

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

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

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : ALLEN E. GILES
Special Assistant Attorney General

DATE: 10/8/80

FROM : H. THEODORE GRINDAL HTG
Special Assistant
Attorney General

PHONE: 297-3471

SUBJECT: Rules as Approved In the Matter of Proposed Rules for the Certification of Evaluators for the Energy Disclosure Program.

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.

HTG/bw
Encl.
cc: Duane Harves
Susan Robertson

ATTORNEY GENERAL

DON PATES, Assistant Director
Building Code Division
Room 408
Metro Square Building

Oct. 10, 1980

ALLEN E. GILES, S.A.A.G.
G-25 State Administration Building

6-0315

Rules for Certification of Evaluators BCD-80-004-RL

Attached, please find the rules as approved by the Attorney General's Office and submitted to the Secretary of State's Office. Attached, also, is the record of the proceeding before the Hearing Examiner. The Division should not destroy these records, they be necessary in the future if there is a challenge to the rules.

AEG:bw
encs.

cc: Sivert Hendrickson

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

BUILDING CODE DIVISION

In the Matter of Proposed
Rules for the Certification of
Evaluators for the Energy
Disclosure Program

ORDER ADOPTING RULES

The above entitled matter came on for hearing before Richard C. Luis, hearing examiner on the 3rd day of July, 1980 after proper notice required by Minn. Stats. 15.0412 (1978), was served upon all persons, association, municipalities and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all the evidence adduced and upon the records, files and proceedings herein, and having confirmed the need for the above captioned rules,

NOW THEREFORE IT IS ORDERED that these rules identified as Rules for Energy Disclosure Program and for Certification of Evaluators for the Energy Disclosure Program are adopted this 12th day of September, 1980 pursuant to the authority vested in me by Minn. Stat. 116H.129 subds. 5, 6 and 7 (1979).

STATE OF MINNESOTA
DEPARTMENT OF ADMINISTRATION

9-16-80
DATE

James J. Hiniker, Jr.
Commissioner

A.G copy. Rules As Adopted

DEPARTMENT OF ADMINISTRATION

BUILDING CODE DIVISON

RULES FOR ENERGY DISCLOSURE PROGRAM AND FOR CERTIFICATION OF EVALUATORS FOR THE ENERGY DISCLOSURE PROGRAM

HE 4P11

additions to Rule ... Proposed underlining in red.

2MCAR Sec. 1.16220 Authorization. These rules are promulgated pursuant to Minn. Stat. 116 H. 129 Subds. 5, 6 and 7. (1978)

2MCAR Sec. 1.16221 Purpose and Scope. The purpose of these rules is to establish procedures for a residential energy disclosure program and for certification of evaluators.

2MCAR Sec. 1.16222 Disclosure Program. Effective October 1, 1980. Prior to time of sale, as required by Sec. 116H.129 subds. 5, 6 and 7 an evaluation and report disclosing the extent of compliance with Energy Conservation Standards for Existing Residences (2MCAR 1.16205) shall be made for all residences constructed prior to January 1, 1976, unless the buyer waives the disclosure report.

Evaluators shall use a disclosure report form approved by the Building Code Division in consultation with the Minnesota Energy Agency and the Legislature. Evaluators' calculations shall be made on forms prepared by the Building Code Division and/or the Minnesota Energy Agency. Evaluators shall maintain copies of completed disclosure reports which shall be available for review by the Building Code Division or the Minnesota Energy Agency. Evaluators shall submit an annual summary of evaluations to the Minnesota Energy Agency. Copies of completed disclosure reports shall be retained by evaluators for a period of not less than 5 years.

mod. to Ras P. #1

Prior to time of sale the potential buyer of any residence constructed prior to January 1, 1976, shall be furnished with a disclosure report signed by a certified evaluator, which shall indicate the extent of compliance with the Energy Conservation Standards for Existing Residences (2 MCAR 1.16205). If the buyer chooses to waive the disclosure report he may do so by signing a waiver provision on the disclosure report form. Completed disclosure reports and evaluators' calculations shall be submitted to the owners by evaluators within 30 days of request for evaluation.

2MCAR Sec. 1.16223 Certification. A certification shall be issued to qualified applicants upon successful completion of an examination evidencing knowledge of structural and energy use characteristics of residences and proficiency in evaluation of buildings, submittal of a copy of a bond required under 2MCAR 1.16226 and payment of fee required under 2MCAR Sec. 1.16227.

2MCAR 1.16224 Standards for Certification, Prerequisities. Persons possessing one of the following qualifications shall be eligible to be admitted for examination;

A. Building Officials, certified by examination by the Building Code Division.

B. Architects and Mechanical Engineers registered in the State of Minnesota.

C. Truth in Housing Evaluators and Truth in Sale of Housing Evaluators certified by examination by the cities of Minneapolis and St. Paul.

D. Individuals experienced in weatherization procedures who have completed a minimum of twenty-five (25) audits and six (6) months satisfactory work with a non-profit weatherization program.

E. Employees of participating utility companies trained to perform audits under the Federal Residential Conservation Program.

F. Persons who have successfully completed a prescribed course or courses of training for residential evaluators, sponsored by the Minnesota Energy Agency.

G. Persons who have successfuily completed a course or courses of training for residential evaluators sponsored by the University of Wisconsin Extension Division, or similar courses, with prior approval of the Building Code Division.

Said persons shall be required to attend an orientation program prior to examination.

2MCAR Sec. 1.16225 Examinations. Examinations shall be conducted at least once a year, or based upon receipt of request for examination more often, at locations determined by the Building Code Division. Notice of time and place of examination shall be provided by the Building Code Division by publication in the State Register and Building Code Newsletter published at regular intervals or to persons upon request. Applications for examination with required fee must be received by the Building Code Division a minimum of two (2) weeks prior to established examination dates.

mod. to Ras P#4 HE P16

2 MCAR Sec. 1.16226 Bond Required. Evaluators must provide a bond to the State in the sum of $5,000.00 conditioned upon the faithful and lawful performance of all work done pursuant to these rules and Minn. Stat. Sec. 116H.129, and such bond shall be for the benefit of persons injured or suffering financial loss by reason of failure of such performance. The bond shall be filed with the Building Code Division and must be continuously applicable for the period of the certificate. Such bond shall be written by a corporate surety licensed to do business in the State of Minnesota. Bonds shall not be required for evaluators in the employ of municipal governments.

2 MCAR Sec. 1.16227 Certification fees. Application for evaluator certification must be accompanied by a fee of $50.00 remitted to the Building Code Divison; payable to the State of Minnesota. No fee shall be charged upon receipt of an application by a certified Municipal Building Official who is directly employed by a muncipality as defined in Minn. Stat. 16.84 Subd. 3.

2MCAR Sec. 1.16228 Conflict of Interest. Evaluators shall not be engaged in nor have an interest in the sale of products referenced in the standards.

Evaluators shall not own nor have an interest in properties that they evaluate. Holding of a listing for sale by a person or persons employing firm constitutes an interest in property.

Public Utilities evaluation programs such as Residential Conservation Services (RCS) are not to be considered a conflict of interest.

2MCAR Sec. 1.16229 Non-Endorsement. The evaluator shall not endorse the use of specific materials, brand names of material or product, person, firm, contractor or methods which may be used to meet any specific standard, nor shall any statement relating to the standards be interpreted as an endorsement of any specific material or product.

mod. to Ras P #7 HE #19

2MCAR Sec. 1.16230 Revocation. Certification shall be revoked upon cancellation or expiration of a bond. When reasonable evidence discloses a conflict of interest, unethical practices or negligent performance of duties by the evaluator, the Building Code Division shall notify the evaluator of its intent to revoke the certificate and provide for a contested case proceeding in accordance with the provisions of Minn. Stat. Sections 15.041 et. seq.

Oct 3 80

STATE OF MINNESOTA
DEPARTMENT OF STATE
F I L E D
OCT - 6 1980
Joan Anderson Growe
Secretary of State
12:30 PM

Our File #6-23

Permanent Rule X

Temporary Rule _____

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 9/24 DUE DATE 10/14/80

Resubmitted and Received _____

a. Returned to Agency w/o Filing w/Secretary of State _____
b. Approved _____ Date Sent Back to Agency _____

- -

1. Rules as Adopted ✓
2. Rules as Proposed ✓ see S.R. + attached modifications
3. Certificate of Board's Authorizing Resolution, where applicable N/A
4. Order for Hearing ✓
5. Notice of Hearing ✓ 7.30.80
   Sufficiency ? but see HE ¶10 re statutory authority
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 ✓ 5.29.80
10. Publication in State Register ? but see HE ¶9
    At least 30 days prior to hearing ✓ 6.2.80
11. Statement of Need and Evidence ✓
12. Hearing Examiner's Report ✓
13. Agency's Findings of Fact A) 9.9.80 B) Supplemental F of F
14. Certificate of Board's Resolution Adopting Rules, where applicable N/A
15. Order Adopting ✓
16. Report/order of Chief Hearing Examiner A) 9.2.80 B) 9.11.80 C) 9.23.80
17. Order Approving Incorporation by Reference, where applicable N/A
18. Certificate of Compliance with Rulemaking Procedures ✓
19. Copy of Notice of Intent to Solicit Outside Opinion, where applicable _____
20. Petition by Public, where applicable N/A
21. Energy Agency letter dated 6/2 re consultation on rule.

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

BUILDING CODE DIVISION

In the Matter of Proposed
Rules for the Certification of
Evaluators for the Energy
Disclosure Program

FINDINGS OF FACT

(A)

The above entitled matter came on for hearing before Richard C. Luis, Hearing Examiner on the 3rd day of July, 1980 after proper notice required by Minn. Stat. 15.0412 (1978) was served on all persons, associations, municipalities and other interested groups registered with the Secretary of State for the purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all the evidence adduced and upon the records, files and proceedings herein, this agency hereby accepts and adopts the findings of fact, conclusions and recommendations of the hearing examiner as included in his report dated August 22, 1980 and incorporates them hereto by reference with the following exception and amendments.

The hearing examiner's report finding number 17 and conclusion number 4 and 7; 2MCAR section 1.16226 and references to that section in sections 1.16223 and 1.162230 are deleted as proposed, at the hearing, by the Division. The hearing examiner's suggestion to delete the words "to the State" is a remedy that is not possible. Bonding companies require that bonds be issued to a named party or corporation and will not write bonds naming only unknown third parties. The hearing examiner's proposal to require purchase of liability insurance is not an acceptable remedy because such insurance would provide protection against bodily injury and property damage and would not protect against failure of auditors to perform faithfully and lawfully. Deletions noted above do not constitute substantial change. Further the notice of hearing clearly stated that the proposed rules are subject to change during the hearing process.

see p. 4

STATE OF MINNESOTA
DEPARTMENT OF ADMINISTRATION

9-5-80
DATE

James J. Hiniker, Jr.
Commissioner

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

BUILDING CODE DIVISION

In the Matter of Proposed
Rules for the Certification of
Evaluators for the Energy
Disclosure Program

SUPPLEMENTAL
FINDINGS OF FACT

(B)

The above entitled matter came on for hearing before Richard C. Luis, Hearing Examiner on the 3rd day of July, 1980 after proper notice required by Minn. Stat. 15.0412 (1978) was served on all persons, associations, municipalities and other interested groups registered with the Secretary of State for the purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all the evidence adduced and upon the records, files and proceedings herein, this agency hereby accepts and adopts the findings of fact, conclusions and recommendations of the hearing examiner as included in his report dated August 22, 1980 and incorporates them hereto by reference.

STATE OF MINNESOTA
DEPARTMENT OF ADMINISTRATION

9-14-80
DATE

James J. Hiniker, Jr.
Commissioner

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

BUILDING CODE DIVISION

In the Matter of the Proposed Rules of the Building Code Division for Certification of Evaluators For Energy Disclosure Program

STATEMENT OF NEED AND REASONABLENESS

The need for the proposed rules was established in Minn. Stats. 116H.129, Subds. 5, 6 and 7 (1978) (1979 Supplement) which directed the Commissioner of Administration to promulgate rules for certification of energy evaluators for the energy disclosure program.

Don Pates, Director and Sivert Hendrickson, Section Chief - Consultants of the Building Code Division, will appear in behalf of the proposed rules at the hearing. They will testify regarding the need for and reasonableness of the proposed rules. The substance of the testimony is set forth herein.

The proposed rules have been prepared in consultation with the Minnesota Energy Agency and appropriate legislative committees as required in Minn. Stats. 116H.129, Subd. 7.

The proposed rules will apply to certification of evaluators for the residential energy disclosure program. The evaluators will inspect residences built before January 1, 1976 prior to their sale, upon request of owners to determine extent of compliance with the Energy Conservation Standards for Existing Residences (2 MCAR 1.16201 through 1.16207) and furnish to the owner a completed evaluation form indicating extent of compliance.

The reason for the proposed rules is to implement the residential energy disclosure program.

The following is the evidence and argument which supports the need for and reasonableness of the proposed rules:

2MCAR S. 1.16220 Authorization. This section is necessary to reference appropriate statutory requirements and limitations.

2MCAR S. 1.16221 Purpose and Scope. This section is needed to define the areas encompassed in the proposed rules.

2MCAR S. 1.16222 Disclosure Program. This section is needed to delineate reasonable procedures and methodology to be followed by evaluators. It provides for the use of standard calculation forms approved by the Building Code Division and Minnesota Energy Agency so that uniformity of evaluations may be achieved. This section also provides for maintenance of records and an annual summary to permit the Building Code Division or the Energy Agency to review the effectiveness of the program. The 5 year period coincides with the provision in the statute which states that new evaluations shall not be required for 5 years if a copy of the previous evaluation is submitted to the buyer.

DJ Exhibit No. 6 A

File No.

Date 7/3/80

It provides for disclosure reports to be submitted to owners within the time required by the statute, along with the evaluators calculations used in arriving at the conclusions contained in the disclosure report.

2MCAR S. 1.16223 Certification. This section is needed to provide for an examination process to determine evaluators competency to evaluate buildings and provide for payment of a fee as prescribed in following sections of these proposed rules.

2MCAR S. 1.16224 Standards for Certification, Pre-requisites. This section provides that persons who apply for examination must have previous experience and training relating to building construction features that provide for efficient use of energy. The persons listed in sections A through D posess experience and training relating to Energy Conservation and include those groups as recommended by the Legislature in M.S. 116.129 Subd. 6. The complexity of a complete evaluation requires that evaluators possess knowledge and experience prior to certification.

2MCAR S. 1.16225 Examinations. This section provides for continuing examinations for certification as need arises. It is the intention of the Building Code Division to conduct examinations during their continuing education seminars which are held each Spring and Fall at 8 to 12 locations in the State, based upon receipt of applications. This will provide for examinations at minimal cost to the State and prospective evaluators.

2MCAR S. 1.16226 Bond Required. This section is deleted.

2MCAR S. 1.16227 Certification Fees. It is necessary and reasonable to provide for fees to defray the cost of the on going program as provided for in the statute.

2MCAR S. 1.16228 Conflict of Interest. This section is necessary and reasonable to protect against potential conflicts that could arise if evaluators sold related products or had an interest in properties they evaluate. The exception for public utilities is provided because of federal laws requiring that evaluation programs be implemented by public utilities.

2MCAR S. 1.16629 Non-Endorsement. It is necessary and reasonable to prohibit evaluators from promoting the use of specific products to the exclusion of others that may serve the same purposes.

2MCAR S. 1.16630 Revocation. This section is needed to provide for revocation of certification in event of failure of evaluators to faithfully perform the required duties. Minn. Stat. Sec. 15.041 et. seq. provides a reasonable means for hearing of contested cases.

STATE OF MINNESOTA
DEPARTMENT OF ADMINISTRATION

6-6-80
Date

James J. Hiniker, Jr.
Commissioner

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

STATE OF MINNESOTA

DEPARTMENT Attorney General

Office Memorandum

TO : Ted Grindal

DATE: 18 September, 1980

FROM : Allen Giles

PHONE: 296-0315

SUBJECT: In the Matter of Proposed Amendments to Energy Conservation Standards for Existing Residences (Rules submitted apply only to Certification of Evaluators)

Enclosed please find three copies of the following:

1. Rules as adopted.
2. Rules as proposed (State Register dated June 2, 1980).
3. Order for Hearing.
4. Notice of Hearing.
5. Certificate of Acquisition of Secretary of State's List.
6. Affidavit of Mailing.
7. Statement of Need.
8. Hearing Examiner's Report.
9. Agency's Order Adopting Rules.
10. Agency's Finding of Fact.
11. Chief Hearing Examiner's Report.
12. Statement of Compliance with Rulemaking Procedures.

These rules are submitted pursuant to Minn. Stat. § 15.0412, Subd. 4 for your review as to form and legality. The entire hearing record is also submitted for your review. Please note that the rules submitted apply only to the Certification of Evaluators. Please contact me if you have any questions.

AEG:mb

Enclosures

c.c.: Don Pates, Assistant Director

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

BUILDING CODE DIVISION

In the Matter of Proposed Rules For the Certification of Evaluators For the Energy Disclosure Program

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Special Assistant Attorney General Allen E. Giles, 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 rulemaking procedures, the applicable rulemaking procedures have been followed.

Date September 19, 1980

Allen E. Giles

ALLEN E. GILES

RECEIVED
JUN 3 1980
OFFICE OF HEARING
EXAMINERS

MINNESOTA ENERGY AGENCY
980 AMERICAN CENTER BUILDING
150 EAST KELLOGG BOULEVARD
ST. PAUL, MINNESOTA 55101

612-296-5120

June 2, 1980

Mr. Richard Luis
Office of Hearing Examiners
Room 300
175 University Avenue
St. Paul, MN 55105

Dear Mr. Luis:

The Minnesota Energy Agency was consulted by the Building Codes Division of the Department of Administration and actively participated in the development of the Proposed Amendments to Rules for Energy Conservation Standards for Existing Residences and the Development of Proposed Rules for Certification of Evaluators for the Energy Disclosure Program. The Energy Agency was formally represented on the Energy Conservation Standards Subcommittee and members of my staff worked very closely with staff from the Building Codes Division to ensure that the proposed amendments would be coordinated with other relevant state and federal programs.

