


# Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 691

Read

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 4/24
DATE FOR REVIEW 5/5
DATE DUE 5/14

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

Approved ✓ 5/14 Disapproved Returned to Agency 5/14

Resubmitted Due
Approved Disapproved Returned to Agency

Date filed w/Secretary of State

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✓ Rule as Adopted

✓ Rule as Proposed see SR. and attached proposed changes

✓ Order Adopting

✓ Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
12.16.80 Date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

? Affidavit of Mailing Notice or rulemaking see affidavit attached to transmittal memo for explanation of clerical error.
11.13.80 At least 30 days prior to hearing/~~adoption~~

? Mailing list Certificate See my comment.

✓ Publication in State Register
11.30.80 At least 30/~~20~~ days prior to hearing/[redacted]

✓ Hearing Examiner's Report 2.11.81

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

✓ Agency's Findings of Fact

N/A LCRAR Report or agency Affidavit

N/A Certificate of Board's Resolution Adopting Rules

✓ Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

✓ Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

ADMIN 1000 Rev. 1-73
SF-03005-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

# Office Memorandum

TO : MARK MASON
Director
Minnesota Energy Agency

DATE: 5/14/81

ATTN : JAMES E. LACKNER
Special Assistant Attorney General

FROM : H. THEODORE GRINDAL HTG
Special Assistant
Attorney General

PHONE: 6-1288

SUBJECT: In the Matter of the Proposed Adoption of Rules of the Minnesota Energy Agency Establishing the Minnesota Energy Conservation Service Program, 6 MCAR §§ 2.2300-2.2313.

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

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

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

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

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

HTG/gy

Enc.

cc: Duane Harves
Susan Robertson

A copy.
shows changes

A

ENERGY AGENCY
CONSERVATION DIVISION

Adopted Rules Establishing the Minnesota
Energy Conservation Service Program.

The proposed rules 6 MCAR §§2.2300-2.2313 Volume 5, Number 18, pp. 698-722, November 3, 1980 (5 S.R. 698) are now adopted with the following amendments:

AG
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6 MCAR § 2.2300. Authority and Purpose.

A. Authority.

The Agency's authority to promulgate ~~the proposed~~ these rules is contained in 1980 Minn. Laws, Chapter 579, § 12 (to be codified as Minn. Stat. § 116H.17), as well as §§ 116.H.08(a) (1978), 116H.07(i)(1978).

B. Purpose

The purpose of these rules is to establish a program requiring major regulated utilities to offer their residential utility customers services related to the promotion of energy conservation. The most important of these services include: conducting home energy audits to determine areas of major heat loss and other energy inefficiencies in the home; distributing lists of approved contractors, suppliers and lenders from whom home energy improvements and financing services may be obtained; arranging for the installation of home energy improvements; and arranging for the financing of supply and installation of home energy improvemen The rules establish requirements for the inclusion in the lists, audit training and certification procedures, procedures for the billing of energy improvement loans on customer utility bills, and post-installation inspection and consumer grievance procedures. The program also includes provisions for voluntary participation of home heating suppliers and non-regulated utilities.

(.2301

6 MCAR § 2.2301. Definitions.

For the purpose of these rules, the following definitions apply:

A. Agency.

The Minnesota Energy Agency

B. Arranged installation.

Any installation of MECS Program Measures, coordinated pursuant to 6 MCAR §§ 2.2304 by a participating utility or heating supplier, which is initiated using a standardized MECS Bid Form.

C. City of the first class.

A city, pursuant to Minn. Stat. § 410.01 (1978), which has a population of 100,000 inhabitants or more.

D. Covered utility.

Covered utilities shall be determined on a yearly basis. The definition includes all public utilities which during the second preceding calendar year had either:

1. Sales of natural gas for purposes other than resale which exceed 10 billion cubic feet; or
2. Sales of electric energy for purposes other than resale which exceed 750 million kilowatt-hours.

E. Customer.

For the purposes of this rule, a customer is any person who:

1. Owns or occupies a residential building; and
2. Receives a fuel bill from a participating utility or home heating supplier for fuel used in such residential building.

F. DOE.

Department of Energy.

G. Energy conservation measures.

Energy Conservation Measures means any of the following measures in a residential building:

1. Caulking.

Pliable materials used to reduce the passage of air and moisture by filling small gaps located at fixed joints on a building, underneath baseboards inside a building, in exterior walls at electric outlets, around pipes and wires entering a building, and around dryer vents and exhaust fans in exterior walls. Caulking includes, but is not limited to, materials commonly known as "sealants," "putty," and "glazing compounds."

2. Weatherstripping.

   Narrow strips of material placed over or in movable joints of windows and doors to reduce the passage of air and moisture.

3. Furnace efficiency modifications.

   a. Replacement furnace or boiler.

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

   b. Furnace replacement burner (oil).

      A device which atomizes the fuel oil, mixes it with air, and ignites the fuel-air mixture, and is an integral part of an oil-fired furnace or boiler including the combustion chamber, and uses less oil than the device it replaces.

   c. Flue opening modification.

      An automatically operated damper installed in a gas-fired furnace (often called a vent damper) which:

      (1) Is installed downstream from the drafthood; and

      (2) Conserves energy by substantially reducing the flow of heated air through the chimney when the furnace is not in operation.

d. Electrical or mechanical ignition system.

A device which, when installed in a gas-fired furnace or boiler, automatically ignites the gas burner and replaces a gas pilot light.

4. Replacement central air conditioner.

A central air conditioner which replaces an existing central air conditioner of the same fuel type and which reduces the amount of fuel consumed due to an increase in efficiency.

5. Ceiling insulation.

A material primarily designed to resist heat flow which is installed between the conditioned area of a building and an unconditioned attic. Where the conditioned area of a building extends to the roofs, the term "ceiling insulation" also applies to such material used between the underside and upper-side of the roof.

6. Wall insulation.

A material primarily designed to resist heat flow which is installed within or on the walls between conditioned areas of a building and unconditioned areas of a building or the outside.

7. Floor insulation.

A material primarily designed to resist heat flow which is installed between the first level conditioned area of a building and an unconditioned basement, a crawl space, or the ground beneath it. Where the first level conditioned area of a building is on a ground level concrete slab, the term "floor insulation" also means such material installed around the perimeter of or on the slab. In the case of mobile homes, the term "floor insulation" also means skirting to enclose the space between the building and the ground.

8. Duct insulation.

   A material primarily designed to resist heat flow which is installed on a heating or cooling duct in an unconditioned area of a building.

9. Pipe insulation.

   A material primarily designed to resist heat flow which is installed on a heating, cooling, or hot water pipe in an unconditioned area of a building.

10. Water heater insulation.

    A material primarily designed to resist heat flow which is suitable for wrapping around the exterior surface of the water heater casing.

11. Storm or thermal window:

    a. A window or glazing material placed outside or inside an ordinary or prime window, creating an air space, to provide greater resistance to heat flow than the prime window alone; or

    b. A window unit with improved thermal performance through the use of two or more sheets of glazing material affixed to a window frame to create one or more insulated air spaces. It may also have an insulating frame and sash.

12. Storm or thermal door:

    a. A second door, installed outside or inside a prime door, creating an insulating air space; or

    b. A door with enhanced resistance to heat flow through the glass area created by affixing two or more sheets or glazing materials; or

    c. A primary exterior door with a R-value of at least two.

13. Heat reflective and heat absorbing window or door material.

A window or door glazing material with exceptional heat-absorbing or heat-reflecting properties; or reflective or absorptive films and coatings applied to an existing window or door which thereby result in exceptional heat-absorbing or heat-reflecting properties.

14. Devices associated with electric load management techniques.

Customer-owned or leased devices that reduce the maximum kilowatt demand on an electric utility and which are any of the following:

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

b. Clock-controlled load switching devices;

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

d. Energy storage devices with control systems.

15. Clock thermostat.

A devise which is designed to reduce energy consumption by regulating the demand on the heating or cooling system in which it is installed, and uses:

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

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

H. Energy conserving practices.

Energy Conserving Practices means any of the following measures in a residential building:

1. Furnace efficiency maintenance and adjustments, which means cleaning and combustion efficiency adjustment of gas or oil furnaces, periodic cleaning or replacement of air filters on forced-air heating or cooling systems, lowering the bonnet or

plenum thermostats to 80°F on a gas or oil forced-air furnace, and turning off the pilot light on a gas furnace during the summer.

2. Nighttime temperature setback, which means manually lowering the thermostat control setting for the furnace during the heating season to a maximum of 55°F during sleeping hours.
3. Reducing thermostat settings in winter, which means limiting the maximum thermostat control setting for the furnace to 68°F during the heating season.
4. Raising thermostat setting in summer, which means setting the thermostat control for an air conditioner to 78°F or higher during the cooling season.
5. Water flow reduction in showers and faucets, which means placing a device in a shower head or faucet to limit the maximum flow to three gallons per minute, or replacing existing shower heads or faucets with those having built-in provisions for limiting the maximum flow to three gallons per minute.
6. Reducing hot water temperature, which means manually setting back the water heater thermostat setting to 120°F; and reducing the use of heated water for clothes washing.
7. Reducing energy use when a home is unoccupied, which means reducing the thermostat setting to 55°F when a home is empty for four hours or longer in the heating season, turning an air conditioner off in the cooling season when no one is home, and lowering the thermostat setting of the water heater when a home is vacant for two days or longer.
8. Plugging leaks in attics, basements, and fireplaces, which means installing scrap insulation or other pliable materials in

gap around pipes, ducts, fans, or other items which enter the attic or basement from a heated space, installing fireproof material to plug any holes around any damper in a fireplace, and adding insulation to an attic or basement door.

9. Sealing leaks in pipes and ducts, which means installing caulking in any leak in a heating or cooling duct, tightening or plugging any leaking joints in hot water or steam pipes, and replacement of washers in leaking water valves.

10. Efficient use of shading, which means using shades or drapes to block sunlight from entering a building in the cooling season, to allow sunlight to enter during the heating season, and to cover windows tightly at night during the heating season.

I. Heating supplier.

A person who sells or supplies home heating fuel (including and not limited to, No. 2 heating oil, kerosene, butane, and propane) to a customer for consumption in a residential building and who has elected to participate in MECS, pursuant to 6 MCAR § 2.2312.

J. Installation standards.

DOE Installation Standards pursuant to 10 C.F.R. § 456 subparts G and I (1979).

K. Material standards.

DOE Material Standards pursuant to 10 C.F.R. § 456 subparts G and H (1979).

L. Measures warranty.

A warranty in writing, by the manufacturer of the program measure, that the residential customer for whom the measure is installed, the contractor who installs the measure, and the supplier of the measure shall at a minimum be entitled to obtain, at no charge, appropriate replacement parts and materials for those measures found within one year from the date of installation or purchase to be defective

due to materials, manufacture or design. The warranty shall also provide that the defect shall be corrected, within two weeks after it is reported to the manufacturer.

M. MECS.

Minnesota Energy Conservation Service.

N. New customer.

A person who first becomes a customer after initial distribution of the Program Announcement but before January 1, 1985.

O. Non-regulated utility.

A public utility whose rates are not within the jurisdiction of the Minnesota Public Utilities Commission's ratemaking authority.

P. OCS.

Minnesota Office of Consumer Service.

Q. Participating utility.

A covered utility or a non-regulated utility which voluntarily participates in the Minnesota Energy Conservation Service.

R. Program announcement.

The MECS program information bulletin and utility offer of service to each customer.

S. Program measures.

All energy conservation measures, and renewable resource measures ~~and state measures~~ to be included in an MECS audit.

F&F 5, HE 16

T. Regulated utility.

A public utility whose rates are within the jurisdiction of the Minnesota Public Utilities Commission's ratemaking authority.

U. Renewable resource measures.

Renewable resource measures means the following measures installed in or connected to a residential building:

1. Solar domestic hot water systems (DHW).

Equipment designed to absorb the sun's energy and to use this energy to heat water for use in a residential building

other than for space heating, including thermosiphon hot water heaters.

2. Passive ~~p~~solar space heating and cooling system.

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

a. Direct gain glazing systems.

The use of south-facing (+ or -45° of True South) panels of insulated glass, fiberglass, or other similar transparent substances that admit the sun's rays into the living space where the heat is retained. Glazing is either double-paned, or single-paned equipped with movable insulation

b. Indirect gain systems.

The use of panels of insulated glass, fiberglass or other transparent substances that direct the sun's rays onto specially constructed thermal walls, ceilings, rockbeds, or containers of water or other fluids where heat is stored and radiated.

c. Solaria/sunspace systems.

A structure of glass, fiberglass or similar transparent material which is attached to the South-facing (+ or -45° of True South) wall of a structure which allows for air circulation to bring heat into the residence, and which is able to be closed off from the residential structure during periods of low solar insolation.

d. Window heat gain ~~retardants~~ and/or loss.

Those mechanisms which significantly reduce summer heat gain or wintertime heat loss through ~~South-facing (+ of 45° of True South)~~ windows by the use of devices such as awnings, insulated rollup shades (external or internal), metal or plastic solar screens, or moveable rigid insulation.

3. Wind energy devices

Equipment that uses wind energy to produce energy in any form for personal residential purposes.

4. Replacement solar swimming pool heaters.

Devices which are used solely for the purposes of using the sun's energy to heat swimming pool water and which replace a swimming pool heater using electricity, gas or another fossil fuel.

5. Active solar space heating.

Equipment designed to absorb the sun's energy and to use this energy to heat living space by use of mechanically forced energy transfer such as fans or pumps.

HE 13
F&F 4

V. Residential building.

Any structure used for residential occupancy including any building containing at least one, but not more than four, dwelling units, and: has a system for either heating or cooling living spaces. However, this definition does not include: new buildings to which final standards under Sections 304(a) and 305 of the Energy Conservation and Production Act (42 U.S.C. 6801 et seq) apply.

~~W. States measures.~~

F&F 5
HE 16

~~State measures are the following measures in or with respect to a residential building:~~

~~1. Insulated window and glass coverings.~~

~~A device with a minimum R value of 2 which is designed to reduce heat losses through windows and doors.~~

~~2.--Vent damper for waterheaters.~~

~~A mechanical or thermally operated damper installed in a gas fired waterheater which:~~

~~a.--Is installed when a vent damper is installed in a furnace and the two appliances share a common chimney.~~

~~b.--Conserves energy by substantially reducing the flow of heated air through the chimney when the waterheater is not in operation.~~

~~3.--Positive fireplace shutoffs.~~

~~A manual shutoff device which can be utilized to produce a seal to inhibit the flow of air when a fireplace or fireplace stove is operating.~~

6 MCAR § 2.2302. Program promotion.

A. Program announcements.

1. Distribution.

a. Each covered utility shall send to all their customers a Program Announcement by June 15 , 1981, and thereafter at least once every two years until January 1, 1985.

b. Each covered utility shall send a Program Announcement to each of its new customers within sixty (60) days after the date that the new customer first receives service.

c. Program Announcements shall be submitted to the agency for approval one month prior to the date that the utility intends to print the announcement. The agency shall approve the distribution of program announcements only if:

(1) The criteria of 6 MCAR § 2.2302A.2. have been met; and

(2) The information contained in the program announcement ~~represented~~ is presented in simple language.

2. Content.

a. The Program Announcement shall contain the following elements, at a minimum:

(1) A list of all program measures with an estimate of the savings in energy costs, expressed in percentages, which are likely to be produced by each measure in one year.

(2) A list of all energy conserving practices with an estimate of the savings in energy costs, expressed in percentages, which are likely to be produced by each practice in one year, and a statement that the practices are of low or no cost;

(3) An offer by the covered utility to provide the following services with a description of each:

(a) A program audit, in accordance with 6 MCAR § 2.2303.

(b) Installation arrangement services, in accordance with 6 MCAR § 2.2304B.

(c) Financing arrangement services, in accordance with 6 MCAR § 2.2304A.

(d) Contractor, lender and supplier lists in accordance with 6 MCAR § 2.2305.

The description of each service shall include information on how a customer may obtain these services, and the direct cost to the customer of obtaining these services;

(4) An offer to provide to each new customer upon request a copy of any program audit performed previously on the customer's present residence;

(5) The following disclosure:

"Energy savings depend on many factors. The estimates contained in the announcement are based on estimates for typical houses. Your costs and savings will be different if your house is a different size or if your energy using habits are different from those we assumed. The energy audit which we offer will provide more specific estimates for your house.";

(6) An explanation of the benefits of applicable federal and state energy tax credits;

(7) A description of the benefits and eligibility requirements of the Weatherization Assistance Program for Low Income Persons, 10 C.F.R. 440: (1980) <u>including the following statement: "Landlords may be eligible for these benefits under certain circumstances.";</u>

see HE 18 & F&F 6a

(8) The following statement:

"The results of this audit may be used by renters to see if their residence complies with existing state standards for rental property. Call the Minnesota Energy Agency at 296-5175 or toll-free 800-652-9747 for more information and what you can do to get your residence brought up to these standards."

b. The Program Announcement shall not contain:

(1) Advertising for sale, installation, or financing of any program measure or energy conserving practice by a particular person or company, listed or not; or

(2) Information regarding any product which is not a program measure or an energy conserving practice.

c. If a covered utility or participating heating supplier finances the sale or installation of program measures and energy conserving practices, it may describe its financial services.

d. The covered utility or participating heating supplier shall use the calculation procedures in Appendix A for the estimates contained in the Program Announcement. All estimates shall be based upon recent prices and appropriate climatological data for the customer's location. The price data will be taken from the survey conducted pursuant to 6 MCAR § 2.2303A.2.

6 MCAR § 2.2303. Energy audits.

A. Validation of audit procedures.

1. Alternative audits.

The agency shall develop a model program audit based on the calculation procedures in Appendix A for use by participating utilities and heating suppliers in the MECS. A participating utility or heating supplier may use an alternative audit if the alternative has been approved by the agency. The alternative audit will be approved if its results are within ± 20% of the results provided by the MECS Audit. To determine this, the Agency shall conduct five field tests of the alternative audit on five representative residences of different sizes and ages. The results of these audits shall be reviewed by the agency and compared to the results achieved by the MECS Audit. If the alternative audit does not meet this test, any necessary changes may be made in the audits procedures and five additional audits may be conducted and reviewed. ~~All alternative audits shall be submitted to the agency for validation by January 15, 19~~

2. Price information.

On a semi-annual basis each covered utility shall survey local fuel prices and prices for materials and installation of program measures for use in audit calculations on a form provided by the agency. The results shall be sent to the agency for verification on the 15 day of January and July, starting on July 15, 1981.

3. Subcontracting audits.

a. Participating utilities and heating suppliers may subcontrac with any auditor who has passed the certification exam pursuant to 6 MCAR § 2.2307, to perform the audits required by these rules. The subcontract may include

an indemnification clause concerning liability incurred by the utility from the subcontractor's actions or the audit performed.

b. Whenever possible covered utilities shall, instead of performing the required audits with their own employees, subcontract with local auditors who:

(1) have passed the certification exam pursuant to 6 MCAR § 2.2307; and

(2) have (or whose sponsoring organization has) a demonstrated community involvement, or capacity to generate customer participation, in the area where the audits are to be performed. The criteria used to determine whether an auditor (or his or her sponsoring organization) has a demonstrated community involvement shall be whether the person, organization or group has a history of energy or related community service in the area where the audits are to be performed. FoF 662

Not withstanding the above, no covered utility shall be required to enter into a subcontract with an auditor if it reasonably believes that the quality of the auditor's work would not be equivalent to what the covered utility could perform or if the charge for performance by the auditor is not competitive with other auditors in the area, or comparable areas, with whom the utility has subcontracted, . . . or with the cost of performance by the covered utility itself. FoF 663

c. An auditor proposing to subcontract pursuant to 6 MCAR § 2.2303A.3.b. may dispute a covered utility's refusal to subcontract by filing a complaint with the Agency. After

reviewing the complaint and receiving comments from both parties, the Agency shall determine whether the refusal was proper under the criteria and requirements of 6 MCAR § 2.2303A.3.b.

d. Any customer of a covered utility may request to have an audi performed by any auditor with whom the covered utility has subcontracted to perform audit services in the area in which the customer lives, pursuant to 6 MCAR § 2.2303 A.3.b. The covered utility may refuse the request only if:

1. the auditor refuses to accept the work; or
2. the covered utility has reason to believe that the auditor would be unable to complete the audit in accordance with the MECS rules or subcontract terms.

B. Scheduling of program audits.

1. Upon prior approval by the agency, a program audit may be offere in the program announcement by a participating utility or heatin supplier on a geographically limited ~~conditional,~~ but otherwise non-discriminating basis. Approval will be granted if the audit offer schedule allows every customer within the respective utility or heating supplier's service area an equal opportunity to receive a program audit, and if the audit offer schedule is consistent with 6 MCAR § 2.2303. In no case shall an expiration date be attached to a participating utility's audit offer. However, any covered utility which serves a city of the first class and offers audits on a geographic basis in that city must first offer the audits to customers in those neighborhoods that contain the largest number of people below the federal poverty guideline. If two or more covered utilities provide service to the same city of the first class, upon approval by the agency those utilities may enter into an agreement which provides that only one utility will offer the audits on the above priority basis. This agreement will not relieve either utility from responsi-

bilities of offering audits to all eligible customers.

2. Each covered utility shall provide a program audit to a customer:

   a. Within thirty (30) days of the customer's request if the audit offer is made on a geographically limited basis; ~~a conditional offer is made.~~

   b. Within sixty (60) days of the customer's request if the audit offer is not made on a geographically limited basis. ~~an unconditional offer is made.~~

3. Each participating utility and heating supplier shall submit to the agency, 45 days prior to the first offer of a program audit, a schedule which states when program audits will be offered and completed throughout the state.

4. Participating utilities and heating suppliers are prohibited from preconditioning a program audit upon the purchase or performance of any other audit.

C. Conducting the audit.

1. Each participating utility and heating supplier shall upon request, provide to each customer a program audit which covers all energy conserving practices and all program measures. In each program audit, a state certified auditor shall determine which of the energy conserving practices would save energy in the residence, explain and emphasize the importance of such practices and recommend that they be performed before the installation of any program measure. The auditor shall then determine the applicability of each program measure pursuant to 6 MCAR § 2.2303D.2 in that residence.

2. The auditor shall estimate energy savings and installation costs of each program measure using the calculation procedures in Appendix A or procedures approved pursuant to 6 MCAR § 2.2303. Furthermore, the auditor shall perform each of the following:

a. Take actual measurements or inspections of the building shell and of the space heating, space cooling, and water heating equipment;

b. Base economic calculations on the survey conducted pursuant to 6 MCAR § 2.2303A.2. for local fuel prices, and local prices for materials and installation of program measures, and also, include in the calculations typical local climate data for the customer's location;

c. Base calculation procedures for active solar domestic hot water and space heating systems on those contained in the HUD Intermediate Minimum Property Standards Supplement, Solar Heating and Domestic Hot Water Systems 4930.2, 1977 Edition; and

d. Base any cost and savings estimate for any applicable furnace efficiency modification to a gas or oil furnace or boiler on an evaluation of the seasonal efficiency of such furnace or boiler. This seasonal efficiency shall be calculated on an estimated peak (tuned-up) steady state efficiency corrected for cycling losses. This shall be done as follows:

(1) For oil furnaces or boilers, the steady state efficiency shall be derived by a flue gas analysis of measured flue gas temperature and carbon dioxide content.

(2) For gas furnaces or boilers, the steady state efficiency shall be derived from manufacturer's design data. If the manufacture's design data does not exist, then a flue gas analysis, as described in 6 MCAR § 2.2303C.2.d. shall be done.

3. The auditor shall calculate the energy index for the residence using the procedures in Appendix A.

4. Each customer shall be required to sign a release form prior to an audit of a furnace which uses as its primary source of energy any fuel other than the fuel source sold by the participating utility or heating supplier which employs the auditor. The release shall include the following statement:

"Since your home is heated by a source of fuel other than (identify the type of fuel supplier), you must sign this release form to allow us to audit your furnace. It will allow us to give you estimates of energy savings that may be available from making your heating appliances more efficient."

D. Technical criteria for calculating energy savings.

1. The following R-Values shall be recommended during the program audit and be used during the calculation procedure:

a. Ceiling insulation R-44

b. (1) Wall insulation R-11

(2) Foundation insulation R-11

c. (1) Floor insulation R-19

(2) Rim joist insulation R-19

2. The following criteria shall be used to determine if an estimate of cost and savings must be given for the particular program measure:

| Measure | Criteria |
|---|---|
| a. Replacement furnaces or boilers | The furnace is five(5) years or older and has a seasonal efficiency of less than 80%. |
| b. Flue opening modifications | The furnace combustion air is taken from a conditioned space. |
| c. Replacement central air conditioner | The building has a central air conditioner that is five (5) years or older. |

| | | |
|---|---|---|
| d. Ceiling insulation | - | The present level of ceiling insulation is R-30 or less. |
| e. Wall insulation | - | There is no insulation in a substantial portion of the exterior walls and the building is not a mobile home. |
| f. Floor insulation | | |
| (1) Floor | - | There is no insulation in the floor over an unconditioned space. |
| (2) Rim joist insulation | - | The rim joist is accessible. |
| g. Water heater insulation | - | The remaining useful life of the heater appears to be three years or greater and space is available around the water heater to install insulation. |
| h. Electric load management devices | - | The electric utility offers a residential rate which reflects any differences in the utility's cost of service between peak and off peak periods. |
| i. Clock thermostat | - | The residence has a thermostat or the existing furnance or central air conditioner is compatible with a clock thermostat. |
| j. Solar domestic hot water system | - | A site exists on or near the residence, which is free of major obstruction to solar radiation. |
| k. Passive solar direct or indirect gain glazing systems | - | The living space of the residence has either a South facing (+ or -45° of True South) wall or an integral South facing (+ or -45° of True South) roof, which is free of major obstruction to solar radiation. |
| l. Heat reflecting and heat absorbing window or door material | - | The affected rooms of the residence are air conditioned and the cooling degree days for the region exceed 700. |
| m. Passive solar solaria/ sunspace systems | - | The living space of the residence has a South-facing ground level wall, which is free of major obstruction to solar radiation. |

| | | |
|---|---|---|
| n. Passive solar window heat gain retardants | - | The living space of the residence has South-facing (+ or -45° of True South) window that is not shaded from summer sunshine. |
| o. Wind energy systems | - | The site has an estimated wind speed of greater than 10 mph and there is sufficient unrestricted access to the wind. |
| p. Active solar space heating- | | A site exists on or near the residence which is free of major obstruction to solar radiation. |

3. Every program audit addressing solar domestic hot water and active solar space heating systems shall include the following information:

   a. The square feet of the solar collector;

   b. The solar collector characteristics, including glazing materials and other solar collector materials;

   c. Any storage system needed, including the capacity of storage;

   d. Any freeze protection needed;

   e. The estimated percent of the water heating load to be met by solar energy;

   f. Any physical connections needed with existing heating systems;

   g. Any site preparation needed; and

   h. If the results are based on a simulation, the following disclosure or its equivalent:

      "The energy cost savings estimates you receive are based on systems which may be different from the ones you purchase. Also, these estimates were not determined using actual conditions but by using simulated measurements. Therefore, the cost savings we have estimated may be different from the savings which actually occur."

4. Every program audit addressing passive solar space heating systems shall include the following information:

   a. A general description and an illustration of the system;

   b. The estimated percent of the maximum heating requirements of the residence that could be met by the system;

c. The approximate dimensions of the system:

d. The method employed by the system to store heat, including the heat capacity for heat storage; and

e. The disclosure provided in 6 MCAR § 2.2303D.3.h.

5. Every program audit addressing wind energy device shall include the following information:

a. Installation cost estimates, based on the installation costs of a commercially available device with kilowatt ratings appropriate to the level of electricty consumed in the customer's residence;

b. The auditor's estimate of the average windspeed at the residen based on data available at the nearest wind measurement station.

c. The specifications of the device under consideration; and

d. Estimates of energy cost savings, based on average yearly wind speeds and the specification of the selected wind device.

E. Presentation of audit results.

1. Upon completion of the program audit the auditor shall provide all the following information on-site, in person, in writing to each customer:

a. An estimate of the total cost (materials and labor) of installation by a contractor expressed in a range of dollars, with a twenty (20) percent maximum range, of each applicable program measure addressed in the program audit;

b. An estimate of the total cost of installation by the customer expressed in a range of dollars, with a twenty (20) percent maximum range, of each applicable program measure, addressed in the program aduit. However, the auditor shall not provide an estimate to a customer of the cost of installation

by the customer of replacement central air conditioners, wall insulation, furnace efficiency modifications, devices associated with load management techniques, or wind energy devices;

c. An estimate of the savings in energy costs expressed in a range of dollars, with a twenty (20) percent maximum range, which occur during the first year from installation of each applicable program measures addressed by the program audit;

d. An estimate of the payback period, measured in years, for the cost savings of each of the measures installed individually;

f. The following disclosure:

"The procedures used to make these estimates are consistent with the Minnesota Energy Agency criteria for residential energy audits. However, the actual installation costs you incur and energy savings you realize from installing these measures may be different from the estimates contained in this audit report. Although the estimates are based on measurements of your house, they are also based on assumptions which may not be totally correct for your household.";

g. An estimate of the annual normal maintenance costs, if any, of each applicable program measure; and

h. Sample calculations of the effect of the federal and state energy tax incentives on the cost to the customer of installing one applicable energy conservation program measure and one applicable renewable resource program measure.

2. The auditor shall also present the following information to the customer during, or upon completion of, the program audit:

a. An explanation of the arrangement services, post-installation inspection requirement and consumer grievance procedures as established in 6 MCAR §§ 2.2304, 2.2306, and 2.2308,

with a brief description of how the customer can qualify for and use such services;

b. A copy of the most recent Master List of contractors, lenders and suppliers for the region, as issued by the Agency;

c. An explanation of the benefits of and eligibility requirements for the Weatherization Assistance Program for Low Income Person 10 C.F.R. § 440 (1980);

d. If the audit is of a rental property, a separate list of those improvements necessary to bring the residence in compliance with Minn. Stat. § 116H.129, subd. 3. (1978) and a statement describing remedies available to tenants for violations of those standards. If the presentation is not made to the tenant, the auditor shall give or mail a copy of this information to the tenant.

3. If the eligible customer is not at his or her residence at the time scheduled for presentation of the audit results or otherwise declines an in person presentation, the auditor is relieved of any obligation to deliver the results in person. In this case, the results shall be mailed to the customer.

F. Prohibitions.

1. An auditor shall not recommend or discuss any supplier, contractor or lender to any customer. The auditor may state whether the participating utility or heating supplier by whom he or she is employed installs or finances the sale or installation of the program measures, but shall not recommend that service.

2. The auditor shall not exclude any applicable program measures in the presentation of the audit to the customer;

3. An auditor shall not estimate or discuss with the customer the costs or energy cost savings of installing any product which is not defined as an energy conserving practice or a program measure.

4. The auditor shall not recommend fuel switching.

G. Required disclosure.

The auditor shall provide the customer with a written statement of any substantial interest which the auditor or the auditor's employer has, directly or indirectly, in the sale or installation of any program measure.

6 MCAR § 2.2304. Arrangement services.

A. Financing arrangement service. Each participating utility and heating supplier shall provide an arrangement service for financing the supply or installation of any program measure, upon request of a customer. This financing arrangement service shall consist of all the following:

1. Providing the customer with the most recent Master List of lenders, and an agency compiled list of other financial programs offered by federal, state or local governments, and explaining these financing programs to the customer;
2. Providing the customer with a standard credit application and offering to assist the customer with a standard credit application; and
3. Providing a service in order to further assist and answer any additional questions of the customer.

B. Installation arrangement service.

Each covered utility shall provide an arrangement service for the installation of any program measure, upon request of a customer:

1. For audited homes this installation arrangement service shall consist of:
   a. Providing a choice to the customer of either the most recent Master List of contractors willing to install measures within the price range that the auditor specifies, or providing the most recent Master List of contractors; and
   b. All the following:
      (1) Providing up to three (3) standard bid forms per measure recommended by the auditor and providing the customer with a choice of having the form filled in by either the customer or the auditor.

(2) Supplying the customer with written information on recommended measures to be installed; and

(3) Providing a service in order to further assist and answer any additional questions of the customer regarding the arrangement process or the actual bids, when received.

2. For non-audited homes, this installation arrangement service shall consist of all the following:

a. Providing the Master List of contractors;

b. Providing up to three (3) standard bid forms to the customer;

c. An offer to supply the customer with written information on various measures; and

d. Providing a service in order to further assist and answer any additional questions of the customer regarding the arrangement process or actual bids, when received.

C. Response time for services.

The participating utilities and heating suppliers shall provide the services described in 6 MCAR § 2.2304A. and B. at the time of the energy audit, for a customer requesting an energy audit. If an audit is not performed, the service shall be provided within twenty (20) days of a customer's request.

D. Prohibitions.

1. Participating utilities, heating suppliers and audit subcontractor shall not recommend any particular contractor, lender, supplier or program measure although participating utilities, ~~and~~ heating suppliers and audit subcontractors may inform customers of their own installation and supply services if they are on the most recent Master List.

2. Participating utilities and heating suppliers shall not arrange for financing or installation with any contractor, lender or supplier not on the most recent Master List.

3. Participating utilities and heating suppliers shall not provide arrangement services for measures which are not approved program measures.

E. Standardized bid forms.

The agency shall develop a standardized bid form for use pursuant to 6 MCAR § 2.2304. This form shall be the only one used by the participating utilities and heating suppliers for arranging installation under MECS.

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6 MCAR § 2.2305. Master list of contractors, lenders and suppliers.

A. Issuance of lists.

1. The agency shall prepare and maintain the Master List of the MECS suppliers, contractors and lenders. The agency shall provide notice through trade organizations to suppliers, contractors and lenders of the procedures for inclusion on the Master List for the MECS Program.

2. Application forms and listing criteria for businesses wishing to be on the Master List shall be available from the agency, participating utilities, and heating suppliers. These forms and listing criteria shall be made available at the time of publication of notice of procedures for inclusion on the Master List.

3. Within sixty (60) days following the receipt of an application for inclusion on the Master List, the agency shall evaluate the application pursuant to 6 MCAR § 2.2305 B. and either place the business on the Master List or inform the business, in writing, of the reasons for its exclusion from the list.

4. Every thirty (30) days after the publication of the first Master List, the agency shall issue revisions to the Master List which include any additions, deletions or information changes. These revisions shall be issued to all participating utilities and heating suppliers. Every six (6) months, a new Master List shall be published.

B. Eligibility requirements.

1. To be eligible for listing, contractors, lenders and suppliers must enter into a written agreement with the agency. (proposed change #6)

a. Contractors shall agree in writing with the agency to meet the following requirements for each arranged installation:

(1) Comply with the applicable DOE installation standards found in 10 C.F.R. 456 subparts, G, I and install only measures that are labeled as meeting DOE material standards;

(2) Install only measures that are covered by the measures warranty (except for caulking and weatherstripping);

(3) Enter into a written contract with each customer detailing the job to be performed, its costs and a statement that the installation will be in compliance with all applicable DOE material and installation standards. This contract shall be in simple language;

(4) Warrant in the contract that any defect in <u>design or manufacture of materials</u> ~~materials manufacture, design~~ or installation found within one year from the date of installation shall be remedied without charge and within two (2) weeks~~.~~, <u>except that where the defect is in a manufactured item a remedy shall be within two (2) weeks after the manufactured item is available to the contractor or supplier;</u>

(5) Maintain comprehensive general liability insurance covering:

(a) bodily injury; $100,000 per person
$300,000 per occurrence

(b) Property damage; $ 50,000 each occurrence
$100,000 aggregate; and

(6) Comply with all applicable federal, state and local laws;

(7) Participate in good faith in the conciliation conference when a complaint is made by a customer;

(8) Hold harmless from liability the participating utility or heating supplier in any contract between contractor and customer when the contractor is not a participating utility or a heating supplier. However, this hold harmless agreement shall apply only where any loss occurs due to the negligence of the contractor or supplier and/or materials supplied by the contractor or supplier and shall not apply to any loss resulting from the negligence of or the materials supplied by the participating utility or heating supplier; and

(9) Agree to notify the MECS inspection agency at the completion of the installation pursuant to 6 MCAR § 2.2306.

b. Suppliers shall agree in writing with the agency to meet the following requirements for each customer:

(1) Supply program measures which meet applicable DOE material standards;

(2) Provide, at a minimum, to any person who purchases a measure from the supplier, a warranty in writing that the person shall be entitled to obtain, within a two week period after notice by the customer to the supplier and at no charge, appropriate replacement parts or materials for those measures found to be defective within one year from the date of purchase due to a defect in materials, manufacture or design.

(3) Comply with all applicable federal, state and local laws;

(4) Have a method for informing customers that the supplier carries products which are program measures, that these

products have a measures warranty and are labeled as meeting the DOE material standards;

(5) Participate in good faith in the conciliation conference when a complaint is made by a customer.

c. Lenders shall agree in writing to meet the following requirements for each arranged financing.

(1) Not to take a security interest in real property that is used as a residence unless the customer acknowledges in writing that he or she is aware of the consequence of default on the loan;

(2) Permit a rebate on unearned finance charges and impose no penalities if a customer prepays a loan (either voluntarily or as a result of default). When prepayment is the result of default, the rebate shall be computed from the day of acceleration;

(3) Comply with all applicable federal, state and local laws; and

(4) Participate in good faith in the conciliation conference when a complaint is made by a customer.

2. Disclosure of unresolved complaints.

All businesses must inform the agency in their application for listing of the existence of any unresolved complaints against that business on file with the Consumer Division of the Minnesota Attorney General's Office or the Office of Consumer Services. Failure to report this information will result in exclusion from the Master List. The existence of three or more unresolved complaints against an applicant on file with the above agencies involving, but not limited to, the following subject matter shall result in exclusion from the Master List;

a. Misrepresentation of materials used in installation;

b. Improper installation of materials, based on manufacturer's or other standard installation procedure; or

c. False or misleading claims concerning energy savings to be produced by the measure.

C. Removal from the master list.

1. Any supplier, lender or contractor shall be removed from the Master List for violation of either the eligibility requirements in 6 MCAR § 2.2305B or the contract between the lender, contractor or supplier and agency as required in the same section.

a. Violations shall be reported to the agency by the post-installation inspectors and the mediators of consumer complaints. The post-installation inspectors and mediators shall also report to the agency whether the violation has been corrected or not, two weeks after the initial report of this violation.

b. Within one (1) week after the agency receives a report of violation, the agency shall send written notice to the contractor, lender, or supplier notifying the business of the reported violation. The contractor, lender, and supplier shall correct the violation within two weeks of mailing of the notice or within one week, send to the agency a written explanation as to why it is not a violation. The agency shall review the letter and the report of the inspector and will notify the contractor of its decision.

c. If the contractor, lender or supplier fails to correct the violation within two weeks after it has received notice of the agency's decision that a violation exists, it shall be temporarily delisted. This temporary delisting shall be in

effect for thirty (30) days. The agency shall then send a second notice to the contractor, lender, or supplier explaining the temporary and permanent delisting procedures and invite a written response from the business prior to the end of the thirty (30) day period. A copy of this notice shall be sent to all participating utilities and heating suppliers. If the violation concerns a contractor, the contractor may see the records of the reported violation. If no resolution is made within thirty (30) days of mailing of the notice the contractor, lender or supplier will be permanently de-listed.

2. Any supplier, lender or contractor permanently removed from the Master List shall not be relisted for a least six (6) months after being so de-listed. To be relisted, all violations under the program must be corrected and inspected and all other listing requirements must be met.

6 MCAR § 2.2306. Post-installation inspections.

A. Inspection procedures.

1. Each covered utility shall arrange to conduct the post-installation inspections of its customers required in this section. By ~~Dec. 15, 1989~~ June 15, 1981 each covered utility shall submit to the agency, for approval, its plans for conducting the inspections and for coordinating these inspections with the agency and the Office of Consumer Services.

2. No person shall conduct or perform an inspection unless he or she has been qualified by the agency, pursuant to 6 MCAR § 2.2307 C.

3. No inspector shall conduct an inspection if he or she has financial interest in the contractor whose work is to be inspected.

4. During the inspection, the inspector shall determine whether:

   a. The installation conforms with DOE installation standards;

   b. In the case of a consumer complaint, the complaint is justified.

5. An inspection report shall be developed by the agency. The inspector shall use this report to certify that the installation meets all DOE installation standards.

   Within five (5) days of the inspection, the inspector shall report to the customer, the contractor and the Agency whether or not any violations of the installation standards were found. If the Agency determines that a violation exists the contractor shall correct any violation within two (2) weeks of receipt of the report and shall arrange for a reinspection of the installation within one week after correction.

B. Mandatory inspections.

All installations of the following arranged measures shall be inspected within one week of installation:

1. Flue opening modifications;

2. Electric or mechanical ignition systems;

3. Wind energy devices; ~~and~~

4. Solar domestic hot water systems; and

5. Active solar space heating systems. HE 23

C. Random inspections.

1. Four of the first ten arranged installations made by each contrator of each of the following program measures shall be inspected:

a. Ceiling insulation;

b. Floor insulation; and

c. Wall insulation~~; and~~

~~d. Solar domestic hot water systems.~~ Prop. chgs #9

2. Ten percent of all utility arranged installations of each program measure listed in 6 MCAR § 2.2306C.1. shall be inspected each year. The inspections required in 6 MCAR § 2.2306C.1. shall count toward the fulfillment of this requirement.

3. At least one inspection shall be conducted each year of the arranged installations of the following measures for each contractor on the Master List:

a. Ceiling insulation;

b. Floor insulation;

c. Wall insulation;

d. Water heater insulation;

e. Storm or thermal windows;

f. Storm or thermal doors;

g. Replacement burner (oil); and

~~h. Solar domestic hot water systems; and~~ Prop. chges #10

~~i.~~ h. Replacement solar swimming pool heaters.

Before April 1, 1982, the utility, or its designated inspection agency, shall determine whether all listed contractors have been inspected at least once by that date. Any contractor whose work has not been inspected by that time shall then be inspected. An additional inspection shall be required for any contractor whose installation has been found in violation of these rules. This review shall be done annually thereafter.

D. Inspections as a result of consumer complaints.

1. Within two (2) weeks of the receipt by the Office of Consumer Services of any customer complaint concerning arranged installation of the measures listed in 6 MCAR § 2.2306B . and C.3., an inspection shall be conducted to determine the existence of any violations of these rules. Within five (5) days after the inspection, a copy of the inspection report shall be sent to the Office of Consumer Services.

2. All inspections conducted as a result of a consumer complaint shall be counted toward the fulfillment of the inspection requirement in 6 MCAR § 2.2306C.1.,2. and 3.

6 MCAR § 2.2307. Qualification procedures for auditors and inspectors.

A. Prohibition of discrimination.

No person shall be denied the right to become an auditor or inspector on the basis of race, religion, nationality, creed, sex, age or sexual preference.

B. Auditors.

1. Training.

a. No person shall be eligible for certification pursuant to 6 MCAR § 2.2307B.2., unless he or she has first participated in a training course which has been approved by the agency and which covers the subject matter tested in the auditors' certification examination.

b. Any present auditor with six (6) months experience who has completed twenty-five (25) audits, or any registered engineer or any architect shall be permitted to take an agency approved orientation session, in lieu of the requirements of 6 MCAR § 2.2307B.1.a.

c. Two months prior to the first public offer of the audit, the participating utility and heating supplier shall submit to the agency for approval a plan to develop and administer a program of in-service training for the continuing education of certified auditors. The agency shall approve a plan if it reviews and updates the material listed in 6 MCAR § 2.2307B.2.b., provides the auditors with additional technical information and the program measures and audit techniques and reviews the communications skills needed for the interaction with the ~~homeowner~~ customer.

2. Certification.

a. No person shall participate in the MECS Program as an

auditor , unless he or she has first passed a certification examination conducted by the agency.

b. The certification examination shall test for the following qualifications:

(1) A general understanding of the three types of heat transfer and the effects of temperature and humidity on heat transfer;

(2) A general understanding of residential construction terminology and components;

(3) A general knowledge of the operation of the heating and cooling systems used in residential buildings, including the need and provision for combustion air;

(4) A general knowledge of the different types of each applicable program measure, of the advantages and disadvantages and applications of each, and of the DOE installation standards;

(5) The capability to conduct the MECS energy audit including:

(a) A working knowledge of the energy conserving practices defined in this plan,

(b) The ability to determine the applicability of each of the program measures, and

(c) A proficiency in the auditing procedures for each applicable program measure established in 6 MCAR § 2.2303.

(6) A working ability to calculate the steady state efficiency of furnaces or boilers;

(7) An understanding of the nature of solar energy and its residential applications including:

(a) Insulation,

(b) Shading,

(c) Heat capture and transport, and

(d) Heat transfer for hot water;

(8) An understanding of the nature of wind energy and its residential applications including:

(a) Wind availability,

(b) Effects of obstruction,

(c) Wind capture,

(d) Power generation, and

(e) Interfaces with residential and utility power lines; and

(9) A working knowledge of building and fire codes related to the installation and safety of wood burning appliances.

c. These examinations shall be conducted by the agency and offered at the following times;

(1) Within two (2) days after the completion of each state-sponsored training course or orientation session, or

(2) Once a month, until February 1982, with a minimum of two examinations per year afterward.

d. Certification shall be valid for one year.

e. After one year, each auditor must be recertified. Recertification procedures shall be as follows:

(1) One month prior to the date of certificate expiration, the auditor shall attend a recertification course, as required by the agency. Attendance in this course shall recertify the auditor for the next year.

(2) The recertification course requirement for auditors shall be eliminated for any particular year, if the

agency determines that no changes were made in the MECS Program that year. Certification shall then be automatically renewed.

(3) This recertification shall occur annually, for the life of the program.

f. Any person who is certified to conduct Residential Conservation Service audits in another state shall not be required to take the training course established in 6 MCAR § 2.2307B.1., but shall be required to pass the Minnesota certification examination.

C. Inspectors.

1. Qualifications to conduct random inspections.

a. No person shall participate in the MECS Program as a general inspector unless he or she has been qualified. To become qualified each person must first take a training course which has been approved by the agency.

b. The training course shall cover the following subject matter:

(1) The measures listed in 6 MCAR § 2.2306C.3;

(2) Methodology to evaluate whether the installation of a measure conforms to DOE installation standards;

(3) The MECS recommended standards for R-values for each insulation measure, pursuant to 6 MCAR § 2.2303.D.1.

c. Each covered utility shall submit to the agency for approval a plan for the training of general inspectors, as required in 6 MCAR § 2.2307C.1.a, by ~~January 15, 1980~~ June 15, 1981. The agency shall approve a plan if it ensures coverage of the subject matter pursuant to 6 MCAR § 2.2307C.1.b.

d. Each covered utility shall notify the agency of each person qualified as a general inspector within two weeks after that person has been qualified.

