distribution or retention elements.

Only the cost of equipment, materials, and devices which are integral parts of a passive solar energy system and the actual cost of labor for system installation are eligible expenditures. Expenditures for equipment, materials, or devices which are a part of the conventional (nonrenewable energy) heating, cooling, or insulation system of the building are not eligible for the credit. The entire expenditure for each integral component and associated labor costs is eligible for the credit unless indicated below.

To qualify for the credit, a passive solar energy system must reasonably be expected to remain in operation for at least five years.

2. Collection aperture.

The term "collection aperture" means a. Double glazing material ~~installed-in-walls-which-face~~ facing south, plus or minus 30 degrees, installed in exterior walls, and fully exposed to the sun for at least four hours on December 21, during which time the sun must pass through an imaginary vertical plane drawn perpendicular to the glazing. The area of glazing shall exceed the lesser of 15 percent of the floor area of the room in which the glazing is installed or 8 percent of the floor area of the habitable rooms within the dwelling unit. The entire expenditure for glazing shall qualify for the credit. b. Double glazing material installed in a roof which is elevated at an angle of at least 45 degrees from horizontal and which faces the south, plus or minus 30 degrees. Such glazing shall be fully exposed to direct solar radiation for at least four hours on December 21. A taxpayer who has installed both a wall and a roof collection aperture may qualify.

3. Storage element.

The term "storage element" means thermal mass in the form of water, masonry, brick, rock, concrete or other material with heat storage performance equivalent to or better than that of any of these forms of thermal mass. The thermal mass must be installed within the insulated shell of the building or attached building and it must be insulated from the earth by materials with at least an R value of 6.5 $F^{o} \cdot Hr \cdot Ft^{2}/Btu$ (1.1 $m^{2} \cdot K/W$). The thermal mass must have a storage capacity of at least 15 Btu per degree Fahrenheit per square foot (300 $kJ/K \cdot m^{2}$) of aperture area. The thermal mass shall be situated so that at least half of it is completely exposed to the sun's direct radiation for four hours on December 21. The exposed half of the thermal mass must not be shielded from direct solar radiation by hangings, rugs, carpet, furniture, etc. Thermal mass which is heated by forced convection can also qualify. An example would be that of a system in which a blower forces solar air from a collection area through a rock bed, when the rock bed has been insulated to prevent heat loss into the earth or outside air.

The entire amount of the expenditures and labor costs allocable to qualifying thermal mass will be allowed. Concrete slab floors uninsulated from the earth and swimming pools do not qualify as a storage element for purposes of this credit. Stone and masonry materials used in fireplace construction, which meet the above requirements for thermal mass, may qualify as a storage element. The flues and other mechanical devices of a fireplace do not qualify.

4. Control and distribution element.

The term "control and distribution element" means fans, exhausts, vents, dampers, sensors, controllers, air ducts, louvers or other equipment when used exclusively to facilitate the distribution of solar heat.

5. Retention element.

The term "retention element" means movable insulation which is installed to reduce heat loss through the collection aperture of the passive solar energy system at night. All of the movable insulation installed on that collection aperture must have a combined R value of at least 4 $F^{o} \cdot Hr \cdot Ft^{2}/Btu$ (0.7 $m^{2}K/W$). Awnings and overhangs shall not be considered retention elements.

6. Miscellaneous.

The Commissioner of Revenue will require drawings, photographs, or other descriptions of a passive solar energy system from any taxpayer claiming the credit for a passive solar energy system. If the taxpayer consents, the Commissioner may consult with the Director of the Minnesota Energy Agency to secure an evaluation of the drawings, photographs, or other descriptions to determine if the system qualifies for the energy credit.

A taxpayer who has installed or is planning to install a passive solar energy system which he or she feels may achieve passive solar energy performance better than a system designed according to the criteria contained in this rule may request an advisory opinion

by submitting an architectural drawing, a detailed operational description of the system and performance calculations to the Director of the Energy Agency. On the basis of this information, the Director may decide that the entire system and its integral components or some part thereof qualifies for the credit. The taxpayer shall furnish the Department of Revenue with a copy of the Director's Opinion when claiming this credit.

The original use of the passive solar energy system must begin with the taxpayer who claims the credit. Expenses for normal maintenance on the passive solar energy system do not qualify for the credit. Replacement expenditures of a capital nature to replace all or part of the passive solar energy system do qualify for the energy credit provided that the taxpayer must add these expenditures to the other expenditures that he had already claimed for the energy credit. Those passive solar energy system expenditures which exceed a reasonable cost amount, which serve no additional passive solar function, or which serve a purely aesthetic function, shall not be allowed.

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT of Revenue

Office Memorandum

TO : Jerry Anderson
Joanne Hinderaker
Spec. Asst. Atty. General
Room G25
Administration Building

DATE: February 6, 1980

FROM : Dale H. Busacker DHB
Division Attorney
Income Tax Division

PHONE: 3439

SUBJECT: Proposed Rules Relating To An Income Tax Energy Credit
(13 MCAR Section 1.6020)

Please review these proposed rules as to their form and legality as required under Minn. Stat. Section 15.0412, subd. 4.

DHB/ml

PRINTED ON RECYCLED PAPER

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF REVENUE RELATING TO AN INCOME TAX ENERGY CREDIT (13 MCAR SECTION 1.6020)	STATEMENT OF COMPLIANCE WITH RULE MAKING PROCEDURES

I, Special Assistant Attorney General Thomas K. Overton, do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, all rule making procedures have been followed. Any exceptions are noted below.

1. A transcript of the proceeding has not been prepared as required by A. G. Rule 303. Minn. St. 15.0412, subd. 4 requires that a transcript be made if requested by the Attorney General. The regulation constitutes such a request.

Thomas K. Overton
Special Assistant Attorney General

Dated: Feb 6, 1980

Submitted to Hearing Examiner on 12/8/79 — Hearing Date is 12/17/79

Amendments to the Proposed Energy Credit Rule
(See 4 S.R. 772-775, Nov. 12, 1979)

Page 772, A.1. 3rd paragraph, last sentence:

"~~This allocation provision does~~ These provisions on residence do not apply to biomass conversion equipment."

Unlike the other three parts of the energy credit, the biomass conversion equipment provision is not restricted to the residence. The biomass equipment may be used to produce energy for commercial buildings, farm buildings, or apartment buildings. This change is to clarify that none of the provisions on residence apply to biomass, not just the allocation provision.

Page 772, A.2. after the second sentence insert:

"If the taxpayer receives a refund from the seller or the manufacturer of equipment on which the taxpayer claimed this credit, the amount of expenditures that were allowable for this credit must be reduced by the amount of the refund that was received. The taxpayer will need to file an amended income tax return if the refund that was received would require a reduction in the energy credit which had already been claimed."

It has come to the Department's attention that a seller of solar energy equipment is offering purchasers a refund of some of the purchase price, if they complete four report cards on the system. The energy credit should be given only to expenditures which have actually been paid by the taxpayer. When a taxpayer receives a refund from the seller, the taxpayer has not actually incurred that expense. The taxpayer has, in fact, claimed an excessive credit amount and must file an amended return to reduce the amount of credit that was claimed.

The last paragraph of the law adopts federal Section 44C(c)(7)(C) by reference. This federal provision says that the amount of expenditure is the cost. A refund from the seller reduces the cost.

It is important to require that the taxpayer file an amended return to reduce the credit amount. If the refund was simply counted as income, the taxpayer would receive an unfair windfall because the highest tax rate that would apply to the refund would be 17 percent. The credit would have allowed 20 percent of the refund as a direct tax credit. This treatment of a refund of expenditures on which a credit was received is consistent with the federal treatment in similar situations (see Section 905(c)-foreign tax credit, and Section 6201(a)(4)-gas tax and earned income credit).

The proposed amendment has been worded so that a refund would require an adjustment in the amount of energy credit which was claimed only if the refund reduced the amount allowable for the credit. Example - If a taxpayer paid $12,000 for a solar system and received a $1,000

refund, no adjustment need be made since the taxpayer can use only $10,000 in expenditures to claim the credit. However, if the taxpayer paid $8,000 for a solar system and received a $1,000 refund, the taxpayer would need to reduce the energy credit that was claimed by $200.

Page 772, A.2., after the last sentence add:

"Each dollar of expenditure which qualifies for this credit may be used only one time for purposes of computing this credit."

It is possible that certain expenditures may be allowable under two or more parts of this credit. This proposed amendment specifies that that dollar of expenditure cannot be used under each part of the credit.

Page 773, C.2., line 3:

after "not part of a" insert "collection aperture of a"

The intent is that the rules on earth sheltered dwelling not apply to a collection aperture. The passive solar collection aperture should have a higher U value than that which is specified here. However, the U value given here for an opaque wall should apply to a storage element. The previous wording would exempt the storage element.

Page 774, D., 4th paragraph, line 2:

delete "a bank,"

The biomass part of this credit applies to all corporations including banks, savings and loan corporations and insurance companies. If the rule specifies one of these, the rule should specify all three or specify none at all. This amendment is only a clarification and is not a change in interpretation.

State of Minnesota

Department of Revenue

In the matter of the Proposed Adoption of Rules of the Department of Revenue Relating to an Income Tax Energy Credit. (14MCAR Sec. 1.6020)

Statement of Need & Reasonableness

The above captioned rules are being proposed as a result of Laws 1979, Chapter 303, Article 5, which established a residential energy credit as part of the Minnesota income tax law.

This document has been prepared as a verbatim affirmative presentation of the facts necessary to establish the statutory authority, need for, and reasonableness of the proposed new rules. It is submitted pursuant to 9 MCAR Section 2.104 requiring a Statement of Need and Reasonableness.

A Notice of Intent to Solicit Outside Opinion in the preparation of the energy credit rules was published in the State Register on June 25, 1979. Several discussions have been held with the Energy Agency concerning the administration of this credit, and meetings were held with some of the representatives of the various segments of the passive solar energy industry. Suggestions and comments that were received have been duly considered.

Authority to Adopt Rules

Laws of Minnesota 1979, Chapter 303, Article 5, Section 2 grants the Commissioner of Revenue statutory authority to promulgate rules establishing additional qualifications and definitions for the energy credit. The Commissioner of Revenue has consulted and has cooperated

with the Director of the Energy Agency in the preparation of these rules. Minnesota Statutes, Section 290.52 provides the Commissioner of Revenue with general authority to make income tax rules.

Adoption of Proposed Rules

Need and Reasonableness

A. - General Provisions.

The general provisions contained in A. establish qualifications that are applicable to all parts of the energy credit.

1. Residence.

The first paragraph provides a general definition for the term "building." The first part of Section 1, Article 5, Chapter 303, Laws 1979 provides some definitions for the term "building." For purposes of the federal renewable energy source credit, the building must be the taxpayer's principal residence. The requirement that the building must be used as the taxpayer's principal residence is also based on part of the last sentence in the first paragraph of the law which states, in part, "The credit shall be deducted from the tax liability of the first individual to purchase the building for use as a principal residence or for residential rental purposes . . ." The last paragraph of the law also adopts the provisions of the Internal Revenue Code Section 44C(c)(7) which includes the requirement of an allocation for that part of the building which is not used for nonbusiness residential purposes.

Based on these statutes and in order to adopt uniform provisions with the federal renewable energy source credit for purposes of the state piggybacked credit, it is reasonable to require that the building

or dwelling unit must be the taxpayer's principal residence.

The definition of principal residence is the same as the federal definition contained in Internal Revenue Code Section 44C(c)(8). In order to provide consistency of definition for purposes of the residential energy credit, especially the piggybacked federal renewable energy source credit, it is reasonable to adopt the same definition that is contained in federal law.

The term "building" is further defined to include the common residential types of uses or ownerships. The rule treats a condominium unit, townhouse, or cooperative unit as a single family dwelling and not as an apartment unit. This makes it clear that a condominium unit, etc. will not be disqualified for purposes of this credit simply because the physical structure of the building contains more than six condominium units. This is reasonable because the energy credit law states that "the term 'building' shall include a condominium or townhouse used by the taxpayer as a residence." Also, it seems reasonable to assume that the six dwelling unit restriction is only for apartments which are rented and not for units which are actually owned by an individual just as a single family house is. Also, a condominium unit is a parcel of real estate and is a person's homestead (see M. S. Section 515.04). A cooperative corporation can hold real estate (see M. S. Section 308.05). Because a cooperative is a similar type of ownership, the rule includes them in the provisions that govern a condominium or a townhouse.

The second paragraph allows renters to qualify for the energy credit because there is no restriction in the law preventing renters who make the necessary expenditures from qualifying. The fact that the law says that it applies to "a Minnesota building of six dwelling units or less" implies that renters can qualify for the credit because the law mentions buildings containing several dwelling units which would include apartments. The federal energy credit does allow renters to claim that credit. The rule does define the term "building" to make it clear that a residential building that is for residential rental purposes and which contains six dwelling units or less does meet the qualifications of a building. The law prevents any renter who lives in an apartment building which contains more than six dwelling units or apartments from qualifying for the energy credit. It is crucial to restate this requirement of the law here to avoid misleading renters who read this rule.

The allocation formula contained in the third paragraph is prescribed for uses of the building or dwelling unit that are other than using the building or dwelling unit as the taxpayer's principal residence, (nonbusiness residential purposes), is based on the last paragraph of the law which adopts by reference Internal Revenue Code Section 44C(c)(7)(D). The rule copies this provision and applies it also to dwelling units to make it clear that it does apply to renters who sublease part of their unit. The last sentence of this paragraph makes it clear that this apportionment doesn't apply to biomass conversion equipment. Unlike the other three parts of the energy credit, biomass conversion equipment is not related to a taxpayer's residence and so the allocation provisions shouldn't be applied to it.

2. The purpose of the energy credit is to encourage taxpayers to make investments in renewable energy source equipment or in earth sheltered dwellings. The law consistently talks about expenditures made by the taxpayer. The federal energy credit does not allow leasing expenses to qualify for the credit (see Proposed Reg. Section 1.44C-2(b)). The state law adopts the provisions of the federal energy credit requiring a basis adjustment to property on which the energy credit was claimed (see I.R.C. Section 44C(e)). This provision would not be necessary if the credit applied to equipment that was leased. This is why the rule does not allow leasing expenses to qualify. The rule does provide that if a taxpayer receives a government grant and uses that grant to purchase renewable energy source equipment, those expenditures will qualify to the extent that the grant was subject to income tax. This is a reasonable requirement to prevent a person from receiving a government grant to install a solar system, pay no tax on that grant, and yet claim an energy credit. The rule is designed to prevent this situation from occurring. However, this provision would not apply to a person who received a grant from a private organization, a gift, or other tax exempt income because these amounts are clearly exempt from income tax under other provisions of the law and because they are not government funds which are given for the same purpose as the tax credit.
3. The rule clarifies the law to allow a contractor to receive the energy credit on a building that he constructs if, in fact, he is the first person to use that building as his principal residence. The law is designed to prevent a contractor from claiming the energy credit on a building simply because he built the building. However,

it isn't reasonable to prevent a contractor from claiming this credit if he makes the building his principal residence. The following paragraph of this rule will prevent abuse of this provision because no taxpayer can claim more than $2,000 in total energy credits for all years.

4. The rule makes it clear that the taxpayer is entitled to claim no more than $2,000 in total energy credits for all years. There are four parts to the energy credit law and it is assumed that it was the intent of the legislature that expenditures made for any one of these four parts would be counted in determining the total amount of credit available. The legal basis for this position is found in two places. The first sentence of the law states, "A credit of 20 percent of the first $10,000 of renewable energy source expenditures . . ." Towards the end of the energy credit law is the provision that "If a credit was allowed to a taxpayer under this subdivision for any prior taxable year, the dollar amount of the maximum expenditure for which a taxpayer may qualify for a credit under this subdivision in subsequent years shall be $10,000 reduced by the amount of expenditures which a credit was claimed pursuant to this subdivision in prior years." This provision clearly provides that the taxpayer is to aggregate his expenditures. This is different from the federal provision contained in Internal Revenue Code Section 44C(b)(2) and (3) which require a taxpayer to aggregate the expenditures the taxpayer made on that dwelling unit. The rule makes it clear that the $10,000 of allowable expenditures includes those expenditures that the taxpayer personally made and the proportionate share of any other expenditures that he might be entitled to receive because they flow directly through to him. Normally, expenditures

made by a corporation are used as a corporate income tax credit and would not flow through to the shareholder. The provisions allowing the taxpayer to claim the proportionate share of expenses made as a tenant shareholder in a cooperative housing corporation or as a member of a condominium management association are contained in the last paragraph of the law which adopts the provisions of the Internal Revenue Code Section 44C(d)(2) and (3). The granting of no more than $2,000 in total energy credits for all years to a taxpayer will make a credit far easier to administer. This is especially true when one considers that biomass equipment is not related to a principal residence as are the other parts of this credit and the federal credit.

5. The provision requiring the basis adjustment in energy credit property is provided in the last paragraph of the law which adopts the provisions of the Internal Revenue Code Section 44C(e). The rule is a restatement of the federal law so that a person who reads this rule need not also look at the federal law. The federal law has been restated for the sake of clarity.
6. The law has conflicting provisions in that the first paragraph of the law limits three parts of the energy credit to expenditures made by an individual taxpayer. A later paragraph of the law allows family farm corporation shareholders to receive the energy credit "in the same manner and to the same extent allowed a joint owner of property under clause (a)." Clause (a) is the piggy-backed federal renewable energy source credit. Therefore, it is reasonable to assume that the legislature intended to adopt by reference the provisions of the Internal Revenue Code section 44C(d)(1) which refers to joint occupants and also to dwelling

units used as a principal residence. For these reasons it seems reasonable to conclude that the legislature intended to allow the energy credit to shareholders such as a farm family who form a family farm corporation. It is assumed that the legislature intended to allow these individuals to receive the energy credit on expenditures they incurred on their principal residence. The legislature has enacted a similar special provision allowing property tax homestead classification for a homestead occupied by a shareholder of a family farm corporation (see Minn. Stat. Section 273.13, subd. 6a). For all these reasons the rule makes it clear that the special provision for family farm corporation shareholders supersedes the earlier restriction and that these shareholders qualify for the entire credit to the same extent as an individual.

The rule allows partners to claim energy credit expenditures made by a partnership as joint owners. The law allows partners in a family farm partnership to claim this credit as joint owners. Because there are no distinctions between a family farm partnership and other partnerships, the rule proposes to treat all partnerships alike. Partners, not the partnership, are subject to the Minnesota income tax (see Minn. Stat. Section 290.31, subd. 1). Each partner is entitled to receive his distributive share of the partnership's credits (see Minn. Stat. Section 290.31, subd. 2(1)(f). The rule says that if a partner or a partnership makes expenditures on a partner's principal residence which is in the partnership's name, the partner may claim those expenditures under the rules that govern joint owners.

Minn. Stat. Sections 290.971 to 290.975 govern the tax election that can be made by small business corporations. These provisions are patterned after the Subchapter S provisions contained in Sections 1371 and 1372 of the Internal Revenue Code. The rule makes it clear that energy credit expenditures made by a small business corporation will qualify for the energy credit only where a corporation may claim this credit. The shareholders of a small business corporation have decided to form a corporation for many reasons. The law states that expenditures must be made "by an individual taxpayer" except for the biomass conversion unit expenditures. The energy credit claimed to install a biomass conversion unit would flow through the small business corporation to the shareholders just as they do for a partnership (see Minn. Stat. Section 290.973, subd. 2). The point of the rule is that small business corporations are corporations and, therefore, they will only qualify for this credit as a corporation.

7. This paragraph explains how joint owners may claim the energy credit. This provision is based on the last paragraph of the law which adopts by reference Section 44C(d)(1) of the Internal Revenue Code. Basically the second and third sentences are a restatement of the federal requirements. The second sentence of the rule explains what the federal law means when it says that joint owners will be treated as one taxpayer, namely, that they will qualify for only one energy credit. This interpretation is based on the proposed federal regulation Section 1.44C-3(h)(3) and (4), especially example (1).

This paragraph of the rule also contains the provisions of the law, previously mentioned, which states that shareholders of a

family farm corporation qualify as joint owners (see second to last paragraph of the law). It is crucial to restate this provision here, in the paragraph dealing with joint owners, so that these shareholders know how they may qualify. The last sentence allows an alternative allocation method for Subchapter S and family farm corporations where the expenditures were made by the corporation and not by the shareholders. In this case, the credit may be allocated based on percentage of stock ownership.

8. This paragraph allows the taxpayer to release the Department from the income tax return secrecy provision contained in Section 290.61. This will allow the Department of Revenue to consult with the Energy Agency to receive technical advice and assistance on the application of this credit to that taxpayer. The taxpayer may also have the benefit of the Energy Agency's expertise. The Energy Agency has requested the ability to compile specific information on the use of the credit. Without the consent of the taxpayer, the income tax secrecy provision would prevent the disclosure of specific information. This paragraph does not constitute a change in current administrative practice. It is inserted so that taxpayers who read this rule may know how the procedure will operate, how the information will be used, and that they may contact the Energy Agency for assistance.

9. This paragraph specifies the relationship between the energy credit and the pollution control credit (Minn. Stat. Section 290.06, subd. 9) and the feedlot pollution control credit (Minn. Stat. Section 290.06. subd. 9a). It is possible that equipment, primarily biomass equipment, could qualify for both types of

credits. There is a provision in the feedlot pollution control credit law which says that if equipment qualifies for that credit and the pollution control credit, the taxpayer must choose which credit will be used. There is no provision in the law preventing a taxpayer from using both the energy credit and one of the pollution credits. However, a taxpayer may receive only one $2,000 energy credit while the pollution credits are credits that the taxpayer may take every year that certain equipment is purchased. The pollution credits are also permanent credits.

The provision in the rule stating that these three credits shall be applied after all other nonrefundable credits is for the taxpayer's benefit. These three credits are the only nonrefundable credits which have carryforward provisions. The rule also allows the taxpayer to decide which credits will be used because this is a determination for the taxpayer to make. The law never requires a taxpayer to utilize certain credits. To give effect to this election, the taxpayer may file an amended return (Minn. Stat. Section 290.391) as long as the statute of limitations has not yet expired on that return (see Minn. Stat. Sections 290.49, subd. 1, 290.50, subd. 1, and 290.56).

The rule does provide that the energy credit will be applied before a pollution credit if the taxpayer decides to use both credits. The legal basis for this provision is that the law says that 1. the energy credit applies to "the <u>first</u> $10,000 of renewable energy source expenditures . . ." (see first paragraph of the law) and 2. both of the pollution credits state that they

are based on "the net cost of" equipment. Therefore, the amount of expenditures used to claim the energy credit would reduce the net cost of the equipment. It is not permissible to use the same dollar of expenditure to qualify for two credits.

10. The terms "R" value and "U" value are used several times in this rule in connection with earth sheltered dwelling units and passive solar energy systems. These definitions are identical to those contained in the State Building Code, Energy Conservation, Existing Buildings, 2MCAR Section 1.16204, J. and N. These definitions needed to be printed in this rule and could not merely be cited by reference to MCAR because of the provisions of Minn. Stat. Section 15.0412, subd. 4 governing incorporation by reference.

B. - Piggybacked Federal Renewable Energy Source Credit.

The purpose of the first sentence is to restate that any expenditure that is allowable for the federal renewable energy source credit will be allowable for Minnesota's piggybacked federal renewable energy source credit. Some specific expenditures which are allowable are mentioned to emphasize the fact that the state credit will be the same as the federal credit. However, there are two differences between the federal and state credit, namely, that the expenditures must be made "on a Minnesota building of six dwelling units or less" (see first paragraph of energy credit law). The allowable expenditures are limited to the expenditures that were allowable under federal law on the date set by the legislature for the adoption of the federal provisions. Currently, the law is based on the provisions of the federal credit as they existed on December 31, 1978. The fact that the legislature must specify a date for the adoption of the federal provisions is based on the decision of the Minnesota Supreme Court in

Wallace v. Commissioner of Taxation, 289 Minn. 220 at 228 (1971) in which the court said, "We must accordingly hold that the effect of Minn. St. 290.01, subd. 20, was to adopt the federal law by reference as it existed at the time that statute was adopted. The legislature did not, or could not, grant the Congress the right to make future modifications or changes in Minnesota law."

The federal energy credit contains two parts. If an expenditure would qualify for the federal renewable energy source credit, the taxpayer may use that expenditure on the state piggybacked federal renewable energy source credit even though the taxpayer actually used that expenditure for the other part of the federal energy credit. This is consistent with the federal provisions (see Fed. Reg. Section 1.44C-3(d)).

C. - Earth Sheltered Dwelling Units.

The first sentence of clause (b) in the law provides that "expenditures for earth sheltered dwelling units" are allowable as a renewable energy source expenditure. The rule explains this provision by providing that all those expenditures that are incurred in order to construct the earth sheltered dwelling are allowable. Clause (b) of the law provides that the structure must comply "with applicable building standards . . ." The rule specifies that the Minnesota building code will be the standard that will be used even though the code may no longer be in effect in that area under the local option provision (see Laws 1979, chapter 287, section 2). The reason for this requirement in the rule is to require a single statewide standard to be applied for purposes of the statewide energy credit. This will provide assurance to a taxpayer that if he meets the Minnesota building code standards that his home will qualify for the credit. A single

standard will obviously be much easier for the Department to administer and audit. It must be remembered that adopting the Minnesota building code as the standard for the energy credit does not prevent a person from building an earth sheltered dwelling that doesn't meet the building code standards. All this rule does is to set a standard which must be met to qualify for the energy credit. The rule also provides that all three tests contained in clause (b)(1)-(3) must be satisfied in order for an earth sheltered dwelling to qualify for the credit. This requirement is based on the fact that clause (b)(1) and (2) end with the word "and."

The rule quotes clause (b)(1)-(3) as they appear in the law. It is crucial in order to provide a clear understanding of the rule to quote these provisions of the law. Clause (b)(1)-(3) are cited several times in the following paragraphs of this part of the rule. With the provisions of the law appearing immediately before the paragraphs that define terms in clause (b)(1)-(3), the reader of the rule will be less likely to be confused.

The purpose of the law requiring that a certain depth of earth cover the roof and the walls is to provide proper insulation for that dwelling. The rule recognizes this fact and specifies that the roof and wall areas that need to be covered with earth are only those that are in connection with heated residential living areas and that a garage does not need to be covered with earth. The exclusion of a garage is consistent with the proposed change in the Minnesota building code (see proposed rule 2MCAR Section 1.10111, UBC Section 406, 4 S.R. 238 and 239). The rule defines the term "wall" as the exterior walls to define which walls must be covered with earth and to make it clear that interior walls would not be counted in the 50 percent requirement.

The rule eliminates from the percentage requirement that exterior wall area of a residential living area which is part of an attached garage because of the impossibility of this wall being covered with earth. The word horizontal is added to determine the necessary depth of earth on the wall. The clear meaning of the law is to require a minimum horizontal depth or covering of earth. The rule contains this understanding and also prevents someone from claiming that the depth requirement may be met by measuring diagonally from the wall. The rule also allows those wall areas that are covered with less than 12 vertical inches of earth to be included in the percentage limitations. A definition of the term structure as used in clause (b)(3) is given to make it clear exactly what that term means. Clause (b)(3) requires that additional insulation be placed on those portions of the structure that do not have a minimum amount of earth cover. The rule specifies exactly how much insulation must be provided to meet the requirements of the law.

1. The rule specifies different requirements for the insulation needed to meet the standards for a wall that is above grade and one that is below grade. This distinction is made because of the obvious difference in construction and of components.

   An R value of 11.5 is required for the below grade wall because this will be the exterior wall for a heated living area. Requiring R 11.5 insulation is a fairly standard minimum energy efficiency requirement. It is the equivalent of a 10 inch standard sand and gravel aggregate block and R-10 insulation (2 inches of styrofoam). The rule allows all of the components of the wall to be aggregated in calculating the R value to make it clear

that not only the wall assembly qualifies (like sand and gravel aggregate block) but also any insulation or film that was added. This allows maximum flexibility in construction. In order to simplify the necessary calculations and to make the R value standard easier to determine the thermal resistance of the earth is excluded. In exchange a lower R value is required. The term "grade" has the same meaning here as that which is contained in the Minnesota building code, (2MCAR Section 1.10111, UBC Section 408).

The required insulation in the wall below grade extends to seven vertical feet below grade so that it should generally extend beyond the frost line depth. The Minnesota building code establishes the minimum frost line depth, in the absence of a determination by an engineer, as being five feet in the northern part of the state and three and one-half feet in the southern part (see 2MCAR Section 1.10111, UBC 2907(a)). The frost line depth is an arbitrary figure. Generally, seven feet appears to be a much better value to be used in constructing an energy efficient earth sheltered dwelling.

The rule allows the taxpayer to count in the R value of the wall, insulation away from the wall (forming what is commonly called an apron).

2. This part of the rule establishes separate standards for that part of the wall which is above grade and which is not covered with at least seven feet of earth. Again, the word horizontal is inserted to clearly define how the seven feet of earth is to be

measured. Because of the special glazing requirements for a collection aperture installed as part of a passive solar system, that area is exempted from the requirements for a wall above grade. Each component part of the wall above grade is assigned its own maximum U value.

2.a. The maximum U value for the opaque wall is the equivalent of a common stud wall and assumes a 10% framing area. It was also assumed that the wall would have an R-19 value through the insulated cavity and sheathing with an R-5 value. However, the rule is stated in terms of U value to allow maximum flexibility. This requirement is consistent with present day construction of energy efficient earth sheltered dwellings.

2.b. The maximum U value for the glazing (window) area is the equivalent of triple glazing or low-emissivity coated double glazing. The U value standard for the glazing is taken from page 22.24 of the 1977 ASHRAE Handbook of Fundamentals. It also is a standard used by Farmer's Home Administration (see Instructions 424.1, exhibit D. Standard for new home construction in Minnesota, effective July 1, 1978). In order to limit the amount of energy that can escape through the windows, the rule imposes a restriction on the maximum area of glazing allowable. The glazing is related to the floor area of the room in which it is installed. This would cover rooms which are lived in and also those which are not. The Minnesota building code will require minimum glazing area of 8% of the habitable room floor area. The differences in the area which is covered and in the percentages allows some flexibility in the construction of the dwelling.

A special provision is made for glazing which is the collection aperture for a passive solar system. The requirement is stated so that collection aperture glazing may exceed the 10% maximum if all of the glazing in that room is for the collection aperture. However, the collection aperture glazing is subtracted from the 10% maximum to limit the installation of other glazing in addition to the collection aperture glazing.

The rule specifies that a glass door will be treated as glazing and not as a door.

2.c. The maximum U value for the door is equivalent to a 1-3/4 inch metal faced door with a rigid insulation core or a solid core wood door with a storm door. The standard is stated in terms of a U value to allow flexibility. This standard is based on the 1977 ASHRAE Handbook of Fundamentals, page 22.25.

3. There are two standards for the roof/ceiling. The first standard is the result of clause (b)(3) which states that a roof/ceiling covered with this amount of earth must have additional insulation. A roof/ceiling covered with less than 12 inches of earth would not qualify as earth covered under clause (b)(1).

3.a. The word vertical has been inserted in the measurements to clearly describe what the law means when it uses the word depth.

The U value equivalent for this roof/ceiling is that of a roof/ceiling with R-20 insulation (the equivalent of four

inches of styrofoam and concrete beam construction). Flexibility is allowed because the requirement is stated in terms of a U value. This standard is consistent with present day construction for energy efficient earth sheltered dwellings.

The thermal resistance of the earth is excluded for the same reasons as described in the section for wall below grade.

3.b. The new provision not explained in 3.a. concerns the U value. This U value is the equivalent of R-38 insulation. This standard is identical to the proposed Minnesota building code standard (see proposed 2MCAR Section 1.16005-ASHRAE 90-75 Section 4.3.2.2., 4S.R. 282).

D. - Biomass Conversion Equipment.

The rule requires that biomass conversion equipment be located in Minnesota in order to qualify for the credit. It appears that this item was overlooked by the legislature in the drafting of the law, as the other parts of the energy credit are restricted to Minnesota buildings. It seems only reasonable to conclude that the legislature would intend to grant an energy credit only for equipment located in Minnesota. To grant a Minnesota tax credit for biomass equipment located outside of Minnesota would be absurd (Minn. Stat. Section 645.17(1)). The primary object of the legislation is to encourage expenditures in energy saving equipment in this state so that the people of this state can receive a direct benefit. The law does not provide a concise definition for biomass conversion equipment. The rule contains two parts to the definition of equipment because methanol

and ethanol are normally liquid fuels; however, methane is normally a gaseous fuel. Methane does not become liquid until approximately minus 150° Fahrenheit. Thus, there is a conflict in the law in that clause (c) specifically allows expenditures for biomass conversion equipment which produces methane, and that same clause also states that the fuel produced must be liquid. Because methane is specifically mentioned, it appears that it was the legislature's intent to include all methane generation equipment, and the rule adopts this approach. The definitions allow the credit for equipment that produces fuel by using organisms in the biological process or by using chemicals in the physical chemical process. Both technologies of refining fuel from biomass sources are recognized and allowed.

A definition is inserted in the rule to require that the fuel produced must be able to sustain combustion by itself in air. This is a generally accepted definition of fuel. If the fuel produced could not meet this definition, the purpose of converting biomass would not have been fulfilled. Some sort of measure of the energy value of the product is needed and the self combustibility test will be easier for auditors to use than a test that was based on the BTU value of the product. Without a standard prescribing the measure of the fuel value of the product, equipment that produces ammonia gas and drinking alcohol would qualify for the credit. Examples of biomass conversion equipment that qualify are given. These examples include equipment that converts the biomass source into fuel by using an organic process or by burning the biomass.

The provision that the energy or fuel that is produced cannot be offered for sale is contained in the law. It is important to

restate this requirement here to avoid the possibility of any confusion. The rule includes the restriction that the energy or fuel shall not be sold. This is a logical extension of the law and gives full effect to the law.

The rule provides for a broad definition of biomass sources including those that reasonably and scientifically could be used to produce energy required by the law.

The rule provides that corporate taxpayers, trusts, and estates may claim the biomass credit. The first paragraph of the energy credit law specifies that expenditures for the piggybacked federal renewable energy source credit, earth sheltered dwellings, and passive solar energy systems will be allowed only if they are made by an individual taxpayer and they also must be made on buildings containing dwelling units. No such restrictions are imposed on expenditures for biomass conversion equipment. Two other credit provisions contained in Section 290.06, namely, the pollution control credit and the feedlot pollution control credits, apply to corporations because there is no language in the law limiting these credits only to individuals. The rule interprets the law to apply the credit as broadly as possible when there is no language of restriction and where the other parts of the credit are clearly restricted.