Because these proposed rules were developed through consultation with a wide range of interested parties, including the Energy Agency, and because the proposed amendments were designed to be compatible with emerging federal programs, I believe the adoption of these amendments will result in significant energy savings in Minnesota over the coming years.

Sincerely,

Mark Mason, Director
Minnesota Energy Agency

Exhibit No. 9
File No.
Date 7/3/80

AN EQUAL OPPORTUNITY EMPLOYER

7/1/80

MINNESOTA DEPARTMENT OF ADMINISTRATION

BUILDING CODE DIVISION

MODIFICATIONS TO RULES AS PROPOSED

(Certification of Evaluators for Energy Disclosure Program)

State Register Vol. 4 No. 48 June 2, 1980

Public Hearing July 3, 1980

1. 4 S.R. 1890 - 2MCAR 1.16222 2nd paragraph 10th line should read, Evaluators shall submit an annual summary of evaluations to the Minnesota Energy Agency. ✓ p.1

2. 4 S.R. 1890 - 2MCAR 1.16223 Certification line 5, Delete "submittal of a copy of a bond required under 2MCAR Section 1.16226,". NOT deleted p.2 see HE #17

3. 4 S.R. 1890 - 2MCAR 1.16224 Standards for Certification, prequisites, first line should read, "Persons possessing one of the following qualifications shall be eligible to be admitted for examination. ✓ p.2

4. 4 S.R. 1890 - 2MCAR 1.16225 last line, insert after, "Building Code Division, a minimum of two (2) weeks prior to established examination dates. ✓ p.3

5. 4 S.R. 1890 and 1891 - 2MCAR 1.16226 Bond Required. Delete entire section. Editorially renumber all the following sections. NOT deleted p.4 see HE #17

6. 4 S.R. 1891 - 2MCAR 1.16227 Add sentance. No fee shall be charged upon receipt of an application by a Certified Municipal Building Official who is directly employed by a municipality as defined in Minn. Stat. 16.84 Subd. 3. ✓ p.4

7. 4 S.R. 1891 - 2MCAR 1.16229 3rd line, insert after: or products, person, firm, contractor, ✓ p.5

8. 4 S.R. 1891 - 2MCAR 1.16230 Delete first sentence "Certification shall be revoked upon cancellation or expiration of bond." NOT deleted p.4 see HE #17

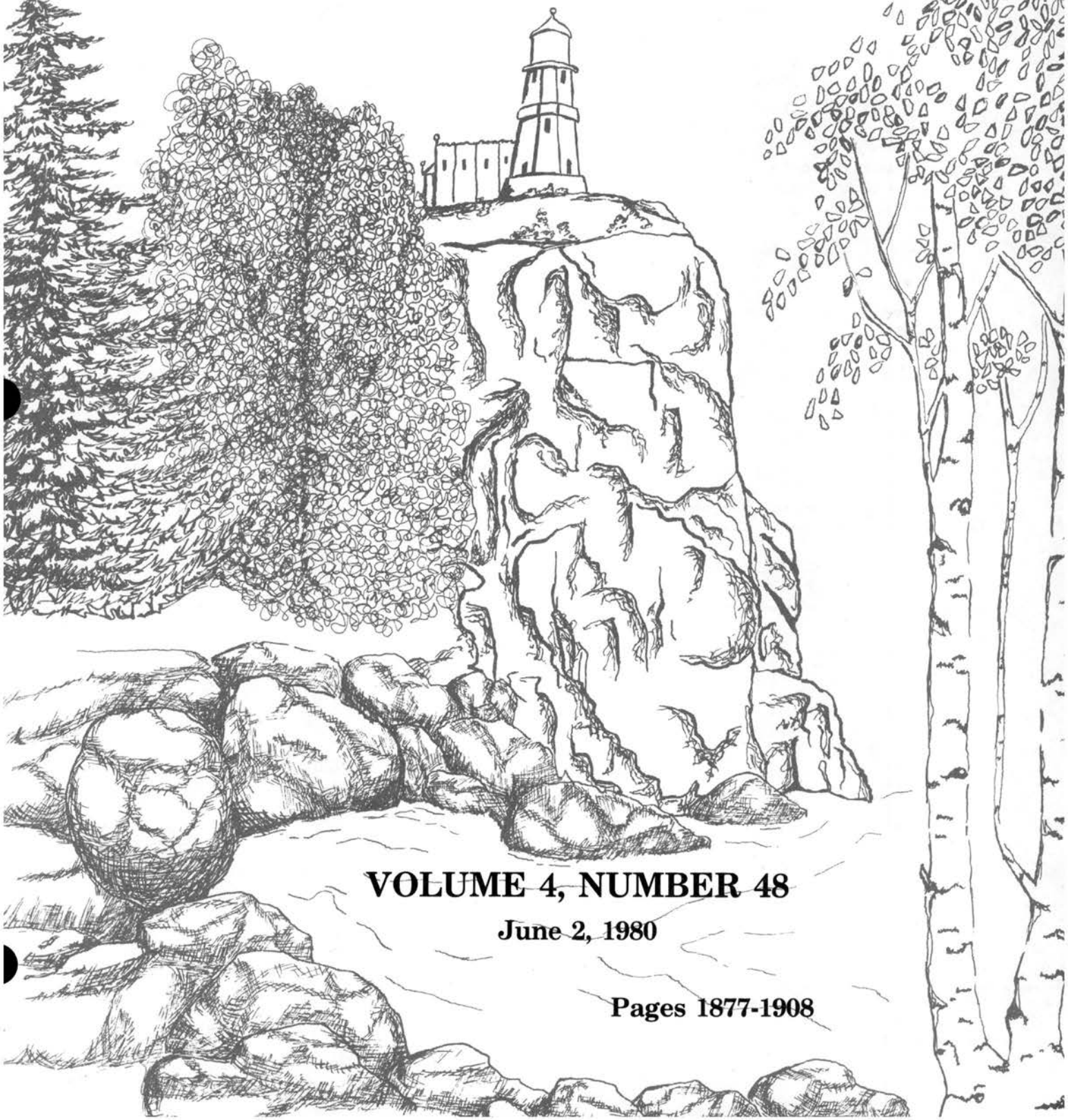
Div Exhibit No. 8

File No.

Date 7/3/80

STATE REGISTER

STATE OF MINNESOTA



VOLUME 4, NUMBER 48

June 2, 1980

Pages 1877-1908

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		
49	Friday May 23	Monday June 2	Monday June 9
50	Monday June 2	Monday June 9	Monday June 16
51	Monday June 9	Monday June 16	Monday June 23
52	Monday June 16	Monday June 23	Monday June 30

*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 $118 per year, postpaid to points in the United States. Second class postage paid at St. Paul, Minnesota, Publication Number 326630. (ISSN 0146-7751) No refunds will be made in the event of subscription cancellation. Single issues may be obtained at $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
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Office of the State Register

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

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

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

The PROPOSED RULES section contains:

- Proposed new rules (including Notice of Hearing).
- Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
- Proposed temporary rules.

The ADOPTED RULES section contains:

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

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

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

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Issue 27-38, inclusive
Issue 39, cumulative for 1-39
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7 MCAR §§ 3.002, 3.004-3.005, 3.011-3.022, 3.025, 3.031-3.034, 3.044-3.046, 3.063 (proposed) 1798

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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.

Department of Administration Building Code Division

Proposed Amendments to Rules for Energy Conservation Standards for Existing Residences, and Proposed Rules for Certification of Evaluators for Energy Disclosure Program

Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held in the Conference Room, 408 Metro Square Building, 7th and Robert Street, St. Paul, Minnesota on July 3, 1980, 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. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Richard Luis, Office of Hearing Examiners, Room 300, 175 University Avenue, St. Paul, Minnesota 55105, either before the hearing or within 5 working days after the close of the hearing. The Hearing Examiner may extend the time for receipt of written comments for a period not to exceed twenty (20) calendar days from the date of the hearing.

The hearing will commence with the matter of proposed amendments to rules for Energy Conservation Standards for Existing Residences. These rules add additional mandatory standards for residential rental property if economically feasible pursuant to Minn. Stat. § 116H.129, subd. 3. In addition the proposed rules provide for 22 standards, which will be used as a basis for evaluation of residences at the time of sale. The proposed rules incorporate methods for calculating energy savings and determining economic feasibility. Generally the amendments expand the rules to include requirements for reduction of energy usage by mechanical or electrical systems.

The hearing will also consider proposed rules for Certification of Evaluators for Energy Disclosure Program. These rules provide procedures for a disclosure program; outline requirements for certification and performance of energy evaluators, including revocation; and, further, provide provisions regarding conflict of interest, non-endorsement, certification fees, and bonding requirements for energy evaluators.

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

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."

Copies of the proposed rules will be available at the door on the date of the hearing and one free copy can be obtained by writing to the Building Code Division, 408 Metro Square Building, 7th and Robert Streets, St. Paul, Minnesota 55101. The agency's authority to promulgate the proposed rules is contained in Minn. Stat. § 116H.129, subds. 1, 5, 6 and 7 (1978).

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 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.

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 persons 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 pursuant to Minn. Stat. § 10A.01, subd. 11 (1978) 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 must register with the State Ethical Practices Board as a lobbyist within five days of the commencement of such activity by the individual. The state provides certain exceptions. Questions should be directed to the State Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, phone (612) 296-5615.

Adoption of the proposed rules by the agency will not require the expenditure of public monies by local public bodies.

May 16, 1980

James J. Hiniker, Commissioner
Department of Administration

Amendments as Proposed (Energy Conservation Standards for Existing Residences)

2 MCAR § 1.16201 Authority. These rules are promulgated pursuant to Minn. Stat. § 116H.129 (1978).

2 MCAR § 1.16202 Enforcement. The Minnesota Energy Agency shall conduct random inspections of certain renter occupied residences as provided in Minn. Stat. § 116H.129, subds. 3 and 4 (1978).

2 MCAR § 1.16203 Purpose and scope. The purpose of these rules is to establish minimum energy efficiency standards for existing residences. Such standards shall be applicable to certain rental residences as provided in Minn. Stat. § 116H.129, subds. 3 and 4 (1978) and shall be utilized in the energy disclosure program required by Minn. Stat. § 116H.129, subds. 5, 6, and 7 (1978), ~~and shall be applicable to certain rental residences as provided in Minn. Stat. Sec. 116H.129, Subds. 3 and 4 (1978).~~

The scope of these standards addresses ~~two~~ the following areas of energy savings:

A. The reduction of air infiltration as it relates to air leakage through the exterior envelope.

Caution: When infiltration is reduced it may be necessary to provide combustion air by other means as provided for in the Minnesota State Building Code.

B. The improvement of the thermal efficiency of the structure as it relates to the transfer of heat through the exterior envelope.

C. Reduction of energy usage by mechanical or electrical systems.

The rules also contain the methods for calculating energy savings and determining the economic feasibility of each minimum energy efficiency standard for each residence.

2 MCAR § 1.16204 Definitions.

A. Accessible. Shall mean exposed, without the removal of permanent parts of the structure.

B. Attic. The space between the ceiling joists and the rafters immediately above. The space between rafters formed where interior finish material is affixed directly to the rafters shall ~~not~~ be construed to be an attic space.

C. Clock thermostats. Shall mean a device which is designed to reduce energy consumption by regulating the demand on the heating or cooling system in which it is installed, and uses:

1. A temperature control device for interior spaces incorporating more than one temperature control level, and

2. A clock or other automatic mechanism for switching from one control level to another.

D.~~C.~~ Conditioned space. Space enclosed within a building that is heated or cooled by an energy-using system.

E.~~D.~~ Degree day. Shall mean degree day, heating. A unit, based upon temperature difference and time, used in estimating fuel consumption and specifying nominal heating load of a building in winter. For any one day, when the mean temperature is less than 65°F (18°C) there exist as many Degree Days as there are Fahrenheit (Celsius) degrees difference in temperature between the mean temperature for the day and 65°F (18°C).

F.~~E.~~ Economic feasibility. For the purpose of these rules, the test of economic feasibility is met when the savings in energy procurement costs, based on residential energy costs as certified by the Minnesota Energy Agency director in the *State Register*, exceed the cost of acquiring and installing each energy conserving item required to meet the minimum energy conservation standards as set forth at 2 MCAR § 1.16205, amortized over the subsequent ~~5~~ 10-year period.

G. Electric load management devices. Shall mean customer owned or leased devices that reduce the maximum kilowatt demand on an electric utility and which are either:

1. Part of a radio, ripple or other utility controlled load switching system on the customer's premises;

2. Clock-controlled load switching devices;

3. Interlocks, and other load actuated, load-limiting devices; or

4. Energy storage devices with control systems.

H.~~F.~~ Exterior envelope. The elements of a building which enclose conditioned spaces and through which thermal energy may be transferred to or from the exterior.

I.~~G.~~ Fireplace stove. A chimney-connected, solid fuel-burning stove having part of its fire chamber open to the room.

J. Floor insulation. A material as described in definition M which is installed between the first level conditioned area of a building and an unconditioned basement, a crawl space or the outside beneath it.

K. Flow restrictors. A device placed in a shower head to limit the maximum flow to three gallons per minute, or a shower head with built in provisions for limiting the maximum flow to three gallons per minute.

L. Furnace efficiency modification. Shall mean:

1. Replacement furnace or boiler, including a heat pump, which replaces an existing furnace or boiler of the same fuel type and which reduces the amount of fuel consumed due to an increase in combustion efficiency, improved heat generation or reduced heat losses.

2. Furnace replacement burner (oil) means a device which atomizes the fuel oil, mixes it with air, and ignites the fuel-air mixture, and is an integral part of an oil-fired furnace or boiler including the combustion chamber, and which because of its design, achieves a reduction in the oil used from that used by the device which it replaces.

3. Vent dampers, means an automatically operated damper installed in the vent connector of a gas fired furnace, water heater, or boiler which:

a. Is installed downstream from the drafthood; and

b. Conserves energy by substantially reducing the flow of heated air through the chimney when the furnace or heater is not in operation.

4. Electronic ignition system, means a device which, when installed on a natural gas fired, force air furnace, automatically ignites the gas burner and replaces a gas pilot light.

M.~~H.~~ Insulation. Any material or assembly of materials used primarily to provide resistance to heat flow in building structures, including but not limited to mineral fibrous, mineral cellular, organic fibrous, organic cellular, or reflective materials, whether in loose fill, flexible, or semi-rigid form.

N. Passive solar. Shall mean systems that make the most efficient use of, or enhance the use of, natural forces—including solar insolation, winds, night time coolness and opportunity to lose heat by radiation to the night sky—to heat or cool living space by the use of conductive, convective or radiant energy transfer. Passive solar systems include only:

1. Direct gain glazing system. A system using south-facing (+ or – 45 deg. of true south) panels of insulated glass, plastic, or other transparent substances that admit the sun's rays into the living space where the heat is retained. Glazing is either double or single equipped with moveable insulation.

2. Indirect gain system. A system using panels of insulated glass, plastic, or other (similar) transparent substances that direct the sun's rays onto specially constructed thermal walls, floors, ceilings, rockbeds, or containers of water or other fluids where heat is stored and radiated.

3. Solaria/sunspace system. A structure primarily of glass, plastic, or (similar) transparent material which is attached to the south-facing (+ or – 45 deg. of true south) wall of a structure which allows for air circulation to bring heat into the residence, and which is able to be closed off from the residential structure during periods of low solar insolation.

4. Window heat gain retardant. Shall mean those mechanisms which significantly reduce summer heat gain through south facing (+ or – 45 deg. of true south) windows by use of devices such as awnings, insulated rollup shades (external or internal), metal or plastic solar screen, or moveable rigid insulation.

O.~~I.~~ Positive shut-off. A manual shut-off device which will can be utilized to produce a seal to inhibit the flow of air when a fireplace or fireplace stove is not operating. i.e. damper in fireplace, damper at top of flue, damper in connector pipe, or doors (glass or other) on fireplace or fireplace stove.

P.~~J.~~ "R" value. 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 Fahrenheit at 75 degrees Fahrenheit (24°C) mean temperature.

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."

Q. Replacement solar swimming pool heaters. Shall mean devices which are used solely for the purpose of using the sun's energy to heat swimming pool water and which replaces a swimming pool heater which uses electricity, gas or other fossil fuel.

R.~~K.~~ Residence. Means any dwelling for habitation either seasonally, meaning all or a portion of the months of December through March, or permanently by one or more persons. A residence may be owned or rented and may be part of a multi-family dwelling or multi-purpose building, but shall not include buildings such as hotels, hospitals, motels, dormitories, sanitariums, nursing homes, schools and other buildings used for educational purposes, or correctional institutions. A mobile home as defined in Minn. Stat. § 168.011, subd. 8, shall be a residence for purposes of these rules.

S.~~L.~~ Rim joist. That portion of the exterior envelope between the top of the foundation wall and the sub-floor immediately above. The perimeter of the floor joists.

T.~~M.~~ Single glazed. Windows with one sheet of glazing separating the conditioned space from the exterior. For the purposes of these rules non-conditioned enclosed porches, vestibules, or other appurtenances are considered the equivalent of one layer of glazing.

U. Solar domestic water heater. Shall mean equipment designed to absorb the sun's energy and to use this energy to heat water for use in a residential building other than for space heating, including thermosiphon hot water heaters.

V. Storm door. Shall mean a second door, installed outside or inside a primary door, creating an insulating air space.

W. Thermal door shall mean:

1. A door with enhanced resistance to heat flow through the glass area by affixing two or more sheets of glazing material, or

2. A primary exterior door with an "R" value of at least 2.

X. Storm window. Shall mean a window or glazing material placed outside or inside of a window sash (prime window) creating an air space, to provide greater resistance to heat flow than the glazed window sash alone.

