

Minnesota Attorney General: Administrative Rules Proceedings

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ADMIN-1000 Rev. 1/78
SF-00006-04

Our File #648

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

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

DATE: Nov. 17, 1980

ATTN: DOROTHY A. MCCLUNG, Dir. Legal Research

FROM : H. THEODORE GRINDAL
Special Assistant
Attorney General

PHONE: 297-3471

SUBJECT: Rules as Approved Proposed Amendments & Additions to Rules Relating to Taxation and Inspection of Petroleum Products.

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.

bw
Encl.
cc: Duane Harves
Susan Robertson

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

STATE OF MINNESOTA

DEPARTMENT REVENUE

Office Memorandum

TO : JOANNE E. HINDERAKER
Special Assistant Attorney General

DATE:

FROM : DOROTHY A. McCLUNG, Director
Legal Research

PHONE:

SUBJECT: GAS TAX RULES

Attached is the file on the Rules of the Department of Revenue Relating to the Inspection and Taxation of Petroleum Products. We are adopting these rules without a public hearing pursuant to Laws 1980, Chapter 615, Section 7.

We received no comments during the thirty-day period and no one requested to be notified when the rules are filed with the Attorney General.

DAM:dlw
Attachment

RECEIVED
OCT 31 1980
ADMINISTRATIVE AGENCIES

Department of Revenue
Petroleum Tax Division

Proposed Amendments & Additions to Rules
Relating to Taxation and Inspection of
Petroleum Products

FINDINGS OF FACT
and
ORDER ADOPTING RULES

A notice of Intent to Adopt Rules Without Public Hearing, along with the full text of the rules to be amended or added to, was published on September 22, 1980, in the State Register, Volume 5, Number 12, pages 460-467 (5 S.R. 460-467). Proper notice required by Minn. Stat. § 15.0412, subd. 4h., was served upon all persons, associations and other interested groups registered with the Department of Revenue for that purpose.

Thirty days have elapsed since publication in the State Register and the Department of Revenue has not received any requests for a hearing, nor has the Department received any written data or views on the proposed amendements and additions.

Based on the Statement of Need and Reasonableness prepared to support these amendments and additions, I confirm the need for and reasonableness of the proposed amendments and additions as published in the State Register with the typographical errors corrected as shown on Exhibit A.

NOW, THEREFORE, It Is Ordered that these rules identified as Rules Relating to Taxation and Inspection of Petroleum Products as published on September 22, 1980, in the State Register, Volume 5, Number 12, pages 460-467 (5 S.R. 460-467) with the typographical errors corrected as shown in the attached Exhibit A, are adopted this 28th day of OCTOBER, 1980, pursuant to authority vested in me by Minn. Stat. 1978, § 296.27.

STATE OF MINNESOTA

Clyde E. Allen Jr.

CLYDE E. ALLEN, JR.
Commissioner of Revenue

EXHIBIT A. Rules as Adopted
AG copy

Department of Revenue

Petroleum Tax Division

this copy contains errors corrected in copy as stamped approved + filed

Proposed Amendments and Additions to Rules Relating to Taxation and Inspection of Petroleum Products

13MCAR§1.4001 Terminal Records and Reports.

A. Terminal. As used herein, the word "terminal" shall mean a facility for storage of petroleum products which have not theretofore been received in this state by a licensed distributor.

B. Records and terminal reports. All operators of terminals in this state shall keep a true and accurate record of all petroleum products delivered into and withdrawn from their terminal. A terminal report on a form approved by the commissioner shall be filed for each month showing receipts, disbursements and inventories.

C. Manifests to be furnished. A manifest or a bill of lading shall be issued for each withdrawal from a terminal in this state at the time of such withdrawal. Manifests or bills of lading shall show the following information: State tax number, date shipped, name of carrier, transport permit (MDR) number, origin (point of loading), name of supplier, name and address of distributor who will report and pay the tax and/or fee (consignee), destination, kind of product and number of gallons. The state tax number may be the manifest or bill of lading number if designated as the state tax number. A legible duplicate copy of each such manifest or bill of lading shall be filed with the commissioner.

No petroleum product shall be loaded into a tank car, the cargo tank of a tank truck or a truck transport at any terminal located outside the state for shipment to a Minnesota destination unless the distributor who will report and pay the tax and/or fee (consignee) shall require that a manifest or bill of lading be issued showing the following information: State tax number, date shipped, name of carrier, transport permit (MDR) number, origin (point of loading), name of supplier, name and address of consignee, destination, kind of product and number of gallons. The state tax number may be the manifest or bill of lading number if designated as the state tax number. A legible duplicate copy of such manifest or bill of lading shall be sent to the commissioner.

13MCAR§1.4002 Transport Requirements.

A. Truck transports. Any unit operated on the public highways of this state which is used to transport petroleum products shall be deemed to be a truck transport if the cargo tank has a capacity of 2,100 gallons or more.

B. Transport permits. Except as specifically authorized by the commissioner, no truck transport shall be operated in Minnesota until a transport permit for the cargo tank has been obtained from the commissioner. If any person sells, trades or otherwise disposes of a cargo tank during the term of the permit, he shall immediately surrender the permit to the commissioner at his office in St. Paul, Minnesota, together with complete information regarding its disposal, including the name and address of any new owner.

C. Permit number. The transport permit number prefixed by the letters "MDR" shall be painted in six-inch letters and numbers in a conspicuous place on the left front and right rear ends of the cargo tank for which the permit is issued.

D. Transporter must have permit. No petroleum product shall be loaded into the cargo tank of a truck transport to be operated in Minnesota unless the operator has in his possession a valid transport permit for such cargo tank.

E. Diversions to be reported. Any supplier or transporter of petroleum products who diverts a shipment destined to a state other than Minnesota to a Minnesota destination, or who diverts a shipment from one Minnesota destination or consignee to another Minnesota destination or consignee, shall notify the commissioner within 48 hours, setting forth the manifest number (state tax number), date, kind of product, number of gallons, the consignee to whom the shipment has been diverted and the final destination.

F. Accidents to be reported. Any transporter who while in the act of transporting petroleum products on the highways of this state has an accident involving a loss of petroleum products due to spillage, fire, leakage or any other cause, shall notify the commissioner within 48 hours, setting forth the date of the accident, the manifest number (state tax number) and date, the consignee and destination.

G. Manifest to be carried. Operators of tank trucks or truck transports transporting petroleum products in this state on which the gasoline tax and/or the inspection fees have not been assumed shall carry proof of ownership of such material (bill of lading, manifest, invoice or other identification).

13MCAR§1.4003 Distributor Records.

A. Records to be kept. Licensed distributors shall keep a true and accurate record of all purchases, transfers, sales and use of petroleum products. A record shall be kept showing the following information for each receipt of petroleum products: Manifest number (state tax number), point of origin, from whom received, kind of product, gallons received and date unloaded. A daily record shall be kept of the totals of all sales of each petroleum product.

B. Sales invoices. A sales invoice shall be made for each bulk sale of petroleum products at the time of the sale, regardless of gallonage. All sales invoices issued for bulk sales shall be machine-numbered serially with numbers of at least three digits, and shall show the following: Name and address of distributor printed or rubber-stamped upon the invoice, date of sale, name and address of the purchaser, kind of product, price per gallon, number of gallons, and rate and amount of tax if any. The words "bulk sale," as used in this rule, shall mean any sale of a petroleum product dispensed from a truck transport or tankwagon into a storage facility. When issued for the purpose of securing refunds or credits of the Minnesota gasoline tax, the invoices shall, in addition to

the aforementioned requirements, be prepared at least in duplicate, the original to be marked "Original Invoice." and given to the purchaser. The words "original invoice," as used used in this rule, shall mean the first or top sheet of an invoice, bearing the original inked or penciled imprint, whether it be typewritten, handwritten or printed, issued by a seller to a purchaser covering the product or products sold. Whenever the original invoice is unavailable, the commissioner may approve the use of a copy thereof. In such cases, a lost-or-destroyed-invoice affidavit executed by the claimant, together with a supporting statement by the supplier, must be filed.

When issued for other than bulk sales and for the purpose of securing refunds or credits of the Minnesota gasoline tax, the invoices or receipts shall show the name and location of the seller, date of purchase, number of gallons and total price.

When issued for deliveries made into another state, invoices shall be issued in the same manner with a separate set of numbers.

Sales invoices used for the sale of a rejected petroleum product not meeting specifications which the commissioner has approved for sale shall bear the following notation:

"FUEL OIL--REJECTED PRODUCT--UNSAFE FOR HEATING OR LIGHTING PURPOSES"

"GASOLINE--REJECTED PRODUCT--CONTAINS OTHER PETROLEUM PRODUCTS ON WHICH THE GASOLINE TAX HAS BEEN PAID"

C. Inventories. A physical inventory shall be taken at the end of each month of all petroleum products and a record kept of the quantity in each tank, tank capacity, tank number if any, and kind of product.

D. Records to be retained. With the exception of sales invoices or receipts issued for other than bulk sales and for the purpose of securing refunds or credits of the Minnesota gasoline tax, copies of all manifests, bills of lading, invoices and delivery tickets, as well as all other records relating to the purchase, transfer, sales and use of petroleum products, shall be retained for a period of four years.

13MCAR§1.4004 Distributor and Dealer Credits and Refunds.

A. Distributor credits, how allowed. The credits under Minn. Stat. §296.14, subd. 2, shall be allowed as follows:

Under clause (1), credit shall be taken prior to computing the allowance for evaporation and loss;

Under clause (2), credit on sales made directly from terminals shall be taken prior to computing the allowance for evaporation and loss; credit on all other sales shall be taken after computing the allowance for evaporation and loss;

Under clause (3), credit shall be taken prior to computing the allowance for evaporation and loss;

Under clause (4), credit shall be taken only when supported by a credit memorandum issued by the commissioner. Such credit memorandum will reflect the adjustment for the allowance for evaporation and loss.

B. Unusual losses. A written notice of any unusual loss of gasoline or special fuel by a distributor or dealer while in his possession, including gasoline or special fuel destroyed by accident, shall be given to the commissioner within 30 days after the discovery of the loss in order to qualify for credit or refund of tax paid, and, in addition, all claims of a distributor or dealer for refund or credit of gasoline or special fuel tax paid as a result of such unusual loss shall be filed with the commissioner within 90 days after the discovery of such loss.

13MCAR§1.4005 Dealer Records.

A. Records to be kept. Dealers shall keep a true and accurate record of all purchases and sales of petroleum products. Purchase records shall show the kind of product, from whom purchased, number of gallons and date unloaded. A daily record shall be kept of the total of all sales of each petroleum product.

B. Sales invoices. When issued for the purpose of securing refunds or credits of the Minnesota gasoline tax, sales invoices representing bulk

sales shall be machine-numbered serially with numbers of at least three digits, and shall show the following: Name and address of the dealer printed or rubber-stamped upon the invoice, date of sale, name and address of the purchaser, kind of product, price per gallon, number of gallons and rate and amount of tax. They shall be prepared at least in duplicate, the original to be marked "Original Invoice." and given to the purchaser. The words "bulk sale," as used in this rule, shall mean any sale of a petroleum product dispensed from a truck transport or tankwagon into a storage facility. The words "original invoice," as used in this rule, shall mean the first or top sheet of an invoice, bearing the original inked or penciled imprint, whether it be typewritten, handwritten or printed, issued by a seller to a purchaser covering the product or products sold. Whenever the original invoice is unavailable, the commissioner may approve the use of a copy thereof. In such cases, a lost-or-destroyed-invoice affidavit executed by the claimant, together with a supporting statement by the supplier, must be filed.

When issued for other than bulk sales and for the purpose of securing refunds or credits of the Minnesota gasoline tax, the invoices or receipts shall show the name and location of the seller, date of purchase, number of gallons and total price.

When issued for the purpose of securing a refund or credit of the Minnesota gasoline tax, a separate invoice shall be issued for each sale, at time of sale, regardless of gallonage.

Invoices issued to operators of portable feed mills, corn shellers and other portable units for gasoline serviced to the unit tank, shall show separately the number of gallons, if any, serviced to the vehicle supply tank.

Sales invoices used for the sale of a rejected petroleum product not meeting specifications which the commissioner has approved for sale shall bear the following notation:

"FUEL OIL--REJECTED PRODUCT--UNSAFE FOR HEATING OR LIGHTING PURPOSES"

"GASOLINE--REJECTED PRODUCT--CONTAINS OTHER PETROLEUM PRODUCTS ON WHICH THE GASOLINE TAX HAS BEEN PAID"

C. Records to be retained. All records relating to the purchase and sale of petroleum products, excluding copies of sales invoices or receipts issued for other than bulk sales and for the purpose of securing refunds or credits of the Minnesota gasoline tax, shall be retained for a period of four years.

13MCAR§1.4006 Special Fuel Requirements.

A. Records. All distributors, special fuel dealers and bulk purchasers shall keep a true and accurate record of all purchases, transfers, sales and use of special fuel. They shall also keep complete and accurate records of purchases, sales and use of fuel oil and liquefied petroleum gas at all their locations where special fuel is sold or stored.

B. Sales invoices. A sales invoice shall be issued for each sale of special fuel made by a distributor or a special fuel dealer. Such sales invoices shall bear the signature of the person making the delivery, name and address of the purchaser, motor vehicle license number if delivered into the supply tank of a licensed motor vehicle, date of sale, number of gallons, rate of tax, price per gallon and total amount of sale. The words "Special Fuel" shall be written or printed on each sales invoice at the time of sale or delivery. Sales invoices shall have the name and address of the distributor or special fuel dealer printed or rubber-stamped thereon and shall be machine-numbered serially with numbers of at least three digits and issued in sequence. A separate sales invoice book shall be maintained for special fuel sales, and one copy of each such sales invoice shall be retained in the special fuel sales invoice book, unless otherwise authorized by the commissioner. Sales invoices issued for fuel other than for use as special fuel shall show the kind of fuel and the name and address of the purchaser.

C. Meter readings and inventories. Distributors, special fuel dealers and bulk purchasers shall at the end of each month take and record

1. through an accumulating meter in working order, meter readings for each pump through which special fuel is dispensed; and

2. physical inventories of special fuel showing quantity in each tank, tank capacity and kind of product.

D. Users' records and reports. All users of special fuel shall keep a true and accurate record of all purchases, sales, transfers and use of special fuel and shall retain all such records for a period of four years. Users of special fuel (except licensed distributors, special fuel dealers and bulk purchasers required to file monthly reports) shall file an annual information report showing the number of gallons used, miles traveled and such other information as the commissioner may prescribe, for each licensed motor vehicle. This report shall be filed on or before March 1 of each year for the preceding calendar year.

E. Mileage reports. Upon demand of the commissioner there shall be attached to and made a part of the monthly special fuel tax report an accurate statement of mileage traveled during such month on Minnesota highways by each licensed motor vehicle supplied with special fuel from the bulk storage facilities maintained by the licensee.

F. Bulk sales reports. Persons selling or delivering special fuel into storage facilities maintained by any licensed bulk purchaser shall, on or before the 23rd day of each month, file with the commissioner an itemized report, in a manner prescribed by and on a form supplied by him, showing all sales of special fuel to said licensed bulk purchaser.

G. Records to be retained. Copies of all manifests, bills of lading, invoices, sales and delivery tickets, as well as all other records relating to the purchase, transfer, sales and use of special fuel, shall be retained for a period of four years.

H. Changes in storage capacity or location. Distributors, special fuel dealers and bulk purchasers shall report to the commissioner in writing within seven days any change in storage capacity or location of special fuel facilities.

I. Prices posted. Each pump used to dispense special fuel into the supply tank of a licensed motor vehicle by a special fuel dealer shall show the total sales price per gallon posted on the pump in a conspicuous manner.

13MCAR§1.4007 Other Taxable Products. Material used as stove or lamp gasoline, and naphtha, toluol, benzol or any like product used in blending to produce gasoline, shall be reported and the Minnesota gasoline tax paid thereon.

13MCAR§1.4012 ~~Gas Tax 12~~ Refunds and Credits.

A. Claims for refund of the tax paid on aviation gasoline or on special fuel for aircraft must be filed on or before April 15 of the year following the year in which the fuel was purchased. Any such claim filed during the 15-day period from April 16 to April 30 may be honored less a penalty of 25 percent of the amount of the approved refund claim. The postmark on the envelope in which the claim is mailed determines the date of filing. Each claim must be accompanied by the original invoice receipted for payment by the supplier. The words "original invoice," as used in this rule, shall mean the first or top sheet of an invoice, bearing the original inked or penciled imprint, whether it be typewritten,

handwritten or printed, issued by a seller to a purchaser covering the product or products sold. Whenever the original invoice is unavailable, the commissioner may approve the use of a copy thereof. In such cases, a lost-or-destroyed-invoice affidavit executed by the claimant, together with a supporting statement by the supplier, must be filed.

B. Minnesota gasoline tax refunds and credits.

1. General. The amount paid by a taxpayer-claimant during the taxable year as tax on gasoline (including gasohol) or special fuel may be credited against any income or excise tax due under Minn. Stat. ch. 290 to the extent that the gasoline was bought and used for a purpose other than use in motor vehicles or snowmobiles and to the extent that the special fuel was bought and used for a purpose olher than use in licensed motor vehicles. The tax on aviation gasoline and on special fuel for aircraft cannot be used as a credit. If the credit for the amount paid as tax on gasoline or special fuel exceeds the tax due under ch. 290, the excess shall be refunded to the taxpayer-claimant.

A credit or refund may be claimed only for the amount paid as the Minnesota-imposed tax on gasoline or special fuel. No credit or refund may be claimed solely on the basis that the Minnesota tax was paid on gasoline or special fuel subsequently used outside Minnesota; that is, if no credit or refund of the Minnesota tax would be allowable with respect to a particular use of gasoline or special fuel inside Minnesota, then no credit or refund of the Minnesota tax

will be allowable with respect to that particular use of gasoline or special fuel outside Minnesota.

2. Individuals. Every individual taxpayer-claimant seeking this credit or refund must file a Minnesota individual income tax return, together with a properly completed gasoline tax credit form to be furnished by the commissioner. However, individuals classified as exempt from income tax under Minn. Stat. § 290.05, subd. 1, need only file the properly completed gasoline tax credit form in order to claim a refund.

3. Trusts and estates. Every trust and every estate seeking this credit or refund must file a Minnesota fiduciary income tax return, together with a properly completed gasoline tax credit form to be furnished by the commissioner. However, trusts and estates classified as exempt from income tax under Minn. Stat. § 290.05, subd. 1, need only file the properly completed gasoline tax credit form in order to claim a refund.

4. Corporations. Every corporation seeking this credit or refund must file a Minnesota corporate income tax return, together with a properly completed gasoline tax credit form to be furnished by the commissioner. However, corporations classified as exempt from income and excise taxes under Minn. Stat. § 290.05, subd. 1, need only file the properly completed gasoline tax credit form in order to claim a refund.