E. - Passive Solar Energy System.

1. General.

The first paragraph is essentially a restatement of the law. It is important to have this restated here so that people may have a statement of what the law provides. The rule does allow a passive solar energy system that is installed in an attached building, such as a greenhouse, to qualify for the credit because

it is heating or cooling the residence. It is generally conceded that a greenhouse can be used in this way.

The second paragraph restates for clarification purposes the fact that the law requires that a passive solar energy system must have a collection aperture and a storage element. The control, distribution, or retention elements are optional.

Equipment, materials and devices that are integral parts of the passive solar energy system are allowable expenditures under the law (see the third paragraph of clause (d) of the law). It is important to restate this provision in the rule to avoid any confusion. The rule does expand the definition of allowable expenditures to include the actual cost of labor to install this system. The federal energy credit does allow labor costs (see Section 44C(c)(2)(B)). Labor costs would be allowable for the piggybacked federal renewable energy source credit. It appears to be an oversight of the legislature in that the law was not drafted to also allow labor costs because this could be an essential item in the installation of a passive solar system. The law does not allow expenditures for those equipment, materials and devices that are part of the normal system. This restriction is important to restate in the rules to remind people of the limitation and to avoid confusion. A normal system is defined in the rule to mean that system which is a conventional system, or more specifically one which uses a nonrenewable energy source. The proposed federal regulation (Section 1.44C-2(f)) disallows any energy source, fuel, or energy which is indirectly derived

from solar energy, such as fossil fuel or wood . . . ." It is submitted that it is the purpose of the law to encourage the new use of renewable energy and to not give credit for systems that are normal, namely, the nonrenewable systems.

The last sentence of this paragraph is merely a statement that if the component qualifies, all the expenditures will qualify. Other that the allocation for use other than for principal residential purposes as provided in A.1., no allocation will be required for those amounts necessary to meet minimal qualifications. Once it qualifies, all qualifies.

The federal renewable energy source credit requires that the systems must reasonably be expected to remain in operation for at least five years (see Section 44C(c)(5)(C)). The rule adopts this restriction of the federal law. It is important to have this requirement to insure that systems that do receive the credit have a certain minimum life.

2. Collection aperture.

The law defines a collection aperture to include glazing installed in south facing walls and roofs. The rule takes this definition and expands on it in several areas. The rule requires that double glazing material be used. This is necessary to provide a minimum standard for the collection aperture that will allow a maximum amount of solar energy to be received into the room but, at the same time, provide some minimum insulation value. An example of double glazing material would be a normal window used

in conjunction with a storm window or a double-paned picture window. Mazria supports other studies which indicate that double glazing is essential for passive solar collection apertures in Minnesota (see The Passive Solar Energy Book, Edward Mazria, Rodale Press, Emmaus, Pennsylvania, 1979 (hereinafter cited as Mazria)).

The rule provides some variance from the requirement that the wall must face south. The 30° variance allows minor variations from the south direction. When a wall exceeds the 30° requirement, the amount of direct sunlight that is received drops drastically. Mazria recommends the 30° limitation.

The requirement that the collection aperture be fully exposed to the sun for at least four hours on December 21 is again a minimum requirement to provide the amount of exposure to the sun that must occur. This is a compromise between Mazria's design criteria which states that the collection aperture must be exposed to the sun between the hours of 10 a.m. and 2 p.m., and the knowledge that many passive solar systems will experience shading from adjacent buildings and other obstructions. By allowing the collection aperture to be exposed for any four hours during the day, leeway is granted to collect the energy during the morning or afternoon hours, even if the solar radiation is shielded during other hours of the day. However, the fully exposed requirement of the rule requires that the collection aperture, during these four hours, cannot be prevented from receiving direct radiation from the sun by trees, buildings or other obstructions. December

21 is used as the determination date because it is the date on which the collection aperture will receive the least amount of solar radiation.

The area of glazing must exceed the lesser of 15 percent of the floor area of the room or 8 percent of the floor area of the habitable rooms. Below 15 percent the collection aperture would not be large enough to provide a meaningful exposure to the sun. By including a minimum criteria per room and for the entire house, the rule allows for both passive solar retrofit installations, which typically would only be important to a room, or a portion of an existing house, and new passive solar homes which may be designed to have only one large divided room. As explained under earth sheltered dwellings, the 8 percent minimum is contained in the building code. The definition for habitable space is the same as that which is contained in the building code (see 2MCAR Section 1.10111, UBC Section 409). Once these minimums are satisfied, the entire amount of the expenditure for glazing will qualify for the credit.

The rule allows a collection aperture to qualify if it is installed in a roof which is elevated at an angle of at least 45° from horizontal. This criteria allows clerestory windows built into roofs but excludes skylights and other simple roof openings. At an angle of 45° or more, the collection aperture can be designed for maximum solar absorption over the desired portion of the year. When a roof has an angle of less than

45°, the amount of direct solar radiation that can be received is reduced, it is more difficult to keep clear of snow, and it is more difficult to shade from the summer sun. The rule makes it clear that a taxpayer may claim the credit if he has installed both a collection aperture in a wall and a collection aperture in a roof.

3. Storage Element.

The law lists some forms of thermal mass that will qualify as a storage element. The rule lists the forms of thermal mass that are given in the law to avoid confusion on what qualifies. The rule adds brick as a thermal mass because it is a common form of storage element which is equivalent to the others that are listed. The rule allows flexibility and innovation when it allows other materials to qualify if their heat storage performance is equal to or better than that of the materials which are listed. An effective thermal mass must have a high specific heat (be able to store a lot of heat) and a relatively high thermal conductivity (be able to distribute the heat through the thermal mass). Though all materials do indeed store heat, many building materials, including wood, plastics, and cotton fiber, have insufficient specific heat and conductivity to be used effectively as a thermal mass.

The rule requires that the thermal mass be located within the insulated shell of the building so that the solar energy that is absorbed by the thermal mass will be radiated back into the building and will not be absorbed into the surrounding environment outside of the building. In normal building practice, the earth contact walls may be left uninsulated. Since the thermal mass

will attain temperatures considerably higher than normal earth contact walls, it is necessary to require a minimum amount of insulation to avoid excessive heat loss.

The rule imposes a comprehensive definition to determine the storage capacity of the thermal mass. This imposes a minimum floor on the performance of the thermal mass to eliminate those materials that do not have as high a storage capacity as is needed for maximum efficiency. The rule is stated in these terms to allow flexibility. This definition allows water walls of 4 inches (10 cm) or greater, or cement trombe walls with a thickness of 8 inches (20 cm) or greater to qualify. This storage capacity criteria should be relatively easy to attain in a direct gain system.

The rule also requires that the thermal mass be able to absorb a reasonable amount of solar energy by requiring that at least half of the thermal mass be completely exposed to the sun. The rule requires that at least half of the thermal mass be exposed to provide flexibility in building construction and design, and to not be too restrictive. It is important to require that at least half of the thermal mass be used as storage element to insure that this is the primary use of the thermal mass. The rule also contains the same requirement on minimum number of hours of solar radiation that it must be exposed to on December 21 as was required for collection aperture.

The requirement that the exposed half of the thermal mass not be shielded is very important. This prevents the thermal mass from being covered by obstructions that would prevent the passive solar energy system from operating efficiently. If solar radiation falls upon items with lower specific heat, such as a rug, that item will rapidly increase in temperature and the heat will be converted into the surrounding air, rather than being absorbed into the thermal mass. This situation must be avoided. The restriction is limited to the exposed half of the thermal mass because areas not directly exposed to sunlight are not as adversely affected by shielding.

Thermal mass which is heated by forced convection can also qualify. Virtually all spaces have natural air convection currents. Therefore, thermal mass anywhere in a room exposed to sunlight will be partially heated by convection. On the other hand, heat transferred to a thermal storage area by forced convection can be an effective passive heat storage system. This forced convection to the heat storage area should not be confused with equipment designed to distribute the solar heat from storage. The example given in the rule conforms to these comments.

A difficult determination is required in deciding how much of the thermal mass will qualify for the passive solar energy credit. The federal renewable energy source credit is allowed for passive solar energy systems; however, the IRS has restricted the credit to allow only those expenses whose sole purpose is to transmit or use solar radiation. Any expenses for materials that serve

a dual purpose, e.g., they have a significant structural function or are structural components of the dwelling, do not qualify for the federal credit (see proposed Reg. Section 1.44C-2(f)). It is understood to be the intention of the legislature to allow storage elements to qualify for the passive solar energy credit even though they do serve some structural function. Therefore, the rule states that all the expenditures and labor costs allocable to the thermal mass will qualify for the credit as long as the thermal mass has met the other qualifications. A thermal mass that serves a purely structural function in the building and which is not used for the passive solar energy system would, of course, not qualify for the credit. For administrative ease, the rule will not require apportionment of the costs between those that could be attributed to use of the passive solar system and those that could be attributed to structural functions. Secondary expenditures needed to install the thermal mass, such as additional footings or support structures for the thermal mass, will not be allowed. If these secondary functions were allowed, the credit would need to be expanded to the entire structure of the building because all parts of the building would serve some function to support the storage element.

Concrete slab floors uninsulated from the earth would not be allowed as a storage element because they do not meet the qualification prescribed in the first paragraph for insulation to insure that the heat they absorb is radiated back into the living area. The federal law in Section 44C(c)(2)(C) disallows the use of a swimming pool as a storage element. The rule adopts the

federal provision. A swimming pool is not allowed because it has many other functions, including recreational functions, that could be more important to its use than that of a storage element. Swimming pools are not effective heat storage devices at temperatures which are acceptable for swimming.

The exterior structural materials of a fireplace such as stone and masonry can qualify as a storage element if they meet the other definitions contained in the rule. The mechanical devices to operate the fireplace have a primary function other than that as a part of the passive solar energy system. These devices also do not have the storage capacity need to qualify as a storage element. The walls of the fireplace have a function in the fireplace; however, if these materials otherwise qualify as a storage element, there is no reason why these materials should be disallowed simply because they are used in a fireplace. As previously stated, the rule does not require apportionment. A fireplace is given as an example because of the anticipated number of questions concerning it.

4. Control and Distribution Element.

The law lists some control and distribution elements that will qualify. The rule adds other similar equipment and allows that equipment to qualify when it is used to facilitate the distribution of the solar heat to other portions of the buildings. Equipment which is part of the normal heating, cooling or insulation system of the building does not qualify under other provisions of the law and the rule. This is why the rule requires that these elements be used exclusively for the passive solar system.

5. Retention Element.

The rule restates some of the provisions of the law that are used to define retention element. The rule requires that all of the movable insulation have a combined R value of at least four in order to place a minimum requirement on the insulation value that would be used. The rule provides flexibility in that it allows a combination of materials that meet these requirements to qualify when the R factor of all of the materials are added together. The R factor of the collection aperture is not included in this measurement. Shades and curtains, when properly constructed and properly insulated, can qualify. The R value of four should include many commercially available effective movable insulation products.

Awnings and overhangs are used to provide shading and do not provide any use as a retention element. They do not protect the building from heat loss; rather, they protect the building from heat gain.

6. Miscellaneous.

The passive solar energy system part of the energy credit will be difficult to administer. Each system can be different. In order to properly evaluate and audit the credit, the Commissioner of Revenue will need to be furnished with information that is not normally required with an income tax return. This provision of the rule is to provide notice to people of the fact that the Commissioner will require drawings, photographs or some other description of their system. The Commissioner has general authority to require this information under the provisions of Minn.

Stat. Sections 290.56, subd. 1, and 290.39, subd. 1. The rule also allows the Commissioner to secure an evaluation from the Energy Agency if the taxpayer consents. This provision is similar to that contained in A.8. of this rule. The income tax secrecy provision (Minn. Stat. Section 290.61) prevents the release of this information without the taxpayer's consent.

In order to allow flexibility and to encourage innovation on the current passive solar energy systems that exist, the rule allows a taxpayer to request an advisory opinion from the Energy Agency Director. It is felt that the above restrictions on the passive solar systems are designed for a particular style of system. Other valid designs are being used in our climactic area with considerable success. This tax credit should be awarded to these alternative designs if they meet comparable performance standards. An energy analysis by the Energy Agency may be the only means to establish the validity of the claims of performance of a passive solar system. Discretion is given to the Director to determine what and how much of the system will qualify. The rule prescribes what information must be submitted to the Director. The Director's opinion can be sought at any time; however, if the opinion is sought in connection with an income tax return, the taxpayer would, of course, have to give the Department a power of attorney in order for the Department to be able to consult with the Energy Agency. The rule allows a taxpayer to seek the advice and direction of the Energy Agency before a system is installed. This will allow the taxpayer to determine if the system will qualify for the tax credit. This authority will allow

the Department of Revenue and the Energy Agency to cooperate with innovations in this area instead of dealing with these questions only on audit.

This paragraph of the rule clearly states that this discretionary authority of the Director's may suspend only the criteria of the rule. A rule can't suspend what is contained in the law. A minimum standard is imposed in that any alternative system must meet the performance standard of a system described in this rule. Some discretionary authority is essential because the state of art of passive solar systems is so new and is subject to new innovations.

The rule requires that the taxpayer furnish a copy of the Director's opinion with his income tax return for verification purposes and to prevent unnecessary auditing of energy credit claims.

Federal law requires that the solar energy system must have its original use with the taxpayer who claims the credit (see Section 44C(c)(5)(B)). The rule incorporates this as a requirement. This should help to prevent some abuse of the credit. Normal maintenance expenses to maintain the passive solar energy system do not qualify for the credit because it is not seen as the purpose of the credit to give a tax benefit for keeping windows clean. The federal rules also do not allow maintenance expenses (see proposed Reg. Section 1.44C-2(b)(2)). However, expenses used to replace all or part of the system do qualify just as if

those expenses had been incurred when the system was originally installed. The last sentence of the last paragraph imposes a restriction limiting the allowable expenditures to those that are reasonable in cost, those that serve a function in the passive solar system, or those which are not purely aesthetic. An expenditure which violates any one of these restrictions is not to be allowed for this credit. This is important so that the Department of Revenue will clearly have authority to disallow items such as extremely fancy and decorative tile coverings on a storage element or very fancy needlepoint work on draperies which qualify as a retention element.

DR-80-035-JL

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF REVENUE

In the Matter of the Proposed Adoption of Rules of the Department of Revenue Relating to an Income Tax Energy Credit 14 MCAR § 1.6020.

REPORT OF THE HEARING EXAMINER

The above-entitled matter came on for hearing before Jon L. Lunde, duly appointed Hearing Examiner, on December 17, 1979, at 9:00 a.m. in Auditorium Room 83, State Office Building, 435 Park Street, Saint Paul, Minnesota 55155, pursuant to Notice of Hearing dated October 26, 1979.

Dale Busacker, Staff Attorney of the Income Tax Division, Second Floor, Centennial Office Building, 658 Cedar Street, Saint Paul, Minnesota 55145, appeared as counsel for the Department of Revenue (hereinafter the "Department"). Gerome T. Caulfield, Income Tax Director, Wesley A. Skjegstad, Technical Assistant to the Income Tax Director, Dorothy McClung, Research Attorney, and Gary Mesna, an attorney, all appeared on behalf of the Department. In addition, John Dunlop, Solar Office Manager, Ronald Rich, Alternative Energy Manager, Bruce D. Nelson, Conservation Division Staff Member, and Suzan Stewart, Legislative Analyst, all appeared on behalf of the Minnesota Energy Agency, which assisted the Department of Revenue in the preparation of the rules under consideration. The hearing continued until all interested groups and persons had the opportunity to be heard concerning the adoption of the rules involved. Eight persons signed the hearing register. Five of those persons were state employees and the other three appeared to ask questions of the panel concerning the proposed rules. No one present spoke in opposition to the adoption of any of the rules proposed by the Department.

This was a rule hearing held pursuant to Minn. Stat. Ch. 15 to determine whether the proposed rules of the Department were authorized, necessary and reasonable and should be adopted.

Pursuant to Minn. Stat. § 15.0412, subd. 4 (1978), this Report shall be available for review to all affected individuals upon request for at least five working days. Thereafter, the Department shall, if it proposes to adopt the rules as originally proposed or amended, submit a copy of the Order Adopting Rules, a copy of any additional agency findings, a copy of the rules as originally proposed, and a copy of the rules as adopted to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, subd. 4 (1978). The submission to the Chief Hearing Examiner shall precede review by the Attorney General. The Chief Hearing Examiner shall complete his review and submit his report to the Department on the issues of substantial changes in the rule and compliance with Minn. Stat. § 15.0412 (1978) within ten calendar

days. The Department will be responsible for filing the rules with the Attorney General and for notifying persons who have indicated that they wish to be notified of such filing.

Based upon all the records and proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

Procedural Requirements

1. On October 26, 1979, the Department filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules.
(b) The Order for Hearing proposed to be issued.
(c) The Notice of Hearing proposed to be issued.
(d) A Statement of the number of persons expected to attend the hearing and estimated length of the Agency's presentation.

On the same date, the Department's attorney, Dale Busacker, filed with the Chief Hearing Examiner a request to incorporate the State Building Code (2 MCAR §§ 1.10001 - 1.18901) by reference into the proposed rule at 14 MCAR § 1.6020 C., which said request was approved by Order of the Chief Hearing Examiner on November 2, 1979, since the Building Code exceeded 3,000 words and would exceed five pages of publication in the State Register.

2. On Monday, November 12, 1979, a Notice of Hearing and a copy of the proposed rules were published at 4 State Register 771.

3. On November 7, 1979, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

4. On November 21, 1979, the Department filed the following documents:

(a) The Order for Hearing and authorizing resolution.
(b) The Notice of Hearing as mailed.
(c) The Affidavit of Receipt of the Secretary of State's list.
(d) The Affidavit of Mailing the Notice to all persons on the Secretary of State's list.
(e) The Secretary of State's Certificate and list.
(f) The Statement of Need and Reasonableness.
(g) All materials received following a Notice of Intent to Solicit Outside Opinion published at 3 State Register 2276 (Monday, June 25, 1979).
(h) The names of state personnel who will represent the Agency at the hearing together with the names of any other witnesses solicited by the Agency to appear on its behalf.

The documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing.

5. The record remained open through December 24, 1979, for the receipt of written comments and statements, the period not having been extended by order of the Hearing Examiner to 20 calendar days following the hearing.

Statutory Authority

6. In the Notice of Hearing, the Department cited Minn. Stat. § 290.52 (1978) and Laws of Minnesota 1979, Ch. 303, Article V, Sec. 2 as its authority for the adoption of this rule. The latter enactment adding an additional paragrapn to Minn. Stat. § 290.06, subd. 14 (1978) provides as follows:

> The commissioner of revenue in cooperation with the director of the energy agency shall promulgate rules establisning additional qualifications and definitions for the credits provided in clauses (a) to (d).

Clauses (a) to (d) referred to provide an income tax energy credit for certain renewable energy source expenditures including expenditures which qualify for the federal renewable energy credit under Section 44C of the Internal Revenue Code of 1954, expenditures for earth sheltered dwellings, expenditures for certain biomass conversion equipment and certain expenditures for passive solar energy systems.

Minn. Stat. § 290.52 (1978) is the Department's general source of rule-making authority. It provides:

> The commissioner shall administer and enforce the assessment and collection of the taxes imposed by this chapter. He may, from time to time, make, publish and distribute rules and regulations in enforcing its provisions.

Proposed Rule

7. The rule the Department proposes to adopt is coded as 14 MCAR § 1.6020 and is being proposed pursuant to the Laws of Minnesota 1979, Ch. 303, Article V, which added a new subdivision 14 (hereinafter called "Subd. 14") to Minn. Stat. § 290.06.

Minn. Stat. Ch. 290 contains the various income and excise tax provisions of state law, and Section 290.06 contains the income tax rate and credit provisions. This new subdivision 14, clauses (a) - (d), provides for a credit of up to $2,000 for renewable energy source expenditures made by an individual taxpayer on certain Minnesota buildings. It specifies the type of qualifying expenditures and mandates the adoption of rules establishing additional qualifications and definitions for the credit authorized.

The Department's proposed rule was adopted after consultation and cooperation with the Director of the Minnesota Energy Agency as is required in Minn. Stat. § 290.06 (1979 Supp.). The rule, itself, is divided into five general parts (A. - E.) consisting of A. General Provisions, B. Piggybacked Federal Renewable Energy Source Credit, C. Earth Sheltered Dwelling Units, D. Biomass Conversion Equipment, and E. Passive Solar Energy Systems, following the basic types of renewable energy source expenditures which qualify for the credit under subdivision 14.

8. In subsection A. of the proposed rule, the Department has established the general conditions applicable to the energy credit and has further clarified the types of buildings and taxpayers who can claim the credit authorized. The rule limits the credit to buildings or dwelling units used as the taxpayer's "principal residence" and it is not required that the building or dwelling unit be owned by the taxpayer claiming the credit, thereby qualifying certain lessees. Limitation of the credit to principal residences is consistent with state and federal laws, and a reasonable exercise of the Commissioner's discretion under subdivision 14. Not only is the federal renewable energy source credit applicable only to principal residences, but a careful reading of the language in the first paragraph of subdivision 14 indicates that the Minnesota Legislature intended a similar result for purposes of the

state credit. The Department's decision to have a credit on dwellings that is similar to the credit available under federal law is within his informed discretion under these circumstances.

The buildings which qualify for the credit are any residential buildings containing six units or less. Condominiums, cooperatives and townhouses are treated as single units and qualify for the credit even if they are located in buildings of more than six units. Such a provision, at least insofar as townhouses and condominiums are concerned, is consistent with subdivision 14, which mandates that condominiums and townhouses be treated as buildings. However, to the extent that cooperative units located in buildings containing more than six units qualify as buildings, the proposed rule enlarges the credit beyond the scope of the statute. Such an enlargement is not an "additional qualification" within the meaning of subdivision 14, and is unauthorized. If the legislature had intended to include cooperatives as buildings, it would have indicated that intention when it mentioned townhouses and condominiums, and its failure to do so is persuasive evidence that cooperatives were not to be so treated. Consequently, cooperatives should not qualify for the credit if located in buildings containing more than six units, even if there is a similarity between cooperatives, condominiums and townhouses, and the rule should be modified accordingly. The legislature has not found it reasonable to treat these three the same, and its determination in that respect is binding on the Department. See, Wallace v. Commissioner of Taxation, 289 Minn. 220, 184 N.W.2d 588 (1971).

9. Individuals who rent dwellings as their residence can claim the credit authorized. However, the credit is limited to dwelling units and buildings that contain six dwelling units or less. In its Statement of Need and Reasonableness, the Department stated:

> The law prevents any renter who lives in an apartment building which contains more than six dwelling units or apartments from qualifying for the energy credit.

The rule, as so explained, is ambiguous because it is not clear whether one who rents a condominium or townhouse would qualify for the credit. Since townhouses and condominiums "used by the taxpayer as a residence" qualify as buildings under subdivision 14, it would appear that renters of such condominiums or townhouses regardless of the number of other dwelling units in the same building qualify for the credit under the statute. It is suggested, therefore, that the rule be amended to clarify that point. The rule could read:

> Individuals who rent a dwelling unit as their residence can claim this credit. The dwelling unit, except in the case of the rental of condominiums or townhouses, must be located in a building that contains six dwelling units or less.

Special allocation provisions are included in the rule for those dwellings or buildings which have multiple uses, and swimming pools are specifically treated as a nonresidential use for purposes of the rule. These allocation

provisions which do not apply to biomass conversion equipment[1] are taken from the Internal Revenue Code of 1954, Section 44C(c) (7)(D) adopted by reference in subdivision 14. As such, they are authorized, reasonable and necessary.

10. The rule at subsection A.2. limits the credit to purchases of renewable energy source equipment or earth sheltered dwellings and leasing expenses themselves do not qualify. In this respect, the rules follow proposed federal regulations disallowing such leasing expenses and are a consistent and reasonable exercise of the Commissioner's authority to qualify the credit. The Department pointed out that the legislature in subdivision 14 adopted Section 44C(e) by reference, thereby requiring a basis adjustment to property on which the energy credit is claimed and it argues that such a provision would not have been necessary if the credit applied to equipment that was leased. Standing alone, that is not a persuasive showing of legislative intention insofar as leasing expenditures are concerned, but the Commissioner's decision to so limit the credit is nonetheless a reasonable exercise of his discretion under subdivision 14.

11. Under subsection A.4., the credit is limited to a maximum aggregate amount of $2,000 for all years. While this provision is different from its federal counterpart which limits expenses on particular dwelling units to particular amounts, it is clearly consistent with the plain language of subdivision 14, and is, therefore, a necessary and reasonable provision.

12. Subsection A.6. provides that shareholders of family farm corporations are allowed to claim the energy credit "notwithstanding the fact that an earlier provision of the law limits three of the four parts of this credit to individual taxpayers."[2] In explaining this result, the Statement of Need and Reasonableness provides, commencing on page seven, as follows:

> The law has conflicting provisions in that the first paragraph of the law limits three parts of the energy credit to expenditures made by an individual taxpayer. A later paragraph of the law allows family farm corporation shareholders to receive the energy credit "in the same manner and to the same extent allowed a joint owner of property under clause (a)." Clause (a) is the piggybacked federal renewable energy source credit. Therefore, it is reasonable to assume that the legislature intended to adopt by reference the provisions of the Internal Revenue Code section 44C(d)(1) which refers to joint occupants and also to dwelling units used as a principal residence. For these reasons it seems reasonable to conclude that the legislature intended to allow the energy credit to shareholders such as a farm family who form a family farm corporation. It is assumed that the legislature intended to allow these individuals to receive the energy credit on expenditures whey incurred on their principal residence. The legislature has enacted a similar special provision allowing property tax homestead classification for a homestead occupied by a shareholder of a family farm corporation (see Minn. Stat. Section 273.13, subd. 6(a). For all these reasons the rule makes it clear that the special provision for

---

[1]None of the residence requirements apply to biomass conversion equipment expenditures because such expenditures are used to produce energy for commercial, agricultural or residential structures, are not directly related to the dwellings themselves, and can be claimed by persons other than individual taxpayers.

[2]The Department could delete the quoted language because it is not necessary for an understanding of the rule and merely raises doubts concerning its validity.

family farm corporation shareholders supersedes the earlier restriction and that these shareholders qualify for the entire credit to the same extent as an individual.

The Hearing Examiner does not consider the provisions of subdivision 14 to be conflicting insofar as the shareholders of family farm corporations or partners in partnerships operating family farms are concerned. On the contrary, the rule quite plainly provides that said shareholders and partners "shall be eligible for the credit provided by this subdivision" to the manner and extent that joint owners are allowed the federal renewable energy credit under Section 44C of the Internal Revenue Code of 1954. This language quite clearly requires shareholders in family farm corporations and partners in partnerships operating family farms to be treated as individual taxpayers. The allusion to joint owners under federal law is merely a reference to the method by which the partners or shareholders share of the state credit is calculated. It is calculated in the same manner as the joint owners credit is calculated under Section 44C(d)(1) which was adopted by reference in the very next paragraph of subdivision 14. Thus, the Department's adoption of the language contained in subdivision A.6., insofar as shareholders of family farm corporations and partners and partnerships operating family farms is concerned, is clearly proper.

However, extension of the credit to the partners of all partnerships appears to be inconsistent with subdivision 14, which limits the credit only to "partners and partnerships operating a family farm". If the legislature had intended all partners to qualify, it would most likely have said so. It would be reasonable to exclude most partnerships because, except for farming operations, partnerships seldom own, rent or improve the principal residences of the partners themselves. For these reasons, the extension of the credit to partnerships generally seems inconsistent with subdivision 14 and such extension should await a clearer statement from the legislature. After all, there is a difference between partnerships operating family farms and partnerships generally. The same comments would be applicable to shareholders of corporations other than family farm corporations which were specifically mentioned in the law; however, the rule properly allows expenditures by small business corporations (Subchapter S, Corporations) only for biomass conversion equipment.

13. Section A.8. provides that the Department on behalf of a "requesting taxpayer", shall give a copy of that taxpayer's energy credit form to the Minnesota Energy Agency so that both the Department and the taxpayer may receive technical advice from the Energy Agency. This provision permits a taxpayer to waive the income tax security provisions of Minn. Stat. § 290.61 (1978), and enables the Energy Agency to compile information on the use of the credit in this state. The Agency has requested that such a provision be included in these rules, and it enables the Department to obtain expert comment on claimed credits. As such, the rule, which merely codifies existing practice, is a necessary and reasonable exercise of the Commissioner's authority. It is suggested, however, that the language be amended to provide that the taxpayer's form will be submitted to the Energy Agency only at the taxpayer's

"written" request. Such waivers should be in writing for the protection of the Department and the individuals involved.

The remainder of subsection A. specifies which taxpayers qualify for the credit and how various expenditures can be allocated between various joint taxpayers, and it also defines certain technical terms and explains the interrelationship between the energy credit and other credits available under state law. These other provisions are all reasonable and necessary clarifications of the credit, and insofar as the division of expenditures between shareholders is concerned, implement Section 44C(d) which was adopted by reference in subdivision 14.

14. Subsection B. pertains to the so-called piggybacked federal renewable energy credit and allows the state credit in those cases where a federal credit is permitted under Section 44C of the Internal Revenue Code of 1954, as amended through December 31, 1978. This provision is consistent with subdivision 14 and a necessary and reasonable exercise of the Commissioner's authority.

15. Subsection C. pertains to the expenditures for earth sheltered dwelling units which qualify for the energy credit and specifies which expenses and what structures qualify for the credit. Generally speaking, all expenses incurred in order to construct the earth sheltered dwelling unit are covered including the cost of materials, labor and other construction costs. However, interest costs (such as those incurred during construction) are not covered under this rule as was explained to Mr. Michael Philipp of the Sierra Club in response to his question on that point. Since interest is a common construction cost, it might be helpful to clarify the Department's intent and the scope of the rule by amending the language in subsection C. to provide that ". . . material, labor and other construction costs except interest" are covered.

Mr. John Berg, Technical Manager of the Energy Control Project at the 3M Company, asked the panel why above-grade homes which meet or exceed the "R" and "U" values of earth sheltered dwellings are not eligible for the credit. It was clearly explained that such a credit is unauthorized under subdivision 14 and outside the scope of the Department's rulemaking authority.

16. An earth sheltered dwelling unit is one constructed in accordance with the Minnesota Building Code, which the rules incorporate by reference as authorized by Order of the Chief Hearing Examiner dated November 2, 1979. Mr. Philip D. Brick of Duluth, Minnesota, questioned such a provision in light of the "resounding defeat" that the Code has suffered in the counties where referendums on its adoption have been held pursuant to Minn. Stat. § 16.868 (1979 Supp.). Notwithstanding such referendums, the State Building Code is still in effect in all metropolitan counties and in many cities throughout the state. Its provisions have been found reasonable in a number of public hearings and its adoption fulfills the Department's need for a statewide standard for determining when the credit is available. Not only does the adoption of the State Building Code help taxpayers know how to get a credit, it provides the Department with an easy standard to administer and audit. Under the circumstances, the rule is certainly a necessary and reasonable

exercise of the Department's authority, and it is not inconsistent with Minn. Stat. § 16.868 (1979 Supp.). That latter enactment gave counties the local option to decide whether the construction of buildings generally should follow the provisions of the State Building Code, and it was not meant to give counties the authority to determine for purposes of an income tax credit whether the standards of the State Building Code applicable to earth sheltered dwellings should or should not be followed.

17. In addition to the State Building Code, the rules repeat the requirements on earth sheltered dwellings which are found in subdivision 14, clauses (b)(1) - (3), and elaborates upon them. The repetition of statutory language in this case is crucial for a taxpayer's proper understanding of the meaning and effect of the rules and is, therefore, allowable under Minn. Stat. § 15.0412, subd. 1 (1978). While the Department has substituted the word "roof" for the word "wall" in clause (b)(1), such a substitution was necessary in order to correct a typographical error appearing in the law which rendered its provisions hopelessly inconsistent and senseless. As such, the Department's construction of the law changing the word "wall" to "roof" where necessary was reasonable and proper under the circumstances. Provisions in this subsection require that earth sheltered dwellings must be covered with and insulated by a specified amount of earth. However, the rule makes it clear that the general earth-depth requirements applicable to roofs generally do not apply to garages. For purposes of energy conservation, the Department could further elaborate on this provision by applying the depth requirements to heated garages which the rule does not do. This could be accomplished by amending the second sentence of the second paragraph of subsection C. to read as follows:

> The roof area that must be covered with earth does not include the roof area for a garage, unless heated.

Those portions of the exterior walls and roof of the sheltered earth dwelling not covered with a minimum of seven feet of earth must have additional insulation which is set out in detail. Mr. Berg questioned the requirement of Section 1.6020 C.2.b. prohibiting a glazing (window) area in excess of 10 percent of the floor area of the room in which it was installed. However, as was pointed out by Energy Agency Staff, such a requirement while not as flexible as the ASHRAE standards[3] was necessary because large portions of the walls of the dwellings could be below grade and all exposed walls could consist entirely of windows. Such a result would not be energy efficient and had to be curtailed. The 10 percent provision was necessary for that reason. While the glazing area in a room may not generally exceed 10 percent of the floor space, an exception exists which permits the glazing area to exceed the 10 percent limitation in the case of collection aperature glazing for a passive solar system. This, of course, is eminently reasonable because passive solar systems need exposure to the sun and require a rather large collection aperature. However, to avoid abuses, the amount of permitted

---

[3]ASHRAE means the standards adopted by the American Society of Hearing, Refrigeration and Air Conditioning Engineers which have been adopted in Minnesota.

glazing area is reduced by the amount of collection aperature glazing that is used for a passive solar system.

18. For purposes of clarification, the Energy Agency submitted the following amendments to Section 1.6020 C.2. and C.2.b. subsequent to the hearing. Their proposed amendments read as follows:

> 13 MCAR Sect. 1.6020.C.2. The wall which is above grade and which is not covered with a minimum of 7 horizontal feet (2.1 m) of earth and which is not part of a passive solar system (see section E) must meet the following criteria:
>
> > 13 MCAR 1.6020.C.2.b. Sentence 2. The maximum glazing area for a room shall be reduced by the amount of collection aperature glazing, as defined in section E, installed in that room.
>
> The passive solar system and the collection aperature glazing are defined in Section E. The source of those definitions should be identified in this section C, so that the reader is aware that the definitions follow.