Y. Thermal duct insulation. Shall mean a material primarily designed to resist heat flow which is installed on a heating or cooling duct within unconditioned space or area of a building.

Z. Thermal pipe insulation. Shall mean a material primarily designed to resist flow which is installed on a heating or cooling pipe within unconditioned space or area of a building.

AA.~~N.~~ U-value (U-factor or U = thermal transmittance). 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·ft^2·F). Also the reciprocal of total R-Value.

BB. Water heater insulation. Shall mean a material primarily designed to resist heat flow which is suitable for wrapping around the exterior surface of the water heater casing.

CC. Wall insulation. Shall mean insulation installed within or on the walls between conditioned spaces of a building and unconditioned spaces of a building or the outside.

DD.~~O.~~ Weatherstripping. Material permanently affixed to limit infiltration of air, usually made of metal, wood, felt, neoprene, expanded foam, or a combination thereof.

EE. Wind energy device. Shall mean equipment that uses wind energy to produce energy in any form for personal residential purposes.

2 MCAR § 1.16205 Minimum energy efficiency standards.

A. Where demonstrated to be economically feasible pursuant to 2 MCAR § 1.16206, 2 MCAR § 1.16207, and 2 MCAR § 1.16208 the following shall be standards for existing residences. Pursuant to Minn. Stat. § 116H.129, subds. 3 and 5 (1978) residential rental buildings built before January 1, 1976, which are not in compliance with these standards shall be modified to be in compliance within the economic feasibility defined in 2 MCAR § 1.16204 by January 1, 1980 with respect to caulking and weatherstripping and by July 1, 1983 with respect to all provisions herein. A partial attainment of these standards shall be required if shown by calculations to be economically feasible even though full compliance will not meet criteria of economic feasibility. These standards shall also provide a basis for evaluation of residences at time of sale.

B. The following standards 1 thru 10 shall apply to residential rental buildings as described in Minn. Stat. § 116H.129, subd. 3.

1. Install weatherstripping between exterior operable window sash and frames and between exterior doors and frames.

Exception: Weatherstripping not required on storm doors or storm windows.

2. Caulk, gasket or otherwise seal accessible exterior joints between foundation and rim joist, around window and door frames, between wall and roof, between wall panels, at penetrations for utility services through walls, floors, and roofs and all other openings in the exterior envelope.

3. Install positive shut-offs for all fireplaces or fireplace stoves.

4. Install insulation in accessible attics to achieve a minimum total "R" value of 19.

5. Install insulation in all accessible rim joist areas to achieve a minimum total "R" value of 11.

6. Install insulation in accessible walls and/or floors enclosing conditioned spaces to achieve a minimum total "R" value of 11. Accessible walls shall include above-grade foundation walls of basements, cellars or crawl spaces.

7. Install storm windows and/or thermal windows on all single glazed exterior window units enclosing conditioned space.

8. Install storm doors and/or thermal doors on all exterior door openings into conditioned spaces unless a single door, enclosed porch, vestibule, or other appurtenance provides a double door effect or provides an "R" value of 2 or more.

9. Install clock thermostat in tenant dwelling unit where such thermostat controls the tenants heating or cooling systems, and the tenant directly purchases fuel.

10. Install flow restrictors on all shower heads.

C. The following standards 1 thru 22 shall be applicable to those residences requiring disclosure of certain energy characteristics pursuant to Minn. Stat. § 116H.129, subds. 5 and 7.

1. Caulk, gasket or otherwise seal accessible exterior joints between foundation and rim joist, around windows and door frames, between wall and roof, between wall panels, at penetrations for utility services through walls, floors, and roofs and all other openings in the exterior envelope. Caulking, gasketing or sealing may be accomplished either on the exterior or interior of the exterior envelope.

2. Install weatherstripping between exterior openable window sash and frames and between exterior doors and frames.

Exception: Weatherstripping not required on storm doors or storm windows.

3. Furnace efficiency modifications.

a. Install replacement energy efficient system if furnace and or boiler is older than 5 years.

b. Install replacement burner, if oil fired furnace or boiler is older than 5 years.

c. Install vent dampers on gas fired furnace, waterheaters, and boilers, if the combustion air or draft dilution air is taken from a conditioned space.

d. Install electronic ignition systems on natural gas fired forced air heating systems.

4. Replace central air conditioner with energy efficient model if older than five (5) years.

5. Install insulation in attic to achieve a minimum total "R" value of R-44 and provide ventilation as per current State Building Code. (Applicable if existing is R-30 or less.)

6. Install insulation in or on walls to achieve a minimum "R" value of 11.

7. Install floor insulation in floors over unconditioned spaces to achieve a minimum "R" value of 19. (Applicable if existing is R-9 or less.)

8. Install insulation in accessible rim joist areas to achieve a minimum "R" value of 19. (Applicable if existing is R-9 or less.)

9. Install insulation on or in foundation walls above grade to achieve a minimum "R" value of 11.

10. Install thermal duct insulation on all ducts, and or plenums installed in unconditioned spaces to achieve a minimum "R" value of 3.

11. Install thermal pipe insulation on all piping, containing heated water in unconditioned spaces, having a temperature difference exceeding 50 degrees F. (10C) between ambient temperature and piping temperature to achieve a minimum "R" value of 4.

12. Install water heater insulation on water heaters. Water heater insulation shall have a minimum "R" value of 3.

13. Install storm windows on all single glazed exterior window units enclosing conditioned space.

or

Install thermal windows on all single glazed exterior window units enclosing conditioned space, where primary window is in need of replacement.

14. Install storm or thermal doors on all exterior door openings into conditioned spaces unless a single door, enclosed porch, vestibule, or other appurtenance provides a double door effect or provides a "R" value of 2 or more.

15. Electric load management devices—applicable if such devices are available through the electric utility.

a. Radio or ripple control system.

b. Clock-controlled load switching.

c. Interlocks and other load switching devices.

d. Energy storage devices.

16. Install clock thermostat—applicable if house has a thermostat and existing heating or cooling system is compatible.

17. Install positive shut-off's for all fireplaces or fireplace stoves.

18. Install solar domestic hot water heater—applicable if a site exists which is free of major obstruction to solar radiation.

19. Install wind energy systems—applicable if lot is larger than .75 acres, there is no major wind obstruction and the tower is sited at least (50) fifty feet from property line or right of way for electrical transmission or distribution lines.

20. Install solar swimming pool heater to replace or supplement existing fossil fuel heater. Applicable where site is free of obstruction to solar radiation.

21. Passive solar/install

a. Direct gain glazing systems—applicable if residence has a south facing wall or roof which is free of obstruction to solar radiation.

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b. Indirect gain—applicable if site is free of obstruction to solar radiation.

c. Solar/sunspace systems—applicable if living space has a south-facing wall and is free of major obstruction to solar radiation.

Caution: Sleeping rooms must have exterior egress windows or doors—refer to UBC Sec. 1204.

d. Window heat gain retardants—applicable if residence has a south-facing window that is not shaded from summer sunshine, and space is mechanically cooled.

22. Install thermal shutters, shades and/or draperies on exterior windows and glass doors. Devices shall have a minimum "R" value of 2.

2 MCAR § 1.16206 Procedures for calculating energy savings and determining economic feasibility. The calculation of the energy savings and the determination of the economic feasibility for each of the minimum energy efficiency standards shall be computed in a manner specific to each residence, i.e., on a case by case basis. This determination shall be performed according to the following procedures.

A. Determine the values of the general energy savings equation (2 MCAR § 1.16207) which are specific to each residence. These values include degree days, heating system efficiency and the heating value of the fuel but do not include the design heat loss per degree Fahrenheit (△H).

B. Calculate design heat per degree Fahrenheit (△H) for the standard under consideration using the equations outlined in 2 MCAR § 1.16207.A. through 2 MCAR § 1.16207.~~H.~~ U.

C. Calculate the quantity of annual energy savings for the standard under consideration by substituting the calculated value of △H into the general energy savings equation and solving for energy savings (△E).

D. Determine the price per unit of energy (P) for the annual energy savings quantity.

E. Determine the cost of the energy saving improvement (c) proposed to meet the standard under consideration.

F. Calculate the payback period (T) for the standard under consideration by substituting the values of P, C and △ E into the general payback equation (2 MCAR § 1.16208) and solving for the payback period in years.

G. If the payback period is less than ~~five~~ ten years the energy saving improvement meets the economic feasibility requirement.

H. Repeat the above procedure for each of the energy efficiency standards.

2 MCAR § 1.16207 General energy savings equations. The following equations shall be used to calculate energy savings for each of the energy efficiency standards.

Equation A*:

$$\triangle E = \triangle H \times \frac{D \times \cancel{21.7}\ 14.4}{N \times V}$$

Where

△ E = The quantity of annual energy savings in the appropriate energy units, e.g. hundreds of cubic feet of natural gas, gallons of fuel oil, or kilowatt hours of electricity.

△H = The difference in design heat loss per degree Fahrenheit between the improved condition and the existing condition for infiltration and/or thermal transmission. Equations for calculating △H are listed in subsequent subsections.

D = The normalized annual degree days as published by the National Oceanic and Atmospheric Administration (NOAA).

N = The ~~rated full load~~ seasonal operating efficiency of the heating system.

V = The heating value of the fuel type, consistent with △E and △H.

*Equation (A) is derived from the ASHRAE Handbook, 1976 Systems, pp. 43.1-43.18, and Department of Energy, Residential Conservation Service Model Audit.

A. Install window and door weatherstripping. The following equation shall be used to calculate △H for energy efficiency standards B-1 & C-2 (2 MCAR § 1.16205 ~~A.~~).

Equation #1:

$$\triangle H = 1.08 \times (q_0 - q_1) \times L$$

Where:

q_0 = The infiltration value in cubic feet per minute per lineal foot of crack, $\frac{CFM}{ft.}$, for the existing window or door weatherstripping condition before improvement;

q_1 = The infiltration value in cubic feet per minute per lineal foot of crack, $\frac{CFM}{ft.}$, for the proposed window or door weatherstripping condition after improvement;

L = The length of the crack in feet which is under consideration for weatherstripping.

B. Caulk, Gasket or Seal Joints. The following equation shall be used to calculate △H for energy efficiency standards B-2 & C-1 (2 MCAR § 1.16205~~A.~~).

Equation #2:

$$\triangle H = 1.08 \times (q_0 - q_1) \times L$$

Where:

q_0 = The infiltration value in cubic feet per minute per lineal foot of crack, $\frac{CFM}{ft.}$, for the existing crack before improvement;

q_1 = The infiltration value in cubic feet per minute per lineal foot of crack, $\frac{CFM}{ft.}$, for the proposed crack seal after improvement;

L = The crack length in feet for the crack under consideration.

C. Install positive shut-offs. The following equation shall be used to calcuate $\triangle H$ for energy efficiency standards B-3 & C-17 (2 MCAR § 1.16205~~A.~~).

Equation #3:

$$\triangle H = 1.08 \times (q_0 - q_1) \times A$$

Where:

q_0 = The infiltration value in cubic feet per minute per square foot, $\frac{CFM}{ft.^2}$, for the existing condition before improvement;

q_1 = The infiltration value in cubic feet per minute per square foot, $\frac{CFM}{ft.^2}$, for the proposed condition after improvement with a positive shut-off;

A = The cross sectional area of the flue or connector in square feet.

D. Install attic insulation. The following equation shall be used to calculate $\triangle H$ for energy efficiency standards B-4 & C-5 (2 MCAR § 1.6205~~A.~~).

Equation #4:

$$\triangle H = (\frac{1}{R_0} - \frac{1}{R_1}) \times A$$

Where:

R_0 = The total R-value of the attic/ceiling/roof assembly including existing insulation before improvement;

R_1 = The total R-value of the proposed attic/ceiling/roof assembly including existing insulation and additional insulation after improvement;

A = The area of the attic/ceiling/roof assembly in square feet separating conditioned spaced from unconditioned space.

E. Install Rim Joist Insulation. The following equation shall be used to calculate $\triangle H$ for energy efficiency standards B-5 & C-8 (2 MCAR § 1.6205~~A.~~).

Equation #5:

$$\triangle H = (\frac{1}{R_0} - \frac{1}{R_1}) \times A$$

Where:

R_0 = The total R-value of the rim joist assembly including existing insulation before improvement;

R_1 = The total R-value of the rim joist assembly including existing and additional insulation after improvement;

A = The area of the rim joist assembly in square feet separating conditioned space from unconditioned space.

F. Install wall and/or floor insulation. The following equation shall be used to calculate $\triangle H$ for energy efficiency standards B-6, C-6, C-7 & C-9 (2 MCAR § 1.16205~~A.~~).

Equation #6:

$$\triangle H = (\frac{1}{R_0} - \frac{1}{R_1}) \times A$$

Where:

R_0 = The total R-value of the existing wall or floor assembly including existing insulation before improvement;

R_1 = The total R-value of the proposed wall or floor assembly including existing and additional insulation after improvement;

A = The area of the wall or floor assembly in square feet separating conditioned space from unconditioned space.

G. Install storm windows and or thermal windows. The following equation shall be used to calculate $\triangle H$ for energy efficiency standards B-7 & C-13 (2 MCAR § 1.16205~~A.~~).

Equation #7:

$$\triangle H = (U_0 - U_1) \times A$$

Where:

U_0 = The U-value for the existing window assembly before improvement;

U_1 = The U-value for the proposed window assembly after improvement;

A = The area of the window assembly in square feet separating conditioned space from exterior.

H. Install storm doors and or thermal doors. The following equation shall be used to calculate $\triangle H$ for energy efficiency standards B-8 or C-14 (2 MCAR § 1.16205~~A.~~).

Equation #8:

$$\triangle H = (U_0 - U_1) \times A$$

Where:

U_0 = The U-value for the existing door assembly before improvement;

U_1 = The U-value for the proposed door assembly after improvement;

A = The area of the door assembly in square feet separating conditioned space from exterior.

I. Install clock thermostats. The following equation shall be used to calculate $\triangle E$ for efficiency standards B-9 & C-16 (2 MCAR § 1.16205).

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Equation #9:

The equation is based upon a single eight (8) hour nighttime setback.

9-a: $\triangle E = .07E_h$ for 5F setback

9-b: $\triangle E = .10E_h$ for 10F setback

9-c: $\triangle E = .11E_h$ for 15F setback

Where:

E_h = Total annual energy used for space heating, in units of fuel.

J. Install flow restrictors. The following equation shall be used to calculate $\triangle H$ for efficiency standard B10 (2 MCAR § 1.16205).

Equation #10:

$$\triangle E \quad \frac{6100\ (F_1 - F_0)\quad (100\ F - T)}{N_r\ V}$$

Where:

F_0 = The shower flow rate in gallons per minute before installing restrictor.

F_1 = The flow rate after installing restrictor.

T = Average cold water supply temperature.

N_r = Recovery efficiency of water heater.

V = Heating value of the fuel type in Btu's per unit of fuel.

K. Furnace efficiency modifications. The following equations shall be used to calculate $\triangle E$ for efficiency standard C-3 (2 MCAR § 1.16205).

Equation #11:

a. $$\triangle E = E_h\left(1 - \frac{N_0}{N_1}\right)$$

Where:

E_h = Total annual energy used for spaced heating, in units of fuel.

N_0 = The seasonal operating efficiency of the existing heating system.

N_1 = The seasonal operating efficiency of the proposed heating system.

b. If the heating system already has a retention head burner, rotary cup burner, or if it is a wet base boiler, the energy savings shall be estimated as 0.

Low estimate of $\triangle E = .10E_h$

High estimate of $\triangle E = .18E_h$

Where:

E_h = Total annual energy used for space heating, in units of fuel.

c. Low estimate of $\triangle E = .07E_h$

High estimate of $\triangle E = .10\ E_h$

d. If pilot is turned off each summer—

$$\triangle E = \frac{3600\ F_p}{V}$$

If pilot is left on in the summer—

$$\triangle E = \frac{7300\ F_p}{V}$$

Where:

F_p = Rate at which pilot uses energy, in Btu per hour. (typically 800-1000 Btu per hour.)

V = Heating value of the fuel type in Btu per unit of fuel.

L. Replace central air conditioner. The following equation shall be used to calculate $\triangle E$ for efficiency standard C-4 (2 MCAR § 1.16205).

Equation #12.

$$\triangle E = E_c\ [1 - (PSE/NSE)]$$

Where:

E_c = Annual energy used by existing central air conditioner in units of fuel.

PSE = Present Seasonal Efficiency.

NSE = New unit Seasonal Efficiency.

M. Install thermal duct insulation. The following equation shall be used to calculate $\triangle E$ for efficiency standard C-10. (2 MCAR § 1.16205.)

Equation #13.

$$\triangle E = \frac{\left(\frac{1}{R_0} - \frac{1}{R_1}\right) \times A \times (T_2 - T_1) \times HRS}{N \times V}$$

Where:

R_0 = The total R-value of ducts before improvement.

R_1 = The total R-value of ducts after addition of duct insulation.

A = Area of ducts to be insulated in square feet.

T_2 = Temperature inside ducts during on cycle of heating system.

T_1 = Average temperature on outside of ducts.

HRS = Number of hours per year furnace is operating.

N = Seasonal operating efficiency of heating system.

V = Heating value of fuel.

N. Install thermal pipe insulation. The following equation shall be used to calculate $\triangle E$ for efficiency standard C-11 (2 MCAR § 1.16205).

Equation #14.

$$\triangle E = \frac{(Q_1 - Q_0) \times L \times HRS}{N \times V}$$

Where:

Q_0 = Heat loss in Btu/hr. ft. before improvement, (from charts).

Q_1 = Heat loss in Btu/hr. ft. after addition of pipe insulation. (from charts)

L = Length of un-insulated pipes in unconditioned space.

HRS = Number of hours per year furnace is operating.

N = Seasonal operating efficiency of heating system.