5. Information required. The gasoline tax credit form shall contain all of the following information:

a. The claimant's name, address and Minnesota tax identification number or social security number, whichever is applicable; and

b. If the claimant is exempt from income and excise taxes under Minn. Stat. § 290.05, subd. 1, the signature of the claimant or the signature and title of the claimant's duly authorized representative, whichever is applicable; and

c. The preparer's signature, address, Minnesota tax indentification number or social security number, whichever is applicable; and

d. A description of the use or uses made of the gasoline, gasohol and special fuel on which this claim is based; and

e. Dates of purchase and total gallonage of Minnesota gasohol used in boats. For purposes of this subclause and of subclause g below, the words "Minnesota gasohol" shall mean gasohol in which the alcohol contained therein has been distilled in Minnesota from agricultural products produced in Minnesota; and

f. Dates of purchase and total gallonage of gasoline and non-Minnesota gasohol used in boats. For purposes of this subclause

and of subclause h below, the words "non-Minnesota gasohol" shall mean any gasohol which does not fall within the definition of "Minnesota gasohol" as set forth in subclause e above; and

g. Dates of purchase and total gallonage of Minnesota gasohol used for a purpose for which a credit or refund is allowable under clause 1 of part B of this rule, other than boat use; and

h. Dates of purchase and total gallonage of gasoline, non-Minnesota gasohol and special fuel used for a purpose for which a credit or refund is allowable under clause 1 of part B of this rule, other than boat use.

6. Information returns. Information returns filed by partnerships and by qualifying electing small business corporations (qualifying Subchapter S corporations) must include the names and addresses of all partners or all shareholders entitled to a distributive share of the Minnesota gasoline tax credit and the amount of such distributive share to which each is entitled.

7. Filing requirements. A claim for credit or refund of the Minnesota tax on gasoline or special fuel shall be filed only once per calendar or fiscal year. The due date for filing such a claim shall be the same as the due date specified in Minn. Stat. § 290.42 for filing an income or excise tax return. For purposes of determining the due date for filing a claim, cities, counties, school districts and other organizations classified as exempt from income

and excise taxes under Minn. Stat. § 290.05, subd. ~~1(m)~~ shall be treated as if they were corporations.

8. All of the provisions contained in Minn. Stat. ch. 290, are applicable to claims filed for purposes of securing a credit or refund of the Minnesota tax on gasoline or special fuel, including but not limited to, provisions governing the statute of limitations on allowable claims and provisions setting forth the penalties to be invoked for filing false claims.

C. Motor vehicle with a power take-off. As used in this rule, the words "motor vehicle with a power take-off" mean any motor vehicle or licensed motor vehicle whose motor is used for the dual purpose of propelling the vehicle and the operation of special equipment by means of a power take-off.

No refund or credit is allowable with respect to the tax paid on gasoline or special fuel used in a motor vehicle with a power take-off which can be operated while the vehicle is being propelled on the public highways unless such vehicle is equipped with an automatic metering device approved by the commissioner which accurately measures the amount of fuel which is consumed when the vehicle is stationary and not being propelled on the public highways.

A refund or credit is allowable with respect to the tax paid on gasoline or special fuel used in a motor vehicle with a power take-off if the vehicle has two separate fuel supply tanks, one for use when the

special equipment is being operated and the other when the vehicle is being propelled on the public highways, and if the use of the fuel from the appropriate supply tank is automatically controlled.

A refund or credit is allowable with respect to the tax paid on gasoline or special fuel used in a motor vehicle with a power take-off provided that such claim is supported by complete and detailed records that will clearly and accurately establish the amount of gasoline or special fuel used for purposes other than propelling the vehicle on the public highways or provided such vehicle is equipped with an automatic metering device approved by the commissioner. Such records shall include, but not be limited to, all of the following information which is applicable to the claimant's situation: Type of operation, dates of operation, name of customer, miles traveled, hours of operation of special equipment, age of equipment, and results of tests determining engine performance during highway and power take-off operations. The use of separate fuel tanks and/or hubometers are not sufficient in themselves to qualify as complete and accurate records. Estimates of the amount of fuel used, regardless of how reasonable they may be, are not acceptable.

D. Off public highway use. If a motor vehicle or a licensed motor vehicle is used entirely off the public highways, a refund or credit of the tax paid on gasoline or special fuel is allowable.

If a motor vehicle or a licensed motor vehicle is used both on and off the public highways, a refund or credit of the tax paid on gasoline or special fuel used for purposes other than propelling the vehicle on the

public highways is allowable provided such claim is supported by complete and detailed records that will clearly and accurately establish such amounts of fuel. Such records shall include, but not be limited to, all of the following information which is applicable to the claimant's situation: Type of operation, dates of operation, miles traveled on public highways, miles traveled on private roads, hours of travel off the public highways, age of equipment, and results of tests determining engine performance during off highway use. Estimates of such amounts, regardless of how reasonable they may be, are not acceptable.

E. Gasoline or special fuel lost by accident. No refund or credit is allowable with respect to the tax paid on gasoline or special fuel which is lost through spillage or accident except while in the possession of a distributor or dealer.

F. Gasoline not used by claimant. No refund or credit is allowable with respect to the tax paid on gasoline which has not been purchased and used by the claimant.

G. Gasoline or special fuel used by State of Minnesota. No refund is allowable with respect to the tax paid on gasoline used in motor vehicles or special fuel used in licensed motor vehicles owned by the State of Minnesota, including any of its municipalities and school districts, if such motor vehicles or licensed motor vehicles are used on the public highways.

13MCAR§1.4013 Road Tax.

A. Commercial motor vehicle. "Commercial motor vehicle" means a passenger vehicle that has seats for more than nine passengers in addition to the driver, or any road tractor, or any tractor truck or any truck having more than two axles, which passenger vehicle, road tractor, tractor truck or truck is propelled by motor fuel.

B. Vehicles exempted from road tax. The following vehicles are exempted from the road tax law:

1. All straight trucks having only two axles;

2. All motor vehicles having three or more axles on which is permanently mounted a corn sheller, feed grinder, back hoe, crane, well drilling machine or other similar equipment and the use of which on the public highways of this state is only for transporting the special equipment to and from the site of operation;

3. All commercial motor vehicles operated by this state, any subdivision thereof, the United States, or any agency of two or more states or of states and the United States in which this state participates, or to any school bus as defined by the laws of this state operated by, for or on behalf of a state or any subdivision thereof;

4. All motor vehicles which bear base license plates issued by the State of Minnesota or by states with which Minnesota has reciprocal

agreements relating to motor fuel taxes. The commissioner of public safety will be furnished a list of such states and notified of any new agreements entered into or any cancellation of agreements now in existence.

C. Temporary authorizations. Any person not having a valid trip permit or who is not licensed as a motor carrier who, because of unforeseen circumstances, is required to operate a commercial motor vehicle in this state may obtain temporary authorization for operating a commercial motor vehicle in Minnesota by one of the following procedures:

1. A telegram may be sent to the Petroleum Division, Department of Revenue, requesting either a motor carrier license or a trip permit, together with a Western Union money order payable to the commissioner of revenue for the amount of either $10 in the case of a motor carrier license or $5 in the case of a trip permit. The copy of the telegram and the money order receipt shall be carried in the cab of the vehicle while it is operated in Minnesota.; or

2. A trip permit may be purchased through a service company authorized by the State of Minnesota to sell trip permits. An electronically transmitted facsimile of the trip permit shall be carried in the cab of the vehicle while it is operated in Minnesota.

No more than three trip permits may be issued during any calendar year.

D. Reports of motor carriers and payment of tax. All motor carriers are required to file a road tax report each calendar quarter. The motor carrier's report shall be for a complete three-month period and is due to be filed by the last day of April, July, October and January. The report shall be on a form prescribed and furnished by the commissioner of revenue. All reports must be accompanied by a remittance for the full amount of the tax shown to be due on the report. If no travel takes place in Minnesota during any quarter, a report must still be filed, with the word "None" written in the appropriate column on line 4 of the return. The person who is responsible for the payment of the motor fuel used in the vehicle is liable for the filing of the report whether the vehicle is owned or leased by him.

E. Annual affidavit instead of quarterly report. The commissioner may exempt from the quarterly reporting requirements those motor carriers all or substantially all of whose mileage is within the State of Minnesota and require in such instances an annual affidavit attesting to the intrastate or substantially intrastate character of their operations provided that the enforcement of this law is not adversely affected thereby and that the commissioner is satisfied that an equitable amount of motor fuel is purchased in Minnesota by such carriers. The affidavit shall be on a form prescribed and furnished by the commissioner.

F. Records and invoices. An accurate record must be kept by all motor carriers of the following:

1. The miles traveled within and without Minnesota;

2. The miles traveled in Minnesota;

3. The number of gallons of fuel used in the entire operation within and without Minnesota;

4. The number of gallons of fuel purchased in Minnesota.

To substantiate the purchases of fuel in Minnesota, the original invoices or receipts must show the following:

1. Date of purchase;

2. Name and location of seller printed thereon;

3. Name and address of purchaser;

4. Kind of product;

5. Number of gallons;

6. Price per gallon;

7. Total sales price.

All records and invoices must be retained for a period of at least three years.

G. Surrender of motor carrier license. When the motor carrier shall voluntarily or involuntarily sell, dispose of or discontinue his business, he shall immediately notify the commissioner in writing and shall within 10 days surrender his motor carrier license together with all copies of such license.

H. Enforcement powers. The officers of the Minnesota highway patrol shall assist the commissioner of revenue in the enforcement of the provisions of the road tax act. Prosecution for violation of the road tax

act may be commenced in the county in which the violation occurred or in Ramsey County.

SP:B

Department of Revenue
Petroleum Tax Division

Proposed Amendments and Additions to Rules Relating to Taxation and Inspection of Petroleum Products

Notice of Intent to Adopt Without Public Hearing

NOTICE IS HEREBY GIVEN that the Department of Revenue intends to adopt amendments and additions to the rules relating to the taxation and inspection of petroleum products. Because the agency is of the opinion that its proposed amendments and additions to the rules will be noncontroversial in nature, it has decided to utilize the provisions of Minn. Stat. §15.0412, subd. 4h and adopt them without first holding a public hearing on the matter. All interested or affected persons have 30 days from the date this notice is published in the state register to object, in writing, to the lack of a hearing. The agency will hold a public hearing on the proposed amendments and additions to the rules in accordance with the provisions of Minn. Stat. §15.0412, subdivisions 4 through 4f only if seven or more persons submit to the agency within this 30-day period for comment a written request for a hearing.

All interested or affected persons have 30 days from the date this notice is published in the state register to submit, in writing, data and views on the proposed amendments and additions to the rules. The proposed amendments and additions may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change.

All correspondence, including written requests for a hearing or for notification of the date upon which the proposed amended rules are submitted to the attorney general and written comments on the proposed changes to the rules, should be addressed to Mr. James Dagen, Director, Petroleum Tax Division, Minnesota Department of Revenue, Centennial Office Building, St. Paul, Minnesota, 55145, (612) 296-3511.

Copies of the proposed amended rules and copies of the statement of need and reasonableness are now available, and one free copy of each may be obtained by writing to Mr. James Dagen at the address listed in the preceding paragraph. The statement of need and reasonableness includes a summary of all of the agency's evidence justifying both the need for, and the reasonableness of, the proposed amendments and additions to the rules. The agency strongly recommends that both of the above-mentioned documents be carefully examined before a decision to request a hearing or to comment on the proposed changes is considered.

The proposed amended rules, if adopted, would incorporate amendments since 1972 to the statutes dealing with the tax on gasoline and gasoline substitutes (Minn. Stat. ch. 296). Generally, the amendments are proposed in order to accomplish the following goals: (1) to bring the rules into compliance with the above-mentioned statutory amendments; (2) to clarify and correct existing rules; (3) to simplify procedures wherever possible; and (4) to abolish those procedures which no longer serve a useful purpose. The agency's authority to promulgate the proposed amendments and additions to the rules is contained in Minn. Stat. §296.27.

An amendment to 13MCAR§1.4001C (Gas Tax 1(c)) is being proposed which would tighten the requirements relating to the type of documentation which must be issued for each withdrawal of petroleum from a terminal. Conversely, an amendment to 13MCAR§1.4012 would eliminate the language in Gas Tax 12(b), which, as it presently reads, prohibits dealers and distributors and their agents from preparing gasoline tax refund claims for others.

Amendments to 13MCAR§§1.4002, 1.4004 and 1.4006 (Gas Tax 2, 4 and 6) are being proposed in order to abolish procedures which no longer serve a useful purpose. The amendment to 13MCAR§1.4002B (Gas Tax 2(b)) would strike the requirement that a certificate of calibration be obtained prior to applying for a transport permit. The amendment to 13MCAR§1.4004A (Gas Tax 4(a)) would do away with the requirement that sales to the federal government must be supported by Federal Exemption Certificate 1094 when application is made for the credits allowed by Minn. Stat. §296.14, subd. 2. Under the proposed amendment to 13MCAR§1.4006B (Gas Tax 6(b)), the person accepting a delivery of special fuel would no longer be required to sign the sales invoice.

Amendments to 13MCAR§§1.4003 and 1.4005 (Gas Tax 3 and 5) are being proposed in order to ease the requirements pertaining to record keeping and to the preparation and issuance of sales invoices for dealers and distributors operating on the retail level. To that end, amendments to these two rules define a bulk sale and differentiate between bulk sales and sales of relatively small amounts of fuel at the retail level when setting forth the procedural requirements to be followed when sales invoices are issued for purposes of securing refunds or credits of the Minnesota gasoline tax. In addition, amendments to these two rules provide a definition for the term "original invoice," and they explain the proper procedure for filing claims for refunds or credits of the gasoline tax when the original invoices are unavailable. An amendment to 13MCAR§1.4012A (Gas Tax 12(a)) also provides a definition for the term "original invoice" and explains the proper procedure for filing claims for refund of the tax paid on aviation gasoline and on special fuel for aircraft when the original invoices are unavailable.

An amendment to 13MCAR§1.4006C (Gas Tax 6(c)) is being proposed in order to clarify the procedure for taking meter readings of special fuel dispensed and to bring this provision into compliance with the language contained in Minn. Stat. §296.12, subd. 10.

Amendments throughout the provisions of 13MCAR§1.4012 (Gas Tax 12), relating to claims for refunds or credits of the Minnesota tax on gasoline (including gasohol) and special fuel used for eligible purposes such as off-highway use or use in boats and to claims for refund of the tax on aviation gasoline and on special fuel for aircraft, are being proposed in order to bring this rule into compliance with Minn. Stat. §§290.06, subd. 13, 296.02, subd. 7, and 296.18, subdivisions 1 and 5. Amendments updating 13MCAR§§1.4003 and 1.4005 (Gas Tax 3 and 5) are also being proposed in light of the statutory changes reflected in Minn. Stat. §§290.06, subd. 13 and 296.18, subd. 1.

Amendments to 13MCAR§1.4013 (Gas Tax 13) are being proposed to correct an error relating to the number of axles a motor vehicle must have in order to qualify for exemption from the road tax law, to provide

an alternative procedure for obtaining trip permits, and to bring into compliance with Minn. Stat. §296.17, subd. 11, the provisions governing the filing of reports.

If no hearing is required, the agency shall submit to the attorney general the proposed rules and notice as published, the rules as proposed for adoption, any written comments received by the agency, and a statement of need and reasonableness for the rules. The agency shall give notice to all persons who requested to be informed that these materials have been submitted to the attorney general. This notice shall be given on the same day that the record is submitted. The attorney general shall approve or disapprove the rules as to form and legality, including the issue of substantial change, within 14 days. If he approves the rules, he shall promptly file them in the office of the secretary of state. If he disapproves the rules, he shall state in writing his reasons therefor, and the rules shall not be filed in the office of the secretary of state, nor published. The rules shall become effective upon publication in the state register in the same manner as provided for adopted rules in Minn. State §15.0412, subd. 4f.

Dated: Oct 2 1980

STATE OF MINNESOTA
CLYDE E. ALLEN, JR.
Commissioner of Revenue

By _____
ARTHUR C. ROEMER
Deputy Commissioner

DEPARTMENT OF REVENUE

In the Matter of the Proposed
Adoption of Rules of the Department
of Revenue, Petroleum Tax Division
Governing the Taxation and Inspection
of Petroleum Products

AFFIDAVIT OF MAILING

Susan M Speel, being first duly sworn, deposes and says:

That on the 18th day of September, 1980, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Intent to Adopt Without Public Hearing by depositing with the Central Mail Section a true and correct copy thereof, properly enveloped, to all persons and associations at the addresses listed on the attached Certificate of Completeness and Accuracy.

Susan M Speel

Subscribed and sworn to before me
this [illegible] day of September, 1980.

[illegible]

[illegible]



STATE OF MINNESOTA

DEPARTMENT OF REVENUE

In the Matter of the Proposed Adoption of Amended Rules of the Petroleum Tax Division Relating to Taxation and Inspection of Petroleum Products

CERTIFICATE OF COMPLETENESS AND ACCURACY

I hereby certify that the attached four sheets consisting of 69 typewritten and 3 handwritten names and addresses constitute the complete list of persons, associations and other interested groups who, as of 8 o'clock a.m., this 17th day of September, 1980, have requested, pursuant to Minn. Stat. § 15,0412, subd. 4, that their names be placed on file with the Department of Revenue for the purposes of receiving notice of public hearing on proposed rules on the subject captioned above.

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

By Dorothy McClung
DOROTHY McCLUNG, Director
Legal Research Division

Department of Revenue
Petroleum Tax Division

Proposed Amendments and Additions to Rules Relating to Taxation and Inspection of Petroleum Products

Statement of Need and Reasonableness
Summary of Evidence

The above-captioned rules are amendments and additions to existing rules of the Department of Revenue, Petroleum Tax Division. The last time these rules were amended was July 18, 1972.

This document has been prepared as a verbatim, affirmative presentation of facts necessary to establish the statutory authority, need for, and reasonableness of the proposed amendments and additions to the existing rules. It is submitted pursuant to 9MCAR §2.104, which requires both a Statement of Need and Reasonableness and a Summary of Evidence.

AUTHORITY TO ADOPT RULES

Minn. Stat. §296.27 grants the Commissioner of Revenue statutory authority to adopt rules for the administration and enforcement of laws regulating the sale, distribution and use of petroleum products and special fuel. This statute reads as follows:

> "The commissioner may make rules and regulations relating to the administration and enforcement of laws regulating the sale, distribution, and use of petroleum products and special fuel. The rules and regulations shall be reasonable and not inconsistent with the law."

AMENDMENTS AND ADDITIONS TO EXISTING RULES
NEED AND REASONABLENESS

The need for and reasonableness of the proposed amendments and additions are as follows:

13MCAR§1.4001 (GAS TAX 1)
Terminal Records and Reports.

13MCAR§1.4001C (Gas Tax 1(c)) Manifests to be furnished. The proposed amendments to this provision are necessary in order to provide the Department with sufficient information to track the movements of every load of fuel as it enters into, travels through and leaves the state, thereby ensuring that the Department will be able to account for every gallon of petroleum which may be subject to the Minnesota tax on petroleum products.

One of the proposed amendments consists of eliminating the loading ticket from the list of acceptable types of documentation which must be issued for each withdrawal of a petroleum product from a terminal. The loading ticket is unacceptable because it does not provide enough

information to enable the Department to determine the future whereabouts of the fuel being withdrawn. Specifically, the loading ticket does not indicate the name of the carrier, the transport permit (MDR) number, the name and address of the consignee or the destination. As a practical matter, this proposed change is a reasonable one because in addition to the loading ticket, a manifest or bill of lading pertaining to the fuel being withdrawn will also have been written up; therefore, no extra work is involved.

Another proposed change would require that every manifest and every bill of lading, both of which are acceptable types of documentation for purposes of these rules, show on their faces the transport permit (MDR) number of the vehicle making the withdrawal. Again, this additional information is necessary because it facilitates tracing the future movements of the fuel being withdrawn.

13MCAR§1.4002 (GAS TAX 2)
Transport Requirements.