19. Section 1.6020 D. further defines the meaning of biomass conversion equipment to mean that equipment which produces the requisite liquid or gaseous energy which can "sustain combustion, by itself, in air." The quoted language is the generally accepted definition of fuel, and is consistent with the legislative intention of encouraging expenditures in energy-saving equipment and alternative sources of energy. If the fuel produced by the machinery that qualifies for this credit could not produce a fuel capable of sustaining combustion in air, the purpose of granting the credit would not have been fulfilled. For these reasons, the conditions imposed by the rule are necessary and reasonable. It was also reasonable for the Department to limit the credit to equipment located within the State of Minnesota because it would be absurd to grant a credit to equipment located outside of the state. While Mr. Philipp questioned the rules' ban on the sale of fuels produced, that provision was derived from subdivision 14 itself, and cannot be changed by the Department in rulemaking proceedings.

20. Section 1.6020 E. pertains to passive solar energy systems which qualify for a credit. Qualifying systems are those which utilize the sun's energy and the existing systems of a building to heat or cool the building involved. The passive system must include a collection aperature and a storage element and may include a control and distribution element and a retention element. The rules of the Department further define the various elements of passive solar systems which qualify for the credit and impose certain energy-related requirements. All of the provisions are necessary and reasonable in order to meet the energy objectives the legislature had in mind in enacting subdivision 14, and no one objected to any of the various requirements involved.

After the close of the hearing, the Minnesota Energy Agency submitted to the Hearing Examiner a proposed amendment of subsection E.2. in order to clarify the confusion that could arise under the current language of that subsection insofar as passive solar systems which are partially shaded is concerned. Their proposed amendment is as follows:

E.2. Double glazing material ~~installed in walls which face~~ facing south, plus or minus 30 degrees, in exterior walls, and fully exposed to the sun for at least four hours on December 21, during which time the sun must pass through an imaginary vertical plane drawn perpendicular to the glazing.

The panel did point out in response to a question from Mr. Howard Noziska of the Minnesota Masonry Institute that a prestressed concrete floor could qualify as a storage element (thermal mass) if it met the other requirements of the rules. However, it should be pointed out that strict compliance with the criteria set forth in the rules is not necessary if the taxpayer can demonstrate that the system he installs achieves better performance. In order to obtain credit in those cases where a nonconforming system is constructed, the taxpayer must obtain approval from the Director of the Minnesota Energy Agency and procedures are set forth for obtaining his approval. This provision is certainly a reasonable one and gives the rules and the taxpayers of the state a great deal of flexibility.

CONCLUSIONS

1. Due, timely and adequate legal notice of the hearing was properly served and published by the Department.

2. The Agency fulfilled all relevant substantive and procedural requirements imposed by rule or law, and obtained authorization from the Chief Hearing Examiner to incorporate provisions of the State Building Code in the proposed rules.

3. The Department has demonstrated the need for and the reasonableness of the proposed rule.

4. With the exceptions noted in the Findings, the Department has demonstrated its statutory authority to adopt the proposed rule.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

RECOMMENDATION

That the proposed rule be modified as suggested in the Findings, and that as so modified, it be adopted.

Dated: January 23, 1980.

JON L. LUNDE
Hearing Examiner

[redacted]-80-035-JL

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF REVENUE

IN THE MATTER OF THE PROPOSED)
ADOPTION OF RULES OF THE DE-)
PARTMENT OF REVENUE RELATING)
TO AN INCOME TAX ENERGY CREDIT)
14 MCAR § 1.6020.)

SUPPLEMENTAL ORDER
OF THE
CHIEF HEARING EXAMINER

WHEREAS, on February 1, 1980, the Department of Revenue submitted the above-entitled rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, subd. 4, and 9 MCAR § 2.110; and

WHEREAS, on February 4, 1980, the Chief Hearing Examiner issued his report finding that the rules as proposed to be adopted were not substantially different from those proposed at the public hearing and that the Department of Revenue had met all requirements of Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Department of Revenue subsequently submitted the rules and the record of the proceedings to the Attorney General for his review as to form and legality pursuant to Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Attorney General recommended to the Department of Revenue that certain of the rules be amended; and

WHEREAS, the Department of Revenue has now resubmitted the rules to the Chief Hearing Examiner for his review; and

WHEREAS, the Chief Hearing Examiner finds that the changes made in the rules do not make the rules substantially different from those proposed at the public hearing.

NOW, THEREFORE, upon receipt of this report, the Department of Revenue has the responsibility of resubmitting the complete hearing record and the rules as adopted by the Department to the Attorney General, notifying all persons who requested to be informed that the hearing record has been resubmitted to the Attorney General, and publishing in the State Register, all pursuant to Minn. Stat. § 15.0412, subd. 4.

Dated this 26th day
of February, 1980.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF REVENUE

IN THE MATTER OF THE PROPOSED)
RULE OF THE DEPARTMENT OF)
REVENUE, INCOME TAX DIVISION,)
GOVERNING THE ENERGY CREDIT.)

ORDER OF THE
CHIEF HEARING EXAMINER

WHEREAS, on October 26, 1979, the Department of Revenue, Income Tax Division (hereinafter "Division"), by it attorney, Dale Busacker, submitted a request to the Chief Hearing Examiner for approval of the incorporation by reference of the Minnesota Building Code (2 MCAR §§ 1.10001 - 1.18901) in the rule to be proposed; and

WHEREAS, pursuant to Minnesota Statutes 1978, § 15.0412, subd. 4, agencies may incorporate by reference provisions of federal law or rule or other materials from sources which the Chief Hearing Examiner determines are conveniently available for viewing, copying and acquisition by interested persons; and

WHEREAS, the Chief Hearing Examiner has reviewed the Minnesota Building Code and has found it to be in excess of 3,000 words and has determined that it would exceed five pages of publication in the State Register; and

WHEREAS, the Division has stated that the Building Code is a part of the Minnesota Code of Agency Rules at 2 MCAR §§ 1.1001 - 1.18901 which is available at legal libraries throughout the state and can be purchased at the State Documents Section, the Chief Hearing Examiner thus finds that the document is thereby conveniently available for viewing, copying and acquisition by interested persons.

NOW, THEREFORE, IT IS ORDERED, that the Division shall have the approval of the Chief Hearing Examiner to incorporate by reference in the proposed rule the above-referenced document.

Dated this 2nd day
of November, 1979.

Duane R. Harves
DUANE R. HARVES
Chief Hearing Examiner

Agency Exhibit No. 9
File No. DR-80-035-JL
Date 12-17-79

DR-80-035-JL

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF REVENUE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF REVENUE RELATING TO AN INCOME TAX ENERGY CREDIT 14 MCAR § 1.6020.	ORDER OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on December 17, 1979, before Jon L. Lunde, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Report of the Hearing Examiner made pursuant to Minn. Stat. § 15.052, subd. 3, was issued to the Department of Revenue on January 23, 1980; and

WHEREAS, the Department of Revenue has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Department of Revenue has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, subd. 4, and 9 MCAR § 2.110; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Department of Revenue has met all requirements of Minn. Stat. § 15.0412, subd. 4.

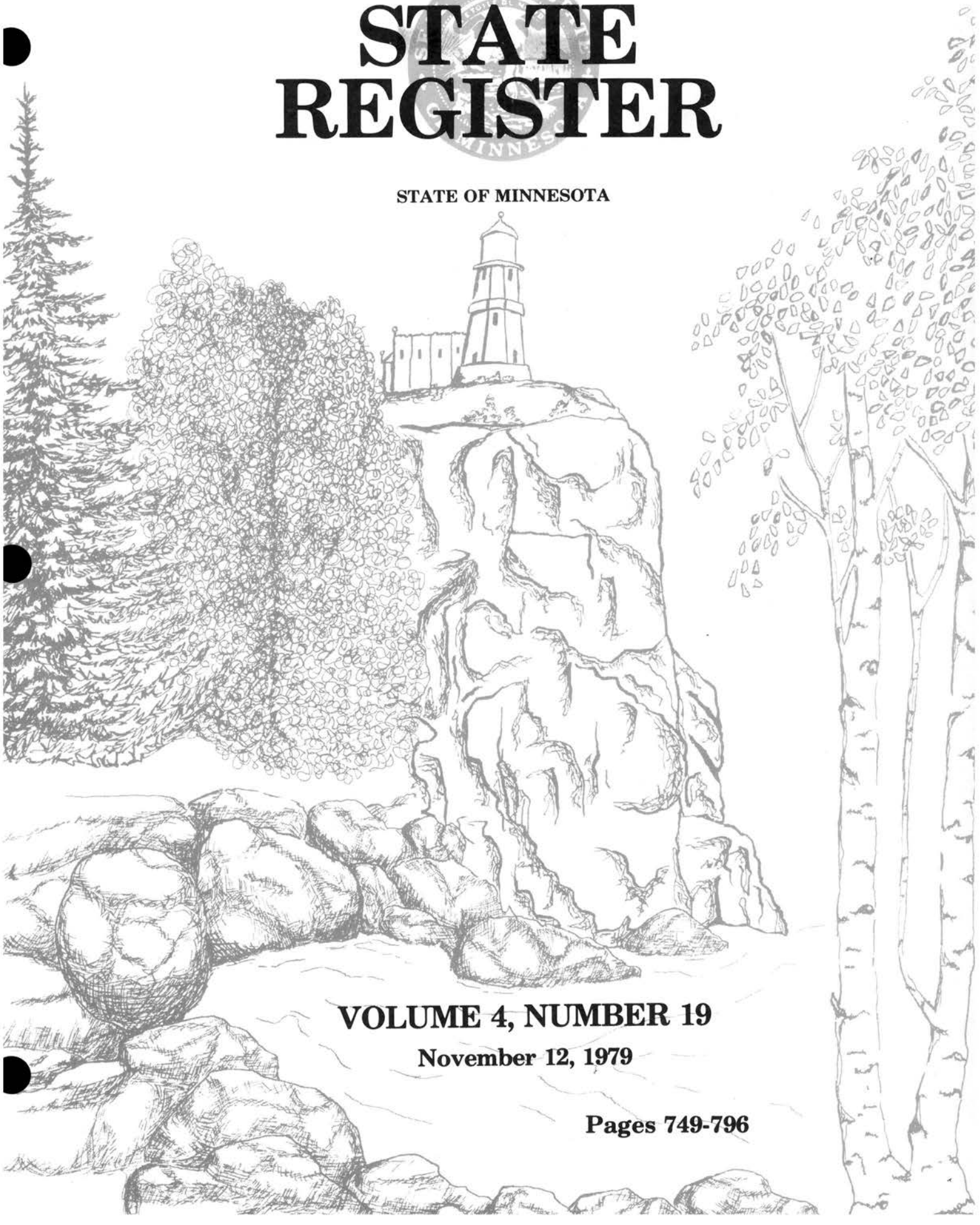
NOW, THEREFORE, upon receipt of this Report, the Department of Revenue has the responsibility of submitting the complete hearing record and the rules as adopted by the Department to the Attorney General, notifying all persons who requested to be informed that the hearing record has been submitted to the Attorney General, and publishing in the State Register, all pursuant to Minn. Stat. § 15.0412, subd. 4.

Dated this 4th day
of February, 1980.

DUANE R. HARVES
Chief Hearing Examiner

STATE REGISTER

STATE OF MINNESOTA



VOLUME 4, NUMBER 19

November 12, 1979

Pages 749-796

STATE REGISTER

Volume 4 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 4		
20	Monday Nov 5	Tuesday Nov 13	Monday Nov 19
21	Tuesday Nov 13	Monday Nov 19	Monday Nov 26
22	Monday Nov 19	Monday Nov 26	Monday Dec 3
23	Monday Nov 26	Monday Dec 3	Monday Dec 10

*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 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, Suite 415, Hamm Building, 408 St. Peter Street, St. Paul, Minnesota 55102.

The *State Register* is published by the State of Minnesota, Office of the State Register, Suite 415, Hamm Building, 408 St. Peter Street, St. Paul, Minnesota 55102, pursuant to Minn. Stat. § 15.0411. Publication is weekly, on Mondays, with an index issue in August. In accordance with expressed legislative intent that the *State Register* be self-supporting, the subscription rate has been established at $110 per year, and $85 per year for additional subscriptions, postpaid to points in the United States. Second class postage paid at St. Paul, Minnesota, Publication Number 326630. (ISSN 0146-7751) No refunds will be made in the event of subscription cancellation. Single issues may be obtained at $2.25 per copy.

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

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

Albert H. Quie
Governor

James J. Hiniker, Jr.
Commissioner
Department of Administration

Stephen A. Ordahl
Manager
Office of the State Register

Carol Anderson Porter
Editor

Paul Hoffman, Robin PanLener, Jean M. Walburg
Editorial Staff

Roy Schmidtke
Circulation Manager

Cindy Riehm
Secretarial Staff

Cover graphic: *Split Rock Lighthouse*, pen and ink drawing by Barbara J. Peterson.

CONTENTS

MCAR AMENDMENTS AND ADDITIONS 752

RULES

Department of Education Vocational-Technical Division
Adopted Temporary Rules Governing Post-Secondary Vocational-Technical and Adult Vocational-Technical Education 753

Ethical Practices Board
Adopted Rules Related to Economic Interest Disclosure 753

Department of Natural Resources
Adopted Rules Providing Criteria for Regulating Agricultural Dike Construction Along the Red River of the North and Bois de Sioux Rivers 753

Department of Revenue
Adopted Rules Governing the Ad Valorem (Property) Taxes Imposed on Utility Companies 756

PROPOSED RULES

Public Hearings on Agency Rules
November 15-19, 1979 757

Department of Public Safety Driver License Division
Certification of Motor Vehicle Insurance 757

Department of Public Welfare
Proposed Temporary Rules Governing the Minnesota Merit System 759

Department of Public Welfare Social Services Division
Proposed Amendment of Foster Care for Children Rule and Proposed Adoption of a New Child Protective Services Rule 759

Department of Revenue
Proposed Rules Relating to An Income Tax Energy Credit (13 MCAR § 1.6020) 771

Department of Transportation
Proposed Amendment of Rules Governing Weight Limitations on Interstate Highways & Designated Routes 775

OFFICIAL NOTICES

Ethical Practices Board
Advisory Opinion #58 Concerning Employment Practices — Bona Fide Occupational Qualification 783

Pollution Control Agency
Notice of Intent to Solicit Outside Opinion on Revised Design Criteria for Land Application of Wastewater Effluents 785

Pollution Control Agency
Notice of and Order for Hearing Regarding Application by the City of Winsted for A Variance from Rule WPC 14 (c) (6) for Its Existing and Proposed Municipal Wastewater Treatment Facility 785

Department of Public Welfare Mental Health Bureau
Notice of Intent to Solicit Outside Opinion Regarding the Proposed Rule Governing the Administration of Developmental Achievement Centers and Services for Persons Who Are or May Be Mentally Retarded or Cerebral Palsied 786

Notice of Intent to Solicit Outside Opinion Concerning Proposed Rule Governing Grants for Community Support Services 787

Department of Transportation
Notice of Application and Opportunity for Hearing Regarding Petition of Chicago and North Western Transportation Company for Authority to Retire and Remove An Unnumbered Track Located at Faribault, MN 787

Notice of Application and Opportunity for Hearing Regarding Petition of Chicago and North Western Transportation Company for Authority to Retire and Remove I.C.C. Track Nos. 6, 13 and 14, Including Turnouts, All Located at Red Wing, MN 788

Water Resources Board
Notice of Public Hearing Concerning Petition to Make Boundary Changes in Middle River-Snake River Watershed District 788

STATE CONTRACTS

Cable Communications Board
Notice of Request for Proposals for Technical and Analytical Services for Interconnection of Cable Communications Systems 789

Department of Economic Security Office of Statewide CETA Coordination
Notice of Request for Proposals for Operation of Displaced Homemaker Programs 789

Department of Health Community Services Division
Notice of Request for Proposals for Technical Services Contract 789

Higher Education Coordinating Board
Notice of Request for Proposals for Development of a Computer Based Model for Projecting the Supply of Nurses 790

Department of Transportation Administration Division
Notice of Request for Proposals for Maintenance Management Information Analysis 791

SUPREME COURT
Decisions Filed Friday, November 2, 1979 791

MCAR AMENDMENTS AND ADDITIONS

All adopted rules published in the *State Register* and listed below amend rules contained in the Minnesota Code of Agency Rules (MCAR). Both proposed temporary and adopted temporary rules are listed here although they are not printed in the MCAR due to the short-term nature of their legal effectiveness.

The *State Register* publishes partial and cumulative listings of all proposed and adopted rules 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; and issue 52, cumulative for 1-52. The listings are arranged in the same order as the table of contents of the MCAR.

TITLE 4 COMMERCE

Part 6 Accountancy Board

4MCAR § 6.110 (adopted temporary) 736

TITLE 5 EDUCATION

Part 1 Education Department

EDU 641 (proposed) 573

5 MCAR §§ 1.0100-1.0105, 1.01051, 1.0106-1.0118, 1.01101-1.01102 (proposed) 708

5 MCAR §§ 1.0104, 1.01051 (adopted temporary) 753

5 MCAR §§ 1.0800, 1.0805 (proposed temporary) 707

5 MCAR §§ 1.0900-1.904 (proposed) 573

Part 3 Teaching Board

5 MCAR §§ 3.001, 3.060, 3.102-3.103, 3.108, 3.114 (proposed) 543

5 MCAR § 3.002 (withdrawn) 572

5 MCAR § 3.106 (adopted) 540

5 MCAR § 3.142 (adopted) 572

TITLE 6 ENVIRONMENT

Part 1 Natural Resources Department

6 MCAR §§ 1.0057-1.0058, 1.5030-1.5034 (adopted) 685

6 MCAR § 1.5400 (adopted) 753

Part 4 Pollution Control Agency

SW 11 (proposed) 579

6 MCAR §§ 4.0033, 4.0040 (proposed) 622

TITLE 7 HEALTH

Part 1 Health Department

7 MCAR §§ 1.210-1.211, 1.217-1.224 (adopted) 601

7 MCAR §§ 1.327-1.328 (proposed) 577

7 MCAR §§ 1.536-1.538 (proposed) 719

TITLE 9 LAW

Part 1 Ethical Practices Board

9 MCAR §§ 1.0100-1.0111 (adopted) 753

TITLE 10 PLANNING

Part 1 State Planning Agency

10 MCAR §§ 1.300-1.305 (adopted) 541

TITLE 11 PUBLIC SAFETY

Part 1 Public Safety Department

11 MCAR §§ 1.0188-1.0196 (adopted) 699

11 MCAR §§ 1.4051-1.4056, 1.4061-1.4062 (proposed) 757

TITLE 12 SOCIAL SERVICE

Part 2 Public Welfare Department

12 MCAR § 2.047 (adopted temporary) 701

12 MCAR § 2.047 (proposed) 737

12 MCAR § 2.049 (adopted) 703

12 MCAR §§ 2.204, 2.207 (proposed) 759

12 MCAR §§ 2.490a, 2.491a (proposed temporary) 759

Part 3 Housing Finance Agency

12 MCAR §§ 3.002, 3.052, 3.063, 3.070-3.074 (proposed) 704

TITLE 13 TAXATION

Part 1 Revenue Department

13 MCAR §§ 1.0001-1.0007 (TaxAdVal 1-7) (adopted) 756

13 MCAR § 1.6020 (proposed) 771

TITLE 14 TRANSPORTATION

Part 1 Transportation Department

14 MCAR §§ 1.3001-1.3043 (proposed) 628

14 MCAR §§ 1.5050 (proposed) 775

RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 15.0412, subd. 4, have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

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

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

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 15.0412, subd. 5. Notice of his decision will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under subd. 4.

Department of Education Vocational-Technical Division

Adopted Temporary Rules Governing Post-Secondary Vocational-Technical and Adult Vocational-Technical Education

The proposed temporary rules (5 MCAR § 1.0104 and 5 MCAR § 1.01051) published at *State Register*, Volume 4, Number 8, pp. 215-217, August 27, 1979 (4 S.R. 215) were adopted on October 10, 1979, approved by the Office of the Attorney General on October 22, 1979, and filed with the Office of the Secretary of State on October 24, 1979. The rules were adopted as proposed, without amendment.

Ethical Practices Board

Adopted Rules Related to Economic Interest Disclosure

The Economic Interest rules published and proposed at *State Register*, Volume 3, Number 42, pp. 1929-1933, April 23, 1979 (3 S.R. 1929) were adopted by the Ethical Practices Board on September 28, 1979; approved by the office of the Attorney General on October 19, 1979; and filed with the Secretary of State on October 22, 1979, with the following amendment:

Rule as Adopted

9 MCAR § 1.0105 Late filing fees.

A. The Board shall send a delinquency notice by certified mail to a public official or candidate within ten business days after a filing date. If a certified letter is returned by the post office to the Board as refused, then the letter shall be deemed to have been received by the addressee~~.~~ on the date refused. The late filing fee will then commence accumulating on the eighth day after refusal. A certified letter returned to the Board as undelivered or refused shall be forwarded by first class mail to the public official or candidate. ~~and shall be deemed to have been received 7 days after the first class mailing.~~ The late filing fee for an undelivered notice will commence on the eighth day after the notice is deposited in first class mail.

Department of Natural Resources

Adopted Rules Providing Criteria for Regulating Agricultural Dike Construction Along the Red River of the North and Bois de Sioux Rivers

The rules proposed and published at *State Register*, Volume 2, Number 37, pp. 1733-1736, March 20, 1978 (2 S.R. 1733) are adopted, with the changes indicated below.

Rules as Adopted

~~FIRST AMENDMENT TO~~

~~JOINT AND COOPERATIVE AGREEMENT FOR THE ESTABLISHMENT OF CRITERIA FOR AUTHORIZING DIKES AND OTHER FLOOD CONTROL STRUCTURES AND MEASURES ON THE RED RIVER OF THE NORTH AND THE BOIS DE SIOUX RIVER~~

~~1. Article IV of the agreement is hereby amended by the deletion of the existing article and the insertion of the following new article.~~

~~IV. JOINT DIKE CRITERIA FOR AGRICULTURAL DIKE CONSTRUCTION~~

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. **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."

6 MCAR § 1.5400 Criteria for regulating agricultural dike construction along the Red River of the North and Bois de Sioux Rivers.

A. General purpose.

1. The purpose of these ~~criteria~~ rules is to provide for the orderly and consistent review of permit applications to construct, relocate, rebuild or alter agricultural dikes along the Red River of the North and Bois de Sioux Rivers in order to assure that the granting of such permits would be in the best interests of the people of Minnesota and North Dakota. These ~~criteria would be~~ rules are mutually applicable in both states. The authority to establish these joint criteria is granted to the Commissioner of Natural Resources in Minn. Stat. §§ 105.42, 105.49 and 471.59 and to the North Dakota State Water Commission by Sections 61-02-24 and 61-16-15 of the North Dakota Century Code. The two states recognize that establishment of these ~~criteria~~ rules governing the issuance, review and denial of permits to construct, relocate, rebuild or alter agricultural dikes along the boundary rivers is but the first step in the exercise of joint control over those activities which could contribute to an increased flood potential of these rivers. The two states further recognize the need to exercise this joint control in that water management decisions which appear logical in a local or statewide context may have negative interstate and international impacts.

2. ~~The criteria herein~~ These rules are being established at this time because there is a current need to provide a basis for the review of existing, unauthorized agricultural dikes and permit applications for the construction of additional agricultural dikes along the boundary waters. Local landowners view such dikes as interim solutions to local flood problems.

B. Jurisdiction. These ~~criteria~~ rules governing the review, issuance and denial of permits to construct, relocate, rebuild or alter agricultural dikes along the boundary rivers pertain to all such dikes located within the flood plains of the Red River of the North and the Bois de Sioux Rivers. Floodplain areas of the Red River of the North are defined by Appendix O, Volume 8 of the Souris-Red-Rainy Basins Comprehensive Study as "Red River of the North Main Stem Regional Floodplain Area" and the floodplain of the Bois de Sioux River is defined by the U.S. Geological Survey one percent chance of recurrence area flood quadrangles. These ~~criteria~~ rules apply to dikes constructed on tributaries within the floodplains of these boundary rivers. These rules shall be superseded by local authority adoption of Commissioner approved floodplain ordinances which include agricultural diking provisions as conditional uses.

C. Definitions. For the purposes of these ~~regulations~~ rules certain terms or words used herein shall be interpreted as follows:

1. "Boundary rivers" means the Red River of the North and the Bois de Sioux River as they form a natural boundary between the States of Minnesota and North Dakota.

2. ~~"Agricultural Dike" or~~ "Dike" means an embankment constructed of earth and/or other suitable materials to protect agricultural lands ~~from frequently recurring floods (10-year frequency or more often) which result from overflow of watercourses or from diffused surface waters~~.

3. "Farmstead" means a farm dwelling~~, adjacent~~ and or associated farm buildings ~~and those nontillable acres adjacent to the buildings~~.

4. "Flood frequency" means the average frequency, statistically determined, for which it is expected that a specific flood stage or discharge may be equalled or exceeded. This frequency is usually expressed as having a probability of occurring, on the average, once within a specified number of years.

5. "Flood waters" means those waters which temporarily inundate normally dry areas adjoining a watercourse. This inundation results from an overflow of the watercourse caused by excessive amounts of rainfall and/or snowmelt which exceed its capacity.

~~"Ring Dike" means an embankment constructed of each and/or other suitable materials which completely encloses a parcel of land.~~

6. "Public waters" means all natural and altered natural watercourses with a total drainage area greater than two square miles, except that trout streams officially designated by the Commissioner shall be public regardless of the size of their drainage area.

7. "Watercourse" means a channel in which a flow of water occurs either continuously or intermittently in a definite direction. The term applies to either natural or artificially constructed channels.

~~"Watercourse, Class I" means, in Minnesota, those natural watercourses serving as major drainage outlets, or major tributaries to those outlets, which are capable of serving a number of beneficial public purposes; smaller natural watercourses serving specific values such as trout streams and scenic waterways.~~

~~"Watercourse, Class II" means, in Minnesota, those natural watercourses serving as tributaries of Class I watercourses which are often perennial streams serving more than one beneficial public purpose.~~

D. Severability. The provisions of these ~~regulations~~ rules shall be severable, and the invalidity of any paragraph, subparagraph, or subdivision thereof shall not make void any other paragraph, subparagraph, subdivision, or any other part.

E. Design criteria.

1. Dike setbacks and elevations. Dikes are to be constructed at a location and elevation ~~sufficient distance from the river~~ so as not to cause an increase in ~~the~~ elevation ~~of flood water~~ of the ~~10~~ 100-year frequency flood of more than ~~one (1)~~ one-half (1/2) foot at any point along the river. ~~However, when the effect of the dike extends within the corporate limits~~

~~of any city the permitted increase in flood water elevation shall not exceed 0.5 feet within the corporate limits of the city.~~ Calculation of the effects of ~~proposed~~ the dikes shall be based on ~~the dikes being located on both sides of the boundary water~~ an assumed equal degree of encroachment along the opposite side of the river. ~~distance from the center of the channel.~~ If mutual agreement has been reached between applicants on both sides of the river, dikes on one side may utilize up to the entire increase in flood elevation allowable. ~~as to location of the dike, the "equal distance from the center" requirements may be waived providing the limit for increase in flood stage is met.~~ In all instances the applicants maintain the liability for damages resulting from any and all activities.

~~2. Dike Elevations. Dikes are to be designed and constructed so that they will be overtopped upon the occurrence of a flood that is one foot higher than the 10 year frequency flood at that point.~~

2. ~~3.~~ Dike dimensions. Dike top width shall not be less than six (6) feet. Side slopes shall not be steeper than 3:1, except where slope stability analysis and slope erosion control can justify steeper slopes. No organic soil or material shall be allowed in the foundation of the fill of dikes.

3. ~~4.~~ Vegetative cover and riprap. A protective cover of grasses shall be established on all exposed surfaces of the dike. Riprap shall be used where required for control of erosion.

4. ~~5.~~ Interior drainage. Dikes shall have provisions for interior drainage. The design shall include plans to handle the discharge from the drainage area based on drainage design requirements for the local area.

F. Hydrologic data for design. The North Dakota State Water Commission and the Minnesota Department of Natural Resources shall provide the discharges and corresponding elevations of the ~~10 year flood~~ various frequency floods (and other available flood data), in relation to known historic floods, for use in dike design.

G. Dikes across natural waterways and legal drains.

1. Dikes shall not be constructed across ~~Class I or Class II~~ public waters or watercourses without permit from the Commissioner of Natural Resources under Minn. Stat. § 105.42. ~~in Minnesota. Dikes shall not be constructed across the following rivers in North Dakota: Wild Rice, Sheyenne, Elm, Goose, Turtle, Forest, Park and Pembina. Dikes constructed across other natural waterways, streams or rivers in Minnesota and North Dakota shall have an opening capable of passing the summer storm having a four percent chance of recurrence and have an emergency spillway to prevent overtopping of the structure when the one percent (1%) summer storm occurs. Dike setbacks along tributary waterways, within the area defined in Section B of these criteria, to the boundary water shall meet the criteria as stated in Section E.~~

2. Dikes constructed across legal drains or public ditch systems shall require the approval of the appropriate local authority (watershed district county, city, etc.) ~~drain board, water management district or other local authority.~~

H. Farmstead diking. Within an existing dike system, ring dikes around individual farmsteads shall not require dike permits if they are not provided with tie-backs to existing roadways or dikes. Ring dikes provided with tie-backs shall be considered part of the overall dike system and will be required to secure diking permits. Outside the dike system there shall be no limitations on tie-backs of dikes around farmsteads. However appropriate authorization must be obtained from the local land use authority consistent with adopted codes or ordinances.

I. Administration.

1. Application for permit. All applications submitted by the owner to construct, to relocate, rebuild or alter dikes shall be made on forms provided by the Commissioner ~~Minnesota DNR or ND State Water Commission~~ and shall be accompanied by two (2) complete sets of plans or specifications. Such plans and specifications shall include the following:

a. A general location map with a minimum scale of 1″=800′ showing the following:

(1) Location of the dike with respect to the watercourse;

(2) Location of field inlets to provide for internal drainage; and

(3) Location of legal drains and natural channels tributary to the main river channel.

b. Detailed cross-sections of the dike showing elevations, in relation to mean sea level, and side slopes.

c. Other data as deemed appropriate by the Commissioner to properly evaluate the application for permit.

After review of the information required above and other available data, the state agency to which the application is made shall determine the location and number of required cross-sections of the river channel and overland areas. These locations shall be provided to the applicant who shall then provide the required cross-section data. The applicant shall undertake and agree to pay the expenses incurred in securing these cross-sections.

2. Joint permit applications. Joint permit applications involving two or more landowners or a permit application on behalf of two or more landowners will be accepted by the State agencies. These permit applications, taken together, must meet the above ~~criteria~~ rules.

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. **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."

~~3. Issuance of Permits. Dike permits will be issued only upon concurrent approval by the state and local government in which state the dikes are located. Approval of the permit will in no way relieve the owner from damages which may be caused or created by construction of the dikes.~~

3. ~~4.~~ Joint administration. A copy of each application for a permit shall be forwarded by the state agency receiving the initial application to the other state for comment and recommendation before final approval is granted. If no response is received within 30 days, the Commissioner shall process the permit without such comments or recommendations.

4. ~~5.~~ Permit revocation. The applicant shall provide for certification by a registered land surveyor, engineer, or other qualified person or agency that the finished dike elevations are not higher than those approved by the Commissioner ~~state agency to which the application was submitted~~. The permit will be revoked for failure to provide this certification.

The permit may be revoked for failure to construct the dike in accordance with the plans and specifications submitted. Structural alteration of the dike without permission of the appropriate state agency will also result in having the permit revoked.

5. ~~6. Dike Maintenance. All dikes must be adequately maintained to the required shape, height, and protective covering. All maintenance shall be the responsibility of the permit holder.~~ Reconstruction/maintenance. Reconstruction of any authorized dike may be performed after notification to the Commissioner of the repair needed. Permittee shall again certify the repair concurrent with this section. The maintenance of dikes must include periodic removal of woody vegetation (for example, trees and shrubs) which may become established on the embankment. ~~Design of the project shall include provisions of maintenance access.~~

6. General administration. All applicants for permits to construct dikes shall be subject to the provisions of 6 MCAR § 1.5026.

J. Exception to the criteria. Under special circumstances, exceptions to the dike ~~criteria~~ rules may be authorized on an individual basis but they must have the concurrent approval of the N.D. State Engineer, local water management board in North Dakota, Minnesota Department of Natural Resources and local watershed district in Minnesota. Factors that will be considered include but shall not be limited to dike setback line, location of farmsteads, property lines, existing roads, stream velocity, environmental effects, and acquisition of flowage rights. ~~increase in flood stage, increase of stage at existing city dike, increase in stream velocity and environmental affects.~~ Request for exceptions must be accompanied by a plan satisfactory to all agencies.

K. Application to existing dikes.

1. These ~~criteria~~ rules shall apply to all unauthorized dikes constructed in the past for the protection of those agricultural lands located within the floodplains of the Red River of theNorth and the Bois de Sioux, as defined in section B. of these ~~criteria~~ rules. Exceptions are farmstead dikes if they meet the provision of Section H. of these ~~criteria~~ rules.

2. The Commissioner shall have the authority to order removal, modification, or reconstruction of dikes not conforming to these rules.

~~V. Removal of unauthorized dikes.~~

~~Parties to this agreement hereby agree that they shall immediately take whatever steps are necessary and available to remove unauthorized dikes adjacent to the boundary rivers not meeting the criteria contained in part IV above.~~

~~STATE OF MINNESOTA~~

~~Commissioner Department of Natural Resources~~

~~DATE:~~

~~STATE OF NORTH DAKOTA~~

~~State Engineer~~
~~State Water Commission~~

~~DATE:~~

Department of Revenue

Adopted Rules Governing the Ad Valorem (Property) Taxes Imposed on Utility Companies

The rules published as proposed rules at *State Register*, Volume 3, Number 43, pp. 1984-1989, April 30, 1979 (3 S.R. 1984) were adopted without amendments, approved by the Attorney General on October 19, 1979, and filed with the Secretary of State on October 22, 1979.

PROPOSED RULES

Pursuant to Minn. Stat. § 15.0412, subd. 4, agencies must hold public hearings on proposed new rules and/or proposed amendment of existing rules. Notice of intent to hold a hearing must be published in the *State Register* at least 30 days prior to the date set for the hearing, along with the full text of the proposed new rule or amendment. The agency shall make at least one free copy of a proposed rule available to any person requesting it.