V = Heating value of fuel.

O. Install water heater insulation. The following equation shall be used to calculate $\triangle E$ for efficiency standard C-12 (2 MCAR § 1.16205).

Equation #15.

a. If water heater is in an unconditioned space.

$$\triangle E. = \frac{\left(\frac{1}{R_0} - \frac{1}{R_1}\right) \times A \times (T_w - T_a) \times 8760}{N_r \times V}$$

If water heater is in an conditioned space.

$$\triangle E. = \frac{\left(\frac{1}{R_0} - \frac{1}{R_1}\right) \times A \times (T_w - T_a) \times H_{65}}{N_r \times V}$$

Where:

R_0 = Total R-value of water heater assembly before improvement.

R_1 = Total R-value of water heater assembly after insulation added.

A = Area of water heater that could be insulated in square feet.

T_w = Temperature of hot water.

T_a = Average air temperature in area surrounding water heater.

N_r = Recovery efficiency of water heater.

V = Heating value of fuel type in Btu per unit of fuel.

H_{65} = Number of hours per year that the outside temperature is above 65 degrees F. (19° C).

P. Install load management devices. Standard C-15 (2 MCAR § 1.16205).

Equation #16.

Calculation procedures to determine installation costs and savings in energy costs must be obtained from the local electric utility, if the utility offers a residential rate which reflects any differences in the utility's cost of service between peak and off-peak periods.

Q. Install solar domestic water heater. The following shall be used to calculate $\triangle E$ for energy efficiency Standard C-18 (2 MCAR § 1.16205).

Equation #17.

The residence will be examined to determine if a collector site exists that would supply 60% of the annual domestic hot water heating energy.

$\triangle E = .6E_{dhw}$

Where:

E_{dhw} is the annual energy used for heating domestic hot water.

R. Install wind energy systems. The following shall be used to determine if energy savings may be accomplished. Standard C-19 (2 MCAR § 1.16205).

Procedure #18.

Wind energy devices.

An evaluation of the site shall be made, including an approximation of the average annual wind speed and accessibility to an undisturbed wind stream at a 30 foot height. An energy savings estimate will be made for 2 types of systems:

1. Wind systems that deliver utility quality power for residential appliance loads and discretionary loads (including domestic hot water and space heating). Cost and savings estimates shall be made for typical systems sized to provide 40% to 80% of the residential electric load.

2. Wind systems dedicated to delivering thermal energy for space heating and domestic hot water heating. Cost and savings estimates shall be made for typical systems sized to provide 40% to 80% of the annual energy used for space and water heating.

S. Install Solar Swimming Pool Heater. The following shall be used to calculate $\triangle E$ for efficiency standard C-20 (2 MCAR § 1.16205).

Procedure #19.

The residence will be examined to determine if a collector site exists that would supply 30% to 75% of the energy used to heat the swimming pool for the months of May thru September.

$\triangle E = .3E_{sp}$ to $.75E_{sp}$

Where:

E_{sp} = The energy used to heat the swimming pool for the months of May thru September.

T. Install Passive Solar Systems. The following shall be used to determine if energy savings may be accomplished. Standard C-21 (2 MCAR § 1.16205).

Procedure #20.

The residence shall be examined to determine if an acceptable site exists for the addition of:

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1. Direct gain glazing.

2. Indirect gain glazing,

3. Passive solar sunspace, and

4. Window heat gain retardants.

U. Install thermal shades, shutters or draperies. The following shall be used to calculate △H for efficiency Standard C-22 (2 MCAR § 1.16205).

Equation #21.

$\triangle H = (U_a - U_e) \times A$

Where:

U_a = Total "U" value of window assembly after addition of Thermal Shades, Shutters or Draperies.

U_e = Total "U" value of window assembly as it exists.

A = Total area of windows.

Rules as Proposed (~~Certification of Evaluators for Energy Disclosure Program~~)

2 MCAR § 1.16220 Authorization. These rules are promulgated pursuant to Minn. Stat. § 116H.129, subds. 5, 6 and 7. (1978)

2 MCAR § 1.16221 Purpose and scope. The purpose of these rules is to establish procedures for a residential energy disclosure program and for certification of evaluators.

2 MCAR § 1.16222 Disclosure program. Effective October 1, 1980. Prior to time of sale, as required by § 116H.129, subds. 5, 6 and 7 an evaluation and report disclosing the extent of compliance with Energy Conservation Standards for Existing Residences (2 MCAR § 1.16205 ~~C.1. through 22.~~) shall be made for all residences constructed prior to January 1, 1976, unless the buyer waives the disclosure report.

Evaluators shall use ~~the appended~~ disclosure report form approved by the Building Code Division in consultation with the Minnesota Energy Agency ~~or a form which is substantially similar to that appended to these rules~~. Evaluators calculations shall be made on forms prepared by the Building Code Division and/or the Minnesota Energy Agency. Evaluators shall maintain copies of completed disclosure reports which shall be available for review by the Building Code Division or the Minnesota Energy Agency. Evaluators shall submit an annual summary of evaluations to the ~~Building Code Division.~~ Copies of completed disclosure reports shall be retained by evaluators for a period of not less than 5 years.

Prior to time of sale the potential buyer of any residence constructed prior to January 1, 1976, shall be furnished with a disclosure report signed by a certified evaluator, which shall indicate the extent of compliance with the Energy Conservation Standards for Existing Residences (2 MCAR § 1.16205 ~~C.1. through C.22.~~). If the buyer chooses to waive the disclosure report he may do so by signing a waiver provision on the disclosure report form. Completed disclosure reports and evaluators calculations shall be submitted to the owners by evaluators within 30 days of request for evaluation.

2 MCAR § 1.16223 Certification. A certification shall be issued to qualified applicants successful upon completion of an examination evidencing knowledge of structural and energy use characteristics of residences and proficiency in evaluation of buildings, submittal of a copy of a bond required under 2 MCAR § 1.16226, and payment of fee required under 2 MCAR § 1.16227.

2 MCAR § 1.16224 Standards for certification, prerequisites. Persons possessing the following qualifications shall be eligible to be admitted for examination:

A. Building officials, certified by examination by the Building Code Division.

B. Architects and mechanical engineers registered in the State of Minnesota.

C. Truth in Housing Evaluators and Truth in Sale of Housing Evaluators certified by examination by the cities of Minneapolis and St. Paul.

D. Individuals experienced in weatherization procedures who have completed a minimum of twenty-five (25) audits and six (6) months satisfactory work with a non-profit weatherization program.

E. Employees of participating utility companies trained to perform audits under the Federal Residential Conservation Program.

F. Persons who have successfully completed a prescribed course or courses of training for residential evaluators, sponsored by the Minnesota Energy Agency.

G. Persons who have successfully completed a course or courses of training for residential evaluators sponsored by the University of Wisconsin Extension Division, or similar courses, with prior approval of the Building Code Division.

Said persons shall be required to attend an orientation program prior to examination.

2 MCAR § 1.16225 Examinations. Examinations shall be conducted at least once a year, or based upon receipt of request for examination more often, at locations determined by the Building Code Division. Notice of time and place of examination shall be provided by the Building Code Division by publication in the *State Register* and *Building Code Newsletter* published at regular intervals or to persons upon request. Applications for examination with required fee must be received by the Building Code Division two (2) weeks prior to established examination dates.

2 MCAR § 1.16226 Bond required. Evaluators must provide a bond to the State in the sum of $5,000.00 conditioned upon the faithful and lawful performance of all work done pursuant to these rules and Minn. Stat. § 116H.129, and such bond shall be for the benefit of persons injured or suffering financial loss by reason of failure of such performance. The bond shall be filed with the Building Code Division and must be continuously

deletions indicated by strikeout in pencil

applicable for the period of the certificate. Such bond shall be written by a corporate surety licensed to do business in the State of Minnesota. Bonds shall not be required for evaluators in the employ of Municipal Governments.

2 MCAR § 1.16227 Certification fees. Application for evaluator certification must be accompanied by a fee of $50.00 remitted to the Building Code Division; payable to the State of Minnesota.

2 MCAR § 1.16228 Conflict of interest. Evaluators shall not be engaged in nor have an interest in the sale of products referenced in the standards.

Evaluators shall not own nor have an interest in properties that they evaluate. Holding of a listing for sale by a person or persons employing firm constitutes an interest in property.

Public Utilities evaluation programs such as Residential Conservation Services (RCS) are not to be considered a conflict of interest.

2 MCAR § 1.16229 Non-endorsement. The evaluator shall not endorse the use of specific materials, brand names of material or product, or methods which may be used to meet any specific standard, nor shall any statement relating to the standards be interpreted as an endorsement of any specific material or product.

2 MCAR § 1.16230 Revocation. Certification shall be revoked upon cancellation or expiration of bond. When reasonable evidence discloses a conflict of interest, unethical practices or negligent performance of duties by the evaluator, the Building Code Division shall notify the evaluator of its intent to revoke the certificate and provide for a contested case proceeding in accordance with the provisions of Minn. Stat. §§ 15.041 *et seq.*

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Department of Public Service
Public Service Commission

Notice of Public Participation Meeting Concerning Standards for Information to Consumers as Set Forth in Section 115(f) of the Federal Public Utility Regulatory Policies Act (PURPA)

Notice is hereby given that the Public Service Commission will conduct a public participation meeting in the Commission Meeting Room, 7th Floor, American Center Building, 160 East Kellogg Boulevard, St. Paul, Minnesota, on Monday, June 23, 1980 commencing at 11:00 a.m. and continuing until all persons have had an opportunity to be heard.

The purpose of this meeting is to consider the standards for information to consumers as set forth in Section 115(f) of the Federal Public Utility Regulatory Policies Act (PURPA) and more specifically, the adequacy of the present PSC rules 281 and 313.

PURPA Section 113(b) (3) requires the commission to consider Section 115(f) whereby utilities must transmit to its electric consumers information regarding rate schedules.

PURPA Section 115(f) states the following:

115(f) Information to Consumers.—

(1) For purposes of the standard for information to consumers established by section 113(b) (3), each electric utility shall transmit to each of its electric consumers a clear and concise explanation of the existing rate schedule and any rate schedule applied for (or proposed by a nonregulated electric utility) applicable to such consumer. Such statement shall be transmitted to each such consumer—

(A) not later than 60 days after the date of commencement of service to such consumer or 90 days after the standard established by section 113(b) (3) is adopted with respect to such electric utility, whichever last occurs, and

(B) not later than 30 days (60 days in the case of an electric utility which uses a bimonthly billing system) after such utility's application for any change in a rate schedule applicable to such consumer (or proposal of such a change in the case of a nonregulated utility).

(2) For purposes of the standard for information to consumers established by section 113(b) (3), each electric utility shall transmit to each of its electric consumers not less frequently than once each year—

(A) a clear and concise summary of the existing rate schedules applicable to each of the major classes of its electric consumers for which there is a separate rate, and

(B) an identification of any classes whose rates are not summarized. Such summary may be transmitted together with such consumer's billing or in such other manner as the State regulatory authority or nonregulated electric utility deems appropriate.

(3) For purposes of the standard for information to consumers established by section 113(b) (3), each electric utility, on request of an electric consumer of such utility, shall transmit to such consumer a clear and concise statement of the actual consumption (or degree-day adjusted consumption) of electric energy by such consumer for each billing period during the prior year (unless such consumption data is not reasonably ascertainable by the utility).

The current PSC rules which regulate information to consumers are as follows:

PSC 281 Customer information. The utility is responsible for informing its customers of the following information as prescribed by following provisions:

A. A sign or notice, which shall be approved by the commission, posted prominently and conspicuously at all utility office locations open to the general public. The sign or notice shall state where, when, and to whom a complaint is to be directed, and the address of the Public Service Commission and its availability for mediation upon written request.

B. The utility shall, at its expense, publish ''customer information,'' that will be offered to each new customer, and upon request, to any existing customer. This ''customer information'' must be submitted to the Commission for approval. This ''customer information'' must, at a minimum, include the following:

1. The utility's own customer policies governing the following areas.

a. bill collections,

b. notice of disconnection,

c. disconnection of service,

d. reconnection of service,

e. deposit and guarantee requirements, and

f. meter reading procedures.

2. The rate schedule pertaining to the customers of that area. The current rate schedule as required by PSC 310 C. may be attached to the ''information'' to meet this requirement.

3. The title, addresses and phone numbers of the department(s) of the utility to which complaints should be directed, including a telephone number for customers to call in emergency situations or a concise statement as to where such information can be obtained.

4. The information contained in PSC 282 B. and PSC 303.

5. This statement: ''The Minnesota Public Service Commission regulates this utility and is available for mediation

upon written request,'' and the address of the Minnesota Public Service Commission.

C. The utility's billing statements to its customers must contain this information:

1. This statement: ''Register any inquiry or complaint at . . .'' (and list the address and telephone number of the utility, designating where the customer may initiate an inquiry or a complaint, or a concise statement as to where such information can be obtained).

2. A notice to customers of the availability upon request of the ''customer information.''

PSC 313 Billing content.

A. Bills rendered periodically to customers for electric and gas service shall include, but are not limited to, the following information:

1. The present and last preceding meter readings;

2. The date of the present reading;

3. Identification of the applicable rate schedule;

4. The number and kinds of units metered;

5. A complete itemization of all charges incurred at each level of customer usage;

6. The amount of the bill;

7. The date on which the bill will become delinquent;

8. If an estimated bill, clear and conspicuous language identifying the bill as an estimated bill;

10. The amount of state and local taxes separately itemized;

11. Fuel or power adjustment clause separately itemized, if applicable;

12. The information required by PSC 281 C.

B. If a utility is unable to comply with any provisions of PSC 313 A. within twelve (12) months of the effective date of the rule, the utility shall petition the commission for either a temporary exception or a permanent exemption. The petition shall include the justification for noncompliance, the duration of the desired exception, and the plan for compliance.

Please be advised that pursuant to Minn. Stat. § 10A.01, subd. 11 (1978) 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 must register with the State Ethical Practices Board as a lobbyist within five days of the commencement of such activity by the individual. The statute provides certain exceptions. Questions should be directed to the State Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, phone (612) 296-5615.

Mary L. Harty
Executive Secretary

Department of Public Welfare
Support Services Bureau

Proposed Temporary Rule Governing Limitation of Nursing Hours in the Nursing Home Reimbursement Rule (12 MCAR § 2.049)

Request for Public Comment

Notice is hereby given that the following amendment to 12 MCAR § 2.049 (DPW 49) governing the maximum reimbursable nursing hours allowed to selected skilled nursing facilities and intermediate care facilities as required by Minn. Stat. § 184, ch. 614 (1980), is proposed for adoption as a temporary rule as authorized by Minn. Stat. § 15.0412, subd. 5 (1978), pending completion of a full hearing and adoption of a permanent rule. Comments from interested and affected persons are requested. Comments must be received at the address given below within 20 days of the date of this publication to be considered. The temporary rule may be revised on the basis of comments received.

Comments on the proposed rule should be sent to:

Robert Rau
1st Floor
Centennial Office Building
St. Paul, Minnesota 55155

Temporary Rule as Proposed

12 MCAR § 2.049 D.2. Nursing care and attendant limitations.

a. Nursing care. Nursing-care costs will be limited by a maximum number of nursing hours per patient day as follows:

Skilled—2.9 hours
ICF I—2.3 hours

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If the actual average nursing hours per patient day exceed the above limit, the reasonable cost limitation will be calculated by multiplying the ratio of the above stated limit to the average actual nursing hours per patient day for the year times the actual cost per patient day. This limitation will not apply to facilities that qualify for exception under D.8.d.(3) or facilities mandated by a correction order from the Department of Health to provide additional nursing care.

b. Attendants (ICF II facilities only). Reasonable costs for attendants in ICF II facilities will be limited to one hour per patient day. If the actual average attendant hours per patient day exceeds this limit, the reasonable cost limitation will be calculated by multiplying the ratio of the stated limit to the average actual attendant hours per patient day for the year times the actual cost per patient day.

c. Nursing care exceptions. Facilities in which the nursing hours exceeded 2.8 hours per day for skilled nursing care and 2.2 hours per day for intermediate care during calendar year 1979 shall be limited to maximum of 3.2 hours per day for skilled nursing care and 2.45 hours per day for intermediate care. The cost of additional nursing hours in excess of 2.8 hours for skilled care and 2.2 hours for intermediate care shall be exempted from the rate provision of B.4.b. This provision is effective for facilities with fiscal years ending after May 31, 1980 and before June 30, 1981.

State Planning Agency Human Resources Division

Proposed Rules Regarding Provision of State Grants for Human Services Management and Planning Improvement

Notice of Hearing

Notice is hereby given that a public hearing in the above-titled matter will be held in Conference Room 101, Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota 55101 on July 10, 1980, commencing at 8:30 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. Statements may be made orally and written material may be submitted at the hearing. In addition, written materials may be submitted by mail to: Richard Luis, Office of Hearing Examiners, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, (612) 296-8114. Unless a longer period not to exceed twenty calendar days is ordered by the hearing examiner at the hearing, the hearing record will remain open for the inclusion of written material for five working days after the hearing ends. The hearing shall be conducted in accordance with the rules of the Office of Hearing Examiners, 9 MCAR § 2.101 *et seq.*, Minn. Stat. §§ 15.0411-15.0417 and 15.052.

The proposed rules, if adopted, would guide the State Planning Agency, Human Resources Division, in administering grants for Human Services Management and Planning Improvement. As part of grants administration, the rule would define the procedures for applying for funding, the criteria for evaluating projects for funding and requirements for grant disbursement and for reporting on the project.

Copies of the proposed rules are now available and one free copy may be obtained by writing to Linda Sutherland, State Planning Agency, Room 101 Capitol Square Building, St. Paul, Minnesota 55101.

The statutory authority to promulgate the proposed rules is contained in Minn. Stat. §§ 4.17, 402.046 and Laws of 1979, ch. 533, § 16, subd. 3.