13MCAR§1.4002B (Gas Tax 2(b)) Transport permits. The amendment to this provision consists of abolishing the requirement that makes the acquisition of a certificate of calibration a prerequisite for obtaining a transport permit. The original intent and purpose behind this requirement was to aid the Weights and Measures Division of the Department of Public Service in effecting greater compliance with its calibration requirements. The Weights and Measures Division, however, no longer requires calibration. Therefore, this amendment is necessary in order to eliminate a requirement that no longer serves a useful purpose and is an unnecessary impediment to the acquisition of a transport permit.

13MCAR§1.4002C (Gas Tax 2(c)) Permit number. The amendment to this provision is accomplished by substituting the letters "MDR" for the letters "MDT" as a prefix to the transport permit number, which is used by the Department for identification purposes. The amendment is necessary to accurately reflect that the issuing agency is now properly known as the Minnesota Department of Revenue, not the Minnesota Department of Taxation.

13MCAR§1.4002G (Gas Tax 2(g)) Manifest to be carried. The amendment to this provision consists of deleting the word "excise" where reference is made to the gasoline tax. Throughout these rules as they are presently written, the tax on petroleum products is arbitrarily referred to in some sections as the Minnesota gasoline tax and in other sections as the gasoline excise tax. This lack of consistency is unnecessarily confusing. Therefore, it is necessary and reasonable to make this deletion in the interests of clarity and consistency and in order to eliminate superfluous verbiage.

13MCAR§1.4003 (GAS TAX 3)
Distributor Records.

13MCAR§1.4003B (Gas Tax 3(b)) Sales invoices. The proposed amendments to this provision differentiate between bulk sales and sales of relatively small amounts of fuel with respect to the type of information which must appear on sales invoices issued for purposes of securing a credit or refund of the Minnesota gasoline tax. Under the present rule,

the same degree of documentation is required on a sales invoice issued by a distributor-operated retail service station, where the average sale is of a relatively small quantity, as is required on an invoice issued by a distributor who routinely deals in large quantities which are delivered by tank wagon. The amendments, if adopted, will relax the standards relating to form and content of sales invoices when such invoices represent retail service station sales. Relaxing the invoice requirements for service station sales is necessary in light of the substantial changes in marketing at the retail level which have come about in recent years. With the rise in popularity of practices such as self-serve, the amount of paperwork involved per sale has become too burdensome in proportion to its value to the Department to warrant continuation of the present practice, as far as small-volume service station sales are concerned. The amendments are accomplished by adding new language to the first paragraph, which defines a bulk sale and limits the paragraph's scope to cases involving bulk sales, and by adding a new paragraph which sets forth the minimal standards with which an invoice or receipt must comply when it is issued for other than a bulk sale and for the purpose of securing a credit or refund of the Minnesota gasoline tax.

Another proposed change in the first paragraph consists of eliminating the requirement that a sales invoice be made for each delivery or transfer of a petroleum product. The all-encompassing nature of this requirement as it presently reads is the result of an overkill philosophy, the basic tenet of which is that it is better to be too inclusive than to risk the possibility that some unforeseen transaction will be inadvertently left out. Dropping this requirement is necessary and reasonable because it is burdensome and serves no useful purpose: Sales invoices are not normally generated by transfers or deliveries, and distributors are already required to keep a record of all such movements by virtue of 13MCAR§1.4003D (Gas Tax 3(d)).

New language in the first paragraph is also being proposed in order to provide a definition for "original invoice" and to explain the procedure to be followed in filing a claim when the original invoice is unavailable. This new language is necessary and reasonable because it clarifies procedural points on which the present rule is silent and therefore confusing.

Another proposed change involves adding the words "or credits" after the word "refunds" in the first paragraph. Amending this rule so that it refers to the securing of credits as well as of refunds is necessary in order to bring this rule into compliance with statutory changes reflected in Minn. Stat. §§290.06, subd. 13 and 296.18, subd. 1. Under Minn. Stat. §296.18, subd. 1 (1978), people who bought and used gasoline or special fuel for off-highway use or for any other eligible purposes were able to secure reimbursement of the amount they paid as tax by filing a claim for refund with the Commissioner. Under Minn. Stat. §§290.06 and 296.18, subd. 1 (1978), as amended by Laws of 1979, ch. 303, art. X, §§6 and 9, respectively, these direct refunds from the Commissioner of the tax paid on gasoline and special fuel bought and used for off-highway use or for any other eligible purpose are no longer available to most claimants. Instead, most claimants will be eligible to receive a credit equal to the amount paid as tax during the taxable year, which may be credited against the amount of income tax they owe. If the amount of the credit exceeds the amount of income tax due, the excess will be refunded. (See proposed 13MCAR§1.4012B.)

Finally, if the proposed amendments are adopted, they would eliminate the requirement that double-faced carbon paper be used in sales invoices issued for purposes of securing refunds or credits of the gasoline tax and that such invoices be issued in sequence. These requirements were originally adopted in order to provide the Department with a method of double-checking the carbon imprint on the back side of the original invoices, which the claimant was required to submit along with the refund claim, to ensure that the dates or gallonage figures had not been altered. Over the years, however, the Department has found this auditing tool to be of limited usefulness because in most cases, when an invoice has been altered, the change is apparent on its face. The Department is of the opinion that it can sufficiently protect itself against fraud by cross-checking claims against the records that distributors are required to keep under Minn. Stat. §296.21 and 13MCAR§1.4003D (Gas Tax 3(d).) Such being the case, it is necessary and reasonable to eliminate the above-mentioned requirements, the usefulness of which are questionable and the inconveniences and costs of which are burdensome.

13MCAR§1.4003D (Gas Tax 3(d)) Records to be retained. The proposed amendment to this provision differentiates between bulk sales and sales of relatively small amounts of fuel with respect to the need for retaining copies of sales invoices issued for purposes of securing a credit or refund of the Minnesota gasoline tax. The change involves adding language which makes it clear that copies of sales invoices must be retained only when they represent bulk sales. The purpose of this change is to reduce still further the paper work required of retail service station owners, by excusing them from having to comply with this provision.

13MCAR§1.4004 (GAS TAX 4)
Distributor and Dealer Credits and Refunds.

13MCAR§1.4004A (Gas Tax 4(a)) Distributor credits, how allowed. The proposed amendments to this provision eliminate the requirement that a copy of Federal Exemption Certificate 1094 be submitted in support of a claim for credit of the tax paid on gasoline and special fuel which is sold to the United States government. This amendment, which deletes all reference to the certificate, is necessary because the federal government is no longer making the certificate readily available to the seller. For purposes of these rules, it is sufficient for the vendor to indicate on his regular invoice that the purchaser was the United States government.

In addition, the language used to cite Minnesota Statutes has been modified in the interests of consistency and clarity.

13MCAR§1.4005 (GAS TAX 5)
Dealer Records.

13MCAR§1.4005B (Gas Tax 5(b)) Sales invoices. The proposed amendments to this provision differentiate between bulk sales and sales of relatively small amounts of fuel with respect to the type of information which must appear on sales invoices issued for purposes of securing a credit or refund of the Minnesota gasoline tax. Under the present rule, the same degree of documentation is required on a sales invoice issued by a retail service station owner, whose average sale is of a relatively small quantity, as is required on an invoice issued by a bulk dealer who

routinely deals in large quantities. The amendments, if adopted, will relax the standards relating to form and content of sales invoices issued for small-scale sales made at the retail level. Relaxing the invoice requirements for service station sales is necessary in light of the substantial changes in marketing at the retail level which have come about in recent years. With the rise in popularity of practices such as self-serve, the amount of paperwork involved per sale has become too burdensome in proportion to its value to the Department to warrant continuation of the present practice, as far as small-volume service station sales are concerned. The amendments are accomplished by adding new language to the first paragraph, which defines a bulk sale and limits the paragraph's scope to cases involving bulk sales, and by adding a new paragraph which sets forth the minimal standards with which an invoice or receipt must comply when it is issued for purposes of securing a credit or refund for other than a bulk sale.

New language in the first paragraph is also being proposed in order to provide a definition for "original invoice" and to explain the procedure to be followed in filing a claim when the original invoice is unavailable. This new language is necessary and reasonable because it clarifies procedural points on which the present rule is silent and therefore confusing.

In addition, if the proposed amendments are adopted, they would eliminate the requirement that double-faced carbon paper be used in sales invoices issued for purposes of securing refunds or credits of the gasoline tax and that such invoices be issued in sequence. These requirements were originally adopted in order to provide the Department with a method of double-checking the carbon imprint on the back side of the original invoices, which the claimant was required to submit along with the refund claim, to ensure that the dates or gallonage figures had not been altered. Over the years, however, the Department has found this auditing tool to be of limited usefulness because in most cases, when an invoice has been altered, the change is apparent on its face. The Department is of the opinion that it can sufficiently protect itself against fraud by cross-checking claims against the records that dealers are required to keep under Minn. Stat. §296.21 and 13MCAR§1.4005C (Gas Tax 5(c)). Such being the case, it is necessary and reasonable to eliminate the above-mentioned requirements, the usefulness of which are questionable and the inconveniences and costs of which are burdensome.

Another proposed change involves adding the words "or credits" after the word "refunds" in the first paragraph. Amending this rule so that it refers to the securing of credits as well as of refunds is necessary in order to bring the rule into compliance with statutory changes reflected in Minn. Stat. §§290.06, subd. 13 and 296.18, subd. 1. Under Minn. Stat. §296.18, subd. 1 (1978), people who bought and used gasoline or special fuel for off-highway use or for any other eligible purposes were able to secure reimbursement of the amount they paid as tax by filing a claim for refund with the Commissioner. Under Minn. Stat. §§290.06 and 296.18, subd. 1 (1978), as amended by Laws of 1979, ch. 303, art. X, §§6 and 9, respectively, these direct refunds from the Commissioner of the tax paid on gasoline and special fuel bought and used for off-highway use or for any other eligible purpose are no longer available to most claimants. Instead, most claimants will be eligible to receive a credit equal to the amount paid as tax during the taxable year, which may be credited against

the amount of income tax they owe. If the amount of the credit exceeds the amount of income tax due, the excess will be refunded. (See proposed 13MCAR§1.4012B.)

The language in the third paragraph, dealing with the need for a separate invoice for each sale regardless of gallonage if the invoice is issued for the purpose of securing a refund or credit, would be modified in order to make clear the fact that the paragraph applies to sales of small quantities as well as to bulk sales.

Finally, with respect to the notation which must appear on the sales invoice whenever fuel oil has been rejected as being unsafe for heating or lighting purposes, the wording of the notation as it presently reads refers to "rejected products." It should read "rejected product." The present wording is a result of a typographical error which occurred when the present rules were originally being typed. It is necessary and reasonable to correct this mistake so that the language used on the sales invoice to give notice that the petroleum product being purchased does not meet specifications will be consistent with the language required elsewhere in 13MCAR§1.4005B (Gas Tax 5(b)) and in 13MCAR§1.4003B (Gas Tax 3(b)).

13MCAR§1.4005C (Gas Tax 5(c)) Records to be retained. The proposed amendments to this provision differentiate between bulk sales and sales of relatively small amounts of fuel with respect to the need for retaining copies of sales invoices issued for purposes of securing a credit or refund of the Minnesota gasoline tax. The change involves adding language which makes it clear that copies of sales invoices must be retained only when they represent bulk sales. The purpose of this change is to reduce still further the paperwork required of retail service station owners, by excusing them from having to comply with this provision.

As is the case in 13MCAR§1.4005B (Gas Tax 5(b)), it is also proposed that the words "or credits" be added after the word "refunds," so as to bring this provision into compliance with statutory changes reflected in Minn. Stat. §§290.06, subd. 13 and 296.18, subd. 1.

13MCAR§1.4006 (GAS TAX 6)
Special Fuel Requirements.

13MCAR§1.4006B (Gas Tax 6(b)) Sales invoices. The amendment to this provision consists of deleting the requirement that the person accepting a delivery of special fuel must sign the sales invoice. This requirement is of limited value in today's market because a sizable share is comprised of consumers who purchase relatively small quantities of diesel fuel for use in the family car, and they are wary of signing the invoice. Given that the requirement is of limited value to the Department and that the public finds it distasteful, an amendment to delete the requirement is both necessary and reasonable.

13MCAR§1.4006C (Gas Tax 6(c)) Meter readings and inventories. The amendment to this provision is necessary for purposes of clarification and to bring this rule into compliance with the language contained in Minn. Stat. §296.12, subd. 10. The amendment consists of adding language requiring that meter readings be taken from an accumulating meter in working order.

13MCAR§1.4007 (GAS TAX 7)
Other Taxable Products.

The proposed amendment to this rule consists of substituting the words "Minnesota gasoline" for the word "excise" where reference is made to the tax which must be paid. Throughout these rules as they are presently written, the tax on petroleum products is arbitrarily referred to in some sections as the Minnesota gasoline tax and in other sections as the gasoline excise tax. This lack of consistency is unnecessarily confusing. Therefore, it is necessary and reasonable to make this change in the interests of clarity and consistency.

13MCAR§1.4012 (GAS TAX 12)
Refunds and Credits.

13MCAR§1.4012A (Gas Tax 12(a)) Aviation gasoline and special fuel tax refunds. Minn. Stat. §296.18, subd. 5 (1978) and Minn. Stat. §296.18, subd. 1 (1978), as modified by Laws of 1979, ch. 303, art. X, §9, differentiate between gasoline or special fuel used for aviation purposes and gasoline or special fuel used for off-highway purposes, with respect to procedures for recovering the amounts paid as tax. Gas Tax 12(a), a general requirements provision in its present form, does not so differentiate and is thus no longer applicable. The proposed amendment to this provision limits the provision's scope to a statement of the proper procedure for claiming refunds of the tax paid on aviation gasoline or on special fuel for aircraft, and it deletes the information that has been invalidated by Laws of 1979, ch. 303, art. X, §9.

Other proposed amendments to this provision consist of referring to the special fuel at issue as "special fuel for aircraft" rather than as "aviation special fuel" and of deleting the word "excise" where reference is made to the tax which must be paid on such petroleum products. The former change is necessary in order to make the language in this rule conform to the language in Minn. Stat. §296.18, subds. 1, 4 and 5. The latter change is necessary because throughout these rules as they are presently written, the tax on petroleum products is arbitrarily referred to in some sections as being an excise tax while in other sections no such reference is made. This lack of consistency is unnecessarily confusing. Therefore, it is necessary and reasonable to make this deletion in the interests of clarity and consistency.

Finally, new language is being proposed in order to provide a definition for "original invoice" and to clarify the procedure to be followed in filing a claim where the original invoice is unavailable. This new language is necessary and reasonable because it clarifies procedural points on which the present rule is silent and therefore confusing.

Gas Tax 12(b) Preparation of claims. It is proposed that the language presently comprising this provision be deleted. Because of statutory changes reflected in Minn. Stat. §§290.06, subd. 13 and 296.18, subd. 1, any usefulness this provision may once have had with respect to reducing the risk of collusion, fraud and conflicts of interest, has now been outweighed by a major drawback; namely, that it unreasonably and unnecessarily restricts dealers, distributors and their agents in their attempts to seek gainful employment in another field. Under the above-

cited statutes, eligibility for receiving a gasoline or special fuel tax refund is, for many claimants, inextricably tied to and determined by information contained in their income tax returns. If a dealer or distributor or agent of either wished to engage in the business of preparing income tax returns, the present rule would place unnecessary and unreasonable restrictions on his ability to do so.

13MCAR§1.4012B Minnesota gasoline tax refunds and credits. If the proposed amendments to Gas Tax 12(b) are adopted, the present language which regulates the preparation of claims would be eliminated and replaced with new language which does the following: (1) specifies which uses of gasoline and special fuel qualify for credits or refunds of the Minnesota gasoline tax, (2) sets forth the proper procedures for securing credits and refunds of monies spent for taxes on gasoline and special fuel, and (3) gives notice that claims for credit or refund of the Minnesota gasoline tax are governed by provisions of Minn. Stat. ch. 290. New guidelines in this area are necessary and reasonable in order that statutory changes reflected in Minn. Stat. §§290.06, subd. 13 and 296.18, subd. 1 may be correctly and effectively carried out.

The new language proposed for the first paragraph of clause 1 of part B of this rule expands upon and clarifies the language contained in Minn. Stat. §290.06, subd. 13. It lists the uses to which gasoline (including gasohol) or special fuel must be put in order to qualify for reimbursement of the Minnesota gasoline tax, and it points out that such reimbursement no longer takes the form of a direct refund from the Department's Petroleum Tax Division; rather, in most cases, such a claim must now be taken as a credit on the claimant's income tax return. Its inclusion in the rules relating to the administration and enforcement of Minn. Stat. ch. 296 is necessary because changes are being proposed throughout 13MCAR§1.4012 (Gas Tax 12) in order that the directives contained in this new statutory provision and in Minn. Stat. §296.18, subd. 1, will be properly and effectively carried out. In order for potential claimants and those in the petroleum industry to make sense out of these changes, it is necessary to add this new provision.

The new language proposed for the second paragraph of clause 1 emphasizes the fact that a claim for credit or refund of the Minnesota gasoline tax will be approved only if the gasoline or special fuel was used for a qualifying purpose as set forth in the first paragraph of this clause. This language is necessary and reasonable because it clarifies the fact that the type of use determines whether a claim will be approved, not the state where the use took place.

The new language in clauses 2, 3 and 4 of part B distinguish among individuals and trusts and estates and corporations with respect to the type of forms which must be filed in order to claim reimbursement of the Minnesota gasoline tax: Individuals are required to file a Minnesota individual income tax return form, together with a gasoline tax credit form. Trusts and estates are required to file a Minnesota fiduciary income tax return form, together with a gasoline tax credit form. Corporations are required to file a Minnesota corporate income tax return form, together with a gasoline tax credit form. It is necessary and reasonable to distinguish among individuals and trusts and estates and corporations with respect to the type of Minnesota income tax return form which must be filed, in order to be consistent with the provisions of

Minn. Stat. ch. 290 which govern these clauses. It is necessary and reasonable to require that a gasoline tax credit form also be filed because the Minnesota gasoline tax credit is a refundable credit and in order to safeguard against potential wrongful claims, more information than can be included on the income tax form is necessary for auditing as well as other administrative purposes.

Clauses 2, 3 and 4 also differentiate between claimants required by Minn. Stat. ch. 290 to file and pay Minnesota income tax returns and claimants exempt from filing or paying income and excise tax returns under Minn. Stat. §290.05, subd. 1, with respect to the number of forms that must be filed in order to claim reimbursement of the Minnesota gasoline tax: The former must file both a Minnesota income tax return form and a gasoline tax credit form, while the latter are required to file only the gasoline tax credit form. Although under Minn. Stat. §§290.06, subd. 13 and 296.18, subd. 1, securing reimbursement of the amount paid as tax on gasoline and special fuel is to be accomplished by taking such a claim as a credit on the claimant's income tax return, it is necessary and reasonable to make an exception for claimants such as political subdivisions of the state or certain non-profit corporations which are exempt from income and excise taxes and which consequently are never required to file income tax returns, because for them and for the Department, this is an impractical method. It is impractical from the claimants' viewpoint because it requires such claimants to annually file no-tax income tax returns solely for the purpose of securing their gasoline and special fuel tax refunds. It is impractical from the Department's viewpoint because the income tax computer system is not currently compatible with processing such no-tax returns and the Department would therefore be required to expend considerable time and money in creating and implementing a computer program capable of accommodating such diverse entities as the YMCA and the Robbinsdale school district. Therefore, it is proposed that claimants exempt from income and excise taxes under Minn. Stat. §290.05, subd. 1, be required to file only the gasoline tax credit form, that their claims be processed manually by the Department's Income Tax Division, and that their claims, if approved, be directly refunded to them.