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Public Hearings on Agency Rules November 15-19, 1979

Date	Agency and Rule Matter	Time & Place
Nov. 15	Pollution Control Agency Exemption for Sparsely Populated Areas from Certain Sanitary Landfill Operating Standards	10:00 a.m., Detroit Lakes Area Vocational Technical Institute, Multi-purpose Room. South One-half Highway 34 East of Detroit Lakes, MN
Nov. 15	Same as above	7:00 p.m., Itasca Community College, Wilson Hall, Rm. 137, Rt. 3 East of Grand Rapids, MN
Nov. 19	Same as above	10:00 a.m., Pollution Control Agency Board Rm., 1935 W. Co. Rd. B2, Roseville, MN
Nov. 19	Educational Department Education Computer Systems and Veterans Refund Policy	8:30 a.m., Veterans Service Bldg., Conference Room D. 20 W. 12th St. and Columbus Ave., St. Paul, MN

Department of Public Safety
Driver License Division

Certification of Motor Vehicle Insurance

Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held in Room B9 Transportation Building, John Ireland Blvd., St. Paul, Minnesota on December 12, 1979, commencing at 1:00 p.m. and continuing until all persons have had an opportunity to be heard concerning adoption of the proposed rules captioned above.

All interested or affected persons or representatives of groups or organizations will have an opportunity to participate, by submitting either oral or written data, statement, or arguments. Written materials may be submitted by mail to Mr. Jon L. Lunde, Office of Hearing Examiners, 1745 University Avenue, St. Paul, MN, either before the hearing or within 5 days after the close of the hearing (or within 20 days if so ordered by the hearing examiner). The proposed rules are subject to change as a result of the rule hearing process. The department therefore strongly urges those who may potentially be affected by the substance of the proposed rules to participate in the hearing process.

The Commissioner proposes to adopt rules relating to the following matters:

To amend existing rules relating to the certification of insurance for registration or transfer of a motor vehicle, which rules require owners to certify, upon registration or transfer of ownership, that the vehicle is covered by a plan of reparation security (no-fault insurance). The amendments propose to include motorcycles within the scope of the rules. The proposed rules also change from mandatory to discretionary certain language in the existing rules concerning the requirement for immediate surrender of the registration certificate and license plates when department records indicate that an owner has ceased to maintain the required insurance coverage.

The Department's authority to promulgate the proposed rules is contained in Laws of 1979, ch. 190. One free copy of the proposed rules is available and may be obtained by writing to "Rules," Department of Public Safety, Room 211 Transportation Building, St. Paul, Minnesota 55155. Additional copies will be available at the door on the date of the hearing.

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

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. **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."

review at the Department of Public Safety and at the Office of Hearing Examiners. The Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the department at the hearing, justifying both the need for and reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

The department estimates that there will be no cost to local public bodies in the state to implement the rules for the two years immediately following their adoption, within the meaning of Minn. Stat. § 15.0412, subd. of (1978).

Please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he commences lobbying. Minn. Stat. § 10A.01, subd. 11 defines a lobbyist as any individual engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including *his own* travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or who spends more than $250, not including *his own* traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, phone (612) 296-5615.

John P. Sopsic
Commissioner of Public Safety

Rules as Proposed

Chapter Five: Certification of Insurance for Registration or Transfer of A Motor Vehicle; Requests for Verification

11 MCAR § 1.4051 Purpose ~~and Scope.~~ The purpose of these ~~regulations~~ rules is to implement and provide effective administration of the provisions requiring and governing termination of a plan of reparation security as required by Minn. Stat. ~~1974,~~ ch. 65B (1979 Supplement).

11 MCAR § 1.4052 Scope. The scope of these ~~regulations~~ rules is intended to be consistent with the provisions of Minn. Stat. ~~1974,~~ § 65B.68 (1979 Supplement).

11 MCAR § 1.4053 Definitions. For the purposes of these rules, the following terms shall have the meanings ascribed to them:

A. Commissioner. The Commissioner of the Minnesota Department of Public Safety ~~of the State of Minnesota~~.

B. Owner. ~~Owner means a~~ A person who holds legal title to a motor vehicle or motorcycle, or in the event that a motor vehicle or motorcycle is the subject of a security agreement or lease with option to purchase and the debtor or lessee is entitled to the immediate use or possession of the motor vehicle or motorcycle, then the debtor or lessee shall be deemed the owner.

C. Insurance policy. ~~Insurance policy means a~~ A plan of reparation security as required by Minn. Stat. ~~1974,~~ ch. 65B (1979 Supplement).

D. Reparation obligor. ~~Reparation Obligor means an~~ An insurer or self-insurer as defined by Minn. Stat. ~~1974,~~ § 65B.43 (1979 Supplement).

11 MCAR § 1.4054 Every owner when applying for registration, re-registration or transfer of ownership shall supply any information the Commissioner reasonably requires to determine that the motor vehicle or motorcycle is covered by a plan of reparation security. Such information shall include but is not limited to the name and address of the owner, the name of the reparation obligor, the insurance policy number and any other data the Commissioner requires. In lieu of the information regarding reparation security, the owner may submit an affidavit, in a form prescribed by the Commissioner, that the motor vehicle or motorcycle will not be used or operated.

11 MCAR § 1.4055 The owner shall provide such information as required by provisions of ~~DrivLic 54,~~ 11 MCAR § 1.4054 when the records of the department indicate that a required insurance policy is not in effect or as circumstances indicate such information is necessary.

11 MCAR § 1.4056 All reparation obligors shall comply with all written requests from the department to furnish information concerning the effective dates of an insurance policy.

Chapter Six: Suspension and Surrender of the Registration Certificate and License Plates

11 MCAR § 1.4061 If department records indicate that any owner has ceased to maintain a required insurance policy, the Commissioner shall suspend the registration certificate and license plates for the motor vehicle or motorcycle and ~~shall~~ may demand their immediate surrender by the owner. The Commissioner ~~shall~~ may direct any peace officer to serve an order of suspension or revocation and secure any registration certificate and license plates not surrendered.

11 MCAR § 1.4062 Upon certification that the motor vehicle or motorcycle is covered by an insurance policy and application and payment of all applicable fees, the Commissioner may issue a replacement registration certificate and license plates to the owner of a motor vehicle or motorcycle for which the registration certificate and license plates have been suspended.

Department of Public Welfare

Proposed Temporary Rules Governing the Minnesota Merit System

Request for Public Comment

Notice is hereby given that the Department of Public Welfare has proposed the following temporary rules amending current rules 12 MCAR § 2.490 and 12 MCAR § 2.491 for the purpose of implementing the provisions of Laws of 1979, ch. 324, § 5, pertaining to the Community Social Services Act. The proposed temporary rules shall be designated 12 MCAR § 2.490a and 12 MCAR § 2.491a.

All interested persons are hereby afforded the opportunity to submit their comments on the proposed rule for 20 days immediately following publication of this material in the *State Register* by writing to Ralph Corey, Minnesota Merit System, Department of Public Welfare, 4th Floor, Centennial Office Building, Saint Paul, Minnesota, 55155. The temporary rule may be revised on the basis of comments received. Any written material received shall become part of the record in the final adoption of the temporary rule.

October 23, 1979

Arthur E. Noot
Commissioner of Public Welfare

12 MCAR § 2.490a Definitions.

A. The following definitons apply throughout these rules, unless the context clearly requires another meaning.

A.2. "Appointing authority" means the county board, county welfare board, human service board or officer authorized by statute or lawfully delegated authority to make appointments to positions under the Merit System.

A.3. "Board" means the county board, county welfare board, or human service board.

A.7. "County agency" means the organization created by the county board, county welfare board or the human service board to carry out the functions and policies of the board with regard to community social service or income maintenance programs funded in whole or in part by federal grants-in-aid requiring a merit system of personnel administration.

A.15. "Employee" means any person in the employ of a county board, county welfare board, or human services board, exclusive of its members, who occupies a position covered by these rules and who is paid a salary or wage.

A.43. "County welfare board" means the county welfare board, county board or human service board.

12 MCAR § 2.491a Statement of policy and means of effecting policy.

D. Positions covered by these rules.

1. These rules shall apply to all positions ~~created~~ and employees in these positions under the jurisdiction of ~~the Minnesota county welfare boards~~ appointing authorities engaged in the administration of community social service or income maintenance programs funded in whole or in part by federal grants-in-aid requiring a merit system of personnel management except duly appointed or elected members of these boards, ~~and~~ all employees of institutions, sanatoria, and hospitals under the jurisdiction of ~~county welfare~~ such boards, and the director of community social services. These rules shall be applicable to such positions until such time as the counties adopt and maintain rules and regulations affecting classification and compensation, examination, and certification of eligibles and other personnel standards acceptable to the Commissioner.

Department of Public Welfare
Social Services Division

Proposed Amendment of Foster Care for Children Rule and Proposed Adoption of a New Child Protective Services Rule

Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held pursuant to Minn. Stat. § 15.0412, subd. 4, in the Centennial Office Building, Room A, Fourth Floor, 658 Cedar Street, St. Paul, Minnesota on December 13, 1979 commencing at 9:00 a.m.

All interested or affected persons will have an opportunity to participate concerning the rules captioned above. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to George Beck, Hearing Examiner, Office of Hearing Examiners, 1745 University Ave., St. Paul, Minnesota 55104 (612) 296-8108, either before the hearing or within five (5) working days after the close of the hearing. The hearing examiner may keep the record open for a longer period not to exceed 20

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. **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."

calendar days. All such statements will be entered into and become part of the record.

12 MCAR § 2.204 was promulgated April 16, 1976. It governs the administration and provision of foster care service for children and their families. Foster care service is defined as a twenty-four-hour-a-day service which provides substitute family or group home care for a planned period of time, provides experiences and conditions which promote normal growth, and provides a full range of casework and other treatment or community services to the child and his family.

The primary reasons for the Department of Public Welfare's proposal of amendments to this rule are to aid in the effective implementation of legislation enacted since the promulgation of the rule (Minn. Stat. § 257.071), to clarify the counties' responsibilities under a statute enacted in 1973 (Minn. Stat. § 260.40) and to clarify Department policies.

The rule contains a three part introduction. The third part of the introduction has been added to highlight the importance of efforts to keep families intact when possible and appropriate, thus limiting foster care placement.

The rule contains an extensive definition section in which the term "group home" has been redefined and "custodian" and "relative" have been newly defined.

The major portion of the rule contains standards for the delivery of services to children in foster care. To clarify the present rule, the section detailing when placement in licensed facilities is required has been revised. The local agency responsibilities in court-ordered and voluntary placements have been clarified by separating these into two sections. There is added the requirement that in court-ordered placements the agency inform foster parents of court hearings pertaining to any child in their care, and the requirement in voluntary placements that the agency require the child's parents or guardian to agree to provide 30 days' notice to the agency before removing the child from placement.

There are sections on major decisions affecting the child, on relationship with the schools, and on protecting a child's heritage.

The subsection on relationship between social service agencies and other agencies or institutions contains a deletion regarding an agency's need to obtain approval from another agency if it wants to evaluate for licensing a foster home in another county.

The section on practice components of service contains a number of revisions including an overall waiver option for any requirement that is not in the foster child's best interest; a waiver of the pre-placement visit for newborn infants being placed from a hospital into a foster home; specific requirements for a placement worker's initial visit to a newly-placed child, parents' initial visit with a newly-placed child, worker visits with the foster child in the first three months of placement, and worker contacts with a foster child's family.

The section on meeting a child's health needs requires the local agency to assure that the Early and Periodic Screening, Diagnosis and Treatment services are provided to all children eligible for the Medical Assistance Program.

A new section has been added to interpret the foster care law, Minn. Stat. § 257.071. This section defines the population group to whom the law applies, the components of the written foster care service plan, and adds a requirement of a six-month administrative review of the service plan.

The rule has been revised to require that the agency's permission be obtained anytime the foster child leaves the state.

Parts of the section on financial arrangements and funding have been deleted because they already exist in statute.

The section on rates paid to foster homes is amended to waive, in certain situations, the requirement of payments of rates based upon the schedule in 12 MCAR § 2.044. The section also addresses rate requirements when a county agency contracts with another agency.

The section on foster care benefits up to age 21 interprets and clarifies the requirements of Minn. Stat. § 260.40.

Added to the section dealing with foster home recruitment and development are phrases already required by 12 MCAR § 2.001 and a requirement that if an agency learns that new applicants or presently licensed foster care providers demonstrate attitudes of racism or bigotry, the agency may not renew the foster home license.

Minor wording changes for clarity have been made in several sections.

The purpose of the Rule 207 (12 MCAR § 2.207) is to clarify the responsibility of local social service agencies in the delivery of protective services to children who are alleged to be physically or sexually abused or neglected, or who are threatened with abuse or neglect.

Rule 207 (12 MCAR § 2.207) contains an introduction stating the scope of its authority along with the purpose of the child protection system. It also contains definitions consistent with those in other rules promulgated by DPW.

Section C. contains standards and procedures for the administration of Child Protective Services at the county agency level. This includes standards and procedures for accepting and investigating reports of abuse/neglect in the child's own home, as well as in institutions, the services to be provided and the agency's responsibility to report to the state agency. It also includes local social service agency responsibility for investigating reported incidents of juvenile prostitution and children involved in the production of obscene materials or performances. Finally, it contains local agency responsibility for keeping and destroying records relating to complaints and for the provision of emergency services.

The statutory authority for 12 MCAR § 2.204 is Minn. Stat. § 256.01, subd. 2, (2); Minn. Stat. § 257.175; Minn. Stat. § 245.802; Minn. Stat. § 256E.05, subd. 3(b) (Supp. 1979).

The statutory authority for 12 MCAR § 2.207 is Minn. Stat. § 245.813; Minn. Stat. § 256E.05, subd. 3(b) (Supp. 1979); Minn. Stat. § 256.01, subd. (2) 2; and Minn. Stat. § 626.556.

Adoption of neither Rule 204 nor Rule 207 will result in $100,000 additional annual expenditures by local public bodies.

Copies of the proposed rule are now available and at least one free copy may be obtained by writing to Paul Spears, Department of Public Welfare, Centennial Building, St. Paul, MN 55155, telephone: (612) 296-6740. Additional copies will be available at the door on the date of the hearing.

Notice is hereby given that 25 days prior to the hearing a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed and amended rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

Any person may request notification of the date on which the hearing examiner's report will be available, after which date the commissioner may not take any final action on the rules for a period of five (5) working days. Any person may request notification of the date on which the hearing record has been submitted to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner, in the case of the hearing examiner's report, or to the agency, in the case of the agency's submission or resubmission to the Attorney General.

In addition, please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 as amended by Laws of 1979, ch. 59, § 3, as any individual:

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

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

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

October 25, 1979

Arthur E. Noot
Commissioner of Public Welfare

Amendments as Proposed

12 MCAR § 2.204, Foster care-children.

A. Introduction.

1. This rule governs the administration and provision of foster care services to children and their families by the local social service agency~~.~~ when the agency has placement and supervisory responsibilities.

2. The purpose of foster care services to children is to provide temporary substitute family or group care for a child while an intensive effort is made to correct or ~~ameliorate~~ improve the condition necessitating placement in order to reunite the family or, in the failure of this, to provide some other permanent plan.

3. Foster care services shall be provided only after services aimed at preventing the need for placement of a child in foster care have been considered, provided, or refused by the child's family.

B. ~~3.~~ Definitions.

1. Foster care service. The ~~twenty-four hour a day~~ service which provides substitute twenty-four-hour-a-day family or group home care for a planned period of time, provides experiences and conditions which promote normal growth, and provides to the child, ~~and his~~ the child's family~~.~~, and the foster parents ~~a full range of~~ casework services and other treatment or community services geared toward reuniting the family.

2. Local social service agency. Local agency under the authority of the County Welfare Board or Human Service Board or Board of County Commissioners which is responsible for social services.

3. State agency. Minnesota State Department of Public Welfare.

4. Foster family home. A family ~~home~~ licensed under 12 MCAR § 2.001 to provide twenty-four-hour-a-day care in their home to children who are unrelated to the family.

~~5. Group Home. A specialized facility which provides care on a twenty-four-hour-a-day basis for a group of not more than ten children.~~

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. **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."

5. Group home. A facility licensed by the Minnesota Department of Public Welfare as a group family foster home under 12 MCAR § 2.001 or as a group home under ~~12 MCAR § 2.008~~ or certified by the Department of Corrections as a ~~juvenile judges'~~ group foster home or licensed or approved by an Indian tribe with the authority to do so.

6. Voluntary placement. Placement in which the local social service agency assumes responsibility for the placement of a child after ~~it~~ the agency has determined, in conjunction with the child's parent(s), and the child, if possible, or legal guardian that such placement is in the best interest of the child~~.~~ and his family. ~~The agency must obtain the parent(s) written consent.~~

7. Legal custody. Legal custody is defined by law as the right to care, custody and control of a child and requires the removal of the child from his or her parent(s) or legal guardian for ~~his~~ the child's welfare and/or safety. Legal custody is for a specified length of time, but not to exceed one year.

8. Custodian. Any person who is under a legal obligation to provide care and support for a child.

9. Relative. Any of the following persons related to the child by marriage, blood or adoption: parent, grandparent, brother, sister, stepparent, stepsister, stepbrother, niece, nephew, uncle, or aunt.

C. ~~B.~~ Services to children in foster care.

1. Service delivery.

a. Placement in licensed facility. With the exception of placement in a relatives' home, the local social service ~~An~~ agency ~~must~~ shall place a child in a licensed foster family or group home except in emergencies when an unlicensed foster home may be selected. In these emergency cases, the agency shall assure that application for licensure ~~must be~~ is made within 30 days~~.~~ of the child's placement if the child is expected to remain in the home for 30 days or longer.

b. Legal basis for placement.

(1) The local social service agency ~~must have~~ shall obtain the proper authority to place a child in foster care, either through written consent of the child's parent(s) or legal guardian (voluntary placement) or with an order of the court (legal custody).

(2) Responsibilities in court ordered and voluntary placements.

(a) ~~(2)~~ When legal custody is given to a local social service agency, that agency shall:

(i) ~~(a)~~ avoid precipitous movement of the child without orderly pre-placement planning and preparation. When removal of the child is not emergent, the agency shall request permission of the ~~juvenile~~ court for time to place the child in an orderly fashion and, upon being granted this request, ~~may~~ shall proceed ~~to do so.~~ to effect the placement according to the requirements of rule and statute.

(ii) ~~(a)~~ provide information, evaluations and recommendations to assist the court in arriving at appropriate decisions and actions with regard to the child and ~~his~~ the child's family;

(iii) provide the ~~juvenile~~ court written reports and recommendations prior to the expiration of any order giving the agency responsibility for the child;

(iv) inform the foster parents of court hearings which pertain to any foster child in their care;

(v) ~~(b)~~ report to the court the placement of a child out of the jurisdiction of the court. Copies of such notification shall be forwarded to the child's parent(s)~~.~~ or legal guardian;

(vi) ~~(c)~~ request the court to order any special treatment and care needed by the child if the child's parent or legal guardian fails to provide it;

(vii) ~~(d)~~ obtain for its record a copy of the court's findings, decisions, disposition of the case and any other information which may aid the county in providing services to the child;

(viii) ~~(b)~~ obtain the permission of the ~~juvenile~~ court before terminating foster care and returning the child to his or her parent(s);

~~(c) Obtain the written consent of the child's parent(s) for major decisions affecting the child, such as nonemergency surgery. If the parent(s) fail to give consent, and it is essential to the child's health or well being, a court order shall be obtained which will provide the authority to secure whatever is needed for the child. Whenever there is a question as to what shall be regarded as a decision requiring parental or judicial consent, the agency shall consult the court.~~

(ix) ~~(d)~~ obtain the written consent of the parent(s) or legal guardian and the court if a child under legal custody is to be placed in a facility outside of the state. If the parent(s) or legal guardian refuse or fail to give consent, the court's written consent is sufficient.

(b) When a child is placed in foster care by voluntary agreement between the local social service agency and the parent(s), or legal guardian the agency shall:

(i) obtain the parent(s)' or legal guardian's written consent prior to the placement;

(ii) require the parent(s) or legal guardian to agree to provide 30 days' notice to the agency before removing the child from placement.

c. Major decisions affecting child. The local social service agency shall ~~(c)Obtain~~ obtain the written consent of the child's parent(s) or legal guardian for major decisions affecting the child~~,.such as non-emergency surgery.~~ If the parent(s) or legal guardian fail to give consent, and it is essential to the child's health or well-being, a court order shall be obtained which will provide the authority to secure whatever is needed for the child. Whenever there is a question as to

what shall be regarded as a decision requiring parental or judicial consent, the agency shall consult the court.

d. ~~e.~~ Relationship to other agencies and institutions. The local social service agency shall establish formalized agreements with those agencies and institutions which, in conjunction with the local social service agency, are serving a particular child. The purpose of such agreements is to ensure optimum cooperative planning and provision of services.

~~(1) Juvenile Court. The local social service agency shall:~~

(1) ~~(2)~~ Schools.

(a) Prior to foster care placement, the local social service agency shall involve in the placement planning the child's present school and the one which he may attend in order to assure that the child's social, educational and extracurricular needs will be met. The agency shall initiate contact with the schools.

~~(i) The local social service agency is responsible for initiating contact with the schools.~~

~~(ii) The responsibility for meeting the child's educational needs is that of the school district in which the child resides.~~

(b) If a child is to remain in the same school, the local social service agency shall notify the school at such time as the child is to be placed in foster care or when the child is to be moved to another facility.

(2) ~~(3)~~ Other social service agencies.

(a) The local social service agency shall not place a child in another county without the approval of the other county local social service agency.

~~(b) The local social service agency shall not evaluate for licensing a foster home in another county without the approval of the other county's local social service agency.~~

(b) ~~(c)~~ When a local social service agency requests services of another agency in effecting a placement, or receives such a request for service from another agency, there shall be a written agreement defining the responsibilities for services to be delivered, methods for evaluation and procedures for handling foster care payments.

e. ~~d.~~ Group homes. The local social service agency shall provide for the utilization of group homes for children requiring such services.

(1) The choice of facility and length of stay shall be determined by the needs of the child for the specific services offered by the facility.

(2) The child's service plan shall state the rationale for placement of the child in a group facility.

(3) The local social service agency shall provide or arrange for services not available in the group facility.

f.~~e.~~ Practice components of service. All local social service agencies, in delivering foster care services, shall:

~~(1) Involve the parent and child in the development of the service plan.~~

(1)~~(2)~~ provide at least one pre-placement visit for the child to the foster or group home. This requirement is waived for newborn infants being placed from a hospital into a foster home.

(2) provide help to the child in his initial adjustment to the foster home through the placement worker's visit to the home within four days of the placement;

(3) plan with the parent(s) for a parent visit with the child within a week of the placement;

~~(3) Provide casework and other indicated services to all children regardless of funding source.~~

(4) provide casework to the child on a planned regular basis, at least twice a month for the first three months and as frequently as necessary thereafter.

(5)~~(4)~~ provide or arrange for casework and other indicated services to the child's family on a planned regular basis, and at least twice a month~~,~~ to help them:

(a) ~~Help them~~ fulfill their roles and responsibilities as parents to the placed child;

(b) ~~Help them to~~ remedy the conditions which necessitated placement;

(c) ~~Help them~~ prepare for the child's return home or, if this return home is not possible, involve them in making an alternative plan;

(d)~~(5)~~ ~~Provide ongoing help to the child and his natural family toward developing and maintaining~~ develop and maintain a constructive relationship with their child through a carefully planned and executed program of communication and visitation;

(6) provide ~~ongoing~~ assistance to the foster parents or group home operators with their responsibilities of incorporating the child into their family or facility. The foster parents and group home operators shall be provided a telephone number and an additional back-up number to call during the hours the agency is closed.

(7) provide follow-up services to the family and child when the child returns home to assist with the adjustment and to prevent recurrence of the circumstances which led to placement:

(8) evaluate, in conjunction with the foster par-

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. **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."

ents or group home operators, the placement experience when a child leaves the facility to ascertain the facility's potential for future placements.

Those requirements listed under C.1.f. "Practice components of service" which may not be applicable for children under state guardianship as dependent/neglected or for placements of children in emergency facilities in crisis situations may be waived. The agency may also waive those requirements under C.1.f. "Practice components of service" which may be contrary to the child's best interests but must document the rationale behind such waivers.

g.~~f.~~ Provision ~~of~~ for meeting ~~medical~~ health needs. The local social service agency shall meet the ~~medical~~ health and dental needs of every child by:

(1) assuring that each child has a ~~pre-placement physical~~ health examination prior to placement or, in emergency situations, within two weeks thereafter; ~~in emergency situations.~~

(2) assuring that a child's ongoing ~~medical~~ health and dental needs are met;

(3) assuring that the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services are provided pursuant to 12 MCAR § 2.061 to all children eligible for the Medical Assistance Program;

(4)~~(3)~~ providing the foster or group home with information about the child's immunizations and other pertinent ~~medical~~ health data with instructions for the record to be kept up-to-date;

(5)~~(4)~~ providing to the foster or group home a written authorization for obtaining routine ~~medical~~ health care for the child with clear instructions as to who is to provide the care and how the billing is to be handled.

h. Service plan and review. For those children who are placed in foster family homes, group homes or relatives' homes (unless placement with the relative is planned to be permanent) and for whom the local social service agency has placement and/or supervisory responsibility, the agency shall comply with the following requirements:

(1) Service plan.

(a) The agency shall develop, in conjunction with the child's parent(s), or other custodian, the child's legal guardian, and, if possible, the child, a service plan which includes:

(i) the specific reasons for the placement of the child in a foster home, including a description of the problems or conditions in the home of the parent or parents which necessitated removal of the child from his home;

(ii) the specific actions to be taken by the parent or parents of the child to eliminate or correct the problems or conditions identified in clause (1), and the time period during which the actions are to be taken;

(iii) the financial responsibilities and obligations, if any, of the parents for the support of the child during the period the child is in the foster home;

(iv) the visitation rights and obligations of the parent or parents during the period the child is in the foster home;

(v) the social and other supportive services to be provided to the parent or parents of the child, the child, and the foster parents during the period the child is in the foster home;

(vi) the date on which the child is expected to be returned to the home of his parent or parents;

(vii) the nature of the effort to be made by the social service agency responsible for the placement to reunite the family.

(b) The agency shall advise the parents of their right to receive assistance from any person or social service agency and their right to legal counsel in the preparation of the service plan.

(c) In those situations where the child's condition or behavior may require change before placement can be terminated, the service plan shall include actions to be taken or progress to be made by the child while in placement.

(d) A detailed visitation plan shall be prepared by the agency and shall include, but not be limited to, the date and conditions of the first visit, specific days of visits, specific hours for beginning and ending of visits and special conditions of visitation.

(e) The agency shall explain to the parents that if the parents are unable to correct the conditions necessary for their child's return home, they could lose their parental rights.

(f) If the agency cannot comply with any service plan requirement, the agency shall document the reason in the record.

(2) Six-month administrative review of service plan. The local social service agency shall provide an administrative, supervisory, or conference review at least every six months for each child in placement to determine the appropriateness and adequacy of the service plan. The review shall include persons other than or in addition to the service worker responsible for the case. The administrative review may be waived if the court has reviewed the service plan within that six-month period.

(3) Review of service plan with parents and child. Within 180 days of the child's initial placement, if the child is still in foster care, the local social service agency shall review the service plan, including in the review all persons involved in the plan's preparation. The review may be waived if the court has reviewed the plan within the 180 day period.

i.~~h.~~ Child's or foster parents' absence from foster home. The local social service agency's permission must be

obtained any time the foster family and/or child are to be away from the licensed foster care facility within the state for a period exceeding three nights~~.~~ or, if the child leaves the state, for any period of time.

j.~~i.~~ Protecting the child's heritage. The local social service agency shall provide for the preservation of the child's religious, racial, cultural and ethnic heritage through:

(1) placement if possible and indicated in a foster home of similar background;

(2) education of the foster parents as to the importance of the heritage to the child;

(3) education of the foster parents as to the customs and values of the particular group;

(4) ~~Help~~ assistance to the foster parents or group home operators, ~~if indicated, in their working with the child with regard to his cultural,~~ so that they will be better able to provide a home which is accepting and supportive of the child's cultural, religious, racial, or ethnic identity.

k.~~j.~~ Financial arrangements and funding considerations.

(1)~~(2)~~ The local social service agency and the parent(s) shall evaluate the various resources available to meet the costs of care.

(2)~~(3) In accordance with applicable Minnesota law,~~ Parent(s) shall pay for the cost of care in a manner consistent with their ability to do so.

~~(4) When a child's parent(s) are unable to pay the costs for foster care, the responsibility shall be assumed by the local social service agency of the child's legal settlement.~~

(3)~~(5)~~ If the local social service agency establishes that the parent(s) are able to meet some or all of the costs of care, but are unwilling to do so, ~~it shall make a written report to the court for determination by the judge of the parents' responsibility to reimburse the agency.~~ the following courses of action are indicated:

(a) For a child under legal custody, the local social service agency shall make a written report to the court for determination by the judge of the parents' responsibility to reimburse the agency.

(b) For a child placed by voluntary agreement, the local social service agency shall file a dependency or neglect petition with the court and ask the court to establish the parents' responsibility to reimburse the agency.

(4)~~(1)~~ The local social service agency ~~is responsible for~~ shall make the payments directly to foster parents and other providers of care.

~~(6) In any dispute as to county of financial responsibility the local social service agency providing or arranging services shall pay for such care and services pending final determination of the county of financial responsibility.~~

~~(7) When no provision is otherwise made by law for the care, examination or treatment of a child, the costs shall be paid by the welfare fund of the responsible county.~~

l.~~k.~~ Rates paid to foster home.

(1) Rates paid for children in foster care shall be uniform regardless of funding source, and maintenance rates paid for children in foster care shall be established pursuant to ~~DPW Rule 44.~~ 12 MCAR § 2.044. This requirement is waived when the local social service agency is being reimbursed pursuant to 12 MCAR § 2.030, Cost of Care for Mentally Retarded or Epileptic, or Emotionally Handicapped Children.

(2) When foster care is provided for a child through contract with another public or private agency, maintenance payments to the cooperating agency's foster care facilities shall be determined according to 12 MCAR § 2.044. If the local social service agency is contracting for administrative or social service costs, payments to the cooperating agency shall be an amount which is additional to the maintenance rates established in 12 MCAR § 2.044.

m. Foster care benefits up to age 21.

(1) Within the six months prior to a child's 18th birthday, the local social service agency shall advise the child, the child's parents or legal guardian, and the foster parents of the availability of benefits up to age 21 of the foster care program.

(2) Upon the request of a person between the ages of 18 and 21 who is not under state guardianship as dependent/neglected and who had been receiving foster care benefits immediately prior to his or her 18th birthday and who is in foster care at the time of the request, or upon the request at any time between the ages of 18 and 21 of a person who had been under state guardianship as dependent/neglected, the local social service agency shall develop, in conjunction with the foster child and other appropriate parties, a specific plan related to that person's vocational, educational, social or maturational needs and shall assure that any maintenance or counseling benefits are tied to that plan.

~~g. Service record. The local social service agency shall maintain a service record for each child that provides, in addition to general service plan requirements, accountability for:~~

~~(1) The authority to place the child.~~

~~(2) Implementation of foster care services as spelled out in Practice Components of Service.~~

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. **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."

(3) Medical care provided to the child.

(4) Record of the child's placements.

C. Resource development

D.1. Foster home recruitment and development.

1.a. The local social service agency shall attempt to recruit and license a sufficient number and variety of foster homes to allow for a choice in the selection of a home for a child. in order to be able to meet the particular needs of each child needing placement.

2.b. The local social service agency shall provide for the development of foster parents by:

a.(1) provision of training on an ongoing basis;

b.(2) provision of opportunities to attend educational workshops and conferences;

c.(3) provision of opportunities for recognition. such as an annual recognition dinner, service awards and publicity through the news media.

3.(4) The local social service agency shall involvement of the foster parents on an advisory basis in the development of policies and procedures pertaining to foster care.

4.(c) Before recommendation for relicensure, the local social service agency, in conjunction shall evaluate with the foster parents, shall evaluate the home before recommendation for relicensure, to assess factors in the home pertinent to continued utilization of the home as a foster care resource. These factors shall include the services provided by both the foster family and the agency and an evaluation of the year's placement experiences. A copy of the evaluation shall be given to the foster family.

5. The local social service agency shall assess the foster care applicant's or foster care provider's capacity for accepting children of another race, religion, color or national origin. If the family's reason for refusing to accept such children is based upon racism or bigotry, that is, negative attitudes toward people of a particular race, religion, color or national origin, the agency shall, in the case of a new applicant, refuse to recommend the home for licensure. If the agency ascertains the existence of racism or bigotry in a licensed foster family home, the agency shall, at time of relicensure, establish a plan for phasing the home out of the foster care program and no additional children shall be placed in the home.

MINN. RULE DPW 207 Protective Services to Children

(I) Introduction

(a) This rule governs the administration and provision of protective services to children through local social service agencies.

(b) The purpose of a child protective service system is to carry out community responsibility for safeguarding the rights and welfare of children whose parents are unable or unwilling to do so.

(c) Local Social Service Agency: Local agency under the authority of the county welfare or human services board which is responsible for social services.

(d) State Agency: Minnesota Department of Public Welfare.

(e) Any child in Minnesota who is in need of protection is to receive such service in the county in which the child lives or is found, irrespective of family income and legal or poor relief settlement of the child or family.

(II) Administration and Organization of Protective Services Program

(a) Local Social Service Agency Responsibility in Assessing Child Abuse or Neglect Reports

(1) The local social service agency must accept all complaints alleging that a child has been abused or neglected.

(2) Every report alleging maltreatment of a child shall be assessed at the time of its receipt to determine the agency's initial response to the allegations.

(3) An initial contact with the family must be made based on the following assessments of the report.

(A) A child in need of immediate care by virtue of being abandoned, life-threatened, or likely to experience physical injury due to abuse, requires an immediate contact with the family to determine the harm or threatened harm to the children involved and the risk to such children if they continue to remain in the existing home environment or return to such environment.

(i) if the protective service worker determines that the child is in need of immediate care

(aa) the parents or caretakers must be given the opportunity to voluntarily place the child or seek an alternative that assures the safety of the child and is agreeable with the protective service worker.

(bb) if the parents or caretakers are unwilling or unable to cooperate in the protection of the child, the protective service worker shall

(i.) petition the juvenile court for the immediate custody of the child.

or

(ii.) seek the assistance of a peace officer in taking a child into custody that such peace officer reasonably believes is in danger.

(ii) if the protective service worker determines that the child is not in need of immediate care and neglect or abuse is present

(aa) the parents or caretakers shall be given the opportunity to voluntarily cooperate in resolving the problem

(bb) and the parents or caretakers are unwilling or unable to cooperate, the worker shall seek the authority of the court to intervene.