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

Please be advised that pursuant to Minn. Stat. § 10A.02, subd. 1 (1978) as amended by Laws of 1979, § 3, lobbyists must register with the State Ethical Practices Board within five (5) days after becoming lobbyists.

"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 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;

(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 a claim form and supporting documents and by appearing at public hearings on the claim.

Questions concerning lobbyists or their required registration should be directed to the State Ethical Practices Board, Room 41, State Office Building, Wabasha Street, St. Paul, Minnesota 55155, at telephone number (612) 296-5615.

Notice is hereby given that 25 days prior to a hearing, a Statement of Need and Reasonableness will be available for review at the Human Resources Division of the State Planning 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 State Planning Agency at the hearing justifying the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

NOTICE: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the State Planning Agency may not take any final action on the rules for a period of five (5) working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the State Planning Agency. If you desire to be 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 State Planning Agency, (in the case of the agency's submission or resubmission to the Attorney General).

May 20,1980

Arthur Sidner, Director
State Planning Agency

Rules as Proposed (all new material)

10 MCAR § 1.320 Authority and purpose.

A. Authority. The rules contained herein are prescribed pursuant to authority granted in Minn. Stat. §§ 4.17 and 402.046 and Laws of 1979, ch. 333, § 16, subd. 3 and subsequent applicable laws.

B. Purpose of the rules. These rules are set forth to provide the procedures for awarding human services management and planning improvement grants.

10 MCAR § 1.321 Definitions. The following terms as used in these rules have the following meanings:

A. Human services—shall have the meaning established in Minn. Stat. § 402.02, subd. 2(d).

B. Division—means the Human Resources Planning Division of the State Planning Agency.

C. "SPA"—means the State Planning Agency.

D. Management and planning improvement—means those activities focused at providing procedures, methods of actions and guidance for the administration of human services programs.

E. Grant agreement—means a signed written agreement between the state, acting by and through the SPA, and the county which specifies the terms of the funding to the county.

10 MCAR § 1.322 Application process.

A. Submission of application.

1. Eligibility. Any Minnesota county is eligible to apply for the grants described herein.

2. Notice. Annually the division shall provide notice of the time period during which applications will be accepted. The duration of the application period shall not be less than 30 days. Notices will be sent to:

a. Chairman of county boards;

b. Directors of human services boards established pursuant to Minn. Stat. § 402;

c. Directors of community health services programs established pursuant to Minn. Stat. §§ 145.911 to 145.922;

d. Directors of community social services programs established pursuant to Minn. Stat. §§ 256E.01 to 256E.12;

e. Directors of community corrections programs established pursuant to Minn. Stat. § 401;

f. Others who request notification.

3. Eligible projects. A project whose goals are to improve the management or planning capacity of a county to deliver human services programs is eligible for funding.

B. Application procedures. Applications, on forms supplied by the SPA, must be received by the division before 5 p.m. on the last day of the application period or be postmarked not later than the last day of the application period.

10 MCAR § 1.323 Distribution of grants.

A. Criteria—priority counties. Consistent with priorities established in applicable appropriations law, priority status shall be given counties who have not previously received funding for the improvement of their management or planning capacity.

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."

The following criteria shall be used by the division to evaluate projects for funding:

1. The extent to which the project is likely to be transferable to other counties.

2. The extent to which the project is likely to result in a significant improvement in management systems, organizations or services integration.

3. A project which is undertaken by a group of counties or by multiple disciplines or programs within a single county.

4. The extent to which the project can demonstrate a high cost-effectiveness result.

B. Ranking of applications. The division will rank applications from highest to lowest based on the stated criteria and will award funds in order of ranking.

C. Applications from other counties. If funds remain after awards are made to counties who have priority status as specified in 10 MCAR § 1.323 A., the remaining money shall be available to other counties and will be evaluated and distributed on the basis of criteria stated in 10 MCAR § 1.323 A.1.-4. and 10 MCAR § 1.323 B.

D. Limit on grants. Total grants to any county during the biennium shall not exceed the limit set in applicable appropriations laws.

E. Grant disbursement. The SPA shall disburse the grants according to the following procedures:

1. A grant agreement shall be entered into by the SPA and the county once the grants are awarded.

2. The grant agreement shall specify:

a. the amount of the funding to be awarded the county for the management and planning improvement;

b. the manner and process for making payments to the county; and

c. the requirements for accounting, auditing and reporting required of the county by the SPA.

10 MCAR § 1.324 Final report. Within 60 days of completion of the project, each grantee shall submit to the division a final report. The report shall address the following:

1. description of the project;

2. participants in the project;

3. staffing of the project, including consultants;

4. results of the project;

5. an assessment of the effect of the project on future events or issues in the county;

6. plans for continuation of the project, if any;

7. source and amount of funds, if any, used in addition to state grant.

10 MCAR § 1.325 Availability of funding. Grants under the rule are subject to continuing availability of funds appropriated for such purposes.

TAX COURT

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

State of Minnesota — Tax Court

Robert R. and Helen Truex, — **Appellants,**

v.

The Commissioner of Revenue, — **Appellee.**

Docket No. 2505 — **Dated May 16, 1980**

Taxpayer appeals from the commissioner's Order of September 27, 1977. The commissioner found that the taxpayers were domiciliaries of the State of Minnesota and therefore residents of Minnesota for income tax purposes for the period from July 1, 1974, through December 31, 1975. Accordingly, the commissioner found that all of Appellants' income, for such period, was assignable to the state for income tax purposes under Minn. Stat. (1974) 290.17(1). Appellant claims that they were domiciliaries of the State of Florida for the period in question. Therefore,

according to Appellants, it was improper for the commissioner to assign Appellants' income for such period to Minnesota.

Harold Farnes appeared for the Appellants

Richard Davis, Special Assistant Attorney General, appeared for the Appellee.

Decision

The commissioner's Order is hereby affirmed.

Findings of Fact

John Knapp

1. The Appellants, Robert R. and Helen Truex, were legal residents and domiciliaries of the State of Minnesota from May, 1943, until at least June 30, 1974.

2. Appellants have four children. Two of the children, Richard and Joan, were dependent upon Appellants for support during the period in question, July 1, 1974, through December 31, 1975. There is no question that Richard and Joan were residents of the State of Minnesota throughout the period in question. While Joan attended college at the University of Miami at Coral Gables, Florida, during the 1974-1975 school year, she returned to Minnesota during her summer vacation and lived at her parents' home and worked in a supermarket. After completion of the 1975-1976 school year, Joan once again returned to Minnesota, lived in her parents' home, attended business school and thereafter worked in Minnesota. From that time on, she did not return to school in Florida.

3. Appellant, Robert R. Truex, has been employed as an airline pilot for Northwestern Orient Airlines, Inc. since March, 1943. All flight schedules flown by Robert Truex during the period in question began in Minnesota and ended in Minnesota. During the period in question, Northwestern Airlines sent all its mailings directed to Robert Truex, including his W-2 statement.

4. During the period in question, and for 24 years prior thereto, Appellants owned the home at 2835 Inner Road, Wayzata, Minnesota. Robert Truex built the house himself in 1950. On an application for homeowner's insurance submitted on October 16, 1975, Appellant Robert Truex claimed that the market value of the structure alone was $45,000, and the contents were valued at $22,500. The home is situated on land leased from the Methodist Lakeside Assembly.

5. In order to buy or build a home on land owned by the Lakeside Methodist Assembly, Appellants were required to be members in good standing of a church. During the period in question, Appellants were members of the Excelsior Methodist Church of Excelsior, Minnesota. During the period in question, Appellants' ground lease had three years to run before it expired. Appellants, on January 1978, signed a new 25-year lease and as of July 1979, still owned the home at 2835 Inner Road, Wayzata, Minnesota.

6. Appellants applied for, and were granted, a homestead classification for the home located at 2835 Inner Road, Wayzata, Minnesota, in 1974. They did not apply for homestead classification in 1975, and therefore did not receive the $325.00 property tax credit.

7. The income tax savings to Appellants which would result from a determination that they were Florida residents during the period in question is over $10,000.

8. In May, 1972, Appellants purchased Apartment No. 22 in the 3900 Condominium Apartments, 3930 North Ocean Drive, Riviera Beach, Florida. Appellants paid $32,000 for the apartment. They made a $16,000 down payment and assumed the prior owners' mortgage.

9. During the period in question, Appellant Robert R. Truex owned and actively operated a business named Hangar Services. Appellant Helen Truex was a co-owner of Hangar Services and also its bookkeeper. Hangar Services was in the business of renting aircraft hangars at Flying Cloud Airport in Eden Prairie, Minnesota. The Truexes had operated the business since 1964, and during the period in question had 47 separate hangar stalls. Robert Truex was active in the business, including the repair and maintenance of the hangars. He had a machine shop located in the basement of his home at 2835 Inner Road, Wayzata, Minnesota, for the use in connection with the hangar business. The lessees of the hangars sent their monthly rent payments to 2835 Inner Road in Wayzata. All billing statements for utilities, taxes and supplies, etc. associated with the hangar business were sent to 2835 Inner Road, Wayzata. Appellants have thought of the business as something to pass on to their children. Hangar Services' checking account was located at the Wayzata Bank and Trust Company in Wayzata, Minnesota, during the period in question. The address printed on the check blanks of Hangar Services was 2835 Inner Road, Wayzata, and the statements of account for Hangar Services' checking account were sent to Appellants at 2835 Inner Road, Wayzata, during the period in question.

10. Appellants did not own or operate a business in the State of Florida during the period in question.

11. Appellants' joint personal checking account was located at the Wayzata Bank and Trust Company, Wayzata, Minnesota, during the period in question. The address printed on Appellants' check blanks was 2835 Inner Road, Wayzata. All checking account statements and cancelled checks for the account were sent to the Appellants at their Wayzata, Minnesota, home.

12. Appellants did not have a checking account in Florida during the time in question.

13. Appellants had a joint personal savings account at the Wayzata Bank and Trust Company during the entire period in question. Statements of account for the personal savings account were sent to the Appellants' Wayzata address by the bank.

14. Appellant Robert Truex had a savings account at the Northwest Airlines Employees' Credit Union during the entire period in question. All statements of account were sent by the Credit Union to Appellant at 2835 Inner Road, Wayzata. The vast majority of Appellants' savings during the period in question were deposited in three Minnesota savings institutions.

15. In November, 1974, Appellants opened a joint savings account at the First National Bank and Trust Company of Riviera Beach, Florida. The balance in said account was minimal during the period in question. Appellants opened the savings account in Florida only because it afforded them the privilege of cashing checks at the Florida bank written on their Minnesota checking account. The First National Bank and Trust Company of Riviera Beach sent all account statements for the Truex's Florida savings account to their Minnesota address.

16. The Appellants purchased and sold common stock during the period in question through the Minneapolis office of Piper, Jaffray & Hopwood. All monthly statements mailed to the Truexes during the period in question by Piper, Jaffray & Hopwood were mailed to their Wayzata, Minnesota, address.

17. On or about June 30, 1974, Appellants invested $5,000 in the Centuria Petroleum Fund 1974, a limited partnership involved in oil and gas leases. The records of Centuria Petroleum Fund 1974 indicate that the Truex's address was 2835 Inner Road, Wayzata, Minnesota. In 1975 the Appellants invested another $5,000 in Centuria Petroleum Fund 1975. Once again the address was indicated for Appellants on the records of the Petroleum Fund was their Minnesota address.

18. Appellants maintained charge accounts and/or credit privileges with numerous businesses located in the State of Minnesota during the period in question. Appellants during the period in question regularly purchased goods and services from these local businesses. In all cases, the billing statements were sent to the Wayzata, Minnesota, address.

19. During the period in question, the Appellants had numerous charge accounts with national businesses. In each case, the billing statements for goods purchased from these businesses were sent to Appellants' Minnesota address.

20. During the period in question, Appellants licensed and registered a 1971 Lincoln automobile and 1973 Ford Pickup in the State of Minnesota. Appellants purchased two used cars in the State of Florida.

21. Appellants were members of the Minneapolis, Minnesota, branch of the American Automobile Association and the Bel Aire Yacht Club in Minnesota during the entire period in question. They were not members of any social or athletic clubs in the State of Florida.

22. Appellants were treated by numerous doctors, dentists and clinics and a chiropractor in the State of Minnesota during the period in question. Appellant Robert Truex testified that during the period in question he was treated by a chiropractor in Florida but could not recall his name.

23. Appellant Robert Truex owned an interest in Family Flyers, Inc., a Minnesota non-profit corporation, which owned an airplane during the period in question. The airplane was hangared in a hangar owned by the Truexes at Flying Cloud Airport in Eden Prairie, Minnesota. The Appellants' son maintained the airplane during the period in question.

24. While Appellants maintained Florida drivers' licenses in 1974, the Minnesota Department of Public Safety records indicate that they had valid Minnesota drivers' licenses in effect throughout the period in question. In fact, the Truexes listed their Minnesota driver's license numbers on an application for car insurance in November, 1974.

25. In June, 1974, Appellants purchased a new 140 horsepower inboard-outboard speed boat for their own use and that of their family. The boat was, and still is, kept at the Minnesota home.

26. In December, 1974, Appellant Robert Truex made application for homeowners' insurance for his Minnesota home. Appellants' mailing address was indicated as 2835 Inner Road in Wayzata, Minnesota. The application indicated that the owner of the home lived in the house. The agent who took the application was Appellants' son, Thomas. Appellant Robert Truex admitted that Thomas knew more about Appellant's personal life and whereabouts than would an agent who was not related to Appellants.

27. In November, 1974, Appellant Robert Truex made application for automobile insurance. On the application he indicated his address was 2835 Inner Road, Wayzata. The application was signed by Robert Truex. Once again, the application was taken by his son, Thomas, as agent. On the application, the Minnesota driver's license numbers of Robert and Helen Truex were listed, not their Florida driver's license numbers. While the application indicated that the Appellants would be spending part of the year in Florida, Appellants estimated that they would drive each of their vehicles that were registered in the State of Minnesota, a 1971 and 1973 Ford Pickup, 7,000 miles annually. Appellant Robert Truex, on the application, indicated that his current home address was 2835 Inner Road and that he had been at that address since 1951.

28. Appellant Robert Truex made application in May, 1975, for insurance for his 1974 140-horsepower inboard-outboard speed boat. Robert Truex signed the application which indicated his home address to be 2835 Inner Road in Wayzata, Minnesota. In response to a question of how long he had been at his current address, Truex indicated 25 years. Once again, the agent who took the application was Appellants' son, Thomas Truex.

29. Insurance premium notices in connection with all of the foregoing insurance policies were mailed to the Appellants at 2835 Inner Road, Wayzata, Minnesota.

30. Appellant Robert Truex signed his daughter's 1975 Minnesota income tax return as the "preparer" on April 6, 1976. Robert Truex on the blanks provided for the preparer of the return, indicated that his address at that time was 2835 Inner Road, Wayzata.

31. During the period from July 1, through December 31, 1974, Appellant Robert Truex spent sixty-one days in the performance of his duties as a pilot for Northwest Airlines. Appellant Robert Truex, upon cross-examination and presentation of documentary evidence by Appellee's counsel, admitted that during the same period of time, July 1, through December 31, 1974, he spent at least forty-one days in the State of Minnesota. On the other hand, Appellant Robert Truex is unable to establish with certainty, either through documentation or testimony, more than a few specific days upon which he was physically present in the State of Florida during the period from July 1, through December 1, 1974.

32. During the period from January 1, 1975, through December 31, 1975, Appellant Robert Truex spent 119 days in the performance of his duties as a pilot for Northwest Airlines. Appellant, upon cross-examination and presentation of documentary evidence by Appellee's counsel, admitted that he spent at least 99 days during the 1975 calendar year in the State of Minnesota. He was unable to establish with certainty, either through documentation or testimony, more than a few specific days upon which he was physically present in the State of Florida during the 1975 calendar year.

33. Appellant Helen Truex had no idea when she was in Minnesota or Florida during the period from July 1, 1974, through December 31, 1974, or during the period from January 1, 1975, through December 31, 1975.

34. In addition, Appellant spent from three weeks to seven weeks in the State of Ohio visiting relatives during the period from July 1, through December 31, 1974. Appellant spent three weeks or more in the State of Ohio visiting relatives during the calendar year of 1975.

35. By their own admission, Appellants did not make much effort to establish their physical presence in Florida during the period in question.

Conclusion of Law

During the taxable periods of 1974 and 1975, Appellants remained domiciled in Minnesota within the meaning of Minn. Stat. § 290.01, subd. 7. Therefore, Appellant's entire income for the period is assignable to Minnesota under Minn. Stat. § 290.17(1).

Memorandum

Minn. Stat. § 290.17(1) (1974), provides that the entire income of all resident taxpayers shall be assigned to this state for income tax purposes. The term ''resident'' is defined in Minn. Stat. § 290.01, subd. 7, as follows:

''Resident. The term ''resident'' means any individual domiciled in Minnesota and any other individual maintaining an abode therein during any portion of the tax year who shall not, during the whole of such year, have been domiciled outside the state''

A further definition of ''resident'' is found in income tax regulations 2001(7), which reads in relevant part as follows:

''*Residence, as defined in the Act, is practically synonymous with domicile*. The residence of any person is held to be in that place in which his habitation is fixed, without any present intentions of removing therefrom, and to which, whenever he is absent, he intends to return.

A person who leaves his home to go into another state for temporary purposes only is not considered to have lost his residence. But if a person removes to another state with the intention of remaining there for an indefinite time as a place of permanent residence, he shall be considered to have lost his residence in this State.

*****

The mere intention to acquire a new residence, without the fact of removal, does not change the status of the taxpayer, *nor does the fact of removal, without the intention to remain, change his status. The presumption is that one's domicile is the place where he lives. A domicile once shown to exist is presumed to continue until the contrary is shown*. An absence of intention to abandon a residence is equivalent to an intention to retain the existing one. No positive rule can be adopted with respect to the evidence necessary to prove an intention to change a domicile but such intention may be proved by acts and declarations, and *of the two forms of evidence, acts are generally conceded more weight than declarations*. A person who is temporarily employed within the state does not require a residence in the state, if during such period he is domiciled without the state.