Clause 5 of part B details the information that must be contained on the Minnesota gasoline tax credit form if the claim is to be processed. This information is necessary for auditing and other administrative purposes. The information required by clause 5, subclauses a, b and c is necessary for purposes of identification and accountability. The information required by clause 5, subclause d and by clause 5, subclauses e through h is necessary to ensure that the gasoline, special fuel and gasohol upon which the claim is based were used for a purpose for which a credit or refund is allowable under clause 1 of part B of this rule and to verify that the purchases were made during the taxable year, as required by Minn. Stat. §290.06, subd. 13. In addition, clause 5, subclauses e through h require the claimant to differentiate between boat use and allowable uses other than boat use in order that the provisions of Minn. Stat. §296.421, which governs the distribution of unrefunded tax for motor boat purposes, may be carried out; and, finally, these subclauses also define "Minnesota gasohol" and "non-Minnesota gasohol" and require that the claimant differentiate between total gallonage of gasoline, non-Minnesota gasohol and special fuel used for an allowable purpose and total gallonage of Minnesota gasohol used for an allowable purpose because

Minnesota gasohol is not taxed at the same rate as gasoline, non-Minnesota gasohol and special fuel; therefore, the differentiation is necessary in order to correctly calculate the amount of the credit or refund.

Clause 6 of part B points out that for purposes of preparing the information returns required by Minn. Stat. ch. 290, partnerships and qualifying electing small business corporations (Subchapter S corporations) are to treat the Minnesota gasoline tax credit the same as any other refundable credit. This new paragraph is necessary for purposes of explanation and clarification.

The new language in clause 7 of part B specifies that claims for credit or refund of the Minnesota gasoline tax may only be filed once per calendar or fiscal year and that the date for filing such claims is the same as that for filing income and excise tax returns under Minn. Stat. ch. 290. This new paragraph provides that the state and its political subdivisions should be treated as if they were corporations for purposes of establishing their due date for filing claims. This new language setting forth how often claims for credit or refund of the Minnesota gasoline tax may be filed and the due dates for filing such claims, completely changes the provisions of Gas Tax 12(a) in this regard. The changes incorporated in this new language are necessary in order to comply with Minn. Stat. §§290.06, subd. 13 and 296.18, subd. 1.

Finally, the new language comprising clause 8 of part B specifies that claims for credit or refund of the Minnesota gasoline tax are governed by the provisions of Minn. Stat. ch. 290. This language is necessary in order to put those in the industry and other potential claimants on notice that ch. 290, rather than ch. 296, governs such claims despite the fact that the procedure for filing them is contained in the rules relating to ch. 296.

13MCAR§1.4012C (Gas Tax 12(c)) Motor vehicle with a power take-off. One amendment to this provision consists of adding the words "or credit" after the word "refund" in order to bring the provision into compliance with new statutory procedures reflected in Minn. Stat. §§290.06, subd. 13 and 296.18, subd. 1, which govern the main method of obtaining reimbursement of taxes paid on gasoline and special fuel used for off-highway use. Another amendment consists of substituting the word "rule" for the word "regulation," in order to comply with the terminology used in the Administrative Procedure Act (Minn. Stat. §§15.0411 to 15.052).

Finally, another proposed change tightens up the language referring to the type of information which must be included in records submitted in support of a claim for reimbursement of the Minnesota tax paid on gasoline or special fuel used in a motor vehicle with a power take-off. This change is necessary for purposes of clarifying what the minimum standards are in terms of documentation.

13MCAR§1.4012D (Gas Tax 12(d)) Off public highway use. One of the amendments to this provision consists of adding the words "or credit" after the word "refund" in order to bring the provision into compliance with new statutory procedures reflected in Minn. Stat. §§290.06, subd. 13 and 296.18, subd. 1, which govern the main method of obtaining reimbursement of taxes paid on gasoline and special fuel used for off-highway use.

Another proposed change tightens up the language referring to the type of information which must be included in records submitted in support of a claim for reimbursement of the taxes paid on gasoline or special fuel used in a motor vehicle used both on and off public highways. This change is necessary for purposes of clarifying what the minimum standards are in terms of documentation.

13MCAR§1.4012E (Gas Tax 12(e)) Gasoline or special fuel lost by accident. The amendment to this provision consists of adding the words "or credit" after the word "refund" in order to bring the language into compliance with the language in Minn. Stat. §296.14, subd. 2.

13MCAR§1.4012F (Gas Tax 12(f)) Gasoline not used by claimant. The amendment to this provision consists of adding the words "or credit" after the word "refund" in order to bring the provision into compliance with new statutory procedures reflected in Minn. Stat. §§290.06, subd. 13 and 296.18, subd. 1, which govern the main method of obtaining reimbursement of taxes paid on gasoline and special fuel.

13MCAR§1.4013 (GAS TAX 13)
Road Tax.

13MCAR§1.4013B2 (Gas Tax 13(b)(2)) Vehicles exempted from road tax. This amendment is necessary because it corrects an error in the present wording with respect to the number of axles a motor vehicle must have in order to qualify for exemption from the road tax law. Adoption of this proposed amendment will bring this provision into compliance with Minn. Stat. §296.17, subd. 7(b), which requires exempt motor vehicles to have three or more axles.

13MCAR§1.4013B4 (Gas Tax 13(b)(4)) All motor vehicles which bear base license plates issued by the State of Minnesota or by states with which Minnesota has reciprocal agreements relating to motor fuel taxes. The proposed amendment to this provision substitutes the Department of Public Safety for the Department of Highways (or the Department of Transportation as it is now known) as the state agency which is to be furnished with a list of states having reciprocal agreements with Minnesota relating to motor fuel taxes. The proposed amendment is necessary in order to reflect the fact that under Minn. Stat. §296.17, subd. 20 (1971), as amended by Laws of 1973, ch. 107, §1, jurisdiction to assist in the enforcement of the provisions of subdivisions 7 to 22 was transferred to the Commissioner of Public Safety.

13MCAR§1.4013C (Gas Tax 13(c)) Temporary authorizations. The proposed amendment to this provision consists of adding new language which sets forth a new, alternative procedure by which temporary authorization for operating a commercial motor vehicle in Minnesota may be obtained. It is in response to a popular request by those in the industry. It is a necessary and reasonable procedure because it greatly reduces the amount of time necessary for processing applications, and thus it ensures that truckers will gain quicker access to trip permits than is possible when applications are made by mail.

Another proposed amendment to this provision involves a change of name in the state agency to which application for a trip permit is made. This amendment is necessary in order to reflect the fact that the agency in question is now properly known as the Department of Revenue.

13MCAR§1.4013D (Gas Tax 13(d)) Reports of motor carriers and payment of tax. The proposed amendment to this provision changes from a monthly basis to a quarterly basis the reporting period for filing a road tax report. The amendment is necessary in order to bring this provision into compliance with Minn. Stat. §296.17, subd. 11.

Another proposed amendment to this provision involves a change of name in the state agency which is charged with the responsibility of furnishing the reporting forms. This amendment is necessary in order to reflect the fact that that the agency in question is now properly known as the Department of Revenue.

13MCAR§1.4013E (Gas Tax 13(e)) Annual affidavit instead of quarterly report. The proposed amendment to this provision consists of substituting the word "quarterly" for the word "monthly" in referring to the block of time covered by each road tax report. It is necessary in order to bring this provision into compliance with Minn. Stat. §296.17, subd. 11.

13MCAR§1.4012G (Gas Tax 12(g)) Surrender of motor carrier license. The proposed change to this provision consists of substituting the word "involuntarily" for the word "unvoluntarily." This change is necessary in order to correct a spelling error.

13MCAR§1.4013H (Gas Tax 13(h)) Enforcement powers. The amendment to this provision consists of changing the title of the agency head from "Commissioner of Taxation" to "Commissioner of Revenue." This amendment is necessary because it reflects the fact that the agency in question is now properly known as the Department of Revenue.

SP:B

Department of Revenue
Petroleum Tax Division

Proposed Amendments and Additions to Rules Relating to Taxation and Inspection of Petroleum Products

13MCAR§1.4001 ~~Gas Tax 1~~ Terminal Records and Reports.

A. ~~(a)~~ Terminal. As used herein, the word "terminal" shall mean a facility for storage of petroleum products which have not theretofore been received in this state by a licensed distributor.

B. ~~(b)~~ Records and terminal reports. All operators of terminals in this state shall keep a true and accurate record of all petroleum products delivered into and withdrawn from their terminal. A terminal report on a form approved by the commissioner shall be filed for each month showing receipts, disbursements and inventories.

C. ~~(c)~~ Manifests to be furnished. A manifest, or a bill of lading ~~or loading ticket~~ shall be issued for each withdrawal from a terminal in this state at the time of such withdrawal. Manifests or bills of lading shall show the following information: State tax number, date shipped, name of carrier, transport permit (MDR) number, origin (point of loading), name of supplier, name and address of distributor who will report and pay the tax and/or fee (consignee), destination, kind of product and number of gallons. The state tax number may be the manifest or bill of lading number if designated as the state tax number. A legible duplicate copy of each such manifest or bill of lading shall be filed with the commissioner.

No petroleum product shall be loaded into a tank car, the cargo tank of a tank truck or a truck transport at any terminal located outside the state for shipment to a Minnesota destination unless the distributor who will report and pay the tax and/or fee (consignee) shall require that a manifest or bill of lading be issued showing the following information: State tax number, date shipped, name of carrier, transport permit (MDR) number, origin (point of loading), name of supplier, name and address of consignee, destination, kind of product and number of gallons. The state tax number may be the manifest or bill of lading number if designated as the state tax number. A legible duplicate copy of such manifest or bill of lading shall be sent to the commissioner.

13MCAR§1.4002 ~~Gas Tax 2~~ Transport Requirements.

A. ~~(a)~~ Truck transports. Any unit operated on the public highways of this state which is used to transport petroleum products shall be deemed to be a truck transport if the cargo tank has a capacity of 2,100 gallons or more.

B. ~~(b)~~ Transport permits. Except as specifically authorized by the commissioner, no truck transport shall be operated in Minnesota until a transport permit for the cargo tank has been obtained from the commissioner. ~~Before applying for such permit, a certificate of calibration shall have been obtained from the Weights and Measures Division of the Department of Public Service.~~ If any person sells, trades or otherwise disposes of a cargo tank during the term of the permit, he

shall immediately surrender the permit to the commissioner at his office in St. Paul, Minnesota, together with complete information regarding its disposal, including the name and address of any new owner.

C. ~~(c)~~ Permit number. The transport permit number prefixed by the letters ~~"MDT"~~ "MDR" shall be painted in six-inch letters and numbers in a conspicuous place on the left front and right rear ends of the cargo tank for which the permit is issued.

D. ~~(d)~~ Transporter must have permit. No petroleum product shall be loaded into the cargo tank of a truck transport to be operated in Minnesota unless the operator has in his possession a valid transport permit for such cargo tank.

E. ~~(e)~~ Diversions to be reported. Any supplier or transporter of petroleum products who diverts a shipment destined to a state other than Minnesota to a Minnesota destination, or who diverts a shipment from one Minnesota destination or consignee to another Minnesota destination or consignee, shall notify the commissioner within 48 hours, setting forth the manifest number (state tax number), date, kind of product, number of gallons, the consignee to whom the shipment has been diverted and the final destination.

F. ~~(f)~~ Accidents to be reported. Any transporter who while in the act of transporting petroleum products on the highways of this state has an accident involving a loss of petroleum products due to spillage, fire, leakage or any other cause, shall notify the commissioner within 48 hours, setting forth the date of the accident, the manifest number (state tax number) and date, the consignee and destination.

G. ~~(g)~~ Manifest to be carried. Operators of tank trucks or truck transports transporting petroleum products in this state on which the gasoline ~~excise~~ tax and/or the inspection fees have not been assumed shall carry proof of ownership of such material (bill of lading, manifest, invoice or other identification).

13MCAR§1.4003 ~~Gas Tax 3~~ Distributor Records.

A. ~~(a)~~ Records to be kept. Licensed distributors shall keep a true and accurate record of all purchases, transfers, sales and use of petroleum products. A record shall be kept showing the following information for each receipt of petroleum products: Manifest number (state tax number), point of origin, from whom received, kind of product, gallons received and date unloaded. A daily record shall be kept of the totals of all sales of each petroleum product.

B. ~~(b)~~ Sales invoices. A sales invoice shall be made for each bulk sale, ~~delivery or transfer~~ of petroleum products at the time of the sale, ~~delivery or transfer~~ regardless of gallonage. All sales invoices issued for bulk sales shall be machine-numbered serially with numbers of at least three digits, and shall show the following: Name and address of distributor printed or rubber-stamped upon the invoice, date of sale, name and address of the purchaser, kind of product, price per gallon, number of gallons, and rate and amount of tax if any. The words "bulk sale," as used in this rule, shall mean any sale of a petroleum product dispensed from a truck transport or tankwagon into a storage facility. When issued for the

purpose of securing refunds or credits of the Minnesota gasoline tax, the invoices shall, in addition to the aforementioned requirements, be prepared at least in duplicate, the original to be marked "Original Invoice," and given to the purchaser. The words "original invoice," as used in this rule, shall mean the first or top sheet of an invoice, bearing the original inked or penciled imprint, whether it be typewritten, handwritten or printed, issued by a seller to a purchaser covering the product or products sold. Whenever the original invoice is unavailable, the commissioner may approve the use of a copy thereof. In such cases, a lost-or-destroyed-invoice affidavit executed by the claimant, together with a supporting statement by the supplier, must be filed. ~~Unless otherwise authorized by the commissioner, double-faced carbon paper (carbon on both sides) shall be used, invoices shall be issued in sequence and the original invoice shall be given to the purchaser.~~

When issued for other than bulk sales and for the purpose of securing refunds or credits of the Minnesota gasoline tax, the invoices or receipts shall show the name and location of the seller, date of purchase, number of gallons and total price.

When issued for deliveries made into another state, invoices shall be issued in the same manner with a separate set of numbers.

Sales invoices used for the sale of a rejected petroleum product not meeting specifications which the commissioner has approved for sale shall bear the following notation:

"FUEL OIL--REJECTED PRODUCT--UNSAFE FOR HEATING OR LIGHTING PURPOSES"

"GASOLINE--REJECTED PRODUCT--CONTAINS OTHER PETROLEUM PRODUCTS ON WHICH THE GASOLINE TAX HAS BEEN PAID"

C. ~~(c)~~ Inventories. A physical inventory shall be taken at the end of each month of all petroleum products and a record kept of the quantity in each tank, tank capacity, tank number if any, and kind of product.

D. ~~(d)~~ Records to be retained. With the exception of sales invoices or receipts issued for other than bulk sales and for the purpose of securing refunds or credits of the Minnesota gasoline tax, copies ~~Copies~~ of all manifests, bills of lading, invoices and delivery tickets, as well as all other records relating to the purchase, transfer, sales and use of petroleum products, shall be retained for a period of four years.

13MCAR§1.4004 ~~Gas Tax 4~~ Distributor and Dealer Credits and Refunds.

A. ~~(a)~~ Distributor credits, how allowed. The credits under ~~section 296.14, subdivision 2~~, Minn. Stat. §296.14, subd. 2, shall be allowed as follows:

Under clause (1), credit shall be taken prior to computing the allowance for evaporation and loss;

Under clause (2), credit on sales made directly from terminals shall be taken prior to computing the allowance for evaporation and loss; credit on all other sales shall be taken after computing the allowance for

evaporation and loss ~~and must be supported by Federal Exemption Certificates 1094~~;

Under clause (3), credit shall be taken prior to computing the allowance for evaporation and loss;

Under clause (4), credit shall be taken only when supported by a credit memorandum issued by the commissioner. Such credit memorandum will reflect the adjustment for the allowance for evaporation and loss.

B. ~~(b)~~ Unusual losses. A written notice of any unusual loss of gasoline or special fuel by a distributor or dealer while in his possession, including gasoline or special fuel destroyed by accident, shall be given to the commissioner within 30 days after the discovery of the loss in order to qualify for credit or refund of tax paid, and, in addition, all claims of a distributor or dealer for refund or credit of gasoline or special fuel tax paid as a result of such unusual loss shall be filed with the commissioner within 90 days after the discovery of such loss.

13MCAR§1.4005 ~~Gas Tax 5~~ Dealer Records.

A. ~~(a)~~ Records to be kept. Dealers shall keep a true and accurate record of all purchases and sales of petroleum products. Purchase records shall show the kind of product, from whom purchased, number of gallons and date unloaded. A daily record shall be kept of the total of all sales of each petroleum product.

B. ~~(b)~~ Sales invoices. When issued for the purpose of securing refunds or credits of the Minnesota gasoline tax, sales invoices representing bulk sales shall be machine-numbered serially with numbers of at least three digits, and shall show the following: Name and address of the dealer printed or rubber-stamped upon the invoice, date of sale, name and address of the purchaser, kind of product, price per gallon, number of gallons and rate and amount of tax. They shall be prepared at least in duplicate, the original to be marked "Original Invoice." and given to the purchaser. The words "bulk sale," as used in this rule, shall mean any sale of a petroleum product dispensed from a truck transport or tankwagon into a storage facility. The words "original invoice," as used in this rule, shall mean the first or top sheet of an invoice, bearing the original inked or penciled imprint, whether it be typewritten, handwritten or printed, issued by a seller to a purchaser covering the product or products sold. Whenever the original invoice is unavailable, the commissioner may approve the use of a copy thereof. In such cases, a lost-or-destroyed-invoice affidavit executed by the claimant, together with a supporting statement by the supplier, must be filed. ~~Unless otherwise authorized by the commissioner, double-faced carbon paper (carbon on both sides) shall be used, invoices shall be issued in sequence and the original invoice shall be given to the purchaser.~~

When issued for other than bulk sales and for the purpose of securing refunds or credits of the Minnesota gasoline tax, the invoices or receipts shall show the name and location of the seller, date of purchase, number of gallons and total price.

~~When such invoices are issued,~~ When issued for the purpose of securing a refund or credit of the Minnesota gasoline tax, a separate invoice shall be issued for each sale, at time of sale, regardless of gallonage.

Invoices issued to operators of portable feed mills, corn shellers and other portable units for gasoline serviced to the unit tank, shall show separately the number of gallons, if any, serviced to the vehicle supply tank.

Sales invoices used for the sale of a rejected petroleum product not meeting specifications which the commissioner has approved for sale shall bear the following notation:

"FUEL OIL--REJECTED ~~PRODUCTS~~ PRODUCT--UNSAFE FOR HEATING OR LIGHTING PURPOSES"

"GASOLINE--REJECTED PRODUCT--CONTAINS OTHER PETROLEUM PRODUCTS ON WHICH THE GASOLINE TAX HAS BEEN PAID"

C. ~~(c)~~ Records to be retained. All records relating to the purchase and sale of petroleum products, ~~including~~ excluding copies of sales invoices or receipts issued for other than bulk sales and for the purpose of securing refunds or credits of the Minnesota gasoline tax, shall be retained for a period of four years.

13MCAR§1.4006 ~~Gas Tax 6~~ Special Fuel Requirements.