(iii) if the protective service worker determines that the child is not in need of immediate care and neglect or abuse is not present the protective worker may

(aa) offer other services appropriate to need or seek to refer family to other community agency

(bb) inform the family of the agency's availability and willingness to work with the family in the future.

(B) A child not in need of immediate care but allegedly physically or sexually abused requires a contact with the family within 24 hours.

(C) A child not in need of immediate care but allegedly neglected requires a contact with the family within 72 hours.

(D) Reports for which no response is required include those which do not fall within the parameters of child maltreatment (although a referral to a more appropriate agency may be made), those which do not contain enough information to be investigated, or those which concern a situation that has recently been investigated and determined to be unsubstantiated.

(4) The local social service agency shall assess the need for protective intervention in each case in which a report is filed and shall develop a plan which meets the needs of the child and family. In assessing the propriety of intervention, the local social service agency shall consider:

(A) Family composition, including the names, addresses, ages and sexes of the child or children named in the report.

(B) The physical or emotional harm to the children involved. A determination of the present condition of the children should be made as well as an assessment of prior injuries, abuse, or maltreatment. In addition, the local social service agency should attempt to identify the person or persons responsible for the maltreatment, evaluate the home environment and assess the risk of such children if they continue to remain in the existing home environment. Finally, there should be a determination of the nature, extent, and cause of any other condition enumerated in the report.

(C) The protective treatment and ameliorative services that may prevent further maltreatment and improve the home environment as well as the parent's ability to adequately care for the children.

(5) The local social service agency shall document in the record whether the report is substantiated or unsubstantiated not more than ninety days after receipt of the initial report. At the conclusion of the investigation, the subjects of the report shall be notified in writing of the local social service agency's determination whether the report has been substantiated or unsubstantiated. The subjects of the report shall be notified of right to review the report pursuant to applicable Minnesota Law.

(A) Records Relating to Substantiated Reports

(i) Records relating to reports made pursuant to Minnesota Statutes 626.556, which is supported by evidence obtained during the local social service agency's investigation shall be destroyed seven years after the date of the final entry in the case record.

(ii) The name of the individual submitting the report shall be disclosed only upon court order. or with the knowledge and consent of the individual making the report.

(B) Records Relating to Unsubstantiated Reports

(i) Records relating to reports made pursuant to Minnesota Statutes 626.556 shall be destroyed immediately and the name of the individual submitting the report shall be disclosed upon request of the subjects of the report.

(ii) Records relating to reports which upon initial investigation cannot be substantiated to the satisfaction of the local social service agency may be kept for one year. As the reports are clearly not unsubstantiated, the name of the individual submitting the report shall not be disclosed unless the report is found to be unsubstantiated, or one year passes, or with the knowledge and consent of the individual submitting the report.

(C) Reports to the State Agency

(i) Every incident of suspected physical or sexual abuse reported to the local social service agency shall be reported to the state agency on forms provided by the state agency.

(aa) All reported incidents of physical or sexual abuse, shall be sent to the state agency within 20 days after receipt of the report, except for the reports which are required to be sent to the state agency within 24 hours as defined in Section (II) (a) (5) (c) (i) (bb).

(bb) The form must be submitted to the state agency within 24 hours for reports alleging that the perpetrator is a local staff person or for incidences occurring in a facility supervised or evaluated for licensing by the local social service agency. The report will be reviewed by state agency personnel for assurance that the child is being protected.

(cc) An amended report shall be forwarded to the state agency whenever reports are either substantiated or unsubstantiated.

(ii) Reports to the state agency are summary data to be used for statistical purposes only. Identifying information about the child or its family of the individual suspected

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. **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."

~~of perpetrating an incident of physical or sexual abuse should not be furnished to the state agency.~~

~~(iii) The local social service agency must provide its county number as a prefix and the case number to all reports containing statistical data pertaining to physical or sexual abuse. This number will be used by the state agency to communicate with the local social service agency when it is necessary to amend previously submitted reports or identify those reports needing additional statistical data.~~

~~(6) The agency shall offer the family services best adapted to need as determined by the investigation and evaluation.~~

~~(A) The family shall be informed of its right to accept or reject service.~~

~~(B) The local social service agency shall provide services to the family to help correct or alleviate the conditions of abuse or neglect.~~

~~(C) The local social service agency shall provide services that preserve the child within his own family unit and assure the child a safe environment.~~

~~(D) The family shall be informed of the agency's statutory authorization to seek court intervention when services are rejected and the child appears to need care or protection.~~

~~(E) When the need for removal of the child from his home is not emergent, the local social service agency should request permission of the juvenile court for sufficient time to place the child in an orderly fashion.~~

~~(i) When the child is removed from his home, the local social service agency shall obtain the consent of the child's parents for major decisions affecting the child. If the parents fail to consent, a court order may be obtained.~~

~~(ii) The local social service agency shall attempt to obtain consent of the child's parents and juvenile court if a child under legal custody is to be placed in a facility outside of the state. If the parents refuse or fail to give consent, a juvenile court order is itself sufficient.~~

~~(iii) The local social service agency shall provide the juvenile court written reports and recommendations at such times as the court may direct or prior to the expiration of any order giving them responsibility for a child.~~

~~(b) Administrative Requirements~~

~~(1) The local social service agency must provide for the availability of protective services 24 hours per day, seven days a week, for response to emergencies.~~

~~(2) Every local social service agency shall designate a member of its staff to be responsible for the protective services program.~~

~~(3) Each agency shall designate a licensed facility which can be available seven days a week for the emergency care of abused or neglected children.~~

~~(A) The local social service agency must designate a staff member to be responsible for placements in such facility under such conditions as it deems necessary.~~

~~(B) Emergency placements shall not exceed 30 days.~~

~~(4) Every local social service agency shall coordinate its child protection activities with other agencies involved with the child's family, and may:~~

~~(A) Participate as a member of a team utilizing a multidisciplinary approach.~~

~~(B) Not assign its primary statutory responsibility to another agency.~~

DPW 207 Protective Services to Children.

A. Introduction.

1. This rule governs the administration and provision of protective services to children through local social services agencies.

2. The purpose of a child protective service system is to carry out community responsibility for safeguarding the rights and welfare of children whose parents/caretakers are unable or unwilling to do so, or whose parents/caretakers actively violate their children's rights or jeopardize their welfare.

B. Definitions.

1. Local social service agency. Local agency under the authority of the county welfare or human services board or county board of commissioners which is responsible for social services.

2. State agency. Minnesota Department of Public Welfare.

C. Administration and organization of protective services program.

1. Local social service agency responsibility in the delivery of child protective services.

a. Any child in Minnesota who is in need of protection is to receive such service in the county in which the child lives or is found, irrespective of family income and legal or poor relief settlement of the child or family.

b. The local social service agency must accept all complaints alleging that a child has been physically or sexually abused or neglected. Neglect includes conditions or actions which threaten either the child's physical health or the child's mental health. Upon receiving such complaints, the local social service agency shall immediately notify the local police or sheriff's department.

(1) All reports shall be assessed at the time they are received to determine the agency's initial response.

(a) For complaints alleging that a child is abandoned, life threatened, or likely to experience physical injury due to abuse an immediate on site contact with the family and/or child is required.

(b) When a child is not in need of immediate care but is allegedly physically or sexually abused, the local social service agency shall contact the family within 24 hours.

(c) When child is not in need of immediate care but is allegedly neglected, the local social service agency shall contact the family within 72 hours.

(d) Reports for which no response is required include those which do not fall within the parameters of child maltreatment (although a referral to a more appropriate agency may be made); those which do not contain enough information to be investigated; or those which concern a complaint that has recently been investigated and determined to be unsubstantiated.

(2) Where contacts with the family are required the child protection worker shall assess the validity of the complaint.

(3) If upon the initial assessment there appears to be substance to the complaint, the child protection worker shall attempt to determine the following:

(a) the risk posed if the child or children involved remain in the home environment;

(b) the current physical and/or emotional condition of the child or children involved, as well as an assessment of prior injuries;

(c) the name, address, age, sex and relationship of the alleged perpetrators to the involved child/children;

(d) family composition, including the name, age, and sex of the child or children involved.

(4) If the child protection worker determines that neither neglect nor abuse are present but that the family may be experiencing problems, the worker may:

(a) offer the family such services as may be appropriate;

(b) inform the family of the agency's availability and willingness to work with the family upon request.

(5) If the child protection worker determines that the child is in need of immediate care due to circumstances or surroundings that jeopardize the child's physical or mental health or welfare, the parents must be given the opportunity to voluntarily place the child or seek an alternative that, in the worker's judgment, assures the safety of the child.

(6) If when given the opportunity, the parents are unwilling or unable to cooperate, the child protection worker shall petition the court for immediate custody of the child or seek the assistance of a peace officer in taking the child into custody.

c. Where the need for protective intervention has been established, the local social service agency shall, whenever possible, provide services that preserve the child within the family unit while at the same time assuring the child a safe environment. Such services may include, but are not limited to:

(1) family counseling;

(2) homemaking services;

(3) referral to parent support organizations or to courses in parenting or child care such as may be available in the community.

d. If services necessary to provide the child a safe environment are rejected, the child protection worker shall petition the court for authorization to intervene.

e. When the need for removal of a child from its home is considered necessary but not emergent, the local social service agency shall request permission of the juvenile court for sufficient time to place the child in an orderly fashion.

(1) When a child is under legal custody and has been removed from its home, the local social service agency shall obtain the consent of the child's parents for major decisions affecting the child. If the parents fail to consent, and the decision is essential to the child's health and safety, a court order may be obtained.

(2) The local social service agency shall obtain the written consent of the child's parents, and a court order, if a child under legal custody is to be placed in a facility outside the state. If the parents refuse or fail to give consent, a court order is sufficient.

(3) The local social service agency shall provide the court written reports and recommendations at such times as the court may direct or prior to the expiration of any order giving it responsibility for a child. Such reports shall contain information sufficient to support the recommendation and to enable the court to make a decision in the child's best interest.

f. Local social service agency responsibility in accepting reports of acts of prostitution or involvement in the production of obscene material or performances by persons under 18 years of age.

(1) Upon receiving a report of juvenile prostitution or juveniles involved in the production of obscene material or performances, the local social service agency shall:

(a) assess the victim's circumstances to determine the need for protective services;

(b) provide counseling and assistance to the victim in order to encourage and support her/him in discontinuing in prostitution; or involvement in the production of obscene acts or material;

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. **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."

(c) offer the victim and the victim's family such services as may be needed to:

(i) protect the victim;

(ii) preserve or reestablish family relationships.

(d) If such services are rejected, inform the victim and family of the agency's responsibility and authority to seek juvenile court intervention.

(2) If immediate custody is necessary to protect the victim or to restrain the victim from engaging in prostitution, or involvement in the production of obscene acts or material, the protective service worker shall request a juvenile court order granting the agency temporary legal custody.

g. When child maltreatment is reported in a state supervised or licensed facility, including a foster home, the local social service agency shall:

(1) immediately contact the facility to determine the validity of the report;

(2) where such reports are valid, the local social service agency shall:

(a) assess present risk to the child and assure steps are taken to protect the child;

(b) as soon as possible, inform the child's parents or guardians of the incident;

(c) when an incident involves a child placed out of his/her home county, inform the agency responsible for the child's placement;

(d) make an oral report to the state agency within 24 hours. Such reports shall include:

(i) the identity of facility in which the incident occurred, the name, age and sex of the victim and the name and status of the alleged perpetrator if known;

(ii) the nature and extent of the child's injuries, measures taken to assure necessary treatment and protection, and the name of the protective services worker responsible for investigating the incident.

h. Every incident of suspected physical or sexual abuse or neglect reported to the local social service agency shall be reported to the state agency on forms provided by the state agency.

(1) Such reports shall be sent to the state agency within 20 days of receipt of the report.

(2) Reports to the state agency are for statistical information only. The identity of the victim, the victim's family and suspected perpetrator should not be included on the copy of the report sent to the state agency.

i. The local social service agency shall assess and classify and record all reports as either substantiated, unsubstantiated, or unable to substantiate within 90 days of receiving the initial report. At the conclusion of the assessment the subjects of the report shall be notified in writing of the agency's determination of the classification of the report. The subjects of the report shall also be informed of their right to review the report subject to applicable Minnesota law.

(1) Records relating to substantiated reports.

(a) Records relating to reports made pursuant to Minn. Stat. § 626.556 which are supported by evidence and information obtained during the assessment, and are determined by the agency to be substantiated, shall be destroyed seven years following the date of the final entry in the case record.

(b) The name of the individual submitting a report which is determined to be substantiated shall be disclosed only upon court order, or with the knowledge and consent of the person making the report.

(2) Records relating to unsubstantiated or false reports made pursuant to Minn. Stat. § 626.556 shall be destroyed immediately, upon determination that they are unsubstantiated and the name of the individual submitting the report shall be disclosed upon request of the subject of the report.

(3) Records relating to reports which upon initial assessment cannot be substantiated to the satisfaction of the local social service agency may be kept for one year. Since there is substance to the reports, and they are, therefore, not unsubstantiated, the name of the individual making the report shall not be disclosed unless the report is later found to be unsubstantiated, or one year passes, or with the knowledge and consent of the person making the report.

2. Administrative requirements.

a. The local social service agency must provide for the availability of protective services 24 hours per day, seven days a week, for response to emergencies.

b. Every local social service agency shall designate a member of its staff to be responsible for the protective services program.

c. Each agency shall designate a licensed facility which can be available seven days a week for the emergency care of abused or neglected children.

(1) The local social service agency must designate a staff member to be responsible for placements in such facility under such conditions as it deems necessary.

(2) Emergency placements shall not exceed 30 days.

d. Every local social service agency shall coordinate its child protection activities with other agencies involved with the child's family and may:

(1) participate as a member of a team utilizing a multidisciplinary approach;

(2) not assign its primary statutory responsibility to another agency.

Department of Revenue

Proposed Rules Relating to An Income Tax Energy Credit (13 MCAR § 1.6020)

Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held in Room 83, State Office Building, 435 Park Street, St. Paul, Minnesota 55155, on December 17, 1979, commencing at 9:00 a.m. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate by offering testimony and by asking questions. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Jon L. Lunde, Office of Hearing Examiner, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, (612) 296-5938, either before the hearing or within five days after the close of the hearing, or for a longer period, not to exceed 20 calendar days if prescribed by the Hearing Examiner.

The agency estimates that there will be no cost to local public bodies in the state to implement this rule for the two years immediately following its adoption within the meaning of Minn. Stat. § 15.0412, subd. 7 (1978).

The proposed rules, if adopted, will govern the interpretation of the income tax energy credit. The proposed rule provides standards that earth sheltered dwelling units, biomass conversion equipment and passive solar energy systems must meet in order to qualify for the energy credit. The proposed rule explains the allowance of the state energy credit for expenses that qualify for the federal renewable energy source credit. The proposed rule also explains the relationship of the energy credit to other income tax credit provisions, the treatment of joint owners, shareholders of a family farm corporation, and partnerships, and the definition of the terms building, dwelling unit, and principal residence.

Copies of the proposed rules are now available, and one free copy may be obtained by writing to Gerome Caulfield, Director, Income Tax Division, 2nd Floor, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55145, (612) 296-3436. Additional copies will be available at the door on the date of the hearing. The agency's authority to promulgate the proposed rules is contained in Minn. Stat. § 290.52 and Laws of 1979, ch. 303, Article V, § 2.

Notice is hereby given that 25 days prior to the hearing a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

Minn. Stat. ch. 10A requires each lobbyist to register with the Ethical Practices Board within five days after commencing lobbying. "Lobbyist" means any individual:

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

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

"Lobbyist" does not include any:

(a) Public official or employee of the state or any of its political subdivisions or public bodies acting in his official capacity.

(b) Party or his representative appearing in a proceeding before a state board, commission or agency of the executive branch unless the board, commission or agency is taking administrative action;

(c) Individual while engaged in selling goods or services to be paid for by public funds;

(d) News media or their employees or agents while engaged in the publishing or broadcasting or news items, editorial comments or paid advertisements which directly or indirectly urge official action;

(e) Paid expert witness whose testimony is requested by the body before which he is appearing but only to the extent of preparing or delivering testimony; or

(f) Stockholder of a family farm corporation as defined in Section 500.24, subd. 1, who does not spend over $250, excluding his own travel expenses in any year in communicating with public officials; or

(g) Party or his representative appearing to present a claim to the legislature and communicating to legislators only by the filing of a claim form and supporting documents and by appearing at public hearings on the claim.

Questions should be directed to the Ethical Practices

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. **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."

Board, 41 State Office Building, Wabasha Street, St. Paul, Minnesota 55155, phone number (612) 296-5615.

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

October 26, 1979

Clyde E. Allen, Jr.
Commissioner of Revenue

Rules as Proposed (All new material)

13 MCAR § 1.6020 Energy credit.

A. General provisions.

1. Residence. For purposes of this credit, a building or dwelling unit must be the taxpayer's principal residence. The term "principal residence" is defined as that residence which would qualify for the nonrecognition of gain on the sale and the rollover of that gain when a new principal residence is purchased except that no ownership requirement is imposed. The period for which a building or a dwelling unit is treated as the principal residence of the taxpayer includes the 30 day period ending on the first day on which it would (but for this sentence) be treated as the taxpayer's principal residence. The term "building" includes a single family dwelling, duplex, condominium unit, townhouse, cooperative unit, and any other residential building containing six dwelling units or less. A condominium unit, a townhouse, or a cooperative unit which is used by a taxpayer as his principal residence will each qualify separately for purposes of this credit regardless of how many units are in the building. A taxpayer who buys or rents a residential unit in a condominium, townhouse or a cooperative need only buy or rent that unit and not the entire physical structure to qualify for this credit.

Individuals who rent a dwelling unit as their residence can claim this credit. The dwelling unit must be located in a building that contains six dwelling units or less.

If less than 80 percent of the use of a building or dwelling unit is for use as the taxpayer's principal residence, only that portion of the expenditures for that building or dwelling unit which is properly allocable for use as the taxpayer's principal residence shall be taken into account. A swimming pool shall be treated as a use which is not for residential purposes. This allocation provision does not apply to biomass conversion equipment.

2. A taxpayer must actually purchase the equipment or earth sheltered dwelling to qualify for this credit. The expenses connected with the leasing of equipment or the leasing of an earth sheltered dwelling do not qualify for this credit. Expenditures will qualify even though they are paid for as the result of a federal or state grant, but only to the extent that the grant was included in federal adjusted gross income.

3. A contractor can receive this credit on a building that he has constructed if he is the first individual to use the building or dwelling unit as his principal residence.

4. For purposes of this credit, a taxpayer is entitled to use only the first $10,000 of renewable energy source expenditures. The $10,000 of expenditures to which the taxpayer is entitled includes the expenditures that he personally made, and the proportionate share of expenditures to which he is entitled as a partner in a partnership, as a shareholder in a Subchapter S corporation, as a tenant shareholder in a cooperative housing corporation, as a member of a condominium management association, or as a shareholder in a family farm corporation. No taxpayer shall be allowed to claim a total amount of more than $2,000 in total energy credits for all years.

5. The increase in the basis of property because of expenditures which qualify for this credit shall be reduced by the amount of the energy credit that was claimed for that property.

6. A shareholder in a family farm corporation is allowed to claim this credit for any of the expenditures that qualify for one of the four parts of this credit, notwithstanding the fact that an earlier provision of the law limits three of the four parts of this credit to individual taxpayers. A partnership will be treated as an individual taxpayer and expenditures that qualify for the energy credit which are made by the partnership, may be claimed by the partners as joint owners. For purposes of this credit, an electing small business corporation will qualify as a corporation and not as a partnership.

7. A shareholder of a family farm corporation is allowed to claim this credit in the same manner as a joint owner of property that otherwise qualified for the credit. All joint owners will be treated as one taxpayer (and so qualify for only one $2,000 energy credit) with the same taxable year. Each joint owner will be allowed, with respect to the expenditures, a credit for that taxable year in an amount, which bears the same ratio to the total amount allowable, as the amount of the expenditures made by the joint owner during the taxable year bears to the aggregate of the expenditures made by all joint owners during the taxable year. If a Subchapter S or a family farm corporation makes the expenditure, the expenditure may be divided among the shareholders based on the percentage of their stock ownership in the corporation.

8. The Department of Revenue, on behalf of a requesting taxpayer, shall furnish the Energy Agency with a copy of the energy credit form that has been completed by the taxpayer so that the taxpayer and the Department of Revenue may receive technical advice and assistance from the Energy Agency and so that the Energy Agency may compile information on the use of this credit.

9. The energy credit, pollution control credit and feedlot pollution control credit shall be applied after all other nonrefundable credits. If the expenditures otherwise qualify, the taxpayer may elect which credit (including the carryforward) will be used. This election may be amended at any time before the expiration of the statute of limitations. If an expenditure otherwise qualifies the taxpayer may claim both the energy credit and the feedlot pollution control credit or pollution control credit on that property but the energy credit must be used first and the expenditures allowable for the feedlot pollution control credit or pollution control credit must be reduced by the expenditures that have been used for the energy credit.

10. As used in this rule, the term "R" value is the measure of resistance to heat flow through a material or the reciprocal of the heat flow through a material expressed in British thermal units per hour per square foot per degree Farenheit at 75 degrees Farenheit mean temperature. The term "U" value is the thermal transmission of heat in unit time through unit area of a particular body or assembly, including its boundary films divided by the difference between the environmental temperatures on either side of the body or assembly; (Btu/Hr·Ft²·F°). Also the reciprocal of total R-Value.

B. Piggybacked federal renewable energy source credit. Any expenditure that qualifies for the federal renewable energy source credit, including expenditures for labor costs, geothermal energy, wind energy for electricity, renewable energy used to heat water, and any other expenditures which are allowable for the federal credit, would also be allowable for purposes of the state piggybacked credit provided that the building is located in Minnesota and does not contain more than six dwelling units. Expenditures that are allowable are only those that were allowable on the date that the legislature has specified for purposes of adopting the federal credit provisions. If an expenditure qualifies for both the federal energy conservation credit and for the federal renewable energy source credit and the taxpayer used the expenditure for the federal conservation credit, the taxpayer can use that expenditure for the state piggybacked federal renewable energy source credit provided that the expenditure otherwise qualifies.

C. Earth sheltered dwelling units. Expenditures that qualify for the credit for earth sheltered dwellings include material, labor and other construction costs incurred to construct the dwelling. The structure of the earth sheltered dwelling unit must meet the standards of the Minnesota building code even though the code may not be in effect in that area. The earth sheltered dwelling unit's structure must also comply with all three tests which are contained in clause (b) (1)-(3) of the law and which are as follows:

"(1) 80 percent or more of the roof* area is covered with a minimum depth of 12 inches of earth; and
(2) 50 percent or more of the wall area is covered with a minimum depth of 12 inches of earth; and
(3) Those portions of the structure not insulated with a minimum of seven feet of earth shall have additional insulation;"

The roof area contained in clause (b) (1) that must be covered with earth means that area of the roof that is above the area used for residential living which is heated. The roof area that must be covered with earth does not include the roof area for a garage. For clause (b) (2) the term "wall" means the exterior walls of the residential living area. The walls of a garage are not included in this definition. If a garage is attached to the exterior walls of the residential living area, that area of the exterior wall of the residential living area that is part of the attached garage is not counted in the area of the wall that must be covered with earth. The wall must be covered with a minimum horizontal depth of 12 inches (30 cm) of earth. The term "structure" contained in clause (b) (3) means the exterior walls and roof as defined for clauses (b) (1) and (2). In clause (b) (3) the additional insulation that will be required is the amount of insulation that is needed to equal the following requirements:

1. All of the components of the wall below grade to 7 vertical feet (2.1 m) below grade must have at least a combined minimum R value of 11.50 F°·Hr·Ft²/Btu (2.03 m²·K/W), not including the thermal resistance of the earth. Insulation below grade which extends out from the wall may be included in the combined R value.

2. The wall which is above grade and which is not covered with a minimum of 7 horizontal feet (2.1 m) of earth and which is not part of a passive solar system must meet the following criteria:

a. The opaque wall area may not exceed a maximum U value of 0.0555 Btu/Hr·Ft²F° (0.315 W/m²K).

b. The glazing area must not exceed a maximum U value of 0.47 Btu/Hr·Ft²·F° (2.7 W/m²K) and must not exceed a maximum area which is more than 10% of the floor area of the room in which it is installed. The maximum glazing area for a room shall be reduced by the amount of collection aperture glazing installed in that room. Glass doors shall be considered as glazing area.

c. The doors must not exceed a maximum U value of 0.40 Btu/Hr·Ft²·F° (2.3 W/m²·K).

*A computer typing error was made here in the final copy of the conference committee report on H.F. 1495 (Laws 1979, Chapter 303). The law contains the word "wall" and not the word "roof." However, it is clear that this was a technical mistake and the Department is proposing a law change to the 1980 legislature.

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. **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."

3. Roof/ceiling.

a. A roof/ceiling which is covered with less than 7 vertical feet (2.1 m) but with 12 vertical inches (30 cm) or more of earth may not exceed a maximum U value of 0.045 Btu/Hr·Ft²·F° (0.25 W/m²·K), not including the thermal resistance of the earth.

b. A roof/ceiling which is covered with less than 12 vertical inches (30 cm) of earth may not exceed a maximum U value of 0.027 Btu/Hr·Ft²·F° (0.15 W/m²·K), not including the thermal resistance of the earth.

D. Biomass conversion equipment. The term "biomass conversion equipment" means equipment which is located in Minnesota and which is (1) equipment for the production of gaseous fuels from biomass sources by biological or physical-chemical processes. To qualify for the credit, the gaseous energy produced shall sustain combustion, by itself, in air. Examples of the type of equipment that qualify for the credit are methane digestors, and destructive distillation equipment. (2) Equipment for the production of liquid fuels from biomass sources by biological or physical-chemical processes. To qualify for the credit, the liquid fuel produced shall sustain combustion, by itself, in air, and shall contain ethanol or methanol.

The gaseous energy or liquid fuels produced by the equipment shall not be sold or offered for sale.

The term "biomass sources" means wood, wood residues, agricultural crops, agricultural crop residues, other plant materials, human or animal manure, and food processing waste.

A taxpayer who is a corporation (including an electing small business corporation), a bank, a trust or an estate may claim the credit for biomass conversion equipment.

E. Passive solar energy system.

1. General. The term "passive solar energy system" means a system which utilizes the building or an attached building (such as a greenhouse) and its operable components to heat and cool the building or a portion thereof by utilizing the sun's energy by means of conduction, convection, radiation or evaporation.

A system shall include collection aperture and storage element designed to store heat from solar radiation, and it may include control, distribution or retention elements.

Only the cost of equipment, materials, and devices which are integral parts of a passive solar energy system and the actual cost of labor for system installation are eligible expenditures. Expenditures for equipment, materials, or devices which are a part of the conventional (nonrenewable energy) heating, cooling, or insulation system of the building are not eligible for the credit. The entire expenditure for each integral component and associated labor costs is eligible for the credit unless indicated below.

To qualify for the credit, a passive solar energy system must reasonably be expected to remain in operation for at least five years.

2. Collection aperture. The term "collection aperture" means:

a. Double glazing material installed in walls which face south, plus or minus 30 degrees and fully exposed to the sun for at least four hours on December 21. The area of glazing shall exceed the lesser of 15 percent of the floor area of the room in which the glazing is installed or 8 percent of the floor area of the habitable rooms within the dwelling unit. The entire expenditure for glazing shall qualify for the credit.

b. Double glazing material installed in a roof which is elevated at an angle of at least 45 degrees from horizontal and which faces the south, plus or minus 30 degrees. Such glazing shall be fully exposed to direct solar radiation for at least four hours on December 21. A taxpayer who has installed both a wall and a roof collection aperture may qualify.

3. Storage element. The term "storage element" means thermal mass in the form of water, masonry, brick, rock, concrete or other material with heat storage performance equivalent to or better than that of any of these forms of thermal mass. The thermal mass must be installed within the insulated shell of the building or attached building and it must be insulated from the earth by materials with at least an R value of 6.5 F°·Hr·Ft²/Btu (1.1m²·K/W). The thermal mass must have a storage capacity of at least 15 Btu per degree fahrenheit per square foot (300 kJ/K·m²) of aperture area. The thermal mass shall be situated so that at least half of it is completely exposed to the sun's direct radiation for four hours on December 21. The exposed half of the thermal mass must not be shielded from direct solar radiation by hangings, rugs, carpet, furniture, etc. Thermal mass which is heated by forced convection can also qualify. An example would be that of a system in which a blower forces solar air from a collection area through a rock bed, when the rock bed has been insulated to prevent heat loss into the earth or outside air.

The entire amount of the expenditures and labor costs allocable to qualifying thermal mass will be allowed. Concrete slab floors uninsulated from the earth and swimming pools do not qualify as a storage element for purposes of this credit. Stone and masonry materials used in fireplace construction, which meet the above requirements for thermal mass, may qualify as a storage element. The flues and other mechanical devices of a fireplace do not qualify.

4. Control and distribution element. The term "control and distribution element" means fans, exhausts, vents, dampers, sensors, controllers, air ducts, louvers or other equipment when used exclusively to facilitate the distribution of solar heat.

5. Retention element. The term "retention element" means movable insulation which is installed to reduce heat loss through the collection aperture of the passive solar energy system at night. All of the movable insulation installed on that collection aperture must have a combined R value of at least 4 F°·Hr·Ft²/Btu (0.7 m²K/W). Awnings and overhangs shall not be considered retention elements.

6. Miscellaneous. The Commissioner of Revenue will require drawings, photographs, or other descriptions of a passive solar energy system from any taxpayer claiming the credit for a passive solar energy system. If the taxpayer consents, the Commissioner may consult with the Director of the Minnesota Energy Agency to secure an evaluation of the drawings, photographs, or other descriptions to determine if the system qualifies for the energy credit.

A taxpayer who has installed or is planning to install a passive solar energy system which he or she feels may achieve passive solar energy performance better than a system designed according to the criteria contained in this rule may request an advisory opinion by submitting an architectural drawing, a detailed operational description of the system and performance calculations to the Director of the Energy Agency. On the basis of this information, the Director may decide that the entire system and its integral components or some part thereof qualifies for the credit. The taxpayer shall furnish the Department of Revenue with a copy of the Director's Opinion when claiming this credit.

The original use of the passive solar energy system must begin with the taxpayer who claims the credit. Expenses for normal maintenance on the passive solar energy system do not qualify for the credit. Replacement expenditures of a capital nature to replace all or part of the passive solar energy system do qualify for the energy credit provided that the taxpayer must add these expenditures to the other expenditures that he had already claimed for the energy credit. Those passive solar energy system expenditures which exceed a reasonable cost amount, which serve no additional passive solar function, or which serve a purely aesthetic function, shall not be allowed.

Department of Transportation

Proposed Amendment of Rules Governing Weight Limitations on Interstate Highways & Designated Routes

Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held pursuant to Minn. Stat. § 15.0412, subd. 4 in the State Office Building, Room 81, Wabasha Street, Saint Paul, Minnesota 55155, on December 20, 1979, commencing at 9:30 a.m., and continuing until all persons have had an opportunity to be heard.

The Commissioner of Transportation has been provided the statutory authority to promulgate rules governing weight limitations on interstate highways and designated routes in Minn. Stat. § 169.832 (1978). The proposed amended rules, if adopted, would modify or newly designate certain streets or highway routes, or segment of a route, to carry the gross weights permitted under Minn. Stat. § 169.832 which are generally 20,000 pounds per single axle, 34,000 pounds per tandem axle, and a total gross weight of 80,000 pounds. Certain streets and highway routes heretofore designated by the Commissioner in calendar year 1979 are proposed for continued designation. Other routes are proposed to be added, deleted or modified in length.

A copy of the proposed amended rules is attached. Limited additional copies are now available and may be obtained by writing to the Minnesota Department of Transportation (Attention: F. C. Marshall, Assistant Commissioner for Technical Support), 413 Transportation Building, Saint Paul, Minnesota 55155. The proposed amended rules will be available at the door on the date of the hearing.

The proposed amended rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rule, you are urged to participate in the rule hearing process.

Following the department's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Harry S. Crump, Hearing Examiner, Room 300, 1745 University Avenue, St. Paul, MN 55104, telephone (612) 296-8111 either before the hearing or within five working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. For those wishing to submit written statements or exhibits it is requested that at least three (3) copies be furnished. In addition, it is suggested to save time and avoid duplication that those persons, organizations or associations having a common viewpoint or interest in these proceedings join together where possible and present a single statement on behalf of such interests. All such statements will be entered into and become part of the record. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052, and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

Twenty-five days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. **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."

evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rule. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimum charge.

The department estimates that there will be no cost to local bodies in the State to implement the rule for the two years immediately following its adoption within the meaning of Minn. Stat. § 15.0412, subd. 7 (1978).

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

Please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11, as any individual:

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

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

"Lobbyist" does not include any:

(a) Public official or employee of the state or any of its political subdivisions or public bodies acting in his official capacity.

(b) Party or his representative appearing in a proceeding before a state board, commission or agency of the executive branch unless the board, commission or agency is taking administrative action;

(c) Individual wholly engaged in selling goods or services to be paid for by public funds;

(d) News media or their employees or agents while engaged in the publishing or broadcasting of news items, editorial comments or paid advertisements which directly or indirectly urge official action;

(e) Paid expert witness whose testimony is requested by the body before which he is appearing, but only to the extent of preparing or delivering testimony; or

(f) Stockholder of a family farm corporation as defined in § 500.24 subd. 1 who does not spend over $250 excluding *his own* travel expenses, in any year in communicating with public officials; or

(g) Party or his representative appearing to present a claim to the legislature and communicating to legislators only by the filing of claim form and supporting documents and by appearing at public hearings on the claim.

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

October 29, 1979

Richard P. Braun
Commissioner of Transportation

Amendments as Proposed

14 MCAR § 1.5050 Weight limitations on interstate highways and designated routes.*

A. Purpose. The purpose of these rules is to carry out the mandate of the legislature and to effectuate that mandate as set forth in Minn. Stat. § 169.832 with reference to the establishment of weight limitations on interstate highways and designated routes in Minnesota.

B. Scope. The scope of these rules is intended to be confined within the framework of and consistent with Minn. Stat. § 169.832.

C. Jurisdiction and effect. These rules are adopted by the Commissioner of Transportation as the means to designate certain streets or highway routes, or segment of a route, to carry the gross weights permitted under Minn. Stat., § 169.832.

Trunk Highways

T.H. 1—From west state border to Jct. T.H. 32.

T.H. 2—In its entirety from west state border to Jct. T.H. 61 (I-35). FROM JCT. I-35 IN DULUTH TO ARROWHEAD BRIDGE.