While the exercise of one's voting franchise is presumptive evidence of residence, such evidence may be overcome by a showing of the facts involved in the determination of residence. Casting an illegal vote does not of itself establish residence for income tax purposes. (Emphasis added)

The relevant authorities on the subject make it clear that once a domicile is established in Minnesota, it is presumed to continue to exist until another domicile is proven to have been established elsewhere. This rule on the continuing nature of a domicile is clearly set forth in American Law Institute, Restatement, Conflict of Laws, Chapter 2, Section 23, as follows:

A domicile, once established, continues until it is superceded by a new domicile.

See also, *McCutchin v Commissioner of Taxation*, Docket No. 563 (January 20, 1956).

The legal test for establishing domicile requires bodily presence in a given jurisdiction coupled with an intention to make such place one's home. In re *Estate of Smith*, 242, Minn. 85, 64 N.W. 2d, 129, 1954; *Miller's Estate v Commissioner of Taxation*, 240 Minn. 18, 59 N.W. 2d, 925, 1953. In the case at bar, it is undisputed that Appellants were bodily present in the State of Florida at various times during the period from July 1, 1974, through December 31, 1975. Therefore, the precise issue to be resolved on this appeal is whether the facts established the required intention to make Florida the Appellants' permanent home after July 1, 1974.

The issue of intent in establishing one's domicile is one of fact. *In re Estate of Smith*, 242 Minn. 85, 64 N.W. 2d, 129, 1954. In analyzing the intent of the parties, the Court must consider all of the facts of the case at hand. The intent of the party may be gathered from both acts and declarations. *Seecomb v Bovey* 135 Minn. 353 160 N.W. 10 18 1917. Acts are considered more persuasive than declarations, and written declarations are considered more persuasive than oral ones. *Seecomb v Bovey, Supra*.

Thus, to transfer one's domicile to another state, it is necessary to show by actions as well as words that the person intends to make a new home in the new community. A few incidental contacts are not enough. As this Court stated in *Coulter v Commissioner of Taxation*, Docket No. 257, (October 8, 1946):

"Domicile is not something either easily abandoned or accidentally changed. It is a reflection of the true situation which prevails in the life of a man or of a family. *A domicile is not lost with a changed abode when deep roots remain embedded in the social and economic life of the old community*. Nor is a new domicile acquired unless and until actual residence has been supplemented by good faith intent, and, as time passes, *intent must be implemented by action, which in fact, integrates one's life with the new community*. (Emphasis added)

Prior to July 1, 1974, there is no question that Appellants were domiciled in Minnesota and had been since 1943. During this period of time Appellants established many social, financial and employment contacts in this state. The facts clearly indicate that the vast majority of these contacts remained fully intact throughout the period in question.

Throughout the period in question, Appellants owned a home at 2835 Inner Road, Wayzata, Minnesota. The structure, which is situated on land leased from the Methodist Lakeside Assembly, is valued at $45,000.00. Appellants received the benefit of a homestead classification for that home for the year 1974. However, they did not apply for such classification in 1975.

Appellant Robert Truex maintained his long-standing employment with a Minnesota employer, Northwestern Orient Airlines, Inc. throughout the entire period in question. All flight schedules flown by Truex during the period in question began and ended in Minnesota. During the period in question Northwest Airlines sent all of its mailings directed to Truex, including his W-2 statements, to his Wayzata, Minnesota, home. In fact, Northwest Airlines typed Truex's Wayzata address on his W-2 statement.

Appellants also maintained business contacts with the State of Minnesota for the period in question. They owned and actively operated a business named Hangar Services. The lessees of the hangars at such business sent their monthly rent payments to the Wayzata home. Additionally, billing statements for utilities, taxes and supplies, etc. associated with the hangar business were sent to the Wayzata home. The Wayzata Bank and Trust Company handled the checking account for the hangar business. The address printed on the checks was that of the Wayzata home, and the checking account statements were sent to the Wayzata home. Appellants did not own or operate a business in the State of Florida during the period in question.

The majority of personal savings accounts and checking accounts during the time in question were located in Minnesota. Additionally, all accounts statements for Truex's *only* Florida savings account were mailed to their Wayzata home.

Other than a blanket declaration of intention to make Florida their domicile, Appellants have given the Court meager evidence to substantiate that claim. The only evidence of note are the purchase of two used cars in the State of Florida and the purchase of a condominium in the State of Florida during 1974.

Once a domicile is established in Minnesota, it is presumed to continue until another domicile is proven to have been established elsewhere. *Sarek v Commissioner of Revenue*, Docket No. 2524 (April 19, 1979). To establish a new domicile, the taxpayer must establish actual physical presence in the new jurisdiction and must establish his intention to make the new jurisdiction his home. *In re Estate of Smith, Supra*. Therefore, the burden of proof is upon Appellants in this case. In balancing the evidence in this case, it is clear to the Court that Appellant has fallen short of meeting that burden. The Court therefore must find Appellant for the periods in question was a domicile of the State of Minnesota. And therefore, the Court affirms the decision of the Commissioner.

John Knapp, Chief Judge

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.

Minnesota Community College System
North Hennepin Community College
Notice of Availability of Contract for Consultant to Develop Contract Learning Agreements

North Hennepin Community College requires the services of a qualified consultant to develop contract learning agreements between the college and individual profit-making organizations.

Developing contract learning agreements shall include the following:

1. The consultant will organize, coordinate, and direct a program of courses offered to area business and industry.

2. The courses are to be taught at off-campus locations, probably on private sites.

3. The courses offered are to be both credit and non-credit. The consultant will teach a minimum of ten credit courses from the college curricula related to management and supervision.

4. The consultant may teach approximately 30% of the non-credit courses he/she arranges, but the schedule for these activities will be negotiated with the community service director of the college to whom the consultant will report.

5. The length of the contract with the consultant will be from July 1, 1980 through June 30, 1981.

6. Firms/individuals desiring consideration should submit a resume of their office and work before June 16, 1980 to:

Don McGuire
Director of Community Services
North Hennepin Community College
7411 85th Avenue North
Brooklyn Park, Minnesota 55445
Telephone (612) 425-4541

Department of Corrections
Minnesota Correctional Facility/Lino Lakes
Contract Available for Certified Clinical Psychologist

The Minnesota Correctional Facility—Lino Lakes announces its intention to contract with a certified clinical psychologist to provide the following services:

1) Provide psychological evaluation on institution residents as requested by classification teams and the Minnesota Corrections Board. Advise program staff concerning treatment needs of residents and be available for consultation and/or ongoing treatment of designated residents when arranged.

2) Consulting sessions to consist of two 5-hour visits per week at $175 per visit, however a limit of 90 visits per year is maintained.

Department of Health
Family Planning Section
Notice of Availability of Funds for Family Planning Special Project Grants

Any eligible agency interested in administering a Family Planning Special Project in calendar year 1981 shall contact the Minnesota Department of Health by June 27, 1980.

Purpose and Eligibility

Family planning is voluntary planning and action by individuals to *attain* or *prevent pregnancy*. Family Planning Special Project Grants will be made available to local government agencies and non-profit corporations to develop or expand pre-pregnancy family planning services to Minnesota residents in accordance with the Family Planning Services Act (Minn. Stat. § 145.925) and the family planning rule (ch. 27, Part II: 7 MCAR § 1.457).

How To Apply For Funds

A potential applicant should submit a letter of intent to apply for funds to the Commissioner of Health. The letter of intent must be received by the department no later than 4:30 p.m. Friday, June 27, 1980 and must include the name of the applicant agency, name and telephone number of an agency contact person and an estimate of the amount of funds to be requested for calendar year 1981.

Because the amount of grant funds available for 1981 may be the same as for 1980, agencies awarded Family Planning Special Project funds for 1980 may not request a sum which exceeds their January, 1980 grant award.

An agency expressing an intent to apply will be provided with a copy of the Family Planning Act, the family planning rule,

application materials, information on the review and award process, and the name and telephone number of a family planning consultant available to provide technical assistance concerning preparation of the grant application. The completed application must be submitted to the appropriate Regional Development Commission(s), Health Systems Agency(s), and local board(s) of health *prior* to submission to the commissioner. The completed application must be received by the department on or prior to 4:30 p.m., August 15, 1980.

Award of Funds

Applications will be reviewed and grants awarded in accordance with the Criteria for Award of Family Planning Special Project Grants found in the family planning rule (7 MCAR § 1.457E.). For 1981, award priority will be given to agencies whose applications meet the criteria for award and propose all family planning components in counties with no family planning services as of December 31, 1978 (7 MCAR § 1.457 E.1.). All other agency applications shall be funded in rank order based on the criteria for award (7 MCAR § 1.457E.) as funds are available. Applicant agencies will be notified in writing of the status of the application by December 31, 1980.

Further information regarding family planning and application for Family Planning Special Project Grants may be obtained by contacting Ms. Judi Kapuscinski, Supervisor, Family Planning Unit, 717 Delaware Street S.E., Minneapolis, Minnesota 55440, (612) 296-5285.

Duration of Funding

Funds for approved grants for these purposes will be awarded for the period of January 1, 1981 through December 31, 1981. The second half of the funding period is, however, dependent upon favorable action by the Minnesota Legislature relative to the Department's biennial budget request for family planning funds.

Department of Public Safety
Office of Planning and Analysis

Notice of Request for Proposal for Traffic Records System Project Planning and Project Management Assistance

The Department of Public Safety is seeking a qualified consultant to assist the Traffic Records Integration Project (TRIP) team. The project is developing an integrated data base and information system for the areas of motor vehicle, driver license, and accident records.

The project employs Structured Systems Analysis using data flow diagrams and transform-centered structured design techniques. The consultant must be familiar with this methodology.

The contract will be for the duration of the project, currently scheduled to end August 31, 1982. Estimated cost of the project is up to $35,000. The deadline for submission of proposals is June 23, 1980.

Details are contained in a Request for Proposal. Copies of the Request for Proposal may be obtained by contacting:

Mr. Fred Logman, Director
Office of Planning and Analysis
Department of Public Safety
314 Transportation Building
St. Paul, MN 55155
(612) 296-2017

Department of Public Welfare
Systems and Data Flow Division

Notice of Request for Proposal for Data Entry Service

Notice is hereby given that the Systems and Data Flow Division, Department of Public Welfare is seeking proposals for data entry operator(s) and a system compatible with the Department's Nixdorff/Entrex 480A entry system. This service is to be available to the Systems Division during overload periods. All data will be entered at the contractor's site on his equipment using the data entry programs of the Department of Public Welfare. The agreement shall be for the period from July 1, 1980 through June 30, 1981. The estimated amount of the contract will not exceed $24,000. Responses must be received by June 23, 1980.

To receive a copy of the Request For Proposal (RFP) or for further information contact:

G. Warren Peterson
Department of Public Welfare
Systems and Data Flow Division
P.O. Box 43170
1st Floor, Space Center Bldg.
444 Lafayette Road
St. Paul, MN 55164

Department of Public Welfare
Willmar State Hospital

Notice of Request for Proposals for Psychiatric Services

Notice is hereby given that the Willmar State Hospital, Men-

tal Health Division, Department of Public Welfare, is seeking the following services for the period July 1, 1980 through June 30, 1981; these services to be performed as requested by the Administration of the Willmar State Hospital:

Services of Psychiatrist, trained in General Psychiatry, to provide consultation to newly admitted mentally ill and chemically dependent patients; also, related educational guidance to Staff Personnel.

The estimated amount of the contract will not exceed $25,500.

Responses for the above services must be received by June 23, 1980. Direct inquiries to:

Mae Forstrom, Sr. Accounting Officer
Willmar State Hospital
Box 1128
Willmar, MN 56201
(612) 235-3322, Ext. 396

SUPREME COURT

Decisions Filed Friday, May 23, 1980

Compiled by John McCarthy, Clerk

50186/211 Gordon Eugene Mondt, et al., vs. Sexter Realty Company, et al., Appellants. Hennepin County.

Treble damages are recoverable under Minn. Stat. § 548.05 (1978) only when the personal property taken during trespass is property such as is "produced by and grown upon land." *Berg vs. Baldwin*, 31 Minn. 541, 542-43, 18 N.W. 821, 822 (1884). Home furnishings, toys, and clothing are not such personal property.

Affirmed in part, reversed in part. Otis, J.

50267/145 Robert J. Johnson, et al., Plaintiffs, vs. McGough Construction Co., Inc., defendant and third party plaintiff, vs. Hankee Heating Co., Inc., third party defendant, Appellant, Acme Sheet Metal Co. Ramsey County.

A subcontract provision requiring the subcontractor to "assume entire responsibility and liability for all damages" and to "indemnify and save harmless the Contractor * * * from all such claims including * * * claims for which the Contractor may be, or may be claimed to be, liable" is an express provision to indemnity the indemnitee for liability occasioned by its own negligence.

Affirmed. Rogosheske, J.

49993/459 In the Matter of the Welfare of Charles Sweats. Hennepin County.

The juvenile court is divested of jurisdiction in a juvenile delinquency proceeding upon the prosecutor's filing of notice of intent to prosecute pursuant to Minn. Stat. § 260.125, subd. 1 (1978).

Affirmed. Peterson, J.

49334, 49525/4 Lee Ann Gryc, by her mother and natural guardian, Jacquelyn Gryc, and Jacquelyn Gryc, individually, vs. Dayton-Hudson Corp., et al, Riegel Textile Corp., Appellant. Ramsey County.

Puntive damages may properly be awarded in an appropriate strict liability case.

Appellant's compliance with an applicable federal safety standard does not preclude a punitive damages award as a matter of law.

The preemption provision of the federal Flammable Fabrics Act and the Supremacy Clause of the United States Constitution do not prohibit the imposition of punitive damages on a defendant who has complied with that Act.

Since appellant failed to object below to the trial court's instruction to the jury on the issue of punitive damages, the instruction became the law of the case and is not subject to review on appeal.

There was sufficient evidence to support the award of punitive damages.

Policy considerations do not dictate against an award of punitive damages in this case.

The award of $1,000,000 in punitive damages is not clearly excessive as a matter of law.

There was sufficient evidence to support the finding that appellant manufactured a defective product and that respondents were not aware of the defect.

The jury verdict was not perverse when it found appellant to have caused respondents' injuries while at the same time finding that the other defendants in the stream of commerce did not cause those injuries.

Appellant was not prejudiced by the trial court's dismissal of appellant's counterclaim against Jacquelyn Gryc when the jury found that Jacquelyn Gryc was not at fault.

The trial court did not err in finding that 4-year-old child, Lee Ann Gryc, could not be comparatively at fault as a matter of law.

There is no merit to appellant's contention that the trial court committed cumulative errors and that respondents' counsel engaged in misconduct which denied appellant a fair trial.

The award of $750,000 in compensatory damages is not clearly excessive as a matter of law.

Affirmed. Todd, J.

50173/153 Richard Walter Marben, petitioner, Appellant, vs. State of Minnesota, Department of Public Safety. Stearns County.

Consistent with the Fourth Amendment of the United States Constitution, a peace officer who has a specific and articulable suspicion of a violation is justified in stopping a motorist.

In this case the trooper saw the motorist driving his vehicle and, after a proper stop under the Fourth Amendment, immediately thereafter observed that the motorist was under the influence of alcohol. An arrest then was lawfully made.

Affirmed. Scott, J.

50210/188 State of Minnesota vs. Norman Junior Howard, Appellant. Hennepin County.

Identification procedures used by police did not create a ''very substantial likelihood of irreparable misidentification'' and evidence of defendant's guilt, which included positive eyewitness identification testimony, was not, as defendant contends, legally insufficient.

Trial court did not commit prejudicial error in refusing to grant a mistrial because the prosecutor elicited testimony that a knife not connected to the crime was seized from defendant when he was arrested, or in refusing to admit evidence deemed cumulative.

Defendant, by failing to object, is deemed to have forfeited his right to have his claim of prosecutorial misconduct in closing argument considered on appeal.

Affirmed. Scott, J.

50305/248 State of Minnesota vs. Michael Jerome Kaminski, Appellant. St. Louis County.

Trial court did not err in denying motion to suppress evidence seized pursuant to warranted search of defendant's automobile.

Affirmed. Scott, J.

51080/Sp. In the Matter of the Application between Finley W. Markley, Thomas Benham, Raymond M. Lukes and Medical Incorporated. Hennepin County.

Effective appellate review of the trial court's decision cannot be made until the trial court issues detailed findings relating to the scope of authority granted to the arbitration panel by the agreement of the parties and to the court's determination as to whether that authority was exceeded.

Remanded with instructions. Per Curiam.

Decision Filed Tuesday, May 20, 1980

50950, 51067/319 State of Minnesota, Appellant, 50950 vs. Nate Baxter Compton, and State of Minnesota, Plaintiff, 51067 vs. Eugene Elmer Compton. Cass County.

Held, law officer who observed property in open view in box of pickup truck properly concluded that surrounding circumstances that he had probable cause to believe the property was stolen, and, accordingly, he was justified in arrresting defendants, in seizing the property, and in searching the truck.

State vs. Nate Baxter Compton, No. 50950, reversed and remanded; State vs. Eugene Elmer Compton, No. 51067, appeal dismissed and case remanded. Sheran, C. J.

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.

Energy Agency
Certificate of Need Activity

Notice of Change in Hearing Room for the Public Hearings on the Certificate of Need Application of Northern States Power Company to Increase the Storage Capacity of the Spent Fuel Pool at The Prairie Island Nuclear Generating Facility

Notice is hereby given that the June 24 evening session, originally scheduled to be held in Room 584, Federal Courthouse, St. Paul, Minnesota 55101, will be held instead at the Large Hearing Room, Department of Public Service, Seventh Floor, American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101. The evening session will commence at 7:00 p.m. and will be devoted to public testimony only.