A. ~~(a)~~ Records. All distributors, special fuel dealers and bulk purchasers shall keep a true and accurate record of all purchases, transfers, sales and use of special fuel. They shall also keep complete and accurate records of purchases, sales and use of fuel oil and liquefied petroleum gas at all their locations where special fuel is sold or stored.

B. ~~(b)~~ Sales invoices. A sales invoice shall be issued for each sale of special fuel made by a distributor or a special fuel dealer. Such sales invoices shall bear the signature of the person making the delivery, ~~the signature of the person accepting the delivery,~~ name and address of the purchaser, motor vehicle license number if delivered into the supply tank of a licensed motor vehicle, date of sale, number of gallons, rate of tax, price per gallon and total amount of sale. The words "Special Fuel" shall be written or printed on each sales invoice at the time of sale or delivery. Sales invoices shall have the name and address of the distributor or special fuel dealer printed or rubber-stamped thereon and shall be machine-numbered serially with numbers of at least three digits and issued in sequence. A separate sales invoice book shall be maintained for special fuel sales, and one copy of each such sales invoice shall be retained in the special fuel sales invoice book, unless otherwise authorized by the commissioner. Sales invoices issued for fuel other than for use as special fuel shall show the kind of fuel and the name and address of the purchaser.

C. ~~(c)~~ Meter readings and inventories. Distributors, special fuel dealers and bulk purchasers shall at the end of each month take and record

1. ~~(1)~~ through an accumulating meter in working order, meter readings for each pump through which special fuel is dispensed; and

2. ~~(2)~~ physical inventories of special fuel showing quantity in each tank, tank capacity and kind of product.

D. ~~(d)~~ Users' records and reports. All users of special fuel shall keep a true and accurate record of all purchases, sales, transfers and use of special fuel and shall retain all such records for a period of four years. Users of special fuel (except licensed distributors, special fuel dealers and bulk purchasers required to file monthly reports) shall file an annual information report showing the number of gallons used, miles traveled and such other information as the commissioner may prescribe, for each licensed motor vehicle. This report shall be filed on or before March 1 of each year for the preceding calendar year.

E. ~~(e)~~ Mileage reports. Upon demand of the commissioner there shall be attached to and made a part of the monthly special fuel tax report an accurate statement of mileage traveled during such month on Minnesota highways by each licensed motor vehicle supplied with special fuel from the bulk storage facilities maintained by the licensee.

F. ~~(f)~~ Bulk sales reports. Persons selling or delivering special fuel into storage facilities maintained by any licensed bulk purchaser shall, on or before the 23rd day of each month, file with the commissioner an itemized report, in a manner prescribed by and on a form supplied by him, showing all sales of special fuel to said licensed bulk purchaser.

G. ~~(g)~~ Records to be retained. Copies of all manifests, bills of lading, invoices, sales and delivery tickets, as well as all other records relating to the purchase, transfer, sales and use of special fuel, shall be retained for a period of four years.

H. ~~(h)~~ Changes in storage capacity or location. Distributors, special fuel dealers and bulk purchasers shall report to the commissioner in writing within seven days any change in storage capacity or location of special fuel facilities.

I. ~~(i)~~ Prices posted. Each pump used to dispense special fuel into the supply tank of a licensed motor vehicle by a special fuel dealer shall show the total sales price per gallon posted on the pump in a conspicuous manner.

13MCAR§1.4007 ~~Gas Tax 7~~ Other Taxable Products. Material used as stove or lamp gasoline, and naphtha, toluol, benzol or any like product used in blending to produce gasoline, shall be reported and the Minnesota gasoline ~~excise~~ tax paid thereon.

13MCAR§1.4012 ~~Gas Tax 12~~ Refunds and Credits.

A. ~~(a) General requirements.~~ Aviation gasoline and special fuel tax refunds. ~~Claims for refund of the excise tax paid on gasoline or special fuel, except for aviation gasoline or aviation special fuel, must be filed within four months from the date of purchase, except that a gasoline or special fuel purchase invoice filed within 15 days after the expiration of~~

~~the four months filing period may be honored less a penalty of 25 percent of the amount of the approved invoice.~~ Claims for refund of the ~~excise~~ tax paid on aviation gasoline or ~~aviation~~ on special fuel for aircraft must be filed on or before April 15 of the year following the year in which the fuel was purchased. Any such claim filed during the 15-day period from April 16 to April 30 may be honored less a penalty of 25 percent of the amount of the approved refund claim. The postmark on the envelope in which the claim is mailed determines the date of filing. Each claim must be accompanied by the original invoice receipted for payment by the supplier. The words "original invoice," as used in this rule, shall mean the first or top sheet of an invoice, bearing the original inked or penciled imprint, whether it be typewritten, handwritten or printed, issued by a seller to a purchaser covering the product or products sold. Whenever the original invoice is unavailable, the commissioner may approve the use of a copy thereof. In such cases, a lost-or-destroyed-invoice affidavit executed by the claimant, together with a supporting statement by the supplier, must be filed.

~~(b) Preparation of claims. No distributor or dealer or agent or servant of either shall assist in the preparation of any claim for gasoline tax refund of any other person.~~

B. Minnesota gasoline tax refunds and credits.

1. General. The amount paid by a taxpayer-claimant during the taxable year as tax on gasoline (including gasohol) or special fuel may be credited against any income or excise tax due under Minn. Stat. ch. 290 to the extent that the gasoline was bought and used for a purpose other than use in motor vehicles or snowmobiles and to the extent that the special fuel was bought and used for a purpose other than use in licensed motor vehicles. The tax on aviation gasoline and on special fuel for aircraft cannot be used as a credit. If the credit for the amount paid as tax on gasoline or special fuel exceeds the tax due under ch. 290, the excess shall be refunded to the taxpayer-claimant.

A credit or refund may be claimed only for the amount paid as the Minnesota-imposed tax on gasoline or special fuel. No credit or refund may be claimed solely on the basis that the Minnesota tax was paid on gasoline or special fuel subsequently used outside Minnesota; that is, if no credit or refund of the Minnesota tax would be allowable with respect to a particular use of gasoline or special fuel inside Minnesota, then no credit or refund of the Minnesota tax will be allowable with respect to that particular use of gasoline or special fuel outside Minnesota.

2. Individuals. Every individual taxpayer-claimant seeking this credit or refund must file a Minnesota individual income tax return, together with a properly completed gasoline tax credit form to be furnished by the commissioner. However, individuals classified as exempt from income tax under Minn. Stat. § 290.05, subd. 1, need only file the properly completed gasoline tax credit form in order to claim a refund.

3. Trusts and estates. Every trust and every estate seeking this credit or refund must file a Minnesota fiduciary income tax

return, together with a properly completed gasoline tax credit form to be furnished by the commissioner. However, trusts and estates classified as exempt from income tax under Minn. Stat. § 290.05, subd. 1, need only file the properly completed gasoline tax credit form in order to claim a refund.

4. Corporations. Every corporation seeking this credit or refund must file a Minnesota corporate income tax return, together with a properly completed gasoline tax credit form to be furnished by the commissioner. However, corporations classified as exempt from income and excise taxes under Minn. Stat. § 290.05, subd. 1, need only file the properly completed gasoline tax credit form in order to claim a refund.

5. Information required. The gasoline tax credit form shall contain all of the following information:

a. The claimant's name, address and Minnesota tax identification number or social security number, whichever is applicable; and

b. If the claimant is exempt from income and excise taxes under Minn. Stat. § 290.05, subd. 1, the signature of the claimant or the signature and title of the claimant's duly authorized representative, whichever is applicable; and

c. The preparer's signature, address, Minnesota tax indentification number or social security number, whichever is applicable; and

d. A description of the use or uses made of the gasoline, gasohol and special fuel on which this claim is based; and

e. Dates of purchase and total gallonage of Minnesota gasohol used in boats. For purposes of this subclause and of subclause g below, the words "Minnesota gasohol" shall mean gasohol in which the alcohol contained therein has been distilled in Minnesota from agricultural products produced in Minnesota; and

f. Dates of purchase and total gallonage of gasoline and non-Minnesota gasohol used in boats. For purposes of this subclause and of subclause h below, the words "non-Minnesota gasohol" shall mean any gasohol which does not fall within the definition of "Minnesota gasohol" as set forth in subclause e above; and

g. Dates of purchase and total gallonage of Minnesota gasohol used for a purpose for which a credit or refund is allowable under clause 1 of part B of this rule, other than boat use; and

h. Dates of purchase and total gallonage of gasoline, non-Minnesota gasohol and special fuel used for a purpose for which a credit or refund is allowable under clause 1 of part B of this rule, other than boat use.

6. Information returns. Information returns filed by partnerships and by qualifying electing small business corporations

(qualifying Subchapter S corporations) must include the names and addresses of all partners or all shareholders entitled to a distributive share of the Minnesota gasoline tax credit and the amount of such distributive share to which each is entitled.

7. Filing requirements. A claim for credit or refund of the Minnesota tax on gasoline or special fuel shall be filed only once per calendar or fiscal year. The due date for filing such a claim shall be the same as the due date specified in Minn. Stat. § 290.42 for filing an income or excise tax return. For purposes of determining the due date for filing a claim, cities, counties, school districts and other organizations classified as exempt from income and excise taxes under Minn. Stat. § 290.05, subd. 1(m) shall be treated as if they were corporations.

8. All of the provisions contained in Minn. Stat. ch. 290, are applicable to claims filed for purposes of securing a credit or refund of the Minnesota tax on gasoline or special fuel, including but not limited to, provisions governing the statute of limitations on allowable claims and provisions setting forth the penalties to be invoked for filing false claims.

C. ~~(c)~~ Motor vehicle with a power take-off. As used in this ~~regulation~~ rule, the words "motor vehicle with a power take-off" mean any motor vehicle or licensed motor vehicle whose motor is used for the dual purpose of propelling the vehicle and the operation of special equipment by means of a power take-off.

No refund or credit is allowable with respect to the tax paid on gasoline or special fuel used in a motor vehicle with a power take-off which can be operated while the vehicle is being propelled on the public highways unless such vehicle is equipped with an automatic metering device approved by the commissioner which accurately measures the amount of fuel which is consumed when the vehicle is stationary and not being propelled on the public highways.

A refund or credit is allowable with respect to the tax paid on gasoline or special fuel used in a motor vehicle with a power take-off if the vehicle has two separate fuel supply tanks, one for use when the special equipment is being operated and the other when the vehicle is being propelled on the public highways, and if the use of the fuel from the appropriate supply tank is automatically controlled.

A refund or credit is allowable with respect to the tax paid on gasoline or special fuel used in a motor vehicle with a power take-off provided that such claim is supported by complete and detailed records that will clearly and accurately establish the amount of gasoline or special fuel used for purposes other than propelling the vehicle on the public highways or provided such vehicle is equipped with an automatic metering device approved by the commissioner. Such records shall include, but not be limited to, all of the following information which is applicable to the claimant's situation: Type of operation, dates of operation, name of customer, miles traveled, hours of operation of special equipment, age of equipment, and results of tests determining engine performance during highway and power take-off operations. The use of separate fuel tanks and/or hubometers are not sufficient in themselves to

qualify as complete and accurate records. Estimates of the amount of fuel used, regardless of how reasonable they may be, are not acceptable.

D. ~~(d)~~ Off public highway use. If a motor vehicle or a licensed motor vehicle is used entirely off the public highways, a refund or credit of the tax paid on gasoline or special fuel is allowable.

If a motor vehicle or a licensed motor vehicle is used both on and off the public highways, a refund or credit of the tax paid on gasoline or special fuel used for purposes other than propelling the vehicle on the public highways is allowable provided such claim is supported by complete and detailed records that will clearly and accurately establish such amounts of fuel. Such records shall include, ~~some or all of the following~~ but not be limited to, all of the following information which is applicable to the claimant's situation: Type of operation, dates of operation, miles traveled on public highways, miles traveled on private roads, hours of travel off the public highways, age of equipment, and results of tests determining engine performance during off highway use. Estimates of such amounts, regardless of how reasonable they may be, are not acceptable.

E. ~~(e)~~ Gasoline or special fuel lost by accident. No refund or credit is allowable with respect to the tax paid on gasoline or special fuel which is lost through spillage or accident except while in the possession of a distributor or dealer.

F. ~~(f)~~ Gasoline not used by claimant. No refund or credit is allowable with respect to the tax paid on gasoline which has not been purchased and used by the claimant.

G. ~~(g)~~ Gasoline or special fuel used by State of Minnesota. No refund is allowable with respect to the tax paid on gasoline used in motor vehicles or special fuel used in licensed motor vehicles owned by the State of Minnesota, including any of its municipalities and school districts, if such motor vehicles or licensed motor vehicles are used on the public highways.

13MCAR§1.4013 ~~Gas Tax 13~~ Road Tax.

A. ~~(a)~~ Commercial motor vehicle. "Commercial motor vehicle" means a passenger vehicle that has seats for more than nine passengers in addition to the driver, or any road tractor, or any tractor truck or any truck having more than two axles, which passenger vehicle, road tractor, tractor truck or truck is propelled by motor fuel.

B. ~~(b)~~ Vehicles exempted from road tax. The following vehicles are exempted from the road tax law:

1. ~~(1)~~ All straight trucks having only two axles;

2. ~~(2)~~ All motor vehicles having ~~two~~ three or more axles on which is permanently mounted a corn sheller, feed grinder, back hoe, crane, well drilling machine or other similar equipment and the use of which on the public highways of this state is only for transporting the special equipment to and from the site of operation;

3. ~~(3)~~ All commercial motor vehicles operated by this state, any subdivision thereof, the United States, or any agency of two or more states or of states and the United States in which this state participates, or to any school bus as defined by the laws of this state operated by, for or on behalf of a state or any subdivision thereof;

4. ~~(4)~~ All motor vehicles which bear base license plates issued by the ~~state~~ State of Minnesota or by states with which Minnesota has reciprocal agreements relating to motor fuel taxes. The ~~Commissioner~~ commissioner of ~~highways~~ public safety will be furnished a list of such states and notified of any new agreements entered into or any cancellation of agreements now in existence.

C. ~~(c)~~ Temporary authorizations. Any person not having a valid trip permit or who is not licensed as a motor carrier who, because of unforeseen circumstances, is required to operate a commercial motor vehicle in this state may obtain temporary authorization for operating a commercial motor vehicle in Minnesota by one of the following ~~procedure~~ procedures:

1. A telegram ~~shall~~ may be sent to the Petroleum Division, Department of ~~Taxation~~ Revenue, requesting either a motor carrier license or a trip permit, together with a Western Union money order payable to the commissioner of ~~taxation~~ revenue for the amount of either $10 in the case of a motor carrier license or $5 in the case of a trip permit. The copy of the telegram and the money order receipt shall be carried in the cab of the vehicle while it is operated in Minnesota.; or

2. A trip permit may be purchased through a service company authorized by the State of Minnesota to sell trip permits. An electronically transmitted facsimile of the trip permit shall be carried in the cab of the vehicle while it is operated in Minnesota.

No more than three trip permits may be issued during any calendar year.

D. ~~(d)~~ Reports of motor carriers and payment of tax. All motor carriers are required to file a road tax report each ~~month~~ calendar quarter. The motor carrier's report shall be for a complete ~~calendar month~~ three-month period and is due to be filed by the last day of ~~the following month~~ April, July, October and January. The report shall be on a form prescribed and furnished by the commissioner of ~~taxation~~ revenue. All reports must be accompanied by a remittance for the full amount of the tax shown to be due on the report. If no travel takes place in Minnesota during any ~~month~~ quarter, a report must still be filed, with the word "None" written in the appropriate column on line 4 of the return. The person who is responsible for the payment of the motor fuel used in the vehicle is liable for the filing of the report whether the vehicle is owned or leased by him.

E. ~~(e)~~ Annual affidavit instead of ~~monthly~~ quarterly report. The commissioner may exempt from the ~~monthly~~ quarterly reporting requirements those motor carriers all or substantially all of whose mileage is within the State of Minnesota and require in such instances an annual affidavit attesting to the intrastate or substantially intrastate character of their operations provided that the enforcement of this law is not

adversely affected thereby and that the commissioner is satisfied that an equitable amount of motor fuel is purchased in Minnesota by such carriers. The affidavit shall be on a form prescribed and furnished by the commissioner.

F. ~~(f)~~ Records and invoices. An accurate record must be kept by all motor carriers of the following:

1. ~~(1)~~ The miles traveled within and without Minnesota;
2. ~~(2)~~ The miles traveled in Minnesota;
3. ~~(3)~~ The number of gallons of fuel used in the entire operation within and without Minnesota;
4. ~~(4)~~ The number of gallons of fuel purchased in Minnesota.

To substantiate the purchases of fuel in Minnesota, the original invoices or receipts must show the following:

1. ~~(1)~~ Date of purchase;
2. ~~(2)~~ Name and location of seller printed thereon;
3. ~~(3)~~ Name and address of purchaser;
4. ~~(4)~~ Kind of product;
5. ~~(5)~~ Number of gallons;
6. ~~(6)~~ Price per gallon;
7. ~~(7)~~ Total sales price.

All records and invoices must be retained for a period of at least three years.

G. ~~(g)~~ Surrender of motor carrier license. When the motor carrier shall voluntarily or ~~unvoluntarily~~ involuntarily sell, dispose of or discontinue his business, he shall immediately notify the commissioner in writing and shall within 10 days surrender his motor carrier license together with all copies of such license.

H. ~~(h)~~ Enforcement powers. The officers of the Minnesota highway patrol shall assist the commissioner of ~~taxation~~ revenue in the enforcement of the provisions of the road tax act. Prosecution for violation of the road tax act may be commenced in the county in which the violation occurred or in Ramsey County.

SP:B

STATE REGISTER

STATE OF MINNESOTA



VOLUME 5, NUMBER 12

September 22, 1980

Pages 455-478

STATE REGISTER

Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
	SCHEDULE FOR VOLUME 5		
13	Monday Sept 15	Monday Sept 22	Monday Sept 29
14	Monday Sept 22	Monday Sept 29	Monday Oct 6
15	Monday Sept 29	Monday Oct 6	Monday Oct 13
16	Monday Oct 6	Monday Oct 13	Monday Oct 20

*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.

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

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NOTICE

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

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

The PROPOSED RULES section contains:

- 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:

Issues 1-13, inclusive
Issues 14-25, inclusive
Issue 26, cumulative for 1-26
Issue 27-38, inclusive
Issue 39, cumulative for 1-39
Issues 40-51, inclusive
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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.

Public Hearings on Agency Rules
September 29-October 3, 1980

Date	Agency and Rule Matter	Time & Place
Oct. 2	Revenue Department Individual Income Tax and Property Tax Refund Hearing Examiner: Jon L. Lunde	9:00 a.m., Rm. 83, State Office Bldg., 435 Park St., St. Paul, MN

Pollution Control Agency

Notice of Withdrawal of Proposed Rule Relating to Control of Fugitive Emissions within Designated Areas

The Minnesota Pollution Control Agency hereby withdraws the proposed rule 6 MCAR § 4.0040, "Fugitive emissions within designated areas," which was originally published at *State Register,* Volume 4, Number 1, pp. 9-22, July 9, 1979 (4 S.R. 9) and which was reproposed in an amended form at *State Register,* Volume 4, Number 16, pp. 622-628, October 22, 1979 (4 S.R. 622).

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."