2. Qualifications to conduct mandatory inspections.

a. No person shall participate in the MECS Program as a specialized inspector unless he or she has been qualified. To become qualified each person must first take training courses which have been approved by the agency. Each person shall only be qualified to inspect those measures for which that person has been trained.

b. The training courses shall cover:

(1) The following subject matter concerning flue opening modifications and electrical or mechanical ignition systems:

(a) Applicable state and federal codes and regulations;

(b) An understanding of gas appliances used in residential buildings, including basic system requirements, components and operation, and an understanding of potential malfunctions of gas appliances;

(c) An understanding of gas appliance controls and safety controls, including automatic gas valves, limit switches, and thermostats;

(d) An understanding of basic furnace and boiler circuitry, including electrical components, and the use of appropriate meters for testing gas appliance circuitry;

(e) An understanding of the purpose, general structure, and operational systems of vent dampers including the advantages and disadvantages of each type; an ability to service and install electrical, mechanical, and thermal vent dampers;

(f) An understanding of the purpose, basic system requirements and components, and operation of electrical or mechanical ignition systems; an ability to service and install the system, an understanding of schematic diagrams and potential malfunctions of the system;

(g) An understanding of the types of vents, draft diverters, and heat transfer components; an understanding of venting theory including ventilation air, dilution air, vent sizing, and venting installation procedures; an ability to perform leak and spillage checks, and to use instrumentation to measure carbon monoxide and carbon dioxide emissions from gas appliances;

(h) An understanding of proper combustion and proper flame characteristics and gas piping procedures; and

(i) An understanding of the methodology to evaluate whether the installation of the measures conform with DOE installation standards.

(2) The following subject matter concerning wind energy devices:

(a) An understanding of the structural characteristics of wind energy devices;

(b) An understanding of national and local codes governing the electrical interconnection between the wind energy device and the residential and/or utility electrical system; and

(c) Methodology to evaluate whether the installation of a wind energy device conforms with DOE installation standards.

(3) The following subject matter concerning solar domestic hot water and active solar space heating systems:

(a) The residential construction methods employed in the region and the characteristics of strutures that would preclude a safe and enduring solar installation;

(b) The applicable provisions of the HUD(Intermediate Minimum Property Standards Supplement), Solar Heating and Domestic Hot Water Systems 4930.2, 1977 Edition.

(c) The design, operation, installation and degradation of residential hot water and heating systems with which the solar devices will interconnect; and

(d) The connection of the solar devices into the existing residential systems, including testing for satisfactory performance of the solar devices and the modified system, according to the requirements of the HUD (Intermediate Minimum Property Standards Supplement), Solar Heating and Domestic Hot Water Systems 4930.2, 1977 Edition.

(e) Methodology to evaluate whether the installation of a solar domestic hot water or active solar space heating system conforms with DOE installation standards.

c. Each covered utility shall submit to the agency for approval a plan for the training of specialized inspectors as required in 6 MCAR § 2.2307C.2.a. by ~~January 15, 1980~~ June 15, 1981. The agency shall approve a plan if it ensures coverage of the subject matter pursuant to 6 MCAR § 2.2307.C.2

d. Each covered utility shall notify the agency of each person qualified as a specialized inspector, within two weeks after that person has been qualified.

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6 MCAR § 2.2308. Consumer grievance procedures.

A. Conciliation conference.

1. OCS shall be responsible for the mediation of customer complaints against lenders, suppliers, contractors, and participating utilities and heating suppliers which are acting as lenders, suppliers, or contractors under the MECS Program.

2. Before utilizing the OCS Mediation Service, customers shall be directed by the participating utilities and heating suppliers or OCS to first bring their complaint to the attention of the contractor, supplier, lender, or participating utility or heating supplier which is acting as a lender, supplier or contractor. ~~If the complaint is not resolved, the customer shall fill out a MECS customer complaint form supplied by OCS.~~ HE 30 Fgr

3. Within three working days of receipt of a written MECS customer complaint, an OCS mediator will contact the customer and the party complained against to ascertain their positions in regard to the complaint. If necessary, the OCS mediator shall conduct a conciliation conference between the parties in person or by phone.

4. OCS shall report to the Agency, the name of any lender, supplier or contractor which, after two weeks notice from OCS has failed:

   a. To respond to attempts to contact it; or

   b. To actively participate in good faith in the mediation process within 30 days of initial contact ; or

   c. To correct program violations or take remedial measures agreed to in mediation within two (2) weeks after agreement.

B. Annual report.

The Office of Consumer Services shall submit to the agency by May 15 each year, up to and including May 15, 1986, a report containing the following information for the twelve (12) month period ending the preceeding April:

1. The number and nature of complaints against suppliers, contractors and lenders which have been handled through the conciliation conference; and
2. The number and function of employees within OCS assigned to the MECS Program.

6 MCAR § 2.2309. Customer payments.

A. Customer billing.

1. Each covered utility and heating supplier, when billing the customer for any costs it incurred under the MECS, including arranged loans, shall identify and list the charges separately on the billing for the charges. The customer shall be allowed to include payment for those charges with payment for the utility bill.

2. When receiving a payment from a customer that includes payment for utility service or fuel and payment for any MECS service, the covered utility and heating supplier shall credit the payment to utility service or fuel first, and then credit the remainder to MECS Program charges, unless the customer specifies otherwise.

B. Loan payments.

1. If the lender agrees, a loan arranged by a covered utility pursuant to 6 MCAR § 2.2304A. may be repaid by the customer as part of the periodic utility bill. The utility may recover from the lender the cost incurred by the utility in carrying out this repayment.

2. If the lender agrees, any loan for the purchase or installation of program measures made or arranged by a heating supplier shall be subject to the following requirement:

a. The heating supplier shall allow the customer to repay the loan over a period of not less than three years, unless the customer chooses a shorter repayment schedule. The heating supplier may impose a minimum periodic payment of five dollars ($5).

b. A lump-sum payment of outstanding principal and interest may be

required by the lender upon default in payment by the customer.

c. No penalty shall be imposed by a heating supplier or a lender for payment of all or any portion of an outstanding loan prior to the date that such payment would be due.

C. Termination of service.

No participating utility or heating supplier shall terminate or restrict utility or fuel service upon customer default or non-payment of any MECS Program charges and loans.

6 MCAR § 2.2310. Utility supply, installation and financing.

A. Survey of utilities.

1. Each covered utility which supplies or installs any program resource measure:

a. Shall be listed as a supplier or contractor pursuant to 6 MCAR § 2.2305, in the same manner and subject to the same requirements as any other supplier or contractor;

b. Shall charge fair and reasonable prices for the supply or installation of program measures;

c. Shall not discriminate unfairly among eligible customers in undertaking the above described activities.

2. Beginning in June, 1981, the agency shall conduct an annual survey of prices charged for the supply or installation of goods and services comparable to those the covered utilities supply or install. If the agency determines that the prices charged by covered utilities for the supply and installation of program measures are significantly different from the typical local prices and interest rates disclosed in the agency's survey, or the agency receives complaints from contractors or suppliers regarding the prices, the agency shall notify the covered utility of disparity in prices and request a written justification with supporting documentation. This documentation with copies of the survey shall then be sent to the Minnesota Attorney General's Office, Anti-Trust Division.

B. Financing.

Whenever a covered utility undertakes to finance its own lending program for program measures through financial institutions, the utility shall seek such funds from institutions located in the area

covered by the lending program.

However, if the covered utility determines that this limitation is disadvantageous to its customers, or not feasible, the limitation shall not apply.

6 MCAR § 2.2311. Reporting and recordkeeping.

A. Annual report.

Each covered utility and heating supplier shall submit to the agency by May 15 of each year up to and including May 15, 1986, a report containing the following information for the twelve (12) month period ending the preceeding April:

1. The approximate number of customers in its system and, if available, the percentage of that number for whom the covered utility or heating supplier provides the primary heating fuel;
2. A copy of the program announcement;
3. The number of requests for each of the following services as well as the number of requests fulfilled:
   a. Program audit,
   b. Installation arrangement,
   c. Financing arrangement, and
   d. Billing service for repayment of loans;
4. The number of installations of program measures installed by, supplied by, or financed by the covered utility or heating supplier;
5. The number and results of post-installation inspections, including description of violations;
6. The number and function of employees assigned to the program; and
7. The costs incurred, including that portion of the cost paid by individual customers for services received and that portion paid by all ratepayers, in providing each type of the following services:
   a. the program audit,
   b. installation arrangement,
   c. loan arrangement, and
   d. post-installation inspections.

B. Recordkeeping requirements.

1. Each covered utility and heating supplier shall keep the following records which shall be kept for the periods indicated:

   a. For five (5) years from the date of the program audit, the name and address of each customer who receives a program audit;

   b. For five (5) years from the date of the program audit, a copy of the data collected and the estimated cost and savings information for each customer who receives a program audit.

   c. For five (5) years from the date of the request, each request for a furnace audit;

   d. For five (5) years from the date of the arrangement, the name and address of each customer for whom installation or financing of measures was arranged; and

   e. For two (2) years from the date of the program audit, the total amount and cost of fuel purchased for the period of twelve months prior to and twelve months following each audit. This information is only required for those utilities and heating suppliers which supply the primary heating fuel to the customer.

2. This information shall be made available to the agency upon request.

6 MCAR § 2.2312. Heating suppliers.

A. Any heating supplier may apply to the agency to participate in the MECS Program.

B. Any heating supplier or association of heating suppliers may apply to the agency for a waiver of any requirement of this plan, except those listed in 6 MCAR § 2.2312C. All waivers that do not substantially limit either thedelivery of services described in this plan or the conservation potential of the program shall be approved by the agency.

C. The following requirements of these rules shall not be waived:

1. The calculation procedures in Appendix A and the ban on advertising in program announcements offered, as established in 6 MCAR § 2.2302A.2.b.

2. The reporting and recordkeeping requirements, pursuant to 6 MCAR § 2.2311.

3. The on-site energy audit, pursuant to 6 MCAR § 2.2303.

4. The arrangement service for the financing of program measures, pursuant to 6 MCAR § 2.2304A., C., and D.

5. The distribution of Master Lists developed, pursuant to 6 MCAR § 2.2305.

6. The offer of the consumer complaint process, pursuant to 6 MCAR § 2.2308, and

7. The exclusive use of certified auditors, pursuant to 6 MCAR § 2.2307.

D. Any participating heating supplier may voluntarily withdraw from this program after completing all outstanding services offered to its customers.

E. A participating heating supplier which does not provide MECS services or does not comply with the requirements listed in 6 MCAR § 2.2312C., shall be excluded by the agency from participating in the MECS Program.

6 MCAR § 2.2313. Non-regulated utility program.

A. Any non-regulated utility may apply to the Agency for inclusion in the MECS Program.

B. A non-regulated utility or an association of non-regulated utilities may apply for a waiver of any requirements in this rule, except as noted in 6 MCAR § 2.2313C. All waivers that do not substantially limit either the delivery of services listed or the conservation potential of the program shall be approved.

C. The following requirements of these rules shall not be waived:

1. The on-site program audit, pursuant to 6 MCAR § 2.2303.

2. The arrangement services for the financing of program measures, pursuant to 6 MCAR § 2.2304 A., C., and D.

3. The distribution of Master Lists developed pursuant to 6 MCAR § 2.2305.

4. The offer of the consumer complaint process, excluding post-installation inspections, pursuant to 6 MCAR § 2.2308.

5. The exclusive use of certified auditors, pursuant to 6 MCAR § 2.2307.

D. The following requirements of this rule shall not be required for non-regulated utilities:

1. Program Promotion, pursuant to 6 MCAR § 2.2302.

2. Post-installation Inspection Services, pursuant to 6 MCAR § 2.2306.

3. Customer Payments, 6 MCAR § 2.2309 A. and B.

4. Reporting and Recordkeeping, pursuant to 6 MCAR § 2.2311.

E. Any participating non-regulated utility may voluntarily withdraw from this program after completing all outstanding services offered to its customers.

F. A participating non-regulated utility which does not comply with the requirements listed in 6 MCAR § 2.2313 C. shall be excluded

by the agency from participating in the MECS Program.

# Appendix A

## Procedures for Calculating Energy Savings for Program Measures and Practices

The following procedures shall be the basis for calculating energy savings for program measures and practices for the program announcements.

.A. Energy Conserving Measures

1. General energy savings equation
The following equation will be used to calculate energy savings for the practices and measures listed below, except for those that are already termed in E.

Equation #1. $\Delta E = \frac{\Delta H \times D \times 20.4}{N \times V}$

Where

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

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

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

N = The seasonal operating efficiency of the heating system.

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

2. Caulking

Equation #2. $\Delta H = .018 \times I \times Vol$

Where

I = change in infiltration rate in air changes per hour

Vol = volume of heated space in cubic feet

3. Weatherstripping
Use equation #2

4. Furnace efficiency modifications

a. Replacement furnaces or boilers.

Equation #3. $\Delta E = E_h \left(1 - \frac{N_o}{N_1}\right)$

b. Furnace replacement burner. ($\Delta E$ is given as a range)

Equation #4. Low estimate of $\Delta E = .10E_h$

High estimates of $\Delta E = .18E_h$

c. Flue opening modifications. ($\Delta E$ is given as a range)

Equation #5. Low estimate of $\Delta E = .07E_h$
High estimate of $\Delta E = .10 E_h$

d. Install electronic ignition system

(1) If pilot is turned off during the summer.

Equation #6. $\Delta E = \frac{3600F_p}{V}$

(2) If pilot is left on in the summer.

Equation #7. $\Delta E = \frac{7300F_p}{V}$

Where

$E_h$ = Total annual energy used for space heating, in units of fuel.
$N_o$ = The seasonal operating efficiency of the existing heating system.
$N_1$ = The seasonal operating efficiency of the proposed heating system.
$F_p$ = Rate at which pilot uses energy, in Btu per hours. (Typically 800 to 1000 Btu per hour).
V = Heating value of the fuel type in Btu per unit of fuel.

5. Replacement central air conditioner

Equation #8. $\Delta E = E_c \left(1 - \frac{PSE}{NSE}\right)$

Where

$E_c$ = Annual energy used by existing central air conditioner, in units of fuel.
PSE = Present seasonal efficiency.
NSE = New (proposed) seasonal efficiency.

6. Ceiling insulation

Equation #9. $\Delta H = \left(\frac{1}{R_o} - \frac{1}{R_1}\right) A$

Where

$R_o$ = Total R-value in present condition.
$R_1$ = Total R-value of proposed condition.
A = Area for which additional insulation is being proposed.

7. Wall insulation
Use equation #9 for above grade walls.

8. Floor insulation
Use equation #9.

9. Duct insulation

Equation #10. $\Delta E = \frac{\left(\frac{1}{R_o} - \frac{1}{R_1}\right)(T_2 - T_1)\ A \times HRS}{N\ V}$

Where
$R_o$ = The total R-value of the ducts before improvement.
$R_1$ = The total R-value of the ducts after improvement.

$T_2$ = Average temperature of air inside ducts during an on cycle of the heating system.
$T_1$ = Average temperature of the unconditioned space the ducts pass through.
A = Duct area for which insulation is proposed.
HRS = Number of hours the heating system operates in a heating season.
N = Seasonal operating efficiency of the heating system.
V = Heating value of fuel in Btu per unit of fuel.

10. Pipe insulation

Equation #11. $$\Delta E = \frac{(Q_1 - Q_o)\ L \times HRS}{NV}$$

Where
$Q_1$ = Heat loss in Btu/hr. ft. before improvement
$Q_o$ = Heat loss in Btu/hr. ft. after improvement
L = Length of uninsulated pipes in unconditioned space.
HRS = Number of hours per year the heating system operated in a heating season.
N = Seasonal operating efficiency of the heating system.
V = The heating value of the fuel in Btu per unit of fuel.

11. Water heater insulation

a. If water heater is in an unconditioned space.

Equation #12. $$\Delta E = \frac{8760A\ (\frac{1}{R_o} - \frac{1}{R_1})\ (T_w - T_a)}{N_r V}$$

b. If water heater is in a conditioned space.

Equation #13. $$\Delta E = \frac{H \times A \times (\frac{1}{R_o} - \frac{1}{R_1})\ (T_w - T_a)}{N_r V}$$

Where
$R_o$ = Total R-value of the water heater before improvement.
$R_1$ = Total R-value of the water heater after improvement.
$T_w$ = Hot water temperature.
$T_a$ = Average air temperature of area surrounding water heater.
$N_r$ = Recovery efficiency of water heater.
V = Heating value of fuel type in Btu per unit of fuel.
H = Number of hours per year that the outside temperature is above 65°F.

12. Storm and thermal windows

Equation #14. $$\Delta H = (U_o - U_1) \times A$$

Where
$U_o$ = The U-value of the existing window assembly.
$U_1$ = The U-value of the proposed window assembly.
A = The area of the window assembly.

13. Storm and thermal doors
Use equation #14 where:
$U_o$ = The U-value of the existing door assembly.
$U_1$ = The U-value of the propsed door assembly.
$A$ = The area of the door assembly.

14. Heat reflective and heat absorbin window or door material.

Equation #15 $$\Delta E = \frac{A \times F_{ss} \times F_{es}}{N_{ac}}$$

Where
$A$ = Area of glazing
$F_{ss}$ = Summer shading factor
$F_{es}$ = Glazing orientation factor
$N_{ac}$ = Seasonal efficiency of the air conditioning system.

15. Load management
Each utility offering such system will provide $\Delta E$ according to the particular system that the utility offers.

16. Clock thermostats
Energy savings will be given for a single 8 hour night setback.
Equation #16a $\Delta E = .07E_h$ for $5^oF$ setback
Equation #16b $\Delta E = .10E_h$ for $10^oF$ setback
Equation #16c $\Delta E = .11E_h$ for $15^oF$ setback

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

17. Solar domestic hot water

Equation #17 $\Delta E = SSF \times E_{hw}$

Where
SSF = Solar saving fraction = fraction of hot water supplied by the solar system. (Target SSF = .7)
$E_{hw}$ = Annual energy used for heating domestic hot water, in millions of Btus,

18. Passive solar systems

a. Direct gain glazing, indirect gain-water well storage, indirect gain--trombe wall storage.

Energy savings for 100 square feet of double glazing with R-8 night insulation: ($\Delta E$ is given as a range)

Equation #18 $$\Delta E = \frac{10 \times PSF \times F_o}{N}$$ High estimate

$\Delta E = .6 \times$ High estimate Low estimate

b. Indirect gain-thermcsiphon air panel

Energy savings for 100 square feet of panels:

Equation #19 $\Delta E = \frac{3.5 \times PSF \times F_o}{N}$ High estimate

$\Delta E = .7 \times$ high estimate Low estimate

c. Sunspace systems

Energy savings for 100 square feet of vertical double glazing:

Equation #20 $\Delta E = \frac{5 \times PSF \times F_o}{N}$ High estimate

$\Delta E = .6 \times$ High estimate Low estimate

Where
$\Delta E$ is in million of Btu
PSF = Prime Solar Fraction, estimated by auditor.
$F_o$ = Orientation Factor, from tables
N = Heating system seasonal efficiency

d. Window heat gain retardants

Same as equation #14

19. Wind energy devices

a. Systems providing utility grade power that can be sold to the electric utility when the system provides excess power. A system will be chosen with an Annual Wind System Output (AWSO) equal to one half the current annual electric use.

Equation #21a Low estimate of $\Delta E = .8$ AWSO

High estimate of $\Delta E = 1.2$ AWSO

b. Systems providing variable voltage power for heating use only. A system will be chosen with an Annual Wind Systems Output (AWSO) equal to one half of the annual heat supplied by the space heating system.

Equation #21b Low estimate of $\Delta E = .8$ AWSO

High estimate of $\Delta E = 1.2$ AWSO

Where
AWSO = Annual Wind System Output in kwh

20. Replacement solar swimming pool heaters

Equation #22 $\Delta E = SSF \times E_{sp}$

Where
SSF = Solar Saving Fraction = Fraction of swimming pool heat supplied by the solar system. (Target SSF = .5)
$E_{sp}$ = Energy used to heat the pool for the months of May through September.

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

Equation #23 $\Delta H = 1.08 (Q_o - Q_1) A$

Where

$Q_o$ = The infiltration value in cubic feet per minute per square foot for the existing condition before improvement.
$Q_1$ = The infiltration value after improvement with a positive shut-off.
A = The cross sectional area of the flue or connector in square feet.

22. Install thermal shutters, shades, or draperies on exterior windows and glass doors.
Equation #14 will be used.

B. Energy conserving practices

1. Furnace efficiency maintenance and adjustments
   a. Periodic cleaning and combustion efficiency adjustments.
   Savings for gas conversion units will be estimated at up to 15%.
   Savings for gas-designed systems will be estimated at up to 5%.
   Savings for oil heating systems will be estimated at 5% to 15%.

   b. Periodic cleaning or replacing of filters in forced air systems.
   Savings will be estimated at 5% to 10%.

   c. Fan setting on forced air furnaces reduced to 80°F if possible.
   Savings will be estimated at up to 5%.

   d. Increase fan speed,
   Savings will be estimated at up to 5%.

   e. Reduce aquastat setting to 140°F between December 1 and March 1 and 120°F between March 2 and November 30 or other reduction as appropriate to individual boiler. Savings will be estimated at 5% to 10%.

2. Nighttime temperature setback,
Savings estimates will be the same as for clock thermostats.

3. Reducing thermostat settings in winter.
Savings will be estimated at 3% per °F reduction for 24 hours per day.

4. Raising thermostat settings in summer.
Savings will be estimated at 5% per °F increase for 24 hours per day.

5. Water flow reduction in showers and faucents.
Savings will be estimated at up to 40% of total energy used for domestic hot water.

6. Reducing hot water temperatures.
Savings will be estimated at about 10% for reducing temperature from 140°F to 120°F.

7. Reducing energy use when a home is unoccupied.

a. Reducing thermostat setting to 55°F when home is unoccupied for four hours or more. Use equation #16b.

b. Turning an air conditioner off when no one is home. Savings will be estimated as up to 25% of energy used for air conditioning.

c. Turning a water heater off when a home is vacant for 2 or more days. Savings will be estimated as 1/365 of water heater jacket losses for each day the heater is turned off.

8. Plugging leaks in attics, basements, and fireplaces. Savings will be estimated as up to 30%.

9. Sealing leaks in pipes and ducts. Savings will be estimated as up to $6 per month for fixing a dripping hot water peipe or faucet. Savings for patching leaks in ducts in unconditioned spaces will be estimated as up to 15% of the energy used for space heating.

10. Efficient use of shading.
Use Equation #14.

C. Energy Index

Energy Index=$E \times F_w$

Where:

E is energy content of all fuel (including electricity) used during the months of November thru April, in Btus.

Fw is a weather adjustment factor.
It is the ratio of the number of degree days in an average heating season (Nov. 1 thru April 30)
to the number of degree days for the heating season preceding the calculation.

APPROVED AS TO FORM AND LEGALITY

May 14 1981

WARREN SPANNAUS, ATTORNEY GENERAL

BY A. Theodore Mandell

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAY 14 1981
Joan Anderson Growe
Secretary of State

2:45 P.M.

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Adoption of Rules of the Minnesota Energy Agency Establishing the Minnesota Energy Conservation Service Program, 6 MCAR §§ 2.2300-2.2313.

ORDER ADOPTING RULES

The above-entitiled matter came on for hearing before Hearing Examiner Allan W. Klein on the 16th day of December, 1980, at 9:30 A.M., in the State Office Building Auditorium, St. Paul, Minnesota after proper notice required by Minnesota Statutes section 15.0412 was served upon all persons, associations, and other interested groups registered with the Minnesota Energy Agency for that purpose.

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

NOW, THEREFORE, IT IS ORDERED that these rules identified as 6 MCAR §§ 2.2300-2.2313, Establishing the Minnesota Energy Conservation Service Program are adopted this 7th day of April, 1981, pursuant to authority vested in me by Minnesota Statutes sections 116H.17 (1980), 116.08(a) (1978) and 116H.07(i) (1978).

STATE OF MINNESOTA

DIRECTOR OF Minnesota Energy Agency

STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL
ST. PAUL 55155

WARREN SPANNAUS
ATTORNEY GENERAL

ADDRESS REPLY TO:
720 AMERICAN CENTER BLDG.
150 EAST KELLOGG BOULEVARD
ST. PAUL, MN 55101
TELEPHONE: (612) 296-6030

April 23, 1981

Mr. Ted Grindal
Special Assistant Attorney General
G-25 Administration Building
St. Paul, Minnesota 55155

Re: Proposed MECS Rules - 6 MCAR § 2.2300-2313

Dear Ted:

Enclosed for your review, pursuant to Minn. Stat. § 15.0421, subd. 4e (1980) is the complete submission by the Minnesota Energy Agency ("MEA") of its proposed M.E.C.S. rules, 6 MCAR § 2.2300-2313. For your convenience, I have identified each separate document or exhibit by its corresponding letter from 1 MCAR § 1.202 of the rules of the Office of the Attorney General. Thus, the document marked A is the set of rules as adopted, etc.

Since the MEA does not have a board, there is no document C or F; there is no document N or Q because the rules were not sent to the Legislative Commission to Review Administrative Rules nor was there a petition involved.

Document D is the Notice of Intent to Solicit Outside Opinion, which is found at 4 S.R. 869 (November 26, 1979). Document L1 is the initial Chief Hearing Examiner's report; L2 is his follow-up report issued after the Agency submitted its changes to him. Documents T1 and T2 are both the Notice of Submission to the Attorney General and the Affidavit of Mailing of that notice.

Upon our review of this submission we found that Document H, the Affidavit of Mailing of the Notice of Hearing, had a clerical error in it. Instead of stating that the Notice of Hearing (Document G) had been served, the affidavit refers to a document unrelated to this rulemaking. This mistake is merely clerical, as

the proper notice was sent out on the date stated in Document H. So that you may verify this fact, we have also included the affidavit of Jodie Nelson, who mailed the Notice of Hearing and typed and mailed the Affidavit of Mailing.

If you have any questions, please feel free to contact me.

Very truly yours,

JAMES E. LACKNER
Special Assistant
Attorney General

720 American Center Building
150 East Kellogg Boulevard
Saint Paul, Minnesota 55101
Telephone: (612) 296-0151

JEL:cl
Encls.

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

Proposed Rules for the Establishment
of the Minnesota Energy
Conservation Service Program
6 MCAR §§ 2.2300-2.2313

AFFIDAVIT OF
JODIE NELSON

JODIE NELSON, having been first duly sworn, states as follows:

1. I am a secretary at the Minnesota Energy Agency ("MEA") and have been so employed for approximately one year. As part of my responsibilities, I sometimes type, prepare for mailing and mail, notice of hearings for MEA rulemaking purposes;

2. I performed a substantial amount of the clerical work on the proposed MECS rules. On November 13, 1980, I typed the Notice of Hearing for the MECS rules hearing and mailed copies of it to all the persons and organizations listed on the MEA's mailing list (the Notice of Hearing is contained in the general submission as Exhibit G);

3. On the same day I typed an affidavit of mailing, to verify that the copies of the Notice of Hearing had been mailed. (The Affidavit of Mailing is contained in the general submission as Exhibit H.) That affidavit, along with a copy of the Notice of Hearing was filed with the Office of Administrative Hearings (then called Office of Hearing Examiners) on November 21, 1980;

4. The Affidavit of Mailing (Exhibit H) incorrectly states that I mailed a "Notice of intent to prepare Minnesota Energy Agency list for future Rulemaking Hearings." Unfortunately, this is a clerical error. I mailed, and the affidavit should have so stated, the Notice of Hearing (Exhibit A) to all persons on the Agency's list;

5. This is verified by two separate facts. First, I have never mailed a "Notice of intent to prepare Minnesota Energy Agency list for future Rulemaking Purposes" to anyone. Second, the Affidavit of Mailing in Exhibit H states that a copy of the notice mailed by me is attached to it. The attachment to the affidavit is a copy of the Notice for Hearing (Exhibit G). Both were stamped "Received" at the Office of Administrative Hearings on the same day.

FURTHER AFFIANT SAYETH NOT.

Jodie Nelson

JODIE NELSON

Subscribed and sworn to before me

this 23rd day of April, 1981.

Karla V. Sand

KARLA V. SAND
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Commission Expires Jan. 26, 1986.

STATE OF MINNESOTA)
(ss.
COUNTY OF RAMSEY )

AFFIDAVIT OF SERVICE

Alan W. Klein, being first duly sworn, deposes and says that on the 11th day of February, 1981, at the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached Reports of the Chief Hearing Examiner and the Hearing Examiner upon the Minnesota Energy Agency by handing to and leaving the same with Alan R. Lessik, MECS Program Manager

Allan W. Klein

Subscribed and sworn to before me
this 12th day of February, 1981.

Susan C. Wojcik

SUSAN G. WOJCIK
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Commission Expires April 26, 1986

EA-81-001-AK

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Rules for the Establishment of the Minnesota Energy Conservation Service Program.

REPORT OF THE HEARING EXAMINER

The above-entitled matter came on for hearing before Allan W. Klein, Hearing Examiner, on December 16, 1980 in St. Paul. The hearing commenced at 9:30 a.m., and continued into the afternoon until all persons had been given an opportunity to be heard.

This is a rule-making proceeding, conducted pursuant to the Administrative Procedure Act, Minn. Stat. § 15.0411, et seq., to determine whether rules proposed by the Minnesota Energy Agency (hereinafter the "Agency") ought to be adopted.

The Agency was represented by James Lackner, Special Assistant Attorney General, and Alan R. Lessik, MECS (Minnesota Energy Conservation Service) Program Manager.

The Director of the Agency must wait at least five working days before taking any final action on the rules; during that period, this Report must be made available to all interested persons upon request.

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 4d (1980), this Report has been submitted to the Chief Hearing Examiner for his approval. If the Chief Hearing Examiner approves the findings of this Report, he will advise the Director of actions which will correct the defects and the Director may not adopt the rule until the Chief Hearing Examiner determines that the defects have been corrected. However, in those instances where the Chief Hearing Examiner identifies defects which relate to the issues of need or reasonableness, the Director may either adopt the Hearing Examiner's recommendations to cure the defects or, in the alternative, if the Director does not elect to adopt the recommendations, he may submit the proposed rule to the Legislative Commission to Review Administrative Rules for the Commission's advice and comment. Provisions relating to this submission to the Commission may be found in Minn. Stat. § 15.0412, subd. 4d (1980).

If the Director elects to adopt the recommendations of the Hearing Examiner and makes no other changes and the Chief Hearing Examiner determines that the defects have been corrected, then the Director shall submit the rule to the Attorney General for review of form and legality. If the Director makes changes in the rule other than those recommended by the Hearing Examiner, then he shall submit the rule, with the complete record, to the Chief Hearing Examiner for a review of the changes before adopting it and submitting it to the Attorney General. Procedures relating to this subsequent review by the Chief Hearing Examiner are set forth in Minn. Stat. § 15.0412, subd. 4e (1980).

When the Director submits the rule to the Attorney General, he shall give notice on the day of submission to all persons who requested that they be informed of the submission to the Attorney General.

Based upon all the testimony, exhibits and written comments, the Hearing Examiner makes the following:

## FINDINGS OF FACT

### Procedural History

1. On November 26, 1979, the Agency published a Notice of Intent to Solicit Outside Opinion at 4 State Register 869 (Agency Ex. 10). No written responses were received.

2. On September 29, 1980, the Agency filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules.
(b) The order for hearing (with hearing to be held on November 12).
(c) The Notice of Hearing (November 12 date)
(d) A statement of the number of persons expected to attend the hearing and estimated length of the Agency's presentation, along with the names of Alan Lessik and James Lackner as Agency representatives.
(e) Certification of length of three documents proposed to be incorporated by reference.

3. On October 16, 1980, the Agency refiled revised versions of the Order and Notice, indicating a hearing date of December 16, 1980. In addition, new versions of all the other documents listed in Finding 2 were refiled. Finally, the October 16 filing also contained copies of certain Federal rules which the Agency desired to incorporate by reference into its proposed rules.

4. On October 29, 1980, the Agency submitted a copy of a set of Federal guidelines which it desired to incorporate by reference, and on that same date, the Chief Hearing Examiner issued an Order approving the incorporation of the Federal rules and guidelines.

5. On November 3, 1980, the Notice of Hearing and the proposed rules were published at 5 State Register 698. In addition, at 5 State Register 723, the Agency published a Notice of Intent to adopt the proposed rules as temporary rules until the final rules became effective.

6. On November 13, 1980, the Agency mailed the Notice of Hearing to all persons and associations who had registered their names with it for the purpose of receiving such notice. The affidavit of mailing, Agency Ex. 4, states that the document actually mailed was not the Notice of Hearing, but on November 14, the Office of Administrative Hearings did receive a copy of the Notice of Hearing in an envelope addressed to a person who had registered her name with the Agency for the purpose of receiving such notices. Therefore, despite the language of the Affidavit of Mailing, it is found that it was the Notice of Hearing which was mailed on November 13.

7. On November 21, 1980, the Agency filed the following documents:

(a) The Notice of Hearing as mailed.
(b) The Agency's certification that its mailing list was accurate and complete.
(c) The affidavit of mailing the Notice to all persons on the Agency's list.
(d) The Statement of Need and Reasonableness.
(e) The names of Agency personnel who would represent the Agency at the hearing.
(f) A copy of the State Register containing the proposed rules.

All of the above documents were available for inspection at the Office of Administrative Hearings from the date of filing to the date of hearing.

8. At the hearing, the Agency distributed a list of 13 amendments to the rules as published. This list contains changes which, for the most part, are

technical corrections of typographical errors in the published rules. One of the amendments, however, was a substantive amendment and will be discussed more fully below. After the hearing, the Agency submitted a lengthy response (Pub. Ex. 39) to a number of the comments made at the hearing or in writing and also submitted a final comment on certain of the other public suggestions (Pub. Ex. 47). Both contained proposed changes to the rules made in response to public comments and they will be discussed, as necessary, below.

9. The record remained open until January 5, 1981 for the receipt of written comments and statements, the period having been extended by Order of the Hearing Examiner to 20 calendar days following the hearing. Pursuant to a request from the Hearing Examiner, the delivery date of this Report was extended by the Chief Hearing Examiner to February 11, 1981.

Federal Action and Statutory Authority.

10. In 1978, Congress passed the National Energy Conservation Policy Act. Title II of that Act contains a residential energy conservation program. That Title was amended in 1980 by the Energy Security Act. The structure of the Agency's proposed rules is generally mandated by those two Federal statutes. Various rules adopted by the Department of Energy (hereinafter "DOE") set forth very detailed requirements for the states to follow. The basic DOE rules for state programs were promulgated on November 7, 1979, at 44 Federal Register 64602, and additional rules were promulgated on August 1, 1980, September 24, 25 and October 8, 1980. Taken together, the Federal statutes and rules do not leave the states much flexibility in determining the content of their own rules.

11. The Minnesota Legislature responded to this comprehensive Federal scheme by enacting Minn. Stat. § 116H.17 (1980), which provides:

> The director of the energy agency, in cooperation with the director of consumer services, shall develop the state plan for the program of energy audits of residential and commercial buildings required by 42 United States Code, section 8211 et seq. The consumer services division and the attorney general are authorized to release information on consumer complaints about the operation of the program to the energy agency.

There is a very close relationship between the State plan referenced above and these proposed rules. The State plan was submitted to DOE in June of 1980 and was approved by DOE in October. The plan has been rewritten into a form more typical of rules, omitting some unneeded material, but these rules are essentially the same as the State plan. Additional rulemaking authority is contained in Minn. Stat. § 116H.07(1) and 116H.08(a). It is found that the Agency does have statutory authority to adopt the proposed rules.

Rule-by-Rule Analysis

12. These rules have received extensive review, both before the hearing and after. They are the product of an advisory committee which met monthly in early 1980. At the hearing, numerous individuals and groups presented their views. Following the hearing between 20 and 30 sets of comments were received. The Agency's Statement of Need and Reasonableness was over 100 pages in length.

This Report will not discuss each rule, or subsection. Neither will it discuss each comment received. Rather, it will focus on those provisions which:

(a) Received meritorious public comment suggesting they were unneeded or unreasonable or beyond the Agency's statutory authority, or

(b) The public noted a need for an amendment, or

(c) The Examiner believes the provision raises questions about compliance with Minn. Stat. Ch. 15 or the rules of the Office of Administrative Hearings.

Persons or groups who do not find their particular comments addressed below should know that the Examiner has read and considered each and every suggestion. Except as specifically noted below, the Examiner finds that the Agency's proposed rules have been shown to be both needed and reasonable.

13. Rule 2301 contains definitions.

Paragraph U. is a list of renewable resource measures which are included in the program. It includes such items as solar domestic hot water systems, wind energy devices, solar swimming pool heaters, and passive solar space heating and cooling systems. A substantial amount of testimony at the hearing, and written comments, urged the addition of active solar space heating to this list.

Darryl Thayer pointed out that there is a popular solar space heating panel, which has been developed with government funds, and which would qualify under the existing rule as a passive solar space heating measure. Its seasonal output can be doubled with the addition of a small, 30-watt blower. That blower, however, moves it from the category of "passive" to the category of "active", and it would no longer qualify under the existing rule. Thayer believed that the rule's treatment of such an improvement was unreasonable.

In posthearing comments (Pub. Ex. 39, pp. 12-13), the Agency reversed its position and urged that the rule be amended to add the category of active solar space heating to paragraph U. of the definitions, and that other rules be amended to reflect the change. The Agency stated that the addition of this measure would not significantly increase the time or cost of the audit because the existing rule already requires the auditor to collect data for solar domestic hot water heating and passive solar and discuss such measures with the customer.

The Agency has proposed specific language to effectuate this change, and the Examiner finds that it is both needed and reasonable. The Examiner further finds that this change is not "substantially different" according to the standards set forth in 9 MCAR § 2.111. The same findings are reached with regard to the related changes to other rules which are set forth on pages 13 and 14 of Pub. Ex. 39.

added p.1-10

14. Public comments suggested that paragraph U. be further expanded to include biomass and geothermal energy sources. The Agency responded by declining to make the suggested changes because it did not have enough information to evaluate the claims for such systems, but that it would be reviewing these rules in a year to determine whether additional changes were warranted, and would consider these items at that time. The Agency also stated that the additions would be significantly different from the existing rule because they would require significant new auditor training and significant changes to the rule. The Examiner believes that the rule, without the addition of biomass or geothermal, has been demonstrated to be both needed and reasonable.

no such addition p.1-10

15. One of the most controversial parts of the rule relates to the scope of the program. Paragraph V. essentially defines which types of residences are covered by the program. It defines "residential buildings" to mean:

> Any structure used for residential occupancy including any buildings containing at least one, but not more than four, dwelling units, and: (sic) has a system for either heating or cooling living spaces. However, this definition does not include: (sic) new buildings to which final standards under sections 304(a) and 305 of the Energy Conservation and Production Act (42 U.S.C. 6801 et seq.) apply.

The definition includes single family dwellings, duplexes, triplexes and fourplexes, as well as any other buildings containing at last one but not more than four dwelling units. It was the exclusion of larger apartment buildings which caused the controversy.

Groups such as the Urban Coalition of Minneapolis, the Minnesota Project, the Minnesota Tenants' Union, the St. Paul Tenants' Union, a number of neighborhood community councils, the Coalition for Affordable Housing, and others essentially argued that the program ought to be expanded to cover all types of dwelling units (aside from institutional buildings), and in particular that there be no limitation upon the number of dwelling units in a building. While it is difficult to summarize all of their arguments, the Examiner would characterize them as follows:

1. Since the bulk of the cost of this program will be borne by all utility ratepayers (because they will be included in the rate base), it is unfair to extend the benefits of the program to only certain of those ratepayers.

2. Low and moderate income people are more likely to live in large apartment buildings than are people in higher income categories. One of the benefits of the program will be a saving of energy (and money) to those who take advantage of it. It is particularly unfair to exclude low and moderate income people from participating in the program.

3. There is less incentive for a landlord to invest money in energy conservation than there is for a single family homeowner. Therefore, incentives such as this program (and others which are likely to be "piggybacked" with it) are particularly needed for apartment buildings.

4. There is nothing in Federal law or State law which prohibits expanding the program beyond four units.

5. Minnesota has the capacity, through the existing Maxi-Audit program, to handle large apartment buildings.

The Agency's response to these arguments was essentially as follows:

1. Congress, in enacting the 1978 law and the 1980 amendments, specifically limited the program to four units or fewer, but expressed an intent to expand the program at a later date. The Minnesota Legislature, when fashioning the State's implementation of the Federal program, referred to the Federal law, and thus adopted the Federal limitation. Therefore, the Agency does not have authority, either from Congress or the State Legislature, to expand the program.

2. If the Agency did have authority to expand the program, it would choose to treat large apartment buildings differently than it treats smaller buildings. It would provide a different kind of audit and different auditor training than is contemplated by the rules. The Agency expects DOE to promulgate rules in the near future for large buildings, and if the Agency were to expand the program at this point, it would have to go back and amend its rules to conform to the new Federal rules. Such a change in rules would create confusion.

3. The Agency recognizes that until both the Federal and State governments do adopt rules for large apartment buildings, it is true that persons who cannot participate in the program

will have to pay the cost (in their utility's rate base), but it is beyond the Agency's power to allocate the cost any differently because of Minn. Stat. § 216B.165, subd. 1 (1980), which directs that program costs be treated as current operating expenses and charged to all ratepayers.

The Examiner has analyzed all of the comments concerning this issue and finds that the Agency's proposed rule is both needed and reasonable without further expansion. It is clear to the Examiner that Cognress and DOE did, in fact, intend and adopt a "two-step" process. This can be seen from the definitions of "residential building" contained in § 210(9) of the 1978 Federal Act and the amendments to that section contained in § 541 of the 1980 Federal statute. Furthermore, when the Minnesota Legislature authorized the Agency to implement the Federal Act, the 1980 Federal amendments had not yet been passed. Therefore, when the Legislature, in Laws of Minnesota, 1980, Chapter 579, § 12, referred to "42 United States Code, § 8211 et seq.", they referred to the "old", or unamended, Act. Finally, the Examiner agrees with the Agency that it would be appropriate to have a different audit and a different procedure for large buildings than for small ones. For the above reasons, the Agency's rule is found to be both needed and reasonable without the changes recommended by the Minnesota Project and others.

16. Paragraph W. of the definitional rule contains three program measures which are "state measures", which means that they were not required by DOE, but rather were inserted by the Agency pursuant to authority from DOE to add particular program measures which appeared, in the judgment of the state agency, to be particularly appropriate in light of the climate, construction methods, and other factors unique to a particular state. The Agency has chosen to include three such measures in the proposed rule.

Ten utility comapnies filed a joint set of comments (hereinafter "Utility Joint Comments"), and noted that there was no discussion of these three state measures in the Agency's Statement of Need and Reasonableness. In addition, the Utility Joint Comments set forth objections to each of the three measures.

Based upon a review of the Statement of Need and Reasonableness, the Examiner finds that the Agency has failed to justify both the need for and the reasonableness of the three state measures contained in Paragraph W. There is only a brief mention of them at page 1-1, and nothing more was added during the Agency's presentation at the hearing. Therefore, in order to correct this defect, they must be deleted from the proposed rule. deleted P1-10

17. Rule 2302 deals with promotion of the Energy Conservation Service Program (hereinafter "ECS Program"). It sets forth a method whereby utilities are required to notify their customers of the existence of the program, and sets forth certain minimum requirements for the content of program announcements.

Paragraph A.1. contains minimum distribution requirements. The Urban Coalition of Minneapolis (Pub. Ex. 31) stated that the distribution schedule proposed by the Agency was too infrequent and recommended that program announcements should be required to be distributed more frequently, especially just prior to, or during, cold weather months.

Under the schedule outlined in the Rule, it would be possible for a utility to send only two notices to its customers: The first on or about March 15, 1981, and the second on or about March 15, 1983. The proposed Rule is the same as the federal rule, 10 C.F.R. § 456.306(a). The Agency stated, in its Statement of Need and Reasonableness:

The utilities will not be limited to this method of program promotion; all are considering other means of promoting the program. The Agency is working with other organizations such as the local energy awareness committees, the Jaycees, and agricultural exten sion services to do additional promotion as well as producing public service announcements for the media.

The Utility Joint Comments stated, in connection with another rule, "During the initial phases of the program, there will be an extraordinary amount of publicity about the program and its intended functions." In addition, numerous community-based organizations indicated that they would be publicizing the program within their own areas. The costs of mailing program announcements will be treated as a current operating expense of utilities and will be charged to all ratepayers (Minn. Stat. § 216B.165, subd. 1), and the Examiner believes that this must be borne in mind when evaluating an issue such as this. For that reason, and for the other reasons stated above, the Examiner finds that the Agency's proposed rule has been demonstrated to be reasonable.

MPIRG (Pub. Ex. 21) recommended that the program announcement be sent in a separate mailing, i.e., that it not be sent as a "bill stuffer". While this would be desirable, the Examiner does not believe that the Agency's rule can be said to be unreasonable without it, again because of the increased costs involved. Additionally, MPIRG recommended that the rule be amended to require the utility to send a program announcement to its customers when auditors will be in a given neighborhood or locale. Neighborhood-by-neighborhood sequencing of audits is permitted in another part of these rules. While it would be desirable to have such "targeted" announcements, it is found that the Agency's Rule is not unreasonable without them. This finding is based on cost considerations.

18. Paragraph A.2. deals with the content of the program announcement. While a number of suggestions were received for improvements to the Rule, the Agency has demonstrated the need for and reasonableness of it in its present form. However, the Agency might want to examine, in particular, recommendations from the Urban Coalition of Minneapolis (Pub. Ex. 31) aimed at improving subparagraphs (7) and (8). If such changes were adopted, they would not be "substantial changes".

19. Rule 2303 describes the centerpiece of this program - the energy audit. It is a lengthy rule and generated more controversy than any other. Each issue will be treated separately below.

20. The most controversial issue related to the question of who should perform the energy audits. The Agency's original rule only required that all auditors be state certified. State certification is one of the methods permitted by the DOE rule.

At the hearing, however, the Agency distributed a list of amendments, one of which would have amended Paragraph A.3. of this Rule so as to permit participating utilities and heating suppliers to subcontract with third parties for audits. Such third-party auditors would have to be state certified. At the hearing, MPIRG and numerous community-based organizations urged that the Rule be further amended so as to require the utilities to subcontract with state certified auditors "with a demonstrated community involvement in the RCS area where the audits are to be performed."

In its lengthy response to public comments (Pub. Ex. 39), the Agency indicated approval of the MPIRG proposal. The Utility Joint Comments (Pub. Ex. 43) supported the permissive amendment put forward by the Agency at the hearing but opposed the mandatory MPIRG proposal. A great deal of testimony was given at the hearing in support of the MPIRG amendment, and although there were several utility representatives in the audience, they elected to remain silent at the hearing. Therefore, their position was not known until they submitted their joint comments.