For further information, contact Arthur L. Adiarte at the Minnesota Energy Agency, 980 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101, telephone number (612) 296-8279.

Ethical Practices Board

Request for Advisory Opinion Re: Campaign Expenditure

The Minnesota State Ethical Practices Board solicits opinions and comments to the following request for an advisory opinion which will be discussed at its June board meeting. Written comments concerning the opinion request should be forwarded to arrive at the board's office prior to June 13, 1980.

May 22, 1980

Mr. B. Allen Clutter, III
Executive Director
Ethical Practices Board
Room 41
State Office Building

Dear Mr. Clutter and Members of the Board:

I am a member of the Board of Directors of Minnesota Christian Radio, Incorporated. Each year in August we have a three-day sharathon in which we raise the funds to operate the station for the following year. Last year, I participated in the sharathon and provided some commentary to the listening audience.

This year, I have been asked to participate in the sharathon all three days. I will provide some commentary, some encouragement, and some devotional material for the listening audience.

I will be referred to simply as Glen Sherwood, a member of the Board of Directors of Minnesota Christian Radio. I will in no way be referred to as Representative Glen Sherwood. Nor, will I be making any political comments of any kind. My comments will relate entirely to the needs of the radio station and to spiritual matters.

Will my participation in this sharathon be considered as a campaign expenditure?

I would appreciate an advisory opinion on this question. Thank you.

Sincerely yours,

Glen Sherwood
State Representative

Office of the Governor

Notice of Appointment of Department Head

In accordance with Minn. Stat. § 15.06, notice is hereby given of the appointment of Kent E. Eklund as Commissioner of the Minnesota Department of Economic Development on May 19, 1980.

Metropolitan Council

Public Hearing on a Revised Metropolitan Development Guide/Policy Plan for Recreation Open Space

The Metropolitan Council will hold a public hearing on Thursday, June 26, 1980, at 7 p.m. in the Metropolitan Council Chambers, 300 Metro Square Building, 7th and Robert Sts., St. Paul, MN (use Jackson St. entrance) for the purpose of receiving public comment on a revised Metropolitan Development Guide/Policy Plan for Recreation Open Space. This draft plan deals in detail with policies for the development of regional recreation facilities and funding for operations and maintenance. Copies of the proposed Development Guide/Policy Plan are available free of charge from the Metropolitan Council's Public Information Office at (612) 291-6464. Persons wishing to speak at the public hearing may register to do so in advance by contacting the Council's public hearing coordinator at 291-6482.

Charles Weaver
Chairman

STATE OF MINNESOTA
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FOR LEGISLATIVE NEWS

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

Perspectives—Publication about the Senate. Contact Senate Information Office.

Weekly Wrap-Up—House committees, committee assignments of individual representatives, news on committee meetings and action, House action and bill introductions. Contact House Information Office, Room 8 State Capitol, St. Paul, MN, (612) 296-2146.

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

BCC-80-004-RL

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF ADMINISTRATON
BUILDING CODE DIVISION

In the Matter of Proposed Amendments to Energy Conservation Standards for Existing Residences and In the Matter of Proposed Rules for the Certification of Evaluators for the Energy Disclosure Program.

REPORT OF THE HEARING EXAMINER

Pursuant to an Order for and Notice of Hearing issued by James J. Hiniker, Commissioner, Department of Administration, on May 16, 1980, the above-entitled matter came on for hearing before Richard C. Luis, duly appointed as hearing examiner by the Chief Hearing Examiner, at 9:00 a.m. on July 3, 1980, in the Conference room, 408 Metro Square Building, 7th and Robert Streets, St. Paul, Minnesota.

This Report is part of a rule-making process held pursuant to Minn. Stat. ch. 15, to determine whether the proposed rules for certification of evaluators for the energy disclosure program and amendments to existing rules for energy conservation standards for existing residences should be adopted by the Building Code Division, Department of Administration.

Sheila Fishman, Special Assistant Attorney General, appeared as counsel for the Department of Administration, Building Code Division. Members of the Agency panel included: Don Pates, Assistant Director of the Building Code Division of the Department of Administration (hereinafter "the Department"); Sivert Hendrickson, Section Chief of the Building Code Division; John Armstrong, Assistant Director for Conservation, Minnesota Energy Agency (hereinafter "MEA"); Frank Altman, Conservation Policy Analyst, MEA; and Gary Nelson, Residential Engineer, MEA.

Fifty-three persons signed the hearing register. These included six persons who were agency personnel, three of whom were members of the panel; and four members of the Energy Conservation Standards Subcommittee which contributed to the drafting of the proposed rules and rule amendments. Six members of the public spoke at the hearing. The Department submitted 17 exhibits. The public submitted six exhibits. Several written comments, many of which included attachments, were received by the Hearing Examiner subsequent to the hearing and prior to the close of the record, which remained open through July 18, 1980 by Order of the Hearing Examiner.

On August 18, 1980, the Chief Hearing Examiner granted the Hearing Examiner's request for an extension for completion of the Report in the above-entitled matter from August 18, 1980 to September 3, 1980. The extension was granted primarily due to the complexity of the proposed rules for Energy Conservation Standards for Existing Residences. In light of the requirements of Minn. Stat. § 116H.129, subd. 7, the Hearing Examiner is today issuing an interim report covering only the second set of rules as proposed (In the Matter of Proposed Rules for the Certification of Evaluators for the Energy Disclosure Program).

N O T I C E

The Agency must wait at least five working days before taking any final action on the rule; during that period, this Report must be made available to all interested persons upon request. This Report has been submitted to the Chief Hearing Examiner for his approval. If the Chief Hearing Examiner approves the findings of this Report, he will advise the Agency of actions which will correct the defects and the Agency may not adopt the rule until the Chief Hearing Examiner determines that the defects have been corrected. However, in the cases where the Chief Hearing Examiner identifies defects which relate to the issues of need or reasonableness, the Agency may either adopt the Hearing Examiner's recommendations to cure the defects or, in the alternative, if the Agency does not elect to adopt the recommendations, it may submit the proposed rule to the Legislative Commission to Review Administrative Rules for the Commission's advice and comment. Provisions relating to this submission to the Commission may be found in Laws of Minnesota 1980, Chapter 615, § 6, subdivision 4d.

If the Agency elects to adopt the recommendations of the Hearing Examiner and makes no other changes, then it shall submit the rule to the Attorney General for his review of form and legality. However, if the Agency makes changes in the rule other than those recommended by the Hearing Examiner, then it shall submit the rule, with the complete record, to the Chief Hearing Examiner for a review of the changes before adopting it and submitting it to the Attorney General. Procedures relating to this subsequent review by the Chief Hearing Examiner are set forth in subdivision 4e of the same statute.

Finally, whenever the Agency finally submits the rule to the Attorney General, it shall give notice on the day of submission, to all persons who requested that they be informed of the submission to the Attorney General.

Based on the records and proceedings herein, the Hearing Examiner makes the following:

FINDINGS OF FACT

Procedural Requirements

1. On May 15, 1980, the Department filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rule amendments and of the proposed rules.
(b) The Order for Hearing proposed to be issued.
(c) The Notice of Hearing proposed to be issued.
(d) A request for hearing, including a statement of the number of persons expected to attend and the estimated length of their presentation.

2. On May 29, 1980, 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.

3. On June 2, 1980, a Notice of Hearing and copy of the proposed rule amendments and proposed rules were published at 4 State Register 1881.

4. On June 2, 1980, the Department filed the Notice of Hearing as mailed.

5. On June 6, 1980, the Department filed the following documents with the Hearing Examiner:

(a) The affidavit of receipt of the Secretary of State's list.
(b) The certificate of delivery of the Secretary of State's list.
(c) Affidavit of mailing the Notice of Hearing to all persons on the Secretary of State's list.

(d) The Statement of Need and Reasonableness.
(e) Letter confirming consultation with MEA.
(f) Letter from Chairman of House Energy and Utilities Subcommittee acknowledging receipt of information.
(g) Copy of an agenda of the Senate Energy and Housing Committee.
(h) Copy of proposed disclosure report form.

6. On June 9, 1980, the Department filed a signed copy of the Order for Hearing. This filing was one day later than the time required for filing under 9 MCAR § 2.105 A. The Hearing Examiner finds that this tardiness did not prejudice any interested party and therefore, was a technical rather than substantial non-compliance.

7. The documents listed above were available for inspection at the Office of Hearing Examiners (Office of Administrative Hearings) from the date of filing to the date of the hearing.

8. The record remained open through July 18, 1980 for the receipt of written comments and statements.

9. The Notice of Hearing as published at 4 State Register 1881 incorrectly gave the address of the Office of Hearing Examiners as 175 University Avenue. The Hearing Examiner announced the correct address on the record of the public hearing on three different occasions. If any written statements or comments arrived originally sent to the wrong address, the Hearing Examiner considered them timely if they were mailed before July 18, 1980. After the hearing, and prior to the close of the record, the Hearing Examiner received at least four comments which had been sent to the incorrectly published address. The Hearing Examiner finds that the publication error was not prejudicial to those who had an interest in the hearing and was not a fatal defect as to the legality of the notice. It was a technical defect and does not undermine the procedure or prejudice the rights of those intended to be protected. See City of Minneapolis v. Wurtele, et al., 291 N.W. 2d 386 (Minn. 1980).

In the event that comments are subsequently received by the Hearing Examiner or the Department bearing a postmark prior to July 18, 1980 but sent to 175 University Avenue, or if persons come forward with evidence that their written comments were so postmarked and addressed but returned by the U. S. Postal Service, those comments will be considered, and if appropriate, new findings may be issued relating to the rules commented upon.

Statutory Authority

10. The Department cites as authority for the proposed rules for Certification of Evaluators for the Energy Disclosure Program, Minn. Stat. § 116H.129, subds. 5, 6 and 7 (1978). This citation should have included (1979 Supp.), as amended by Minn. Laws 1980, ch. 579, § 9. These amendments extended the dates for the adoption of the rules and commencement of the program. The Hearing Examiner notes that the date set by the Legislature for the adoption of these rules, May 1, 1980, has already passed. However, the mere fact that rules are being proposed after a statutory adoption date is not fatal. The Hearing Examiner concludes that a statutory adoption date is directive in nature, not mandatory, and does not serve to invalidate an otherwise valid rule-making proceeding. Since the failure to cite (1979 Supp.) relates in this instance only to effective dates and prejudices no one, the integrity of this proceeding has not been compromised due to that technicality.

The enabling statute, at subd. 6, requires the Department to establish standards for the certification and performance of evaluators. The rules proposed for 2 MCAR §§ 1.16223-1.6230 do set forth standards for certification. At the hearing, in response to questions about standards for performance, Department personnel pointed out that the standards provide for revocation of certification for negligent performance. However, ordinary care is a common-law standard, which, if violated, could lead to charges of negligence with or without the standard in the rule. Since it is a principle of statutory construction that the Legislature intends an entire statute to be effective and certain, see, Minn. Stat. § 645.17(2) (1978), the Department should adopt some standards of performance. This is especially important because there is no provision in the rules for periodic recertification with a corresponding opportunity for evaluating competency. It appears that once a person is certified, that certification lasts for life. The Department argues that the screening and testing procedures proposed in 2 MCAR §§ 1.6223-1.6230 provide reasonable assurance that the qualified evaluators will be competent. This probably will not hold true in every case. The Department should consider proposing additional rules covering actual performance audits by evaluators. Those rules cannot be adopted until after the Department gives notice, publishes proposed rules in the State Register, and convenes a new public hearing. However, the Hearing Examiner is unable to conclude that failure to be specific regarding performance standards for evaluators is jurisdictionally fatal to the proposed rules before him at this time. The Hearing Examiner finds that the Department has substantially complied with the statutory requirements of Minn. Stat. § 116H.129, subds. 5, 6 and 7 (1979 Supp.) as amended by Minn. Laws 1980, ch. 579, § 9, and that the Commissioner has the authority to adopt rules pursuant thereto for implementation of a residential energy disclosure program and certification of evaluators for that program.

Discussion of Proposed Rules for Certification of Evaluators for the Energy Disclosure Program.

11. The Hearing Examiner suggests that the title of the rules be changed from "Rules for Certification of Evaluators for Energy Disclosure Program" to "Rules for Energy Disclosure Program and for Certification of Evaluators for Energy Disclosure Program". This change would conform the title to the scope section (2 MCAR § 1.16221), and the Hearing Examiner finds that the change is necessary and reasonable in order to ensure an understanding of the rules which follow the title. Adoption of the title as suggested would not constitute a substantial change from the rules as published.

complied see title page

12. 2 MCAR §§ 1.16220 and 1.16221.

These rules set forth the statutory authority for, and the purpose and scope of the proposed rules. The Hearing Examiner notes that the citation to statutory authority is correct and that the stated scope correctly includes procedures for the disclosure program as well as for the certification of evaluators. The Hearing Examiner finds both proposed rules to be reasonable and necessary.

The HE is incorrect if citation includes (1978) since statute was amended by both Supp 1979 and Session Laws 1980, ch. 579 § 9

13. 2 MCAR § 1.16222.

This rule describes the energy disclosure program. The Hearing Examiner suggests that the specifically limited parenthetical reference "(2 MCAR 1.16205 C. 1 through 22)" in the first paragraph of this section be changed to "(2 MCAR § 1.16205)". This change is reasonable and necessary to conform the

complied p.1

reference to the mandate of Minn. Stat. § 116H.129, subd. 5 and allows for any future addition to or rearrangement of the master section. Its adoption would not be a substantial change from the rules as originally published.

The rule as published provides that evaluators shall use "the appended disclosure report form . . . or a form which is substantially similar." No appended form was published prior to the hearing. If the form could not be used unless adopted by rule, the Department's failure to publish it would be fatal to these proceedings because Minn. Stat. § 15.0412, subd. 4 (1978), requires publication of the "full text" of any proposed rule in the State Register. However, Minn. Stat. § 116H.129, subd. 5, does not require that the forms to be used for the Energy Disclosure Program must be adopted by rule. The only requirement is that the Commissioner of Administration "shall approve forms" after consultation with the Director of the MEA and the appropriate standing committees of the Legislature. The Hearing Examiner finds that the failure to append a proposed form to these rules is not a fatal defect because the forms do not have to be adopted by rule.

The first sentence of the second paragraph of the rule as published must be amended by deleting the word "appended" and deleting the phrase "or a form substantially similar to that appended to these rules". The Hearing Examiner suggests the following sentence:

> "Evaluators shall use a disclosure report report form approved by the building code division in consultation with the Minnesota Energy Agency and the Legislature.",

complied p. 1

but the crucial consideration is that any reference to an appended form must be deleted. This deletion although crucial, is clerical in nature and does not constitute a substantial change. Its adoption is necessary and reasonable in order to properly understand the rules.

The Hearing Examiner finds that the Department can use or approve any form which provides for disclosure of information on the standards as they are finally adopted. The form should also provide for waiver of the information by the buyer in order to conform with Minn. Stat. § 116H.129, subd. 7 (1979 Supp.), which allows the buyer to waive the right to a disclosure report.

At the hearing, the Department proposed that evaluators submit their annual summaries to the MEA rather than to the Building Code Division, thus changing the second paragraph of this rule as originally published. Since it is the MEA which must make annual reports to the Legislature, this change is reasonable and is not substantially different from the rule as published. It is clear that both the Building Code Division and MEA work closely with one another in the implementation of this program.

The Hearing Examiner finds that the Department has established the need for and reasonableness of this rule, and it may be adopted as proposed at the hearing, with the modifications as noted in this Finding.

14. 2 MCAR § 1.16223.

This rule provides steps for certification of applicants as evaluators. It is suggested that the words "successful upon" should be transposed to read "upon successful" for the purpose of clarity. Such an adjustment is clerical only and does not constitute a substantial change.

complied p. 2

The Hearing Examiner finds that adoption of this rule as originally published, with the modification as noted in this Finding, is necessary and reasonable.

15. 2 MCAR § 1.16224

At the hearing, the Department proposed to amend the first line of the rule to read: "Persons possessing one of the following qualifications...". The Hearing Examiner finds that this change is not substantially different from the proposed rule as published, but is merely a clarification of its meaning.

The Hearing Examiner finds that this rule is reasonable and necessary for establishing prerequisites for certification of evaluators, and may be adopted as amended at the hearing.

16. 2 MCAR § 1.16225

At the hearing, the Department proposed to amend the rule by inserting the words "a minimum of" before the words "two (2) weeks" as the time required for applying to take the examination. This change is merely a clarification and is not substantially different from the rule as published. The Hearing Examiner finds that this rule is reasonable and necessary and may be adopted as proposed at the hearing.

17. 2 MCAR § 1.16226.

This section requires that evaluators must provide a performance bond to be effective during the period for which they are certified. At the hearing, the Department recommended that this section be deleted, and that references to the bond in sections 1.16223 and 1.16230 also be deleted. Deleting this rule would result in a set of rules substantially different from the one originally proposed. Classes of people who did not come to the hearing, notably buyers and sellers of homes, would not have notice that financial protection (for example, performance bond or liability insurance) was not available to them. Also, deleting this rule would result in a set of rules fundamentally different from that contained in the Notice of Hearing. See the "substantial change" standards at 9 MCAR § 2.111 A. - D.

This rule package is being proposed because, by statute, no one may convey residential property (owner-occupied or rental) in Minnesota after October 1, 1980 without disclosing to the buyer the energy efficiency characteristics of that property, unless the buyer waives the disclosure. The basic or primary thrust of these rules is to implement a system whereby affected property owners can have their properties evaluated for the required disclosure. Once an evaluation is performed, Minn. Stat. § 116H.129, subd. 7, provides that no new evaluation of this sort is required for five more years.