Department of Revenue
Petroleum Tax Division

Proposed Amendments and Additions to Rules Relating to Taxation and Inspection of Petroleum Products

Notice of Intent to Adopt Rules Without A Public Hearing

Notice is hereby given that the Department of Revenue intends to adopt amendments and additions to the rules relating to the taxation and inspection of petroleum products. Because the agency is of the opinion that its proposed amendments and additions to the rules will be noncontroversial in nature, it has decided to utilize the provisions of Minn. Stat. § 15.0412, subd. 4h and adopt them without first holding a public hearing on the matter. All interested or affected persons have 30 days from the date this notice is published in the *State Register* to object, in writing, to the lack of a hearing. The agency will hold a public hearing on the proposed amendments and additions to the rules in accordance with the provisions of Minn. Stat. § 15.0412, subds. 4 through 4f only if seven or more persons submit to the agency within this 30-day period for comment a written request for a hearing.

All interested or affected persons have 30 days from the date this notice is published in the *State Register* to submit, in writing, data and views on the proposed amendments and additions to the rules. The proposed amendments and additions may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change.

All correspondence, including written requests for a hearing or for notification of the date upon which the proposed amended rules are submitted to the attorney general and written comments on the proposed changes to the rules, should be addressed to Mr. James Dagen, Director, Petroleum Tax Division, Minnesota Department of Revenue, Centennial Office Building, St. Paul, Minnesota, 55145, (612) 296-3511.

Copies of the proposed amended rules and copies of the Statement of Need and Reasonableness are now available, and one free copy of each may be obtained by writing to Mr. James Dagen at the address listed in the preceding paragraph. The Statement of Need and Reasonableness includes a summary of all of the agency's evidence justifying both the need for, and the reasonableness of, the proposed amendments and additions to the rules. The agency strongly recommends that both of the above-mentioned documents be carefully examined before a decision to request a hearing or to comment on the proposed changes is considered.

The proposed amended rules, if adopted, would incorporate amendments since 1972 to the statutes dealing with the tax on gasoline and gasoline substitutes (Minn. Stat. ch. 296). Generally, the amendments are proposed in order to accomplish the following goals: (1) to bring the rules into compliance with the above-mentioned statutory amendments; (2) to clarify and correct existing rules; (3) to simplify procedures wherever possible; and (4) to abolish those procedures which no longer serve a useful purpose. The agency's authority to promulgate the proposed amendments and additions to the rules is contained in Minn. Stat. § 296.27.

An amendment to 13 MCAR § 1.4001 C. (Gas Tax 1(c)) is being proposed which would tighten the requirements relating to the type of documentation which must be issued for each withdrawal of petroleum from a terminal. Conversely, an amendment to 13 MCAR § 1.4012 would eliminate the language in Gas Tax 12(b), which, as it presently reads, prohibits dealers and distributors and their agents from preparing gasoline tax refund claims for others.

Amendments to 13 MCAR §§ 1.4002, 1.4004 and 1.4006 (Gas Tax 2, 4 and 6) are being proposed in order to abolish procedures which no longer serve a useful purpose. The amendment to 13 MCAR § 1.4002 B. (Gas Tax 2(b)) would strike the requirement that a certificate of calibration be obtained prior to applying for a transport permit. The amendment to 13 MCAR § 1.4004 A. (Gas Tax 4(a)) would do away with the requirement that sales to the federal government must be supported by Federal Exemption Certificate 1094 when application is made for the credits allowed by Minn. Stat. § 296.14, subd. 2. Under the proposed amendment to 13 MCAR § 1.4006 B. (Gas Tax 6(b)), the person accepting a delivery of special fuel would no longer be required to sign the sales invoice.

Amendments to 13 MCAR §§ 1.4003 and 1.4005 (Gas Tax 3 and 5) are being proposed in order to ease the requirements pertaining to record keeping and to the preparation and issuance of sales invoices for dealers and distributors operating on the retail level. To that end, amendments to these two rules define a bulk sale and differentiate between bulk sales and sales of relatively small amounts of fuel at the retail level when setting forth the procedural requirements to be followed when sales invoices are issued for purposes of securing refunds or credits of the Minnesota gasoline tax. In addition, amendments to these two rules provide a definition for the term "original invoice," and they explain the proper procedure for filing claims for refunds or credits of the gasoline tax when the original invoices are unavailable. An amendment to 13 MCAR § 1.4012 A. (Gas Tax 12(a)) also provides a definition for the term "original invoice" and explains the proper procedure for filing claims for refund of the tax paid on aviation gasoline and on special fuel for aircraft when the original invoices are unavailable.

An amendment to 13 MCAR § 1.4006 C. (Gas Tax 6(c)) is being proposed in order to clarify the procedure for taking meter readings of special fuel dispensed and to bring this provision into compliance with the language contained in Minn. Stat. § 296.12, subd. 10.

Amendments throughout the provisions of 13 MCAR § 1.4012 (Gas Tax 12), relating to claims for refunds or credits of the Minnesota tax on gasoline (including gasohol) and special fuel used for eligible purposes such as off-highway use or use in boats and to claims for refund of the tax on aviation gasoline and on special fuel for aircraft, are being proposed in order to bring this rule into compliance with Minn. Stat. §§ 290.06, subd. 13; 296.02, subd. 7; and 296.18, subds. 1 and 5. Amendments updating 13 MCAR §§ 1.4003 and 1.4005 (Gas Tax 3 and 5) are also being proposed in light of the statutory changes reflected in Minn. Stat. §§ 290.06, subd. 13 and 296.18, subd. 1.

Amendments to 13 MCAR § 1.4013 (Gas Tax 13) are being proposed to correct an error relating to the number of axles a motor vehicle must have in order to qualify for exemption from the road tax law, to provide an alternative procedure for obtaining trip permits, and to bring into compliance with Minn. Stat. § 296.17, subd. 11, the provisions governing the filing of reports.

If no hearing is required, the agency shall submit to the Attorney General the proposed rules and notice as published, the rules as proposed for adoption, any written comments received by the agency, and a Statement of Need and Reasonableness for the rules. The agency shall give notice to all persons who requested to be informed that these materials have been submitted to the Attorney General. This notice shall be given on the same day that the record is submitted. The Attorney General shall approve or disapprove the rules as to form and legality, including the issue of substantial change, within 14 days. If he approves the rules, he shall promptly file them in the Office of the Secretary of State. If he disapproves the rules, he shall state in writing his reasons therefor, and the rules shall not be filed in the Office of the Secretary of State, nor published. The rules shall become effective upon publication in the *State Register* in the same manner as provided for adopted rules in Minn. Stat. § 15.0412, subd. 4f.

September 2, 1980

Clyde E. Allen, Jr.
Commissioner of Revenue

Arthur C. Roemer
Deputy Commissioner

Amendment as Proposed

13 MCAR § 1.4001 ~~Gas Tax 1~~ Terminal records and reports.

A. ~~(a)~~ Terminal. As used herein, the word "terminal" shall mean a facility for storage of petroleum products which have not theretofore been received in this state by a licensed distributor.

B. ~~(b)~~ Records and terminal reports. All operators of terminals in this state shall keep a true and accurate record of all petroleum products delivered into and withdrawn from their terminal. A terminal report on a form approved by the commissioner shall be filed for each month showing receipts, disbursements and inventories.

C. ~~(c)~~ Manifests to be furnished. A manifest~~,~~ or a bill of lading ~~or loading ticket~~ shall be issued for each withdrawal from a terminal in this state at the time of such withdrawal. Manifests or bills of lading shall show the following information: state tax number, date shipped, name of carrier, transport permit (MDR) number, origin (point of loading), name of supplier, name and address of distributor who will report and pay the tax and/or fee (consignee), destination, kind of product and number of gallons. The state tax number may be the manifest or bill of lading number if designated as the state tax number. A legible duplicate copy of each such manifest or bill of lading shall be filed with the commissioner.

No petroleum product shall be loaded into a tank car, the cargo tank of a tank truck or a truck transport at any terminal located outside the state for shipment to a Minnesota destination unless the distributor who will report and pay the tax and/or fee (consignee) shall require that a manifest or bill of lading be issued showing the following information: State tax number, date shipped, name of carrier, transport permit (MDR) number, origin (point of loading), name of supplier, name and address of consignee, destination, kind of product and number of gallons. The state tax number may be the manifest or bill of lading number if designated as the state tax number. A legible duplicate copy of such manifest or bill of lading shall be sent to the commissioner.

13 MCAR § 1.4002 ~~Gas Tax 2~~ Transport requirements.

A. ~~(a)~~ Truck transports. Any unit operated on the public highways of this state which is used to transport petroleum products shall be deemed to be a truck transport if the cargo tank has a capacity of 2,100 gallons or more.

B. ~~(b)~~ Transport permits. Except as specifically authorized by the commissioner, no truck transport shall be operated in Minnesota until a transport permit for the cargo tank has been obtained from the commissioner. ~~Before applying for such permit, a certificate of~~

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."

~~calibration shall have been obtained from the Weights and Measures Division of the Department of Public Service.~~ If any person sells, trades or otherwise disposes of a cargo tank during the term of the permit, he shall immediately surrender the permit to the commissioner at his office in St. Paul, Minnesota, together with complete information regarding its disposal, including the name and address of any new owner.

C. ~~(c)~~ Permit number. The transport permit number prefixed by the letters ~~"MDT"~~ "MDR" shall be painted in six-inch letters and numbers in a conspicuous place on the left front and right rear ends of the cargo tank for which the permit is issued.

D. ~~(d)~~ Transporter must have permit. No petroleum product shall be loaded into the cargo tank of a truck transport to be operated in Minnesota unless the operator has in his possession a valid transport permit for such cargo tank.

E. ~~(e)~~ Diversions to be reported. Any supplier or transporter of petroleum products who diverts a shipment destined to a state other than Minnesota to a Minnesota destination, or who diverts a shipment from one Minnesota destination or consignee to another Minnesota destination or consignee, shall notify the commissioner within 48 hours, setting forth the manifest number (state tax number), date, kind of product, number of gallons, the consignee to whom the shipment has been diverted and the final destination.

F. ~~(f)~~ Accidents to be reported. Any transporter who while in the act of transporting petroleum products on the highways of this state has an accident involving a loss of petroleum products due to spillage, fire, leakage or any other cause, shall notify the commissioner within 48 hours, setting forth the date of the accident, the manifest number (state tax number) and date, the consignee and destination.

G. ~~(g)~~ Manifest to be carried. Operators of tank trucks or truck transports transporting petroleum products in this state on which the gasoline ~~excise~~ tax and/or the inspection fees have not been assumed shall carry proof of ownership of such material (bill of lading, manifest, invoice or other identification).

13 MCAR § 1.4003 ~~Gas Tax 3~~ Distributor records.

A. ~~(a)~~ Records to be kept. Licensed distributors shall keep a true and accurate record of all purchases, transfers, sales and use of petroleum products. A record shall be kept showing the following information for each receipt of petroleum products: Manifest number (state tax number), point of origin, from whom received, kind of product, gallons received and date unloaded. A daily record shall be kept of the totals of all sales of each petroleum product.

B. ~~(b)~~ Sales invoices. A sales invoice shall be made for each bulk sale~~, delivery or transfer~~ of petroleum products at the time of the sale, ~~delivery or transfer~~ regardless of gallonage. All sales invoices issued for bulk sales shall be machine-numbered serially with numbers of at least three digits, and shall show the following: Name and address of distributor printed or rubber-stamped upon the invoice, date of sale, name and address of the purchaser, kind of product, price per gallon, number of gallons, and rate and amount of tax if any. The words "bulk sale," as used in this rule, shall mean any sale of a petroleum product dispensed from a truck transport or tankwagon into a storage facility. When issued for the purpose of securing refunds or credits of the Minnesota gasoline tax, the invoices shall, in addition to the aforementioned requirements, be prepared at least in duplicate, the original to be marked "Original Invoice~~.~~" and given to the purchaser. The words "original invoice," as used in this rule, shall mean the first or top sheet of an invoice, bearing the original inked or penciled imprint, whether it be typewritten, handwritten or printed, issued by a seller to a purchaser covering the product or products sold. Whenever the original invoice is unavailable, the commissioner may approve the use of a copy thereof. In such cases, a lost-or-destroyed-invoice affidavit executed by the claimant, together with a supporting statement by the supplier, must be filed. ~~Unless otherwise authorized by the commissioner, double-faced carbon paper (carbon on both sides) shall be used, invoices shall be issued in sequence and the original invoice shall be given to the purchaser.~~

When issued for other than bulk sales and for the purpose of securing refunds or credits of the Minnesota gasoline tax, the invoices or receipts shall show the name and location of the seller, date of purchase, number of gallons and total price.

When issued for deliveries made into another state, invoices shall be issued in the same manner with a separate set of numbers.

Sales invoices used for the sale of a rejected petroleum product not meeting specifications which the commissioner has approved for sale shall bear the following notation:

"FUEL OIL—REJECTED PRODUCT—UNSAFE FOR HEATING OR LIGHTING PURPOSES"

"GASOLINE—REJECTED PRODUCT—CONTAINS OTHER PETROLEUM PRODUCTS ON WHICH THE GASOLINE TAX HAS BEEN PAID"

C. ~~(c)~~ Inventories. A physical inventory shall be taken at the end of each month of all petroleum products and a record kept of the quantity in each tank, tank capacity, tank number if any, and kind of product.

D. ~~(d)~~ Records to be retained. With the exception of sales invoices or receipts issued for other than bulk sales and for the purpose of securing refunds or credits of the Minnesota gasoline tax, copies ~~Copies~~ of all manifests, bills of lading, invoices and delivery tickets, as well as all other records relating to the purchase, transfer, sales and use of petroleum products, shall be retained for a period of four years.

13 MCAR § 1.4004 ~~Gas Tax 4~~ Distributor and dealer credits and refunds.

A. ~~(a)~~ Distributor credits, how allowed. The credits under ~~section 296.14, subdivision 2,~~ Minn. Stat. § 296.14, subd. 2, shall be allowed as follows:

Under clause (1), credit shall be taken prior to computing the allowance for evaporation and loss;

Under clause (2), credit on sales made directly from terminals shall be taken prior to computing the allowance for evaporation and loss; credit on all other sales shall be taken after computing the allowance for evaporation and loss ~~and must be supported by Federal Exemption Certificates 1094~~;

Under clause (3), credit shall be taken prior to computing the allowance for evaporation and loss;

Under clause (4), credit shall be taken only when supported by a credit memorandum issued by the commissioner. Such credit memorandum will reflect the adjustment for the allowance for evaporation and loss.

B. ~~(b)~~ Unusual losses. A written notice of any unusual loss of gasoline or special fuel by a distributor or dealer while in his possession, including gasoline or special fuel destroyed by accident, shall be given to the commissioner within 30 days after the discovery of the loss in order to qualify for credit or refund of tax paid, and, in addition, all claims of a distributor or dealer for refund or credit of gasoline or special fuel tax paid as a result of such unusual loss shall be filed with the commissioner within 90 days after the discovery of such loss.

13 MCAR § 1.4005 ~~Gas Tax 5~~ Dealer records.

A. ~~(a)~~ Records to be kept. Dealers shall keep a true and accurate record of all purchases and sales of petroleum products. Purchase records shall show the kind of product, from whom purchased, number of gallons and date unloaded. A daily record shall be kept of the total of all sales of each petroleum product.

B. ~~(b)~~ Sales invoices. When issued for the purpose of securing refunds or credits of the Minnesota gasoline tax, sales invoices representing bulk sales shall be machine-numbered serially with numbers of at least three digits, and shall show the following: Name and address of the dealer printed or rubber-stamped upon the invoice, date of sale, name and address of the purchaser, kind of product, price per gallon, number of gallons and rate and amount of tax. They shall be prepared at least in duplicate, the original to be marked "Original Invoice~~.~~" and given to the purchaser. The words "bulk sale," as used in this rule, shall mean any sale of a petroleum product dispensed from a truck transport or tankwagon into a storage facility. The words "original invoice," as used in this rule, shall mean the first or top sheet of an invoice, bearing the original inked or penciled imprint, whether it be typewritten, handwritten or printed, issued by a seller to a purchaser covering the product or products sold. Whenever the original invoice is unavailable, the commissioner may approve the use of a copy thereof. In such cases, a lost-or-destroyed-invoice affidavit executed by the claimant, together with a supporting statement by the supplier, must be filed. ~~Unless otherwise authorized by the commissioner, double-faced carbon paper (carbon on both sides) shall be used, invoices shall be issued in sequence and the original invoice shall be given to the purchaser.~~

When issued for other than bulk sales and for the purpose of securing refunds or credits of the Minnesota gasoline tax, the invoices or receipts shall show the name and location of the seller, date of purchase, number of gallons and total price.

~~When such invoices are issued,~~ When issued for the purpose of securing a refund or credit of the Minnesota gasoline tax, a separate invoice shall be issued for each sale, at time of sale, regardless of gallonage.

Invoices issued to operators of portable feed mills, corn shellers and other portable units for gasoline serviced to the unit tank, shall show separately the number of gallons, if any, serviced to the vehicle supply tank.

Sales invoices used for the sale of a rejected petroleum product not meeting specifications which the commissioner has approved for sale shall bear the following notation:

"FUEL OIL—REJECTED ~~PRODUCTS~~ PRODUCT—UNSAFE FOR HEATING OR LIGHTING PURPOSES"

"GASOLINE—REJECTED PRODUCT—CONTAINS OTHER PETROLEUM PRODUCTS ON WHICH THE GASOLINE TAX HAS BEEN PAID"

C. ~~(c)~~ Records to be retained. All records relating to the purchase and sale of petroleum products, ~~including~~ excluding copies of sales invoices or receipts issued for other than bulk sales and for the purpose of securing refunds or credits of the Minnesota gasoline tax, shall be retained for a period of four years.

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13 MCAR § 1.4006 ~~Gas Tax 6~~ Special fuel requirements.

A. ~~(a)~~ Records. All distributors, special fuel dealers and bulk purchasers shall keep a true and accurate record of all purchases, transfers, sales and use of special fuel. They shall also keep complete and accurate records of purchases, sales and use of fuel oil and liquefied petroleum gas at all their locations where special fuel is sold or stored.

B. ~~(b)~~ Sales invoices. A sales invoice shall be issued for each sale of special fuel made by a distributor or a special fuel dealer. Such sales invoices shall bear the signature of the person making the delivery, ~~the signature of the person accepting the delivery,~~ name and address of the purchaser, motor vehicle license number if delivered into the supply tank of a licensed motor vehicle, date of sale, number of gallons, rate of tax, price per gallon and total amount of sale. The words "Special Fuel" shall be written or printed on each sales invoice at the time of sale or delivery. Sales invoices shall have the name and address of the distributor or special fuel dealer printed or rubber-stamped thereon and shall be machine-numbered serially with numbers of at least three digits and issued in sequence. A separate sales invoice book shall be maintained for special fuel sales, and one copy of each such sales invoice shall be retained in the special fuel sales invoice book, unless otherwise authorized by the commissioner. Sales invoices issued for fuel other than for use as special fuel shall show the kind of fuel and the name and address of the purchaser.

C. ~~(c)~~ Meter reading and inventories. Distributors, special fuel dealers and bulk purchasers shall at the end of each month take and record

1. ~~(1)~~ through an accumulating meter in working order, meter readings for each pump through which special fuel is dispensed; and

2. ~~(2)~~ physical inventories of special fuel showing quantity in each tank, tank capacity and kind of product.