The rationale for requiring utilities to subcontract with third-party auditors who have demonstrated past community involvement can essentially be broken down into three major arguments: (a) They provide an existing core of trained auditors; (b) community-based organizations would have an incentive to promote the program; and (c) community-based organizations would provide follow-up to insure that conservation measures identified in the audits were actually carried out, and they would facilitate the installation of such measures. Each of these will be examined in greater detail below.

It became obvious from the evidence that community-based organizations have, in some cases, already undertaken extensive programs of energy audits in their neighborhoods. For example, the Self-Reliance Center (formerly the Center for Self-Reliance) in Minneapolis has conducted over 900 audits and one "client" who had her home audited by both a professional auditor and an auditor from the Center testified that the latter did a far more thorough job for her. One individual from the Suburban and Rural Hennepin County Weatherization Program testified that he had done over 300 audits himself, and now supervises a staff of six auditors who are performing 120 audits per month. In Montevideo, an organization has been doing audits but has stopped taking requests because of the backlog generated by a "overwhelming response". Darryl Thayer stated that he was aware of over 35 community-based organizations which are now conducting home energy audits. There was concern expressed regarding the ability of the utilities to meet the initial demand for audits, as well as the ongoing demand after the first "peak", without engendering delays between a request for an audit and its actually being performed. It was argued that utilizing this existing corps of trained individuals would reduce these delays. Finally, it was argued that because the Legislature has decreed that the home owner only pay a small fraction of the cost of audits (a maximum of $10), with the balance placed in the utility's rate base, existing auditors could not continue to offer their services (which cost over $100 per audit unless subsidized by a grant program) in competition with the $10 utility audits. It was feared that the price differential would, essentially put them out of business.

If community-based organizations were involved in the program, they would have an incentive to promote it, thereby leading to a higher response rate. It was pointed out that by individual contacts, community newspapers, and the use of existing community entities such as block clubs, these organizations have a network of communications which is far different than the utilities with their bill stuffers. In addition, some testified that particularly in low-income areas, there would be a greater level of trust of community organizations as opposed to utilities and that there are people who would not be willing to have a utility representative audit their home but would be willing to have someone from their own community do so.

Finally, and perhaps most importantly, it was argued that community-based organizations would be more likely than utilities to assure "follow-up" after the audit, and encourage people to actually install conservation measures. It is the actual installation of conservation measures that results in reduced energy demand, not the audit itself, and existing organizations have already developed a variety of methods to assist people in installing such measures. For example, many already offer training for do-it-yourself installation. Many offer group buying and group contracting to reduce costs. Some have tools which they lend out at little or no cost. All of these, it was argued, demonstrated a greater sensitivity to low-income persons than the utilities have demonstrated to date. In addition, it was argued that community-based organizations would be able to trade on existing trust levels in the community and would be able to use their communication facilities to generate community awareness of the practical aspects of installing conservation measures.

The Utility Joint Comments raised two objections to the proposal. First, they argued that mandated contracting of third parties would substantially increase the costs for both the administration and implementation of home energy audits; secondly, they argued that "There are any number of possible legal ramifications" which could arise from a rule that mandates contracting with certain auditors to the exclusion of others. Minnegasco, in separate comments (Pub. Ex. 45), stated that the decision to subcontract auditing ought to be left to the utilities who could employ whatever criteria they found necessary. Minnegasco stated that if the rule were to force utilities to contract exclusively with neighborhood groups, then the Agency would have to take on the responsibility of evaluating and weighing the selection criteria, a task which is beyond both its capability and its jurisdiction to accomplish.

In posthearing comments in support of the MPIRG proposal, the Agency stated that the testimony had convinced it that the proposal would strengthen the program without significantly changing it. It agreed that involving community-based organizations would increase the response rate and that the organizations have significant experience in weatherization. The Agency comments pointed out that the proposal did not force utilities to subcontrct exclusively with such organizations and that if various contract issues, such as cost, could not be resolved, then the subcontracting would not be required. Finally, the Agency pointed out that NSP has an advisory council with many members from communities and that experience has demonstrated the ability of the organizations to work with the utilities. In final comments (Pub. Ex. 47), the Agency stated that subcontracting with existing organizations would shorten response time and reduce costs. In fact, as one community auditor noted, such organizations are non-profit (Pub. Ex. 33).

Based upon a review of the record, the Examiner finds that the Agency's final proposal has been demonstrated to be both needed and reasonable in light of the overall goal of the program, which is to reduce energy demand in a cost-effective manner. However, he would find that it would also be reasonable if the Agency were to have merely permitted (rather than required) subcontracting with community organizations. In other words, the record does not demonstrate that a rule which only permitted subcontracting would be unreasonable. Thus, the Agency may choose either method. If it does choose to adopt the MPIRG proposal, however, one mandatory and one suggested change should be made.

The mandatory change is necessary to cure the vagueness defect which is created by the term "demonstrated community involvement". MPIRG, in the testimony of Naomi Olson (Pub. Ex. 22), suggested that criteria for "demonstrated community involvement" might include:

1. History of energy-related work in the area
2. A community-based board of directors
3. Involvement in community development work
4. Offices located in the community.

While the Agency may wish to "fine-tune" these criteria (or even drop some of them), the Examiner finds that some criteria are needed to avoid vagueness.

The other suggested change, which was proposed by both the Agency and MPIRG, would have disputes between a utility and a community-based organization be resolved by the Agency following a review of the dispute. In the original MPIRG proposal, the dispute would be resolved following a hearing. The Examiner recommends the change because the use of the word "hearing" would require a contested case hearing pursuant to Minn. Stat. § 15.0411, subd. 4 (1980). But this change is only recommended; it is not required. changed p. 3-3

Would the adoption of the MPIRG proposal be a "substantial change"? The Examiner does not believe that it would, based upon the criteria set forth in 9 MCAR § 2.111. It does not affect classes of persons not represented at the hearing (both the register and a "show of hands" on the record indicated several utility representatives were present). It does not go to a new subject matter of significant substantive effect because it merely clarifies a procedure for contracting with third-party auditors. It does not make a major substantive change not raised by the original Notice of Hearing in such a way as to invite reaction at the hearing because it is not "major". Finally, it does not result in a rule fundamentally different from that contained in the Notice of Hearing because the fundamental nature of the rule -- the audit, arrangement services, post-installation inspection, and consumer rights -- is not changed.

21. Paragraph B. of Rule 2303 deals with scheduling of program audits. It permits utilities to offer audits on a geographic basis, in which case the audit must be provided within 30 days of a customer's request. If, on the other hand, a utility chooses not to offer its audits on a geographic basis, then it must provide the audit within 60 days of a customer's request.

The Utility Joint Comments made two suggestions with regard to this Rule. First of all, they noted that the words "conditional" and "unconditional" were not defined in the rule, even though they were defined in the state plan. Secondly, they requested a provision which would allow them to obtain an extension of time from the Agency in the event of heavy demand.

The Examiner agrees with the utilities with regard to the problems created by the words "conditional" and "unconditional". It is unclear, even to the Examiner, what those words mean if they mean something other than geographic sequencing. Therefore, it is found that the Rule is unconscionably vague if those words are retained unless they are defined. There are two ways to solve the problem and correct the defect: Either the rule can be amended by adding definitions, or the words can be stricken. If the latter alternative is chosen, the concept of geographic sequencing would still be retained. If that is the only kind of conditioning which the Agency intends to allow, then there is no need for retaining the vague words. deleted p. 3-3 p. 3-4

The second request from the utilities, that they be allowed to obtain an extension of the time limits contained in the rule, appears to be a problem created by DOE. The Agency stated, in its final comments (Pub. Ex. 47), as follows:

> The time periods for responding to customer requests for an audit have effectively been set by DOE. In approving the original plan submitted to DOE, the Agency had to reduce the time period to the one stated in the proposed rule. DOE ruled that these dates and no extensions of them meet their rules.

The DOE rule, which is 10 C.F.R. § 456.307(a)(1) reads as follows:

> The State Plan shall specify a reasonable time within which each public utility and participating home heating supplier shall provide program audits to an eligible customer upon a request for such an audit.

Clearly, the DOE rule leaves room for interpretation, and apparently DOE has chosen to interpret it strictly. The Examiner finds that, although the rule is likely to create isolated hardships for utilities, it has been shown to be both needed and reasonable. The utilities will simply have to subcontract with enough auditors (or employ them) to comply with the rule. However, if the Agency finds that it is possible to negotiate some sort of extension plan with DOE, that would be desirable, but not required. The Examiner finds that the extension provision suggested by the utilities is both needed and reasonable. If it could be added to the rule, it would not be a "substantial change."

22. Paragraph C. of Rule 2303 deals with the conduct of the audit. It drew a number of comments.

The Urban Coalition of Minneapolis suggested that if an audit is done of a multi-unit building, it should include all units in the building, as well as common spaces. They recommended that as soon as one tenant requests an audit, the utility should contact the landlord and arrange to do all the units at one time, as well as the common spaces. A similar comment was received from the Minnesota Project. The Agency replied, and the Examiner agrees, that it is appropriate to do common spaces when auditing an apartment unit but that it is impossible to require that all apartment units be audited at once. The philosophy underlying the audit program is that it is a voluntary one, i.e., no residence is required to be audited unless the owner or tenant requests an audit. To require that all units be audited would violate this philosophy, and it could well be argued that the Agency does not have statutory authority to do so. The Examiner finds the rule to be both needed and reasonable without the proposed changes. Of course, the rule does not prevent, nor does the Examiner desire to deter, utilities from suggesting coordinated audits as a cost-saving measure. But the ultimate decision must be left to the customers.

23. In this rule, as in many others, a change should be made to conform the rule with the Agency's proposal to include active solar space heating (which has been discussed in Finding 13 above). Unless specifically noted, all of the changes in connection with that proposal (as well as the changes necessitated by the adoption of MPIRG's suggestion regarding third-party auditors) have been examined and have been found to be both needed and reasonable. Because both of these two changes require numerous minor changes throughout the rules, they will not be discussed at each point, and unless they are specifically found to be either not needed or not reasonable, they should be made as proposed if either of the basic changes is finally adopted by the Agency.

changed p.3-5. et seq.

no change p.3-5

24. In connection with proposed Rule 2303 D.2.b., the Examiner would direct the Agency's attention to the Utility Joint Comment, Pub. Ex. 43, at p. 8. Unfortunately, the American Gas Assocation study referenced therein was not available to the Examiner, and thus, he is unable to evaluate this recommendation. see F&FF9

25. Paragraph E. of Rule 2303 deals with presentation of the audit results. A number of comments were received with regard to landlord-tenant issues.

Laws of Minnesota, 1980, Chapter 579, § 17, subd. 2, provides as follows:

> All audits performed pursuant to 42 United States Code 8211 et seq. of residences which are required by § 116H.129, subd. 3, to comply with energy efficient standards shall include a separate list of those improvements to the residence which are required to bring the residence into compliance with § 116H.129, subd. 3, and a statement describing remedies available to the tenants for violations.

The statute referenced above, Minn. Stat. § 116H.129, subd. 3, provides that effective January 1, 1980, renter-occupied residences constructed prior to 1976 must comply with standards pertaining to caulking and weatherstripping and sealing of other openings in the building envelope. Effective July 1, 1983, additional standards must be complied with.

It would appear that when the Legislature mandated that audits under the program covered by these proposed rules include a list of improvements required to bring the residence into compliance with 116H.129, subd. 3, and that they include a statement describing remedies available to tenants for violations, the Legislature intended that these audits perform an enforcement function with regard to the standards for rental units. The question of how best to effectuate that enforcement function drew comments from a number of tenants-rights organizations, the Minnesota Project, utilities and others.

The Agency proposed a rule (2303 E.2.d.) which essentially tracks the statutory language. There were numerous suggestions for expansion of the rule. The Agency has recommended that only one of them be adopted. That suggestion comes from the Minnesota Project and would require that the auditor present a copy of the energy audit to the landlord and all tenants. The Agency recommends a slightly different requirement: that a copy of the audit be presented to the landlord and tenant when available. The Agency appears to be reflecting a practical concern of the utilities, who state that they often do not know whether their customer is a landlord or a tenant, nor do they always know the name of the tenant.

The Examiner believes that what the above-quoted statute requires is delivery of the separate list and statement of remedies to the tenant. It is found that the existing rule conflicts with the statute because it will not accomplish this if the customer is a landlord rather than a tenant. Therefore, in order to comply with Minn. Stat. § 216B.165, subd. 2, and correct the defect, the rule must be amended to require that a copy of the specified information be provided to tenants. The easiest way to do this, it would seem, would be to add a sentence to subparagraph d. which would read substantially as follows:

> If the presentation is not made to the tenant, the auditor shall give or mail a copy of this information to the tenant. added p.3-11

While this will require the auditor to ascertain the name of the tenant, it is the simplest procedure the Examiner can devise to assure that the statute is

complied with. Its addition does not make the rule "substantially different". If the Agency can think of some better way to accomplish the same result - getting a copy of the required information to the tenant - it is free to substitute a different method. But unless some such method is added to the rule, it does not comply with the statute.

The Urban Coalition of Minneapolis (Pub. Ex. 31) made suggestions designed to "sell" the program to landlords. The Examiner suggests that the Agency might want to consider including them, but they are not necessary in order to make the rule reasonable.

26. Rule 2304 deals with arrangement services. These services could include financing and/or installation. The Urban Coalition of Minneapolis, the Minnesota Project, the Minnesota Tenants Union, and others recommended that additional provisions be added to the proposed rules to require landlords desiring to use the financing arrangement services to insert certain "tenant protection clauses" into their financing contracts. These clauses have been used by the Urban Coalition and others in connection with installation of weatherization measures under a different program. They essentially restrict the ability of landlords to evict tenants and raise rents above a certain rate. The Examiner does not believe that these additions to the rule are needed in order to make the rule reasonable; in fact, they appear to have little rational relationship to the goals of the rules or the Program, and would appear to exceed the Agency's statutory authority. He specifically recommends against their adoption.

The Utility Joint Comments suggested a change in the rule which is based upon a fear that the auditor would have to return to the residence a second time to assist the customer in filling out bid forms. While their concern would be noteworthy if it were the auditor who had to return, there is nothing in the rule which requires that the auditor be the the person who performs this service. The rule leaves the utility entirely free to select any person to provide these services. Therefore, the Examiner does not believe that a change is needed in order to make the rule reasonable.

see my comment

27. Rule 2305 relates to master lists of contractors, lenders, suppliers (and, if the Agency elects to follow the MPIRG suggestion, auditors).

SMARCA (Sheet Metal Air Conditioning Refrigeration Contractors Association of Minnesota, Inc.) and other trade groups suggested (in Pub. Ex. 19) changes to paragraphs B.1.a.(4) and B.1.a.(8). The Agency agreed that the changes would be improvements. The Examiner has considered the suggestions and finds that the rule would be reasonable regardless of whether they were made or not. However, he does suggest that they be adopted for the reasons given in Pub. Ex. 19. Neither would be "substantial changes."

see change p.5-2, 5-3

28. Rule 2306 deals with inspections of installations. The main issue with regard to this rule was who should perform the inspections. In particular, SMARCA suggested that the Agency ought to consider seeking input from city building inspectors as to how they might be used to perform these inspections. The Agency responded, and the Examiner agrees, that the rule does not prohibit utilities from contracting with city building inspectors if both parties are agreeable. The rule, as written, gives utilities a great deal of leeway in selecting inspectors, and only requires that they be qualified and have

no financial interest in the entity which performed the work being inspected. The Examiner finds that the rule is both needed and reasonable.

29. Proposed Rule 2307 deals with qualification procedures for auditors and inspectors. Tobey Lapakko of the Minnesota AFL-CIO recommended that the anti-discrimination provision of Paragraph A. be expanded to prohibit discrimination on the basis of sex. The Agency agreed to make the change, and the Examiner finds that it would not result in a "substantially different" rule. changed p. 7-1

The Utility Joint Comments (Pub. Ex. 43) recommended that the annual auditor recertification course requirement be expanded to permit recertification upon completion of a course sponsored by utilities. The Agency opposed this suggestion (Pub. Ex. 47) because it views this course as one of the few opportunities for the Agency to exercise ongoing "quality control" of auditors. The Examiner finds that the rule, as proposed by the Agency, is both needed and reasonable. However, the Agency may want to re-evaluate its position after a few years' of experience.

30. Proposed Rule 2308 deals with consumer grievance procedures, and generally employs the existing services and procedures of the Office of Consumer Services' mediation program.

Tobey Lapakko, former director of the Office of Consumer Services, questioned the lack of a time limit in § A.2. which requires an aggrieved customer to first attempt to resolve a complaint with the contractor, supplier, lender or participating utility or heating supplier before initiating a customer complaint with the Office. Lapakko believed that the rule should be amended to provide that if the complaint is not resolved within two weeks, then the customer may initiate the OCS mechanism. The Agency responded, in Pub. Ex. 39, that such an addition was unnecessary because the rule does not prohibit the aggrieved customer from initiating the process until all attempts at a private settlement have been exhausted. However, the Examiner understands how Ms. Lapakko reached the conclusion which she did. The rule requires the customer to first contact the contractor, supplier, etc., and then provides "if the complaint is not resolved", the OCS process may be initiated. The Examiner believes that this confusion can be avoided by just deleting the last sentence of § A.2. This would maintain the concept that the customer had to first contact the contractor, supplier, etc., before initiating the process, but would avoid the confusion suggested by Ms. Lapakko. However, such a change is not needed in order to make the rule needed and reasonable. It is merely a suggestion. Suggestion followed p. 8-1

31. Rule 2309 deals with customer payments and utility billing for program activities.

A number of the comments from the Citizens Energy Coalition regarding interest-free loans by utilities to customers are beyond the authority of the Agency to adopt. As the testimony of Jeanne Hale seemed to admit, such authority is vested in the Public Service Commission, not in the Agency. The Examiner finds the rule to be both needed and reasonable as written.

32. Proposed Rule 2313 deals with non-regulated utilities, and basically provides that their participation in the entire program is voluntary, and that certain of the rules shall not apply to them, and finally, that they may apply for waivers of any requirement in the rules, but that certain provisions cannot be waived.

Richard Kirkham of the Minnesota Municipal Utilities Association argued that the list of non-waivable requirements ought to be reduced in light of the small size of many municipal utilities. He stated that 80% of the 135 members of the Association served communities of less than 5,000 in population, and one has as few as 59 customers. The Agency pointed out that this rule includes co-operatives as well as municipal utilities but admitted that many of them faced the same problems due to small size.

Kirkham argued that the requirement in Rule 2303 B. which would require an audit within 30 or 60 days of a customer's request was too onerous for small municipals or cooperatives who will not have a qualified auditor on their staff and who would be able to save money by "batching" customer audits. It would seem that by not geographically sequencing audits, such a utility could offer all of its customers audits at the same time, and thus would have 60 days to provide the audits. This would appear to be a reasonable alternative for such utilities, and one which would not require any change in the rule. Therefore, the Examiner does not recommend that the rule be amended in that situation.

The second concern raised by Kirkham related to "local" pricing of materials and labor in developing cost information for calculating installation cost estimates. Kirkham stated that in many small towns, there is no lumberyard or other supplier of materials, and thus a "local" survey would be impossible. The Examiner agrees but would point out that the term "local" is not defined in the rule and thus, it would appear logical that if materials are commonly purchased at the county seat, or regional trading center, for example, the price surveys could be based on information from that source. Again, the Examiner does not believe that the rule needs to be amended, but rather that common sense be used in implementing it.

The third change recommended by Kirkham was that calculations regarding solar and wind renewable resource measures not be made in every case, but rather that the homeowner be given the option of waiving such information if he or she has no interest in installing such measures. It is not unreasonable to require that such information be provided to all customers who request an audit because if a property is sold, the information may be desired by the new owner, and secondly, it may be more practical to install such measures in a rural or small town setting than in a large city. Therefore, the Examiner does not recommend any change in connection with that request.

The fourth change recommended by Kirkham is a modification of Rule 2303 F.4., which, as presently written, prohibits an auditor from recommending fuel switching. Kirkham gave examples of situations where all of the fuel alternatives in a given community are offered by the same utility. In such a situation, the utility would have no incentive to recommend fuel switching merely to gain a new customer. The Examiner is unaware of all of the potential ramifications of making such a proposed change, and cannot find the existing rule to be unreasonable as written. However, Kirkham's logic makes sense, and the Agency may want to consider amending the existing rule to permit fuel switching recommendations in limited circumstances. Kirkham's logic would apply equally in some large cities.

no change

Finally, Kirkham recommended that a course sponsored by the American Power Association, and taken by a number of municipal utility employees, be found to be an acceptable course (with supplementation) for the courses required in Rule

2307 B.1.b. and C.1.a. The Examiner would point out that neither of those rules prohibit the Agency from approving such a course, and thus, would suggest to the Association that they submit the course for approval. The Agency is far better equipped than the Examiner to determine the scope and quality of the course. Thus, the rule, as written, is found to be both needed and reasonable in spite of Kirkham's comment.

33. Attorney Michael J. Ahern, writing on behalf of the Society of the Plastics Industry, Inc., a trade association of the plastics industry, recommended that an additional section be added to the Rules which would define the word "supplier" to mean "the retail supplier of a program measure" to avoid any suggestion that a manufacturer who did not deal at retail with the public was a "supplier". It is clear to the Examiner that the various provisions relating to suppliers, such as master lists and conciliation conferences, intend that suppliers would be retailers (such as a building supply store) rather than original manufacturers (such as an insulation manufacturer). Such an interpretation is also held by DOE, which, in a Notice of Proposed Rulemaking published at 45 Fed. Reg. 66961, stated:

> Neither NECPA nor ESA define the term "supplier", but DOE assumes that Congress intended "supplier" to mean retailer. NECPA requires utilities to distribute to its residential customers lists of "suppliers" of measures. Since a list of retailers would be most helpful to consumers, and since manufacturers are discussed separately, DOE interpreted supply to mean sell at retail.

DOE decided not to include a definition of the term in its rules in order to prevent any unnecessary rigidity when a state must enforce the warranty requirement of the rules under its own particular warranty laws. The Examiner has the same reaction as DOE had.

The Examiner would suggest that the Agency and the Office of Consumer Services (which is knowledgeable about warranties) examine this proposal and consider its adoption. But, he does not find the rules to be unreasonable without such a definition.

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

## CONCLUSIONS

1. That the Energy Agency gave proper notice of the hearing in this matter.

2. That the Agency has fulfilled the procedural requirements of Minn. Stat. § 15.0412, subd. 4-4f (1980) and all other procedural requirements of law or rule.

3. That the Agency has demonstrated its statutory authority to adopt the proposed rules and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 15.0412, subd. 4e and 15.052, subd. 3(4)(i) and (ii) (1980), except as noted at Findings 20, 21 and 25.

4. That the Agency has documented the need for and reasonableness of its proposed rules with an affirmative presentation of facts in the record within the meaning of Minn. Stat. § 15.0412, subd. 4c (1980), except as noted at Finding 16.

5. That the amendments and additions to the proposed rules which were suggested by the Agency after publication of the proposed rules in the State Register do not result in rules which are substantially different from the pro-

posed rules as published in the State Register within the meaning of Minn. Stat. § 15.0412, subd. 4d (1980) and 9 MCAR §§ 2.110 A. and 2.111 (1980 Ed.).

6. That the Hearing Examiner has suggested action to correct the defects cited in Conclusions 3 and 4 as noted at Findings 16, 20, 21 and 25.

7. That due to Conclusions 3 and 4, this Report has been submitted to the Chief Hearing Examiner for his approval pursuant to Minn. Stat. § 15.0412, subd. 4d (1980).

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

9. That a finding or conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the Energy Agency from further modification of the proposed rules based upon an examination of the public comments, provided that no substantial change is made from the proposed rules as originally published, and provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

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

RECOMMENDATION

It is hereby recommended that the proposed rules be adopted except where specifically otherwise noted above.

Dated this 11th day of February, 1981.

Allan W. Klein

ALLAN W. KLEIN
Hearing Examiner

STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL
ST. PAUL 55155

WARREN SPANNAUS
ATTORNEY GENERAL

ADDRESS REPLY TO:
720 AMERICAN CENTER BLDG.
150 EAST KELLOGG BOULEVARD
ST. PAUL, MN 55101
TELEPHONE: (612) 296-6030

May 13, 1981

Mr. Ted Grindal
Special Assistant Attorney General
G-25 Administration Building
St. Paul, Minnesota 55155

Re: Proposed MECS Rules

Dear Ted:

This letter authorizes you to make the typographical changes to the above-captioned rules which we discussed by phone on May 12, 1981. The corrections are reflected in the enclosed pages.

Also please note that to avoid retroactivity problems, the Agency has made several other changes, on pages 2-1, 3-1, 6-1, 7-4, 7-7, 10-1. These changes delay the effective dates of various parts of the rules until after the first week in June. There is no substantial change here, because no rights or benefits are affected. The changes only delay the effective date of certain utility responsibilities. Please call me if you have any questions.

Very truly yours,

James E. Lackner

JAMES E. LACKNER
Special Assistant
Attorney General

720 American Center Building
150 East Kellogg Boulevard
Saint Paul, Minnesota 55101
Telephone: (612) 296-0151

JEL:cl

Enclosures

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ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES
RECEIVED
MAY

Mr. Ted Grindal
G25 Administration Building
St. Paul, MN 55155

April 30, 1981

Dear Mr. Grindal:

Please advise us of any changes that were made in the Rules of the Minnesota Energy Agency Establishing the Minnesota Energy Conservation Service Program, 6 MCAR ss 2.2300 - 2.2313 which were being submitted to the Attorney General.

Thank you.

Sincerely,

Jerry Bennett

Jerry Bennett, Supervisor
Member Service Department

JB:ck

AEC

# 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

### Invitation to Comment on Proposed Saint Paul Suburban Cable Service Territory before December 14, 1979

On September 14, 1979, Capitol City Cablevision, Inc., a Minnesota corporation planning to seek cable franchises in this area, proposed a cable service territory (CST) consisting of the corporate limits of 15 suburban municipalities surrounding Saint Paul: Falcon Heights, Lauderdale, Lilydale, Little Canada, Maplewood, Mendota, Mendota Heights, Mounds View, New Brighton, Newport, North St. Paul, Roseville, St. Paul Park, South St. Paul, West St. Paul. A number of those municipalities have already responded to the Board's offer to counsel and advice during this period of the Board's consideration of the CST proposal, and a number of nearby municipalities have indicated a wish to be included in the CST.

On December 14, 1979 the Board must make its decision to approve, reject or delay consideration of the proposed CST. Prior to that date, the Cable Board continues to seek written comments from parties interested in the proposed CST — not only from municipalities included in the original proposal and those who may wish to be, but also from other interested municipalities, organizations, agencies, school districts, units of government and individuals. Comments may be addressed to the Board at 500 Rice Street, Saint Paul, Minnesota 55103.

## Energy Agency Conservation Division

### Notice of Intent to Solicit Outside Opinion for Rules Governing the State Residential Conservation Service Plan

Notice is hereby given that the Minnesota Energy Agency, Conservation Division, is seeking information or opinions from sources outside the agency in preparing the State Residential Conservation Service Plan for submission to the U.S. Department of Energy and the state rule-making process. The objective of the program is to facilitate and encourage the installation of energy conservation and renewable resource measures in existing homes of customers of large gas and electric utilities and home heating suppliers. The program requires 13 Minnesota utilities to provide services to their residential customers, such as energy audits on request, and arrangement for installation and financing of energy conservation measures.

Any interested persons may submit data or views on this subject in writing or orally by December 21st to:

Al Lessik or Karen Martin
Minnesota Energy Agency
980 American Center Building
150 East Kellog Boulevard
St. Paul, Minnesota 55101

Any written material received by the agency shall become part of the hearing record in the event rules governing this subject are promulgated.

## Ethical Practices Board

### Request for Advisory Opinion Regarding Propriety of A Political Party Committee Donating Campaign Funds to the Willmar Bank Employees Association Strike Fund

**The Minnesota State Ethical Practices Board solicits opinions and comments to the following request for an advisory opinion which will be discussed at its Board meeting on December 12, 1979, Room 14, State Office Building, St. Paul, MN. No formal action will be taken at that meeting. Written comments concerning the opinion request should be forwarded to arrive at the Board's office prior to December 10, 1979.**

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

RECEIVED
OCT 16 1980
ADMINISTRATIVE HEARINGS

In the Matter of the Proposed
Adoption of Rules of the Minnesota
Energy Agency Establishing the
Minnesota Energy Conservation
Service Program, 6 MCAR §§ 2.2300-2.2313.

ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above captioned rules be held in the Large Hearing Room, 83 State Office Building, 435 Park Street, St. Paul, Minnesota on December 16, 1980, commencing at 9:30 a.m. and continuing until all persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Minnesota Energy Agency for that purpose.

IT IS FURTHER ORDERED that the Notice of Hearing be published in the State Register.

Dated:

10/15/80

Mark Mason
Director

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

RECEIVED
OCT 16 1980
ADMINISTRATIVE HEARINGS

6

In the Matter of the Proposed Adoption of Rules of the Minnesota Energy Agency Establishing the Minnesota Energy Conservation Service Program, 6 MCAR §§ 2.2300-2.2313.

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the public hearing in the above-entitled matter will be held in the Large Hearing Room, 83 State Office Building, 435 Park Street, St. Paul, Minnesota on December 16, 1980, commencing at 9:30 a.m. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written material may be submitted at the hearing. In addition, written material may be submitted and recorded in the hearing record by mailing the material to the Hearing Examiner Allan Klein, Hearing Examiners Office, 1745 University Ave., Room 300, St. Paul, Minnesota 55104 - telephone (612)296-8104, either before the hearing or within five working days after the close of the hearing unless the hearing examiner orders a longer period of time not to exceed 20 calendar days. The proposed rules are subject to change as a result of the rules hearing process. The Agency therefore strongly urges those who may be affected in any matter by the substance of the proposed rules applicable to this hearing to participate in the rules hearing process.

If adopted, the proposed rules would establish a program requiring major regulated utilities to offer their residential utility customers services related to the promotion of energy conservation. The most important of these services include: conducting home energy audits to determine areas of major heat loss and other energy inefficiencies in the home; distributing Master lists of approved contractors, suppliers and lenders from whom home energy improvements and financing services may be obtained; arranging for the installation of home energy improvements; and arranging for the financing or supply of home energy improvements. The rules establish requirements for inclusion in the Master lists, audit training and certification procedures. This program also includes provisions for voluntary participation of home heating suppliers and nonregulated utilities.

The Agency's authority to promulgate the proposed rules is contained in 1980 Minn. Laws, Chapter 579, Section 12 (to be codified as Minn. Stat. § 116H.17), as well as §§ 116H.08(a)(1978), 116H.07(i)(1978).

Copies of the proposed rules are now available and one free copy may be obtained by writing to the Minnesota Energy Agency, Attention: Alan Lessik, 980 American Center Building, 150 E. Kellogg Boulevard, St. Paul, Minnesota 55101 - (612)297-2117. Copies will also be available at the door on the date of the hearing.

Minn. Stat. Ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, Subd. 11 (1979 Supp.) as any individual:

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

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

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

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

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the Agency and at the Office of Administrative Hearings. This Statement of Need and Reasonableness will include a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rule or rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.417, § 15.052 and by 9 MCAR §§ 2.101-2.113. Any questions concerning the procedures may be directed to the Hearing Examiner.

Dated: 10/16/80

Mark Mason
Director

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EXAMINERS

Energy Agency
Conservation Division

Proposed Rules for the Establishment of the Minnesota Energy Conservation Service Program.

Notice is hereby given that the public hearing in the above-entitled matter will be held in the Large Hearing Room, 83 State Office Building, 435 Park Street, St. Paul, Minnesota on December 16, 1980, commencing at 9:30 a.m. and continuing until all persons have had an opportunity to be heard.

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

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

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a written request to the Hearing Examiner (in the case of the Hearing Examiner's Report), or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the Agency and at the Office of Administrative Hearings. This Statement of Need and Reasonableness will include a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rule or rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.417, § 15.052 and by 9 MCAR §§ 2.101-2.113. Any questions concerning the procedures may be directed to the Hearing Examiner.

October 20, 1980

Mark Mason
Director

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EXAMINERS

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

| | | |
|---|---|---|
| For the Purpose of Preparing a List of Persons Who Wish to Receive Notice of Hearings on Proposed Rules of the Minnesota Energy Agency. | ) ) ) ) | AFFIDAVIT OF MAILING |

Jodie Nelson, being first duly sworn upon oath, deposes and says:

That on the 13th of November, 1980, at the City of Saint Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Intent to Prepare Minnesota Energy Agency List for Future Rulemaking Hearings by depositing in the United States mail a true and correct copy thereof, properly enveloped, with first class postage prepaid, to all persons and associations at the addresses listed in the attached Certificate of the Administrative Services Manager of the Minnesota Energy Agency.

Jodie Nelson

Subscribed and sworn to before me
this 13th day of November, 1980.

Karla V. Sand
Notary Public

KARLA V. SAND
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Commission Expires Jan. 26, 1986.

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EXAMINERS

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

| | | |
|---|---|---|
| For the Purpose of Preparing a List of Persons Who Wish to Receive Notice of Hearings on Proposed Rules of the Minnesota Energy Agency. | ) ) ) ) | CERTIFICATE OF DELIVERY ENERGY AGENCY LIST |

I hereby certify that the attached 7 sheets, 280 labels constitute the complete list of persons, associations, and interested groups who as of 2:15 o'clock p.m., this 30th day of October, 1980, have requested pursuant to Minn. Stat. §§ 15.0412 (1978) that their names be placed on file with the Energy Agency for the purpose of receiving notice of public hearings on proposed rules.

Janice K. Watts
Administrative Services Manager
Minnesota Energy Agency

By Janice K. Watts

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NOV 2 1 1980
OFFICE OF HEARING
EXAMINERS

# STATE REGISTER

STATE OF MINNESOTA



VOLUME 5, NUMBER 18

November 3, 1980

Pages 687-746

# 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 | | |
| 19 | Monday Oct 27 | Monday Nov 3 | Monday Nov 10 |
| 20 | Monday Nov 3 | Friday Nov 7 | Monday Nov 17 |
| 21 | Monday Nov 10 | Monday Nov 17 | Monday Nov 24 |
| 22 | Monday Nov 17 | Monday Nov 24 | Monday Dec 1 |

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

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

Instructions for submission of documents may be obtained from the Office of the State Register, Suite 415, Hamm Building, 408 St. Peter Street, St. Paul, Minnesota 55102.

The *State Register* is published by the State of Minnesota, Office of the State Register, Suite 415, Hamm Building, 408 St. Peter Street, St. Paul, Minnesota 55102, pursuant to Minn. Stat. § 15.0411. Publication is weekly, on Mondays, with an index issue in August. In accordance with expressed legislative intent that the *State Register* be self-supporting, the subscription rate has been established at $120.00 per year, postpaid to points in the United States. Second class postage paid at St. Paul, Minnesota, Publication Number 326630. (ISSN 0146-7751) No refunds will be made in the event of subscription cancellation. Single issues may be obtained at $2.25 per copy.

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

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

Albert H. Quie
**Governor**

James J. Hiniker, Jr.
**Commissioner**
**Department of Administration**

Stephen A. Ordahl
**Director**
**State Register and**
**Public Documents Division**

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**Cover graphic: *Minnesota State Capitol*, ink drawing by Ric James.**

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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 lisitngs 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
Issue 52, cumulative for 1-52

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# PROPOSED RULES

Pursuant to Minn. Laws of 1980, § 15.0412, subd. 4h, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules;

and

4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of § 15.0412, subds. 4 through 4g, which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 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 30 days thereafter, interested persons may submit data and views in writing to the proposing agency.

## Board of Animal Health

### Proposed Amendments to Rules 3 MCAR § 2.044 The Establishment and Operation of Public Stockyards and LSB 66 Slaughter Cattle and Slaughter Swine Identification

#### Notice of Hearing

A public hearing concerning the proposed rule amendments will be held in Conference Room A, Capitol Square Building, 550 Cedar Street, Saint Paul, Minnesota, on Thursday December 4, 1980 commencing at 9:30 a.m. The proposed rule amendments may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed amendments, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested (or affected) persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statement or material may be submitted to Peter Erickson, Hearing Examiner, Office of Administrative Hearings, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, phone 612-296-8118 either before the hearing or within five working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.052 and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedures, call or write the hearing examiner.

Notice is hereby given that twenty-five days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the Office of Administrative Hearings. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rule amendments. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

Amendments to 3 MCAR § 2.044 The establishment and operation of public stockyards. will: 1. Provide that after January 1, 1982 any cattle in contact with a brucellosis reactor will be considered to have been exposed to the disease. 2. Delete the requirement that swine leave the stockyards within 72 hours. 3. Require that cows and bulls over two years of age be backtagged before being offered for sale. 4. Delete the exemption granted livestock for immediate slaughter for removal from the stockyards without a release from the veterinary services contractor. 5. Delete the exemption from a tuberculin test for cattle going to approved drylot feeding premises. 6. Require that cattle unloaded in the stockyards and not offered for sale be backtagged or properly tested before removal from the yards. 7. Require a pseudorabies test on swine from other states removed for breeding purpose. 8. Reduce the quarantine period on swine removed for breeding or feeding to 30 days rather than until sent to slaughter.

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

Amendments to LSB 66 Slaughter cattle and slaughter swine identification, propose that only sows, boars and stags received by any agent or agency for slaughter be identified by a tatoo to the herd of origin. The present requirement that butcher swine consigned for slaughter be tattooed would be deleted from the rule.

Statutory authority to promulgate the proposed rules is vested in the Board of Animal Health by Minn. Stat. § 35.03 (1978).

The agency estimated that there will be no cost to local public bodies in the state to implement the amendments or rule for the two years immediately following its adoption, within the meaning of Minn. Stat. § 15.0412, subd. 7 (1978).

Copies of the proposed rule amendments are now available and at least one free copy may be obtained by writing to Board of Animal Health, LL70 Metro Square Building, 7th and Robert Streets, Saint Paul, Minnesota 55101, telephone (612) 296-2942. Additional copies will be available at the hearing.

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

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1979 Supp.) as any individual:

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

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

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

J. G. Flint, D.V.M.
Secretary and Executive Officer

## Amendments as Proposed

**3 MCAR § 2.044 The establishment and operation of public stockyards.**

A. Definitions.

1. "Board" shall mean the State of Minnesota ~~Livestock Sanitary~~ Board of Animal Health ~~acting by and through the secretary and executive officer~~ or its authorized agents.

2. "Public stockyards" means an assembly point for livestock operated as a public market for livestock producers, feeders, market agencies and buyers; having facilities and providing services for those individuals or organizations who have been granted the privileges of the market by the management of the stockyards.

3. "Shipper contract" shall mean a record indicating:

a. Consignor's name and address.

b. Identification and description of the livestock consigned.

c. Date and time received.

d. Name of the trucker or transportation agency.

e. Name of the individual or firm who will represent the seller.

f. Signature of the seller or his agent.

4. "Veterinary services contractor" shall mean an accredited veterinarian or more than one veterinarian selected by the management and approved by the board to perform necessary services in connection with the rules of the board.

B. Permit to operate.

1. A permit to operate expiring June 30 following the issue date shall be issued provided:

a. A veterinarian or veterinarians acceptable to the board has been retained by the stockyards management to act as the veterinary services contractor.

b. An inspection by representatives of the board indicates compliance with the sanitation and general requirements of this rule.

c. The management of the stockyards shall furnish a list of all persons and firms granted the privilege of the market.

2. Revocation of permit.

a. The secretary and executive office may suspend the permit for just cause for a period of not more than thirty (30) days pending a hearing before the board to show cause why the permit should not be revoked.

C. General requirements.

1. All pens, yards, alleys and livestock holding areas shall be constructed so that they may be maintained in good repair and in a sanitary condition.

2. The veterinary services contractor shall be provided adequate space and facility to perform his duties.

3. Separate isolation pens shall be provided for yarding reactors, suspects and exposed livestock.

4. Facilities shall be provided by the management for adequately cleaning and disinfecting trucks and other vehicles at a reasonable cost to the transportation agency.

5. Agents of the board shall be allowed entry for inspection purposes upon demand at any reasonable time.

6. The management shall maintain and cause to be maintained records of all livestock transactions for a period of one year. Such records shall be available for inspection on demand at reasonable times by agents of the board.

7. The management shall lock and seal pens or sections of the stockyard upon demand when agents of the board detect or suspect contagious or communicable disease exists in such pens and sections of the stockyards. Such pens shall be cleaned and disinfected under board supervision before being used again.

8. Upon disclosure of brucellosis reactors all cattle in the consignment shall be considered exposed and must be sold for immediate slaughter or returned to the farm of origin under quarantine. If sold for immediate slaughter a shipping permit shall be issued and each exposed animal shall be permanently ~~identified~~ branded with the letter "S" on the left jaw. Cattle that have been in contact with such a consignment 24 hours or more shall be considered exposed cattle and shall be handled in the same manner. Commencing January 1, 1982, any cattle in contact with a reactor shall be considered exposed.

9. All movements into and out of the public stockyards shall be in compliance with applicable federal interstate regulations and the laws of the State of Minnesota and rules of the board.

~~10. Swine leaving the stockyards for further feeding or breeding must leave within 72 hours of arrival in the stockyards.~~

D. Entry of livestock.

1. ~~2.~~ All livestock shall enter with a properly completed shipper contract.

2. ~~1.~~ Livestock under quarantine because of disease shall be allowed entry when properly identified and accompanied by a shipping permit issued by a veterinarian or notice of shipment prepared by the owner.

3. All reactors, suspects, and exposed livestock shall enter the stockyards through separate entryway and be yarded in the isolation area. The shipper contract shall be clearly marked with the appropriate word or words indicating such livestock.

4. Cows and bulls two years of age and over shall be identified to the herd of origin by an official backtag as required in rule LSB 66 Slaughter cattle and slaughter swine identification. prior to being offered for sale.

E. Removal of livestock.

1. No livestock ~~except livestock for immediate slaughter~~ shall be removed from the premises until released by the veterinary services contractor or his representative.

2. Cattle. ~~Cows and bulls two years of age and over for immediate slaughter shall be identified to the herd of origin by~~

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~~an official backtag, as required in rule LSB 66 and shall not be released by the veterinary services contractor or his representative unless all animals are identified by official backtag.~~

~~3. Swine sold for slaughter shall be identified to the herd of origin as required in LSB 66 and shall not be released by the veterinary services contractor or his representative unless identified.~~

a. ~~4.~~ Cattle removed for purposes other than slaughter must be accompanied by a health certificate meeting Minnesota importation requirements if they originate from other states or Minnesota sale requirements if they originate from Minnesota or state of destination requirements if exported.

~~5. Swine removed for breeding or further feeding purposes must be accompanied by a health certificate indicating:~~

~~a. Eartag number.~~

~~b. Negative brucellosis buffered antigen test for sows and boars six months of age and over.~~

~~c. Any other requirements of a state of destination.~~

~~6. All swine for breeding and further feeding removed from public stockyards or points in Minnesota shall be quarantined until sent to slaughter.~~

~~7. Sheep, goats, horses, mules, and other species may be removed when a health certificate certifying compliance with the state of destination requirements have been met.~~

~~F. Tuberculosis test requirements for cattle.~~

b. ~~(1)~~ These ~~All~~ cattle shall be tested for tuberculosis except;

~~a. Cattle for immediate slaughter.~~

(1) ~~b.~~ Cattle originating in Minnesota.

(2) ~~c.~~ Cattle from states having ~~tuberculosis~~ a reciprocity agreement with Minnesota deleting test requirement.

(3) ~~d.~~ Female feeding ~~and grazing~~ cattle of beef type and breed under 18 months of age leaving the public stockyard on permit.

(4) ~~e.~~ Steers, spayed heifers, ~~beef~~ and cattle under ~~8 months of age, and dairy cattle~~ 6 months of age.

~~f. Cattle leaving on permit to approved drylot feeding premises.~~

c. ~~C.~~ Brucellosis test requirements for these cattle ~~and swine~~.

(2) ~~1.~~ The ~~test for and~~ diagnosis of ~~brucellosis responding~~ cattle ~~and swine~~ which respond to the brucellosis test shall be in accordance with ~~LSB 11~~ 3 MCAR § 2.011.

(1) ~~2.~~ The requirements for transfer of ownership for cattle, as embodied in ~~LSB 11~~ 3 MCAR § 2.011 Eradication of bovine and bison brucellosis, ~~in Minnesota,~~ shall apply to all cattle removed from the public stockyards to Minnesota destinations. ~~except that:~~

~~a. Cattle of all classes may be sold to leave the public stockyards to enter a Minnesota approved drylot feeding premises provided:~~

~~(1) A permit is secured.~~

~~(2) The cattle are branded with the letter "F" on the right jaw.~~

~~(3) Individual identification for each animal is listed on the health certificate.~~

d. Anaplasmosis test requirements for breeding cattle.

1. Breeding cattle originating in states other than Minnesota shall be tested in accordance with 3 MCAR § 2.001.

e. Cows and bulls two years of age and over not offered for sale shall be backtagged or tested and found negative to brucellosis and if originating from other states negative to anaplasmosis and tuberculosis before removal from the stockyards.

3. Swine. ~~The requirements for transfer of ownership for removal of breeding swine six months of age and over, except for immediate slaughter, shall be negative brucellosis test.~~

a. ~~3.~~ Swine sold for slaughter shall be identified to the herd of origin as required in LSB 66 Slaughter cattle and slaughter swine identification.

b. Swine removed for breeding or further feeding purposes must be accompanied by a health certificate indicating:

(1) Eartag number.

(2) Negative brucellosis buffered antigen (BBA) test for sows and boars six months of age and over.

(3) Any other requirements of a state of destination.

c. Pseudorabies test requirements for breeding swine.

(1) Breeding swine six months of age and over originating in states other than Minnesota shall be tested for pseudorabies in accordance with 3 MCAR § 2.005 before removal to any Minnesota destination.

d. All swine for breeding and further feeding removed from public stockyards to points in Minnesota shall be quarantined for 30 days.

4. Sheep, goats, horses, mules and other species may be removed when a health certificate certifying compliance with the state of destination requirements have been met.

**3 MCAR § 2.066 ~~LSB-66.~~ Slaughter cattle and slaughter swine identification.**

A. ~~(a)~~ Slaughter cattle identification.

1. ~~(1)~~ It shall be the duty of every livestock trucker, livestock dealer, livestock market operator, and slaughtering establishment subject to or maintaining meat inspection, to identify upon receipt unless previously identified by backtag, all bovine breeding animals two years of age and over originating from herds in this state and received for sale or shipment to a slaughtering establishment.

2. ~~(2)~~ Such identification unless otherwise authorized by the ~~Livestock Sanitary~~ Board of Animal Health shall consist of an official backtag issued by the ~~Livestock Sanitary~~ Board of Animal Health, or Veterinary Services, APHIS, USDA, and shall be affixed to such animals at a point approximately four (4) inches behind the shoulder and four (4) inches below the top line.