The potential for causes of action which can arise from implementation of the system contemplated by these rules is enormous. Under Minn. Stat. § 116H.129, subd. 3, all rental property must meet certain energy efficiency standards. If a house is sold to a buyer who intends to rent it out, and the evaluator attests that the house meets all the required standards, the buyer could face huge uncontemplated expenses if that evaluation is faulty.

The Hearing Examiner finds that some form of protection to property owners must accompany the system proposed by these rules. The Department declared at the hearing that a buyer in such a case would have a cause of action for ordinary negligence, but that is true even without the rules. What must be remembered is that the rules as originally published held out the representation that some sort of financial protection would accompany the evaluations. The Department's witness acknowledged at the hearing that financial protection to

potentially injured parties was the intent of the rule as originally published. The Department's justification for withdrawal of that protection is that drafting the bond "to the State" (as proposed in the rules as published) would not provide the protection contemplated. To cure this problem, the Department proposes withdrawal of all financial protection. The Hearing Examiner believes that such a remedy is far too drastic. If the Department wishes to delete financial protection from this rules package, it must republish the proposed rules and convene a new hearing. The Hearing Examiner suggests deletion of the words "to the State" from the first sentence of the proposed section as a way of solving the problem articulated by the Department at the hearing. If the Department decides that bonding of evaluators is not appropriate, then the rule, as adopted, should require the purchase of liability insurance by the evaluators.

The Hearing Examiner finds that the rule as originally published is necessary and reasonable, if modified as suggested in the previous paragraph. The Hearing Examiner further finds that deletion of financial protection would be a substantial change from the rules as originally published within the meaning of Minn. Laws 1980, ch. 615, § 6, subd. 4d (to be codified as Minn. Stat. § 15.0412, subd. 4d).

18. 2 MCAR § 1.16227

At the hearing, the Department proposed to modify this rule by exempting Certified Municipal Building Officials from payment of a certification fee. The intent of the modification is to enable local units of government to have certified persons in their employ to do evaluations of any residences owned by that unit, or engaged in evaluation programs sponsored by that governmental unit without additional expenditures of public monies. The Hearing Examiner finds that this addition to the proposed rules is necessary and reasonable, and not a substantial change from the rules as originally published.

The Hearing Examiner finds that this rule is necessary and reasonable to provide for fees to defray the cost of the program as provided for in the enabling statute, and it may be adopted as proposed.

19. 2 MCAR §§ 1.16228 and 1.16229.

The Hearing Examiner finds that these two rules are reasonable and necessary to protect against potential conflicts of interest and promotion of specific products. It may be adopted as proposed.

At the hearing, the Department proposed the inclusion of "person, firm, contractor" in the non-endorsement provision. The Hearing Examiner finds that these inclusions are implied in the rule as originally published and merely clarifications. They may be included in the final rule since they do not constitute a substantial change.

20. 2 MCAR § 1.16230.

The Hearing Examiner finds that this rule is reasonable and necessary in order to provide for revocation of certification and for a means of resolving disputes over revocation of certification.

The Hearing Examiner notes that there is no provision in the rules as to what procedure will occur if the Department receives a complaint from a consumer that the energy audit performed by an evaluator was not correct. At the hearing, the Department responded to this query by stating that the evaluator's certification could be revoked because of negligence. However, this does

not really give an adequate remedy to either a buyer or seller who has been damaged by an improper audit. Presumably, such a person could have a common-law tort action. The Hearing Examiner suggests that the Department consider whether some rules should be proposed which would give such persons remedies through the administrative process. Any such rules would require a new notice and publication in the State Register, followed by an additional public hearing.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS

1. That due, timely and legally adequate notice of the hearing was properly served and published by the Department. All relevant substantive and procedural requirements of law and rule have been satisfied.

2. That the Department has demonstrated its statutory authority to adopt the proposed rules.

3. That the Department has demonstrated the need for and reasonableness of the proposed rules by an affirmative presentation of facts in the record.

4. That the additions to the proposed rules which were proposed after publication of the rules in the State Register are not substantially different from the rules as published in the State Register within the meaning of Minn. Laws 1980, ch. 615, § 6, subd. 4d (to be codified as Minn. Stat. § 15.0412, subd. 4d), except as noted at Finding 17.

5. That the Department has met the requirements of Minn. Laws 1980, ch. 615, § 6, subds. 4-4f (to be codified as Minn. Stat. § 15.0412, subds 4-4f).

6. That the Hearing Examiner is not recommending any changes in the proposed rule within the meaning of Minn. Laws 1980, ch. 615, § 6, subd. 4e (to be codified as Minn. Stat. § 15.0412, subd. 4e).

7. That the Hearing Examiner has suggested action to correct the defects mentioned in Conclusion 4, as noted at Finding 17.

8. That due to Conclusions 4 and 7, this Report has been submitted to the Chief Hearing Examiner for his approval pursuant to Minn. Laws 1980, ch. 615, § 6, subd. 4d (to be codified as Minn. Stat. § 15.0412, subd. 4d).

9. That any Findings which might properly be termed Conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such.

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the proposed rules be adopted consistent with the Findings and Conclusions made above.

Dated this 22nd day of August, 1980.

Richard C. Luis

RICHARD C. LUIS
Hearing Examiner

BCD-80-004-RL

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF ADMINISTRATION
BUILDING CODE DIVISION

In the Matter of Proposed Amendments to Energy Conservation Standards for Existing Residences and In the Matter of Proposed Rules for the Certification of Evaluators for the Energy Disclosure Program.

REPORT OF THE CHIEF HEARING EXAMINER

A

The above-entitled matter came on for review by the Chief Hearing Examiner pursuant to the provisions of Minn. Laws 1980, Ch. 615, § 6, subd. 4d (to be codified as Minn. Stat. § 15.0412, subd. 4d) which provides in part:

> If the [hearing examiner's] report contains a finding that the proposed rule is substantially different from that which was proposed at the public hearing, or that the agency has not met the requirements of section 15.0412, subdivisions 4 through 4f, it shall be submitted to the chief hearing examiner for approval. If the chief hearing examiner approves the finding of the hearing examiner, he shall advise the agency of actions which will correct the defects, and the agency shall not adopt the rule until the chief hearing examiner determines that the defects have been corrected. If the chief hearing examiner determines that the need for and reasonableness of the rule has not been established pursuant to subdivision 4, clause (c), and if the agency does not elect to follow the suggested actions of the hearing examiner to correct that defect, then the agency shall submit the proposed rule to the legislative commission to review administrative rules for the commission's advice and comment. The agency shall not proceed to adopt the rule until it has received and considered the advice of the commission; provided, that the agency is not required to delay adoption longer than 30 days after the commission's receipt of the agency's submission.

Based upon a review of the record in this proceeding, the Chief Hearing Examiner hereby approves the Interim Report of the Hearing Examiner in all respects and specifically as to any finding of substantial change or of failure to comply with Minn. Laws 1980, Ch. 615, § 6 (to be codified as Minn. Stat. § 15.0412, subd. 4-4f), or of failure to establish need for and reasonableness of the proposed rule.

In order to correct the defects enumerated by the Hearing Examiner, the Agency shall either take the action recommended by the Hearing Examiner or reconvene the rule-hearing if appropriate. If the agency chooses to reconvene the rule-hearing, it shall do so as if it is initiating a new rule-hearing, complying with all substantive and procedural requirements imposed on the Agency by law or rule.

If the Agency chooses to take the action recommended by the Hearing Examiner, it shall, prior to submitting the rules to the Attorney General for review, submit to the Chief Hearing Examiner a copy of the rules as initially published in the State Register, a copy of the rules as proposed for final adoption in the form required by the State Register for final publication, and a copy of the Agency's Findings of Fact and Order Adopting Rules. The Chief Hearing Examiner will then make a determination as to whether the defect in regard to substantial change and the requirements of Minn. Laws 1980, Ch. 615, § 6 (to be codified as Minn. Stat. § 15.0412, subd. 4-4f) have been corrected.

Should the agency make changes in the rules other than those recommended by the Hearing Examiner, it shall also, prior to submitting the rule to the Attorney General, submit the complete record to the Chief Hearing Examiner for a review in regard to substantial changes.

In reviewing the Hearing Examiner's Report, the last paragraph of Finding 13 (page 5) may leave the reader in doubt with respect to what action it may or should take. It is the opinion of the Chief Hearing Examiner that the Hearing Examiner has found the rule to be reasonable as proposed but has "suggested" a clarifying amendment which would not be a substantial change requiring a new hearing. Thus, it appears that the Agency may either adopt the language as proposed or make the change suggested by the Hearing Examiner without the necessity of a further review by the Chief Hearing Examiner.

Dated this 2nd day of September, 1980.

agency has adopted HE amendments with one exception — see HE pp 17, F of F (A)

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF ADMINISTRATION
BUILDING CODE DIVISION

IN THE MATTER OF PROPOSED AMENDMENTS TO ENERGY CONSERVATION STANDARDS FOR EXISTING RESIDENCES AND IN THE MATTER OF PROPOSED RULES FOR THE CERTIFICATION OF EVALUATORS FOR THE ENERGY DISCLOSURE PROGRAM.

ORDER OF THE
CHIEF HEARING EXAMINER

(B)

On August 22, 1980, Richard C. Luis, Hearing Examiner, issued his report in the above-referenced matter. On that same date, pursuant to the provisions of Minnesota Laws 1980, Chapter 615, § 6, subd. 4d (to be codified as Minn. Stat. § 15.0412, subd. 4d), the Chief Hearing Examiner issued his report approving the Report of the Hearing Examiner.

On September 9, 1980, James J. Hiniker, Jr., Commissioner of the Department of Administration, signed his Findings of Fact and his Order Adopting Rules and, pursuant to the provisions of Minnesota Laws 1980, Chapter 615, § 6, subds. 4d and 4e, submitted the rules to the Chief Hearing Examiner for a determination that the defects required to be corrected had been corrected and that any changes other than those discussed by the Hearing Examiner, are not substantial changes.

In Rule 2 MCAR § 1.16224, the Building Code Division had proposed the insertion of the words "one of" in the first sentence of the rule, which proposal was approved by the Hearing Examiner. In its final adoption, the Building Code Division has not inserted the words "one of" in the sentence. However, the proposal to amend this rule was for purposes of clarification only rather than for purposes of curing any defect and, further, its non-inclusion would not result in a rule substantially different from that which had been proposed.

now included p.2.

Rule 2 MCAR § 1.16225, as adopted, shows the deletion of the words "with required fee". The deletion of these words was not discussed by the Hearing Examiner as the proposal for deletion.

now included p.3.

was not made during the course of the hearing. As the situation covered by this rule is covered by another rule, the rule as adopted is not substantially different from that which was proposed.

In his Finding numbered 17, the Hearing Examiner found that deletion of financial protection (the bonding requirement) would be a substantial change from the rules as originally proposed. This finding was approved by the Chief Hearing Examiner; and, thus, the deletion of the references to this financial protection in Rules 2 MCAR §§ 1.16223, 1.16226 (as originally proposed) and 1.16229 (numbered as adopted) represent a substantial change in the rules. In order to cure the defect, as detailed in the reports of the Hearing Examiner and the Chief Hearing Examiner, the agency was to maintain the financial protection aspects of the rules or reconvene the rule hearing if appropriate.

not deleted p.4

NOW, THEREFORE, pursuant to the provisions of Minnesota Laws 1980, Chapter 615, § 6, subds. 4d and 4e, the Building Code Division of the Department of Administration shall not adopt these rules.

Dated this 11th day of September, 1980.

DUANE R. HARVES
Chief Hearing Examiner

BCD-80-004-RL

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF ADMINISTRATION
BUILDING CODE DIVISION

IN THE MATTER OF PROPOSED)
RULES FOR THE CERTIFICATION)
OF EVALUATORS FOR THE ENERGY)
DISCLOSURE PROGRAM.)

ORDER OF THE
CHIEF HEARING EXAMINER

On September 19, 1980, the Building Code Division of the Minnesota Department of Administration submitted Supplemental Findings of Fact and an Order Adopting Rules dated September 16, 1980, signed by James J. Hiniker, Jr., Commissioner, in the above-referenced matter.

The Chief Hearing Examiner, having reviewed the above-referenced documents, finds that the defects in the rules as enumerated by the Hearing Examiner in his Report which was approved by the Chief Hearing Examiner, have been corrected.

Dated this 23rd day
of September, 1980.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

BUILDING CODE DIVISION

In the Matter of Proposed
Rules for Energy Conservation Standards

and

AFFIDAVIT OF MAILING

The Proposed Rules for
Certification of Evaluators
for Energy Disclosure Program

Margaret Opalinski, being first duly sworn, deposes and says:

That on the 29th day of May, 1980, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State.

Margaret Opalinski

Margaret Opalinski
Building Code Division

Subscribed and sworn to before
me this 29th day of May, 1980

Cynthia L. Clarson

CYNTHIA L. CLARSON
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Commission Expires Feb. 23, 1982

D.U Exhibit No. 4

File No.

Date 7/3/80

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

BUILDING CODE DIVISION

In the Matter of the Proposed
Rules for Energy Conservation Standards
for Existing Residences

and

AFFIDAVIT OF RECEIPT

The Proposed Rules for
Certification of Evaluators
for Energy Disclosure Program

Margaret Opalinski, being duly sworn on oath, deposes and says:

1. That she is an employee of the Building Code Division, Department of Administration, State of Minnesota;

2. That on the 20th day of May, 1980, she went to the Secretary of State's Office of the State of Minnesota and requested a current list of all representatives and associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearing relating to the promulgation of rules pursuant to Minn. Stat. 15.0412;

3. That on the 20th day of May, 1980, in response to the above request, the Secretary of State provided her with such a list.

Further affiant sayeth not.

Margaret Opalinski

Margaret Opalinski
Building Code Division

Subscribed and sworn to before
me this 20th day of May, 1980

Cynthia L. Clawson

CYNTHIA L. CLAWSON
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Commission Expires Feb. 23, 1982

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

BUILDING CODE DIVISION

In the Matter of the Proposed
Rules for Energy Conservation Standards
for Existing Residences

and

The Proposed Rules for
Certification of Evaluators
for Energy Disclosure Program

CERTIFICATE OF DELIVERY
OF THE SECRETARY
OF STATE LIST

I hereby certify that the attached 347 labels and 19 sheets constitute the complete list of persons, associations, and other interested groups who as of 9:45 o'clock AM, this 20th day of May, 1980 have requested pursuant to Minn. Stats. 1974, Section 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: [signature]

DIV Exhibit No. 6

File No.

Date 7/3/80

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

BUILDING CODE DIVISION

IN THE MATTER OF THE PROPOSED
AMENDMENTS TO THE RULES FOR
ENERGY CONSERVATION STANDARDS FOR
EXISTING RESIDENCES

NOTICE OF HEARING

AND

THE PROPOSED RULES FOR
CERTIFICATION OF EVALUATORS
FOR ENERGY DISCLOSURE PROGRAM

NOTICE IS HEREBY GIVEN that a public hearing in the above-entitled matter will be held in the Conference Room, 408 Metro Square Building, 7th and Robert Street, St. Paul, Minnesota on July 3, 1980, 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. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Richard Luis, Office of Hearing Examiners, Room 300, 175 University Avenue, St. Paul, Minnesota 55105, either before the hearing or within 5 working days after the close of the hearing. The Hearing Examiner may extend the time for receipt of written comments for a period not to exceed twenty (20) calendar days from the date of the hearing.

The hearing will commence with the matter of proposed amendments to Rules for Energy Conservation Standards for Existing Residences. These rules add additional mandatory standards for residential rental property if economically feasible pursuant to Minn. Stat. Sec. 116H.129, subd. 3. In addition the proposed rules provide for 22 standards, which will be used as a basis for evaluation of residences at the time of sale. The proposed rules incorporate methods for calculating energy savings and determining economic feasibility. Generally the amendments expand the rules to include requirements for reduction of energy usage by mechanical or electrical systems.

The hearing will also consider proposed Rules for Certification of Evaluators for Energy Disclosure Program. These rules provide proceedures for a disclosure program; outline requirements for certification and performance of energy evaluators, including revocation; and, further, provide provisions regarding conflict of interest, non-endorsement, certification fees, and bonding requirements for energy evaluators.

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

Copies of the proposed rules will be available at the door on the date of the hearing and one free copy can be obtained by writing to the Building Code Division, 408 Metro Square Building, 7th and Robert Streets, St. Paul, Minnesota 55101. The agency's authority to promulgate the proposed rules is contained in Minn. Stat., Section 116H.129 subds. 1, 5, 6 and 7 (1978).

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 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.

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 persons 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 pursuant to Minn. Stat. 10A.01, Subd. 11 (1978) 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 communiating or urging others to communicate with public officials must register with the State Ethical Practices Board as a lobbyist within five days of the commencement of such activity by the individual. The state provides certain exceptions. Questions should be directed to the State Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, phone (612) 296-5615.

Adoption of the proposed rules by the agency will not require the expenditure of public monies by local public bodies.

STATE OF MINNESOTA
DEPARTMENT OF ADMINISTRATION

by Daniel B. Magraw Deputy Commissioner
James J. Hiniker, Commissioner

Date: 5/16/80

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

BUILDING CODE DIVISION

IN THE MATTER OF THE PROPOSED
RULES FOR ENERGY CONSERVATION STANDARDS
FOR EXISTING RESIDENCES.

AND

ORDER FOR HEARING

THE PROPOSED RULES FOR
CERTIFICATION OF EVALUATORS
FOR ENERGY DISCLOSURE PROGRAM

IT IS HEREBY ORDERED that a public hearing on the above-captioned rules be held in the Conference Room, 408 Metro Square Building, 7th and Robert Streets, St. Paul, Minnesota on July 3, 1980, 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 Notice of Hearing and applicable proposed rules be published in the State Register.

STATE OF MINNESOTA
DEPARTMENT OF ADMINISTRATION

by Daniel B. Magnuson, Deputy Comm't.

James J. Hiniker, Jr.
Commissioner

5/16/80
Date

DJ Exhibit No. 1
File No.
Date 7/3/80