D. ~~(d)~~ Users' records and reports. All users of special fuel shall keep a true and accurate record of all purchases, sales, transfers and use of special fuel and shall retain all such records for a period of four years. Users of special fuel (except licensed distributors, special fuel dealers and bulk purchasers required to file monthly reports) shall file an annual information report showing the number of gallons used, miles traveled and such other information as the commissioner may prescribe, for each licensed motor vehicle. This report shall be filed on or before March 1 of each year for the preceding calendar year.

E. ~~(e)~~ Mileage reports. Upon demand of the commissioner there shall be attached to and made a part of the monthly special fuel tax report an accurate statement of mileage traveled during such month on Minnesota highways by each licensed motor vehicle supplied with special fuel from the bulk storage facilities maintained by the licensee.

F. ~~(f)~~ Bulk sales reports. Persons selling or delivering special fuel into storage facilities maintained by any licensed bulk purchaser shall, on or before the 23rd day of each month, file with the commissioner an itemized report, in a manner prescribed by and on a form supplied by him, showing all sales of special fuel to said licensed bulk purchaser.

G. ~~(g)~~ Records to be retained. Copies of all manifests, bills of lading, invoices, sales and delivery tickets, as well as all other records relating to the purchase, transfer, sales and use of special fuel, shall be retained for a period of four years.

H. ~~(h)~~ Changes in storage capacity or location. Distributors, special fuel dealers and bulk purchasers shall report to the commissioner in writing within seven days any change in storage capacity or location of special fuel facilities.

I. ~~(i)~~ Prices posted. Each pump used to dispense special fuel into the supply tank of a licensed motor vehicle by a special fuel dealer shall show the total sales price per gallon posted on the pump in a conspicuous manner.

13 MCAR § 1.4007 ~~Gas Tax 7~~ Other taxable products. Material used as stove or lamp gasoline, and naphtha, toluol, benzol or any like product used in blending to produce gasoline, shall be reported and the Minnesota gasoline ~~excise~~ tax paid thereon.

13 MCAR § 1.4012 Gas Tax 12 Refunds and credits.

A. ~~(a) General requirements.~~ Aviation gasoline and special fuel tax refunds. ~~Claims for refund of the excise tax paid on gasoline or special fuel, except for aviation gasoline or aviation special fuel, must be filed within four months from the date of purchase, except that a gasoline or special fuel purchase invoice filed within 15 days after the expiration of the four months filing period may be honored less a penalty of 25 percent of the amount of the approved invoice.~~ Claims for refund of the ~~excise~~ tax paid on aviation gasoline or ~~aviation~~ on special fuel for aircraft must be filed on or before April 15 of the year following the year in which the fuel was purchased. Any such claim filed during the 15-day period from April 16 to April 30 may be honored less a penalty of 25 percent of the amount of the approved refund claim. The postmark on the envelope in which the claim is mailed determines the date of filing. Each claim must be accompanied by the original invoice receipted for payment by the supplier. The words "original invoice," as used in this rule, shall mean the first or top sheet of an invoice, bearing the original inked or penciled imprint, whether it be typewritten, handwritten or printed, issued by a seller to a purchaser covering the product or products sold. Whenever the original invoice is unavailable, the commissioner may approve the use of a copy thereof. In such cases, a lost-or-destroyed-invoice affidavit executed by the claimant, together with a supporting statement by the supplier, must be filed.

~~(b) Preparation of claims. No distributor or dealer or agent or servant of either shall assist in the preparation of any claim for gasoline tax refund of any other person.~~

B. Minnesota gasoline tax refunds and credits.

1. General. The amount paid by a taxpayer-claimant during the taxable year as tax on gasoline (including gasohol) or special fuel may be credited against any income or excise tax due under Minn. Stat. ch. 290 to the extent that the gasoline was bought and used for a purpose other than use in motor vehicles or snowmobiles and to the extent that the special fuel was bought and used for a purpose other than use in licensed motor vehicles. The tax on aviation gasoline and on special fuel for aircraft cannot be used as a credit. If the credit for the amount paid as tax on gasoline or special fuel exceeds the tax due under ch. 290, the excess shall be refunded to the taxpayer-claimant.

A credit or refund may be claimed only for the amount paid as the Minnesota-imposed tax on gasoline or special fuel. No credit or refund may be claimed solely on the basis that the Minnesota tax was paid on gasoline or special fuel subsequently used outside Minnesota; that is, if no credit or refund of the Minnesota tax would be allowable with respect to a particular use of gasoline or special fuel inside Minnesota, then no credit or refund of the Minnesota tax will be allowable with respect to that particular use of gasoline or special fuel outside Minnesota.

2. Individuals. Every individual taxpayer-claimant seeking this credit or refund must file a Minnesota individual income tax return, together with a properly completed gasoline tax credit form to be furnished by the commissioner. However, individuals classified as exempt from income tax under Minn. Stat. § 290.05, subd. 1, need only file the properly completed gasoline tax credit form in order to claim a refund.

3. Trusts and estates. Every trust and every estate seeking this credit or refund must file a Minnesota fiduciary income tax return, together with a properly completed gasoline tax credit form to be furnished by the commissioner. However, trusts and estates classified as exempt from income tax under Minn. Stat. § 290.05, subd. 1, need only file the properly completed gasoline tax credit form in order to claim a refund.

4. Corporations. Every corporation seeking this credit or refund must file a Minnesota corporate income tax return, together with a properly completed gasoline tax credit form to be furnished by the commissioner. However, corporations classified as exempt from income and excise taxes under Minn. Stat. § 290.05, subd. 1, need only file the properly completed gasoline tax credit form in order to claim a refund.

5. Information required. The gasoline tax credit form shall contain all of the following information:

a. The claimant's name, address and Minnesota tax identification number or social security number, whichever is applicable; and

b. If the claimant is exempt from income and excise taxes under Minn. Stat. § 290.05, subd. 1, the signature of the claimant or the signature and title of the claimant's duly authorized representative, whichever is applicable; and

c. The preparer's signature, address, Minnesota tax identification number or social security number, whichever is applicable; and

d. A description of the use or uses made of the gasoline, gasohol and special fuel on which this claim is based; and

e. Dates of purchase and total gallonage of Minnesota gasohol used in boats. For purposes of this subclause and of subclause g below, the words ''Minnesota gasohol'' shall mean gasohol in which the alcohol contained therein has been distilled in Minnesota from agricultural products produced in Minnesota; and

f. Dates of purchase and total gallonage of gasoline and non-Minnesota gasohol used in boats. For purposes of this subclause and of subclause h below, the words ''non-Minnesota gasohol'' shall mean any gasohol which does not fall within the definition of ''Minnesota gasohol'' as set forth in subclause e above; and

g. Dates of purchase and total gallonage of Minnesota gasohol used for a purpose for which a credit or refund is allowable under clause 1 of part B of this rule, other than boat use; and

h. Dates of purchase and total gallonage of gasoline, non-Minnesota gasohol and special fuel used for a purpose for which a credit or refund is allowable under clause 1 of part B of this rule, other than boat use.

6. Information returns. Information returns filed by partnerships and by qualifying electing small business corporations (qualifying Subchapter S corporations) must include the names and addresses of all partners or all shareholders entitled to a distributive share of the Minnesota gasoline tax credit and the amount of such distributive share to which each is entitled.

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7. Filing requirements. A claim for credit or refund of the Minnesota tax on gasoline or special fuel shall be filed only once per calendar or fiscal year. The due date for filing such a claim shall be the same as the due date specified in Minn. Stat. § 290.42 for filing an income or excise tax return. For purposes of determining the due date for filing a claim, cities, counties, school districts and other organizations classified as exempt from income and excise taxes under Minn. Stat. § 290.05, subd. 1(m) shall be treated as if they were corporations.

8. All of the provisions contained in Minn. Stat. ch. 290, are applicable to claims filed for purposes of securing a credit or refund of the Minnesota tax on gasoline or special fuel, including but not limited to, provisions governing the statute of limitations on allowable claims and provisions setting forth the penalties to be invoked for filing false claims.

C. ~~(c)~~ Motor vehicle with a power take-off. As used in this ~~regulation~~ rule, the words ''motor vehicle with a power take-off'' mean any motor vehicle or licensed motor vehicle whose motor is used for the dual purpose of propelling the vehicle and the operation of special equipment by means of a power take-off.

No refund or credit is allowable with respect to the tax paid on gasoline or special fuel used in a motor vehicle with a power take-off which can be operated while the vehicle is being propelled on the public highways unless such vehicle is equipped with an automatic metering device approved by the commissioner which accurately measures the amount of fuel which is consumed when the vehicle is stationary and not being propelled on the public highways.

A refund or credit is allowable with respect to the tax paid on gasoline or special fuel used in a motor vehicle with a power take-off if the vehicle has two separate fuel supply tanks, one for use when the special equipment is being operated and the other when the vehicle is being propelled on the public highways, and if the use of the fuel from the appropriate supply tank is automatically controlled.

A refund or credit is allowable with respect to the tax paid on gasoline or special fuel used in a motor vehicle with a power take-off provided that such claim is supported by complete and detailed records that will clearly and accurately establish the amount of gasoline or special fuel used for purposes other than propelling the vehicle on the public highways or provided such vehicle is equipped with an automatic metering device approved by the commissioner. Such records shall include, but not be limited to, all of the following information which is applicable to the claimant's situation: Type of operation, dates of operation, name of customer, miles traveled, hours of operation of special equipment, age of equipment, and results of tests determining engine performance during highway and power take-off operations. The use of separate fuel tanks and/or hubometers are not sufficient in themselves to qualify as complete and accurate records. Estimates of the amount of fuel used, regardless of how reasonable they may be, are not acceptable.

D. ~~(d)~~ Off public highway use. If a motor vehicle or a licensed motor vehicle is used entirely off the public highways, a refund or credit of the tax paid on gasoline or special fuel is allowable.

If a motor vehicle or a licensed motor vehicle is used both on and off the public highways, a refund or credit of the tax paid on gasoline or special fuel used for purposes other than propelling the vehicle on the public highways is allowable provided such claim is supported by complete and detailed records that will clearly and accurately establish such amounts of fuel. Such records shall include, ~~some or all of the following~~ but not be limited to, all of the following information which is applicable to the claimant's situation: Type of operation, dates of operation, miles traveled on public highways, miles traveled on private roads, hours of travel off the public highways, age of equipment, and results of tests determining engine performance during off highway use. Estimates of such amounts, regardless of how reasonable they may be, are not acceptable.

E. ~~(e)~~ Gasoline or special fuel lost by accident. No refund or credit is allowable with respect to the tax paid on gasoline or special fuel which is lost through spillage or accident except while in the possession of a distributor or dealer.

F. ~~(f)~~ Gasoline not used by claimant. No refund or credit is allowable with respect to the tax paid on gasoline which has not been purchased and used by the claimant.

G. ~~(g)~~ Gasoline or special fuel used by State of Minnesota. No refund is allowable with respect to the tax paid on gasoline used in motor vehicles or special fuel used in licensed motor vehicles owned by the State of Minnesota, including any of its municipalities and school districts, if such motor vehicles or licensed motor vehicles are used on the public highways.

13 MCAR § 1.4013 ~~Gas Tax 13~~ Road tax.

A. ~~(a)~~ Commercial motor vehicle. ''Commercial motor vehicle'' means a passenger vehicle that has seats for more than nine passengers in addition to the driver, or any road tractor, or any tractor truck or any truck having more than two axles, which passenger vehicle, road tractor, tractor truck or truck is propelled by motor fuel.

B. ~~(b)~~ Vehicles exempted from road tax. The following vehicles are exempted from the road tax law:

1. ~~(1)~~ All straight trucks having only two axles;

2. ~~(2)~~ All motor vehicles having ~~two~~ three or more axles on which is permanently mounted a corn sheller, feed grinder, back hoe, crane, well drilling machine or other similar equipment and the use of which on the public highways of this state is only for transporting the special equipment to and from the site of operation;

3. ~~(3)~~ All commercial motor vehicles operated by this state, any subdivision thereof, the United States, or any agency of two or more states or of states and the United States in which this state participates, or to any school bus as defined by the laws of this state operated by, for or on behalf of a state or any subdivision thereof;

4. ~~(4)~~ All motor vehicles which bear base license plates issued by the ~~state~~ State of Minnesota or by states with which Minnesota has reciprocal agreements relating to motor fuel taxes. The ~~Commissioner~~ commissioner of ~~highways~~ public safety will be furnished a list of such states and notified of any new agreements entered into or any cancellation of agreements now in existence.

C. ~~(c)~~ Temporary authorizations. Any person not having a valid trip permit or who is not licensed as a motor carrier who, because of unforeseen circumstances, is required to operate a commercial motor vehicle in this state may obtain temporary authorization for operating a commercial motor vehicle in Minnesota by one of the following ~~procedure~~ procedures:

1. A telegram ~~shall~~ may be sent to the Petroleum Division, Department of ~~Taxation~~ Revenue, requesting either a motor carrier license or a trip permit, together with a Western Union money order payable to the commissioner of ~~taxation~~ revenue for the amount of either $10 in the case of a motor carrier license or $5 in the case of a trip permit. The copy of the telegram and the money order receipt shall be carried in the cab of the vehicle while it is operated in Minnesota~~.~~; or

2. A trip permit may be purchased through a service company authorized by the State of Minnesota to sell trip permits. An electronically transmitted facsimile of the trip permit shall be carried in the cab of the vehicle while it is operated in Minnesota.

No more than three trip permits may be issued during any calendar year.

D. ~~(d)~~ Reports of motor carriers and payment of tax. All motor carriers are required to file a road tax report each ~~month~~ calendar quarter. The motor carrier's report shall be for a complete ~~calendar month~~ three-month period and is due to be filed by the last day of ~~the following month~~ April, July, October and January. The report shall be on a form prescribed and furnished by the commissioner of ~~taxation~~ revenue. All reports must be accompanied by a remittance for the full amount of the tax shown to be due on the report. If no travel takes place in Minnesota during any ~~month~~ quarter, a report must still be filed, with the word "None" written in the appropriate column on line 4 of the return. The person who is responsible for the payment of the motor fuel used in the vehicle is liable for the filing of the report whether the vehicle is owned or leased by him.

E. ~~(e)~~ Annual affidavit instead of ~~monthly~~ quarterly report. The commissioner may exempt from the ~~monthly~~ quarterly reporting requirements those motor carriers all or substantially all of whose mileage is within the State of Minnesota and require in such instances an annual affidavit attesting to the intrastate or substantially intrastate character of their operations provided that the enforcement of this law is not adversely affected thereby and that the commissioner is satisfied that an equitable amount of motor fuel is purchased in Minnesota by such carriers. The affidavit shall be on a form prescribed and furnished by the commissioner.

F. ~~(f)~~ Records and invoices. An accurate record must be kept by all motor carriers of the following:

1. ~~(1)~~ The miles traveled within and without Minnesota;
2. ~~(2)~~ The miles traveled in Minnesota;
3. ~~(3)~~ The number of gallons of fuel used in the entire operation within and without Minnesota;
4. ~~(4)~~ The number of gallons of fuel purchased in Minnesota.

To substantiate the purchases of fuel in Minnesota, the original invoices or receipts must show the following:

1. ~~(1)~~ Date of purchase;
2. ~~(2)~~ Name and location of seller printed thereon;
3. ~~(3)~~ Name and address of purchaser;
4. ~~(4)~~ Kind of product;
5. ~~(5)~~ Number of gallons;
6. ~~(6)~~ Price per gallon;
7. ~~(7)~~ Total sales price.

All records and invoices must be retained for a period of at least three years.

G. ~~(g)~~ Surrender of motor carrier license. When the motor carrier shall voluntarily or ~~unvoluntarily~~ involuntarily sell, dispose of or discontinue his business, he shall immediately notify the commissioner in writing and shall within 10 days surrender his motor carrier license together with all copies of such license.

H. ~~(h)~~ Enforcement powers. The officers of the Minnesota highway patrol shall assist the Commissioner of ~~taxation~~ Revenue in the enforcement of the provisions of the road tax act. Prosecution for violation of the road tax act may be commenced in the county in which the violation occurred or in Ramsey County.

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SUPREME COURT

Decisions Filed Friday, September 12, 1980

Compiled by John McCarthy, Clerk

50185/255 In the Matter of the Welfare of Carl Otis Mullins. Hennepin County.

The State of Minnesota is without primary jurisdiction to entertain a petition in neglect or dependency filed on behalf of a minor who, although placed with foster parents in Minnesota, is adjudged dependent by the State of California and under its continuing supervision. Minnesota may only modify the custody decree of another state when the original state no longer has or declines to assume jurisdiction. Under the ancillary jurisdiction afforded by the presence of the child and the foster parents in this state, however, and to assure an informed decision on custody as contemplated by the Uniform Child Custody Jurisdiction Act to which Minnesota and California both adhere, the return of the child is conditioned on an evidentiary hearing to be conducted by a court of record in Minnesota on behalf of the State of California to afford appellants the opportunity to introduce local evidence relevant to the child's disposition.

Affirmed and remanded with special instructions. Sheran, C. J. Dissenting, Scott, J. Took no part, Amdahl, J. and Simonett, J.

50229/270 State of Minnesota vs. John Earl Turnipseed, Appellant. Hennepin County.

A decision to deny a motion for a continuance lies within the sound discretion of the trial court and will only be reversed upon a showing that the court abused that discretion. Here, we find no such abuse.

In instructing on circumstantial evidence, the phrase that "all circumstances proved must be consistent with that conclusion and inconsistent with any other rational conclusion" in order for the jury to reach a conclusion beyond a reasonable doubt, is not mandatory. Where the jury was properly instructed on the standards of reasonable doubt and the instruction on circumstantial evidence was otherwise adequate, no error was created by such omission.

Evidence of guilt is sufficient if, based on the facts contained in the record and the inferences that may legitimately be drawn from those facts, a jury could reasonably conclude that the defendant was guilty of the offense charged.

In this burglary case, the defendant's contention that the trial court should have instructed the jury on the offense of trespass has no merit.

Affirmed. Scott, J. Took no part, Amdahl, J. and Simonett, J.

49842/16 Timothy Wilson, Appellant, vs. City of Eagan, et al., Jay Berthe. Dakota County.

Punitive damage awards against municipal officers and employees are not precluded by Minn. Stat. § 466.04, subd. 1a (1978).

Punitive damages are appropriate against an animal warden who intentionally killed plaintiff's pet cat in violation of a city ordinance and Minn. Stat. § 35.71, subd. 3 (1978), but are not appropriate against a police officer who actually shot the cat but did not know that the cat had not been impounded for the length of time required by the city ordinance and Minn. Stat. § 35.71, subd. 3 (1978).

The trial court did not err in reducing the punitive damages awarded by the jury.

It is unfair to allow joinder of a defendant halfway through the trial where the new defendant had no notice that he would be a defendant, where the defendant had no opportunity to select an attorney or prepare his defense, and where the statute of limitations did not preclude a new action against the newly joined defendant.

The trial court did not err in finding defendants negligent and plaintiff not contributorily negligent as a matter of law.

Affirmed in part, reversed in part. Wahl, J. Took no part, Simonett, J.

Decisions Filed Friday, September 5, 1980

48890/411 Nancy L. Hanson, et al., vs. Fred L. Stoerzinger, et al., Appellants, The Igo Company, Defendant. Dakota County.

The trial court erred in concluding that defendant purchasers waived rescission of a contract for the sale of land where, prior to the parties' entering into the contract, plaintiff sellers represented the area of the subject property as substantially greater than its actual area and the abstract of title, containing a legal description of the property from which its actual area was calculable, was not in defendant's possession until the date of closing.