3. ~~(3)~~ Every person required to identify animals in accordance with this rule ~~regulation~~ shall file reports on forms prescribed by the board, including thereon the backtag number and date of application; the name, address and county of residence of the person who owned or controlled the herd from which such animals originated; and whether the animal was of beef or dairy type.

a. ~~(aa)~~ When ever animals are identified a report shall be filed with the board at the end of each fourteen day period covering all animals identified during such a period.

4. ~~(4)~~ This requirement shall not apply to livestock truckers with respect to animals delivered ~~received for delivery~~ directly to a livestock market agreeing to accept responsibility for backtag identification, if at the time of delivery the market is furnished with information identifying the herd of origin.

B. ~~(b)~~ Slaughter swine identification.

1. ~~(1)~~ It shall be the legal obligation of each agent transporting sows, boars and stags ~~slaughter swine~~ from a producer to a livestock dealer, livestock market, stockyards, commission company, other concentration point or slaughter establishment subject to or maintaining meat inspection to supply the receiving agent or agency with the name and address of the producer so the sows, boars and stags ~~swine~~ can be identified to the herd of origin.

2. ~~(2)~~ It shall be the legal obligation of the agent or agency—livestock dealer, livestock market operator, stockyard operator, commission company, buying station, operator of any concentration point at which the herd of origin of individual sows, boars and stags ~~swine~~ would be lost or slaughtering establishment subject to or maintaining meat inspection—receiving sows, boars and stags ~~slaughter swine~~ from a transporting agent to identify the sows, boars and stags ~~slaughter swine~~, unless so previously identified, with a tattoo or other identification authorized by the board. Failure of the first agent or agency receiving the sows, boars and stags ~~slaughter swine~~ to properly identify the sows, boars and stags ~~slaughter swine~~ does not relieve other agents and agencies receiving the sows, boars and stags ~~slaughter swine~~ from the responsibilities of identification of the sows, boars and stags ~~slaughter swine~~ to the herd of origin.

a. ~~(aa)~~ Tattoos or other identification shall be applied as directed by the board, using a code approved by the board which will identify the herd of origin of the sows, boars and stags ~~slaughter swine~~.

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b. ~~(bb)~~ Every agent or agency identifying sows, boars and stags ~~slaughter swine~~ shall maintain a record of the identification used, date of application, name and address of the producer of all sows, boars and stags ~~swine~~ identified for at least 120 days. These records shall be made available to the board at any time.

C. ~~(a)~~ Each agent or agency failing to comply with the provisions of this regulation is in violation of the rule ~~regulation~~ and the penalties invoked as provided in Minn. Stat. ch. 35, § 35.70 (1978).

# Department of Employee Relations

## Proposed Amendment of Rules Regarding Depositing of Social Security Contributions by Covered Public Employers

### Notice of Intent to Adopt Rules without A Public Hearing

Notice is hereby given that the State Department of Employee Relations proposes to adopt the above entitled rules without a public hearing. The commissioner has determined that the proposed adoption of these rules is noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, section 15.0412, subdivision 4g (1980) for adoption of noncontroversial rules.

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, section 15.0412, subdivisions 4-4f.

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

Patrick Halvorsen
Room 307, Space Center Building
444 Lafayette Road
St. Paul, Minnesota 55101
Telephone No. 296-4349

Authority for the adoption of these rules is contained in Minnesota Statutes, section 355.05. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from Patrick Halvorsen upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the Statement of Need and Reasonableness, all written comments received, and the final rules as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Patrick Halvorsen.

The rules proposed for adoption relate to the following matter:

The time schedule for local governmental units to remit their social security contributions each month to the state agency is being changed due to recently enacted federal legislation. Under the proposed rules, the social security contributions must be submitted within the 15 day period following the end of each month. Under the existing rules, the contributions are submitted within five working days after the end of the first and second months of each quarterly period and within 20 days following the third month of each quarter.

Copies of this notice and the proposed rules are available and may be obtained by contacting Patrick Halvorsen.

Barbara L. Sundquist
Commissioner of Employee Relations

### Amendments as Proposed

2 MCAR § 2.198 E. Employee's contribution. The employee's contribution is measured by the amount of wages actually received on or after the effective date of the agreement or modification entered into between the state and the Secretary of Health, Education and Welfare (hereinafter referred to as "State Agreement") with respect to services performed in

employment by the employee in a coverage group included in such agreement or modification. After the maximum reportable wages as provided in Title II of the Federal Social Security Act have been paid an employee during a calendar year, additional wages paid that employee during the remainder of the calendar year are not subject to deductions for social security taxes and no further wage contributions are required.

1. The social security tax rates to be applied against the wages of employees within the coverage group and which are to be matched with an equal amount by the payroll record unit of the State or political subdivision (hereinafter referred to as the "reporting unit") are the contribution rates established by Title II of the Federal Social Security Act.

2. Taxes shall be computed on the basis of the rate effective at the time the wages are actually or constructively received or paid.

However, wages received by an employee subsequent to the effective date of coverage for services rendered in a period prior to the effective date of coverage cannot be regarded as "wages received for employment" and such amounts are not subject to tax. Therefore, where the State Agreement makes social security coverage effective January 1 of a calendar year, wages received by an employee in such calendar year for services rendered in the previous calendar year cannot be regarded as "wages received for employment" and such amounts are not subject to tax.

3. Where an employee performs services during a calendar year for the state and one or more political subdivisions or for two or more political subdivisions, the wages paid in any calendar year to such employee by the state and each such political subdivision not in excess of the maximum reportable wages as provided in Title II of the Federal Social Security Act shall be reported by the state and each political subdivision, with the following exception: Where the State of Minnesota pays the matching employer social security contributions tax, such as for teachers in Minnesota public schools, then only the maximum reportable wages as provided in Title II of the Federal Social Security Act paid to such individual in the aggregate are subject to the social security tax and reported as wages.

4. The reporting unit shall be responsible for and shall collect from each employee the amount of tax determined to be due by deducting said amount from employee's wages when actually or constructively paid. The reporting unit shall collect the tax notwithstanding the fact that the wages are paid in any medium other than cash. After the matching amount has been provided by the reporting unit, the total social security contribution shall be remitted to the state agency for credit to the Social Security Contributions Fund in accordance with the following schedule:

a. ~~Except as provided in paragraph c.,~~ For each month, the social security contributions due on the wages paid ~~during the first and second months of each quarterly period~~ shall be forwarded to the state agency within ~~five working~~ the fifteen days ~~after~~ period following the end of each month beginning with the month of July 1980. Where the last day of the 15-day period is a legal holiday or a nonwork day, the social security contribution payment is due on the next preceding work day.

~~b. Except as provided in paragraph c., the social security contributions due on the wages paid during the third month of each quarterly period shall be forwarded to the state agency within 20 days after the end of such month along with the quarterly report.~~

b. ~~c.~~ Where the state assumes the responsibility for the matching employer social security contribution pursuant to Minn. Stat. § 355.46, subd. 3(b), the payments under a. ~~and b.~~ above shall be equal to the required employee contribution withheld only.

c. ~~d.~~ In lieu of remitting at times indicated above, the reporting unit may remit the required social security contribution payment at the end of each payroll period or after each salary payment made to the employees, but in no event shall the contribution payment be made later than the time periods specified in paragraphs a. ~~and b.~~ of this section.

d. ~~e.~~ With each contribution payment, the reporting unit must submit a completed approved Remittance Form prescribed by the state agency.

e. ~~f.~~ If any monthly contribution payment is not received by the state agency within the deadlines specified in paragraphs a. ~~and b.~~ above, interest will be charged to the reporting unit at the rate of six percent per annum on the contributions due for each month or part of a month from the due date, but in no case shall such interest charge or penalty be less than five dollars ($5.00).

5. The reporting unit is liable to the state agency for the employee's share of the tax whether or not such share has been

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withheld from the employee's wages. Notwithstanding the foregoing, the employee remains liable for the employee's share of the tax on all wages received by the employee not in excess of the maximum reportable wages as provided in Title II of the Federal Social Security Act per calendar year.

6. If any reporting unit fails to make the social security contribution payments required by law and these rules, the delinquent payments due with interest thereon at the rate of six percent per annum or the minimum penalty as established by these rules, whichever is greater, may be recovered in an action by the state agency in a court of competent jurisdiction against each and every political subdivision liable therefor or may, at the request of the state agency, be deducted from any other moneys payable to such political subdivision by any department or agency of the state.

7. The state or a political subdivision is not authorized to begin making deductions for social security taxes from the earnings of employees until after the State Agreement has been approved on behalf of the federal government by the Secretary of Health, Education and Welfare. However, as soon as the State Agreement has been fully executed and has been approved, the political subdivision shall make the necessary deductions from earnings, retroactive to effective date of said agreement or modification thereof, so that the total contribution payments required from the effective date of the State Agreement are transmitted to the state agency along with initial reports before the initial deadline as determined by the state agency. The exact method and time of deducting retroactive contributions from employees are matters to be determined by each political subdivision individually.

8. The responsibility of each reporting unit to make the required deductions from earnings of all covered employees shall not be affected by the fact that some employees may, while employed, be receiving social security benefits.

# Energy Agency Conservation Division

## Proposed Rules for the Establishment of the Minnesota Energy Conservation Service Program

Notice is hereby given that the public hearing in the above-entitled matter will be held in the Large Hearing Room, 83 State Office Building, 435 Park Street, St. Paul, Minnesota on December 16, 1980, commencing at 9:30 a.m. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written material may be submitted at the hearing. In addition, written material may be submitted and recorded in the hearing record by mailing the material to the Hearing Examiner Allan Klein, Hearing Examiners Office, 1745 University Ave., Room 300, St. Paul, Minnesota 55104—telephone (612) 296-8104, either before the hearing or within five working days after the close of the hearing unless the hearing examiner orders a longer period of time not to exceed 20 calendar days. The proposed rules are subject to change as a result of the rules hearing process. The agency therefore strongly urges those who may be affected in any matter by the substance of the proposed rules applicable to this hearing to participate in the rules hearing process.

If adopted, the proposed rules would establish a program requiring major regulated utilities to offer their residential utility customers services related to the promotion of energy conservation. The most important of these services include: conducting home energy audits to determine areas of major heat loss and other energy inefficiencies in the home; distributing Master lists of approved contractors, suppliers and lenders from whom home energy improvements and financing services may be obtained; arranging for the installation of home energy improvements; and arranging for the financing or supply of home energy improvements. The rules establish requirements for inclusion in the Master lists, audit training and certification procedures. This program also includes provisions for voluntary participation of home heating suppliers and nonregulated utilities.

The agency's authority to promulgate the proposed rules is contained in 1980 Minn. Laws, ch. 579, § 12 (to be codified as Minn. Stat. § 116H.17), as well as §§ 116H.08(a)(1978), 116H.07(i)(1978).

Copies of the proposed rules are now available and one free copy may be obtained by writing to the Minnesota Energy Agency, Attention: Alan Lessik, 980 American Center Building, 150 E. Kellogg Boulevard, St. Paul, Minnesota 55101—(612) 297-2117. Copies will also be available at the door on the date of the hearing.

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1979 Supp.) as any individual:

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

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

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

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

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Administrative Hearings. This Statement of Need and Reasonableness will include a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rule or rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.417, § 15.052 and by 9 MCAR §§ 2.101-2.113. Any questions concerning the procedures may be directed to the hearing examiner.

October 20, 1980

Mark Mason, Director

## Rules as Proposed (all new material)

### 6 MCAR § 2.2300 Authority and purpose.

A. Authority. The agency's authority to promulgate the proposed rules is contained in 1980 Minn. Laws, ch. 579, § 12 (to be codified as Minn. Stat. § 116H.17), as well as §§ 116.08(a)(1978), 116H.07(i)(1978).

B. Purpose. The purpose of these rules is to establish a program requiring major regulated utilities to offer their residential utility customers services related to the promotion of energy conservation. The most important of these services include: conducting home energy audits to determine areas of major heat loss and other energy inefficiencies in the home; distributing lists of approved contractors, suppliers and lenders from whom home energy improvements and financing services may be obtained; arranging for the installation of home energy improvements; and arranging for the financing of supply of home energy improvements. The rules establish requirements for inclusion in the lists, audit training and certification procedures, procedures for the billing of energy improvement loans on customer utility bills, and post-installation inspection and consumer grievance procedures. This program also includes provisions for voluntary participation of home heating suppliers and nonregulated utilities.

### 6 MCAR § 2.2301 Definitions.

For purposes of these rules, the following definitions apply:

A. Agency: The Minnesota Energy Agency.

B. Arranged installation. Any installation of MECS Program Measures, coordinated pursuant to 6 MCAR § 2.2304 by a participating utility or heating supplier, which is initiated using a standardized MECS Bid Form.

C. City of the first class: A city, pursuant to Minn. Stat. § 410.01(1978), which has a population of 100,000 inhabitants or more.

D. Covered utility. Covered utilities shall be determined on a yearly basis. The definition includes all public utilities which during the second preceding calendar year had either:

1. Sales of natural gas for purposes other than resale which exceed 10 billion cubic feet; or
2. Sales of electric energy for purposes other than resale which exceed 750 million kilowatt-hours.

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

E. Customer. For the purposes of this rule, a customer is any person who:

1. Owns or occupies a residential building; and

2. Receives a fuel bill from a participating utility or home heating supplier for fuel used in such residential building.

F. DOE: Department of Energy.

G. Energy conservation measures. Energy Conservation Measures means any of the following measures in a residential building:

1. Caulking. Pliable materials used to reduce the passage of air and moisture by filling small gaps located at fixed joints on a building, underneath baseboards inside a building, in exterior walls at electric outlets, around pipes and wires entering a building, and around dryer vents and exhaust fans in exterior walls. Caulking includes, but is not limited to, materials commonly known as "sealants," "putty," and "glazing compounds."

2. Weatherstripping. Narrow strips of material placed over or in movable joints of windows and doors to reduce the passage of air and moisture.

3. Furnace efficiency modifications.

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

b. Furnace replacement burner (oil). A device which atomizes the fuel oil, mixes it with air, and ignites the fuel-air mixture, and is an integral part of an oil-fired furnace or boiler including the combustion chamber, and uses less oil than the device it replaces.

c. Flue opening modification. An automatically operated damper installed in a gas-fired furnace (often called a vent damper) which:

(1) Is installed downstream from the drafthood; and

(2) Conserves energy by substantially reducing the flow of heated air through the chimney when the furnace is not in operation.

d. Electrical or mechanical ignition system. A device which, when installed in a gas-fired furnace or boiler, automatically ignites the gas burner and replaces a gas pilot light.

4. Replacement central air conditioner. A central air conditioner which replaces an existing central air conditioner of the same fuel type and which reduces the amount of fuel consumed due to an increase in efficiency.

5. Ceiling insulation. A material primarily designed to resist heat flow which is installed between the conditioned area of a building and an unconditioned attic. Where the conditioned area of a building extends to the roofs, the term "ceiling insulation" also applies to such material used between the underside and upperside of the roof.

6. Wall insulation. A material primarily designed to resist heat flow which is installed within or on the walls between conditioned areas of a building and unconditioned areas of a building or the outside.

7. Floor insulation. A material primarily designed to resist heat flow which is installed between the first level conditioned area of a building and an unconditioned basement, a crawl space, or the ground beneath it. Where the first level conditioned area of a building is on a ground level concrete slab, the term "floor insulation" also means such material installed around the perimeter of or on the slab. In the case of mobile homes, the term "floor insulation" also means skirting to enclose the space between the building and the ground.

8. Duct insulation. A material primarily designed to resist heat flow which is installed on a heating or cooling duct in an unconditioned area of a building.

9. Pipe insulation. A material primarily designed to resist heat flow which is installed on a heating, cooling, or hot water pipe in an unconditioned area of a building.

10. Water heater insulation. A material primarily designed to resist heat flow which is suitable for wrapping around the exterior surface of the water heater casing.

11. Storm or thermal window:

a. A window or glazing material placed outside or inside an ordinary or prime window, creating an air space, to provide greater resistance to heat flow than the prime window alone; or

b. A window unit with improved thermal performance through the use of two or more sheets of glazing material affixed to a window frame to create one or more insulated air spaces. It may also have an insulating frame and sash.

12. Storm or thermal door:

a. A second door, installed outside or inside a prime door, creating an insulating air space; or

b. A door with enhanced resistance to heat flow through the glass area created by affixing two or more sheets or glazing materials; or

c. A primary exterior door with a R-value of at least two.

13. Heat reflective and heat absorbing window or door material. A window or door glazing material with exceptional heat-absorbing or heat-reflecting properties; or reflective or absorptive films and coatings applied to an existing window or door which thereby result in exceptional heat-absorbing or heat-reflecting properties.

14. Devices associated with electric load management techniques. Customer-owned or leased devices that reduce the maximum kilowatt demand on an electric utility and which are any of the following:

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

b. Clock-controlled load switching devices;

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

d. Energy storage devices with control systems.

15. Clock thermostat. A device which is designed to reduce energy consumption by regulating the demand on the heating or cooling system in which it is installed, and uses:

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

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

H. Energy conserving practices. Energy Conserving Practices means any of the following measures in a residential building:

1. Furnace efficiency maintenance and adjustments, which means cleaning and combustion efficiency adjustment of gas or oil furnaces, periodic cleaning or replacement of air filters on forced-air heating or cooling systems, lowering the bonnet or plenum thermostats to 80°F on a gas or oil forced-air furnace, and turning off the pilot light on a gas furnace during the summer.

2. Nighttime temperature setback, which means manually lowering the thermostat control setting for the furnace during the heating season to a maximum of 55°F during sleeping hours.

3. Reducing thermostat settings in winter, which means limiting the maximum thermostat control setting for the furnace to 68°F during the heating season.

4. Raising thermostat setting in summer, which means setting the thermostat control for an air conditioner to 78°F or higher during the cooling season.

5. Water flow reduction in showers and faucets, which means placing a device in a shower head or faucet to limit the maximum flow to three gallons per minute, or replacing existing shower heads or faucets with those having built-in provisions for limiting the maximum flow to three gallons per minute.

6. Reducing hot water temperatures, which means manually setting back the water heater thermostat setting to 120°F; and reducing the use of heated water for clothes washing.

7. Reducing energy use when a home is unoccupied, which means reducing the thermostat setting to 55° F when a home is empty for four hours or longer in the heating season, turning an air conditioner off in the cooling season when no one is home, and lowering the thermostat setting of the water heater when a home is vacant for two days or longer.

8. Plugging leaks in attics, basements, and fireplaces, which means installing scrap insulation or other pliable materials in gaps around pipes, ducts, fans, or other items which enter the attic or basement from a heated space, installing fireproof material to plug any holes around any damper in a fireplace, and adding insulation to an attic or basement door.

9. Sealing leaks in pipes and ducts, which means installing caulking in any leak in a heating or cooling duct, tightening or plugging any leaking joints in hot water or steam pipes, and replacement of washers in leaking water valves.

10. Efficient use of shading, which means using shades or drapes to block sunlight from entering a building in the cooling season, to allow sunlight to enter during the heating season, and to cover windows tightly at night during the heating season.

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I. Heating supplier. A person who sells or supplies home heating fuel (including and not limited to, No. 2 heating oil, kerosene, butane, and propane) to a customer for consumption in a residential building and who has elected to participate in MECS, pursuant to 6 MCAR § 2.2312.

J. Installation standards. DOE Installation Standards pursuant to 10 CFR § 456 subparts G and I (1979).

K. Material standards. DOE Material Standards pursuant to 10 CFR § 456 subparts G and H (1979)

L. Measures warranty. A warranty in writing, by the manufacturer of the program measure, that the residential customer for whom the measure is installed, the contractor who installs the measure, and the supplier of the measure shall at a minimum be entitled to obtain, at no charge, appropriate replacement parts and materials for those measures found within one year from the date of installation or purchase to be defective due to materials, manufacture or design. The warranty shall also provide that the defect shall be corrected within two weeks after it is reported to the manufacturer.

M. MECS. Minnesota Energy Conservation Service.

N. New customer. A person who first becomes a customer after initial distribution of the Program Announcement but before January 1, 1985.

O. Non-regulated utility. A public utility whose rates are not within the jurisdiction of the Minnesota Public Utilities Commission's ratemaking authority.

P. OCS: Minnesota Office of Consumer Services.

Q. Participating utility. A covered utility or a non-regulated utility which voluntarily participates in the Minnesota Energy Conservation Service.

R. Program announcement. The MECS program information bulletin and utility offer of service to each customer.

S. Program measures. All energy conservation measures, renewable resource measures and state measures to be included in an MECS audit.

T. Regulated utility. A public utility whose rates are within the jurisdiction of the Minnesota Public Utilities Commission's ratemaking authority.

U. Renewable resource measures. Renewable resource measures means the following measures installed in or connected to a residential building:

1. Solar domestic hot water systems (DHW). Equipment designed to absorb the sun's energy and to use this energy to heat water for use in a residential building other than for space heating, including thermosiphon hot water heaters.

2. Passive polar space heating and cooling systems. Systems that make efficient use of, or enchance the use of, natural forces—including solar insolation, winds, night time coolness and opportunity to lose heat by radiation to the night sky—to heat or cool living space by the use of conductive, convective or radiant energy transfer. Passive solar systems include only:

a. Direct gain glazing systems. The use of south-facing (+ or −45° of True South) panels of insulated glass, fiberglass, or other similar transparent substances that admit the sun's rays into the living space where the heat is retained. Glazing is either double-paned, or single-paned equipped with movable insulation.

b. Indirect gain systems. The use of panels of insulated glass, fiberglass or other transparent substances that direct the sun's rays onto specially constructed thermal walls, ceilings, rockbeds, or containers of water or other fluids where heat is stored and radiated.

c. Solaria/sunspace systems. A structure of glass, fiberglass or similar transparent material which is attached to the South-facing (+ or −45° of True South) wall of a structure which allows for air circulation to bring heat into the residence, and which is able to be closed off from the residential structure during periods of low solar insolation.

d. Window heat gain retardants. Those mechanisms which significantly reduce summer heat gain through South-facing (+ or −45° of True South) windows by use of devices such as awnings, insulated rollup shades (external or internal), metal or plastic solar screens, or moveable rigid insulation.

3. Wind energy devices. Equipment that uses wind energy to produce energy in any form for pesonal residential purposes.

4. Replacement solar swimming pool heaters. Devices which are used solely for the purposes of using the sun's energy to heat swimming pool water and which replace a swimming pool heater using electricity, gas or another fossil fuel.

V. Residential building. Any structure used for residential occupancy including any building containing at least one, but not more than four, dwelling units, and: has a system for either heating or cooling living spaces. However, this definition does not

include: new buildings to which final standards under Sections 304(a) and 305 of the Energy Conservation and Production Act (42 U.S.C. 6801 et seq) apply.

W. State measures. State measures are the following measures in or with respect to a residential building:

1. Insulated window and glass coverings. A device with a minimum R-value of 2 which is designed to reduce heat losses through windows and doors.

2. Vent damper for waterheaters. A mechanical or thermally operated damper installed in a gas fired waterheater which:

a. Is installed when a vent damper is installed in a furnace and the two appliances share a common chimney.

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

3. Positive fireplace shutoffs. A manual shutoff device which can be utilized to produce a seal to inhibit the flow of air when a fireplace or fireplace stove is operating.

**6 MCAR § 2.2302 Program promotion.**

A. Program announcements.

1. Distribution.

a. Each covered utility shall send to all their customers a Program Announcement by April 9, 1981, and thereafter at least once every two years until January 1, 1985.

b. Each covered utility shall send a Program Announcement to each of its new customers within sixty (60) days after the date that the new customer first receives service.

c. Program Announcements shall be submitted to the agency for approval one month prior to the date that the utility intends to print the announcement. The agency shall approve the distribution of program announcements only if:

(1) The criteria of 6 MCAR § 2.2302 A.2. have been met; and

(2) The information contained in the program announcement represented in simple language.

2. Content.

a. The Program Announcement shall contain the following elements, at a minimum:

(1) A list of all program measures with an estimate of the savings in energy costs, expressed in percentages, which are likely to be produced by each measure in one year;

(2) A list of all energy conserving practices with an estimate of the savings in energy costs, expressed in percentages, which are likely to be produced by each practice in one year, and a statement that the practices are of low or no cost;

(3) An offer by the covered utility to provide the following services with a description of each:

(a) A program audit, in accordance with 6 MCAR § 2.2303.

(b) Installation arrangement services, in accordance with 6 MCAR § 2.2304 B.

(c) Financing arrangement services, in accordance with 6 MCAR § 2.2304 A.

(d) Contractor, lender and supplier lists in accordance with 6 MCAR § 2.2305.

The description of each service shall include information on how a customer may obtain these services, and the direct cost to the customer of obtaining these services;

(4) An offer to provide to each new customer upon request a copy of any program audit performed previously on the customer's present residence;

(5) The following disclosure: "Energy savings depend on many factors. The estimates contained in the announcement are based on estimates for typical houses. Your costs and savings will be different if your house is a different size or if your energy using habits are different from those we assumed. The energy audit which we offer will provide more specific estimates for your house.";

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(6) An explanation of the benefits of applicable federal and state energy tax credits;

(7) A description of the benefits and eligibility requirements of the Weatherization Assistance Program for Low Income Persons, 10 C.F.R. 440; (1980);

(8) The following statement: "The results of this audit may be used by renters to see if their residence complies with existing state energy standards for rental property. Call the Minnesota Energy Agency at 296-5175 or toll-free, 800-652-9747 for more information and what you can do to get your residence brought up to these standards."

b. The Program Announcement shall not contain:

(1) Advertising for sale, installation, or financing of any program measure or energy conserving practice by a particular person or company, listed or not; or

(2) Information regarding any product which is not a program measure or an energy conserving practice.

c. If a covered utility or participating heating supplier finances the sale or installation of program measures and energy conserving practices, it may describe its financial services.

d. The covered utility or participating heating supplier shall use the calculation procedures in Appendix A for the estimates contained in the Program Announcement. All estimates shall be based upon recent prices and appropriate climatological data for the customer's location. The price data will be taken from the survey conducted pursuant to 6 MCAR § 2.2303 A.2.

**6 MCAR § 2.2303 Energy audits.**

A. Validation of audit procedures.

1. Alternative audits. The agency shall develop a model program audit based on the calculation procedures in Appendix A for use by participating utilities and heating suppliers in the MECS. A participating utility or heating supplier may use an alternative audit if the alternative has been approved by the agency. The alternative audit will be approved if its results are within ± 20% of the results provided by the MECS Audit. To determine this, the agency shall conduct five field tests of the alternative audit on five representative residences of different sizes and ages. The results of these audits shall be reviewed by the agency and compared to the results achieved by the MECS Audit. If the alternative audit does not meet this test, any necessary changes may be made in the audits procedures and five additional audits may be conducted and reviewed. All alternative audits shall be submitted to the agency for validation by January 5, 1981.

2. Price information. On a semi-annual basis each covered utility shall survey local fuel prices and prices for materials and installation of program measures for use in audit calculations on a form provided by the agency. The results shall be sent to the agency for verification on the 15 day of January and July, starting on January 15, 1981.

B. Scheduling of program audits.

1. Upon prior approval by the agency, a program audit may be offered in the program announcement by a participating utility or heating supplier on a geographic or other conditional, non-discriminating basis. Approval will be granted if the audit offer schedule allows every customer within the respective utility or heating supplier's service area an equal opportunity to receive a program audit, and if the audit offer schedule is consistent with 6 MCAR § 2.2303. However, any covered utility which serves a city of the first class and offers audits on a geographic basis in that city must first offer the audits to customers in those neighborhoods that contain the largest number of people below the federal poverty guideline. If two or more covered utilities provide service to the same city of the first class, upon approval by the agency those utilities may enter into an agreement which provides that only one utility will offer the audits on the above priority basis. This agreement will not relieve either utility from responsibilities of offering audits to all eligible customers.

2. Each covered utility shall provide a program audit to a customer:

a. Within thirty (30) days of the customer's request if a conditional offer is made; or

b. Within sixty (60) days of the customer's request if an unconditional offer is made.

3. Each participating utility and heating supplier shall submit to the agency, 45 days prior to the first offer of a program audit, a schedule which states when program audits will be offered and completed throughout the state.

4. Participating utilities and heating suppliers are prohibited from preconditioning a program audit upon the purchase or performance of any other audit.

C. Conducting the audit.

1. Each participating utility and heating supplier shall upon request, provide to each customer a program audit which covers all energy conserving practices and all program measures. In each program audit, a state certified auditor shall determine

which of the energy conserving practices would save energy in the residence, explain and emphasize the importance of such practices and recommend that they be performed before the installation of any program measure. The auditor shall then determine the applicability of each program measure pursuant to 6 MCAR § 2.2303 D.2 in that residence.

2. The auditor shall estimate energy savings and installation costs of each program measure using the calculation procedures in Appendix A or procedures approved pursuant to 6 MCAR § 2.2303 A. Furthermore, the auditor shall perform each of the following:

a. Take actual measurements or inspections of the building shell and of the space heating, space cooling, and water heating equipment;

b. Base economic calculations on the survey conducted pursuant to 6 MCAR § 2.2303 A.2, for local fuel prices, and local prices for materials and installation of program measures, and also, included in the calculations typical local climate data for the customer's location;

c. Base calculation procedures for active solar domestic hot water systems on those contained in the HUD Intermediate Minimum Property Standards Supplement, Solar Heating and Domestic Hot Water Systems 4930.2, 1977 Edition; and

d. Base any cost and savings estimate for any applicable furnace efficiency modification to a gas or oil furnace or boiler on an evaluation of the seasonal efficiency of such furnace or boiler. This seasonal efficiency shall be calculated on an estimated peak (tuned-up) steady state efficiency corrected for cycling losses. This shall be done as follows:

(1) For oil furnaces or boilers, the steady state efficiency shall be derived by a flue gas analysis of measured flue gas temperature and carbon dioxide content.

(2) For gas furnaces or boilers, the steady state efficiency shall be derived from manufacturer's design data. If the manufacture's design data does not exist, then a flue gas analysis, as described in 6 MCAR § 2.2303 C.2.d. shall be done.

3. The auditor shall calculate the energy index for the residence using the procedures in Appendix A.

4. Each customer shall be required to sign a release form prior to an audit of a furnace which uses as its primary source of energy any fuel other than the fuel source sold by the participating utility or heating supplier which employs the auditor. The release shall include the following statement: "Since your home is heated by a source of fuel other than (identify the type of fuel supplier), you must sign this release form to allow us to audit your furnace. It will allow us to give you estimates of energy savings that may be available from making your heating appliances more efficient."

D. Technical criteria for calculating energy savings.

1. The following R-Values shall be recommended during the program audit and be used during the calculation procedure:

| | |
|---|---|
| a. Ceiling insulation | R-44 |
| b. (1) Wall insulation | R-11 |
| (2) Foundation insulation | R-11 |
| c. (1) Floor insulation | R-19 |
| (2) Rim joist insulation | R-19 |

2. The following criteria shall be used to determine if an estimate of cost and savings must be given for the particular program measure:

| Measure | Criteria |
|---|---|
| a. Replacement furnaces or boilers | — The furnace is five (5) years or older and has a seasonal efficiency of less than 80%. |
| b. Flue opening modifications | — The furnace combustion air is taken from a conditioned space. |
| c. Replacement central air conditioner | — The building has a central air conditioner that is five (5) years or older. |

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| | |
|---|---|
| d. Ceiling insulation | — The present level of ceiling insulation is R-30 or less. |
| e. Wall insulation | — There is no insulation in a substantial portion of the exterior walls and the building is not a mobile home. |
| f. Floor insulation | |
| (1) Floor | — There is no insulation in the floor over an unconditioned space. |
| (2) Rim joist insulation | — The rim joist is accessible. |
| g. Water heater insulation | — The remaining useful life of the heater appears to be three years or greater and space is available around the water heater to install insulation. |
| h. Electric load management devices | — The electric utility offers a residential rate which reflects any differences in the utility's cost of service between peak and off peak periods. |
| i. Clock thermostat | — The residence has a thermostat or the existing furnace or central air conditioner is compatible with a clock thermostat. |
| j. Solar domestic hot water system | — A site exists on or near the residence, which is free of major obstruction to solar radiation. |
| k. Passive solar direct or indirect gain glazing systems | — The living space of the residence has either a South facing (+ or −45° of True South) wall or an integral South facing (+ or −45° of True South) roof, which is free of major obstruction to solar radiation. |
| l. Heat reflecting and heat absorbing window or door material | — The affected rooms of the residence are air conditioned and the cooling degree days for the region exceed 700. |
| m. Passive solar solaria/sunspace systems | — The living space of the residence has a South-facing ground level wall, which is free of major obstruction to solar radiation. |
| n. Passive solar window heat gain retardants | — The living space of the residence has South-facing (+ or −45° of True South) window that is not shaded from summer sunshine. |
| o. Wind energy systems | — The site has an estimated wind speed of greater than 10 mph and there is sufficient unrestricted access to the wind. |

3. Every program audit addressing solar domestic hot water system shall include the following information:

a. The square feet of the solar collector;

b. The solar collector characteristics, including glazing materials and other solar collector materials;

c. Any storage system needed, including the capacity of storage;

d. Any freeze protection needed;

e. The estimated percent of the water heating load to be met by solar energy;

f. Any physical connections needed with existing heating systems;

g. Any site preparation needed; and

h. If the results are based on a simulation, the following disclosure or its equivalent: "The energy cost savings estimates you receive are based on systems which may be different from the ones you purchase. Also, these estimates were not determined using actual conditions but by using simulated measurements. Therefore, the cost savings we have estimated may be different from the savings which actually occur."

4. Every program audit addressing passive solar space heating systems shall include the following information:

a. A general description and an illustration of the system;

b. The estimated percent of the maximum heating requirements of the residence that could be met by the system;

c. The approximate dimensions of the system;

d. The method employed by the system to store heat, including the heat capacity for heat storage; and

e. The disclosure provided in 6 MCAR § 2.2303 D.3.h.

5. Every program audit addressing wind energy device shall include the following information:

a. Installation cost estimates, based on the installation costs of a commercially available device with kilowatt ratings appropriate to the level of electricity consumed in the customer's residence;

b. The auditor's estimate of the average windspeed at the residence based on data available at the nearest wind measurement station;

c. The specifications of the device under consideration; and

d. Estimates of energy cost savings, based on average yearly wind speeds and the specification of the selected wind device.

E. Presentation of audit results.

1. Upon completion of the program audit the auditor shall provide all the following information on-site, in person, in writing to each customer:

a. An estimate of the total cost (materials and labor) of installation by a contractor expressed in a range of dollars, with a twenty (20) percent maximum range, of each applicable program measure addressed in the program audit;

b. An estimate of the total cost of installation by the customer expressed in a range of dollars, with a twenty (20) percent maximum range, of each applicable program measure, addressed in the program audit. However, the auditor shall not provide an estimate to a customer of the cost of installation by the customer of replacement central air conditioners, wall insulation, furnace efficiency modifications, devices associated with load management techniques, or wind energy devices;

c. An estimate of the savings in energy costs expressed in a range of dollars, with a twenty (20) percent maximum range, which occur during the first year from installation of each applicable program measure addressed by the program audit.

d. An estimate of the payback period, measured in years, for the cost of installation of each program measure addressed by the audit.

e. A clear disclosure to the customer, through the use of sample calculations, that the total energy cost savings from the installation of more than one program measure may be less than the sum of energy cost savings of each of the measures installed individually;

f. The following disclosure: "The procedures used to make these estimates are consistent with the Minnesota Energy Agency criteria for residential energy audits. However, the actual installation costs you incur and energy savings you realize from installing these measures may be different from the estimates contained in this audit report. Although the estimates are based on measurements of your house, they are also based on assumptions which may not be totally correct for your household.";

g. An estimate of the annual normal maintenance costs, if any, of each applicable program measure; and

h. Sample calculations of the effect of the federal and state energy tax incentives on the cost to the customer of installing one applicable energy conservation program measure and one applicable renewable resource program measure.

2. The auditor shall also present the following information to the customer during, or upon completion of, the program audit:

a. An explanation of the arrangement services, post-installation inspection requirement and consumer grievance procedures as established in 6 MCAR §§ 2.2304, 2.2306, and 2.2308, with a brief description of how the customer can qualify for and use such services;

b. A copy of the most recent Master List of contractors, lenders and suppliers for the region, as issued by the Agency;

c. An explanation of the benefits of and eligibility requirements for the Weatherization Assistance Program for Low Income Person 10 C.F.R. § 440 (1980);

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d. If the audit is of a rental property, a separate list of those improvements necessary to bring the residence in compliance with Minn. Stat. § 116H.129, subd. 3. (1978) and a statement describing remedies available to tenants for violations of those standards.

3. If the eligible customer is not at his or her residence at the time scheduled for presentation of the audit results or otherwise declines an in person presentation, the auditor is relieved of any obligation to deliver the results in person. In this case, the results shall be mailed to the customer.

F. Prohibitions.

1. An auditor shall not recommend or discuss any supplier, contractor or lender to any customer. The auditor may state whether the participating utility or heating supplier by whom he or she is employed installs or finances the sale or installation of program measures, but shall not recommend that service.

2. The auditor shall not exclude any applicable program measures in the presentation of the audit to the customer.

3. An auditor shall not estimate or discuss with the customer the costs or energy cost savings of installing any product which is not defined as an energy conserving practice or a program measure.

4. The auditor shall not recommend fuel switching.

G. Required disclosure. The auditor shall provide the customer with a written statement of any substantial interest which the auditor or the auditor's employer has, directly or indirectly, in the sale or installation of any program measure.

**6 MCAR § 2.2304 Arrangement services.**

A. Financing arrangement service. Each participating utility and heating supplier shall provide an arrangement service for financing the supply or installation of any program measure, upon request of a customer. This financing arrangement service shall consist of all the following:

1. Providing the customer with the most recent Master List of lenders and an agency compiled list of other financing programs offered by federal, state or local governments and explaining these financing programs to the customer;

2. Providing the customer with a standard credit application and offering to assist the customer with a standard credit application; and

3. Providing a service in order to further assist and answer any additional questions of the customer.

B. Installation arrangement service. Each covered utility shall provide an arrangement service for the installation of any program measure, upon request of a customer:

1. For audited homes this installation arrangement service shall consist of:

a. Providing a choice to the customer of either the most recent Master List of contractors willing to install measures within the price range that the auditor specifies, or providing the most recent Master List of contractors; and

b. All the following:

(1) Providing up to three (3) standard bid forms per measure recommended by the auditor and providing the customer with a choice of having the form filled in by either the customer or the auditor.

(2) Supplying the customer with written information on recommended measures to be installed; and

(3) Providing a service in order to further assist and answer any additional questions of the customer regarding the arrangement process or the actual bids, when received.

2. For non-audited homes, this installation arrangement service shall consist of all the following:

a. Providing the Master List of contractors;

b. Providing up to three (3) standard bid forms to the customer;

c. An offer to supply the customer with written information on the various measures; and

d. Providing a service in order to further assist and answer any additional questions of the customer regarding the arrangement process or actual bids, when received.

C. Response time for services. The participating utilities and heating suppliers shall provide the services described in 6 MCAR § 2.2304 A. and B. at the time of the energy audit, for a customer requesting an energy audit. If an audit is not performed, the service shall be provided within twenty (20) days of a customer's request.

D. Prohibitions.

1. Participating utilities and heating suppliers shall not recommend any particular contractor, lender, supplier or

program measure although participating utilities and heating suppliers may inform customers of their own installation and supply services if they are on the most recent Master List.

2. Participating utilities and heating suppliers shall not arrange for financing or installation with any contractor, lender or supplier not on the most recent Master List.

3. Participating utilities and heating suppliers shall not provide arrangement services for measures which are not approved program measures.

E. Standardized bid forms. The agency shall develop a standardized bid form for use pursuant to 6 MCAR § 2.2304. This form shall be the only one used by the participating utilities and heating suppliers for arranging installation under MECS.

**6 MCAR § 2.2305 Master list of contractors, lenders and suppliers.**

A. Issuance of lists.

1. The agency shall prepare and maintain the Master List of the MECS suppliers, contractors and lenders. The agency shall provide notice through trade organizations to suppliers, contractors and lenders of the procedures for inclusion on the Master List for the MECS program.

2. Application forms and listing criteria for businesses wishing to be on the Master List shall be available from the agency, participating utilities, and heating suppliers. These forms and listing criteria shall be made available at the time of publication of notice of procedures for inclusion on the Master List.

3. Within sixty (60) days following the receipt of an application for inclusion on the Master List, the agency shall evaluate the application pursuant to 6 MCAR § 2.2305 B. and either place the business on the Master List or inform the business, in writing, of the reasons for its exclusion from the list.

4. Every thirty (30) days after the publication of the first Master List, the agency shall issue revisions to the Master List which include any additions, deletions or information changes. These revisions shall be issued to all participating utilities and heating suppliers. Every six (6) months, a new Master List shall be published.

B. Eligibility requirements.

1. To be eligible for listing, contractors and suppliers must enter into a written agreement with the agency.

a. Contractors shall agree in writing with the agency to meet the following requirements for each arranged installation:

(1) Comply with the applicable DOE installation standards found in 10 CFR 456 subparts G, I and install only measures that are labeled as meeting DOE material standards;

(2) Install only measures that are covered by the measures warranty (except for caulking and weatherstripping);

(3) Enter into a written contract with each customer detailing the job to be performed, its costs and a statement that the installation will be in compliance with all applicable DOE material and installation standards. This contract shall be in simple language;

(4) Warrant in the contract that any defect in materials manufacture, design or installation found within one year from the date of installation shall be remedied without charge and within two weeks;

(5) Maintain comprehensive general liability insurance covering:

(a) bodily injury; $100,000 per person
$300,000 per occurrence
(b) Property damage; $50,000 each occurrence
$100,000 aggregate; and

(6) Comply with all applicable federal, state and local laws;

(7) Participate in good faith in the conciliation conference when a complaint is made by a customer;

(8) Hold harmless from liability the participating utility or heating supplier in any contract between contractor and customer when the contractor is not a participating utility or heating supplier; and

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(9) Agree to notify the MECS inspection agency at the completion of the installation pursuant to 6 MCAR § 2.2306.

b. Suppliers shall agree in writing with the agency to meet the following requirements for each customer:

(1) Supply program measures which meet applicable DOE material standards;

(2) Provide, at a minimum, to any person who purchases a measure from the supplier, a warranty in writing that the person shall be entitled to obtain, within a two week period after notice by the customer to the supplier and at no charge, appropriate replacement parts or materials for those measures found to be defective within one year from the date of purchase due to a defect in materials, manufacture or design.

(3) Comply with all applicable federal, state and local laws;

(4) Have a method for informing customers that the supplier carries products which are program measures, that these products have a measures warranty and are labeled as meeting the DOE material standards;

(5) Participate in good faith in the conciliation conference when a complaint is made by a customer.

c. Lenders shall agree in writing to meet the following requirements for each arranged financing.

(1) Not to take a security interest in real property that is used as a residence unless the customer acknowledges in writing that he or she is aware of the consequence of default on the loan;

(2) Permit a rebate on unearned finance charges and impose no penalties if a customer prepays a loan (either voluntarily or as a result of default). When prepayment is the result of default, the rebate shall be computed from the day of acceleration;

(3) Comply with all applicable federal, state and local laws; and

(4) Participate in good faith in the conciliation conference when a complaint is made by a customer.

2. Disclosure of unresolved complaints. All businessses must inform the agency in their application for listing of the existence of any unresolved complaints against that business on file with the Consumer Division of the Minnesota Attorney General's Office or the Office of Consumer Services. Failure to report this information will result in exclusion from the Master List. The existence of three or more unresolved complaints against an applicant on file with the above agencies involving, but not limited to, the following subject matter shall result in exclusion from the Master List;

a. Misrepresentation of materials used in installation;

b. Improper installation of materials, based on manufacturer's or other standard installation procedure; or

c. False or misleading claims concerning energy savings to be produced by the measure.

C. Removal from the master list.

1. Any supplier, lender or contractor shall be removed from the Master List for violation of either the eligibility requirements in 6 MCAR § 2.2305B or the contract between the lender, contractor or supplier and agency as required in the same section.

a. Violations shall be reported to the agency by the post-installation inspectors and the mediators of consumer complaints. The post-installation inspectors and mediators shall also report to the agency whether the violation has been corrected or not, two weeks after the initial report of this violation.

b. Within one (1) week after the agency receives a report of violation, the agency shall send written notice to the contractor, lender, or supplier notifying the business of the reported violation. The contractor, lender, and supplier shall correct the violation within two weeks of mailing of the notice or within one week, send to the agency a written explanation as to why it is not a violation. The agency shall review the letter and the report of the inspector and will notify the contractor of its decision.

c. If the contractor, lender or supplier fails to correct the violation within two weeks after it has received notice of the agency's decision that a violation exists, it shall be temporarily delisted. This temporary delisting shall be in effect for thirty (30) days. The agency shall then send a second notice to the contractor, lender, or supplier explaining the temporary and permanent delisting procedures and invite a written response from the business prior to the end of the thirty (30) day period. A copy of this notice shall be sent to all participating utilities and heating suppliers. If the violation concerns a contractor, the contractor may see the records of the reported violation. If no resolution is made within thirty (30) days of mailing of the notice the contractor, lender or supplier will be permanently de-listed.

2. Any supplier, lender or contractor permanently removed from the Master List shall not be relisted for at least six (6) months after being so de-listed. To be relisted, all violations under the program must be corrected and inspected and all other listing requirements must be met.

**6 MCAR § 2.2306 Post-installation inspections.**

A. Inspection procedures.

1. Each covered utility shall arrange to conduct the post-installation inspections of its customers required in this section. By Dec. 15, 1980 each covered utility shall submit to the agency, for approval, its plans for conducting the inspections and for coordinating these inspection with the agency and the Office of Consumer Services.

2. No person shall conduct or perform an inspection unless he or she has been qualified by the agency, pursuant to 6 MCAR § 2.2307 C.

3. No inspector shall conduct an inspection if he or she has financial interest in the contractor whose work is to be inspected.

4. During the inspection, the inspector shall determine whether:

a. The installation conforms with DOE installation standards; and

b. In the case of a consumer complaint, the complaint is justified.

5. An inspection report shall be developed by the agency. The inspector shall use this report to certify that the installation meets all DOE installations standards.

Within five (5) days of the inspection, the inspector shall report to the customer, the contractor and the Agency whether or not any violations of the installation standards were found. If the Agency determines that a violation exists the contractor shall correct any violation within two (2) weeks of receipt of the report and shall arrange for a reinspection of the installation within one week after correction.

B. Mandatory inspections.

1. Flue opening modifications;

2. Electric or mechanical ignition systems;

3. Wind energy devices; and

4. Solar domestic hot water systems.

C. Random inspections.

1. Four of the first ten arranged installations made by each contractor of each of the following program measures shall be inspected:

a. Ceiling insulation;

b. Floor insulation;

c. Wall insulation; and

d. Solar domestic hot water systems.