T.H. 3—From Jct. T.H. ~~60~~ 65 to Jct. T.H. 55.
FROM JCT. T.H. 110 TO T.H. 212.

T.H. 4—From Jct. T.H. 14 north to Jct. T.H. 68.

T.H. 5—From west Jct. T.H. 19 to T.H. 212.
From Jct. T.H. 41 to I-494.
FROM JCT. I-494 TO MISSISSIPPI RIVER.
From Mississippi River to T.H. 61 (Mounds Boulevard).

*Explanatory Note: Both the 12 month and seasonal routes are listed together with the distinction between the two being upper and lower case type. The 12 month routes are all upper case letters. The seasonal routes utilize both upper and lower case letters. The routes are listed in numerical order and read geographically from west to east and from south to north.

T.H. 6—From Jct. T.H. 18 to east Jct. T.H. 210.

T.H. 7—From Jct. T.H. 12 east to Jct. T.H. 15.
FROM T.H. 15 TO JCT. I-494.
From Jct. I-494 to Jct. T.H. 100

T.H. 8—From Jct. I-35 to east state line (St. Croix River).

T.H. 9—From Jct. T.H. 29 to Jct. T.H. 59.

T.H. 10—FROM WEST STATE LINE TO BECKER COUNTY C.S.A.H. 10 (FRAZEE)
From C.S.A.H. 10 Becker County (Frazee) to Anoka.
From Jct. T.H. 47 to Jct. I-694.

T.H. 12—From west state line to north Jct. T.H. 7 (Ortonville).
From Jct. T.H. 59 to Jct. T.H. 100.
FROM T.H. 280 TO I-694.
FROM I-694 TO WISCONSIN.

T.H. 13—From Jct. I-90 (Albert Lea) to west Jct. T.H. 19.
From Jct. T.H. 282 northeast to Jct. T.H. 101.
FROM JCT. T.H. 101 TO I-35W.

T.H. 14—From Jct. T.H. ~~23~~ 75 to 2 miles west of I-35.
FROM I-35 WEST TO 24TH AVENUE NORTHWEST IN OWATONNA.
From Jct. I-35 to Jct. T.H. ~~57~~ ~~(Kasson)~~ 218 (Havana).
From Jct. T.H. 56 to Jct. T.H. 57 (Kasson).
FROM JCT. T.H. 57 (KASSON) TO JCT. T.H. 52.
From Jct. T.H. 52 to Jct. T.H. 61.

T.H. 15—~~FROM SOUTH STATE LINE TO I-90.~~
From Jct. I-90 to Jct. T.H. 257.
~~From west Jct. T.H. 14 to Jct. T.H. 19.~~

T.H. 16—From Jct. I-90 to east Jct. T.H. 52.
From Jct. T.H. 44 to Jct. T.H. 61.

T.H. 18—From Jct. T.H. 210 to north Jct. T.H. 169.
From south Jct. T.H. 47 to north Jct. T.H. 47.
From Finlayson (~~C.S.A.H. 61~~) to east Jct. T.H. 23.

T.H. 19—From Jct. T.H. 59 ~~into Morton~~ to Jct. T.H. 14.
~~From Jct. T.H. 4 to Jct. T.H. 22.~~

T.H. 21—From south Jct. T.H. 13 to Jct. 169.

T.H. 22—From Jct. T.H. 109 to Jct. T.H. 14.
From Jct. T.H. 212 to Jct. T.H. 55.

T.H. 23—From Jct. T.H. 269 to north Lyon County Line.
From ~~Maynard~~ Granite Falls to T.H. 55.
FROM T.H. 55 in PAYNESVILLE TO I-94.
From Jct. I-94 to south Jct. I-35.
From north Jct. I-35 to Jct. T.H. 123.

T.H. 24—From Jct. I-94 to Jct. T.H. 10.

T.H. 25—From south Jct. T.H. 5 to Norwood.
FROM I-94 TO SHERBURNE COUNTY C.S.A.H. 11.
From Sherburne C.S.A.H. 11 to north Jct. T.H. 10.
From Jct. T.H. 18 to Merrifield.

~~T.H. 26—From south Jct. T.H. 44 to Jct. T.H. 14.~~

T.H. 27—From Jct. T.H. 75 to Jct. T.H. 9.
From Jct. T.H. 29 to Jct. T.H. 127.
From south Jct. T.H. 71 to Jct. T.H. 25.
From north Jct. T.H. 47 to Jct. T.H. 65.
From I-35 to Jct. T.H. 73 (Moose Lake).

T.H. 28—From west state line to south Jct. T.H. 9.
From Morris to Cyrus.
FROM 5TH STREET NORTHWEST IN GLENWOOD TO JCT. I-94.

T.H. 29—From Jct. T.H. 212 to Jct. T.H. 7.
FROM JCT. I-94 TO ITS NORTH JCT. WITH T.H. 27 (ALEXANDRIA)
From North Jct. T.H. 27 to Parkers Prairie.

T.H. 30—From Jct. T.H. 75 to north Jct. T.H. 59.
From Jct. T.H. 4 to south Jct. T.H. 15.

T.H. 33—From Jct. I-35 to Jct. T.H. 53.

T.H. 34—From Osage to Jct. T.H. 371.

I-35 —CONTINUOUS FROM IOWA BORDER TO 1.0 MILE NORTH OF JCT. WITH I-535 IN DULUTH. INCLUDES I-35W and I-35E FROM DOWNTOWN ST. PAUL TO VICINITY OF FOREST LAKE.

T.H. 36—FROM JCT. I-35W TO T.H. 212 NEAR STILLWATER.

T.H. 37—In its entirety.

T.H. 40—From west state line to Jct. T.H. 75.

T.H. 41—From Jct. T.H. 169 to Jct. T.H. 212.
From Jct. T.H. 5 to Jct. T.H. 7.

T.H. 44—From west Jct. T.H. 52 to Jct. T.H. 16.

T.H. 47—FROM JCT. T.H. 10 IN ANOKA TO 2 MILES SOUTH OF JCT. I-694.
From south Jct. T.H. 27 to north Jct. T.H. 18.

T.H. 49—From Jct. T.H. 3 to north Jct. T.H. 55.

T.H. 51—FROM I-94 TO I-694.
FROM WEST 7TH STREET IN ST. PAUL TO I-94 (SNELLING AVENUE FROM I-94 TO MONTREAL AVENUE, THEN MONTREAL AVENUE FROM SNELLING AVENUE TO WEST 7TH STREET).

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. **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."

T.H. 52—From south state line to I-90.
FROM JCT. I-90 TO OLMSTEAD COUNTY ROAD 14, 5 MILES NORTH OF WEST JCT. T.H. 14 IN ROCHESTER.
From Olmstead County Road 14 to Jct. T.H. 3.
FROM PLATO BOULEVARD TO WEST CITY LIMITS OF ST. PAUL.
FROM JCT. T.H. 100 TO ~~I-94~~ NORTH JCT. 152 (OSSEO).
From Jct. I-94 (Vic. St. Cloud) to north Jct. T.H. 152.

T.H. 53—From Jct. I-35 (Duluth) to south Jct. T.H. 169 (Virginia).

T.H. 55—From Jct. T.H. ~~28~~ 29 to Brooten.
FROM 6.5 MILES WEST OF JCT. T.H. 71 (BROOTEN) TO JCT. T.H. 23.
From Jct. T.H. 23 to Jct. T.H. 22.
FROM JCT. T.H. 22 (EDEN VALLEY) TO 1½ MILES EAST OF T.H. 100.
FROM EAST 24TH STREET IN MINNEAPOLIS TO JCT. T.H. 5.
From Jct. T.H. 5 to Jct. I-35E.
From Jct. T.H. 110 to Jct. T.H. 61.

T.H. 56—From ~~Jct. T.H. 63~~ Adams to Jct. T.H. 30.
From Jct. T.H. 52 (Hampton) to Jct. T.H. 3.

T.H. 57—From Jct. T.H. 14 to Jct. T.H. 60.

T.H. 59—From south Jct. T.H. 30 to Jct. T.H. 23.
From ~~west Jct. T.H. 212~~ Jct. T.H. 67 to Jct. T.H. 12.
From south Jct. T.H. 9 to north Jct. T.H. 28.
FROM SOUTH JCT. I-94 TO SHERIDAN AVENUE IN FERGUS FALLS. In Fergus Falls from Sheridan Avenue to north Jct. T.H. 210.
FROM NORTH JCT. I-94 TO JCT. T.H. 10
From Jct. T.H. 10 to Jct. T.H. 2.
From Jct. T.H. 1 to north state line.

T.H. 60—From south state line to east Jct. T.H. 14.
From Jct. T.H. 57 to north Jct. T.H. 52.

T.H. 61—From Jct. T.H. 16 to I-90.
FROM NORTH JCT. I-90 TO 1 MILE NORTH OF T.H. 60 AT WABASHA.
FROM HASTINGS TO JCT. I-94.
FROM JCT. T.H. 212 (EAST 7TH STREET) TO SOUTH JCT. T.H. 96.
From south Jct. T.H. 96 to Jct. T.H. 8.
FROM END OF I-35 (DULUTH) TO LAKE COUNTY ROAD 2 (TWO HARBORS).

T.H. 63—From south state line to Jct. T.H. 56.
From Jct. T.H. 16 to Jct. I-90.
FROM JCT. WITH I-90 TO JCT. T.H. 52.

T.H. 65—From south state line to south Jct. I-35.
FROM SOUTH JCT. I-35 (SOUTH OF ALBERT LEA) TO 2.3 MILES NORTH.
From 2.3 miles north of south Jct. I-35 to north Jct. I-35.
From Jct. I-694 to south Jct. T.H. 27.
From Pengilly to north Jct. T.H. 169.

T.H. 67—From west Jct. T.H. 19 to Jct. T.H. 68.

T.H. 68—From Jct. T.H. 23 to east Jct. T.H. 19.
From Jct. T.H. 67 to north Jct. T.H. 15.

T.H. 71—From Jct. I-90 to Jct. I-94.
FROM JCT. I-94 NORTH TO NORTH 4TH STREET IN SAUK CENTRE.
From Jct. 4th Street North in Sauk Centre to Browerville.
From Jct. T.H. 10 to Jct. T.H. 34.
From Jct. T.H. 2 to Jct. T.H. 72 in Blackduck.

T.H. 73—From Jct. I-35 to Jct. T.H. 27 (Moose Lake).
From south Jct. T.H. 169 to north Jct. T.H. 169 (Hibbing).

T.H. 74—FROM JCT. I-90 NORTH TO JCT. T.H. 14 IN ST. CHARLES.

T.H. 75—From south state line to Canadian border.

T.H. 78—From I-94 to Ashby.

T.H. 87—From south Jct. T.H. 71 to north Jct. T.H. 71.

T.H. 89—From Jct. T.H. 2 to south Jct. T.H. 1.

I-90 —FROM WEST BORDER TO EAST BORDER.

I-94 —CONTINUOUS FROM NORTH DAKOTA BORDER TO I-694 EAST OF ST. PAUL (INCLUDES YET TO BE CONSTRUCTED SEGMENT AT LYNDALE AVENUE LOCATION IN MINNEAPOLIS).

T.H. 95—From Jct. T.H. 169 to Jct. I-35.
FROM SOUTH JCT. T.H. 212 TO JCT. T.H. 12.

T.H. 96—From Jct. I-35W to Jct. T.H. 61.

T.H. 100—FROM I-494 TO T.H. 52.

T.H. 101—FROM JCT. T.H. 13 TO JCT. T.H. 169 IN SHAKOPEE.
From south Jct. T.H. 169 to Jct. T.H. 212 and 169.
FROM JCT. ~~I-94 (Rogers)~~ T.H. 152 TO JCT. T.H. 169 (ELK RIVER).

T.H. 109—From Jct. T.H. 22 to Jct. I-90.

T.H. 110—FROM JCT. T.H. 3 TO T.H. 56 WEST.

T.H. 127—From Jct. I-94 to Jct. T.H. 27.

T.H. 135—From Jct. T.H. ~~52~~ 53 to Aurora.

T.H. 152—FROM JCT. ~~I-94 (BROOKLYN PARK) TO JCT. I-94 IN ROGERS~~ T.H. 52 IN OSSEO TO JCT. T.H. 101 (DAYTON).
From Jct. I-94 to ~~Jct. T.H. 52 (St. Cloud)~~ Rogers.

T.H. 169—From south state line to Jct. T.H. 21 (Jordan).
FROM JCT. T.H. 21 (JORDAN) TO JCT. T.H. 101 (SHAKOPEE).

From south Jct. T.H. 101 to Jct. T.H. I-494.
FROM JCT. I-494 TO T.H. 100.
From south Jct. T.H. 52 to Jct. T.H. 23.
From south Jct. T.H. 27 to west Jct. T.H. 210.
From Jct. T.H. 200 to south Jct. T.H. 53.

T.H. 200—From west state line to Jct. T.H. 9.
From north Jct. T.H. 371 to south Jct. T.H. 371.

T.H. 201—From Jct. T.H. 10 to Jct. T.H. 169 (Elk River).

T.H. 210—FROM JCT. I-94E EAST TO ST. ANDREWS STREET SOUTH IN FERGUS FALLS.
In Fergus Falls from St. Andrews south to Sheridan Avenue.
From west Jct. T.H. 10 to I-35.

T.H. 212—From west state line to ~~Dawson (east of T.H. 75)~~ Granite Falls.
~~From Dawson to Jct. T.H. 29.~~
~~From south Chippewa County line (Montevideo) to east Jct. T.H. 59.~~
From west Jct. T.H. 71 to Jct. T.H. ~~15~~ 41.
~~From east Jct. T.H. 22 to Jct. T.H. 41.~~
From Carver County Road 10 (Walnut Street—Chaska) to Jct. T.H. 41.
From Jct. T.H. 101 to Jct. I-494.
(EAST 7TH STREET) FROM T.H. 52 (ROBERT STREET) EAST TO EAST MINNEHAHA AVENUE.
FROM JCT. T.H. 36 (NEAR STILLWATER) TO JCT. T.H. 95.

T.H. 218—From south state line to 1¾ miles south of Jct. I-90.
FROM 1¾ MILES SOUTH OF I-90 TO EAST JCT. I-90.
FROM WEST JCT. I-90 TO 2 MILES NORTH.
From 2.0 miles north of Jct. I-90 to Jct. T.H. 14.

T.H. 226—From Jct. T.H. 34 into Dorset.

T.H. 231—From west state line to I-94 (Moorhead).

~~T.H. 257—From Hanska to Jct. T.H. 15.~~

T.H. 268—From Jct. T.H. 75 into Edgerton.

T.H. 270—From Hills to Jct. T.H. 75.

T.H. 280—FROM JCT. I-94 TO JCT. T.H. 36.

T.H. 282—From Jct. T.H. 169 to Jct. T.H. 13.

T.H. 322—From Jct. T.H. 371 to Jct. T.H. 18.

T.H. 324—FROM I-35 TO ITS JCT. WITH T.H. 361 IN PINE CITY.

T.H. 329—From T.H. 59 for ¾ mile east into University of Morris experimental station.

T.H. 361—From I-35 to Rush City.

T.H. 371—From Jct. T.H. 10 to Jct. T.H. 2.

I-494 —FROM JCT. I-94 (FISH LAKE) TO PRESENT END OF I-494 AT TWIN CITY INTERNATIONAL AIRPORT.
FROM T.H. 56 TO JCT. I-94 EAST OF ST. PAUL.

I-535 —IN DULUTH FROM I-35 TO WISCONSIN.

I-694 —FROM JCT. I-94 (BROOKLYN CENTER) TO JCT. I-94 EAST OF ST. PAUL.

City Streets

Albert Lea —MARGARETHA AVENUE FROM T.H. 65 SOUTH TO 13TH STREET AND 13TH STREET EAST TO ITS TERMINI.

Anoka —MSAS 9th Avenue from T.H. 242 to Hoffman Engineering.

MSAS Tyler Street from 7th Avenue to Federal Cartridge.

Blaine —85TH AVENUE FROM I-35W TO 3601 (TRUCK TERMINAL IN THE CITY OF BLAINE).

Cyrus —From 2 blocks south of Jct. of T.H. 28 and CSAH 3 on Dahl Street to T.H. 28.

Detroit Lakes —RANDOLPH ROAD FROM GABOR TERMINAL TO ROOSEVELT AVENUE; THEN ROOSEVELT AVENUE SOUTH TO T.H. 10.

Fergus Falls —DOUGLAS AVENUE FROM T.H. 59 TO T.H. 210.

SHERIDAN AVENUE FROM T.H. 59 AND 210 NORTH, TO WASHINGTON AVENUE, WEST ON WASHINGTON AVENUE ONE BLOCK TO SHERMAN STREET, THEN SOUTH ONE BLOCK ON SHERMAN STREET TO JUNIUS AVENUE.

FROM T.H. 210 SOUTH ON ST. ANDREWS STREET TO WEST LINCOLN AVENUE, WEST ON WEST LINCOLN AVENUE TO SEWAGE PLANT ROAD, THEN SOUTH ON SEWAGE PLANT ROAD TO CENTRAL BY-PRODUCTS PLANT.

Glenwood —JUNCTION OF T.H. 28 AND MINNESOTA AVENUE TO NORTH LAKESHORE DRIVE, THEN NORTH LAKESHORE DRIVE TO THE WEST CORPORATE LIMITS OF GLENWOOD.

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. **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."

Minneapolis — 18TH AVENUE N.E. FROM ARTHUR STREET N.E. TO NEW BRIGHTON BOULEVARD (T.H. 8).

ARTHUR STREET N.E. FROM 18TH AVENUE N.E. TO NEW BRIGHTON BOULEVARD (T.H. 8).

STINSON BOULEVARD FROM 18TH AVENUE N.E. TO BROADWAY STREET N.E.

I-35W NORTH FRONTAGE ROAD FROM STINSON BOULEVARD TO NEW BRIGHTON BOULEVARD (T.H. 8).

I-35W SOUTH FRONTAGE ROAD FROM STINSON BOULEVARD TO NEW BRIGHTON BOULEVARD (T.H. 8).

BROADWAY STREET N.E. FROM ARTHUR STREET N.E. TO MINNEAPOLIS EAST CITY LIMITS.

ARTHUR STREET N.E. FROM SUMMER STREET N.E. TO BROADWAY STREET N.E.

TAFT STREET N.E. FROM KENNEDY STREET N.E. TO BROADWAY STREET N.E.

INDUSTRIAL BOULEVARD N.E. FROM BROADWAY STREET N.E. TO I-35W.

NEW BRIGHTON BOULEVARD FROM I-35W NORTH FRONTAGE ROAD TO SOUTH FRONTAGE ROAD.

T.H. 55 (HIAWATHA AVENUE) FROM EAST 24TH STREET TO MINNEAPOLIS SOUTH CITY LIMITS.

CEDAR HIGHWAY FROM EAST 24TH STREET TO MINNEHAHA AVENUE.

CEDAR AVENUE FROM I-94 EXIT RAMP TO MINNEHAHA AVENUE.

MINNEHAHA AVENUE FROM I-94 TO EAST 26TH STREET.

EAST 26TH STREET FROM MINNEHAHA AVENUE TO 26TH AVENUE SOUTH.

26TH AVENUE SOUTH FROM EAST 26TH STREET TO EAST 27TH STREET.

Moorhead — 1ST AVENUE NORTH FROM 8TH STREET NORTH TO T.H. 10.

Morris — Pacific Avenue From T.H. 59 to Park Avenue.

New Ulm — Front Street from 8th North Street to Center Street, then Center Street from Front Street to Valley Street, then south Valley Street from Center Street to First South Street.

Owatonna — ~~HOFFMAN DRIVE FROM I-35 TO NORTH STREET, NORTH STREET FROM HOFFMAN DRIVE EAST TO THE RAILROAD TRACKS.~~

~~From T.H. 14 south to railroad tracks. (21st Street N.W.)~~

Park Drive from County Road 75 (24th Avenue N.W.) to Railroad Tracks.

Pine City — SEVENTH STREET FROM HILLSIDE AVENUE TO 8TH AVENUE WEST, FROM 4TH AVENUE WEST TO 3RD AVENUE WEST, FROM 2ND AVENUE WEST TO RIVER.

FOURTH STREET FROM HILLSIDE AVENUE TO 8TH AVENUE EAST, 5TH AVENUE EAST TO 3RD AVENUE EAST.

THIRD STREET FROM 3RD AVENUE EAST TO RIVER.

SECOND STREET FROM 3RD AVENUE EAST TO 2ND AVENUE EAST.

FIRST AVENUE EAST FROM CSAH 61 TO RAILROAD TRACKS.

SECOND AVENUE WEST FROM 7TH STREET TO CSAH 61.

SECOND AVENUE EAST FROM CSAH 61 TO SECOND STREET.

THIRD AVENUE WEST FROM 7TH STREET TO CSAH 61.

THIRD AVENUE EAST FROM CSAH 61 TO 2ND STREET.

FOURTH AVENUE WEST FROM 7TH STREET TO CSAH 61.

EIGHTH AVENUE WEST FROM 7TH STREET TO CSAH 61.

EIGHTH AVENUE EAST FROM CSAH 61 TO 4TH STREET.

HILLSIDE AVENUE FROM CSAH 61 TO FOURTH STREET.

Rose Creek — 3rd Street.

St. Paul — DALE STREET FROM GRAND AVENUE TO LARPENTEUR AVENUE.

PLATO BOULEVARD FROM WATER STREET TO FILLMORE AVENUE.

CHESTER STREET FROM T.H. 3 TO PLATO BOULEVARD.

NORTH CLEVELAND AVENUE FROM UNIVERSITY AVENUE SOUTH TO WABASH AVENUE, THEN WABASH AVENUE ON NORTH CLEVELAND TO VANDALIA STREET, THEN VANDALIA STREET TO I-94.

EAST SEVENTH STREET FROM EAST MINNEHAHA AVENUE TO ATLANTIC STREET, THEN ATLANTIC STREET NORTH TO RAILROAD TRACKS.

WACOUTA STREET FROM I-94 TO FIFTH STREET, THEN FIFTH STREET FROM WACOUTA STREET TO BROADWAY.

SHEPARD ROAD FROM T.H. 5 TO WARNER ROAD. THEN WARNER ROAD FROM ITS INTERSECTION WITH SHEPARD ROAD TO T.H. 61.

ELWAY STREET FROM SHEPARD ROAD TO MONTREAL AVENUE.

THEN MONTREAL AVENUE FROM ELWAY STREET TO STEWART AVENUE. THEN STEWART AVENUE TO TEXACO TERMINAL.

MINNEHAHA AVENUE WEST FROM DALE STREET TO ARUNDEL STREET.

OTTO AVENUE FROM SHEPARD ROAD TO WEST 7TH STREET.

WHITE BEAR AVENUE FROM I-94 TO EAST MINNEHAHA AVENUE.

EAST MINNEHAHA AVENUE FROM WHITE BEAR AVENUE TO BIRMINGHAM STREET.

CHILDS ROAD FROM WARNER ROAD TO THE SOUTHERLY LIMITS OF CHILDS ROAD.

MOUNDS BOULEVARD FROM I-94 TO EAST SEVENTH STREET.

SNELLING AVENUE (T.H. 51).

Sauk Centre — 4th Street north from T.H. 71 to 331 north 4th Street.

Wells — Broadway Avenue from T.H. 109 south to 7th Street S.E.

Worthington — Oxford Street from T.H. 60 to T.H. 266.

County Roads

Anoka — CSAH 23 (Naples Street) from CSAH 32 to County Road 105.

County Road 102 (57th Avenue) from T.H. 47 to Main Street (County Road 102).

County Road 102 (Main Street) from 57th Avenue to CSAH 2 (44th Avenue).

CSAH 32 (85th Avenue) from 3601 85th Avenue to 3701 85th Avenue.

CSAH 7 (7th Avenue) from T.H. 10 to Tyler Street (in Anoka).

T.H. 242 (Main Street) from T.H. 10 to 9th Avenue (in Anoka).

Becker — CSAH 10 CONNECTIONS TO T.H. 10.

CSAH 10 from T.H. 10 west of Frazee to T.H. 10 east of Frazee.

Clay — CSAH 11 FROM T.H. 10 TO TRUCK STOP ½ MILE SOUTH OF I-94.

Douglas — CSAH 41 FROM I-94 TO ITS JCT. WITH CSAH 82.

CSAH 82 FROM CSAH 41 TO ITS JCT. WITH T.H. 29 IN ALEXANDRIA.

Hennepin — CSAH 1 (OLD SHAKOPEE ROAD)—FROM NESBITT AVENUE TO FAI 35W

CSAH 3 (EXCELSIOR BLVD.)—FROM CSAH 18 TO T.H. 100

CSAH 10 (BASS LAKE ROAD)—FROM FAI 494 TO CSAH 156

CSAH 15 (SHORELINE BLVD.)—FROM CSAH 110 TO CSAH 19

CSAH 18—FROM FAI 494 TO T.H. 7

CSAH 18—FROM CSAH 10 TO FAI 94

CSAH 19—FROM T.H. 7 TO CSAH 15

CSAH 20 (BLAKE ROAD)—FROM CSAH 3 TO T.H. 7

CSAH 34 (NORMANDALE BLVD.)—FROM ~~94TH STREET~~ CSAH 1 (OLD SHAKOPEE ROAD) TO FAI 494

CSAH 109 (85TH AVENUE NORTH)—FROM CSAH 18 TO T.H. 52

CSAH 156 (WINNETKA AVENUE)—FROM CSAH 9 TO CSAH 10

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. **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."

McLeod — COUNTY ROAD 90 FROM T.H. 7 TO 1¼ MILES SOUTH.

CSAH 9 Plato to T.H. 212.

County Road 81 in Glencoe.

Pine — CSAH 61 FROM JCT. OF T.H. 361 AND T.H. 324 TO ITS JCT. WITH CSAH 11 IN PINE CITY.

COUNTY ROAD 55 FROM CSAH 61 TO INDUSTRIAL PARK—PINE CITY.

CSAH 8 FROM CSAH 61 TO EAST 2ND STREET.

Ramsey — COUNTY ROAD D (CSAH 19) FROM OLD T.H. 8 TO I/35W IN RAMSEY COUNTY.

OLD HIGHWAY 8 (CSAH 77) FROM COUNTY ROAD D TO FIRST STREET SOUTHWEST IN RAMSEY COUNTY.

CLEVELAND AVENUE (CSAH 46) FROM COUNTY ROAD C TO COUNTY ROAD C-2 IN RAMSEY COUNTY.

COUNTY ROAD C (CSAH 23) FROM WALNUT STREET TO PRIOR AVENUE IN RAMSEY COUNTY.

Sherburne — CSAH 11 from T.H. 25 to T.H. 10.

Steele — CSAH 1 (North Street) from CSAH 45 (Hoffman Drive) east to CSAH 1 (North Cedar) in Owatonna.

CSAH 1 (North Cedar) from CSAH 1 (North Street) north to 11th Street in Owatonna.

CSAH 8 (Grove Street) from CSAH 19 (Rose Street) north and east to Cherry Street in Owatonna.

CSAH 9 from I-35 Exit #45 east to CSAH 45.

CSAH 19 (Rose Street) from CSAH 45 (Hoffman Drive) east to CSAH 8 (Grove Street) in Owatonna.

CSAH 25 (Bridge Street) from CR 75 (24th Avenue N.W.) east to I-35 In Owatonna.

CSAH 34 from I-35 Exit #43 east to CSAH 45.

CSAH 45 from North Steele County Line to T.H. 14 (Hoffman Drive in Owatonna).

CSAH 45 (Cedar and Oak Streets) from T.H. 218 and 14 Exit North to Pearl Street in Owatonna.

CSAH 45 (Hoffman Drive) from T.H. 14 in Owatonna south to CSAH 19 (Rose Street.

CSAH 48 (Main Street) from T.H. 218 and 14 north and west to CSAH 45 (Oak Avenue) in Owatonna.

CR 75 (24th Avenue N.W.) from T.H. 14 south to CSAH 25 (Bridge Street) in Owatonna.

Stevens — CSAH 13 Chokio only.

CSAH 9 Alberta only.

Traverse — CSAH 4 Browns Valley only.

Waseca — CSAH 3 from Waldorf to Jct. T.H. 14.

CSAH 9 from west county line to CSAH 3.

CSAH 12 from CSAH 1 to T.H. 13.

CSAH 2 from County Road 53 to T.H. 14.

CSAH 53 from CSAH 2 to CSAH 5.

CSAH 5 from County Road 53 to CSAH 30.

CSAH 30 from CSAH 5 to T.H. 13.

Washington — CSAH 22 FROM T.H. 61 TO JCT. WITH CSAH 38.

CSAH 38 FROM JCT. WITH CSAH 22 TO JCT. WITH I-494.

Winona — County Road 23 from Jct. T.H. 14 to the Jct. T.H. 61 (Minnesota City).

OFFICIAL NOTICES

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

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

Ethical Practices Board

Advisory Opinion #58 Concerning Employment Practices — Bona Fide Occupational Qualification

Approved by the Ethical Practices Board on October 26, 1979

Issued to:

Mr. M. E. Smedsrud, President
Communicating For Agriculture
P.O. Box 677
Fergus Falls, MN 56537

RE: Employment Practices — Bona Fide Occupational Qualification

Summary

#58. Communicating For Agriculture is a unique, non-partisan agricultural related lobbying organization which, on the facts presented the Board, has demonstrated a bona fide occupational qualification for its directors, officers, management and lobbyists to prohibit those persons from seeking partisan political office.

Text

You have requested an advisory opinion from the Minnesota Ethical Practices Board based upon the following:

Facts

You are president of a small, non-partisan lobbying organization. You and your organization desire to adopt a personnel policy prohibiting certain persons who are directors, officers, managers and lobbyists from seeking and holding partisan political office.

Question I

Does candidacy for public office constitute political activity under Minn. Stat. § 10A.20, subd. 11?



WEAVING AS AN ART FORM — The Science Museum of Minnesota's new anthropology exhibit hall includes a collection of Northwest Coast Indian basketry. Not only do the baskets show the patience and diligence of Indian women, but they also are symbolic of Native American culture. The baskets can be seen in the museum's new building at 505 Wabasha St. in downtown St. Paul. (Courtesy of The Science Museum of Minnesota)

Opinion

Minn. Stat. § 10A.20, subd. 11 provides in part as follows:

> No person or association shall engage in economic reprisals or threaten loss of employment or physical coercion against any person or association because of that person's or association's political contributions or *political activity*.

(Emphasis added). Although it is possible to view the above-quoted section as applying only to the "political activity" regulated by Chapter 10A, the literal language of § 10A.20, subd. 11 does not support such a reading. In fact, the placement of the phrase "political contributions" (the area which Chapter 10A primarily regulates) together with the phrase "political activity" indicates that § 10A.20, subd. 11 was intended to apply to activities outside of the purview of Chapter 10A. Similarly, there is no basis in the literal language of § 10A.20, subd. 11 for distinguishing between working with a political campaign, for example, and being a candidate for public office. Thus, it is our opinion that the phrase "political activity" includes being a candidate for public office.[1]

This reading of § 10A.20, subd. 11 is confirmed by the use of phrase "political activity" in two other contexts. The phrase "political activity" is utilized in Minn. Stat. § 43.28. That section regulates the "political activities" which a civil service employee may engage in, prohibiting certain political activities which are engaged in or might be engaged in during

[1]In an early case heard by the then Minnesota Ethics Commission, political activity under section 10A.20, subd. 11 was deemed to include mere membership in the Communist Party. *See* Case No. H-0002.

working hours. The section, however, specifically limits any political subdivision from imposing or enforcing "any additional limitations on the political activities of its employees." Under § 43.28 a civil service employee must take a leave of absence if campaigning will interfere with his or her work but is permitted to run for public office. Thus, when § 43.28 refers to the "political activities" of civil service employees it assumes the phrase includes being a candidate for public office.

Opinions of the Minnesota Supreme Court also indicate that the Court views the term political activity as including running for political office. In *State ex rel.* Turen vs. Patterson, ____ Minn. ____, 48 N.W.2d 547, 576 (1951), the Supreme Court, in interpreting an earlier version of Minn. Stat. § 43.28, noted that:

> It [§ 43.28] can have only one purpose, and that is to obviate the evils which necessarily follow when officers or employees in the classified service of the State are permitted to engage in *political activity to the extent of running for office.*

(Emphasis added). Similarly, the Supreme Court in *Johnson vs. State of Minnesota*, Civil Service Department, ____ Minn. ____, 157 N.W.2d 747, 751 (1968), assumed that the term "political activities" included running for political office. *See also Navarro vs. Leu*, 469 F. Supp. 832 (1979); *Counsel 11, American Federation of State, County and Municipal Employees, AFL-CIO vs. Michigan Civil Service Commission*, ____ Mich. Ap. ____, 274 N.W.2d 804, 808 (1978).

Question II

May a non-partisan public interest lobbying organization prohibit its officers, directors and lobbyists from being candidates for partisan political office?

Opinion

Although the first sentence of § 10A.20, subd. 11 is a blanket prohibition against economic reprisals or threatened loss of employment resulting from a person's political contributions or political activity, a single exception is provided. Section 10A.20, subd. 11 does not apply to "compensation for employment or loss of employment when the political affiliation or viewpoints of the employee is a *bona fide occupational qualification* of the employment." (Emphasis added).

The phrase "bona fide occupational qualification" is a term of art which evidently originated in Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*[2] The phrase also appears in the Age Discrimination in Employment Act of 1976, 29 U.S.C. § 621, *et seq.* It is apparently from these sources that the Minnesota legislature borrowed the "bona fide occupational qualification" phrase which is now part of § 10A.20, subd. 11. Thus, in interpreting the meaning of the phrase, it is appropriate to consider the manner in which the federal legislation has been construed.

Courts have been virtually unanimous in concluding that the "bona fide occupational qualification" language of the federal laws "provides only the narrowest of exceptions to the general rule" of the statutes. *Dothard vs. Rawlinson*, 433 U.S. 321, 333 (1977). This view is based largely upon the wording of the statutes themselves and upon their remedial nature. The language of § 10A.20, subd. 11, and its remedial nature, lead us to the conclusion that the bona fide occupational qualification exception should also be narrowly construed here, and that the exception must not be allowed to swallow the rule against economic reprisals or loss of employment. *Cf. Weeks vs. Southern Bell Telephone & Telegraph Co.*, 408 F.2d 228, 235 (5th Cir. 1969); *Houghton vs. McDonnell-Douglas Corp.*, 533 F.2d 561, 564 (8th Cir. 1977).