Reversed and remanded. Peterson, J. Took no part, Todd, J., and Amdahl, J.

50232/212 In the Matter of the Welfare of Lori Marie Gillispie and James Allen Gillispie. Ramsey County.

In order for a termination order to be sustained by this court, the record must contain clear and convincing evidence that the statutory grounds for termination of parental rights exist.

The order terminating Bruce Gillispie's parental rights is vacated. Todd, J. Took no part, Amdahl, J.

50424/Sp. State of Minnesota vs. Wilburt E. Buckhalton, Appellant. Hennepin County.

Evidence that defendant used or threatened use of dangerous weapon to cause person to submit to sexual penetration was legally sufficient to sustain the verdict.

Issue of extent to which prosecutor may comment on or introduce evidence to rebut favorable but false impression of good character created by conduct of defendant during trial or recesses of trial is delicate issue requiring use of discretion by prosecutor and trial court; *held*, whether or not evidence of this nature was improperly admitted in this case, defendant was not prejudiced by it.

Affirmed. Todd, J.

50564/Sp. State of Minnesota vs. Todd Duane Gunderson, Appellant. Ramsey County.

Evidence of defendant's participation in burglary was sufficient.

Defendant, by failing to object to trial court's granting of jury request for rereading of testimony, must be deemed to have forfeited his right to have this court review the propriety of the trial court's action.

Affirmed. Todd, J.

51240/Sp. In the Matter of the Welfare of David Weselenak. Hennepin County.

Evidence that complainant was mentally defective, mentally incapacitated, or physically helpless at time of sexual contact with her by appellant juvenile held sufficient.

Affirmed. Todd, J.

Decision Filed Monday, September 8, 1980

51314/Sp. State of Minnesota vs. William Robert Felson, Appellant. Hennepin County.

District court in a criminal prosecution should certify a question of law for pretrial determination only if the question "in the opinion of the judge is so important or doubtful as to require a decision of the Supreme Court." R. 29.02, subd. 4, R. Crim. P.

Held, district court properly denied motion to suppress evidence based on contention that nighttime execution of search warrant was unjustified. *State v. Lien*, 265 N.W.2d 833 (Minn. 1978).

Remanded. Sheran, C. J. Took no part, Simonett, J.

STATE CONTRACTS

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

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

Department of Education
Vocational-Technical Education Division

Notice of Availability of Contract to Develop A Funding Formula to Disburse Federal Dollars According to P.L. 94-482

The Minnesota Division of Vocational-Technical Education is accepting proposals to develop a funding formula(e). Developed formula(e) will be used to disburse funds allocated under P.L. 94-482 and must conform to relevant federal rules and regulations and state vocational program management.

The contract period will be approximately November 17, 1980 to January 30, 1981. Contracted services and expenses are not to exceed $8,000.

STATE CONTRACTS

Interested persons may request further information from:

Ronald C. Dreyer, Management Information Specialist
Minnesota Department of Education
Division of Vocational-Technical Education
551 Capitol Square Building
550 Cedar Street
St. Paul, MN 55101
Telephone: (612) 296-2421

OFFICIAL NOTICES

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

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

Department of Administration Cable Communications Board

Solicitation of Public Comments on Petitions Pertaining to Newspaper and Broadcasting Station Cross-ownership of Cable Communications Systems by October 17, 1980

Notice of Solicitation of Public Comments Regarding a Petition from the Minnesota Broadcasters Association for Amendment and Repeal of Rules Governing Broadcast Station Ownership of Cable Communications Systems

Notice is hereby given that public comments in the above-entitled matter are being solicited by the Minnesota Cable Communications Board pursuant to 4 MCAR § 4.006 of the board rules.

The board will conduct public hearings concerning the petition during its regular meeting on October 17, 1980. The meeting is scheduled to convene at 9 a.m., 500 Rice Street (at University Avenue), St. Paul.

Written comments may be submitted to the board at 500 Rice Street, St. Paul, Minnesota 55103.

All interested or affected persons will have an opportunity to be heard.

The Minnesota Broadcasters Association is petitioning the board for amendment of 4 MCAR § 4.100 A. (underlining indicates petitioner's proposed additions to existing rule language, and ~~strike outs~~ indicate petitioner's proposed deletions from existing rule language):

4 MCAR § 4.100 Certain ownership prohibited. None of the following shall directly or indirectly own, operate, control or have a legal or equitable interest in a cable communications system:

A. A television broadcasting station ~~whose predicted Grade B contour, computed in accordance with section 73.684 of~~ which is prohibited from cross-ownership pursuant to the Federal Communications Commission's rules and regulations~~, overlaps in whole or in part the service area within the system is serving subscribers~~); or

and for repeal of 4 MCAR § 4.100 F:

4 MCAR § 4.100 F. ~~A radio or television broadcast station, broadcasting from within the Twin Cities metropolitan area as designated in Minn. Stat. § 473.121, Subd. 4 (1976).~~

Notice of Solicitation of Public Comments Regarding a Petition from the Minnesota Newspaper Association for Repeal of Rules Governing Newspaper Ownership of Cable Communications Systems

Notice is hereby given that public comments in the above-entitled matter are being solicited by the Minnesota Cable Communications Board pursuant to 4 MCAR § 4.006 of the board rules.

The board will conduct public hearings concerning the petition during its regular meeting on October 17, 1980. The meeting is scheduled to convene at 9 a.m., 500 Rice Street (at University), St. Paul.

Written comments may be submitted to the Board at 500 Rice Street, St. Paul, Minnesota 55103.

All interested or affected persons will have an opportunity to be heard.

The Minnesota Newspaper Association is petitioning the board for repeal of 4 MCAR § 4.100 E. (~~strike outs~~ indicate petitioner's proposed deletions from existing rule language):

4 MCAR § 4.100 Certain ownership prohibited. None of the following shall directly or indirectly own, operate, control or have a legal or equitable interest in a cable communications system:

~~E. A publisher and/or owner of a newspaper company within the primary market area, as defined by the Audit Bureau of Circulation, served by the newspaper.~~

Department of Commerce Insurance Division

Notices of Meetings

Minnesota Comprehensive Health Association

Actuarial Committee

Thursday, September 25, 1980
10:00 a.m.
NWNL Reinsurance Company
100 North 7 Street—Suite 400
Minneapolis, Minnesota

and

Financial Committee

Wednesday, October 8, 1980
1:00 p.m.
NWNL Reinsurance Company
100 North 7 Street—Suite 400
Minneapolis, Minnesota

and

Board of Directors

Tuesday, October 21, 1980
9:00 a.m.
Federated Mutual Insurance Company
129 East Broadway
Owatonna, Minnesota

Changes in any scheduled meetings and notices of any additional meetings will be posted or otherwise be available upon inquiry at the office of the Insurance Division, and may also be obtained by telephone from the Life and Health Section, telephone (612) 296-2202.

Energy Agency

Data and Analysis Division

Notice of Intent to Solicit Outside Opinion Regarding Rules on Annual Electric Utility Information Reported Annually

Notice is hereby given that the Minnesota Energy Agency (hereinafter the "agency") is seeking information or opinions from sources outside the agency in preparing to amend rules governing the contents of the annual report and forecast submitted by electric utilities. Amendments would reflect three years of experience under operation of the current rules which were made effective in 1977.

The current rules are authorized by Minnesota Statutes §§ 116H.10 and 11 (1978) which require the agency to implement certain forecasting, statistical and informational reporting requirements.

The agency requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information and comment orally or in writing. Written statements may be addressed to:

Dan Quillin
Minnesota Energy Agency
980 American Center Building
150 E. Kellogg Blvd.
St. Paul, Minnesota 55101

Oral statements will be received during regular business hours over the telephone at (612) 296-8283 and in person at the above address.

All statements of information and comment must be received by November 1, 1980. Any written material received by the Agency shall become part of the hearing record in the event that amendments to the rules are promulgated.

September 8, 1980

Dan Quillin
Energy Specialist Intermediate

Minnesota Sentencing Guidelines Commission

Notice of Public Hearing to Consider Modifications to Sentencing Guidelines

The Minnesota Sentencing Guidelines Commission will hold a public hearing on Thursday, October 23, 1980, at 6:30 p.m. in Room 57 of the State Office Building, 435 Park Street, St. Paul, Minnesota. The public hearing is to consider proposed modifications to the sentencing guidelines specifically as they relate to:

a) the application of concurrent and consecutive sentencing procedures as they pertain to the crime of escape, and

b) the presumptive duration for conspiring to commit or attempting to commit Murder in the 1st degree.

Copies of the above proposed modifications are available, free of charge, by contacting the Minnesota Sentencing Guidelines Commission at Suite 284, Metro Square Building, 7th and Robert Street, St. Paul, MN 55101, or by calling at (612) 296-0144.

All interested persons are encouraged to attend the hearing and offer comments. Persons wishing to speak may register in advance by contacting the commission staff at the above address/phone number.

The commission will hold the record open for five days after the public hearing to accept additional written comment on the proposed modifications. On or about October 30, 1980, the commission will meet to formally adopt or reject the proposed modifications. If adopted, the modifications will become effective immediately following the Commission's formal adoption and will have the same force and effect as the language it is replacing.

For additional information, contact Linda Anderson, Administrative Assistant to the Commission at (612) 296-7508.

Proposed Modifications

F. Concurrent/Consecutive Sentences: When an offender is convicted of multiple current offenses, or when there is a prior felony sentence which has not expired or been discharged, concurrent sentences shall be given in all cases not covered below. The most severe offense among multiple current offenses determines the appropriate offense severity level for purposes of determining the presumptive guideline sentence.

Consecutive sentences may be given only in the following cases:

1. When a prior felony sentence for a crime against a person has not expired or been discharged and one or more of the current felony convictions is for a crime against a person, and when the sentence for the most severe current conviction is executed according to the guidelines; or

2. When the offender is convicted of multiple current felony convictions for crimes against different persons, and when the sentence for the most severe current conviction is executed according to the guidelines; or

3. When the conviction is for escape from lawful custody, as defined in Minn. Stat. § 609.485. The presumptive disposition for escapes from executed sentences shall be execution of the escape sentence. If the executed escape sentence is to be served concurrently with other sentences, the presumptive duration shall be that indicated by the appropriate cell of the Sentencing Guidelines Grid. If the executed escape sentence is to be served consecutively to other sentences, the presumptive duration shall be that indicated by the aggregation process set forth below.

The use of consecutive sentences in any other case constitutes a departure from the guidelines and requires written reasons pursuant to Minn. Stat. § 244.10, subd. 2 and section E of these guidelines.

For persons given consecutive sentences, the sentence durations for each separate offense sentenced consecutively shall be aggregated into a single presumptive sentence. The presumptive duration for offenses sentenced consecutively is determined by locating the Sentencing Guidelines Grid cell defined by the most severe offense and the offender's criminal history score and by adding to the duration shown therein the duration indicated for every other offense sentenced consecutively at their respective levels of severity but at the zero criminal history column on the Grid. The purpose of this procedure is to count an individual's criminal history score only one time in the computation of consecutive sentence durations.

For persons who, while on probation~~,~~ parole~~,~~ or incarcerated ~~or supervised release,~~ pursuant to an offense committed on or before April 30, 1980, commit a new offense for which a consecutive sentence is imposed, service of the consecutive sentence for the current conviction shall commence upon the completion of any incarceration arising ~~out~~ from ~~of~~ the prior sentence.

G. Convictions for Attempts or Conspiracies: For persons convicted of attempted offenses or conspiracies to commit an offense, the presumptive sentence is determined by locating the Sentencing Guidelines Grid cell defined by the offender's criminal history score and the severity level of the completed offense, and dividing the duration contained therein by two, but such sentence shall not be less than one year and one day except that the presumptive disposition for Conspiracy to Commit or Attempted First Degree Murder, Minn. Stat. § 609.185, with § 609.17 or § 609.175 cited, shall be imprisonment for all cases. The presumptive durations shall be as follows:

CRIMINAL HISTORY SCORE

SEVERITY LEVELS OF CONVICTION OFFENSE	0	1	2	3	4	5	6 or more
Conspiracy/Attempted Murder, 1st Degree	70 67-73	84 80-88	97 92-103	122 115-128	146 139-153	170 162-179	194 185-203

V. OFFENSE SEVERITY REFERENCE TABLE

VIII	Assault 1-609.221 ~~Attempted Murder 1-609.185 with 609.17 or 609.175 cited~~ Criminal Sexual Conduct 1-609.342 Kidnapping (w/great bodily harm)-609.25, subd. 2(2) Manslaughter 1-609.20(1) & (2)
III	Sale of Cocaine-152.15, subd. 1~~(2)~~ (1) (No other changes to this severity level.)
I	Possession of Cocaine-152.15, subd. 2~~(2)~~ (1) (No other changes to this severity level.)

Minnesota Small Business Finance Agency Department of Economic Development

Notice of Intent to Solicit Outside Opinion Concerning Proposed Rules Relating to the Minnesota Small Business Finance Agency

Notice is hereby given pursuant to Minn. Stat. § 15.0412, subd. 6 (1978) that the Minnesota Small Business Finance Agency is commencing the process of drafting rules governing the Minnesota Small Business Finance Agency created by Laws of 1980, ch. 547.

The proposed rules are authorized by the language of Laws of 1980, ch. 547, § 4, subd. 4. Information and opinions regarding the following matter are solicited from sources outside the agency:

1. Criteria, conditions and guidelines for the acceptance or rejection of applications to the agency.

2. Application review and priorities.

Comments should be addressed to Minnesota Small Business Finance Agency, Department of Economic Development, 480 Cedar Street, St. Paul, Minn. 55101. (Attention: M. Jean Laubach, Executive Director). Any comments received by the Small Business Finance Agency shall become a part of the record of proceeding leading to the adoption of permanent rules.

The agency invites interested persons or groups to provide information, comments, opinions and advice on the subject as an information meeting to be held at the State Capitol Building in St. Paul, MN, Room 112, commencing at 7:00 p.m., on October 9, 1980. All written comments must be received by October 22, 1980.

Please be advised that a lobbyist must register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined by Minn. Stat. § 10A.01, subd. 11, as any individual who is:

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

B. Spends more than $250, not including 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.

A 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 the public funds;

D. News media or their employees or agents while engaged in the publishing or broadcasting of news items, editorial comments or paid advertisements which directly or indirectly urge official action;

E. Paid expert witness whose testimony is requested by the body before which he is appearing but only to the extent of preparing or delivering testimony; or

F. Stockholder of a family farm corporation as defined in Minn. Stat. § 50024, subd. 1, who does not spend over $250, excluding *his own* travel expenses in any year in communication with public officials. Questions should be addressed to the State Ethical Practices Board, Room 41, State Office Building, Wabasha Street, Saint Paul, Minnesota 55155, telephone: (612) 296-5615.

September 9, 1980

Kent E. Eklund
Vice Chairman
Small Business Finance Agency

Minnesota State Retirement System

Special Meeting, Board of Directors

A special meeting of the Board of Directors, Minnesota State Retirement System, will be held on Friday, October 17, 1980 at 9:00 a.m. in the office of the system, 529 Jackson Street, St. Paul, Minnesota.

The purpose of the meeting is to receive a report regarding the data base system, revision of board rules and any other matters to come before the board.

Office of the Secretary of State

Notice of Vacancies in Multi-member State Agency

Notice is hereby given to the public that vacancies have occurred in a multi-member state agency, pursuant to Minn. Stat. § 15.0597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul 55155; (612) 296-2805. **Application deadline is Tuesday, October 14, 1980.**

Apprenticeship Advisory Council has 3 vacancies open October 1, for one employee representative, one employer representative, and one public member. The council proposes occupational classifications and minimum standards for apprenticeship programs and agreements and advises the Commissioner of Labor and Industry. Members are appointed by the Commissioner of Labor and Industry and receive $35 per diem plus expenses. For specific information, contact Department of Labor and Industry, 5th Floor, Space Center Building, 444 Lafayette Rd., St. Paul 55101; (612) 296-2342.

Department of Transportation

Notice of Variance Request in the Matter of the Request of the City of St. Cloud for A Variance from Standards for the Design and Construction of the 10th Street Bridge in St. Cloud, MN

Notice is hereby given that the City of St. Cloud has made a written request to the Commissioner of Transportation for a roadway width variance for the design and construction of the 10th Street Bridge in the City of St. Cloud.

The request is for a variance from 14 MCAR § 1.5032, H.1.c., Rules for State Aid Operations under Minn. Stat. chs. 161 and 162, (1978) as amended, so as to permit the 10th Street Bridge to be designed and constructed to a width of 39 feet to accommodate two traffic lanes and two bicycle lanes; plus 6 foot sidewalks on each side for pedestrian use.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155 within 20 days of the publication of this notice in the *State Register*.

If a written objection is received within said 20 days, the variance shall be granted or denied only after a contested case hearing has been held on the request.

September 12, 1980

Richard P. Braun
Commissioner of Transportation

Errata

The Department of Administration, Building Code Division's Notice of Adoption of Amendments to the State Building Code, published at Vol. 5, Number 9, p. 333, September 1, 1980, contained an error. That notice stated that the rules published and proposed at 4 S.R. 233 and at 4 S.R. 1149 were adopted with amendments. However, of those proposed rules, 2 MCAR §§ 1.15501-1.15517 and Tables 55A and D were not amended, but have been withdrawn.

STATE OF MINNESOTA
OFFICE OF THE STATE REGISTER

Suite 415, Hamm Building
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St. Paul, Minnesota 55102
(612) 296-8239

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FOR LEGISLATIVE NEWS

Publications containing news and information from the Minnesota Senate and House of Representatives are available free to concerned citizens and the news media. To be placed on the mailing list, write or call the offices listed below:

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

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

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

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

Our File #648

Permanent Rule X

Temporary Rule _____

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 10/31 DUE DATE 11/14 (w/o hearing)

Resubmitted and Received _____

a. Returned to Agency w/o Filing w/Secretary of State _____

b. Approved _____ Date Sent Back to Agency 11/17/80 Pick-up

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1. Rules as Adopted ✓ labelled "Exhibit A" + attached to FofF + Order Adopting
2. Rules as Proposed ✓
3. Certificate of Board's Authorizing Resolution, where applicable N/A
4. Order for ~~Hearing~~ Notice of Intent to Adopt w/o Public Hearing
5. Notice of ~~Hearing~~ Intent to Adopt w/o Public Hearing
   Sufficiency ✓ if AG proposed rule 208.G. had been adopted, the notice would conform.
6. ~~Secretary of State's List~~ Mailing List Certificate ✓ ~~(one copy only)~~ (list itself returned to agency file)
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~~ adoption ✓ 9.18.80.
10. Publication in State Register ✓
    At least 30 days prior to ~~hearing~~ adoption ✓ 9.22.80
11. Statement of Need and Evidence ✓
12. ~~Hearing Examiner's Report~~ _____
13. Agency's Findings of Fact ✓ combined with #15 - Order Adopting
14. Certificate of Board's Resolution Adopting Rules, where applicable N/A
15. Order Adopting ✓ 10.28.80
16. ~~Report of Chief Hearing Examiner~~ _____
17. Order Approving Incorporation by Reference, where applicable N/A
18. Certificate of Compliance with Rulemaking Procedures not submitted.
19. Copy of Notice of Intent to Solicit Outside Opinion, where applicable N/A
20. Petition by Public, where applicable N/A
21. Affidavit of Mailing Notice of Submission to AG not submitted.
22. Comments / Requests for Hearing N/A - see transmission letter from D. McClung