2. Ten percent of all utility arranged installations of each program measure listed in 6 MCAR § 2.2306 C.1. shall be inspected each year. The inspections required in 6 MCAR § 2.2306 C.1. shall count toward the fulfillment of this requirement.

3. At least one inspection shall be conducted each year of the arranged installations of the following measures for each contractor on the Master List:

a. Ceiling insulation;

b. Floor insulation;

c. Wall insulation;

d. Water heater insulation;

e. Storm or thermal windows;

f. Storm or thermal doors;

g. Replacement burner (oil);

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h. Solar domestic hot water systems; and

i. Replacement solar swimming pool heaters.

Before April 1, 1982, the utility, or its designated inspection agency, shall determine whether all listed contractors have been inspected at least once by that date. Any contractor whose work has not been inspected by that time shall then be inspected. An additional inspection shall be required for any contractor whose installation has been found in violation of these rules. This review shall be done annually thereafter.

D. Inspections as a result of consumer complaints.

1. Within two (2) weeks of the receipt by the Office of Consumer Services of any customer complaint concerning arranged installation of the measures listed in 6 MCAR § 2.2306 B.1. and C.3., an inspection shall be conducted to determine the existence of any violations of these rules. Within five (5) days after the inspection, a copy of the inspection report shall be sent to the Office of Consumer Services.

2. All inspections conducted as a result of a consumer complaint shall be counted toward the fulfillment of the inspection requirements in 6 MCAR § 2.2306 C.1., 2. and 3.

**6 MCAR § 2.2307 Qualification procedures for auditors and inspectors.**

A. Prohibition of discrimination. No person shall be denied the right to become an auditor or inspector on the basis of race, religion, nationality, creed, age or sexual preference.

B. Auditors.

1. Training

a. No person shall be eligible for certification pursuant to 6 MCAR § 2.2307 B.2., unless he or she has first participated in a training course which has been approved by the agency and which covers the subject matter tested in the auditors' certification examination.

b. Any present auditor with six (6) months experience who has completed twenty-five (25) audits, or any registered engineer or any architect shall be permitted to take an agency approved orientation session, in lieu of the requirements of 6 MCAR § 2.2307 B.1.a.

c. Two months prior to the first public offer of the audit, the participating utility and heating supplier shall submit to the agency for approval a plan to develop and administer a program of in-service training for the continued education of certified auditors. The agency shall approve a plan if it reviews and updates the material listed in 6 MCAR § 2.2307 B.2.b., provides the auditors with additional technical information and the program measures and audit techniques and reviews the communications skills needed for the interaction with the homeowner.

2. Certification.

a. No person shall participate in the MECS Program as an auditors, unless he or she has first passed a certification examination conducted by the agency.

b. The certification examination shall test for the following qualifications:

(1) A general understanding of the three types of heat transfer and the effects of temperature and humidity on heat transfer;

(2) A general understanding of residential construction terminology and components;

(3) A general knowledge of the operation of the heating and cooling systems used in residential buildings, including the need and provision for combustion air;

(4) A general knowledge of the different types of each applicable program measure, of the advantages and disadvantages and applications of each, and of the DOE installation standards;

(5) The capability to conduct the MECS energy audit including:

(a) A working knowledge of the energy conserving practices defined in this plan,

(b) The ability to determine the applicability of each of the program measures, and

(c) A proficiency in the auditing procedures for each applicable program measure established in 6 MCAR § 2.2303.

(6) A working ability to calculate the steady state efficiency of furnaces or boilers;

(7) An understanding of the nature of solar energy and its residential applications including:

(a) Insulation,

(b) Shading,

(c) Heat capture and transport, and

(d) Heat transfer for hot water;

(8) An understanding of the nature of wind energy and its residential applications including:

(a) Wind availability,

(b) Effects of obstruction,

(c) Wind capture,

(d) Power generation,

(e) Interfaces with residential and utility power lines; and

(9) A working knowledge of building and fire codes related to the installation and safety of wood burning appliances.

c. These examinations shall be conducted by the agency and offered at the following times:

(1) Within two (2) days after the completion of each state-sponsored training course or orientation session, or

(2) Once a month, until February 1982, with a minimum of two examinations per year afterward.

d. Certification shall be valid for one year.

e. After one year, each auditor must be recertified. Recertification procedures shall be as follows:

(1) One month prior to the date of certificate expiration, the auditor shall attend a recertification course, as required by the agency. Attendance in this course shall recertify the auditor for the next year.

(2) The recertification course requirement for auditors shall be eliminated for any particular year, if the agency determines that no changes were made in the MECS Program that year. Certification shall then be automatically renewed.

(3) This recertification shall occur annually, for the life of the program.

f. Any person who is certified to conduct Residential Conservation Service audits in another state shall not be required to take the training course established in 6 MCAR § 2.2307 B.1., but shall be required to pass the Minnesota certification examination.

C. Inspectors.

1. Qualifications to conduct random inspections.

a. No person shall participate in the MECS Program as a general inspector unless he or she has been qualified. To become qualified each person must first take a training course, which has been approved by the agency.

b. The training course shall cover the following subject matters:

(1) The measures listed in 6 MCAR § 2.2306 C.3.;

(2) Methodology to evaluate whether the installation of a measure conforms to DOE installation standards;

(3) The MECS recommended standards for R-values for each insulation measure, pursuant to 6 MCAR § 2.2303 D.1.

c. Each covered utility shall submit to the agency for approval a plan for the training of general inspectors, as required in 6 MCAR § 2.2307 C.1.a., by January 15, 1980. The agency shall approve a plan if it ensures coverage of the subject matter pursuant to 6 MCAR § 2.2307 C.1.b.

d. Each covered utility shall notify the agency of each person qualified as a general inspector within two weeks after that person has been qualified.

2. Qualifications to conduct mandatory inspections.

a. No person shall participate in the MECS Program as a specialized inspector unless he or she has been qualified. To

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become qualified each person must first take training courses which have been approved by the agency. Each person shall only be qualified to inspect those measures for which that person has been trained.

b. The training courses shall cover:

(1) The following subject matter concerning flue opening modifications and electrical or mechanical ignition systems:

(a) Applicable state and federal codes and regulations;

(b) An understanding of gas appliances used in residential buildings, including basic system requirements, components and operation, and an understanding of potential malfunctions of gas appliances;

(c) An understanding of gas appliance controls and safety controls, including automatic gas valves, limit switches, and thermostats;

(d) An understanding of basic furnace and boiler circuitry, including electrical components, and the use of appropriate meters for testing gas appliance circuitry;

(e) An understanding of the purpose, general structure, and operational systems of vent dampers including the advantages and disadvantages of each type; an ability to service and install electrical, mechanical, and thermal vent dampers;

(f) An understanding of the purpose, basic system requirements and components, and operation of electrical or mechanical ignition systems; an ability to service and install the system, an understanding of schematic diagrams and potential malfunctions of the system;

(g) An understanding of the types of vents, draft diverters, and heat transfer components; an understanding of venting theory including ventilation air, dilution air, vent sizing, and venting installation procedures; an ability to perform leak and spillage checks, and to use instrumentation to measure carbon monoxide and carbon dioxide emissions from gas appliances;

(h) An understanding of proper combustion and proper flame characteristics and gas piping procedures; and

(i) An understanding of the methodology to evaluate whether the installation of the measures conform with DOE installation standards.

(2) The following subject matter concerning wind energy devices:

(a) An understanding of the structural characteristics of wind energy devices;

(b) An understanding of national and local codes governing the electrical interconnection between the wind energy device and the residential and/or utility electrical system; and

(c) Methodology to evaluate whether the installation of a wind energy device conforms with DOE installation standards.

(3) The following subject matter concerning solar domestic hot water systems:

(a) The residential construction methods employed in the region and the characteristics of structures that would preclude a safe and enduring solar installation;

(b) The applicable provisions of the HUD (*Intermediate Minimum Property Standards Supplement*), Solar Heating and Domestic Hot Water Systems 4930.2, 1977 Edition.

(c) The design, operation, installation and degradation of residential hot water and heating systems with which the solar devices will interconnect; and

(d) The connection of the solar devices into the existing residential systems, including testing for satisfactory performance of the solar devices and the modified system, according to the requirements of the HUD (*Intermediate Minimum Property Standards Supplement*), Solar Heating and Domestic Hot Water Systems 4930.2, 1977 Edition.

(e) Methodology to evaluate whether the installation of a solar domestic hot water system conforms with DOE installation standards.

c. Each covered utility shall submit to the agency for approval a plan for the training of specialized inspectors as required in 6 MCAR § 2.2307 C.2.a. by January 15, 1980. The agency shall approve a plan if it ensures coverage of the subject matter pursuant to 6 MCAR § 2.2307 C.2.b.

d. Each covered utility shall notify the agency of each person qualified as a specialized inspector, within two weeks after that person has been qualified.

**6 MCAR § 2.2308 Consumer grievance procedures.**

A. Conciliation conference.

1. OCS shall be responsible for the mediation of customer complaints against lenders, suppliers, contractors, and participating utilities and heating suppliers which are acting as lenders, suppliers, or contractors under the MECS Program.

2. Before utilizing the OCS Mediation Service customers shall be directed by the participating utilities and heating suppliers or OCS to first bring their complaint to the attention of the contractor, supplier, lender, or participating utility or heating supplier which is acting as a lender, supplier or contractor. If the complaint is not resolved, the customer shall fill out a MECS customer complaint form supplied by OCS.

3. Within three working days of receipt of a written MECS customer complaint, an OCS mediator will contact the customer and the party complained against to ascertain their positions in regard to the complaint. If necessary, the OCS mediator shall conduct a conciliation conference between the parties in person or by phone.

4. OCS shall report to the Agency, the name of any lender, supplier or contractor which, after two weeks notice from OCS has failed:

a. To respond to attempts to contact it; or

b. To actively participate in good faith in the mediation process within 30 days of initial contact; or

c. To correct program violations or take remedial measures agreed to in mediation within two (2) weeks after agreement.

B. Annual report. The Office of Consumer Services shall submit to the agency by May 15 each year, up to and including May 15, 1986, a report containing the following information for the twelve (12) month period ending the preceeding April:

1. The number and nature of complaints against suppliers, contractors and lenders which have been handled through the conciliation conference; and

2. The number and function of employees within OCS assigned to the MECS Program.

**6 MCAR § 2.2309 Customer payments.**

A. Customer billing.

1. Each covered utility and heating supplier, when billing the customer for any costs it incurred under the MECS, including arranged loans, shall identify and list the charges separately on the billing for the charges. The customer shall be allowed to include payment for those charges with payment for the utility bill.

2. When receiving a payment from a customer that includes payment for utility service or fuel and payment for any MECS service, the covered utility and heating supplier shall credit the payment to utility service or fuel first, and then credit the remainder to MECS Program charges, unless the customer specifies otherwise.

B. Loan payments.

1. If the lender agrees, a loan arranged by a covered utility pursuant to 6 MCAR § 2.2304 A. may be repaid by the customer as part of the periodic utility bill. The utility may recover from the lender the cost incurred by the utility in carrying out this repayment.

2. If the lender agrees, any loan for the purchase or installation of program measures made or arranged by a heating supplier shall be subject to the following requirements:

a. The heating supplier shall allow the customer to repay the loan over a period of not less than three years, unless the customer chooses a shorter repayment schedule. The heating supplier may impose a minimum periodic payment of five dollars ($5).

b. A lump-sum payment of outstanding principal and interest may be required by the lender upon default in payment by the customer.

c. No penalty shall be imposed by a heating supplier or a lender for payment of all or any portion of an outstanding loan prior to the date that such payment would be due.

C. Termination of service. No participating utility or heating supplier shall terminate or restrict utility or fuel service upon customer default or non-payment of any MECS Program charges and loans.

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**6 MCAR § 2.2310 Utility supply, installation and financing.**

A. Survey of utilities.

1. Each covered utility which supplies or installs any program resource measure:

a. Shall be listed as a supplier or contractor pursuant to 6 MCAR § 2.2305, in the same manner and subject to the same requirements as any other supplier or contractor;

b. Shall charge fair and reasonable prices for the supply or installation of program measures;

c. Shall not discriminate unfairly among eligible customers in undertaking the above described activities.

2. Beginning in April, 1981, the agency shall conduct an annual survey of prices charged for the supply or installation of goods and services comparable to those the covered utilities supply or install. If the agency determines that the prices charged by covered utilities for the supply and installation of program measures are significantly different from the typical local prices and interest rates disclosed in the agency's survey, or the agency receives complaints from contractors or suppliers regarding the prices, the agency shall notify the covered utility of disparity in prices and request a written justification with supporting documentation. This documentation with copies of the survey shall then be sent to the Minnesota Attorney General's Office, Anti-Trust Division.

B. Financing. Whenever a covered utility undertakes to finance its own lending program for program measures through financial institutions, the utility shall seek such funds from institutions located in the area covered by the lending program.

However, if the covered utility determines that this limitation is disadvantageous to its customers, or not feasible, the limitation shall not apply.

**6 MCAR § 2.2311 Reporting and recordkeeping.**

A. Annual report. Each covered utility and heating supplier shall submit to the agency by May 15 of each year up to and including May 15, 1986, a report containing the following information for the twelve (12) month period ending the preceeding April:

1. The approximate number of customers in its system and, if available, the percentage of that number for whom the covered utility or heating supplier provides the primary heating fuel;

2. A copy of the program announcement;

3. The number of requests for each of the following services as well as the number of requests fulfilled:

a. Program audit,

b. Installation arrangement,

c. Financing arrangement, and

d. Billing service for repayment of loans;

4. The number of installations of program measures installed by, supplied by, or financed by the covered utility or heating supplier;

5. The number and results of post-installation inspections, including description of violations;

6. The number and function of employees assigned to the program; and

7. The costs incurred, including that portion of the cost paid by individual customers for services received and that portion paid by all ratepayers, in providing each type of the following services:

a. the program audit,

b. installation arrangement,

c. loan arrangement, and

d. post-installation inspections.

B. Recordkeeping requirements.

1. Each covered utilities and heating supplier shall keep the following records and shall be kept for the periods indicated:

a. For five (5) years from the date of the program audit, the name and address of each customer who receives a program audit;

b. For five (5) years from the date of the program audit, a copy of the data collected and the estimated cost and savings information for each customer who receives a program audit.

c. For five (5) years from the date of the request, each request for a furnace audit;

d. For five (5) years from the date of the arrangement, the name and address of each customer for whom installation or financing of measures was arranged; and

e. For two (2) years from the date of the program audit, the total amount and cost of fuel purchased for the period of twelve months prior to and twelve months following each audit. This information is only required for those utilities and heating suppliers which supply the primary heating fuel to the customer.

2. This information shall be made available to the agency upon request.

**6 MCAR § 2.2312 Heating suppliers.**

A. Any heating supplier may apply to the agency to participate in the MECS Program.

B. Any heating supplier or association of heating suppliers may apply to the agency for a waiver of any requirement of this plan, except those listed in 6 MCAR § 2.2312 C. All waivers that do not substantially limit either the delivery of services described in this plan or the conservation potential of the program shall be approved by the agency.

C. The following requirements of these rules shall not be waived:

1. The calculation procedures in Appendix A and the ban on advertising in program announcements offered, as established in 6 MCAR § 2.2302 A.2.b.

2. The reporting and recordkeeping requirements, pursuant to 6 MCAR § 2.2311.

3. The on-site energy audit, pursuant to 6 MCAR § 2.2303.

4. The arrangement service for the financing of program measures, pursuant to 6 MCAR § 2.2304 A., C., and D.

5. The distribution of Master Lists developed, pursuant to 6 MCAR § 2.2305.

6. The offer of the consumer complaint process, pursuant to 6 MCAR § 2.2308, and

7. The exclusive use of certified auditors, pursuant to 6 MCAR § 2.2307.

D. Any participating heating supplier may voluntarily withdraw from this program after completing all outstanding services offered to its customers.

E. A participating heating supplier which does not provide MECS services or does not comply with the requirements listed in 6 MCAR § 2.2312 C., shall be excluded by the agency from participating in the MECS Program.

**6 MCAR § 2.2313 Non-regulated utility program.**

A. Any non-regulated utility may apply to the Agency for inclusion in the MECS Program.

B. A non-regulated utility or an association of non-regulated utilities may apply for a waiver of any requirement in this rule, except as noted in 6 MCAR § 2.2313 C. All waivers that do not substantially limit either the delivery of services listed or the conservation potential of the program shall be approved.

C. The following requirements of these rules shall not be waived:

1. The on-site program audit, pursuant to 6 MCAR § 2.2303.

2. The arrangement services for the financing of program measures, pursuant to 6 MCAR § 2.2304 A., C., and D.

3. The distribution Master Lists developed pursuant to 6 MCAR § 2.2305.

4. The offer of the consumer complaint process, excluding post-installation inspections, pursuant to 6 MCAR § 2.2308.

5. The exclusive use of certified auditors, pursuant to 6 MCAR § 2.2307.

D. The following requirements of this rule shall not be required for non-regulated utilities:

1. Program Promotion, pursuant to 6 MCAR § 2.2302.

2. Post-installation Inspection Services, pursuant to 6 MCAR § 2.2306.

3. Customer Payments, 6 MCAR § 2.2309 A. and B.

4. Reporting and Recordkeeping, pursuant to 6 MCAR § 2.2311.

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E. Any participating non-regulated utility may voluntarily withdraw from this program after completing all outstanding services offered to its customers.

F. A participating non-regulated utility which does not comply with the requirements listed in 6 MCAR § 2.2312 C. shall be excluded by the agency from participating in the MECS Program.

Appendix A

Procedures for Calculating Energy Savings
for Program Measures and Practices

The following procedures shall be the basis for calculating energy savings for program measures and practices for the program announcements.

A. Energy conserving measures.

1. General energy savings equation. The following equation will be used to calculate energy savings for the practices and measures listed below, except for those that are already termed in E.

Equation #1. $$\Delta E = \frac{\Delta H \times D \times 20.4}{N \times V}$$

Where

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

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

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

N = The seasonal operating efficiency of the heating system.

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

2. Caulking.

Equation #2. $\Delta H = .018 \times I \times Vol$

Where

I = change in infiltration rate in air changes per hour

Vol = volume of heated space in cubic feet

3. Weatherstripping.

Use equation # 2

4. Furnace efficiency modifications.

a. Replacement furnaces or boilers.

Equation #3. $$\Delta E = E_h \left(1 - \frac{N_o}{N_1}\right)$$

b. Furnace replacement burner. ($\Delta E$ is given as a range)

Equation #4. Low estimate of $\Delta E = .10E_h$
High estimates of $\Delta E = .18E_h$

c. Flue opening modifications. ($\Delta E$ is given as a range)

Equation #5. Low estimate of $\Delta E = .07E_h$
High estimate of $\Delta E = .10E_h$

d. Install electronic ignition system

(1) If pilot is turned off during the summer.

Equation #6. $$\Delta E = \frac{3600F}{V} p$$

(2) If pilot is left on in the summer.

Equation #7. $\Delta E = \frac{7300F}{V} p$

Where

$E_h$ = Total annual energy used for space heating, in units of fuel.
$N_o$ = The seasonal operating efficiency of the existing heating system.
$N_1$ = The seasonal operating efficiency of the proposed heating system.
$F_p$ = Rate at which pilot uses energy, in BTU per hours. (Typically 800 to 1000 Btu per hour).
V = Heating value of the fuel type in Btu per unit of fuel.

5. Replacement central air conditioner.

Equation #8. $\Delta E = E_c (1 - \frac{PSE}{NSE})$

Where

$E_c$ = Annual energy used by existing central air conditioner, in units of fuel.
PSE = Present seasonal efficiency.
NSE = New (proposed) seasonal efficiency.

6. Ceiling insulation.

Equation #9. $\Delta H = (\frac{1}{R_o} - \frac{1}{R_1}) A$

Where

$R_0$ = Total R-value in present condition.
$R_1$ = Total R-value of proposed condition.
A = Area for which additional insulation is being proposed.

7. Wall insulation.
Use equation #9 for above grade walls.

8. Floor insulation.
Use equation #9.

9. Duct insulation.

Equation #10. $\Delta E = \frac{(\frac{1}{R_o} - \frac{1}{R_1}) (T_2 - T_1) A \times HRS)}{NV}$

Where

$R_0$ = The total R-value of the ducts before improvement.
$R_1$ = The total R-value of the ducts after improvement.
$T_2$ = Average temperature of air inside ducts during an on cycle of the heating system.
$T_1$ = Average temperature of the unconditioned space the ducts pass through.
A = Duct area for which insulation is proposed.
HRS = Number of hours the heating system operates in a heating season.
N = Seasonal operating efficiency of the heating system.
V = Heating value of fuel in Btu per unit of fuel.

10. Pipe insulation.

Equation # 11. $\Delta E = \frac{(Q_1 - Q_0) L \times HRS}{NV}$

Where

$Q_1$ = Heat loss in Btu/hr. ft. before improvement
$Q_o$ = Heat loss in Btu/hr. ft. after improvement

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L = Length of uninsulated pipes in unconditioned space.
HRS = Number of hours per year the heating system operated in a heating season.
N = Seasonal operating efficiency of the heating system.
V = The heating value of the fuel in Btu per unit of fuel.

11. Water heater insulation.

a. If water heater is in an unconditioned space.

Equation #12. $$\Delta E = \frac{8760A\left(\frac{1}{R_0} - \frac{1}{R_1}\right)(T_w - T_a)}{N_r V}$$

b. If water heater is in a conditioned space.

Equation #13. $$\Delta E = \frac{H \times A \times \left(\frac{1}{R_0} - \frac{1}{R_1}\right)(T_w - T_a)}{N_r V}$$

Where

$R_o$ = Total R-value of the water heater before improvement.
$R_1$ = Total R-value of the water heater after improvement.
$T_w$ = Hot water temperature.
$T_a$ = Average air temperature of area surrounding water heater.
$N_r$ = Recovery efficiency of water heater.
V = Heating value of fuel type in Btu per unit of fuel.
H = Number of hours per year that the outside temperature is above 65°F.

12. Storm and thermal windows.

Equation #14. $\Delta H = (U_0 - U_1) \times A$

Where

$U_0$ = The U-value of the existing window assembly.
$U_1$ = The U-value of the proposed window assembly.
A = The area of the window assembly.

13. Storm and thermal doors.
Use equation #14 where:

$U_0$ = The U-value of the existing door assembly.
$U_1$ = The U-value of the proposed door assembly.
A = The area of the door assembly.

14. Heat reflective and heat absorbing window or door material.
Equation #15 $$\Delta E = \frac{A \times F_{ss} \times F_{es}}{N_{ac}}$$

Where

A = Area of glazing
$F_{ss}$ = Summer shading factor
$F_{es}$ = Glazing orientation factor
$N_{ac}$ = Seasonal efficiency of the air conditioning system.

15. Load management. Each utility offering such system will provide $\Delta E$ according to the particular system that the utility offers.

16. Clock thermostats.

Energy savings will be given for a single 8 hour night setback.

Equation #16a $\Delta E = .07E_h$ for 5°F setback
Equation #16b $\Delta E = .10E_h$ for 10°F setback
Equation #16c $\Delta E = .11E_h$ for 15°F setback

Where

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

17. Solar domestic hot water.

Equation #17 $\Delta E = SSF \times E_{hw}$

Where

SSF = Solar saving fraction = fraction of hot water supplied by the solar system. (Target SSF = .7)
$E_{hw}$ = Annual energy used for heating domestic hot water, in millions of Btus.

18. Passive solar systems.

a. Direct gain glazing, indirect gain-water well storage, indirect gain—trombe wall storage.

Energy savings for 100 square feet of double glazing with R-8 night insluation: ($\Delta E$ is given as a range)

Equation #18 $\Delta E = \frac{10 \times PSF \times F_0}{N}$ High estimate

$\Delta E = .6 \times$ High estimate Low estimate

b. Indirect gain-thermosiphon air panel

Energy savings for 100 square feet of panels:

Equation #19 $\Delta E = \frac{3.5 \times PSF \times F_0}{N}$ High estimate

$\Delta E = .7 \times$ high estimate Low estimate

c. Sunspace systems. Energy savings for 100 square feet of vertical double glazing:

Equation #20 $\Delta E = \frac{5 \times PSF \times F_0}{N}$ High estimate

$\Delta E = .6 \times$ High estimate Low estimate

Where

$\Delta E$ is in million of Btu
PSF = Prime Solar Fraction, estimated by auditor.
$F_o$ = Orientation Factor, from tables
N = Heating system seasonal efficiency

d. Window heat gain retardants.

Same as equation #14

19. Wind energy devices.

a. Systems providing utility grade power that can be sold to the electric utility when the system provides excess power. A system will be chosen with an Annual Wind System Output (AWSO) equal to one half the current annual electric use.

Equation #21a Low estimate of $\Delta E = .8$ AWSO
High estimate of $\Delta E = 1.2$ AWSO

b. Systems providing variable voltage power for heating use only. A system will be chosen with an Annual Wind Systems Output (AWSO) equal to one half of the annual heat supplied by the space heating system.

Equation #21b Low estimate of $\Delta E = .8$ AWSO
High estimate of $\Delta E = 1.2$ AWSO

Where

AWSO = Annual Wind System Output in kwh

20. Replacement solar swimming pool heaters.

Equation #22 $\Delta E = SSF \times E_{sp}$

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Where

SSF= Solar Saving Fraction = Fraction of swimming pool heat supplied by the solar system. (Target SSF = .5)
$E_{sp}$= Energy used to heat the pool for the months of May through September.

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

Equation #23 $\Delta H = 1.08 (Q_o - Q_1) A$

Where

$Q_0$ = The infiltration value in cubic feet per minute per square foot for the existing condition before improvement.
$Q_1$ = The infiltration value after improvement with a positive shut-off.
A = The cross sectional area of the flue or connector in square feet.

22. Install thermal shutters, shades, or draperies on exterior windows and glass doors.

Equation #14 will be used.

B. Energy conserving practices.

1. Furnace efficiency maintenance and adjustments.

a. Periodic cleaning and combustion efficiency adjustments. Savings for gas conversion units will be estimated at up to 15%. Savings for gas-designed systems will be estimated at up to 5%. Savings for oil heating systems will be estimated at 5% to 15%.

b. Periodic cleaning or replacing of filters in forced air systems. Savings will be estimated at 5% to 10%.

c. Fan setting on forced air furnaces reduced to 80°F if possible. Savings will be estimated at up to 5%.

d. Increase fan speed. Savings will be estimated at up to 5%.

e. Reduce aquastat setting to 140°F between December 1 and March 1 and 120°F between March 2 and November 30 or other reduction as approriate to individual boiler. Savings will be estimated at 5% to 10%.

2. Nighttime temperature setback. Savings estimates will be the same as for clock thermostats.

3. Reducing thermostat settings in winter. Savings will be estimated at 3% per °F reduction for 24 hours per day.

4. Raising thermostat settings in summer. Savings will be estimated at 5% per °F increase for 24 hours per day.

5. Water flow reduction in showers and faucets. Savings will be estimated at up to 40% of total energy used for domestic hot water.

6. Reducing hot water temperatures. Savings will be estimated at about 10% for reducing temperature from 140°F to 120°F.

7. Reducing energy use when a home is unoccupied.

a. Reducing thermostat setting to 55°F when home is unoccupied for four hours or more. Use equation #16b.

b. Turning an air conditioner off when no one is home. Savings will be estimated at up to 25% of energy used for air conditioning.

c. Turning a water heater off when a home is vacant for 2 or more days. Savings will be estimated at 1/365 of water heater jacket losses for each day the heater is turned off.

8. Plugging leaks in attics, basements, and fireplaces. Savings will be estimated at up to 30%.

9. Sealing leaks in pipes and ducts. Savings will be estimated at up to $6 per month for fixing a dripping hot water pipe or faucet. Savings for patching leaks in ducts in unconditioned spaces will be estimated at up to 15% of the energy used for space heating.

10. Efficient use of shading.

Use Equation #14.

C. Energy Index

Energy Index = $E \times F_w$

Where:

E is energy content of all fuel (including electricity) used during the months of November thru April, in Btus.

$F_w$ is a weather adjustment factor. It is the ratio of the number of degree days in an average heating season (Nov. 1 thru April 30) to the number of degree days for the heating season preceding the calculation.

# Energy Agency
# Conservation Division

## Proposed Temporary Rules for the Establishment of the Minnesota Energy Conservation Service Program

### Request for Public Comment

Notice is hereby given that pursuant to Minn. Stat. § 15.0412, subd. 5 (1978), the Energy Agency proposes to adopt temporary rules establishing the Minnesota Energy Conservation Service Program. To meet the deadlines established by the U.S. Department of Energy requiring the establishment of the Residential Conservation Service Program, the Minnesota Energy Agency intends to adopt temporary rules regarding this program until the permanent rules have been promulgated.

The proposed temporary rules which are the subject of this notice are exactly the same as the Minnesota Energy Agency's proposed permanent rules establishing the Minnesota Energy Conservation Service Program, 6 MCAR §§ 2.2300-2.2313. These proposed permanent rules are published in this same issue of the *State Register* and can be found immediately preceding this notice.

All interested or affected persons may submit written material containing data and their views on the proposed temporary rules to the Minnesota Energy Agency, Attention: Alan Lessik, 980 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101, telephone (612) 297-2117, within twenty (20) days after the publication of this notice. The temporary rules may be revised on the basis of comments received. Any written material received shall become part of the record in the final adoption of the temporary rules.

October 20, 1980

Mark Mason, Director
Energy Agency

# Department of Transportation

## Proposed Amendment of Rules Governing Weight Limitations on Interstate Highways and Designated Routes

### Notice of Hearing

Notice is hereby given that a public hearing in the above entitled matter will be held pursuant to Minn. Stat. § 15.0412, subd. 4 (1978), as amended, in Room 81, State Office Building (between Aurora and Fuller), St. Paul, Minnesota on December 5, 1980, at 10:00 a.m.

The Commissioner of Transportation has been provided the statutory authority to promulgate rules governing weight limitations on interstate highways and designated routes in Minn. Stat. § 169.832, (1978). The proposed amended rules, if adopted, would modify or newly designate certain streets or highway routes, or segment of a route, to carry the gross weights permitted under Minn. Stat. § 169.832 which are generally 20,000 pounds per single axle, 34,000 pounds per tandem axle, and a total gross weight of 80,000 pounds. Certain streets and highway routes heretofore designated by the commissioner in calendar year 1980 are proposed for continued designation. Other routes are proposed to be added, deleted or modified in length.

A copy of the rules is attached. Additional copies of the proposed rules are now available and one free copy may be obtained by writing to:

F. C. Marshall
Assistant Commissioner for Technical Services
Minnesota Department of Transportation
413 Transportation Building
St. Paul, Minnesota 55155

The rules will be available at the door on the date of the hearing.

Notice is hereby given that twenty-five (25) days prior to the hearing a Statement of Need and Reasonableness will be

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available for review at the agency and at the Office of Administrative Hearings. The Statement of Need and Reasonableness will include a summary of all of the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rule or rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

The proposed rules are subject to change as a result of the rule hearing process. The Department of Transportation therefore strongly urges those who are potentially affected by these proposed rules to participate in the rule hearing process.

All interested or affected persons will have an opportunity to participate concerning the adoption of proposed rules governing Weight Limitations on Interstate Highways and Designated Routes. Statements may be made orally and written material may be submitted at the hearing. The Department of Transportation hereby requests those submitting written statements to provide a copy of said materials to the address given previously, if possible. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted at the hearing. Whether or not an appearance is made at the hearing, written statements or material may be submitted by mail to Harry Seymour Crump, Hearing Examiner, Office of Administrative Hearings, at Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, telephone (612) 296-8111, either before the hearing or within five (5) working days after the close of the hearing. If so ordered by the hearing examiner, the hearing record may remain open and such materials may be submitted for a period longer than five (5) working days but not exceeding twenty (20) calendar days after the close of the hearing. All such statements and materials will be entered into and become a part of the record for this proceeding. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411 to 15.0417 and § 15.052; as well as by 9 MCAR §§ 2.101 to 2.112 (Minnesota Code of Agency Rules). If you have any questions about this procedure, call or write the hearing examiner.

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

The department expects that one hundred persons may attend the hearing and it estimates that one to two hours will be necessary for the department to present its evidence at the hearing.

It is not anticipated that adoption of the proposed rules will result in the expenditure of public monies by local bodies of government to implement the rules for the two years immediately following its adoption within the meaning of Minn. Stat. § 15.0412, subd. 7 (1978).

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1979 Supp.) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250.00, not including *his own* travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

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

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

October 20, 1980

Richard P. Braun, Commissioner
Department of Transportation

### Rules as Proposed for Calendar Year 1981

### 14 MCAR § 1.5050 Weight limitations on interstate highways and designated routes.

A. Purpose. The purpose of these rules is to carry out the mandate of the legislature and to effectuate that mandate as set forth in Minn. Stat. § 169.832 with reference to the establishment of weight limitations on interstate highways and designated routes in Minnesota.

B. Scope. The scope of these rules is intended to be confined within the framework of and consistent with Minn. Stat. § 169.832.

C. Jurisdiction and effect. These rules are adopted by the Commissioner of Transportation as the means to designate certain streets or highway routes, or segment of a route, to carry the gross weights permitted under Minn. Stat. § 169.832.

Explanatory Note: Both the 12 month and seasonal routes are listed together. The 12 month routes are all in capital letters. The seasonal routes are in small letters. The routes are listed in numerical order and read geographically from west to east and from south to north.

Trunk Highways

T.H. 1—From west state border to Jct. T.H. 32.

T.H. 2—In its entirety from west state border to Jct. T.H. 61 (I-35). FROM JCT. I-35 IN DULUTH TO ARROWHEAD BRIDGE.

T.H. 3—From Jct. T.H. ~~65~~ 60 to Jct. T.H. 55.
FROM JCT. T.H. 110 TO T.H. ~~212.~~ 5.

T.H. 4—From Jct. T.H. 14 north to Jct. T.H. 68.

T.H. 5—From west Jct. T.H. 19 to T.H. 212.
From Jct. T.H. 41 to I-494.
FROM JCT. I-494 TO MISSISSIPPI RIVER.
From Mississippi River to ~~T.H. 61 (Mounds Boulevard).~~ Grand Avenue (Ramsey Street).
(EAST 7TH STREET) FROM T.H. 52 (ROBERT STREET) EAST TO EAST MINNEHAHA AVENUE.

T.H. 6—From Jct. T.H. 18 to east Jct. T.H. 210.

T.H. 7—From Jct. T.H. 12 east to Jct. T.H. 15.
FROM T.H. 15 TO JCT. I-494.
From Jct. I-494 to Jct. T.H. 100.

T.H. 8—From Jct. I-35 to east state line (St. Croix River).

T.H. 9—From Jct. T.H. 29 to Jct. T.H. 59.

T.H. 10—FROM WEST STATE LINE TO BECKER COUNTY C.S.A.H. 10 (FRAZEE).
From C.S.A.H. 10 Becker County (Frazee) to Anoka.
~~From Jct. T.H. 47 to Jct. I-694.~~
FROM JCT. T.H. 47 TO JCT. I-694.

T.H. 11—From Jct. T.H. 32 to Baudette.

T.H. 12—From west state line to north Jct. T.H. 7 (Ortonville).
From Jct. T.H. 59 to Jct. T.H. 100.
FROM T.H. 280 TO ~~I-694.~~ WISCONSIN.
~~FROM I-694 TO WISCONSIN.~~

T.H. 13—From Jct. I-90 (Albert Lea) to ~~west~~ Jct. T.H. ~~19.~~ 60.
From Jct. T.H. 282 northeast to Jct. T.H. 101.
FROM JCT. T.H. 101 TO I-35W.

T.H. 14—From Jct. T.H. 75 to 2 miles west of I-35 (24th Avenue N.W.).
FROM I-35 WEST TO 24TH AVENUE NORTHWEST IN OWATONNA.
From Jct. I-35 to Jct. T.H. 218 (Havana).
From Jct. T.H. 56 to Jct. T.H. 57 (Kasson).
FROM JCT. T.H. 57 (KASSON) TO ~~JCT. T.H. 52.~~ EAST ROCHESTER CITY LIMITS.
From Jct. T.H. ~~52~~ 74 (St. Charles) to Jct. T.H. 61.

T.H. 15—From Jct. I-90 to Jct. T.H. 257.

T.H. 16—From Jct. I-90 to east Jct. T.H. 52.
From Jct. T.H. 44 to Jct. T.H. 61.

T.H. 18—From Jct T.H. 210 to north Jct. T.H. 169.
From south Jct. T.H. 47 to north Jct. T.H. 47.
From Finlayson to east Jct. T.H. 23.

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T.H. 19—From Jct. T.H. 59 to Jct. T.H. 22.

T.H. 21—From south Jct. T.H. 13 to Jct. 169.

T.H. 22—From Jct. T.H. 109 to Jct. T.H. 14.
From Jct. T.H. 212 to Jct. T.H. 55.

T.H. 23—From Jct. T.H. 269 to ~~north Lyon County Line.~~ T.H. 55.
~~From Granite Falls to T.H. 55.~~
FROM T.H. 55 IN PAYNESVILLE TO I-94.
From Jct. I-94 to south Jct. I-35.
From north Jct. I-35 to ~~Jct. T.H. 123.~~ Askov.

T.H. 24—From Jct. I-94 to Jct. T.H. 10.

T.H. 25—From south Jct. T.H. 5 to Norwood.
FROM I-94 TO SHERBURNE COUNTY C.S.A.H. 11.
From Sherburne C.S.A.H. 11 to north Jct. T.H. 10.
From Jct. T.H. 18 to Merrifield.

T.H. 27—From Jct. T.H. 75 to Jct. T.H. 9.
From Jct. T.H. 29 to Jct. T.H. 127.
From south Jct. T.H. 71 to Jct. T.H. 25.
From north Jct. T.H. 47 to Jct. T.H. 65.
From I-35 to Jct. T.H. 73 (Moose Lake).

T.H. 28—From west state line to south Jct. T.H. 9.
From Morris to Cyrus.
FROM 5TH STREET NORTHWEST IN GLENWOOD TO JCT. I-94.

T.H. 29—From Jct. T.H. 212 to Jct. T.H. 7.
FROM JCT. I-94 TO ITS NORTH JCT. WITH T.H. 27 (ALEXANDRIA).

T.H. 30—From Jct. T.H. 75 to north Jct. T.H. 59.
From Jct. T.H. 4 to south Jct. T.H. 15.

T.H. 32—From Jct. T.H. 11 to Jct. T.H. 59.

T.H. 33—From Jct. I-35 to Jct. T.H. 53.

T.H. 34—From Osage to Jct. T.H. 371.

I-35 —CONTINUOUS FROM IOWA BORDER TO 1.0 MILE NORTH OF JCT. WITH I-535 IN DULUTH. INCLUDES I-35W, AND I-35E FROM DOWNTOWN ST. PAUL TO VICINITY OF FOREST LAKE.

T.H. 36—FROM JCT. I-35W TO ~~T.H. 212~~ SOUTH JCT. T.H. 95 NEAR STILLWATER.

T.H. 37—From Jct. T.H. 53 to Jct. T.H. 135.

~~T.H. 37—In its entirety.~~

T.H. 40—From west state line to Jct. T.H. 75.

T.H. 41—From Jct. T.H. 169 to Jct. T.H. 212.
From Jct. T.H. 5 to Jct. T.H. 7.

T.H. 44—From west Jct. T.H. 52 to Jct. T.H. 16.

T.H. 45—From Jct. T.H. 210 (Carlton) to Jct. T.H. 33 (Cloquet).

T.H. 47—FROM JCT. T.H. 10 IN ANOKA TO 2 MILES SOUTH OF JCT. I-694.
From south Jct. T.H. 27 to north Jct. T.H. 18.

~~T.H. 49—From Jct. T.H. 3 to north Jct. T.H. 55.~~

T.H. 51—FROM I-94 TO I-694.
FROM WEST 7TH STREET IN ST. PAUL TO I-94 (SNELLING AVENUE FROM I-94 TO MONTREAL AVENUE, THEN MONTREAL AVENUE FROM SNELLING AVENUE TO WEST 7TH STREET).

T.H. 52—From south state line to I-90.
FROM JCT. I-90 TO OLMSTEAD COUNTY ROAD 14, 5 MILES NORTH OF WEST JCT. T.H. 14 IN ROCHESTER.

From Olmstead County Road 14 to Jct. T.H. 3.
FROM PLATO BOULEVARD TO WEST CITY LIMITS OF ST. PAUL.

T.H. 52—FROM JCT. T.H. 100 TO NORTH JCT. 152 (OSSEO).
~~From Jct. I-94 (vicinity St. Cloud) to north Jct. T.H. 152.~~
From Jct. T.H. 152 to I-94 (vicinity St. Cloud).

T.H. 53—From Jct. I-35 (Duluth) to south Jct. T.H. 169 (Virginia).

T.H. 55—From Jct. T.H. 29 to Brooten.
FROM 6.5 MILES WEST OF JCT. T.H. 71 (BROOTEN) TO JCT. T.H. 23.
From Jct. T.H. 23 to Jct. T.H. 22.
FROM JCT. T.H. 22 (EDEN VALLEY) TO ~~1-1/2 MILES EAST OF T.H. 100.~~ OAK LAKE AVENUE.
FROM EAST 24TH STREET IN MINNEAPOLIS TO JCT. T.H. 5.
FROM JCT. T.H. 5 TO JCT. T.H. ~~110.~~ 61.
~~From Jct. T.H. 110 to Jct. T.H. 61.~~

T.H. 56—From Adams to Jct. T.H. 30.
From Jct. T.H. 52 (Hampton) to Jct. T.H. 3.

T.H. 57—From Jct. T.H. 14 to Jct. T.H. 60.

T.H. 59—From south Jct. T.H. 30 to Jct. T.H. 23.
From Jct. T.H. 67 to Jct. T.H. 12.
From south Jct. T.H. 9 to north Jct. T.H. 28.
FROM SOUTH JCT. I-94 TO SHERIDAN AVENUE IN FERGUS FALLS. In Fergus Falls from Sheridan Avenue to north Jct. T.H. 210.
FROM NORTH JCT. I-94 TO JCT. T.H. 10.
From Jct. T.H. 10 to Jct. T.H. 2.
From Jct. T.H. 1 to north state line.

T.H. 60—From south state line to east Jct. T.H. 14.
From Jct. T.H. 57 to north Jct. T.H. 52.

T.H. 61—From Jct. T.H. 16 to I-90.
FROM NORTH JCT. I-90 TO 1 MILE NORTH OF T.H. 60 AT WABASHA.
FROM HASTINGS TO JCT. I-94.
FROM JCT. T.H. ~~212~~ 5 (EAST 7TH STREET) TO SOUTH JCT. T.H. 96.
From south Jct. T.H. 96 to Jct. T.H. 8.
FROM END OF I-35 (DULUTH) TO LAKE COUNTY ROAD 2 (TWO HARBORS).

T.H. 63—~~From south state line to Jct. T.H. 56.~~
~~From Jct. T.H. 16 to Jct. I-90.~~
FROM JCT. WITH I-90 TO JCT. T.H. 52.

T.H. 65—~~From south state line to south Jct. I-35.~~
FROM SOUTH JCT. I-35 (SOUTH OF ALBERT LEA) TO 2.3 MILES NORTH.
From 2.3 miles north of south Jct. I-35 to north Jct. I-35.
From Jct. I-694 to south Jct. T.H. 27.
From Pengilly to north Jct. T.H. 169.

T.H. 67—From west Jct. T.H. 19 to Jct. T.H. 68.

T.H. 68—From Jct. T.H. 23 to east Jct. T.H. 19.
From Jct. T.H. 67 to north Jct. T.H. 15.

T.H. 71—From Jct. I-90 to Jct. I-94.
FROM JCT. I-94 NORTH TO NORTH 4TH STREET IN SAUK CENTRE.
From Jct. 4th Street North in Sauk Centre to Browerville.

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From Jct. T.H. 10 to Jct. T.H. 34.
From Jct. T.H. 2 to Jct. T.H. 72 in Blackduck.

T.H. 73—From Jct. I-35 to Jct. T.H. 27 (Moose Lake).
From south Jct. T.H. 169 to north Jct. T.H. 169 (Hibbing).

T.H. 74—FROM JCT. I-90 NORTH TO JCT. T.H. 14 IN ST. CHARLES.

T.H. 75—From south state line to Canadian Border.

T.H. 79—From Elbow Lake to I-94.

T.H. 87—From south Jct. T.H. 71 to north Jct. T.H. 71.

T.H. 89—From Jct. T.H. 2 to south Jct. T.H. 1.

I-90 —FROM WEST BORDER TO EAST BORDER.

I-94 —CONTINUOUS FROM NORTH DAKOTA BORDER TO I-694 EAST OF ST. PAUL (INCLUDES YET TO BE CONSTRUCTED SEGMENT AT LYNDALE AVENUE LOCATION IN MINNEAPOLIS).

T.H. 95—From Jct. T.H. 169 to Jct. I-35.
FROM SOUTH JCT. T.H. ~~212~~ 36 TO JCT. T.H. 12.

T.H. 96—From Jct. I-35W to Jct. T.H. 61.

T.H. 100—FROM I-494 TO T.H. 52.
FROM T.H. 52 TO I-94.

T.H. 101—FROM JCT. T.H. 13 TO JCT. T.H. 169 IN SHAKOPEE.
From south Jct. T.H. 169 to Jct. T.H. 212 and 169.
FROM JCT. T.H. 152 TO JCT. T.H. 169 (ELK RIVER).

T.H. 109—From Jct. T.H. 22 to Jct. I-90.

T.H. 110—FROM JCT. T.H. 55 TO T.H. 56. ~~WEST.~~

T.H. 127—From Jct. I-94 to Jct. T.H. 27.

T.H. 135—From Jct. T.H. 53 to Aurora.

T.H. 149—From Jct. T.H. 3 to North Jct. T.H. 55.

T.H. 152—FROM T.H. 100 TO I-94.

T.H. 152—FROM 49TH AVENUE NORTH TO JCT. T.H. 100.
FROM JCT. T.H. 52 IN OSSEO TO JCT. T.H. 101 (DAYTON).
From Jct. I-94 to Rogers.

T.H. 169—From south state line to Jct. T.H. 21 (Jordan).
FROM JCT. T.H. 21 (JORDAN) TO JCT. T.H. 101 (SHAKOPEE).
From south Jct. T.H. 101 to Jct. T.H. I-494.
FROM JCT. I-494 TO T.H. 100.
From south Jct. T.H. 52 to Jct. T.H. 23.
From south Jct. T.H. 27 to west Jct. T.H. 210.
From Jct. T.H. 200 to south Jct. T.H. 53.

T.H. 175—From west state line to Jct. T.H. 59.

T.H. 200—From west state line to Jct. T.H. 9.
From north Jct. T.H. 371 to south Jct. T.H. 371.