In addition, the burden of proving that a particular employment practice fits within the narrow ambit of the exception is upon the employer who asserts the existence of a bona fide occupational qualification. See *Weeks vs. Southern Bell Telephone & Telegraph Co., supra,* at 232.

The federal cases also suggest criteria for determining when this burden has been met. The touchstone of our inquiry is "business necessity." *Dothard vs. Rawlinson, supra*, at 433 U.S. 331, n. 14; *Griggs vs. Duke Power Company*, 401 U.S. 424, 431 (1971). An employment practice will constitute a bona fide occupational qualification, necessary for the conduct of an employer's business, if any of three questions can be answered in the affirmative. Adapted to the context of § 10A.20, and of an employee who runs for political office, those questions are:

(1) Would the *essence* of the institution and its goals be undermined by retaining an employee who runs for political office?

(2) Is there a factual basis for believing that all or substantially all employees who become candidates would be unable to perform efficiently the duties of the job?

(3) Would any personnel adjustments caused by retaining employees who become candidates substantially impinge on the efficient and effective operation of the facility?

Applying these criteria to the question posed by Communicating For Agriculture, it is our conclusion that, on the facts presented, a bona fide occupational qualification is shown.

Communicating For Agriculture (CA) states that it is a non-partisan public interest lobbying organization. Its primary functions are to promote agricultural education and to lobby for the preservation of family farms, the improvement of rural education and rural health care, and reform of estate tax laws. It is CA's purpose to remain objective and impartial, and to

---

[2] 42 U.S.C. § 2000e-2(e) (1) provides in part that:

> (e) Notwithstanding any other provision of this subchapter, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, . . . on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a *bona fide occupational qualification* reasonably necessary to the normal operation of that particular business or enterprise, . . .

(Emphasis added).

avoid any appearance of partisan affiliation. In view of the small size of its staff, CA is concerned that an employee who runs for partisan political office may cause the organization to be identified with a particular political party. Accordingly, CA is considering adoption of a policy requiring directors and at least some employees to resign before becoming partisan candidates for state or national office.

We assume that the proposed policy would apply only to directors, officers, management, lobbyists and others who actually represent CA before the public and that it will not apply, for example, to secretarial or clerical employees. We also assume and urge that CA's employees will be informed of the policy and that new employees will be so informed at the time they are hired.

We believe that, on the facts presented, the essence of the organization and its goals would be undermined if CA were required to retain a director, officer, lobbyist or other public representative who runs for partisan office. The credibility and effectiveness of a public interest lobbying organization are absolutely dependent upon both its ability to remain non-partisan and, no less important, its ability to be perceived as non-partisan. Once identified with a political party, such an organization would be immediately suspect in the eyes of much of its intended audience, and its effectiveness would be lost. The risk of such identification is heightened in this case by the small size of CA's staff. Under these circumstances, we believe there is a substantial likelihood that the party affiliation of even a single candidate might be attributed to CA itself, and that this would undermine the essence of the organization and its goals. Accordingly, we conclude that a requirement of non-candidacy is a bona fide occupational qualification in the factual context described by CA, and we need not address the alternative criteria suggested by the federal decisions.

This is not to suggest that CA could not adopt a less severe approach, such as a mandatory leave-of-absence policy, for employees who become candidates. *See, e.g.*, Minn. Stat. § 43.28, subd. 2 (1978), concerning classified state employees. On the facts stated, however, we cannot say that the policy proposed by CA is prohibited by Minn. Stat. § 10A.20, subd. 11 (1978).

Vernon Jensen
Chairperson

Pollution Control Agency

Notice of Intent to Solicit Outside Opinion on Revised Design Criteria for Land Application of Wastewater Effluents

Notice is hereby given that the Minnesota Pollution Control Agency (MPCA) is considering revising its 1972 *Design Criteria for Land Application of Wastewater Effluents*. A draft of the revised criteria has been prepared by the MPCA staff and a copy may be obtained by contacting:

John N. Holck
Division of Water Quality
Minnesota Pollution Control Agency
1935 West County Road B-2
Roseville, Minnesota 55113

In order to assess the suitability of the draft criteria, the MPCA requests information and comments from all interested persons or groups. Written statements of information and comment may be addressed to Mr. Holck at the above address.

All statements of information and comment must be received by November 15, 1979.

Pollution Control Agency

Notice of and Order for Hearing Regarding Application by the City of Winsted for A Variance from Rule WPC 14 (c) (6) for Its Existing and Proposed Municipal Wastewater Treatment Facility

It is hereby ordered and notice is hereby given that a hearing concerning the above-entitled matter will be held on Wednesday, December 12, 1979, at the Winsted City Hall, 181 - 1st Street North, Winsted, Minnesota 55395, beginning at 7:00 p.m. and continuing until all persons have had an opportunity to be heard.

The purpose of this hearing will be to consider testimony and evidence bearing upon the application of the City of Winsted for a variance from rule WPC 14 (c) (6), which establishes an effluent phosphorous concentration of one milligram per liter where the discharge of the effluent is directly to or affects a lake or reservoir, for the operation of its existing and proposed wastewater treatment facility. The City of Winsted currently operates a three-cell aerated waste stabilization pond system which discharges continuously to South Lake. The City's pond system is located in the NW 1/4 of Section 14, Township 117 North, Range 27 West, McLeod County. The City has proposed to upgrade its existing pond system with continued use of South Lake as the receiving water for treated effluent. The City of Winsted seeks the variance from rule WPC 14 (c) (6) for an indefinite period of time.

The Minnesota Pollution Control Agency is authorized to hold the hearing and grant the requested variance pursuant to Minn. Stat. § 116.07, subd. 5 (1978) and rule MPCA 6.

The hearing will be held before Myron Greenberg, 1745 University Avenue, St. Paul, Minnesota 55104, (612) 296-

8109, a Hearing Examiner appointed by the Chief Hearing Examiner of the State of Minnesota. The hearing will be conducted pursuant to the contested case procedures set out in Minn. Stat. §§ 15.0411-15.052 (1978) and 9 MCAR §§ 2.201-2.299 (the Rules of the Office of Hearing Examiners) and to the extent they do not conflict, 6 MCAR §§ 4.3001-4.3013 (the Minnesota Pollution Control Agency's Rules of Procedure).

The above-cited procedural rules are available for inspection at the Office of Hearing Examiners and the Minnesota Pollution Control Agency or may be purchased from the Documents Section of the Department of Administration, 140 Centennial Building, St. Paul, Minnesota 55155, (612) 296-2874. The rules provide generally for the procedural rights of the parties.

All parties have the right to be represented throughout the proceeding by legal counsel, by themselves, or by a person of their choice (if such representation is not otherwise prohibited as the unauthorized practice of law). Any person desiring to intervene as a Party must submit to the Hearing Examiner and serve upon all existing parties a Petition to Intervene, pursuant to 9 MCAR § 2.210, by December 3, 1979. The Petition must show how that person's legal rights, duties, and privileges may be affected by the decision in this case. The Petition must also set forth the grounds and purpose for which intervention is sought and indicate the petitioner's statutory right to intervene if one should exist. A party to a case has the right to present evidence, rebuttal testimony and argument with respect to the issues and to cross-examine witnesses. Further, parties may be entitled, pursuant to 9 MCAR § 2.216, to issuance of subpoenas requiring the attendance of witnesses and the production of documents relevant to any matter involved in the hearing. Interested persons may present oral or written statements at the hearing without becoming parties at the discretion of the Hearing Examiner in accordance with 9 MCAR § 2.210(e), but may not cross-examine witnesses. At the present time the representatives of parties to this proceeding who should be served with such Petition to Intervene are:

Marlene E. Senechal
Special Assistant Attorney General
Minnesota Pollution Control Agency
1935 W. County Road B2
Roseville, Minnesota 55113
Attorney for Minnesota
Pollution Control Agency Staff

Don Guggemos
Mayor
City of Winsted
City Hall
Winsted, Minnesota
55359

A Notice of Appearance form, enclosed with this Order, must be completed and returned to the Hearing Examiner by December 3, 1979, by each person admitted as a Party to the hearing. A Notice of Appearance need not be filed by persons who wish to present oral or written statement without becoming parties. Persons attending the hearing should bring all evidence bearing on the case including any records or other documents.

Please be advised that the issues to be considered at the hearing may, without further notice, be modified or amended by the Hearing Examiner during prehearing conferences. Additionally, prehearing conferences may result in the establishment of foundation for witnesses and exhibits and, furthermore, may lead to a settlement of the issues surrounding the City's application for a variance. Questions concerning the issues raised in the Order or concerning informal disposition or discovery may be directed to Special Assistant Attorney General Marlene E. Senechal, Minnesota Pollution Control Agency, 1935 W. County Road B2, Roseville, Minnesota 55113, (612) 296-7346.

If any person has a good reason for requesting a delay of the hearing, a request must be made in writing to the Hearing Examiner at least five days prior to the hearing. A copy of the request must be served on all parties.

November 5, 1979

Terry Hoffman
Executive Director

Department of Public Welfare

Mental Health Bureau

Notice of Intent to Solicit Outside Opinion Regarding the Proposed Rule Governing the Administration of Developmental Achievement Centers and Services for Persons Who Are Or May Be Mentally Retarded Or Cerebral Palsied

Notice is hereby given that the Minnesota Department of Public Welfare, Mental Health Bureau, has begun consideration of a proposed rule governing the administration of Developmental Achievement Centers and services for persons who are mentally retarded and/or cerebral palsied.

In order to determine the reasonableness and completeness of the proposed rule, the Department of Public Welfare hereby requests information and comments from all interested individuals or groups concerning the subject matter of the proposed rule.

All interested or affected persons or groups are requested to participate. Statements of information and comment should be made in writing.

Written statements of information and comment may be addressed to:

Ardo Wrobel, Director
Mental Retardation Division
Department of Public Welfare
Centennial Office Building
Saint Paul, MN 55155

The proposed rule, if adopted, would supersede DPW Rule 31 (1971 edition).

All statements of information and comment must be received by December 14, 1979. Any written material received by the Department shall become part of the hearing record.

Notice of Intent To Solicit Outside Opinion Concerning Proposed Rule Governing Grants for Community Support Services for Chronically Mentally Ill Persons

Notice is hereby given that the Minnesota Department of Public Welfare is considering adopting a permanent rule, Grants For Community Support Services For Chronically Mentally Ill Persons. (A proposed temporary rule will be published in next week's issue of the *State Register*. A 20 day comment period will be provided on the temporary rule.) This rule will govern grants available to county boards of commissioners under the provisions of Chapter 324, § 12, Laws of Minnesota, 1979, codified as Minn. Stat. § 256E.12, providing state grants for community support services for chronically mentally ill people.

All interested or affected persons or groups are requested to participate. Statements of information and comment may be made orally or in writing. Written statements of information and comment may be addressed to:

Terry Sarazin, Director
Mental Illness Program Division
Department of Public Welfare, Fourth Floor
Centennial Office Building
658 Cedar Street
St. Paul, Minnesota 55155

Oral statements of information and comment will be received during regular business hours over the telephone at (612) 296-2710.

All statements of information and comment must be received by December 10, 1979. Any written material received by the Department shall become part of the hearing record.

Department of Transportation

Notice of Application and Opportunity for Hearing Regarding Petition of Chicago and North Western Transportation Company for Authority to Retire and Remove An Unnumbered Track Located at Faribault, MN

Notice is hereby given that the Chicago and North Western Transportation Company, with offices at 4200 IDS Center, 80 South 8th Street, Minneapolis, Minnesota 55402 has filed a petition with the Commissioner of Transportation pursuant to Minn. Stat. § 219.741 and § 218.041, subd. 3 (10) to retire and remove an unnumbered track located at Faribault, Minnesota.

The petition recites among other matters that: "The subject track is no longer needed for rail transportation service, constitutes a continuing and burdensome maintenance expense, and is an unnecessary safety hazard. The track is not used at the present time, and there is no present prospect that the subject track will be needed in the future. The only shippers, patrons or members of the public who might have any interest in the retention of the tracks or facilities, or who have used the same to any substantial degree within the past several years is Jerome Fairbo Farms/Foods, Inc."

Any person may file a written objection to the proposed action by means of a letter addressed to the Commissioner of Transportation, Transportation Building, Saint Paul, Minnesota 55155, not later than the date specified below. An objection must be received on or before December 4, 1979. The objection should state specifically how the objector's interest will be adversely affected by the proposed action.

Upon receipt of a written objection, the Commissioner will, with respect to the named petitioner, set the matter down for hearing. If no objections are received, the Commissioner may grant the relief sought by the petitioner.

If this matter is set for hearing, any person who desires to become a Party to this matter must submit a timely Petition to Intervene to the Hearing Examiner pursuant to 9 MCAR § 2.210, showing how a person's legal rights, duties and privileges may be determined or affected by the decision in this case. The petition must also set forth the grounds and purposes for which intervention is sought. All parties have the right to be represented by legal counsel or any other representative of their choice. In the event the objecting party does not do so, or otherwise does not participate in the hearing, the statements contained in the application filed may be taken as true.

Richard P. Braun
Commissioner

Notice of Application and Opportunity for Hearing Regarding Petition of Chicago and North Western Transportation Company for Authority to Retire and Remove I.C.C. Track Nos. 6, 13 and 14, Including Turnouts, All Located at Red Wing, Minnesota

Notice is hereby given that the Chicago and North Western Transportation Company, with offices at 4200 IDS Center, 80 South 8th Street, Minneapolis, Minnesota 55402 has filed a petition with the Commissioner of Transportation pursuant to Minn. Stat. § 219.741 and § 218.041, subd. 3 (10) to retire and remove I.C.C. Track Nos. 6, 13 and 14, all including turnouts, located at Red Wing, Minnesota.

The petition recites among other matters that: "The subject tracks are no longer needed for rail transportation service, constitute a continuing and burdensome maintenance expense, and are an unnecessary safety hazard. These tracks are not used at the present time, and there is no present prospect that the subject tracks will be needed in the future. The only shippers, patrons or members of the public who might have any interest in the retention of the tracks or facilities, or who have used the same to any substantial degree within the past several years are Stephen A. Lawrence and Red Wing Developers, Inc."

Any person may file a written objection to the proposed action by means of a letter addressed to the Commissioner of Transportation, Transportation Building, Saint Paul, Minnesota 55155, not later than the date specified below. An objection must be received on or before December 4, 1979. The objection should state specifically how the objector's interest will be adversely affected by the proposed action.

Upon receipt of a written objection, the Commissioner will, with respect to the named petitioner, set the matter down for hearing. If no objections are received, the Commissioner may grant the relief sought by the petitioner.

If this matter is set for hearing, any person who desires to become a Party to this matter must submit a timely Petition to Intervene to the Hearing Examiner pursuant to 9 MCAR § 2.210, showing how the person's legal rights, duties and privileges may be determined or affected by the decision in this case. The petition must also set forth the grounds and purposes for which intervention is sought. All parties have the right to be represented by legal counsel or any other representative of their choice. In the event the objecting party does not do so, or otherwise does not participate in the hearing, the statements contained in the application filed may be taken as true.

Richard P. Braun
Commissioner

Water Resources Board

Notice of Public Hearing Concerning Petition to Make Boundary Changes in Middle River-Snake River Watershed District

The Minnesota Water Resources Board announces it will hold a public hearing in the Newfolden Community Center, Newfolden, Minnesota, 56738, beginning at 10:00 a.m., Central Standard Time, on Tuesday, November 27, 1979, on a petition to make changes along the northern boundary of the Middle River-Snake River Watershed District.

The Board's Notice of Hearing is published in the *Crookston Daily Times* on November 8 and 15, 1979; in the *Thief River Falls Times* on November 7 and 14, 1979; in the *Stephen Messenger Banner* on November 8 and 15, 1979; and in the *Record*, Middle River, on November 7 and 14, 1979.

Copies of the Board's Notice of Hearing are available from the Board's office at 555 Wabasha Street, St. Paul, Minnesota 55102 (612-296-2840).

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.

Cable Communications Board

Notice of Request for Proposals for Technical and Analytical Services for Interconnection of Cable Communications Systems

The Minnesota Cable Communications Board gives notice that a Request for Proposal (RFP) is available to provide technical and analytical services for interconnection of cable communications systems.

The Board is a state agency mandated by the state legislature to prescribe standards for interconnection and may order interconnection after January 1, 1980. The Board is commencing a study to facilitate the interconnection of all cable systems in the Twin Cities Metropolitan area through a uniform regional channel.

The contractor will recommend methods of interconnection and their economic feasibility. The contractor will also assist in the development of procedural and evaluative criteria for regional interconnection and regional channel entities.

Requests for the RFP may be made no later than December 3, 1979.

Requests should be directed in writing to:

W. D. Donaldson, Executive Director
Minnesota Cable Communications Board
500 Rice Street, Saint Paul, Minnesota 55103
(612) 296-2545

Department of Economic Security

Office of Statewide CETA Coordination

Notice of Request for Proposals for Operation of Displaced Homemaker Programs

In accordance with Minnesota Laws of 1976, ch. 480, the Minnesota Department of Economic Security, Office of Statewide CETA Coordination (OSCC), is requesting proposals from qualified organizations to operate two Displaced Homemaker Programs in Minnesota areas outside the Twin Cities Metropolitan Area. Financing is through an appropriation of the 1979 Minnesota Legislature, Chapter 336 and CETA, Title II, Special Grant Funds. The estimated amount of each contract is $170,000.00 for an operational period of approximately 18 months.

Request For Proposal application is available upon request. Inquiries and requests should be directed to:

Pam McCrea
Office of Statewide CETA Coordination
690 American Center Building
St. Paul, Minnesota 55101
612/296-2684

Request For Proposal applications will be accepted to 4:00 p.m., Friday, December 21, 1979.

Department of Health

Community Services Division

Notice of Request for Proposal for Technical Services Contract

Services for Children with Handicaps is planning a new clinical outreach activity for children with juvenile-onset diabetes mellitus in two pilot community programs during the fall of 1979. The selected communities are Montevideo and St. Cloud.

Integral to the success of this project is the evaluation of the outcome of intervention on participants. A team of professionals qualified in health care assessment will perform this evaluation. The team must have expertise in diabetic management issues and should be able to work efficiently with the professional staff of the Diabetes Education Center (currently working with SCH under an individual contract).

The objectives of the evaluation are:

1. To identify the behavioral problems associated with the management of juvenile diabetes by juvenile diabetics and their families living in regional areas of the State of Minnesota so that;

a. health care professionals in regional areas of the State of Minnesota and appropriate members of the Minnesota

Department of Health may become aware of the effects of behavioral problems associated with the management of diabetes on the health status of the juvenile diabetic;

b. health care professionals in regional areas of the State of Minnesota and appropriate members of the Minnesota Department of Health participating in the educational and clinical training program to be provided by the Diabetes Education Center, Saint Louis Park Medical Center will acquire skills in the recognition and modification of these problems; and

c. appropriate intervention programs utilizing motivation techniques, in addition to health education and provision of information, may be designed for juvenile diabetics and their families to enhance adherence with diabetic regimen.

2. To identify the non-behavioral factors contributing to problems associated with the management of juvenile diabetes by juvenile diabetics and their families living in regional areas of the State of Minnesota so that:

a. health care professionals in regional areas of the State of Minnesota and appropriate members of the Minnesota Department of Health may become aware of the effects of non-behavioral factors on the health status of the juvenile diabetic;

b. health care professionals in regional areas of the State of Minnesota and appropriate members of the Minnesota Department of Health participating in the educational and clinical training program to be provided by the Diabetes Education Center, Saint Louis Park Medical Center will acquire skills in the recognition and modification of these factors;

c. appropriate intervention programs utilizing motivating techniques, in addition to health education and provision of information, may be designed for juvenile diabetics and their families to enhance adherence with the diabetic regimen.

3. To evaluate the outcomes of the educational and clinical training programs on juvenile diabetes provided by the Diabetes Education Center, Saint Louis Park Medical Center for both health care professionals and juvenile diabetics and their families, with specific focus on direct and objective measurement of outcome variables affecting the health status of the juvenile diabetic population.

Proposals shall be submitted to Richard P. Nelson, M.D., Director, Services for Children with Handicaps, 2829 University Avenue Southeast, Suite 840, Minneapolis, Minnesota 55414, by November 27, 1979.

Higher Education Coordinating Board

Notice of Request for Proposals for Development of a Computer Based Model for Projecting the Supply of Nurses

The Minnesota Higher Education Coordinating Board is seeking the services of a health manpower information systems consultant to develop a computer based model to project the supply of registered nurses (RNs) and licensed practical nurses (LPNs). The model will take population data and project the numbers of students, graduates, licensees, active and full-time equivalents according to the framework specified in the request for proposals.

Those interested in receiving requests for proposals should contact:

Jerry Setter
Manager of Special Projects
Minnesota Higher Education Coordinating Board
400 Capitol Square Building
550 Cedar St.
St. Paul, MN 55101
(612) 296-9660

Proposals will be accepted until 4:00 p.m., November 26, 1979.

Department of Transportation

Administration Division

Notice of Request for Proposals for Maintenance Management Information Analysis

The Minnesota Department of Transportation (Mn/DOT) is seeking qualified individuals or organizations to conduct an analysis of the present Maintenance Management Information methodology and to identify the needs and requirements for Maintenance Management within the Operations Division of Mn/DOT. This analysis and its resultant report, which will be accomplished under contract, are outlined in detail in the Request for Proposals (RFP) Statement of Work. The formal RFP may be requested and inquiries should be directed to:

Richard Swanson
Director of Accounting and Finance
461 Rice Street
Saint Paul, Minnesota 55155
Telephone (612) 296-3120

It is anticipated that the analysis and resulting report will not exceed a total cost to the state of $15,000. The final document must be completed prior to February 22, 1980.

The deadline for the submission of completed proposals will be the close of the working day December 3, 1979.

SUPREME COURT

Decisions Filed Friday, November 2, 1979

Compiled by John McCarthy, Clerk

50085/501 State of Minnesota vs. Leon Bird a.k.a. Lee Allen and James Herlofsky. Hennepin County.

"Legal impossibility" is not a defense to a prosecution for either attempt or conspiracy.

Remanded for trial. Sheran, C. J.

49195/371 State of Minnesota vs. Mark Prudhomme, Appellant. Hennepin County.

Law enforcement officers, in executing a warrant to search defendant's residence, did not violate notice requirements of Fourth Amendment when, after knocking but not getting any response, they opened an unlocked outer door and, without announcing their authority or purpose, entered an enclosed but apparently public or semi-public area in order to knock on inner locked doors leading to private areas of resident.

Affirmed. Otis, J.

48472/231 State of Minnesota vs. James Vernon Hofmaster, Jr., Appellant. Rice County.

Where defendant did not object to admission, during second part of a bifurcated trial, of evidence of his postarrest silence and did not seek curative instructions, and where the evidence clearly did not prejudice defendant, we need not decide the issue of whether the admission of the evidence was in violation of *Doyle vs. Ohio*, 426 U.S. 610 (1976).

Where defendant was guilty, if at all, of an aggravated form of assault, the court did not err in refusing to submit single assault.

Trial court's instructions were adequate.

Affirmed. Kelly, J.

49367/322 State of Minnesota vs. Allen Dale Hanson, a.k.a. A. D. Hanson, Appellant. Becker County.

The prosecutor's discretion to aggregate offenses under Minn. Stat. § 609.52, subd. 3(5) (1978), is constitutionally confined.

The venue provision of Minn. Stat. § 609.52, subd. 3(5), is constitutional.

Jury instructions on the elements of swindle should no longer include an instruction about whether the victim acted with ordinary prudence or not.

Affirmed. Todd, J.

49384/322 State of Minnesota vs. Allen Dale Hanson, Appellant. Otter Tail County.

Defendant was not denied due process by a 15-month delay in filing of the criminal complaint because he failed to demonstrate prosecutorial intent to gain tactical advantage by the delay.

Defendant's answers to interrogatories were properly admitted into evidence over Fifth Amendment objection because defendant failed to claim the privilege in lieu of answering the interrogatories.

Affirmed. Todd, J.

49245/368 In Re the Marriage of: Frederick J. Mertens, petitioner, vs. Edna I. Mertens, Appellant. Crow Wing County.

The existence of a meretricious relationship, standing alone, so insufficient to justify the termination of alimony. Since the order of

the trial court does not reflect its specific consideration of appellant's financial status at the time of the hearing, the case is remanded for further proceedings.

Reversed and remanded. Todd, J.

48700/372 State of Minnesota vs. Michael Richard Shatto, Appellant. St. Louis County.

Evidence of defendant's guilt of charge of criminal negligence resulting in death was legally sufficient.

Trial court's instructions, not objected to by defendant, were more than adequate and the trial court did not abuse its discretion in denying a defense request to reread other instructions beyond those requested by the jury during its deliberations.

Affirmed. Wahl, J.

48629/17 Dwight Parks vs. Allis-Chalmers Corporation, formerly Allis-Chalmers Manufacturing Company, Appellant. Beltrami County.

The evidence presented jury questions as to whether an improper manner of use of a forage harvester was reasonably foreseeable and whether, if it was, the manufacturer exercised reasonable care in design and instruction. Therefore, the jury verdict must stand.

The jury's apportionment of fault is supported by the evidence.

There was no reversible error in the refusal of requested instructions.

Affirmed. Kennedy, J. Dissenting, Otis and Kelly, JJ. Took no part, Peterson and Todd, JJ.

48635/253½ In the Matter of the Application for the Disbarment of William R. Ojala, an Attorney at Law of the State of Minnesota. Supreme Court.

An attorney who failed to file timely federal and state income tax returns, failed to cooperate with the Board of Professional Responsibility in its investigation of another attorney, and who published several newspaper articles which were based on documents stolen from the files of another law firm, is suspended from the practice of law indefinitely for not less than three years, with the added provision that a petition for reinstatement may be entertained in one year or at any time thereafter, subject to the following conditions:

1. Full payment of any tax delinquencies and penalties owing for the tax years 1975 and 1976 to both the federal and state tax authorities;

2. Faithful and timely performance of all tax obligations for the interim years between suspension and petition for reinstatement;

3. That he engage in no conduct prohibited by the Code of Professional Responsibility during the period of suspension as an indication of his willingness to abide by the Code's obligations if and when he resumes the practice of law;

4. A sincere and private apology to the client whose affairs were published in the July 19, 1977, Gilbert Herald;

5. The return of any property, and any copies of any documents currently possessed by respondent belonging to the law firm of Trenti, Saxhaug, Berger, Carey and Roche.

Suspended. Per Curiam.

STATE OF MINNESOTA
OFFICE OF THE STATE REGISTER

Suite 415, Hamm Building
408 St. Peter Street
St. Paul, Minnesota 55102
(612) 296-8239

ORDER FORM

State Register. Minnesota's official weekly publication for agency rules, notices and executive orders.

_____ Annual subscription $110.00
_____ Additional Subscription $85.00
_____ Single Copy $2.25 each

***State Register* Binder.** Durable 3½ inch, forest green binders imprinted with the *State Register* logo.

_____ *State Register* Binder $5.00 + $.20 (sales tax) = $5.20* each

***Minnesota Code of Agency Rules* (MCAR).** The permanent, 15 volume set of state agency rules. An indispensable reference work for the practice of administrative law.

_____ 15 volume set $325.00, includes the annual update service subscription for the year of order (a $105.00 value) and a set of MCAR binders.

MCAR Binders. A set of 15 sturdy, three inch, three-ring binders in attractive forest green, imprinted with the MCAR logo.

_____ 15 volume set $35.00 + $1.40 (sales tax) = $36.40*

*To avoid Minnesota sales tax, please include your Certificate of Exempt Status issued by the Minnesota Department of Revenue.

Please enclose full amount for items ordered. Make check or money order payable to "Minnesota State Register."

Name _____

Attention of: _____

Street _____

City _____ State _____ Zip _____

Telephone _____

RECEIVED
NOV 21 1979
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA
COUNTY OF RAMSEY

CERTIFICATE

In the matter of the Proposed Adoption of Rules of Revenue Division Department Governing Income Tax Energy Credit.

I hereby certify that the attached 333 labels 3 sheets constitute the complete list of persons, associations, and other interested groups who as of 8:05 o'clock A .M, this 29th day of October, 1979, have requested pursuant to M.S. 1974, 15.0412, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

Secretary of State
Joan Anderson Growe
By Donna Scott

Agency Exhibit No. 3
File No. DR-80-035-JL
Date 12-17-79

RECEIVED
NOV 21 1979
OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

IN THE MATTER OF the proposed adoption of rules of the Department of Revenue relating to an Income Tax Energy Credit (14MCER Section .1.6020)

AFFIDAVIT

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

That on the 29th day of October, 1979 at the City of St. Paul, County of Ramsey, State of Minnesota he personally received the list of persons, associations and other interested groups who had registered with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules. A copy of this list is attached.

Dale H. Busacker

Subscribed and sworn to before me this 31st day of October, 1979

Thelma F. Sheldon

THELMA F. SHELDON
Notary Public, Dakota Co. Mn.
MY COMMISSION EXPIRES
March 7, 1980

RECEIVED
NOV 21 1979
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

IN THE MATTER OF the proposed adoption of rules of the Department of Revenue relating to an Income Tax Energy Credit (14MCAR Section 1.6020)

AFFIDAVIT

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

That on the 7th day of November, 1979, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the Notice of Hearing in the matter of the proposed adoption of rules of the Department of Revenue relating to an income tax energy credit by depositing in interoffice mail, where appropriate, or by depositing in the United States mail at the City of St. Paul, a true and correct copy of the Notice, properly enveloped, with postage prepaid, to all persons and associations at the address listed on the attached list received from the Secretary of State and also to other interested parties who are listed on the attached list.

Mary Lacho

Subscribed and sworn to before me this 7th day of November, 1979.

Kathleen D. Franssen

KATHLEEN D. FRANSSEN
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Commission Expires Nov. 9, 1984.

The following Names on the General Mailing List can be sent through Interoffice Mail

Arnold, Robert MESPA, 55 Sherburne Ave., St. Paul, Mn. 55103

Dawson, Jean Mn. Gov't Rep. Room B12 Capitol Bldg., St. Paul, Mn. 55155

Halverson, Sue R., 720 American Center Bldg., St. Paul, Mn. 55101

Hiniker, James Commissioner of Admin. 200 Admin Bldg., St. Paul, Mn.

Leg.Ref.Lib Z. Dewitt, Room 111 State Capitol, St. Paul, Mn.

Met. Waste Control Comm. 350 Metro Sq. Bldg., St. Paul, Mn.

Minn. Pollution Control , Water Quality, 1935 W. Co. Rd. B2, Roseville, Mn.

Minn. Pollution Control Agency, 1935 W. Co. Rd. B2, Roseville, Mn.

Minnesota Water Resources Bd., Rm. 206 555 Wabasha St., St. Paul, Mn.

Minn. State Council for the Handicapped, Metro Sqr. Bldg. 7th & Robert, St. Paul

Office of the Governor, 130 State Capitol, St. Paul, Mn.

Peterson, H. Commissioner of Labor & Industry, 444 Lafayette Rd., St. Paul

Schultz, Linda, Room 328 Capitol Bldg., St. Paul, Mn.

Sheehy, Lee E., 625 Admin. Bldg., St. Paul, Mn.

Whitlock, Marshal LCRAR, Rm 44 St. Off. Bldg., St. Paul, Mn.