T.H. 201—From Jct. T.H. 10 to Jct. T.H. 169 (Elk River).

T.H. 210—FROM JCT. I-94 EAST TO ST. ANDREWS STREET SOUTH IN FERGUS FALLS.
In Fergus Falls from St. Andrews south to Sheridan Avenue.
From west Jct. T.H. 10 to I-35.

T.H. 212—From west state line to ~~Granite Falls.~~ Carver County Road 10 (Walnut Street—Chaska).
~~From west Jct. T.H. 71 to Jct. T.H. 41.~~
~~From Carver County Road 10 (Walnut Street—Chaska) to Jct. T.H. 41.~~
From Jct. T.H. 101 to Jct. I-494.
(EAST 7TH STREET) FROM T.H. 52 (ROBERT STREET) EAST TO EAST MINNEHAHA AVENUE.
~~FROM JCT. T.H. 36 (NEAR STILLWATER) TO JCT. T.H. 95.~~

T.H. 218—From south state line to 1-3/4 miles south of Jct. I-90.
FROM 1-3/4 MILES SOUTH OF I-90 TO EAST JCT. I-90.
FROM WEST JCT. I-90 TO 2 MILES NORTH.
From 2.0 miles north of Jct. I-90 to Jct. T.H. 14.

T.H. 226—From Jct. T.H. 34 into Dorset.

T.H. 231—From west state line to I-94 (Moorhead).

T.H. 242—(Main Street) from T.H. 10 to 9th Avenue (in Anoka).

T.H. 263—From I-90 to Jct. C.S.A.H. 26 (Old T.H. 16).

T.H. 268—From Jct. T.H. 75 into Edgerton.

T.H. 270—From Hills to Jct. T.H. 75.

T.H. 280—FROM JCT. I-94 TO JCT. T.H. 36.

T.H. 282—From Jct. T.H. 169 to Jct. T.H. 13.

T.H. 322—From Jct. T.H. 371 to Jct. T.H. 18.

T.H. 324—FROM I-35 TO ITS JUNCTION WITH T.H. 361 IN PINE CITY.

T.H. 329—From T.H. 59 for 3/4 mile east into University of Morris experimental station.

T.H. 361—From I-35 to ~~Rush City.~~ Jct. T.H. 324 (Pine City).

T.H. 371—From Jct. T.H. 10 to Jct. T.H. 2.

I-494 —FROM JCT. I-94 (FISH LAKE) TO PRESENT END OF I-494 AT TWIN CITY INTERNATIONAL AIRPORT.
FROM T.H. 56 TO JCT. I-94 EAST OF ST. PAUL.

I-535 —IN DULUTH FROM I-35 TO WISCONSIN.

I-694 —FROM JCT. I-94 (BROOKLYN CENTER) TO JCT. I-94 EAST OF ST. PAUL.

City Streets

Albert Lea —MARGARETHA AVENUE FROM T.H. 65 SOUTH TO 13TH STREET AND 13TH STREET EAST TO ITS TERMINI.

Anoka —(MSAS) 9th Avenue from T.H. 242 to Hoffman Engineering.

(MSAS) Tyler Street from 7th Avenue to Federal Cartridge.

Blaine —85TH AVENUE FROM I-35W to 3601 (TRUCK TERMINAL IN THE CITY OF BLAINE).

Brainerd —North and South 4th Street from Washington Street to Laurel Street.

Laurel Street from South 4th Street to East River Road.

Cyrus —From 2 blocks south of Jct. T.H. 28 and CSAH 3 on Dahl Street to T.H. 28.

Detroit Lakes—RANDOLPH ROAD FROM GABOR TERMINAL TO ROOSEVELT AVENUE; THEN ROOSEVELT AVENUE SOUTH TO T.H. 10.

Faribault —2nd Avenue N.W. from Trunk Highway 60 north to Trunk Highway 3 (20th Street N.W.).

Fergus Falls —DOUGLAS AVENUE FROM T.H. 59 to T.H. 210.

SHERIDAN AVENUE FROM T.H. 59 AND 210 NORTH, TO WASHINGTON AVENUE, WEST ON WASHINGTON AVENUE ONE BLOCK TO SHERMAN STREET, THEN SOUTH ONE BLOCK ON SHERMAN STREET TO JUNIUS STREET.

FROM T.H. 210 SOUTH ON ST. ANDREWS STREET TO WEST LINCOLN AVENUE, WEST ON

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WEST LINCOLN AVENUE TO SEWAGE PLANT ROAD, THEN SOUTH ON SEWAGE PLANT ROAD TO CENTRAL BY-PRODUCTS PLANT.

Glenwood —JUNCTION OF T.H. 28 AND MINNESOTA AVENUE TO NORTH LAKESHORE DRIVE, THEN NORTH LAKESHORE DRIVE TO THE WEST CORPORATE LIMITS OF GLENWOOD.

*Minneapolis—~~18TH AVENUE N.E. FROM ARTHUR STREET N.E. TO NEW BRIGHTON BOULEVARD (T.H. 8).~~

—ARTHUR STREET N.E. FROM 18TH AVENUE N.E. TO NEW BRIGHTON BOULEVARD (T.H. 8).

STINSON BOULEVARD FROM 18TH AVENUE N.E. TO BROADWAY STREET N.E.

I-35W NORTH FRONTAGE ROAD FROM STINSON BOULEVARD TO NEW BRIGHTON BOULEVARD (T.H. 8).

I-35W SOUTH FRONTAGE ROAD FROM STINSON BOULEVARD TO NEW BRIGHTON BOULEVARD (T.H. 8).

BROADWAY STREET N.E. FROM ARTHUR STREET N.E. TO MINNEAPOLIS EAST CITY LIMITS.

ARTHUR STREET N.E. FROM SUMMER STREET N.E. TO BROADWAY STREET N.E.

TAFT STREET N.E. FROM KENNEDY STREET N.E. TO BROADWAY STREET N.E.

INDUSTRIAL BOULEVARD N.E. FROM BROADWAY STREET N.E. TO I-35W.

NEW BRIGHTON BOULEVARD FROM I-35W NORTH FRONTAGE ROAD TO SOUTH FRONTAGE ROAD.

T.H. 55 (HIAWATHA AVENUE) FROM EAST 24TH STREET TO MINNEAPOLIS SOUTH CITY LIMITS.

CEDAR HIGHWAY FROM EAST 24TH STREET TO MINNEHAHA AVENUE.

CEDAR AVENUE FROM I-94 EXIT RAMP TO MINNEHAHA AVENUE.

MINNEHAHA AVENUE FROM I-94 TO EAST 26TH STREET.

EAST 26TH STREET FROM MINNEHAHA AVENUE TO 26TH AVENUE SOUTH.

26TH AVENUE SOUTH FROM EAST 26TH STREET TO EAST 27TH STREET.

EAST 24TH STREET FROM MINNEHAHA AVENUE TO CEDAR AVENUE.

WASHINGTON AVENUE SOUTH FROM 42ND AVENUE NORTH TO 10TH AVENUE NORTH, AND FROM 10TH AVENUE SOUTH TO 14TH AVENUE SOUTH (I-35W)

OAK LANE AVENUE FROM OLSON HIGHWAY TO 10TH AVENUE NORTH.

10TH AVENUE NORTH FROM OAK LAKE AVENUE TO WASHINGTON AVENUE NORTH.

LYNDALE AVENUE NORTH FROM 42ND AVENUE NORTH TO NORTH CITY LIMITS.

49TH AVENUE NORTH FROM HUMBOLDT AVENUE NORTH TO WEST CITY LIMITS.

MARSHALL STREET N.E. FROM BROADWAY STREET N.E. TO EAST RIVER ROAD.

EAST RIVER ROAD FROM MARSHALL STREET N.E. TO NORTH CITY LIMITS.

UNIVERSITY AVENUE N.E. FROM LOWRY STREET N.E. TO NORTH CITY LIMITS.

LOWRY STREET N.E. FROM MARSHALL STREET N.E. TO 5TH STREET N.E.

KASOTA AVENUE S.E. FROM ELM STREET TO EAST CITY LIMITS.

ELM STREET S.E. FROM KASOTA AVENUE TO 17TH AVENUE S.E.

17TH AVENUE S.E. FROM ELM STREET TO ROLLINS AVENUE S.E.

ROLLINS AVENUE S.E. FROM 17TH AVENUE TO 15TH AVENUE S.E.

UNIVERSITY AVENUE S.E. FROM 23RD AVENUE S.E. TO EAST CITY LIMITS.

*Denotes a 1/4 mile deviation from the following listed routes as long as posted bridges are not utilized.

Moorhead —1ST AVENUE NORTH FROM 8TH STREET NORTH TO T.H. 10.

Morris —Pacific Avenue from T.H. 59 to Park Avenue.

New Ulm —Front Street from 8th Street North to Center Street, then Center Street from Front Street to Valley Street, then South Valley Street from Center Street to First South Street.

Owatonna —Park Drive from County Road 75 (24th Avenue N.W.) to Railroad Tracks.

Pine City —SEVENTH STREET FROM HILLSIDE AVENUE TO 8TH AVENUE WEST, FROM 4TH AVENUE WEST TO 3RD AVENUE WEST, FROM 2ND AVENUE WEST TO RIVER.

FOURTH STREET FROM HILLSIDE AVENUE TO 8TH AVENUE EAST, 5TH AVENUE EAST TO 3RD AVENUE EAST.

THIRD STREET FROM 3RD AVENUE EAST TO RIVER.

SECOND STREET FROM 3RD AVENUE EAST TO 2ND AVENUE EAST.

FIRST AVENUE EAST FROM CSAH 61 TO RAILROAD TRACKS.

SECOND AVENUE WEST FROM 7TH STREET TO CSAH 61.

SECOND AVENUE EAST FROM CSAH 61 TO SECOND STREET.

THIRD AVENUE WEST FROM 7TH STREET TO CSAH 61.

THIRD AVENUE EAST FROM CSAH 61 TO 2ND STREET.

FOURTH AVENUE WEST FROM 7TH STREET TO CSAH 61.

EIGHTH AVENUE WEST FROM 7TH STREET TO CSAH 61.

EIGHTH AVENUE EAST FROM CSAH 61 TO 4TH STREET.

HILLSIDE AVENUE FROM CSAH 61 TO FOURTH STREET.

Rose Creek —3rd Street.

St. Paul —DALE STREET FROM GRAND AVENUE TO LARPENTEUR AVENUE.

PLATO BOULEVARD FROM WATER STREET TO FILLMORE AVENUE.

CHESTER STREET FROM T.H. 3 TO PLATO BOULEVARD.

NORTH CLEVELAND AVENUE FROM UNIVERSITY AVENUE SOUTH TO WABASH AVENUE, THEN WABASH AVENUE ON NORTH CLEVELAND AVENUE TO VANDALIA STREET, THEN VANDALIA STREET TO I-94.

EAST SEVENTH STREET FROM EAST MINNEHAHA AVENUE TO ATLANTIC STREET, THEN ATLANTIC STREET NORTH TO RAILROAD TRACKS.

WACOUTA STREET FROM I-94 TO FIFTH STREET, THEN FIFTH STREET FROM WACOUTA STREET TO BROADWAY.

SHEPARD ROAD FROM T.H. 5 TO WARNER ROAD. THEN WARNER ROAD FROM ITS INTERSECTION WITH SHEPARD ROAD TO T.H. 61.

FROM T.H. 5 (WEST 7TH STREET) TO EAGLE STREET VIA RAMSEY STREET (GRAND AVENUE), SHERMAN STREET AND EXCHANGE STREET.

KELLOGG BOULEVARD RAMP FROM EAGLE STREET TO WASHINGTON STREET.

KELLOGG BOULEVARD FROM WASHINGTON STREET TO T.H. 61 (MOUNDS BOULEVARD).

ELWAY STREET FROM SHEPARD ROAD TO MONTREAL AVENUE.

THEN MONTREAL AVENUE FROM ELWAY STREET TO STEWART AVENUE. THEN STEWART AVENUE TO TEXACO TERMINAL.

MINNEHAHA AVENUE WEST FROM DALE STREET TO ARUNDEL STREET.

OTTO AVENUE FROM SHEPARD ROAD TO WEST 7TH STREET.

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WHITE BEAR AVENUE FROM I-94 TO EAST MINNEHAHA AVENUE.

EAST MINNEHAHA AVENUE FROM WHITE BEAR AVENUE TO BIRMINGHAM STREET.

CHILDS ROAD FROM WARNER ROAD TO THE SOUTHERLY LIMITS OF CHILDS ROAD.

MOUNDS BOULEVARD FROM I-94 TO EAST SEVENTH STREET.

SNELLING AVENUE (T.H. 51).

Sauk Centre —4th Street North from T.H. 71 to 331 North 4th Street.

Wells —Broadway Avenue from T.H. 109 south to 7th Street S.E.

Worthington —Oxford Street from T.H. 60 to T.H. 266.

County Roads

Anoka —CSAH 23 (Naples Street) from CSAH 32 to County Road 105.

County Road 102 (57th Avenue) from T.H. 47 to Main Street (County Road 102).

County Road 102 (Main Street) from 57th Avenue to CSAH 2 (44th Avenue).

~~CSAH 32 (85th Avenue) from 3601 85th Avenue to 3701 85th Avenue.~~

CSAH 32 (85TH AVENUE) FROM 3601 85TH AVENUE TO 3701 85TH AVENUE.

CSAH 7 (7th Avenue) from T.H. 10 to Tyler Street (in Anoka).

T.H. 242 (Main Street) from T.H. 10 to 9th Avenue (in Anoka)

Becker —CSAH 10 CONNECTIONS TO T.H. 10.

CSAH 10 from T.H. 10 west of Frazee to T.H. 10 east of Frazee.

Carlton —CSAH 1 from Jct. T.H. 210 (Carlton) to Conoco Refinery (Wrenshall).

Clay —CSAH 11 FROM T.H. 10 TO TRUCK STOP 1/2 MILE SOUTH OF I-94.

CSAH 52 FROM JCT. T.H. 9 (BARNESVILLE) TO JCT. I-94 (MOORHEAD).

Douglas —CSAH 41 FROM I-94 TO ITS JCT. WITH CSAH 82.

CSAH 82 FROM CSAH 41 TO ITS JCT. WITH T.H. 29 IN ALEXANDRIA.

Freeborn —CSAH 26 from Milwaukee Railroad Tracks to Jct. I-90.

CSAH 31 from Railroad Tracks to Jct. I-35.

Hennepin

| | |
|---|---|
| —CSAH 1 (OLD SHAKOPEE ROAD) | —FROM NESBITT AVENUE TO ~~FAI~~-35W. |
| CSAH 3 (EXCELSIOR BLVD.) | —FROM CSAH 18 TO T.H. 100. |
| CSAH 10 (BASS LAKE ROAD) | —FROM ~~FAI~~-494 TO CSAH 156. |
| CSAH 15 (SHORELINE BLVD.) | —FROM CSAH 110 TO CSAH 19. |
| CSAH 18 | —FROM ~~FAI~~-494 TO T.H. 7 |
| CSAH 18 | —FROM CSAH 10 TO ~~FAI~~-94. |
| CSAH 19 | —FROM T.H. 7 TO CSAH 15. |
| CSAH 20 (BLAKE ROAD) | —FROM CSAH 3 TO T.H. 7. |
| CSAH 34 (NORMANDALE BLVD.) | —FROM CSAH 1 (OLD SHAKOPEE ROAD) TO ~~FAI~~-494. |
| CSAH 109 (85TH AVENUE NORTH) | —FROM CSAH 18 T.H. 52. |
| CSAH 156 (WINNETKA AVENUE) | —FROM CSAH 9 TO CSAH 10. |

McLeod —COUNTY ROAD 90 FROM T.H. 7 TO 1 1/4 MILES SOUTH.

CSAH 9 Plato to T.H. 212.

County Road 81 in Glencoe.

Pine —CSAH 61 FROM JCT. OF T.H. 361 AND T.H. 324 TO ITS JCT. WITH CSAH 11 IN PINE CITY.

COUNTY ROAD 55 FROM CSAH 61 TO INDUSTRIAL PARK—PINE CITY.

CSAH 8 FROM CSAH 61 TO EAST 2ND STREET.

Ramsey —COUNTY ROAD D (CSAH 19) FROM OLD T.H. 8 TO I-35W. ~~IN RAMSEY COUNTY.~~

OLD HIGHWAY 8 (CSAH 77) FROM COUNTY ROAD D TO FIRST STREET SOUTHWEST. ~~IN RAMSEY COUNTY.~~

CLEVELAND AVENUE (CSAH 46) FROM COUNTY ROAD C TO COUNTY ROAD C-2. ~~IN RAMSEY COUNTY.~~

COUNTY ROAD C (CSAH 23) FROM ~~WALNUT STREET~~ WEST COUNTY LINE TO PRIOR AVENUE. ~~IN RAMSEY COUNTY.~~

COUNTY ROAD J (CSAH 1) (OR 85TH AVENUE N.E., ANOKA COUNTY CSAH 32) FROM I-35 TO 3701 85TH AVENUE N.E.

*Redwood CSAH 7 from Seaforth to Jct. T.H. 19.

CSAH 1 and 16 from Clements to Jct. T.H. 71.

CSAH 4 and 17 from Wanda to Jct. T.H. 71.

CSAH 6 and 9 from Delhi to Jct. T.H. 19.

CSAH 10 and 30 from Lucan to Jct. T.H. 19.

CSAH 101 from North Redwood to Jct. T.H. 19.

CR 70 from Rowena to Jct. T.H. 71.

CR 80—entire segment.

*These are seasonally restricted 10 ton routes. Effective period to carry the increased weights is from July 15th each year until the following springload restrictions go into effect.

Sherburne —CSAH 11 from T.H. 25 to T.H.10.

Steele —CSAH 1 (North Street) from CSAH 45 (Hoffman Drive) east to CSAH 1 (North Cedar) in Owatonna.

CSAH 1 (North Cedar) from CSAH 1 (North Street) north to 11th Street in Owatonna.

CSAH 8 (Grove Street) from CSAH 19 (Rose Street) north and east to Cherry Street in Owatonna.

CSAH 9 from I-35 Exit #45 east to CSAH 45.

CSAH 19 (Rose Street) from CSAH 45 (Hoffman Drive) east to CSAH 8 (Grove Street) in Owatonna.

CSAH 25 (Bridge Street) from CR 75 (24th Avenue N.W.) east to I-35 in Owatonna.

CSAH 34 from I-35 Exit #3 east to CSAH 45.

CSAH 45 (Hoffman Drive in Owatonna) from North Steele County Line to T.H. 14.

~~(Hoffman Drive in Owatonna.)~~

CSAH 45 (Cedar and Oak Streets) from T.H. 218 and 14 Exit North to Pearl Street in Owatonna.

CSAH 45 (Hoffman Drive) from T.H. 14 in Owatonna south to CSAH 19 (Rose Street).

CSAH 48 (Main Street) from T.H. 218 and 14 north and west to CSAH 45 (Oak Avenue) in Owatonna.

CR 75 (24th Avenue N.W.) from T.H. 14 south to CSAH 25 (Bridge Street) in Owatonna.

Stevens —CSAH 13 Chokio only.

CSAH 9 Alberta only.

CSAH 8 from CSAH 1 to Jct. T.H. 9 (Hancock).

Traverse —CSAH 4 Browns Valley only.

CSAH 100 from 12th Street to Jct. T.H. 75.

Waseca —CSAH 3 from Waldorf to Jct. T.H. 14.

CSAH 9 from west county line to CSAH 3.

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

CSAH 12 from CSAH 1 to T.H. 13.
CSAH 2 from County Road 53 to T.H. 14.
CSAH 53 from CSAH 2 to CSAH 5.
CSAH 5 from County Road 53 to CSAH 30.
CSAH 30 from CSAH 5 to T.H. 13.

Washington —CSAH 22 FROM T.H. 61 TO JCT. WITH CSAH 38.
CSAH 38 FROM JCT. WITH CSAH 22 TO JCT. WITH I-494.

Winona —County Road 23 from Jct. T.H. 14 to the Jct. T.H. 61 (Minnesota City).

# SUPREME COURT

## Decisions Filed Friday, October 24, 1980

### Compiled by John McCarthy, Clerk

**48721/266, (1979) Susan Louise Peterson, Appellant, vs. Paul Sorlien, Norman Jungclaus, et al, Michele Perkins. Hennepin County.**

In an action by an adult against her parents and others for false imprisonment and intentional infliction of emotional distress it is held;

The evidence does not establish liability of parents for false imprisonment as a matter of law;

Admission of evidence to show that defendants acted in the good faith belief that plaintiff had been subjected to psychological duress by a religious group or sect was not error when plaintiff was claiming punitive damages;

Instruction that jury, in assessing plaintiff's credibility, could consider whether the litigation was supported financially by the religious group or sect which, according to defendants, had subjected plaintiff to psychological duress was not reversible error under the facts of this case;

The trial court properly directed a verdict in favor of a defendant whose contacts with the alleged false imprisonment and emotional distress were inconsequential, and

Refusal of trial court to permit amendment of complaint at outset of trial was not reversible error.

Affirmed. Sheran, C. J. Concurring specially, Peterson, J. Dissenting, Otis, J. and Wahl, J. Took no part, Amdahl, J. and Simonett, J.

**50327, 50463/274 James R. Lemmer, et al, Plaintiffs, vs. IDS Properties, Inc., defendant and third party plaintiff, Respondent (50327) Appellant (50463) Waco Scaffolding and Shoring Company defendant and third party plaintiff, vs. Turner Construction Company, third party defendant, Appellant (50327) Respondent (50463). Hennepin County.**

Where a general construction manager is the possessor of the property and has voluntarily, contractually undertaken the duty of taking precautions for the safe construction of a building, his failure to inspect an area of the construction that he knew was hazardous, and his failure to warn employees of the danger or to keep them from entering the area, is sufficient evidence to support a jury's verdict.

Where some of the defendants in a negligence suit, without acting as volunteers, enter into a reasonable and prudent settlement before the jury has returned the verdict, and where one of these defendants had a contract by which one of the non-settling defendants had agreed to indemnify it, the party to be indemnified can recover the indemnity without proving common liability with the party who agreed to indemnify it.

A settling defendant in a negligence suit, who joined a party that subsequently refused to settle, is entitled to be indemnified by the non-settling party if the jury finds that non-settling party to have been solely liable for the injury to the plaintiff.

Where all defendants, those who have settled and those who have not settled, failed to request that the jury determine the amount of damages, a ruling by the trial court that the settlement was reasonable and prudent constitutes a determination that the settlement is a proper amount for damages; the non-settling defendant has thereby waived his right to have the jury decide whether the settlement reflected all or only part of his liability.

Where a party to a prior oral contract proposes that a hold harmless clause be added for that party's benefit, this proposing party has a duty to convey the proposals to the personnel responsible for entering the oral agreement; failure to fulfill that duty nullifies the proposed addition to the agreement, and thus the signing of a delivery order is not to be read as an acceptance of the proposed addition, only as an acknowledged receipt of goods.

Otis, J. Took no part, Amdahl, J., and Simonett, J.

**49753, 49941/131 Jim W. Miller Construction Inc., Respondent (49753) Appellant (49941) vs. Richard Schaefer, d.b.a. Realty Five, Appellant (49753) Respondent (49941). Stearns County.**

A restrictive covenant in an employment agreement which, within a specified geographical area and for a specified period of time, prohibits defendant from acting as a real estate broker but allows him to act as a real estate salesperson is unreasonable and therefore unenforceable.

Reversed. Peterson, J. Took no part, Amdahl, J., and Simonett, J.

**50472/Sp. State of Minnesota vs. Jeffrey Allen Gunn, Appellant. Crow Wing County.**

Evidence that sexual penetration, which was admitted by defendant, was accompanied by force or coercion was, contrary to defendant's contention, sufficient to sustain the verdict.

Defendant, by failing to object to certain statements made by the prosecutor in his closing argument, is deemed to have forfeited his right to raise this issue on appeal.

Affirmed. Yetka, J.

**50855/337 In the Matter of the Trusteeship under the Emil C. Kischel Trust Created by Last Will and Testament of Emil C. Kischel, Deceased. Hennepin County.**

Our primary concern in construing a testamentary trust is to give effect to the testator's intent, as expressed in the pain language of the will.

In construing a will we cannot give effect to provisions in isolation, but must read the will as a whole.

Here, it is clear that the testator did not intend to give his grandson any interest in the trust property unless he survived his mother.

Reversed and remanded with instructions. Scott, J.

**51413/Sp. Clayton Handeland vs. DeZurik Corporation, et al, Relators, Equitable Life Assurance Company. Workers' Compensation Court of Appeals.**

A finding that thrombophlebitis, caused by surgery undertaken to treat an injury arising out of and in the course of employment continues significantly to contribute to employee's temporary total disability is manifestly contrary to the evidence and the inferences reasonable permissible therefrom.

Affirmed in part; reversed in part. Amdahl, J.

**50720/331 Lee Guilliams, et al, vs. The Commissioner of Revenue, Relator. Tax Court.**

The classification of farmers with nonfarm income into those with more than $15,000 of nonfarm income and those with less for the purpose of allowing an offset of farm loss against nonfarm income under Minn. Stat. § 290.09, subd. 29 (1978), does not offend the equal protection clause or the uniformity clause of the federal and state constitutions, nor the due process clauses.

The order of the tax court is reversed. Simonett, J.

**50289/340 In the Matter of the Application for the Discipline of Irving Shaw, an Attorney at Law of the State of Minnesota. Supreme Court.**

Attorney censured, fined and placed on 3-year supervised probation. Per Curiam.

# 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 Natural Resources
## Waters Division
## Dam Safety Section

### Notice of Request for Proposals for Contractural Services for Dam Safety Inspection and Evaluation for New London Dam

Notice is hereby given to request proposals for engineering consultant contract services for the purpose of conducting a Phase II dam evaluation for the New London Dam in Kandiyohi County, Minnesota.

The engineering consultant contractor will be required to provide a systematic inspection and evaluation of the deficiencies found in the Phase I study of the New London Dam which was conducted by the U.S. Corps of Engineers and published in July 1979. The evaluation shall identify alternatives for correcting the deficiencies as well as related reconstruction or repair costs.

Contact persons:
Memos P. Katsoulis or Craig Regalia
Minnesota Department of Natural Resources
Division of Waters, Development Section
Space Center Building
444 Lafayette Road
St. Paul, Minnesota 55101
Phone (612) 296-0525 or (612) 296-0524

Estimated cost: Not to exceed $20,000 (Phase II only)

Submission deadline: December 1, 1980

Interested persons may submit proposals to the above state contact persons.

The engineering consultant contractor must have a minimum of five years experience in dam engineering. This experience shall be documented in the consultant's proposal.

The consultant selected for this Phase II study will, at the option of the DNR and dependent upon the availability of funds, be expected to continue the project into the design stage (preparation of construction plans and specifications) and, at the DNR's option, contract administration and/or inspection.

### Notice of Request for Proposals for Contractural Services for Dam Safety Inspection and Evaluation for Kettle River Dam

Notice is hereby given to request proposals for engineering consultant contract services for the purpose of conducting a Phase II dam evaluation for the Kettle River Dam in Pine County, Minnesota.

The engineering consultant contractor will be required to provide a systematic inspection and evaluation of the deficiencies found in the Phase I study of the Kettle River Dam which was conducted by the U.S. Corps of Engineers and published in September 1979. The evaluation shall identify alternatives for correcting the deficiencies as well as related reconstruction or repair costs.

Contact persons:
Memos P. Katsoulis or Craig Regalia
Minnesota Department of Natural Resources

Division of Waters, Development Section
Space Center Building
444 Lafayette Road
St. Paul, Minnesota 55101
Phone (612) 296-0525 or (612) 296-0524

Estimated cost: Not to exceed $20,000 (Phase II only)

Submission deadline: December 1, 1980

Interested persons may submit proposals to the above state contact persons.

The engineering consultant contractor must have a minimum of five years experience in dam engineering. This experience shall be documented in the consultant's proposal.

The consultant selected for this Phase II study will, at the option of the DNR and dependent upon availability of funds, be expected to continue the project into the design stage (preparation of construction plans and specifications) and, at the DNR's option, contract administration and/or inspection.

### Notice of Request for Proposals for Contractural Services for Dam Safety Inspection and Evaluation for Grindstone River Dam

Notice is hereby given to request proposals for engineering consultant contract services for the purpose of conducting a Phase II dam evaluation for the Grindstone River Dam in Pine County, Minnesota.

The engineering consultant contractor will be required to provide a systematic inspection and evaluation of the deficiencies found in the Phase I study of the Grindstone River Dam which was conducted by the U.S. Corps of Engineers and published in September 1979. The evaluation shall identify alternatives for correcting the deficiencies as well as related reconstruction or repair costs.

Contact persons:
Memos P. Katsoulis or Craig Regalia
Minnesota Department of Natural Resources
Division of Waters, Development Section
Space Center Building
444 Lafayette Road
St. Paul, Minnesota 55101
Phone (612) 296-0525 or (612) 296-0524

Estimated cost: Not to exceed $20,000 (Phase II only)

Submission deadline: December 1, 1980

Interested persons may submit proposals to the above state contact persons.

The engineering consultant contractor must have a minimum of five years experience in dam engineering. This experience shall be documented in the consultant's proposal.

The consultant selected for this Phase II study will, at the option of the DNR and dependent upon availability of funds, be expected to continue the project into the design stage (preparation of construction plans and specifications) and, at the DNR's option, contract administration and/or inspection.

## State Ceremonial House Council

### Request for Letter of Interest for Architectural Program and Master Plan

The State Ceremonial Building Council, created by an act of the 1980 Legislature, has as one of its duties the charge to develop an overall restoration plan for the Minnesota State Governor's Residence (State Ceremonial Building) at 1006 Summit Avenue, St. Paul. The council requests expressions of interest from architects in response to a proposed project to produce a program analyzing the needs of the building, and a master plan which functionally and aesthetically best accommodates those needs. The large, early 20th Century, Tudor Revival building was built as a single-family residence, but now must fulfill the double function of Governor's residence with attendent requirements for comfort, security, and privacy; and as the State Ceremonial House, where numerous and frequently large gatherings are held in an atmosphere expected to favorably represent the State of Minnesota.

The scope of the work includes the preparation of a program assessing existing building spaces, systems, and circulation patterns; determining immediate and long-term space and systems needs and space relationships; and evaluating present conditions in terms of immediate and long-term needs. From this program, a master plan is to be developed illustrating ways program requirements can best be achieved with modification and/or additions to the structure which are sympathetic to the architectural style and character of the building, and which can be phased to reflect the increasing need for modifications and the availability of funding.

A landscape architectural firm has been selected to make a program and master plan study for the grounds, and an interior design firm is being sought to provide a similar study for building interiors. It is expected that the architectural consultant will closely coordinate planning efforts with those of the other consultants.

Letters of interest should contain the following information: statement of interest; special qualifications of firm (including previous experience in similar projects); list of key personnel who would be assigned to this project along with brief resumes; and a list of references. Architects should be registered in, and residents of, the State of Minnesota.

A "walk thru" will be held at the residence between the hours of 3:00 p.m. and 4:00 p.m. on November 13, 1980, for those wishing to tour the building prior to submitting a letter of interest. Such letters and any questions regarding the project are to be directed to William Scott, 1011 Nicollet Mall, Minneapolis, Minnesota, 55403. (Telephone 612/388-8741.) Letters are due no later than November 27, 1980.

# 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
## Building Code Division
## Residential Energy Disclosure Program

### Notice of Scheduled Examinations for Certification of Evaluators for the Energy Disclosure Program

The Minnesota State Legislature in 1978 enacted a statute that provided for energy conservation standards for existing residences.

This statute provides that the Building Code Division and the Minnesota Energy Agency promulgate rules and standards for energy conservation standards and a disclosure report of energy efficiency of the residence to the buyer of the residence at the time of sale.

This statute also provides for a waiver of the energy efficiency disclosure report, provided the buyer has a copy of the disclosure form and has signed the waiver provision.

October 1, 1980 is the effective date of the statute requiring compliance with the disclosure report at time of sale.

Copies of the disclosure form may be obtained from the Minnesota Energy Agency and Public Documents Section. Copies of the Energy Conservation Standards for Existing Residences (2 MCAR § 1.16201) are available from State Register and Public Documents Division, 117 University Avenue, St. Paul, MN 55117.

Energy evaluation of the residence and execution of the disclosure form is limited to Certified Energy Evaluators who are certified by the Department of Administration upon successful completion of a written examination.

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

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

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

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

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

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

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

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

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

1. Persons who have certification of completion from the energy training course conducted by Aadland, Hoffman, Pieri, Energy Associates, Inc. or EES of Minnesota are also eligible.

Candidates shall submit their completed application together with a $50.00 check made payable to the State Treasurer to Dept. of Administration, Building Code Division, 408 Metro Square, St. Paul, MN 55101, two weeks prior to the scheduled December test dates. For the scheduled November test dates applications may be submitted at the locations and times listed below.

Application forms are available from the Building Code Division, 408 Metro Square, St. Paul, MN 55101.

**Schedule of Orientation and Examinations**
**Energy Evaluator Program**
**Orientation and Test Locations at AVTI**

| Date | Location | Time |
|---|---|---|
| Nov. 17, 1980<br>Monday | Staples AVTI | 2:00 p.m. to 4:00 p.m. |
| Nov. 18, 1980<br>Tuesday | North Mankato AVTI | 10:00 a.m. to 12:00 p.m. |
| Nov. 18, 1980<br>Tuesday | Grand Rapids<br>Community College | 10:30 a.m. to 12:30 p.m. |
| Nov. 19, 1980<br>Wednesday | 916 AVTI<br>3300 Century Ave. No.<br>White Bear Lake | 1:00 p.m. to 3:00 p.m. |
| Nov. 20, 1980<br>Thursday | Hennepin Tech. Center<br>South Campus<br>9200 Flying Cloud Dr.<br>Eden Prairie | 10:00 a.m. to 12:00 p.m. |
| Dec. 3, 1980<br>Wednesday | Hennepin Tech. Center<br>South Campus<br>9200 Flying Cloud Dr.<br>Eden Prairie, MN | 9:30 a.m. to 12:30 p.m. |
| Dec. 10, 1980<br>Wednesday | Hennepin Tech. Center<br>South Campus<br>9200 Flying Cloud Dr.<br>Eden Prairie, MN | 9:30 a.m. to 12:30 p.m. |

The Department of Administration shall issue a certificate to successful candidates upon submittal of a $5,000.00 bond.

# Department of Agriculture
# Agronomy Services Division

## Notice of Special Local Need Registration for Terraclor 75 WP and Turfcide 10 G

Pursuant to Minn. Stat. § 18.A.23 and 3 MCAR § 1.0338 B., the Minnesota Department of Agriculture on October 22, 1980, issued Special Local Need Registrations for Terraclor 75 WP and Turfcide 10 G manufactured by Olin Corporation, Little Rock, Arkansas 72203.

The Commissioner of Agriculture, based upon information in the applications, has deemed it in the public interest to issue such registrations, and has deemed that the information in the applications indicates that the pesticides do not have the potential for unreasonable adverse environmental effects.

In addition to the uses prescribed on the product labels, these Special Local Need Registrations permit the use of these products to control snow mold on lawns and turf.

The applications and other data required under Minn. Stat. §§ 18A.22, subd. 2 (a-d), 18A.23, and 40 CFR 162.150-162.158, subpart B relative to these registrations (identified as SLN # MN 80-0017 and SLN # MN 80-0018) are on file for inspection at:

Minnesota Department of Agriculture
Pesticide Control Section
90 West Plato Blvd.
Saint Paul, Minnesota 55107
Phone: (612) 296-8379

A federal or state agency, a local unit of government, or any person or group of persons filing with the commissioner a petition that contains the signatures and addresses of 500 or more individuals of legal voting age has thirty (30) days to file written objections with the Commissioner of Agriculture regarding the issuance of these Special Local Need Registrations. Upon receipt of such objections and when it is deemed in the best interest of the environment or the health, welfare, and safety of the public, the Commissioner of Agriculture shall order a hearing pursuant to Minn. Stat. ch. 15 for the purpose of revoking, amending, or upholding these registrations.

October 22, 1980

Mark W. Seetin, Commissioner
Department of Agriculture

# Minnesota Teachers Retirement Association

## Meeting Notice

The Board of Trustees, Minnesota Teachers Retirement Association will hold a meeting on Friday, November 21, 1980, at 9 a.m. in the office of the association, 302 Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota, to consider matters which may properly come before the board.

# Department of Natural Resources
# Soil and Water Conservation Board

## Notice of Change of Date of Regular Monthly Meeting

The Minnesota Soil and Water Conservation Board has changed the date of their regular monthly meeting from November 11 to November 18. They will meet in Room 551, fifth floor of the Space Center Building, 444 Lafayette Road, St. Paul, Minnesota. The meeting will convene at 9:00 a.m.

The Minnesota Soil and Water Conservation Board has changed the date of their regular monthly meeting from December 9 to December 16. They will meet in Conference Room B, sixth floor of the Space Center Building, 444 Lafayette Road, St. Paul, Minnesota. The meeting will convene at 9:00 a.m.

The Executive Committee of the Minnesota Soil and Water Conservation Board meets on Monday preceding every second Tuesday of each month.

# Office of the Secretary of State

## Notice of Vacancies in Multi-member State Agencies

Notice is hereby given to the public that vacancies have occurred in multi-member state agencies, pursuant to Minn. Stat. § 15.0597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul 55155; (612) 296-7876. **Application deadline is November 25, 1980.**

**Board on Aging** has one vacancy open immediately. The board coordinates and handles federal funds for programs for the aging, and makes grants to local community service agencies. Members are appointed by the governor, and receive $35 per diem plus expenses. For specific information, contact Board on Aging, Suite 204, Metro Square Building, St. Paul 55101; (612) 296-2770.

**Consumer Advisory Council on Vocational Rehabilitation** has one vacancy open immediately for a business representative. The council advises the Assistant Commissioner for Vocational Rehabilitation on policy for rehabilitation services. Members are appointed by the Commissioner of Economic Security, and receive $35 per diem. For specific information, contact Consumer Advisory Council on Vocational Rehabilitation, 3rd Floor, Space Center Building, St. Paul 55101; (612) 296-1822.

**Investment Advisory Council** has one vacancy, open January 1981. The council advises the state board of investment on improving the rate of return on the state's invested money. Members are appointed by the Board of Investment, and receive no compensation. For specific information, contact Investment Advisory Council, Room 105 MEA Building, 55 Sherburne Ave., St. Paul 55155; (612) 296-3328.

**Human Services Occupations Advisory Council** has one vacancy open immediately. The council reviews the rules and policies of health related licensing boards. Members are appointed by the governor, and receive $35 per diem. For specific information, contact Human Services Occupations Advisory Council, 717 Delaware St. S.E., Mpls. 55440; (612) 296-5393.

# Department of Transportation
# Technical Services Division

## Appointment and Scheduled Meeting of a State Aid Standards Variance Committee

Notice is hereby given that the Commissioner of Transportation has appointed a State-Aid Standards Variance Committee who will conduct a meeting on Friday, November 7, 1980 at 9:00 a.m. in Room 612, State Transportation Building, John Ireland Boulevard, St. Paul, Minnesota.

This notice is given pursuant to Minn. Stat. § 471.705.

The purpose of the open meeting is to investigate and determine recommendation(s) for variances from minimum State-Aid roadway and parking standards as governed by 14 MCAR § 1.5032 M.4.b., Rules for State-Aid Operations under Minn. Stat. chs. 161 and 162 (1978), as amended.

The agenda will be limited to these questions:

1. Petition of Sibley County for a Variance from Standards for Diagonal Parking in the City of Arlington, Minnesota.

2. Petition of the City of St. Cloud for a Roadway Width Variance for the Design and Construction of the 10th Street Bridge in the City of St. Cloud.

Dated this 17th day of October, 1980.

Richard P. Braun
Commissioner of Transportation

STATE OF MINNESOTA
OFFICE OF THE STATE REGISTER

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

# ORDER FORM

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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.

EA-81-001-AK

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Rules for the Establishment of the Minnesota Energy Conservation Service Program.

REPORT OF THE CHIEF HEARING EXAMINER

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

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

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

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

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

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

Dated this 11th day of February, 1981.

DUANE R. HARVES
Chief Hearing Examiner

EA-81-001-AK

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Rules for the Establishment of the Minnesota Energy Conservation Service Program.

ORDER OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on December 16, 1980, before Allan W. Klein, a Hearing Examiner of the State Office of Administrative Hearings, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, subd. 3, was issued to the Energy Agency and;

WHEREAS, the Energy Agency has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, subd. 4-4f; and

WHEREAS, the Energy Agency has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. §§ 15.0412, subd. 4e and 15.052, subd. 4, and 9 MCAR § 2.111; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing.

NOW, THEREFORE, upon receipt of this Order, the Energy Agency has the responsibility of submitting the complete hearing record and the rules as adopted by the Energy Agency to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. § 15.0412, subd. 4e and 4f.

Dated: April 9th, 1981.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA

ENERGY AGENCY

In the Matter of the Adoption of the Proposed Rules for the Minnesota Energy Conservation Service, 6 MCAR §§2.2300-2.2313.

PROPOSED CHANGES IN RULE AS PUBLISHED

The following changes are proposed by the Agency:

1. 6 MCAR § 2.2301.U.2.

   Passive psolar space heating.

2. 6 MCAR §§ 2.2301.W.3.

   "...fireplace stove is not operating."

3. 6 MCAR § 2.2303A.1.

   "...The alternative audit shall be approved if its results are within ± 20%..."

4. 6 MCAR §§ 2.2303A.1.

   "...~~All alternative audits shall be submitted to the agency for validation by January 15, 1981~~."

5. 6 MCAR s 2.2303A.3.

   3. Subcontracting audits.

   Participating utilities and heating suppliers are permitted to subcontract audits with third parties. All such audits must be approved pursuant to 6 MCAR § 2.2303A.1. and all auditors must be approved pursuant to 6 MCAR § 2.2307A.

6. 6 MCAR §§ 2.2305B.1.

   "To be eligible for listing, contractors, lenders and suppliers..."

7. 6 MCAR § 2.2306A.1.

   "...By ~~Dec. 15, 1980~~ February 15, 1981 each covered utility shall submit to the Agency, for approval, its plans for conducting the inspections and for coordinating these inspections..."

8. 6 MCAR §§ 2.2306B.

   "All installations of the following arranged measures shall be inspected within one week of installation:"

9. 6 MCAR §§ 2.2306C.1.

   "...b. Floor insulation; and

   c. Wall insulation~~; and~~

   ~~d. Solar domestic hot water systems~~

10. 6 MCAR § 2.2306C.3.

"...g. Replacement burner (oil); and

~~h. Solar domestic hot water systems~~

~~i.~~ h. Replacement solar swimming pool heaters.

11. 6 MCAR § 2.2307B.1.c.

"with the ~~homeowner~~ customer."

12. 6 MCAR § 2.2307C.1.c.

"Each covered utility shall submit to the agency for approval a plan for the training of general inspectors...by ~~January 15, 1980~~ February 15, 1981."

13. 6 MCAR § 2.2307C.2.c.

"Each covered utility shall submit to the agency for approval a plan for the training of specialized inspectors...by ~~January 15, 1980~~ February 15, 1981."

14. 6MCAR § 2.2301.H 3

"Reducing Thermostat settings in the winter, which means limiting the maximum thermostat control setting for the furnace to ~~68~~ 65° F during the heating season."

15. 6 MCAR § 2.2301 U. 2. d.

"Window heat gain ~~retardants~~ and/or loss. Those nechanisms which significantly reduce summer heat gain or wintertime heat loss through ~~South-facing (+ or - 45° of True South)~~ windows by the use of devices..."

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Adoption of Rules of the Minnesota Energy Agency for the Establishment of the Minnesota Energy Conservation Service Program, 6 MCAR §§ 2.2300-2.2313.

FINDINGS OF FACT AND CONCLUSIONS

The above-entitled matter came on for hearing before Hearing Examiner Allan W. Klein on December 16, 1980 at 9:30 a.m. in the State Office Building Auditorium, St. Paul, Minnesota, after proper notice required by Minnesota Statutes § 15.0412 was served upon all persons, associations, and other interested groups registered with the Minnesota Energy Agency for that purpose. The record was closed on January 5, 1981.

After affording all interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and the Report of the Hearing Examiner dated February 11, 1981, and upon the records, files, and proceedings herein, the Energy Agency (hereinafter "Agency") hereby concurs with, adopts, and incorporates the attached Report of the Hearing Examiner in this matter, except as specified in the following Findings and Conclusions:

FINDINGS OF FACT

1. In general, the Agency finds the Hearing Examiner's rule recommendations to be meritorious and reasonable in their attempt to establish an effective program requiring major regulated utilities to offer their residential utility customers services related to the promotion of energy conservation. The Hearing Examiner, at Findings 16, 20, 21 and 25 found defects in the Proposed Rules requiring correction. The Hearing Examiner suggested action to correct each defect and the Agency has adopted the Examiner's recommendations in each instance, in order to

correct the defects. At other Findings in his report, the Hearing Examiner has suggested or allowed certain optional changes to the Proposed Rules. The Agency has considered each suggestion in the Examiner's report. In general, the Agency has adopted those suggestions that have been shown by the record to be timely, cost-effective improvements to the program. The Agency has chosen not to adopt certain other suggestions of the Examiner which are at variance with Agency positions or DOE interpretations of Federal rules governing this program or which the Agency believes would not improve the program. The Agency's Findings concerning the Examiner's required changes and optional suggestions are presented below.

2. The Agency adopts this rule to establish a program requiring major regulated utilities to offer their residential utility customers services related to the promotion of energy conservation. The Agency's authority to promulgate this rule is based upon Minn. Statute § 116H.17 (1980), which directs the Agency to develop the state plan for the program of energy audits required by 42 United States Code, section 8211 et. seq. as well as in Minn. Stat. § 116H.07(i) and § 116H.08(a).

3. The Hearing Examiner, at Finding 8 in his report, discusses the list of amendments distributed by the Agency at the hearing. These amendments, except for the provision concerning subcontracting audits, are described by the Examiner as containing "changes which, for the most part, are technical corrections of typographical errors in the published rules." At Conclusion 5, the Examiner concludes that these amendments and additions "do not result in rules which are substantially different from the proposed rules..." The Agency adopts these amendments and additions with the following changes:

a. The Agency has corrected a typographical error in 6 MCAR § 2.2302A.1.c.2. The verb in the sentence (is) had been mistyped and added as the letters "re" to the following word. corrected p. 2-1

b. The Agency had amended 6 MCAR § 2.2301H.3. to lower the temperature for thermostat reductions from 68°F to 65°F. This was in response to a proposed change

in 10 C.F.R. § 456.105(G)(3) published in the Federal Register August 11, 1980 (p. 53429). In a subsequent action - Federal Register January 6, 1981 (p. 1622) - this proposal was dropped, leaving the original 68°F. The Agency has reinstated its original 68°F and deleted this amendment. p. 1-6

c. The Agency has deleted its proposed 6 MCAR § 2.2301W., defining state measures, in response to the Hearing Examiner's Finding 16 (discussed in this document at Finding 5). As a result, the Agency's proposed typographical correction to 2.2301W.3. is not needed and has been deleted. deleted p. 1-10

d. The Agency has moved forward the submission dates for utility plans required in 6 MCAR § 2.2306A.1., 6 MCAR § 2.2307C.1.c., and 6 MCAR § 2.2307C.2.c. to May 15, 1981, so that these submissions will not be required until after the anticipated effective date of the Rules.

4. The Hearing Examiner approved at Finding 13 the amendments adding active solar space heating as a program measure which were proposed by the Agency in post-hearing comments. The Agency adopts these amendments and believes the addition of active solar space heating to the program will improve program services to customers with little extra program effort. The Agency's post-hearing comments regarding active solar space heating are included here to explain in more detail why these changes have been made: added p. 1-10

"Based on the information submitted to the hearing examiner, the Agency agrees with the Minnesota Solar Energy Association and other solar dealers at that hearing, that addition of active solar space heating is warranted. In reviewing the testimony, the Agency was convinced that barring active solar space heating on the basis of its general cost payback may not be a good idea. That requires too many assumptions about systems and their uses.

As Darryl Thayer (a solar consultant) suggested, there may be systems that are more cost-effective as an active system with the simple addition of a fan than they were as passive systems without the fan. Since all other solar issues are covered, it therefore makes sense to include active solar.

To add this measure would not significantly affect the audit process. The auditor already will be collecting the necessary data for this measure when he or she collects data for solar domestic hot water heating and passive solar. The auditor, therefore, uses this same information to make one additional calculation. Additional time will be needed to explain the solar results to the homeowner. However, this amount of time will not be that significant because other solar measures will already be discussed.

To include active solar, the Agency proposes that the following changes be made in the rule. The language for these changes comes from the federal rule originally published on Nov. 7, 1979."

The Agency had proposed in post-hearing comments to begin its amendment to 6 MCAR § 2.2303D.3. with the word and. The Agency proposes to change this word to or, correcting a typographical error that had caused an inconsistency with the Federal rule. If this change is not made, the Agency's post-hearing language would limit certain solar system information to only those residences being audited for both solar domestic hot water systems and active solar space heating systems. This was neither the Agency's nor DOE's intent.

5. At Finding 16 the Hearing Examiner ruled that the Agency had failed to justify both the need for and the reasonableness of the three state program measures proposed at 6 MCAR §§ 2.2301W. The Examiner found that in order to correct this defect, these state measures must be deleted from the proposed rule. The Agency has complied with the Examiner's finding by deleting 6 MCAR §§ 2.2301W. and the reference to state measures at 6 MCAR §§ 2.2301S. deleted p.1-10

6. The Hearing Examiner, at Finding 20, discussed at length the issue of subcontracting audits. The Agency's original rule did not directly address this issue, but the Agency proposed at the hearing the addition of 6 MCAR § 2.2303A.3. which would allow participating utilities and heating suppliers to subcontract audits with third parties. At the hearing, MPIRG and other community-based organizations

urged that the rule be further amended so as to require utilities to subcontract audits with certified auditors "with a demonstrated community involvement in the RCS area where the audits are to be performed." In post-hearing comments (Pub. Ex. 39) and in final comments (Pub. Ex. 47) the Agency agreed that MPIRG's proposed requirement for subcontracting audits would increase customer response and improve the program. The Examiner found that the Agency could adopt either its permissive language or MPIRG's proposal. If the Agency were to choose to adopt the MPIRG proposal, the Examiner called for one mandatory and one suggested change to be made. The Examiner found that some criteria were needed to cure the vagueness defect created by the term "demonstrated community involvement." The Examiner also suggested that the Agency replace MPIRG's proposed Agency hearing of subcontractor disputes with utilities with an Agency review of such disputes. These issues will be addressed below in paragraph b.

The Agency has continued to analyze this issue since receiving the Hearing Examiner's report and has decided to adopt the concept suggested by MPIRG, with certain revisions, including those suggested by the Hearing Examiner. The Agency believes that this final language will successfully meet MPIRG's intent while avoiding certain complications to the program which would have resulted from adopting MPIRG's proposal verbatim.

In addition to its proposal concerning 6 MCAR § 2.2303A.3., MPIRG proposed related changes to 6 MCAR §§ 2.2302 through 2.2308. The Agency's responses to each MPIRG proposal are as follows:

a. 6MCAR §2.2302 The Examiner, at Finding 17, found the Agency's proposed 6MCAR § 2.2302 to be both needed and reasonable without changes proposed by MPIRG and the Urban Coalition of Minneapolis. The Agency has adopted 6 MCAR §§ 2.2302 as originally proposed, except for the correction of a typographical error discussed at Finding 3 of this document, and an addition proposed by the Urban Coalition to the content of the program announcement, at 6 MCAR § 2.2302A.2.a.7., stating that landlords may be eligible for weatherization program benefits. The Examiner ruled that this

added 7.2-2

change, if adopted, would not be "substantial" (Hearing Examiner Finding 18). Another proposal of the Urban Coalition was to add to the program announcement an Agency phone number for landlords to call for information on weatherization program benefits. However, the rules already require this information to be provided to each customer receiving an audit at 6 MCAR § 2.2303E.2.c. Therefore, the Agency believes that the Urban Coalition's proposal for modifying 6 MCAR § 2.2302A.2.a.8. is not needed. MPIRG proposed a change to 6 MCAR § 2.2302 to require utilities to send additional program announcements to customers when auditors will be in a given locale mentioning if local subcontractors are being used by the utility. The Hearing Examiner found that, based on cost considerations, the Agency's rule was not unreasonable without such additional mailings. Given these cost considerations, the Agency has not adopted this MPIRG proposal.

b. 6 MCAR § 2.2303. The Agency has adopted the central core of MPIRG's proposed rule 6 MCAR § 2.2303A.3., with certain changes to clarify the rule and improve its effectiveness. All the changes, outlined below, comport with the Hearing Examiner's Report.

Paragraph a. is essentially the same as paragraph a. of the MPIRG proposal which was accepted by the Hearing Examiner. This section permits participating utilities and heating suppliers to subcontract with any auditor who has passed the required certification exam. The only changes from the orginial MPIRG proposal were to eliminate the words "master list" and replace them with "auditors who have passed the certification exam". This change is necessary because as explained below, the Agency has not adopted the MPIRG proposal for a Master List of Auditors. The Agency, the Hearing Examiner and all parties testifying on this issue agreed that permitting audit subcontracting will improve the MECS Program.

p3-1

The Agency has made several modifications and clarifications to 6 MCAR § 2.2303A.3.b. of the MPIRG proposal, as follows:

1. This section requires covered utilities, whenever possible, to subcontract audits with qualified local auditors who have a demonstrated community involvement,

or capacity to generate customer participation, in the area where audits are to be performed. The MPIRG proposal would have applied this requirement to all participating utilities and heating suppliers. However, because non-regulated utilities and heating suppliers would in many instances not have the administrative capacity to comply with this requirement, the Agency has limited the rule to covered utilities only. Non-regulated utilities and heating suppliers would still have the option to subcontract pursuant to 6 MCAR § 2.2303A.3.a. This change does not constitute a substantial change because it narrows rather than increases the class of persons affected by the rule. Moreover, this change has no effect on the substantive provisions of the rule;

2. In response to the Hearing Examiner's Finding number 20, that the term "demonstrated community involvement" requires an addition to correct a vagueness defect, the Agency had added to the rule the criteria "a history of energy or related community service in the area where the audits are to be performed". added p3-2 This definition should provide the clarity and certainty which the Hearing Examiner found to be necessary.

3. The utilities expressed concerns in their joint comments, as did Minnegasco separately, that under the MPIRG proposal charges for services of local subcontractors might be artifically high and that the quality of these subcontractors' work might in some instances be below standard. Their fears were without foundation because, as the Hearing Examiner correctly pointed out, under the MPIRG proposal "if various contract issues such as cost could not be resolved, then subcontracting would not be required." (Hearing Examiner Finding of Fact 20.)

However, to make the rule clearer so that the utilities and potential local subcontractors know their rights, the Agency has added language to make the limitations recognized by the Hearing Examiner explicit. Specifically, a new paragraph has been added that states that covered utilities are not required to subcontract with local auditors who charge non-competitive prices or who are not capable of quality work. added p.3-2

Thus, if an audit by a local auditor would cost a covered utility more than what is charged by other certified auditors, or what it cost the covered utility to do itself, there is no requirement under 6 MCAR § 2.2303A.3.b. to subcontract. Similarly, if the quality of a local auditor's work isn't comparable to a covered utility's work, no requirement to subcontract exists. It should be noted that as to the issue of quality, the comparison shall only be made to the covered utility's work and not the work of other auditors. The reason for this is to establish the covered utilities' audit services as a baseline level of comparison, rather than compare local auditors with companies offering a sophisticated package of services not necessarily related to audit quality. The Agency has determined that as long as this baseline level is met, the additional public response which will be generated by the use of local auditors is of paramount importance.

This paragraph does not add new responsibilities or rights to any class of people affected by this rule; it merely serves to clarify an existing limitation. If anything, by explicitly stating the covered utilities rights here, the rule may not provide local auditors with all the rights contained in the MPIRG proposed accepted by the Hearing Examiner. However, measured by the limits set by the Hearing Examiner for amending this rule, the rights of local auditors are not substantially changed. The Hearing Examiner found that the Agency had the right to either adopt the mandatory subcontracting provision of MPIRG or eliminate it and merely provide for permissive subcontracting, which would have provided no rights to local auditors. The Agency's adopted changes are within these two boundaries, and thus no violation of 9 MCAR § 2.111 has occurred.

6 MCAR § 2.2303A.3.c. sets forth a complaint process by which auditors proposing to subcontract pursuant to 6 MCAR § 2.2303A.3.b. may dispute a covered utility's refusal to subcontract. As suggested by the Examiner, the Agency has changed MPIRG's proposed hearing of such disputes to a review of such disputes by the Agency. changed P.3-3

6 MCAR § 2.2303A.3.d. provides that a customer may request an audit with any auditor subcontracting with a covered utility pursuant to 6 MCAR § 2.2303A.3.b.

This provision is necessary to guarantee customer choice and provide an incentive for audit subcontractors to vigorously promote the program. The Agency's language for this provision is essentially the same as that of MPIRG. However it is slightly reworked to make its purposes clearer. One addition has been made, that of providing that if the auditor does not wish to take the work, the covered utility is no longer obligated to honor the customer's request. This addition protects the covered utility in those situation where it would be impossible for it to comply with this rule.

c. 6 MCAR § 2.2304. MPIRG proposed that organizations be prohibited from recommending any particular contractor, lender, supplier, or program measure, although they be allowed to inform customers of their own installation and supply services. This provision in the Proposed Rule (6 MCAR § 2.2304D.1.) applies to participating utilities and heating suppliers. The Agency believes that the addition of audit subcontracting to the program necessitates this addition, and has adopted this change, substituting the phrase audit subcontractor for MPIRG's proposed organization. Participating utilities and heating suppliers may subcontract audits with organizations and individuals, thus necessitating this wording.

d. 6 MCAR § 2.2305. The Agency chooses not to adopt MPIRG's proposed changes to 6 MCAR § 2.2305, establishing a master list of auditors, setting additional eligibility requirements for auditors to the certification required at 6 MCAR § 2.2307B., and establishing procedures for removal from a master auditor list. The Agency believes the issues of quality control raised by MPIRG are addressed and satisfied in the rule by 6MCAR § 2.2307B, which requires certification of auditors. Agency certification of trained auditors who have passed the auditor exam provides sufficient quality control of auditors. Adoption of MPIRG's proposed changes would add additional procedures and costs to the program with no demonstration that the changes would be cost-effective in increasing program participation or conservation. The Agency believes that any additional quality control activities can be handled by participating utilities and heating suppliers and need not be

specifically covered in the rules.

e. 6 MCAR § 2.2306 and 2.2307. The Agency chooses not to adopt MPIRG's proposed changes to rules 6MCAR § 2.2306 & 2.2307, establishing audit inspections, audit inspector training, and audit inspector qualification. MPIRG's concern at 6 MCAR § 2.2306 and 2.2307 is again quality control. As stated above in response to MPIRG's proposed rule 2305, the Agency believes that quality control of auditors is adequately addressed by 6 MCAR § 2.2307B. MPIRG's proposed changes to rules 2306 and 2307 would add substantial costs to the program with no demonstration that the changes would be cost-effective in increasing program participation or conservation.

f. 6 MCAR § 2.2308. The Agency chooses not to adopt MPIRG's proposed changes to rule 2308, establishing Office of Consumer Services mediation of consumer complaints of MECS audits. MPIRG's proposed changes to 6 MCAR § 2.2308 are again quality control proposals, related to MPIRG's proposed changes to rules 2305, 2306, and 2307. As stated above in response to those MPIRG amendments, the Agency believes quality control of audits is adequately addressed in the rule and MPIRG's additional quality control proposals are not needed.

7. The Hearing Examiner, at Finding 21, found the Agency's use of the words "conditional" and "unconditional" at 6 MCAR § 2.2303B. to be unconscionably vague because these terms were not defined in the Proposed Rule. The Examiner suggested the Agency either amend the rule to add definitions or strike the words. The Agency has corrected this vague ness defect by adopting the Examiner's option of striking the words "conditional" and "unconditional" and adjusting the language in paragraph 2303B. to reflect this change. As a result of this change and in order to more fully explain the nature of the audit offer, the Agency has clarified that although audit offers may be geographically limited, they may not be time-limited and shall not contain an expiration date. amended p. 3-3, 3-4

At Finding 21 the Examiner also discusses the utilities' request to add a provision allowing for extensions of the response times to requests for audits to 6 MCAR § 2.2303B. The Proposed Rule provides that utilities must respond to

customer requests for audits in 60 days, or in 30 days if the offer is geographically limited. As stated in final comments (Pub. Ex. 47), the Agency was bound to these response times by DOE, and cannot add a provision allowing extensions. The Examiner found the response times provided in the Proposed Rules to be both needed and reasonable.

8. At Finding 24, the Examiner discusses utility comments on 6 MCAR § 2.2303D.2.b., concerning criteria to be used to determine whether cost and savings estimates are to be given for flue opening modifications. The utilities argued that Minnesota findings from an American Gas Association study justified a modification of this criteria. The Hearing Examiner stated that since the study was not available to him, he was unable to evaluate the utilities proposal. The rule is required by Federal regulations (10 C.F.R. § 456.307(b)(2)(vii)), and the Agency plans to retain it, at least until such time as the Agency can obtain and review the Minnesota data referred to by the utilities.

9. The Hearing Examiner, at Finding 25, found that the Agency's proposed 6MCAR § 2.2303E.2.d. was in conflict with Minn. Stat. § 216B.165, subd. 2. The Examiner found that the rule must be amended to correct this defect by requiring that a copy of the specified information, concerning the compliance of rental property with certain energy efficiency standards, be provided to tenants. The Hearing Examiner proposed language to correct this defect, and the Agency has adopted this language. added p. 3-11

The Hearing Examiner, at Finding 25, also discusses changes proposed by the Urban Coalition of Minneapolis to "sell" the MECS program to landlords. The Examiner suggests that the Agency might want to consider including them "but they are not necessary to make the rule reasonable". The Urban Coalition states: "A marketing scheme especially geared towards a landlord should be developed" (Pub. Ex. 31, page 6). The Agency agrees, and is proceeding to develop, within the Agency's budgetary constraints, a mass-media marketing campaign that will target homeowners, landlords, and tenants. These marketing activities are addi-

tional Agency efforts that fall outside 6 MCAR § 2.2302, Program promotion, which deals exclusively with utility distribution of program announcement to customers, and the Agency does not believe they should be added to the rule at this time.

10. The Hearing Examiner, at Finding 27, suggests that the Agency adopt changes to 6 MCAR § 2.2305B.1.a.(4) and 2.2305B.1.a.(8) proposed by SMARCA and other trade groups in Pub. Ex. 19. The changes concern the obligations of contractors and suppliers to remedy defects in materials (6 MCAR § 2.2305B.1.a.(4)) and to hold harmless participating utilities and heating suppliers from liability in contracts between contractors and customers (6 MCAR § 2.2305B.1.a.(8)). The Agency, in post-hearing comments (Pub. Ex. 39), agreed that these changes would be improvements, and the Agency has added them to the Final Rule. changes made p.5-2, 5-3

11. The Hearing Examiner, at Finding 29, discusses Proposed 6MCAR § 2.2307A., which contains a prohibition against discrimination as follows: "No person shall be denied the right to become an auditor or inspector on the basis of race, religion, nationality, creed, age or sexual preference." Toby Lapakko of the Minnesota AFL-CIO recommended that this paragraph be expaned to prohibit discrimination on the basis of sex, and the Examiner found that this addition would not result in a "substantially different" rule. The Agency believes that this change would improve the rule and has added it to the Final Rule. added p.7-1

12. The Hearing Examiner, at Finding 30, discusses the consumer grievance procedures contained in 6 MCAR § 2.2308. The Examiner discusses the confusion that may be caused customers concerning the procedure contained in 6 MCAR § 2.2308A.2 for resolving complaints and contacting the Office of Consumer Services. The Examiner suggests that the possible confusion in the Proposed Rule can be avoided by deleting the last sentence of 2308A.2. The Agency agrees that the Examiner's suggestion would improve the rule and has made this change in the Final Rule. added p.8-1

13. At Finding 32 the Examiner discusses Richard Kirham's proposal to permit fuel switching recommendations in certain circumstances. The Examiner was

unaware of all the potential ramifications of making a change to permit fuel switching, and did not find the proposed rule, 6 MCAR § 2.2303F.4., to be unresonable as written. The Agency has studied this issue in response to the comments of Mr. Kirham and the Examiner and has decided to retain its proposed rule 6 MCAR § 2.2303F.4., prohibiting an auditor from recommending fuel switching. The addition or replacement of a furnace using a fuel other than that of the current furnace is not a program measure and would need to be added as a state measure to fully accomplish Mr. Kirkham's purpose. The Agency reaffirms its position that fuel switching is not a conservation activity (Statement of Need and Reasonableness, p. 3-26). no change

14. At Finding 33, the Hearing Examiner discusses the recommendation of Michael J. Ahearn to add a definition of the word "supplier" to the rule. The Hearing Examiner suggested that the Agency and the Office of Consumer Services examine this proposal and consider its adoption. The Hearing Examiner did not find the rules to be unreasonable without such a definition.

The Agency and the Office of Consumer Services have examined Mr. Ahearn's proposal to add a definition of the word "supplier". The Agency's decision, with which the Office of Consumer Services concurs, is to reject its adoption. After consultation with the Office of Consumer Services, the Agency believes that a definition limiting the word "supplier" to "a retail supplier of a program measure", as proposed by Mr. Ahearn, might interfere with the program's warranty provisions in those instances where program measures had been obtained at whole sale by an installer.

CONCLUSIONS

1. The Energy Agency is authorized to promulgate these rules under Minnesota Statutes § 116H.17 (1980), § 116.08(a) (1978) and § 116.07(i) (1978).
2. The Agency provided due, timely and adequate legal notice of the hearing held herein. The hearing was properly conducted by the Hearing Examiner. Sufficient opportunity was given for persons to submit written testimony, state-

ments, and arguments. All substantive and due process requirements of Statutes, rules and constitutions have been complied with.

3. The need for and reasonableness of the rules establishing the Minnesota Energy Conservation Service Program, as amended pursuant to the Hearing Examiner's Report, has been shown by the testimony received herein as set forth above.

Mark Mason, Director

EA-81-001-AK

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Adoption of Rules of the Minnesota Energy Agency establishing the Minnesota Energy Conservation Service Program, 6 MCAR §§ 2.2300-2.2313.

ORDER OF THE CHIEF HEARING EXAMINER

WHEREAS, pursuant to the procedure contained in 9 MCAR § 2.109, the Minnesota Energy Agency submitted a request on October 16, 1980 to the Chief Hearing Examiner for approval of the incorporation by reference of certain materials in the above-captioned proposed rules; and,

WHEREAS, the materials consist of three different items, more specifically described as:

1. 10 C.F.R. § 456, subparts G and I (1979) - DOE Installation Standards.

2. 10 C.F.R. § 456, subparts G and H (1979) - DOE Material Standards.

3. HUD Intermediate Minimum Property Standards Supplement, Solar Heating and Domestic Hot Water Systems - 4930.2, 1977 Edition; and,

WHEREAS, Laws of Minnesota 1980, Chapter 615, § 6, subdivision 4(a) provides that, with the approval of the Chief Hearing Examiner, an agency may incorporate provisions of Federal rule or other materials if they are (1) conveniently available for viewing, copying and acquisition by interested persons, and (2) at least 3,000 words in length or would require at least five pages of publication in the State Register; and,

WHEREAS, the Chief Hearing Examiner has inspected the three items and finds that each is (1) conveniently available for viewing, copying and acquisition by interested persons, and (2) at least 3,000 words in length and would require at least five pages of publication in the State Register;

NOW, THEREFORE, IT IS ORDERED that the Minnesota Energy Agency has the approval of the Chief Hearing Examiner for the incorporation by reference of the above-cited materials in its proposed rules.

Dated this 29th day of October, 1980.

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Adoption
of Rules of the Minnesota Energy Agency
Establishing the Minnesota Energy Conservation
Service Program, 6 MCAR §2.2300-2313.

STATEMENT OF NEED
AND REASONABLENESS

These rules have been developed by the Minnesota Energy Agency for the implementation of the Residential Conservation Service (RCS).

The Residential Conservation Service Program was originally contained in Title II of the National Energy Conservation Policy Act (NECPA) 92 U.S.C. §3206 et seq., passed by Congress in 1978. It was later amended by Title V of the Energy Security Act which amended provisions of 6 NECPA.

The U.S. Department of Energy promulgated final rules for most of the program on November 7, 1979. Subsequent editions of the Federal Register on August 1, Sept. 24, September 25 and October 8, 1980 contained revisions and additions to the original rules. Subpart C of the November 7, 1979 rules require that the lead agency of each state submit a State Plan for the implementation of the program to the Department of Energy for approval. The Energy Agency was designated lead agency in 1978, by then Governor Rudy Perpich and reauthorized by Governor Albert Quie. The Agency received authority to promulgate these proposed rules in 1980 Minn. Laws, Chapter 579, Section 12 (to be codified as Minn. Stat. §116H.17) as well as Minn. Stat. §§116H.07(1) and 08(a)(1978).

To develop the State Plan and these rules, the Agency formed the MECS Advisory Committee. This committee contained representatives from many of the groups of people affected by the program. The following people with their affiliations (if any) participated in the Advisory committee.

Peter McLaughlin, Vusumuzi Zul -staff, Minneapolis Urban Coalition
Mike Casper -member, Coalition of Rural Environment Groups

| | |
|---|---|
| Mary Vandeford | -citizen |
| Andy Gibas | -commissioner, Circle Pines Public Utility Commission and member, Board of Residential Utility Consumers |
| Robert Pollock | -contractor, President of Insulating Contractors of the Northwest (ICAN) |
| Jim VanEpps | -staff, Minnesota Rural Electric Association |
| Robert Krogman | -staff, Northwest Petroleum Association |
| Jim Prifrel | -staff, Northern States Power |
| Al Seckinger | -staff, Minnesota Power |
| Gary Cranston | -staff, Ottertail Power |
| Ric Hinkie | -staff, Minnegasco |
| Arlan Restad | -staff, Peoples Natural Gas |
| Juanita Satterlee | -commissioner, Minnesota Public Utilities Commission |
| Mike Feeney | -staff, Office of Consumer Services. |

In addition, special subcommittees on audit and financing were set up. These subcommittees, contained additional members with other areas of expertise, including weatherization programs, city and state agencies, and lending institutions.

The Advisory Committee met monthy from January to June 1980 and discussed the issues involved with each section of the Federal rule. From these discussions, the Agency staff would write drafts of the State Plan. These drafts would then be submitted to the Committee for comment and approval. In addition, these drafts would be sent out to other consumer groups, industry groups, utilities and private citizens for comment. Finally, the entire Plan was approved by the Advisory Committee, prior to submittal to the U.S. Department of Energy on June 4, 1980.

This State Plan described to the U.S. Department of Energy how the state of Minnesota will comply with the federal rules. However, the Plan itself provided no authority for the state or any of its agencies to implement this program. Only through rulemaking, can the Agency implement this program. For this reason, the Agency developed and proposed these rules.

On November 3, 1980 temporary rules for this program called Minnesota Energy Conservation Service (MECS) were printed in the State Register. These rules require the program participants to implement the program in December. They will give the Agency authority to enforce the program until final rulemaking is completed.

If adopted, these proposed rules would establish a program requiring major regulated utilities to offer their residential utility customers services related to the promotion of energy conservation. The most important of these services include: conducting home energy audits to determine areas of major heat loss and other energy inefficiencies in the home; distributing Master lists of approved contractors, suppliers and lenders from whom home energy improvements and financing services may be obtained; arranging for the installation of home energy improvements; and arranging for the financing or supply of home energy improvements. The rules establish requirements for inclusion in the Master lists, audit training and certification procedures. This program also includes provisions for voluntary participation of home heating suppliers and nonregulated utilities.

To convert the State Plan into these proposed rules required extensive language revisions. The original plan contained many descriptive sections, unsuitable for state rules. In addition, much of the original language used was considered too vague for a state rule.

In this entire process of developing the Plan and these rules, the Advisory Committee and the Agency were bound by the original federal rules contained in 10 C.F.R. § 456. The state was required to adopt much of that rule without change. The federal rules allowed the state few options in proposing alternative rules. Thus the need for most of the rules published has been determined by the federal government.

In addition, to the restrictions of the federal rules, the Agency also had to balance several other considerations in developing these rules. These considerations included energy savings potential, cost effectiveness, resource limitations, flexibility, consumer protection, as well as fair treatment to all program participants. The next several paragraphs will discuss how these considerations affected the development of these rules. This statement will later discuss many of these considerations in specific detail as they relate to different provisions of the rules.

The first and primary consideration was the energy savings potential of the program. The MECS is designed to save energy in the residential sector by educating and motivating the customer to conserve. The Advisory Committee and the Agency came up with many suggestions for increasing the potential of MECS to save energy. However, not all of these suggestions could be implemented due to the requirements of the federal rules the uncertainty of the savings potential of the suggestion or the high cost involved. One example of this is the addition of certain state measures to the required DOE measures.

The Agency formulated some energy savings goals. By the end of 1985, fifty percent of the state's one million residences should have requested an audit. If half of these residences install measures that produce a twenty percent savings, a five percent decrease in energy use in the residential sector should occur. Conservatively estimated this would save Minnesota customers over $25 million in energy costs.

The second consideration was cost effectiveness. All participants on the Advisory Committee were concerned with developing a program that would be cost effective for both the customer and the utility or heating supplier. These issues manifested themselves in discussions of cost of the program to the customer (ultimately decided upon by the Legislative), the costs of program management, and the cost of the program in relation to the energy saved. The intent was consistently to reduce program costs if possible, while assuring the highest level of customer participation.

The third consideration was resource limitations. The federal government has not appropriated any money to the state or the utilities for planning or implemention of the program. Consequently, the Agency had to determine which aspects of the program the state could or should have direct control over and which aspects could be monitered by the state with initial responsiblities given to the utilities. An example of this is that the Agency will develop a training program and conduct certification for auditors. Inspectors, on the other hand, will be trained by the utilities and the Agency will only monitor that process.

Congress delegated many program responsibilities directly to the utilities. By doing this Congress was setting new precedents for utility involvement in promoting conservation. The utilities are now expected to use their financial and material resources to this end. Therefore, when appropriate, additional required program services were delegated to the utilities.

In addition to the resources of the Agency or the utilities, the resources of other organizations were considered. As often as possible, MECS will refer customers to or describe other programs sponsored by other state agencies or private organizations. These programs, such as the weatherization program for low-income people broaden the impact of MECS without duplicating services.

The fourth consideration was flexibility in design of various aspects of the rules. Developing rules that must be implemented by a large urban utility is much different than developing rules for a smaller rural utility or even smaller fuel oil jobber. Keeping these considerations in mind, the Agency prescribed different rules where appropriate for the regulated utilities, non-regulated utilities and heating suppliers.

In addition, the Agency and committee attempted to introduce flexibility where permitted by the federal rule. Often the program participants are delegated the responsibility for planning and implementing certain aspects of the rules. When this is done, the Agency will monitor and approve that work before implementation can occur. This allows the program participants to design procedures suited to their needs, and yet allow the Agency to determine if the procedures meet the needs of the program and rules. An example of this is the design and implementation of the post-installation inspections.

The fifth consideration was customer protection. This program is to be designed to assist the customer in making decisions and changes. The goal is to influence the customer by providing needed services and not to coerce the customer into unwanted changes. The NECPA and the federal rules reflect a Congressional orientation towards consumer protection. These rules continue that orientation.

Finally, given the complex interactions between many different program participants--utilities, customers, businesses, contractors, and government agencies--the rules attempt to treat each group fairly and equitable. This is done by reducing the amount of paperwork involved to participate in the program, reflecting the needs of those groups that are smaller or less organized and attempting to allow for full participation by all legitimate interests.

The format for the rest of this statement will be as follows. Each section of the rules except for 6 MCAR §2.2300 and §2.2301 will be introduced by a summary of the rules including their impact on program participants. This summary will also provide for the need and reasonableness of that section. After the summary, the provisions of each rule will be written and underlined. Following each provision, a justification for that provision will follow. All references to 10 C.F.R. § 456 will be from the edition of federal rules published on November 7, 1979, unless indicated differently.

6 MCAR §2.2301. Definitions.

The definitions in this section are all needed to clarify the meaning of certain words used in these rules. Most definitions are self-explanatory and were taken directly from 10 C.F.R. § 456.105.

The following definitions need additional comment.

6 MCAR §2.2301G., H., U. and S. lists the measures and practices that form the basis for the audit. This is the only place in the rules that all the measures are listed. The U.S. Department of Energy mandated all of the measures listed in 10 C.F.R. §456.105(f) and 10 C.F.R. §456 Appendix I(d) to be included in the audit in Minnesota. The measures included met their criteria for cost effectiveness, existence of suitable industry standards, energy savings potential, reduction of fossil fuel use and lack of negative environmental impacts.

The Agency was permitted by 10 C.F.R. § 456.319 to include addition measures if they meet the above criteria, added little additional time to the audit and were approved by the U.S. Department of Energy. DOE did approve the three state measures listed in 6 MCAR §2.2301W. These are the only additional measures permitted in the audit.

The Agency intends to re-evaluate the audit and measures in one year. During this time the Agency will investigate the inclusion of other additonal measures. Any measures that the Agency wishes to include will have to be approved by DOE.

6 MCAR §2.2301 J and K. describe materials and installation standards that must be followed in this program. These standards are required for use in the program by 10 C.F.R. § 456.305(a)(2), 312(b)(1-2) and 313. The Agency had proposed similar standards for Minnesota in a separate set of rules, but has decided to withdraw the proposed standards to evaluate these DOE standards. These

standards are generally accepted by the various industries involved but are not always familiar to general contractors in the field. The Agency will conduct various educational programs to acquaint these contractors with the standards.

The standards are needed to assure a safe and effective installation of materials, either by the customer or a contractor. There have been many incidents in the past years of either unsafe materials entering the market or improper installations endangering the customers life and home. The use and enforcement of these standards in the program will help ease consumer fears over retrofitting their residence.

6 MCAR §2.2301 S combines all of the various terms for measures used in the federal rules, such as energy conservation, renewable resource or state measures into a single term for this rule.

6 MCAR §2.2301 V is the definition of a residential building. This program only covers buildings of four units or less. The new NECPA amendments contained in Title VII of the Energy Security Act will expand the MECS program to multifamily and small commercial buildings in 1982. At present, these rules have not been issued by the Department of Energy.

The definition is taken from 10 C.F.R. § 456.105(w). The federal rule adds this clarification that "town houses and row houses in rows of more than four separate houses are included in this definition by garden apartment complexes which contain clusters of four apartment units or less are not."

6 MCAR §2.2302. Program promotion.

This section describes the covered utility's responsibilities in promoting the MECS.

10 C.F.R. § 456.306 requires that each covered utility send a program announcement to their customers. This announcement serves two purposes. The first is to explain and offer to the customer the services of this program. In addition, the announcement serves to inform and encourage the customer to conserve energy by showing the possible savings that may accrue to the customer.

These rules are needed to provide for a uniform method of contracting all utility customers. The covered utilities are too large to have the personal contact with their customers that would allow for other means of communication. By requiring a program announcement, all customers will be guaranteed to receive information about the program and will have an equal opportunity to request program services. The utilities will not be limited to this method of program promotion; all are considering other means of promoting the program. The Agency is working with other organizations such as the local energy awareness committees, the Jaycees and agricultural extention service to do additional promotion as well as producing public service announcements for the media. The requirements of this section present a reasonable means of assuring that all customers will be contacted.

This section is applicable to covered utilities only. 10 C.F.R. § 456.306 requires their participation. Heating suppliers and non-regulated u utilities may send a program announcement if they wish. Their relatively small amount of customers, (300-500 customers for a fuel oil jobber and several thousand for a rural electric cooperative) allow them other means of contact, such as newletters, telephone or personal contact. The development of a program announcement is then not necessary.

A. Program announcement.

1. Distribution.

Although the Agency is required to prescribe the minimum content of the announcement, each utility shall design its own announcement. This allows the utility to design an announcement that best fits its needs and customers. In addition, the utilities have better resources in their public relations and advertising departments to design an appealing and informative announcement. This is a more reasonable approach than the Agency designing the announcement for use by the utilities.

To be sure that each utility is meeting the requirements of this rule, the Agency will review the program announcement to assure that the minimum criteria have been met and that the information is easily understood. The deadline for submitting the announcements to the Agency is one month prior to the printing of the announcement gives the Agency sufficient time to review and discuss and revise the announcement with the utility before the utility undergoes any major expenses in printing. The approval process is estimated to take two to four days for each utility.

The Agency has required that the annoucement be in "simple language" to ensure that it will be easily understood by each customer. Given the potential complexity of both this program and energy conservation techniques, it is reasonable and necessary to include this provision.

a. Each covered utility shall send to all their customers a Program Annoucement by April 9, 1981, and thereafter at least once every two years until January 1, 1985.

This provision is required by 10 C.F.R. § 456.306(a), which requires the announcement to be sent within six months of

DOE approval of the State Plan. The State Plan was approved on October 9, 1980. It is needed to assure that all customers are made aware of the program services and information contained in the announcement. The program will continue to be promoted by the mailing of announcements until January 1, 1985. At present, there is not sunset provision in the rules or original Act, which means the utilities will still be required to offer the program but not advertise it after 1985.

b. Each covered utility shall send a Program Announcement to each of its new customers within sixty (60) days after the date that the new customer first receives service.

This provision is required by 10 C.F.R. § 456.306(e)(2). It is needed to ensure that customers who move into the service area of the utility are offered the program services.

c. Program Announcements shall be submitted to the Agency for approval one month prior to the date that the utility intendes to print the announcement. The Agency shall approve the distribution of program announcements only if:

(1) The criteria of 6MCAR § 2.2302A.2. have been met; and

(2) The information contained in the program announcement is represented in simple language.

This section is needed to ensure that the program announcements are meeting the requirements of this rule. Since the Agency is allowing the utilities to design their own announcement, it must monitor these announcements to assure that they are complete and accurate. These procedures should only take about a week but additional time must be allocated to allow the utility to make changes and have those changes reviewed. The time period

for submittal is reasonable for the utility's compliance and is needed to prevent the announcement from being delayed.

2. Content.

a. The Program Announcement shall contain the following elements, at a minimum:

(1) A list of all program measures with an estimate of the savings in energy costs, expressed in percentages, which are likely to be produced by each measure in one year;

This provision is required by 10 C.F.R. § 456.306(a)(1-2). It is needed to give the customer an idea of how much money can be saved from following the recommendations. The Federal rule allows the state to decide whether such estimates of savings in energy costs will be in percentages or actual dollar amounts. The use of percentages in the rule will allow the utilities to give accurate information to the customer regardless of their decision to seek additional services.

(2) A list of all energy conserving practices with an estimate of the savings in energy costs, expressed in percentages, which are likely to be produced by each practice in one year, and a statement that the practices are of low or not cost;

This provision is required by 10 C.F.R. § 456.306(a)(3-4). It is needed for similar reasons to those in 6 MCAR §2.2302.A.2.a This section also provides consumer information regarding energy conservation actions that could be implemented immediately, without an audit becuase they are of low or no cost to implement.

(3) An offer by the covered utility to provide the following services with a description of each:

(a) A program audit, in accordance with 6 MCAR §2.2303,

(b) Installation arrangement services, in accordance with 6 MCAR §2.2304B.

(c) Financing arrangement services, in accordance with 6 MCAR §2.2304A.

(d) Contractor, lender and supplier lists in accordance with 6 MCAR §2.2305.

The description of each service shall include information on how a customer may obtain these services, and the direct cost to the customer of obtaining these services.

This section is required by 10 C.F.R. s 456.306(a)(5)(i-iii). It is needed so that customers can learn about the program services and what they must do to receive these services. The offer of the audit will frequently be limited by the provision of 6 MCAR §2.2303B and if so, this will be explained to the customer. The direct cost of these services was limited by the 1980 Minnesota legislative in 1980 Minn. Laws Chapter 579, Section 17 (to be codified as Minn. Stat. §116B.165) to ten dollars or less.

(4) An offer to provide to each new customer upon request a copy of any program audit performed previously on the customer's present residence;

This provision is required by 10 C.F.R. § 456.306(e)(3). It is needed to offer information about a new customer's residence to that customer. This allows the utility to reduce costs by not offering duplicate audits. Since the audits will mainly consider structural rather than lifestyle elements in regard to energy conservation, the duplicate audit will be significant value to the new customer.

(5) The following disclosure:

"Energy savings depend on many factors. The estimates contained in the announcement are based on estimates for typical houses. Your costs and savings will be different if your house is a different size or if your energy using habits are different from those we assumed. The energy audit which we offer will provide more specific estimates for your house."

This disclosure is required by 10 C.F.R. § 456.306(a)(7). It is needed because the utilities will be giveing out cost savings estimates based on a typical home rather than the exact home that the customer lives in. This will alert customers that the costs given are likely to be different than the ones contained in the announcement. It will also provide incentive for the customer to get an audit to get more exact figures.

(6) An explanation of the benefits of applicable federal and state energy tax credits;

This explanation of federal tax credits is required by 10 C.F.R. § 456.306(a)(8). The Agency added state tax credits for renewable resource measures. This provision is needed because tax credits significantly increase the attractiveness of certain energy investments by reducing the final costs of those investments. This provision is reasonable because it will add little burden to the utility and give the customer more complete information.

(7) A description of the benefits and eligibility requirements of the Weatherization Assistance Program for Low Income Persons, 10 C.F.R. 440; (1980).

This provision is required by 10 C.F.R. § 456.306(a)(9). It is needed to promote the services of that program to eligible customers and to encourage them to apply for its benefits. The program provides weatherization grants and installation of certain measures in the homes of low-income and elderly residents.

(8) The following statement:

"The results of this audit may be used by renters to see if their residence complies with existing state energy standards for rental property. Call the Minnesota Energy Agency at 296-5175 or toll-free, 800-652-9747 for more information and what you can do to get your residence brought up to these standards."

This statement is required by 1980 Minn. Laws, Chapter 579, Section 17 (to be codified as Minn. Stat. 216B.165, subd. 2). It requires that any renter requesting an MECS audit be given information on whether their unit complies with State standards for rental housing (Minn. Stat. §116H.129 (1978)). It is therefore reasonable to inform renters of the possible use of this audit in the program announcement and further inform them of how they can receive further information on the state standards.

b. The Program Announcement shall not contain:

(1) Advertising for sale, installation, or financing of any program measure or energy conserving practice by a particular person or company, listed or not; or

(2) Information regarding any product which is not a program measure or an energy conserving practice.

These prohibitions are required by 10 C.F.R. § 456.306(a)(10-11). They are needed to restrict this announcement to the services and measures described in these rules and to assure that the MECS program is not used by the utility to unfairly promote any persons or businesses. It is reasonable to restrict this announcement in these ways because utilities have other opportunities to advertise or promote different services to their customers.

c. If a covered utility or participating heating supplier finances the sale or installation of program measures and energy conserving practices, it may describe its financial services.

This exception is allowed by 10 C.F.R. § 456.306(a)(10). It is needed to encourage the homeowner to install conservation measures. By informing the customer of any special financing that it offers, the utility helps the customer with a difficult aspect of the retrofitting process-finding financial assistance. This provision will be especially useful as the utilities expand their services in the pilot utility conservation investment program as ordered by the Public Utilities Commission (Docket # G, E/CI-80-494).

d. The covered utility or participating heating supplier shall use the calculation procedures in Appendix A for the estimates contained in the Program Announcement. All estimates shall be based upon recent prices and appropriate climatological data for the customer's location. The price data will be taken from the survey conducted pursuant to 6 MCAR §2.2303A.2.

10 C.F.R. § 456.306(d) describes procedures necessary in the State Plan to ensure that all calculations in the program announcements are reasonable and accurate. This section is needed to assure such accuracy. The calculations are provided in Appendix A. Other data necessary will be taken from a survey conducted by the utilities to determine local prices and from other easily obtainable public information such as average degree days and current fuel prices.

6 MCAR 2.2303 Energy audits.

This section . outlines the requirements for the energy audit and the procedures that the auditor must use in the customers home. The audit is the center piece of the entire program. It is the principal service that a customer will receive from the utility and will give that customer the most valuable information. The audit was required by Congress because it assumed that if a customer has reliable, accurate information about his or her residential energy use, then that customer will make changes to conserve energy. In addition, it was assumed that the personal contact with the auditor and the information provided will motivate the customer to make changes.

These two goals of education and motivation form the basis for the entire MECS program. If a customer follows up on an audit, the advantages are many. These include savings in costs to the customer as well as increased revenues for the state and nation. Therefore, it is important to provide accurate and reliable information so that the customer has enough confidence in the audit to be motivated to make changes.

The Agency has chosen to develop a model audit which will be available to any utility or heating supplier. This audit will be based on a model by DOE and on other information particular to Minnesota. If a utility or heating supplier chooses to use a different audit system, this audit will be compared against the Agency's model, to assure that it meets the needs of this program.

The rules in this section apply to all utilities and heating suppliers. They are required by 10 C.F.R. § 456.307. This is necessary to ensure that all utilities and heating suppliers are providing the same quality and kind of audit services. Since the agency is developing a model audit this should relieve the burden from some of the smaller utilities and heating suppliers and allow for their participation.

A. Validation of audit procedures.

1. Alternative audits.

The Agency shall develop a model program audit based on the calculation procedures in appendix A for use by participating utilities and heating suppliers in the MECS. A participating utility or heating supplier may use an alternative audit if the alternative has been approved by the Agency. The alternative audit will be approved if its results are within 20% of the results provided by the MECS Audit. To determine this, the Agency shall conduct five field tests of the alternative audit on five representative residences of different sizes and ages. The results of these audits shall be reviewed by the Agency and compared to the results achieved by the MECS Audit. If the alternative audit does not meet this test, any necessary changes may be made in the audits procedures and five additional audits may be conducted and reviewed.

10 C.F.R. § 456.307(a)(6) requires that the rules contain procedures for validating audits. The Agency chooses to validate audits rather allowing DOE to validate them because this assures an audit more responsive to Minnesota needs. It also allows for closer cooperation with the utilities needing audits validated. DOE has yet to meet any of their self-imposed timelines on this program so that state validation would assure a more timely response.

This section is needed to ensure all audits, other than the Agency's model, are validated and are accurate. The most reasonable way of validating audit is for the utilities to submit their audits to the Agency for approval. The procedures for testing are described in this section.

It is difficult to determine the accuracy of audit calculations. The calculations used by most audits are based on standard heat loss calculations developed by The American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE). However, how and what information is gathered can significantly alter audit results. Attic by-passes of less than three square feet can significantly alter the expected savings in attic insulation. Thus, the Agency allows a 20% leeway from the results achieved by the Agency model. Any results that are significantly deffait than the Agency's will be investigated as to why they occurred and the utility will be required to justify their methods of calculation.

Validation of an audit may take up to one month because of the actual testing required. Thus in order to meet the deadline of starting the program soon after the announcement is sent out, the temporary rules required that these audits must be submitted to the Agency by January 5, 1981. This date is not contained in these rules because it will pass before rulemaking is completed.

This provision does not preclude the utility from changing audit procedures or the entire audit during the program. However, any audit changes proposed later in the program must use the same procedure described in this section for validation.

2. Price information.

   On a semi-annual basis each covered utility shall survey local fuel prices and prices for materials and installation of program measures for use in audit calculations on a form provided by the Agency. The results shall be sent to the Agency for verification on the 15 day of January and July, starting on January 15, 1981.

This section is needed to assure accuracy of the current price information used in the audits and program announcements. The Agency will provide a form to the utility that will describe what type and amount of information to be collected.

This survey must only be done by the covered utilities because they have the resources available to conduct such a survey. Small heating suppliers or non-regulated utilities have indicated that even though this requirement is not to difficult, it may be time consuming for their limited staff. The results of the information gained by the survey is the covered utility will be released to the public for the use by these heating suppliers and non-regulated utilities.

The dates included are reasonable because the utilities will be provided the forms, at least one month prior to the date the survey is due at the Agency. The Agency estimates that the survey will take ten to twenty hours to complete.

3. Subcontracting audits.

Participating utilities and heating suppliers are permitted to subcontract audits with third parties. All such audits must be approved pursuant to 6 MCAR §2.2303A.1. and all auditors must be approved pursuant to 6 MCAR §2.2307A.

This provision is required by 10 C.F.R. § 456.307(g)(2). It is needed to allow utilities or heating suppliers to subcontract audits. Subcontracting audits, especially in inner-city neighborhoods can result in increased program participation. The Anacostia neighborhood group, in Washington, D.C. received a 70% response rate to their offer of audits to the neighborhood. A similar high response is occuring in the Longfellow neighborhood of Mpls., with an audit offered by local community organizations.

These response rates are so high because the people in these neighborhoods have been acquainted with and trust the services provided by these organizations

Unfortunately, in many inner-city neighborhoods, the utility is not so well trusted. Subcontracting audits to a neighborhood organization is likely to significantly increase the number of audits requested by using the organization's high and trusted name recognition and the utilities back-up resources.

All audits subcontracted still must be validated by the Agency and all auditors certified by the Agency, to assure quality control.