ADDITIONAL NAMES FOR GENERAL MAILING LIST

Hunter, Lawrence E. Suite 115 Nalpak Bldg. 333 Sibley St., St. Paul 55101

Bastian, Gary W., Senate IRC, 110 State Office Bldg, St. Paul 55155

Christensen, Robt F., Minn Assn Rehab Fac, 3915 Golden Valley Rd, Golden Valley 55422

Cronin, J.J. Manager, State & Local Taxes, JC Penney, 1301 Ave. of the Americas New York, N,Y 10019

Dickinson, A. James, 1200 NW Natl Bk Bldg, 55 E 5th St, St. Paul 55101

Doidge, Chas, J., 309 E. Wyoming St, Redwood Falls, 56283

First Natl Bk of Mpls, Mpls 2, M.C. Setterberg

Higgins, J.C., Brotherhood Rwy Clks, 2317 W. 7th St, Duluth

Investors Syndicate Life Ins., & Annuity Co., Att: Gen Counsel Investors Bldg. Mpls 55402

Marcus, Jeffrey A., General Television, Ste 115, 2021 E. Henn Dr., Mpls 55413

Mundt, Daniel, c/o Van Evera, Mundt et al, 700 Torrey Bldg, Duluth 55802

Northwest Petroleum Assn, 512 Nicollet Mall, Rn 917, Mpls 55402

Pitt, James F, 55 E St., St. Paul 55101
1840 Rand Tower, Mpls. 55402

Prudential Inc. Co. of America (Att: Law Dept.), Box 1143, Mpls 55440

S & FA Reporting Services, Inc. 1101 15th St.N.W., Suite 205, Washington,D.C. 20005
Savings & Loan League of Minn, 625 2nd Ave So., Suite 303, Mpls 2

Stone, John A.P., Dome Petroleum Corp., Box 200, Calgary, Canada T2P 2H8

AMERICAN CAMPING ASSN
4172 ARTH LANE
ST PAUL MN
55112

ANTHONY DICK WDSM RADIO
1105 E. SUPERIOR ST.
DULUTH, MN
55802

ASSOCIATED GEN CONTR.OF MN.
111 E. KELLOGG BLVD.
ST. PAUL, MN
55101

BEGALKA D REV
212 N ELK ST
BELLE PLAINE MN
56011

BLOHM, JOHN D.
BOX 1065
MARSHALL, MN
56258

BROKER JOHN
2850METRO DR. SUITE 504
BLOOMINGTON MN
55420

BUSCH NOEL
SUITE 705 510 MARQUETTE
MPLS MN
55402

CARVER CO. AUDITOR
600 E. 4TH. ST.
CHASKA, MN
55318

CHRISTIANSEN FREDRIK
RM 505 CAPITOL SQ BLDG
ST PAUL MN
55155

CITY OF ALEXANDRIA
114 7TH AVE W BOX 231
ALEXANDRIA MN
56308

CITY OF BRAINERD
CITY HALL
BRAINERD MN
56401

ANDERSON HERBERT
418 8TH ST. SO.
VIRGINIA MN
55792

ARNOLD ROBERT MESPA
55 SHERBURNE AVE.
ST PAUL, MN
55103

ASSN OF MINN COUNTIES
2305 FORD PKWY
ST PAUL MN
55116

BEST FLANAGAN ET AL
4040 IDS CENTER
MPLS MN
55402

BOYUM BURDETTE
250 SO 4TH ST
MPLS MN
55415

BROOKS WILLIAM F JR.
900 MIDLAND BK. BLDG.
MPLS., MN
55401

CHIEF EDITOR ST INFO UNIT
1231 25TH ST NW
WASHINGTON DC
20037

CITIZENS LEAGUE
530 SYNDICATE BLDG
MPLS MN
55402

CITY OF ANOKA
CITY HALL 2015 1ST AVE
ANOKA MN
55303

CITY OF BRECKENRIDGE
CITY HALL
BRECKENRIDGE MN
56520

Aekland, K. Crim. Just Coun.
1422 City Hall Annex
ST. PAUL, MN
55102

ANDERSON JAMES
7703 NORMANDALE RD
MPLS MN
55435

ARROWHEAD REG. DEV COMM.
211 W 2ND ST
DULUTH MN
55802

BLADIN PAPER CO W J LICKE
115 1ST ST SW
GRAND RAPIDS MN
55744

BRICK PHILIP D
807 SELLWOOD BLDG
DULUTH MN
55802

BROWN D M GOODRIDGE PUB SCH
IND DIST #561
GOODRIDGE MN
56725

CHILDS J L
4012 LYNN AVE S
MPLS MN
55416

CITY CLERKS OFFICE
126 NO. MARSHALL
LITCHFIELD, MN
55355

CITY OF APPLE VALLEY
14200 CEDAR AVE SO
APPLE VALLEY MN
55124

CITY OF BROOKLYN CENTER
6301 SHINGLE CREEK PKWY
BROOKLYN CTR MN
55430

Allers John
1501 W 80TH ST SUITE 210
BLOOMINGTON MN
55431

ANDERSON STANFORD
14600 MINNETONKA BLVD
MINNETONKA MN
55343

ARROWHEAD REGIONAL DEV CO
200 ARROWHEAD PLACE
DULUTH MN
55802

BARATTO DIVINE M
1192 BUSH ST
ST PAUL MN
55106

BLAHA GERALD
457 GOODHUE ST
ST PAUL MN
55102

BRIGGS & MORGAN LIBRARIAN
W2200 1ST.NATL.BK.BLDG.
ST. PAUL, MN
55101

BRUNING C.R.DEPT.CLINIC.E
BURTON HALL
MPLS. MN
55455

CARRISON DALE K
MANKATO STATE COLLEGE
MANKATO MN
56001

CHRISTIAN SCI COMM ON PUB
1821 UNIV AVE SUITE 271
ST PAUL MN
55104

CITY OF ALBERT LEA
221 E CLARK ST
ALBERT LEA MN
56007

CITY OF BLAINE
9150 CENTRAL AVE NE
BLAINE MN
55434

CITY OF BROOKLYN PARK
5900 85TH AVE NO
BROOKLYN PARK MN
55443

City of Burnsville
1313 E. Hwy 13
Burnsville MN
55337

CITY OF CHASKA
[illegible] E 4TH ST
CHASKA MN
55318

CITY OF DULUTH
CITY HALL
DULUTH MN
55802

CITY OF EDEN PRAIRIE
8951 EDEN PRAIRIE RD
EDEN PRAIRIE MN
55343

CITY OF HUTCHINSON
37 WASHINGTON AVE WEST
HUTCHINSON MN
55350

CITY OF MAPLEWOOD
1380 FROST AVE
MAPLEWOOD MN
55109

CITY OF MOUNDSVIEW
2401 HWY 10
ST PAUL MN
55113

CITY OF ROSEMOUNT
BOX 455
ROSEMOUNT MN
55068

CITY OF ST PAUL
445 CITY HALL
ST PAUL MN
55102

CITY OF WHITE BEAR LAKE
250 MILLER AVE
WHITE BEAR LK MN
55110

CONCORDIA COLLEGE
DEAN
MOORHEAD MN
56560

City of Cambridge
139 E First Ave.
Cambridge MN
55008

CITY OF COTTAGE GROVE
7516 80TH ST SO
COTTAGE GROVE MN
55016

CITY OF EAGAN
3795 PILOT KNOB ROAD
EAGAN MN
55122

CITY OF EDINA
4801 W 50TH ST
EDINA MN
55424

CITY OF JORDAN FRANK HOUSER2
10 E 1ST
JORDAN MN
55352

CITY OF MINNEPOLIS
3801 66TH AVE NO
BROOKLYN CTR MN
55429

CITY OF NEW HOPE
4401 XYLON AVE NO
NEW HOPE MN
55428

CITY OF ROSEVILLE
2701 NO LEXINGTON AVE
ROSEVILLE MN
55113

CITY OF SHAKOPEE
129 E 1ST AVE
SHAKOPEE MN
55379

CLARKSON J.B.
2350 I.D.S. CENTER
MINNEAPOLIS MN
55402

CONSUMER SERVICES DEPT COMM
5TH FLR METRO SQ BLDG
ST PAUL MN
55101

DAILEY THOMAS ECONOMICS LAB
370 WABASHA ST
ST PAUL MN
55102

City of Champlin
12001 Hwy 52
Champlin MN
55316

CITY OF CRYSTAL
4141 DOUGLAS DRIVE NO
CRYSTAL MN
55422

CITY OF EAST BETHEL
2751 VIKING BLVD NE
WYOMING MN
55092

CITY OF GOLDEN VALLEY
7800 GOLDEN VALLEY RD
GOLDEN VALLEY MN
55427

CITY OF LAKE INDEPENDENCE
RT 1 BOX 123A
MAPLE PLAIN MN
55359

CITY OF MINNETONKA
74600 MINNETONKA BLVD
MINNETONKA MN
55343

CITY OF ORONO
PO BOX 66
CRYSTAL BAY MN
55323

CITY OF ST CLOUD
CITY HALL
ST CLOUD MN
56301

CITY OF SHOREVIEW
4665 NO VICTORIA ST
SHOREVIEW MN
55112

CLAUSEN PHILLIP
2307 STANDISH ST
ST PAUL MN
55108

COUNTY ATTYS COUNCIL
40 NO MILTON ST STE 106
ST PAUL MN
55104

DAKOTA CO MENTAL HEALTH CTR
744 19THAVE NO
SO ST PAUL MN
55075

City of Chanhassen
7610 Laredo
Chanhassen MN
55317

CITY OF DETROIT LAKES
106 E HOLMES ST
DETROIT LAKES MN
56501

CITY OF E GRAND FORKS
P O BOX 453
E GRAND FORKS MN
46721

CITY OF HASTINGS
100 SIBLEY ST
HASTINGS MN
55033

CITY OF MAPLE GROVE
9401 FERNBROOK LANE
MAPLE GROVE MN

CITY OF MORRIS
CITY HALL
MORRIS MN
56244

CITY OF ROCHESTER
1421 3RD AVE SE
ROCHESTER MN
55901

CITY OF ST LOUIS PARK
5005 MINNETONKA BLVD
ST LOUIS PARK MN
55416

CITY OF WAYZATA
600 RICE STREET
WAYZATA MN
55391

COHEN LAWRENCE
1291 1 APPLETREE SOU
MPLS MN
55420

DANIELSON RODNEY L.
411 MAIN ST. SU 210
ST. PAUL, MN
55102

DICKSON GARY L

Dawson Jean MN Gov't Report
Room B1D Capitol
ST. PAUL MN
55155

DUPONT MIKE
5720 EXCELSIOR BLVD
MPLS MN
55416

EFFLING EDWARD H.
161 N. MAIN
FERHAM MN
55573

ENDERSON WILLIAM
2644 NICOLLET AVE
MINNEAPOLIS MN
55409

FARMERS ELEVATOR ASSN
852 GRAIN EXCH BLDG
MPLS MN
55415

FELHABER R S
W 1ST NATL BANK BLDG
ST PAUL MN
55101

FORSBERG AGR SERV
518 SUMMIT AVE
NEW ULM MN
56073

FRISON FRANK NFCA
RM 305 200 SO ROBERT
ST PAUL MN
55107

GEO A HORMEL & CO LAW DEPT
PO BOX 800
AUSTIN MN
55912

GREATER MET AREA HOSPITALITY
5152 CEDAR AVE S
MPLS MN
55417

HAIDER MARYLOU
1757 PRINCETON AVE
ST PAUL MN
55105

HERRY, RICK
1001 LAKESHORE DR.
MOOSE LAKE, MN
55767

Dayton, Herman, ET AL
800 Midland Bank Bldg.
Mpls., MN
55401

IZUCAN KEN ST.PAUL PLANNING
25 W. 4TH. ST.
ST PAUL, MN
55102

ECKLUND WM FELLHABER-LARSON
W 1080 1ST NATL BANK
ST PAUL MN
55101

ENNIS A E BOISE CASCADE
PO BOX 713
INTL FALLS MN
56649

FARRELL FRANK BUR NOR
RM 1180 176 E 5TH ST
ST PAUL MN
55101

FITZGERALD DR BOB
3007 LYNDALE AVE SO
MPLS MN
55409

FOX W.E. LINDQUIST & VENNUM
4200 IDSCTR 80 S.8TH ST
MINNEAPOLIS MN
55402

FURRY CATHERINE
2174 COMMONWEALTH AVE
ST PAUL MN
55108

GODIN RALPH J
3824 47TH AVE SO
MPLS MN
55406

GREEN GARY J
41 SHERBURNE AVE
ST PAUL MN
55102

H B FULLER CO
2400 KASOTA AVE
ST PAUL MN
55108

HARTFELDT WILL
2850 METRO DRIVE STE800
BLOOMINGTON MN
55420

Develop Disabilities Prog.
State Plan 200 Cap. Sq.
ST. Paul MN
55155

EDINA HEALTH DEPT
4801 W 50TH ST
EDINA MN
55424

ERNEST K LEHMANN & ASSOC.
1409 WILLOW ST.
MPLS MN
55403

FARSETH PAUL FOOD STAMPS PRO
WELFARE DEPT 690 N ROBT
ST PAUL MN

FITZPATRICK LEO
8138 HENSLOWE AVE S
COTTAGE GROVE MN
55016

FREDIN CONRAD M
811 FIRST NATL BK BLDG
DULUTH MN
55802

GOLDBERG PROF MELVIN
WM MITCHELL COL OF LAW
ST PAUL MN
55105

GRUMMERT REV DONALD
1435 ADAMS ST
MPLS MN
55413

HAIK RAYMOND A
4344 IDS CENTER
MPLS MN
55402

HAJN DR J W GEN MILLS
PO BOX 1113
MPLS MN
55440

Dickson Gary L.
4665 No. Victoria
Shoreview MN
55112

E CENTRAL REG. DEV. COMM
COURTHOUSE 18 N VINE ST
MORA MN
55051

ELMER EDWIN W
2901 PLEASANT AVE
MPLS MN
55408

FED-ST REPORTS INC.
5203 LEESBURGPIKE S1201
FALLS CHURCH, VA
22041

FORBES GORDON MINN RRS AS
203 HANOVER 480 CEDAR
ST PAUL MN
55101

FRIESEN MILLER A
RAHR BD 624 13TH ST S
VIRIGINIA MN
55792

GEBERT KENNETH L
300 PUBLIC HEALTH CTR
MPLS MN
55415

GRAHAM THOS H.
900 MIDLAND BK. BLDG.
MPLS., MN
55401

HALVERSON SUE R
720 AMERICAN CENTER BLD
ST PAUL MN
55101

HAYES, THOMAS W
700 SELLWOOD BLG
DULUTH MN
55812

Haven Robt Twin Tn Treatment
1706 Univ. Ave.
St. Paul MN
55104

HEALTH MANPOWER C LARSEN
717 DELAWARE ST SE
MPLS MN
55440

HELTZER JAMES DAYTEN HUDSON
777 NICOLLET MALL
MPLS MN
55402

HELMES EUSTIS ET AL
4610 IDS CENTER
MPLS MN
55402

INTERSTATE POWER RW STEELE
1000 MAIN ST
DUBUQUE IA
52001

JAIN NIRMAL ENIV PROCESS
1223 GLENWOOD AVE
MPLS MN
55405

JOHNSON & SANDERSON
ST MARYS HOSPITAL
ROCHESTER MN
55901

JOHNSON LEROY
1207 98TH LANE NW
COON RAPIDS MN
55433

KAVANEY RICHARD
1233 NORTHERN FED BLDG
ST PAUL MN
55102

KNODELL DAVID 31
5 BEAVER BLDG
MPLS MN
55402

KRONLOKKEN J E
10300 NORD RD
BLOOMINGTON MN
55437

Head + Truhn
1007 Soo Line Bldg.
Mpls. MN
55402

HEANEY BILL
30 W SUPERIOR ST
DULUTH MN
55802

HINIKER JAMES COMM OF ADMIN
200 ADMIN BLDG
ST PAUL MN

HORNER WALDORF - KAZIUKEWICZ
PO BOX 3260
ST PAUL MN
55165

IMS PAUL

ECHO MN

IVERSON DR JOS DEPT ED
ST OLAF COLLEGE
NORTHFIELD MN
55057

JENOS INC
525 LAKE AVE SO
DULUTH MN
55801

JOHNSON CLARENCE IBEW LU 292
3615 37TH AVE S
MPLS MN
55406

JOHNSON M.J. FRUNDT & FRUNDT

BLUE EARTH MN
56013

KEENAN RICHARD J
4444 IDS BLDG
MPLS MN
55402

KNOPP TIMOTHY
COLLEGE FORESTRY U OF M
ST PAUL MN
55108

Headwaters Reg Dev. Comm
Box 584 Mental Health
Bemidji MN
56601

HEARING EX.OFF. M GREENBERG
1745 UNIV AVE
ST PAUL MN
55104

HOGLUND RICHARD C
BOX 755
WILLMAR MN
56201

HULSTRAND ANDERSON & LARSON
PO BOX 130
WILLMAR MN
56201

INGRAM ALAN NASH MN CH
22 NO DALE ST
ST PAUL MN

IZAAK WALTON LEAGUE OF AM
111 E FRANKLIN SU 201
MPLS MN
55404

JENSEN MRS GAYNOLD
111 WEST 107TH ST
MPLS MN
55420

JOHNSON G ROBERT
4344 IDS CENTER
MPLS MN
55402

JOHNSON LANCE J
265 S LAFAYETTE RD
ST PAUL MN
55107

KELLY BARBARA SOLID WASTE
4001 PEBBLEBROOK DR
BLOOMINGTON MN
55437

KNUTSON R N GRANNIS ETAL
E J SCHULT BLDG
ST ST PAUL MN
55075

LAKE SUPERIOR INDUSTRIAL BUR
828 FIRST AM. BK. BLDG.
DULUTH MN
55802

Health Central
3810 57th Ave. No.
Mpls MN
55430

HEIM, PAUL M.
5501 NORMAN CENTER DR.
MPLS., MN
55437

HOLEY GEORGE
1509 SW SIXTH STREET
FARIBAULT MN
55021

HUTCHISON R.M. ANOKA CO.C
COURT HOUSE
ANOKA MN
55303

INGVALSON VERN MN.FARM BU
1976 WOODDALE BOX 43370
ST PAUL MN
55164

JOHANSEN BUS SERV INC.
11911 HWY. 52
CHAMPLIN, MN
55316

JOHNSON KEL MACI
HANOVER BLDG
ST PAUL MN
55101

KJERVIK DIANE
4302 POWEL HALL U OF M
MPLS MN

KRAMER ERNEST W
717 DELAWARE ST SE
MPLS MN
55440

LANGEVIN, DAVID P.
8748 IDEN AVE. SO.
COTTAGE GROVE MN
55016

League Women Voters of Minn.
555 Wabasha
St. Paul MN
55102

LEGISLATIVE REFERENCE LIBRARY
11 STATE CAPITOL
STATE MN
55155

LEGISLATIVE REPORT SERV-P STURDEVANT
PO BOX 3259
ANNAPOLIS MD
2140

Lewis Dr. G. M. Jr.
Abbott 110 E 18th St.
mpls. MN
55403

LITTLE SIS SERVICE OF MN
2414 PARK AVE
MPLS MN
55404

LOEFFLER DOROTHY MRS
9 OF M LOI EDDY HALL
MPLS MN
55455

MAHER RICK CARTER
2850 METRO DR SUITE 431
BLOOMINGTON MN
55420

MALECKI JAMES
1 SO STATE ST
NEW ULM MN
56073

MANKATO STAT STUDENT SENA
CENTENNIAL STUDENT UN
MANKATO MN
56001

MANTHEY T J PICKANDS MATHER
1100 SUPERIOR AVE
CLEVELAND OH
44114

MARLATT RALPH J
1320 SOO LINE BLDG
MPLS MN
55402

MARQUARDT PHILIP
RTE 2 BOX 209
JANESVILLE MN
56048

MASTER & BALE, LTD.
315 PEAVEY BLDG.
MPLS. MN
55402

MAUL WARREN E.
405 4TH. AVE. SO.
MPLS., MN
55415

MCDONALD PHILIP M
2077 SELBY AVE
ST PAUL MN
55104

MCNEILLY GREG MNDSVIEW ED AS
41 SHERBURNE AVE
ST PAUL MN
55103

MET. WASTE CONTOL COMM.
350 METRO SQ BLG
ST PAUL MN
55101

METROPOLITAN COUNCIL LIBRARY
300 METRO SQUARE
ST PAUL MN
55155

MEYER HERBERT
10824 ZENITH AVE S
BLOOMINGTON MN
55431

MIDLAND GLASS-BARTO R.J.
P.O. BOX 69
SHAKOPEE, MN
55379

MILLER PAUL J PHARMACY SE
ST MARYS HOSP
ROCHESTER MN
55901

MILLER TOM
2311 PILLSBURY AVE S
MPLS MN
55404

MILLER THOMAS F
1628 IDS CENTER
MPLS MN
55402

MINN ASPHALT PAVEMENT ASSN
555 WABASHA RM 209
ST PAUL MN
55102

MINN ASSN COOPERATIVES
55 SHERBURNE AVE
ST PAUL MN
55103

MINN ASSN VOL SOC SERVICE
1821 UNIV SUITE 389
ST PAUL MN
55114

MINN CHAP ASSOC BLDRS-CONTRS
7204 W 27TH ST
MPLS MN
55426

MINN DEPT HEALTH J C MCKASY
717 DELAWARE S E
MPLS MN
55440

MINN GOV ENG COUNCIL
2400 SHERWOOD HILL RD
MINNETONKA MN
55343

MINN HOSPITAL ASSN
2333 UNIV AVE SE
MPLS MN
55414

MINN LP GAS ASSN
7515 WAYZATA BLVD 106
MPLS MN
55426

MINN. MTR. TRANSP. J.N.DENN
1821 UNIV.
ST.PAUL MN
55104

MINN NEWSPAPER ASSN
84 S 6TH ST STE 400
MPLS MN
55402

MINN PCA WATER QUALITY
1935 W CO RD B 2
ROSEVILLE MN
55113

MINN PETROLEUM COUNCIL
1020 NORTHERN FED BLDG
ST PAUL MN
55102

MINN POLLUTION CONTROL AGCY
1935 W CO RD B2
ROSEVILLE MN
55113

MINN RETAIL FEDERATION
180 METRO SQUARE BLDG
ST PAUL MN
55101

MINN RETAIL HARDWARE ASSN
3033 EXCELSIOR BLVD 313
MPLS MN
55416

MINN RURAL ELECTRIC ASSN
4901 W 77TH ST
MPLS MN
55435

MINN. SERV. STA. ASSN.
1115 2ND. AVE. SO.
MPLS., MN
55403

MINN STATE BAR ASSN
100 MINN FED BLDG
MPLS MN
55402

MINN STATE BD PHARMACY
717 DELAWARE ST SE #351
MPLS MN
55414

MINN STATE MEDICAL ASSOC
STE 900 AM NATL BK BLDG
STPAUL MN
55101

MINN. TRP. PRODUCERS ASSN
333 W. SUPERIOR ST.
DULUTH, MN
55802

MN Turkey Growers Assn.
2383 Univ. Ave.
St. Paul, MN
55114

MEYA FRANK ER MATKA CPAS PLS
[illegible] LAKE ST
WAYZATA MN
55391

MN PUB INT RESEARCH GROUP
3036 4TH AVE SE
MPLS MN
55414

MN ST PHARMACEUTICAL ASSN
2463 UNIVERSITY AVE
ST PAUL MN
55114

MOTOR VEHICLE MFRS ASSN
411 MAIN ST (215)
ST PAUL MN
55102

MURPHY PATRICK FSR INC
BOX 995 COURTHOUSE STA
ARLINGTON VA
22216

NELSON HOWARD I

LINDSTROM MN
55045

NURSING HOME RES ADV CO.
111 E FRANKLIN S210
MPLS MN
55404

OLDESON ARTHUR MPD & MAINS
927 SOO LINE BLDG
MPLS MN
55402

PETERSON DOUG AM RED CROSS
11 DELL PLACE
MPLS MN
55403

PLOGSON, JOHN G. CITY MGR.
BLOOMINGTON CITY HALL
BLOOMINGTON, MN
55431

MN Water Resources Bd.
Rm 206 555 Wabasha St.
St. Paul MN
55102

MN AUTOMOBILE DEALERS ASSN
277 10TH AVE
ST PAUL MN
55101

MN REP STATE CENTRAL COMM
555 WABASHA AVE
ST PAUL MN
55102

MOFFETT R C
RM 301 M MPLS CITYHALL
MPLS MN
55415

MPLS ASSN RETARDED CITIZENS
2344 NICOLLET AVE. SO.
MPLS., MN
55404

NFMDA
706 ALWORTH BLDG
DULUTH MN
55802

NW BELL TEL CO LEGAL DEPT
224 S 5TH ST RM 2000
MPLS MN
55402

O'BRIEN J.DENNIS
1100 1ST NATL. BANK BLDG
MINNEAPOLIS MN
55402

OTTER TAIL POWER CO.
215 S. CASCADE ST.
FERGUS FALLS MN
56537

PETERSEN, H. COMM LABOR&IND.
444 LAFAYETTE RD.5TH FL
ST. PAUL, MN
55101

PINNETTI NICK M HALEY & ASS.
40 CENTRAL PARK S
NEW YORK NY
10019

Minn-Wisc Boundry Area Comm
600 2nd St.
Hudson WI
54016

MN.BD OF NURSING
717 DELAWARE ST SE
MPLS MN
55414

MN SOC SERV ASS J HOOD
614 PORTLAND
ST PAUL MN
55102

MOSS DR JEROME
125 PEIK 159 PILLSBURY
MPLS MN
55455

MPLS TRIBUNE CITY DESK
425 PORTLAND AVE
MPLS MN
55415

NATL FAMILY INS CO
2147 UNIV AVE
ST PAUL MN
55114

NOZISKA HOWARD
7951 METRO PKWY S 103
MPLS MN
55420

NW COUNTRY ELEVATOR ASSN
P.O.BOX.15004COMM.STAT
MPLS., MN
55415

O'CONNELL RAY
MN GAS CO 733 MARQ AVE
MPLS MN
55402

PHAR MFGRS ASSN GROSSMAN S.
1155 15TH. ST. N.W.
WASHINGTON,DC
20005

POPOVICH PETER S
314 MINN BLDG
ST PAUL MN
55101

minnesota AFL-CIO
175 Aurora Ave.
St. Paul MN
55103

MN ELECTRICAL ASSN
3100 HUMPOLT SQ
MPLS MN
55408

MN ST COUNCIL FOR HANDICA
METRO SQ 7TH & ROBERT
ST PAUL MN
55101

MOSTCA
PO BOX J
PERHAM MN
56573

MT OLIVET ROLLING ACRES
R 1 BOX 576
EXCELSIOR MN
55331

NCEC INC C/O DR DAHLBERG
CONCORDIA COLLEGE
MOORHEAD MN
56560

NURSING HOME ADMRS BD EXA
RM 340 717 DELAWARE SE
MPLS MN
55414

NW REG. DEV. COMM
425 WOODLAND AVE
CROOKSTON MN
56716

OFFICE OF THE GOVERNOR
130 STATE CAPITOL
ST PAUL MN
55101

PAYNE COL ALVIN

DEGRAFF MN
56233

PHILLIPS LEGISLATIVE SERV
459 RICE ST
ST PAUL MN
55103

PORTER DAVID
3002 27 AVE S
MPLS MN
55406

Poyzer Robt.
Box 675
Fergus Falls MN
56357

Prause J.C.
1313 Coon Rapids Blvd.
Coon Rapids, MN
55433

Price Walt C Reiss Coal Co.
1011 So. 8th St.
Sheboygan WI
53081

RADMAN RICHARD-LABOR TEMPLE
411 MAIN STREET
ST. PAUL, MN
55102

RALPH BURKE ASSOCIATES
5300 W 73RD ST
MPLS MN
55435

RAMSEY CO MEDICAL SOC
908 AM NATL BK BLDG
ST PAUL MN
55101

RAUENHORSTCORP-RONALD G KIRK
7900 XERXES S S-2200
MPLS MN
55431

REAGAN MICHAEL
3 MINN LEARNING CTR
BRAINERD MN
56401

REARDON MRS HELEN
1125 S E 6TH ST
WILLMAR MN
56201

RED OWL STORES INC
215 E EXCELSIOR AVE
HOPKINS MN
55343

REGION NINE DEV. COMM.
120 S. BROAD ST.
MANKATO, MN
56001

RENNER R.H. ST PAUL AREA CC
300 OSBURN BLDG.
ST PAUL MN
55102

RICHARDS MONTGOMERY ET AL
1430 RAND TOWER
MPLS MN
55402

RIEKE, DAVID
SCORPION IND. INC.
CROSBY, MN
56441

RITTER, JERRY
1011 NICOLLET MALL
MPLS., MN
55403

ROSENTHAL ABE MN TRANS SERV
SUITE 310 N 1821 UNIV
ST PAUL MN
55104

ROSS ALFRED
6356 WARE RD
LINO LAKES MN
55014

ROYAL ESQUIRE REALTY INC
1612 PIONEER BLDG
ST PAUL MN
55101

SANFORD S M
7000 PORTLAND AVE
RICHFIELD MN
55423

SAX DOVE & STENSON
310 ENDICOTT BLDG
ST PAUL MN
55101

SCARBOROUGH WILLIAM
DIV.ED. U.M.
MORRIS MN
56267

SCHAEN ETHEL
1821 UNIV AVE RM 3895
ST PAUL MN
55104

SCHMIDT WARREN WELLCOME MHS
GARDEN CITY
MN
56034

SCHNEIDER MAHLON
GREEN GIANT
LESUEUR MN
56058

SCHUTZ LINDA
RM 328 CAPITOL BLDG
ST PAUL MN
55155

SCHWINN, ROBT. P.
1930 SCO LINE BLDG.
MPLS., MN
55402

SE MN REG DEV COMM
301 MARQ BK BLDG
ROCHESTER MN
55901

SHABATURA EUGENE H
2833 LAKE AVE. SO.
DULUTH, MN
55802

SHEEHY LEE E
625 ADMIN BLDG
ST PAUL MN
55155

SIX EAST REG. DEV. COMM.
311 W 6TH ST
WILLMAR MN
56201

SMITH BOB III
PIONEER BLDG
ST PAUL MN
55101

SNYDER, R.W. U OF M
RM 248C CLASS OFF BLDG.
ST PAUL MN
55108

SODERBERG HAROLD J
1500 MIDWEST PLAZA BLDG
MPLS MN
55402

SOUTHWEST REGIONAL DEV COMM
25TH & BROADWAY
SLAYTON MN
56172

SPRAGUE CHARLOTTE R
AREA HOSPITAL BOX 339
WINDOM MN
56101

ST. PAUL FOOD RETAILERS A
555 WABASHA ST. STE.204
ST. PAUL, MN
55102

STATE & FEDERAL AGENCIES
1101-15TH NW
WASHINGTON DC
20005

STD AM LIFE & ANNUITY CO
3801 W 50TH ST
MPLS MN
55410

STEELWORKERS CREDIT UNION
BOX 250
BABBITT MN
55706

STONE JOHN F MOSS FLAHER
2350 IDS CENTER
MPLS MN
55402

SULLIVAN J KIRK
P.O. BOX 50
BOISE, IDAHO
83729

SULLIVAN JEANETTE
CDIC SW STATE UNIV
MARSHALL MN
56258

SWANSON DALE
1068 SO LAKE ST
FOREST LAKE MN
55025

TATE VERN 3M CO
3M CENTER 220/6W
ST PAUL MN
55101

TENNESSEN SEN ROBERT J
RM 309 STATE CAPITOL
ST PAUL MN
55165

THORNTON, P.J.
107 SO. 15TH. AVE. W.
VIRGINIA, MN
55792

TOWNSHIP OF WHITE BEAR
1281 HAMMOND RD
WHITE BEAR LK MN
55110

UNION STOCK YARDS
ATTN PRES
SO ST PAUL MN
55075

US DEPT OF AGRICULTURE
252 FEDERAL BLDG
ST PAUL MN
55101

VALLY CENTER DRUG
4827 W 124TH ST
SAVAGE MN
55378

VITTALA, W.C. HONEYWELL
HONEYWELL PLAZA
MPLS MN
55408

VOS LEROY
2137 BURNS AVE
ST PAUL MN
55119

WALTERS THOMAS MN MFG HOUSE
4530 W 77TH ST STE 227
MPLS MN
55435

WALZ SAM CO ADMINISTRATION
ANOKA CTY COURTHOUSE
ANOKA MN
55303

WAMPLER LINUS DIR USW OF
609 PROVIDENCE BLDG
DULUTH MN

WASHINGTON COUNTY
14900 61ST ST NO
STILLWATER MN
55082

WATERS, DONNA M.
110506 WINDMILL COURT
CHASKA MN
55318

WELK G V NORTHERN STATES
414 NICOLLET MALL
MPLS MN
55401

WEST CENTRAL REG. DEV.
ADM BLDG,COMMUNITY COLL
FERGUS FALLS MN
56537

WHITLOCK A G
ECON LAB OSBORN BLDG
ST PAUL MN
55102

WHITLOCK MARSHALL LCRAR
RM.44 ST. OFF. BLDG.
ST. PAUL, MN
55155

WM. MITCHELL LAW LIB.
875 SUMMIT AVE.
ST. PAUL, MN
55105

WIS FEEDER PIG MARKET CO-

FRANCIS CREEK WI

WOZNIAK D D
401 FIRST FED BLDG
ST PAUL MN
55101

WRIGHT CO COMMUNITY SERVICES
7NW 1ST ST
BUFFALO MN
55313

TEST PATTERN TEST PATTERN
ADDRESS TEST ADDRESS

TEST PATTERN TEST PATTERN
ADDRESS TEST ADDRESS

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

RECEIVED
NOV 21 1979
OFFICE OF HEARING
EXAMINERS

IN THE MATTER OF THE PROPOSED ADOPTION
OF RULES OF THE DEPARTMENT OF REVENUE
RELATING TO AN INCOME TAX ENERGY CREDIT
(14 MCAR Sec. 1.6020)

ORDER FOR HEARING

It is hereby ordered that a public hearing on the above captioned rules be held in Room 83, State Office Building, 435 Park Street, St. Paul, Minnesota 55155, on December 17, 1979, commencing at 9:00 a.m. and continuing until all persons have had an opportunity to be heard.

It is further ordered that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Secretary of State for that purpose.

It is further ordered that the Notice of Hearing be published in the State Register.

October 26, 1979

Clyde E. Allen, Jr.
Commissioner of Revenue

Agency Exhibit No. 1
File No. DR-80-035-JL
Date 12-17-79

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

IN THE MATTER OF THE PROPOSED ADOPTION
OF RULES OF THE DEPARTMENT OF REVENUE
RELATING TO AN INCOME TAX ENERGY CREDIT
(14 MCAR SEC. 1.6020)

NOTICE OF HEARING

Notice is hereby given that a public hearing in the above-entitled matter will be held in Room 83, State Office Building, 435 Park Street, St. Paul, Minnesota 55155, on December 17, 1979, commencing at 9:00 a.m. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate by offering testimony and by asking questions. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Jon L. Lunde, Office of Hearing Examiner, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, (612) 296-5938, either before the hearing or within five days after the close of the hearing, or for a longer period, not to exceed 20 calendar days if prescribed by the Hearing Examiner.

The agency estimates that there will be no cost to local public bodies in the state to implement this rule for the two years immediately following its adoption within the meaning of Minn. Stat. Sec. 15.0412, subd. 7 (1978).

The proposed rules, if adopted, will govern the interpretation of the income tax energy credit. The proposed rule provides standards that earth sheltered dwelling units, biomass conversion equipment and passive solar energy systems must meet in order to qualify for the energy credit.

The proposed rule explains the allowance of the state energy credit for expenses that qualify for the federal renewable energy source credit. The proposed rule also explains the relationship of the energy credit to other income tax credit provisions, the treatment of joint owners, shareholders of a family farm corporation, and partnerships, and the definition of the terms building, dwelling unit, and principal residence.

Copies of the proposed rules are now available, and one free copy may be obtained by writing to Gerome Caulfield, Director, Income Tax Division, 2nd Floor, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55145, (612) 296-3436. Additional copies will be available at the door on the date of the hearing. The agency's authority to promulgate the proposed rules is contained in Minn. Stat. Section 290.52 and Laws 1979, Chapter 303, Article V, Section 2.

Notice is hereby given that 25 days prior to the hearing a statement of need and reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This statement of need and reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the statement of need and reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

Minn. Stat. ch. 10A requires each lobbyist to register with the Ethical Practices Board within five days after commencing lobbying. "Lobbyist" means any individual:

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

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

"Lobbyist" does not include any:

(a) Public official or employee of the state or any of its political subdivisions or public bodies acting in his official capacity.

(b) Party or his representative appearing in a proceeding before a state board, commission or agency of the executive branch unless the board, commission or agency is taking administrative action;

(c) Individual while engaged in selling goods or services to be paid for by public funds;

(d) News media or their employees or agents while engaged in the publishing or broadcasting or news items, editorial comments or paid advertisements which directly or indirectly urge official action;

(e) Paid expert witness whose testimony is requested by the body before which he is appearing but only to the extent of preparing or delivering testimony; or

(f) Stockholder of a family farm corporation as defined in Section 500.24, subd. 1, who does not spend over $250, excluding his own travel expenses in any year in communicating with public officials; or

(g) Party or his representative appearing to present a claim to the legislature and communicating to legislators only by the filing of a claim form and supporting documents and by appearing at public hearings on the claim.

Questions should be directed to the Ethical Practices Board, 41 State Office Building, Wabasha Street, St. Paul, Minnesota 55155, phone number (612) 296-5615.

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

Clyde E. Allen, Jr.

October 26, 1979

Clyde E. Allen, Jr.
Commissioner of Revenue