B. Scheduling of program audits.

1. Upon prior approval by the Agency, a program audit may be offered in the program announcement by a participating utility or heating supplier on a geographic or other conditional, non-discriminating basis. Approval will be granted if the audit offer schedule allows every customer within the respective utility or heating supplier's service area an equal opportunity to receive a program audit, and if the audit offer schedule is consistent with 6 MCAR §2.2303. However, any covered utility which serves a city of the first class must first offer the audits to customers in those neighborhoods that contain the largest number of people below the federal poverty guideline. If two or more covered utilities provide service to the same city of the first class, upon approval by the Agency those utilities may enter into an agreement which provides that only one utility will offer the audits on the above priority basis. This agreement will not relieve either utility from responsibilities of offering audits to all eligible customers.

10 C.F.R. § 456.307(a)(5)(i) allows the Agency to permit audits to be offered based on geographic or other factors. Since all program announcements must be sent to all customers at the same time, without this flexibility in offering audits the utilities could be faced with a flow of requests from all parts of their service area. In many of the large utilities, this might mean that on the same day requests might come in two or three hundred miles apart.

The Agency, therefore proposes this provision to allow utilities to condition their original offer of the audit in the program announcement. Most utilities plan to use a geographic offer of the audit concentrating on one city or area at a time. The utilities must make an offer of an audit to each customer within a two year period. It is needed to allow the utility flexibility in scheduling of audits to best use their manpower in a cost-effective manner. It is clearly cheaper for the utility to offer audits all in the same neighborhood or city, than to have the auditor traveling great distances between audits. The more audits that an auditor can do in a day, the more cost-effective the program will be.

Several cities groups have suggested to the Agency in devising the plan that low-income persons should receive the audit offers first. The main reason for this suggestion is that low-income people are in the most need of assistance in coping with their energy bills. In addition, low-income people can benefit most often from other assistance programs that the auditor is required to discuss, such as the weatherization program and Minnesota Housing Finance Agency Loans and Grants.

However, the utilities and heating suppliers have no way of knowing which person have low incomes. Although utilities and heating suppliers receive payments for fuel from the welfare department or from the Emergency Crisis Assistance Program, this information can not be used because it is classified information.

The only way to implement this suggestion was to use other available information such as census tract or information developed by city planning departments. Since cities of the first class, Minneapolis, St. Paul and Duluth, are the only areas in the state with significant concentrations of low-income persons in neighborhoods, it was decided to limit this provision to these cities. This would then affect Northern States Power, serving Minneapolis and St. Paul, Minnegasco serving Minneapolis and Minnesota Power, serving Duluth. Local heating suppliers are exempted because their small volume of customers affected by this rule.

The final provision of the rule regarding two utilities serving the same city is needed to allow Northern States Power to concentrate their efforts in St. Paul first, rather than in both cities at the same time. Since Minnegasco covers Minneapolis and the vast majority of Minneapolis residents have gas service (95%), those residents would be adequately covered.

The two utilities involved must meet with the Agency and discuss the agreement that they enter into. The Agency will ensure that all provision of this section are met before an agreement is approved.

2. Each covered utility shall provide a program audit to a customer:
   a. Within thirty (30) days of the customer's request if a conditional offer is made; or
   b. Within sixty (60) days of the customer's request if an

unconditional offer is made.

This rule is required by 10 C.F.R. § 456.307(a) which directs the Agency to specify "a reasonable time" within which audits will be provided. It is needed to provide audits to a customer when the customer's interest is high. To meet this requirement the Agency decided on two different requirements depending on how the audit if offered.

If the audit is offered on a geographic or other conditional basis (as most utilities intend), then the audit must be provided within thirty days of a request. By offering the audits on a conditional basis, the utility can choose areas that are small enough so that it can quickly respond to requests.

If a utility chooses to offer the audits to all customers at the same time, a longer response time is reasonable to allow for better scheduling of auditors. The auditor could wait for several requiest in one area rather than traveling over the service area. The longer the distance between audits, the more it costs to provide the audits overall.

This response time is only a requirement for the covered utilities. Heating suppliers and non-regulated utilities will have much smaller staffs, usually on auditor and need more leeway in the scheduling of audits.

3. Each participating utility and heating supplier shall submit to the Agency, 45 days prior to the first offer of a program audit, a schedule which state when program audits will be offered and completed throughout the state.

This provision is needed so that the Agency can be assured that all participating utilities and heating suppliers are making offers to

all customers, as required in these rules. In addition, the Agency needs this information to monitor the activities of the program participants and to effective conduct a promotion campaign on MECS. This information is especially important when a utility provides conditional audits to different parts of the state at different times. Heating suppliers will probably offer these program services during the summer or slack periods, when their personel are more available. The Agency wishes to know from those participants when they plan to offer audits also.

4. Participating utilities and heating suppliers are prohibited from preconditioning a program audit upon the purchase or performance of any other audit.

This provision is required by 10 C.F.R. § 456.307(a)(2). It is needed so that customers will not be discouraged from asking for an on-site audit when they first are required to complete a different type of an audit, such as a class B computer audit. There should be no restrictions on the offer of the MECS audit. The participating utilities or heating suppliers may send out a questionaire to be filled out prior to the audit by the homeowner to save time during the audit. However, if the customer fails to fill out the questionaire, This does allow the utility to cancel the audit.

C. Conducting the audit.

1. Each participating utility and heating supplier shall upon request, provide to each customer a program audit which covers all energy conserving practices and all program measures. In each program audit, a state certified auditor shall determine which of the energy conserving practices would save energy in the residence, explain and emphasize the importance of such practices and recommend that they be performed before the installation of any program measure. The auditor shall then determine the applicability of each program measure pursuant to 6 MCAR §2.2303D.2 in that residence.

This provision is required by 10 C.F.R. § 456.307(b)(1-3). It is needed to direct the utilities or heating suppliers to offer the audit and outlines to them the basic content of the audit.

2. The auditor shall estimate energy savings and installation costs of each program measure using the calculation procedures in Appendix A or procedures approved pursuant to 6 MCAR §2.2303A.

This provision is needed to ensure accurate, quality audits for all customers in the state. As previously stated, the Agency is required to validate audit procedures by 10 C.F.R. s 456.307(b)(6). The calculation procedures in Appendix A have been developed by the Agency based on a Department of Energy model audit and ASHRAE heat loss calculations. Other procedures will be approved at the time of audit validation.

Furthermore, the auditor shall perform each of the following:

a. Take actual measurements or inspections of the building shell and of the space heating, space cooling, and water heating equipment;

This is required by 10 C.F.R. § 456.307(b)(3). It is needed to ensure that each audit provides information on the actual house audited for, rather than a typical house. This provision differentiates the audit from other types of audits which are conducted by the homeowner or done without reference to the actual customers home.

b. Base economic calculations on the survey conducted pursuant to 6 MCAR s2.2303A.2, for local fuel prices, and local prices for materials and installation of program measures, and also, included in the calculations typical local climate data for the customer's location;

This provision is required by 10 C.F.R. § 456.307(b)(4). It is needed to ensure that the auditor will use the most recent information

for the calculations of savings. The information will be collected by the covered utilities and made available by the Agency to heating suppliers and non-regulated utilities.

c. Base calculation procedures for active solar domestic hot water systems on those contained in the HUD Intermediate Minimum Property Standards Supplement, Solar Heating and Domestic Hot Water Systems 4930.2, 1977 Edition; and

This provision is required by 10 C.F.R. § 456.307(b)(5). It is needed to establish a standard calculation procedure for the measure.

d. Base any cost and savings estimate for any applicable furnace efficiency modification to a gas or oil furnace or boiler on an evaluation of the seasonal efficiency of such furnace or boiler. This seasonal efficiency shall be calculated on an estimated peak (tuned-up) steady state efficiency corrected for cycling losses. This shall be done as follows:

(1) For oil furnaces or boilers, the steady state efficiency shall be derived by a flue gas analysis of measured flue gas temperature and carbon dioxide content.

(2) For gas furnaces or boilers, the steady state efficiency shall be derived from manufacture's design data. If the manufacture's design data does not exist, then a flue gas analysis, as described in 6 MCAR §2.2303C.2.d shall be done.

10 C.F.R. § 456.307(b)(7) requires that this calculation be done on all heating equipment. The Agency has choosen to treat gas and oil heating differently. Oil burners tend to need adjustments at least once a heating season. It was therefore recommended by Northwest Petroleum Assn., that all oil burners have an actual flue gas analysis

done. This procedure which takes ten to twenty minutes to perform will determine the steady state efficiency of a burner. With this information the auditor can calculate the seasonal efficiency. Gas burners rarely reguire tune-ups--once every three to five years. This means that the manufacturers existing data on the furnace is likely to be correct. Newer models of gas burners have information regarding steady state efficiency marked on them. Older models or conversion units would not have this information, so a flue gas analysis must be done.

These provisions are all needed to ensure that the customers receives accurate information on the performance of his or her heating plant. In addition, by conducting an actual flue gas analysis, the auditor will be stressing through his or her actions the importance of the efficiency of the heating system to the customer.

3. The auditor shall calculate the energy index for the residence using the procedures in Appendix A.

This provision is needed to give the customer additional information on how the customer's residence compares with other similar residences. It is an information tool that was developed by Roger Peterson, an engineer with the University of Minnesota Agricultural Extension Service. It will be used by the Agency and Agricultural Extension in other information programs in the upcoming years. Since the information needed for the calculation is already gathered, it should add only minutes to the audit.

4. Each customer shall be required to sign a release form prior to an audit of a furnace which uses as its primary source of energy any fuel other than the fuel source sold by the participating utility or heating supplier which employs the auditor. The release shall include the following statement:

"Since your home is heated by a source of fuel other than (identify the type of fuel supplier), you must sign this release form to allow us to audit your furnace. It will allow us to give you estimates of energy savings that may be available from making your heating appliances more efficient."

This provision is required by 10 C.F.R. § 456.307(f). The Department of Energy has permitted the Agency to reword the disclosure to make it more positive statement.

The need for the disclosure is to allay fears by the customers and utilities and heating suppliers that the auditor will not discuss fuel switching in the program. Ordinarily, the gas or electric utility does not inspect an oil burner. This release makes clear the reasons why the utility or heating supplier would need to make an inspection.

D. Technical criteria for calculating energy savings.

1. The following R-Values shall be recommended during the program audit and be used during the calculation procedure:

| | | |
|---|---|---|
| a. | Ceiling insulation | R-44 |
| b. (1) | Wall insulation | R-11 |
| (2) | Foundation insulation | R-11 |
| c. (1) | Floor insulation | R-19 |
| (2) | Rim joist insulation | R-19 |

Appendix 1 to 10 C.F.R. § 456 lists minimum R-values for use by auditors. These R-values will be used by the auditor in calculating energy cost savings in the program. The existing insulation level will be compared to the recommended level for the cost savings.

R-value, the resistance to heat loss is the standard used to describe the effectiveness of heat loss. Every material has an R-value, usually measured in inches, i.e. cellulose 3.71/inch. The larger the R-value, the better the insulating qualities of a material.

Pay back or cost effectiveness of an insulation is determined by dividing the total cost of insulating an space to a given R-value

by the savings expected by raising the insulation to that R-value. For example, if it costs $600 to insulate an attic to R-44 and the savings expected in one year, by reduced heat loss is $200, the payback is three years. The payback is, obviously dependent on the cost of materials, cost of fuel and the R-value.

The attic ceiling insulation value is at R-44. This was choosen by the utilities and heating suppliers on the Advisory Committee as a value that could be expected to provide a three year payback for most homes. The DOE standard at R-38, all agreed was too low.

The other R-values for foundation, floor and rim joist were set using the capacity of the structure as the limit. Most walls can be retrofitted to an R-11, for example. These numbers are the ones used already by the Agency and the utilities in their public information.

2. The following criteria shall be used to determine if an estimate of cost and savings must be given for the particular program measures:

This section is needed in order to give guidance to the auditor. Not all measures should be recommended for each residence. The auditor will be prepared to evaluate twenty-two different items but all recommendations will be based on the needs of that residence. Applicability criteria allow the auditors to make consistent decisions on what needs to be included in the audit.

The criteria listed in the following section help make the audit more cost effective. The less time the auditor has to spend in the home auditing for useless or unprofitable measures, the more audits can be completed or the more time can be spent with the customer answering questions. Clearly if a home contains storm windows, the auditor should not spend his or her time measuring and calculating for storms. In addition, if a measure is not allowed by local building codes, then the

auditor is also released from giving information on the measure.

Other measures contain factors limiting their effectiveness in a particular circumstance. The applicability criteria below review and provide guidelines for the auditor. Except when noted all criteria are required by 10 C.F.R. § 456.307(b)(3)(iii-xviii).

| Measure | | Criteria |
|---|---|---|
| a. Replacement furnaces or boilers | - | The furnace is five (5) years or older and has a seasonal efficiency of less than 80%. |

This criteria is needed because only newer heating equipment have seasonal efficiencies of over 80%.

| | | |
|---|---|---|
| b. Flue opening modifications | - | The furnace combustion air is taken from a conditioned space. |

This criteria is needed because little energy is saved if a furnace is in an unconditioned space. By definition a vent damper saves energy by reducing the flow of heated air.

| | | |
|---|---|---|
| c. Replacement central air conditioner | - | The building has a central air conditioner that is five (5) years or older. |

This criteria is needed because newer central air conditioners have much higher seasonal energy efficiency ratios.

| | | |
|---|---|---|
| d. Ceiling insulation | - | The present level of ceiling insulation is R-30 or less. |

This criteria is needed because it is not very cost effective to insulate an attic to R-44 when it contains an R-30 or greater. There are usually other more cost effective measures to install.

| | | |
|---|---|---|
| e. Wall insulation | - | There is no insulation in a substantial protion of the exterior walls and the building is not a mobile home. |

This criteria is needed because it is extremely non-cost effective to insulate a wall if there is already any insulation in that wall. In addition, it is usually difficult to re-insulate a wall that is

already insulated. Mobile home walls are usually insulated and are difficult to re-insulate.

f. Floor insulation

(1) Floor - There is no insulation in the floor over an unconditioned space.

(2) Rim joist insulation - The rim joist is accessible.

This criteria is needed because if the floor is over a conditioned space, the heat flow from that space is usually desirable. With relation to rim joists, the criteria is needed because rim joists that are in accessible cannot be insulated very easily and usually have a higher R-value than exposed rim joists. The rim joist criteria is proposed by the Agency.

g. Water heater insulation - The remaining useful life of the heater appears to be three years or greater and space is available around the water heater to install insulation.

This criteria is needed because the payback period of water heater insulation may be longer than the life of the water heater. In addition, many water heaters are installed in tight spaces which do not allow for the installation of insulation.

h. Electric load management devices - The electric utility offers a residential rate which reflects any differences in the utility's cost of service between peak and off peak periods.

This criteria is needed because the definition in Appendix 1 of 10 C.F.R. § 456 requires such rates to be offered in conjuction with such devices and only the utility itself may offer such devices.

i. Clock thermostat - The residence has a thermostat or the existing furnace or central air conditioner is compatible with a clock thermostat.

This criteria is needed because a clock thermostat cannot work with all heating or cooling equipement.

j. Solar domestic hot water system - A site exists on or near the residence, which is free of major obstruction to solar radiation.

k. Passive solar direct or indirect gain glazing systems - The living space of the residence has either a South facing (+ or -45° of True South) wall or an integral South facing (+ or -45° of True South) roof, which is free of major obstruction to solar radiation.

This criteria is needed because their device needs access to the sun for a significant part of the day to provide any heat.

l. Heat reflecting and heat absorbing window or door material - The affected rooms of the residence are air conditioned and the cooling degree days for the region exceed 700.

This criteria is required because this measure is not cost effective unless a significant coding occurs. Only those parts of the state with the highest cooling loads can expect to benefit from this device.

m. Passive solar solaria/ sunspace systems - The living space of the residence has a South-facing ground level wall, which is free of major obstruction to solar radiation.

n. Passive solar window heat gain retardants - The living space of the residence has South-facing (+ or -45° of True South) window that is not shaded from summer sunshine.

This criteria is needed because this device needs access to the sun for a significant part of the day to provide heating or cooling.

o. Wind energy systems - The site has an estimated wind speed of greater than 10 mph and there is sufficient unrestricted access to the wind.

This criteria is needed because at lower wind speeds, the device will not provide a significant amount of electricity and therefore will not be cost effective.

3. Every program audit addressing solar domestic hot water system shall include the following information:

   a. The square feet of the solar collector;

   b. The solar collector characteristics, including glazing materials and other solar collector materials;

   c. Any storage system needed, including the capacity of storage;

   d. Any freeze protection needed;

   e. The estimated percent of the water heating load to be met by solar energy;

   f. Any physical connections needed with existing heating systems;

   g. Any site preparation needed; and

   h. If the results are based on a simulation, the following disclosure or its equivalent:

      "The energy cost savings estimates you receive are based on systems which may be different from the ones you purchase. Also, these estimates were not determined using actual conditions but by using simulated measurements. Therefore, the cost savings we have estimated may be different from the savings which actually occur."

This section is required by 10 C.F.R. § 456.307(C)(8). It is needed because the renewable energy systems such as solar and wind are not very familiar with most customers and because cost savings calculations can depend on all of the factors listed above. This information will give the customer the necessary basic background to understand the auditors recommendations.

4. Every program audit addressing passive solar space heating systems shall include the following information:

   a. A general description and an illustration of the system;

   b. The estimated percent of the maximum heating requirements of the residence that could be met by the system;

   c. The approximate dimensions of the system;

   d. The method employed by the system to store heat, including the heat capacity for heat storage; and

e. The disclosure provided in 6MCAR § 2.2303D.3.h.

This section is required by 10 C.F.R. § 456.307(c)(9) for similar reasons as above.

5. Every program audit addressing wind energy device shall include the following information:

   a. Installation cost estimates, based on the installation costs of a commercially available device with kilowatt ratings appropriate to the level of electricity consumed in the customer's residence;

   b. The auditor's estimate of the average windspeed at the residence based on data available at the nearest wind measurement station;

   c. The specifications of the device under consideration; and

   d. Estimates of energy cost savings, based on average yearly wind speeds and the specification of the selected wind device.

This section is required by 10 C.F.R. 456.307(c)(10) for the same reasons as above.

E. Presentation of audit results.

The presentation of the audit results is probably the most important time spent in the household. This is the time that will be used by the auditor to educate and motivate the customer. It is important that the auditor gives useful and appropriate information. This presentation takes place on site, with the customer. It may take up to 45 minutes to present the information and answer questions.

1. Upon completion of the program audit the auditor shall provide all the following information on-site, in person, in writing to each customer:

   a. An estimate of the total cost (materials and labor) of

installation by a contractor expressed in a range of dollars, with a twenty (20) percent maximum range, of each applicable program measure addressed in the program audit;

This provision is required by 10 C.F.R. § 456.307(c)(1). It is needed to ensure that all results are provided on-site to allow for interaction between the auditor and the customer. In addition, providing all such material in writing will give the customer a record of the audit and recommendations.

Provision a is needed to establish the parameters of the costs that an auditor must give. A twenty percent range will generally cover the costs that might be expected if a customer were to contact several contractors. In addition, by giving the customer a range, rather than a single price, the auditor will re-inforce the concept that these prices may vary.

b. An estimate of the total cost of installation by the customer expressed in a range of dollars, with a twenty (20) percent maximum range, of each applicable program measure, addressed in the program audit. However, the auditor shall not provide an estimate to a customer of the cost of installation by the customer of replacement central air conditioners, wall insulation, furnace efficiency modifications, devices associated with load management techniques, or wind energy devices;

This section is required by 10 C.F.R. § 456.307(c)(2). The need for this provision is similar to a. above. These costs are what the customer would expect to find from suppliers of devices and do not include costs for time or labor of the customer in installation.

The auditor does not give cost information on certain measures. This is needed because these measures are not generally available for customer installation by the general customer. The Agency does not want to encourage customers to install measures that require major technical knowledge for a safe and effective installation.

c. An estimate of the savings in energy costs expressed in a range of dollars, with a twenty (20) percent maximum range, which occur during the first year from installation of each applicable program measure addressed by the program audit.

This provision is required by 10 C.F.R. § 456.307(c)(3). It is needed to give the customer information on the applicability and energy savings expected of a particular measure. The twenty percent range would allow for greater accuracy by the auditor.

d. An estimate of the payback period, measured in years, for the cost of installation of each program measure addressed by the audit.

This provision is needed to give the customer a way to determine and compare the cost effectiveness of each measure. The payback period is calculated by divided the cost of the measure by the energy savings expected in one year. The result is in dollars per year. The auditor will explain what the payback period means and how it can be used by the customer to make decisions on energy retrofitting.

e. A clear disclosure to the customer, through the use of sample calculations, that the total energy cost savings from the installation of more than one program measure may be less than the sum of energy cost savings of each of the measures installed individually;

This provision is required by 10 C.F.R. § 456.307(c)(4). It is needed to explain to the customer why the sum of the savings for all measures will be greater than expected savings. This "interactive"

effect occurs because the installation of certain measures affects the energy savings potential of other measures. For example, if a customer caulked and weatherstripped the entire house, the savings from installing a new high efficiency furnace would be less because less heat is going out through cracks in the windows.

Each time one measure is installed and the heat loss through the home is reduced, original energy savings potential for any other measure is reduced. This effect is easy to calculate for one or two items but is practically impossible to program into the overall audit calculation The main reason for this difficulty is to know what measures the customer

f. The following disclosure:

> "The procedures used to make these estimates are consistent with the Minnesota Energy Agency criteria for residential energy audits. However, the actual installation costs you incur and energy savings you realize from installing these measures may be different from the estimates contained in this audit report. Although the estimates are based on measurements of your house, they are also based on assumptions which may not be totally correct for your household.";

This disclosure is required by 10 C.F.R. § 456.307(c)(5). It is needed because even though the audit is conducted on-site the calculations used can only theoretically approximate the actual conditions in the home. Therefore, there is likely to be some differences in the auditors calculations and actual savings. Since the auditor will present these savings in a range, it is expected that this range will better represent the actual savings.

g. An estimate of the annual normal maintenance costs, if any, of each applicable program measure; and

This provision is required by 10 C.F.R. § 456.307(c)(6). It is needed in order to give the customer an accurate idea of how much it will cost on a yearly basis to maintain each measure. This might be expecially important with the renewable resource measures, wind and solar.

h. Sample calculations of the effect of the federal and state

stalling one applicable energy conservation program measure and one applicable renewable resource program measure.

10 C.F.R. § 456.307(c)(7) requires a sample calculation of the federal energy tax incentives. The Agency added state energy tax incentives to this requirement. This provision is needed to demonstrate to the customer the actual potential cost of the measures. For example, the installation of a $10,000 solar system would qualify the customer for a combined federal and state tax credit of $6,000 or 60%. This serves to substantially reduce the payback on this measure for the customer and might serve to encourage the customer to install the system.

2. The auditor shall also present the following information to the customer during, or upon completion of, the program audit:

   a. An explanation of the arrangement services, post-installation inspection requirement and consumer grievance procedures as extablished in 6 MCAR §2.2304, §2.2306, and §2.2308, with a brief description of how the customer can qualify for and use such services;

This provision is required by 10 C.F.R. § 456.307(d)(1). It is needed to inform the customer of the other services and benefits of the MECS program. These other services, described further in this statement, will assist the customer in carrying out the recommendations of the audit and will protect the customer interest in receiving a safe and effective installation.

   b. A copy of the most recent Master List of contractors, lenders and suppliers for the region, as issued by the Agency;

This provision is required by 10 C.F.R. s 456.307(d)(2). It is needed to inform the customer of the participating contractors, lenders and suppliers which have agreed to offer the customer certain benefits under the program. These benefits will be discussed further in this stateme

c. An explanation of the benefits of and eligibility requirements for the Weatherization Assistance Program for Low Income Person 10 C.F.R. § 440 (1980);

This provision is required by 10 C.F.R. § 456.307(d)(3). It is needed to encourage those eligible customers to seek assistance under the weatherization program for low-income persons. This will serve to ensure installation of many program measures that may not otherswise occur because of the customer's lack of sufficient financial resources.

d. If the audit is of a rental property, a separate list of those improvements necessary to bring the residence in compliance with Minn. Stat. §116H.129, subd. 3. (1978) and a statement describing remedies available to tenants for violations of those standards.

This provision is required by Minn. Laws, Chapter 579, Section 12 (to be codified as Minn. Stat. §215B.16 (1980)). It is needed to inform renters of energy standards existing for rental property under Minn. Stat. §116H.129, sub. (3) (1978).

3. If the eligible customer is not at his or her residence at the time scheduled for presentation of the audit results or otherwise declines an in person presentation, the auditor is relieved of any obligation to deliver the results in person. In this case, the results shall be mailed to the customer.

This provision is needed so that the auditor does not have to make a second trip to the home to give the audit results if the person is not present. This would be required by 6 MCAR § 2.2303E.1. If these customers have questions with their mailed results, most utilities and heating suppliers will have some one available at their office that would be able to respond to the customer.

F. Prohibitions.

1. An auditor shall not recommend or discuss any supplier, contractor or lender to any customer. The auditor may state

whether the participating utility or heating supplier by whom he or she is employed installs or finances the sale or installation of program measures, but shall not recommend that service.

This prohibition is required by 10 C.F.R. § 456.307(e)(2). It is needed to assure that the auditor or the auditor's employer will not use the program in an unfair way restricting free and open competition. Many customers do know that the utility or heating supplier have certain installation or financing programs and therefore the auditor is allowed to answer customer questions on those programs.

This prohibition and those listed below are needed to assure that the integrity of the program will not be questioned by the customer because of auditors biases or recommendations. The auditor is to "sell" conservation but not specific services of specific businesses.

2. The auditor shall not exclude any applicable program measures in the presentation of the audit to the customer.

This provision is required by 10 C.F.R. § 456.307(e)(3). It is needed to assure that the auditor will give information on all measures. Considerable worry was expressed that utilities might choose to ignore the renewable resource measures if such a provision was not included.

3. An auditor shall not estimate or discuss with the customer the costs or energy cost savings of installing any product which is not defined as an energy conserving practice or a program measure.

This provision is required by 10 C.F.R. § 456.307(e)(1). It is needed so that the auditor or the auditor's employer does not attempt to introduce other measures to the audit that have not been approved by the Department of Energy or the Agency.

4. The auditor shall not recommend fuel switching.

This provision is needed for several reasons. The first is that fuel switching is not a conservation activity and does not save any energy overall. The Agency has made a policy to all consumers that weatherization of the home should occur before the consumer invests in fuel switching. Only by weatherization can the consumer be guaranteed energy savings.

The major reason for this provision is to carefully balance the needs of the program participants. Larger utilities who are required to participate in this program could easily overwhelm the smaller fuel oil jobbers, whose participation is voluntary. Without any restrictions, especially after the heating equipment is audited for, the utility could work to convince the customer to switch to a different fuel. This program is one of the easiest ways for a utility to readily identify which homes are using a competing fuel and to mark those customers for an intensive sales pitch.

G. Required disclosure.

The auditor shall provide the customer with a written statement of any substantial interest which the auditor or the auditor's employer has, directly, or indirectly, in the sale or installation of any program measure.

This disclosure is required by 10 C.F.R. § 456.307(e)(4). It is needed to insure that the customer knows if the auditor stands to gain by any recommendations made to the customer. Again, this serves to ensure the integrity of the auditor and his or her recommendations.

6 MCAR §2.2304. Arrangement services.

The next important services of the MECS program as envisioned by Congress are the arrangement services. These services are to assist the customer with the crucial decisions of how to implement the auditor's recommendations.

Congress decided that the consumer faces several difficulties in the process of weatherizing his or her residence. The first, lack of knowledge of what to do and what would be cost effective, is dealt with by the audit. The next difficulties relate to the actual installation of the measures and to obtaining financing for that installation. The need for assistance in these areas is great.

It is frequently difficult for a consumer to choose a reliable contractor for making home improvements. Especially in regards to weatherization, the media have carried many scare stories of contractors installing dangerous, flammable insulation or energy saving devices that saved no energy. In addition, there exist many companies that make many claims, frequently contradicting each other.

The installation arrangement service, required by 10 C.F.R. § 456.308, attempts to overcome these problems by assisting customers in their choice of contractors which have agreed to certain preconditions and providing information to the customer on the measures themselves. These preconditions and information will insure a quality and effective installation for the customer.

The other arrangement service, that of financing, has been required by 10 C.F.R. § 456.309 to assist the customer in locating financial aid for weatherization. This service will provide the customer with the most up to date information on financing programs available as well as a list of those conventional lending institutions that are participating in the progra

A. Financing arrangement service.

Each participating utility and heating supplier shall provide an arrangement service for financing the supply of installation of

[illegible] program measure, upon request of a customer. This financing arrangem[illegible] service shall consist of all [illegible]e following:

1. Providing the customer with the most recent Master List of lenders and an Agency compiled list of other financing programs offered by federal, state or local governments and explaining these financing programs to the customer;
2. Providing the customer with a standard credit application and offering to assist the customer with a standard credit application; and
3. Providing a service in order to further assist and answer any additional questions of the customer.

This section is required by 10 C.F.R. § 456.309(a) and (b). The federal rule requires that a financing arrangement service be developed and that "this service shall not be accomplished by merely providing customers with information on how to shop for a loan."

As stated previously, this service is needed to assist the customer in overcoming the barriers in finding available financial assist. A financing subcommittee of the MECS Advisory Committee, composed of utility and heating supplier personnel as well as representatives of the Independent Bankers of Minnesota, the League of Minnesota, the Minnesota Bankers Association, the Minnesota League of Credit Unions, Farmers Home Administration, Minnesota Housing Finance Agency and HUD, developed the above procedures for this program.

In developing the procedures, several concerns were raised. The first was that the utilities or heating suppliers not interfere with existing practices of the various lending institutions.

The above named groups have approved a standard credit application for use in the program. Beyond that, standard procedures for making loans to customers will be followed by each institution. The lending institutions did not want significant involvement of the utilities or heating suppliers in arranging for loans with them.

A second concern was to properly inform the customer of the myriad of special programs available for energy retrofitting. To this end, a list of these programs with their requirements will be developed by the Agency and offered to the customers by the utilities and heating suppliers. This will help inform customers of programs with reduced interest loans and grants about which they may not otherwise learn.

Finally, the subcommittee was certain that the customers will probably have additional questions regarding this service and the program itself. Therefore, each utility and heating supplier will provide a phone service for the customer to contact for answers to any additional questions.

B. Installation arrangement service.

Each covered utility shall provide an arrangement service for the installation of any program measure, upon request of a customer:

1. For audited homes this installation arrangement service shall consist of:

   a. Providing a choice to the customer of either the most recent Master List of contractors willing to install measures within the price range that the auditor specifies, or providing the most recent Master List of contractors; and

   b. All the following:

      (1) Providing up to three (3) standard bid forms per measure recommended by the auditor and providing the customer with a choice of having the form filled in by either the customer or the auditor.

      (2) Supplying the customer with written information on recommended measures to be installed; and

(3) Providing a service in order to further assist and answer any additional questions of the customer regarding the arrangement process or the actual bids, when received.

This section is required by 10 C.F.R. §§ 456.308(a) and (b). Like the financing arrangement service, this federal rule requires the service but gives the Agency the authority to design that service. 10 C.F.R. §§ 456.308(b)(1) does require the inclusion of paragraph a. above, which gives the customer a choice of two lists.

The first list is of the contractors willing to install measures at a price within the range that the auditor calculated previously. Preliminary indications are that few contractors will choose to be on this list. The other list is of contractors who will make a bid on the work either from the auditors specifications or after visiting the site.

The customer will make the decisions as to which contractors to choose from the list and to send bid forms. The auditor will help ensure that the bids come back in a manner that the customer can make easy comparisons, by filling in the specifications of the work that is needed.

Finally, in recognition of the difficulties in making an informed decision, the utility will supply the customer with written material on the measures and provide a service to answer any questions. The utility has no responsibility to decide which actual bid is chosen and will not tell a customer which is the "best" bid. However, the utility must assist the customer by answering any other questions the customer may have regarding the bids.

Only covered utilities are required to offer this service, because this service is tied to the utilities responsibility to conduct post-installation inspections (see 6 MCAR §2.2306). 10 C.F.R. § 456.317(c)(2) does not allow heating suppliers to waive requirements of a particular service that a utility must provide.

It would be an enormous burden for the heating suppliers to conduct post-installation inspections. This requirement alone would eliminate all such suppliers from participating in MECS. The only way to remove this requirement and still be in compliance with the federal rule is to waive the entire installation arrangement service for heating suppliers.

The resources of the non-regulated utilities to conduct post-installation inspections are similarily limited therefore, this provision has been dropped for those utilities also.

2. For non-audited homes, this installation arrangement service shall consist of all the following:
   a. Providing the Master List of contractors;
   b. Providing up to three (3) standard bid forms to the customer;
   c. An offer to supply the customer with written information on the various measures; and
   d. Providing a service in order to further assist and answer any additional questions of the customer regarding the arrangement process or actual bids, when received.

This section is required by 10 C.F.R. § 456.308(a) and 309(a). All customers must be offered arrangement services regardless of whether they request an audit. Therefore this section is needed to provide the same level of services to all customers. If an audit is not conducted, the service is similar except that an auditor will not fill out the bids for the customer, only the one list of contractors will

be available.

C. Response time for services.

The participating utilities and heating suppliers shall provide the services described in 6 MCAR §2.2304A and B at the time of the energy audit, for a customer requesting an energy audit. If an audit is not performed, the services shall be provided within twenty (20) days of a customer's request.

10 C.F.R. § 456.308(c) and 309(c) require that these services be provided "within a reasonable period of time after receipt of a customer's request". If a customer requests an audit this is the best time to provide these services when interest is high. For other customers, the services should be provided quickly, so that the customer will not lose interest. Twenty days does not provide an unreasonable burden on the utility or heating supplier an provides a timely service to the customer.

D. Prohibitions.

1. Participating utilities and heating suppliers shall not recommend any particular contractor, lender, supplier or program measure although participating utilities and heating suppliers may inform customers of their own installation and supply services if they are on the most recent Master List.

This prohibition is required by 10 C.F.R. § 456.308(c-e) and 309(d-e). It is needed to ensure that no one business has an unfair competitive advantage and that no program measure is eliminated or promoted because of the prior bias of the utility or heating supplier. Since customers are likely to ask about services offered by the utility or heating supplier, these installation or supply services may be discussed if they meet the program qualifications.

2. Participating utilities and heating suppliers shall not arrange for financing or installation with any contractor, lender or supplier not on the most recent Master List.

This prohibition is required by 10 C.F.R. § 456.308(f) and 309(8). It is needed to ensure that only businesses approved, pursuant to 6 MCAR §2.2305, are involved in this program. Unapproved businesses will not have to abide by the rules listed in 6 MCAR §2.2305B and therefore offer the customer little assurance or protection.

3. Participating utilities and heating suppliers shall not provide arrangement services for measures which are not approved program measures.

This prohibition is required by 10 C.F.R. § 456.308(g) and 309(g). It is needed to ensure that only those measures which have been approved by the Department of Energy or the Agency are arranged. This approval guarantees to the customer that these measures can be expected to produce energy savings. Other non-approved measures do not have this guarantee.

E. Standardized bid forms.

The Agency shall develop a standardized bid form for use pursuant to 6 MCAR §2.2304. This form shall be the only one used by the participating utilities and heating suppliers for arranging installation under MECS.

This provision is needed to require the utilities and heating suppliers to use the Agency developed bid form. This is necessary to provide a uniform method of informing the utilities to conduct the post-installation inspections on arranged installation, pursuant to 6 MCAR §2.2306. After an installation is completed the contractor will send a completion certificate attached to the bid form to the utility.

6 MCAR §2.2305. Master list of contractors, lenders and suppliers.

This section is closely connected with the previous one on arrangement services. 10 C.F.R. § 456.312 requires the Agency to develop a Master List of contractors, suppliers and lenders to give to the customer and to use as part of the arrangement services.

The purpose of this section is to set procedures for the development and maintainance of the Master List. These procedures are needed to ensure fair and equitable treatment of all businesses that desire to be on the list. In addition, the procedures provide for consumer protection by preventing businesses with poor performance records from participating in the program.

The contractors list will contain the names and addresses of each contractor. It will be broken down by regions in the state served by the contractor. In addition, it will be further broken down by the measures that the contractor installs. The supplier list will be similarily done.

The lender list will be broken down by the region of the state served by the lender. In addition, local programs such as a city loan or grant program, or community action agency weatherization programs will be listed by region.

The experience of some of the utilities that previously maintained such lists for their own programs show a need for these rules. One utility did not have a procedure for removing businesses and did not set any standards for materials to be used or installation of those materials. Consequently, a few contractors which performed shoddy work got on the list and could not be removed. The utility was then forced to recommend contractors even though it was known that the quality of their work was poor.

The Agency will only approve businesses for the Master List if they meet the requirements of these rules and sign a contract with the Agency affirming that they will abide by the program requirements. By doing so, the Agency can remove those businesses violating these rules.

These listing provisions do not represent a restraint of trade by the Agency. Businesses will be able to secure customers whether or not they are on the list. Being on the list means that they have agreed to offer customers special benefits for this program.

These procedures have been developed by a subcommittee of the MECS advisory committee. That committee had representatives of ICAN (Insulation Contractors of the Northwest), the Office of Consumer Services and various utilities which had such lists previously.

A. Issuance of lists.

The Agency shall prepare and maintain the Master List of the MECS suppliers, contractors and lenders. The Agency shall provide notice through trade organizatgions to suppliers, contractors and lenders of the procedures for inclusion on the Master List for the MECS program.

This provision is required by 10 C.F.R. § 456.312(a)(1-2). It is needed to establish the Agency's responsibility for the maintainance of the list. It is also needed to require the Agency to provide adequate notice to all businesses that desire to be on the Master List. The Agency has already contacted over one hundred suc organizations and major manufacturers about the list.

2. Application forms and listing criteria for businesses wishing to be on the Master List shall be available from the Agency, participating utilities, and heating suppliers. These forms and listing criteria shall be made available at the time of publication of notice of procedures for inclusion on the Master List.

This provision is needed to inform businesses of the availability of the applications for the List. Since this program will be recognized by the general public as run by the utilities or sometimes, heating suppliers, the applications should also be available through them. This will make the applications easily available in locatic around the state. The Agency will supply utilities and heating suppliers with applications.

3. Within sixty (60) days following the receipt of an application for inclusion on the Master List, the Agency shall evaluate the application pursuant to 6 MCAR §2.2305B and either place the business on the Master List or inform the business, in writing, of the reasons for its exclusion from the list.

This provision is needed to establish a maximum time period by which a business would receive a response to their application. Sixty days was chosen because it allows the Agency sufficient time to review and process an application, without excessively restraining a business from participating in the program.

It is not expected that the evaluation of an individual application will require the full sixty days. In the beginning of the listing process, it may take this long, as over five thousand applications are expected. If such a high response occurs, delays may be expected in listing process because of the limited number of personnel that the Agency is able to devote to the program.

The review process will determine whether or not a business is placed on the list. A business found not meeting the eligibility requirements listed in section B of 6 MCAR §2.2305 will be so notified in writing. This is needed to inform the business of the reasons for the Agency's decision.

4. Every thirty (30) days after the publication of the first Master List, the Agency shall issue revisions to the Master List which include any additions, deletions or information changes. These revisions shall be issued to all participating utilities and heating suppliers. Every six (6) months, a new Master List shall be published.

The Agency is required to update the lists every thirty days by 10 C.F.R. § 456.312(c)(5). This provision is needed to assure that the utilities and heating suppliers have an accurate record of any recent deletions or additions. This assures new businesses of prompt placement on the list, once approved. It also assures the customers that as soon as a business is delisted according to the procedures in 6 MCAR §2.2305C., that business will no longer be allowed to participate in the program or appear on the list.

Since the list may contain several thousand names, the Agency will only issue revisions to the list on a monthly basis. This is needed to save on the costs associated with completely reprinting the list and will also single out those additions or revisions to the utility or heating supplier. Every six months an entire new list will be published to allow the utilities and heating suppliers to double-check their existing lists.

B. Eligibility requirements.

1. To be eligible for listing, contractors, lenders and suppliers must enter into a written agreement with the Agency.

This provision is needed to bind the business desiring to be placed on the list to the eligibility requirements listed below. By signing a written agreement the business is agreeing to meet all program requirements in exchange for appearing on the list. This provision makes it clear to the business that a violation of the listing requirements can result in removal from the list.

a. Contractors shall agree in writing with the Agency to meet the following requirements for each arranged installation:

Each different type of business-contractors, lenders, and suppliers-have different listing requirements. These listing requirements are required by the Department of Energy to assure that consumers are being amply protected.

(1) Comply with the applicable DOE installation standards found in 10 C.F.R. 456 subparts G, I and install only measures that are labeled as meeting DOE material standards;

This provision is required by 10 C.F.R. § 456.312(b)(1)(i). It is needed to assure the customer that an installation is being done in a safe and effective manner using only materials that have met specific safety and quality requirements.

(2) Install only measures that are covered by the measures warranty (except for caulking and weatherstripping);

This provision is required by 10 C.F.R. § 456.312(b)(1)(ii). It is needed to provide the customer with a year's warranty on the materials used in the installation. This is one of the benefits of an installation under this program that may not normally accrue to a customer.

(3) Enter into a written contract with each customer detailing the job to be performed, its costs and a statement that the installation will be in compliance with all applicable DOE material and installation standards. This contract shall be in simple language;

This provision is required by 10 C.F.R. § 456.312(b)(1)(iii). It is needed to provide the customer with a legal contract that states the contractor's compliance with the requirements of this program. It is also needed to assure that the customer receives a contract that is easily understandable.

(4) Warrant in the contract that any defect in materials manufacture, design or installation found within one year from the date of installation shall be remedied without charge and within two weeks;

This provision is required by the Energy Security Act, Section 542(b). In an interpretive rule, published August 11, 1980 in the Federal Register pgs. 53434-6, the Department of Energy listed this provision as one amendment required by the Act.

Although the Department of Energy, had not proposed this provision as a rule (at the time of the writing of 6 MCAR§2305), the Agency has included it here. It is clear that the Energy Security Act requires this provision and that rules will be eventually published. The Agency proposes this provision now, rather than holding another hearing once the federal rule is finalized.

This provision is needed to assure the customer of an additional benefit under the program. It will assure the customer of prompt remedy of any violations of the standards listed previously as well as other possible defects. Many contractors already offer this type of warranty, although frequently only on an informal basis.

(5) Maintain comprehensive general liability insurance covering:

(a) bodily injury - $100,000 per person
- $300,000 per occurance

(b) property damage- $ 50,000 each occurance
- $100,000 aggregate; and

This provision is required by 10 C.F.R. § 456.312(b)(1)(vii), as proposed on August 11, 1980. Although a "performance bond" is required by the rule, the Department of Energy has interpreted this provision to include liability insurance.

This provision is needed to protect the customer and the contractor from any damage that may accidently occur in the installation of a measure. The limits described here are those minimums usually maintained by most contractors and are not so high as to exclude small contractors.

(6) Comply with all applicable federal, state and local laws;

This provision is required by 10 C.F.R. § 456.312(b)(1)(viii). It is needed to clarify the relationship of this rule to other laws or regulations that may already exist. Nothing in this rule prevents a contractor from complying with all other rules or laws.

(7) Participate in good faith in the conciliation conference when a complaint is made by a customer;

This provision is required by 10 C.F.R. § 456.312(b)(1)(ix). It is needed to assure the provision of another benefit of this program. It requires the contractor to participate in a consumer grievance procedure if instituted by the customer. This procedure is described in 6 MCAR §2.2308. It will help provide needed consumer protection as well as a process to mediate consumer complaints.

(8) Hold harmless from liability the participating utility or heating supplier in any contract between contractor and customer when the contractor is not a participating utility or heating supplier; and

This provision is needed to reduce the liability of the utility or heating supplier because of their role in the arranging process. 10 C.F.R. § 456.106 holds that a utility or heating supplier shall "not be held liable by virtue of its role as project manager for the RCS Program". The utilities requested this provision to limit their liability if a customer complaint resulted in litigation.

(9) Agree to notify the MECS inspection agency at the completion of the installation pursuant to 6 MCAR §2.2306.

This provision is needed to assure compliance with the post-installation inspection requirements, another benefit of this program. Since the contractors work is to be inspected, only that contractor will know when the work is completed. This notification will then signal that the contractor believes the installation to be complete. If any violations are found afterward, the contractor can not claim that the job was not yet finished.

b. Suppliers shall agree in writing with the Agency to meet the following requirements for each customer:

(1) Supply program measures which meet applicable DOE material standards;

This provision is required by 10 C.F.R. § 456.312(b)(2)(ii). It is needed to assure that only safe and effective materials will be sold under this program.

(2) Provide, at a minimum, to any person who purchases a measure from the supplier, a warranty in writing that the person shall be entitled to obtain, within a two week period after notice by the customer to the supplier and at no charge, appropriate replacement parts or materials for those measures found to be defective within one year from the date of purchase due to a defect in materials, manufacture or design.

This provision, like the contractor warranty provision was contained in the Energy Security Act revisions to the RCS program. It is needed to meet the requirements of the Act and to assure customers of a prompt remedy for any defect in the warranted materials. The language here directly parallels language used by Congress in the Section 542(b).

(3) Comply with all applicable federal, state and local laws;

This provision is required by 10 C.F.R. § 456.312(b)(2)(iii). It is needed for the same reasons as 6 MCAR §2.2305B.1.a.(6). above.

(4) Have a method for informing customers that the supplier carries products which are program measures, that these products have a measures warranty and are labeled as meeting the DOE material standards;

This provision is required by 10 C.F.R. § 456.312(b)(2)(iv). It is needed to identify which items the supplier carries that are tied to program benefits of the warranty and standards.

(5) Participate in good faith in the conciliation conference when a complaint is made by a customer.

This provision is required by 10 C.F.R. § 456.312(b)(2)(v). It is needed for the same reasons as 6 MCAR §2.2305B.1.a(7).

c. Lenders shall agree in writing to meet the following requirements for each arranged financing.

(1) Not to take a security interest in real property that is used as a residence unless the customer acknowledges in writing that he or she is aware of the consequence of default on the loan;

This provision is required by 10 C.F.R. § 456.312(b)(3)(i). Although this practice is standard lending procedure, it is needed to assure that all customers in the program are informed about provisions contained in a loan contract related to security.

(2) Permit a rebate on unearned finance charges and impose no penalties if a customer prepays a loan (either voluntarily or as a result of default). When prepayment is the result of default, the rebate shall be computed from the day of acceleration;

This provision is required by 10 C.F.R. § 456.312(b)(3)(ii). Again, this is standard lending practice for loans of this type and size and is needed to assure that all customers will be treated the same under the program.

(3) Comply with all applicable federal, state and local laws; and

This provision is required by 10 C.F.R. § 456.312(b)(3)(iii). It is needed for the same reasons as 6 MCAR §2.2305B.1.a(6).

(4) Participate in good faith in the conciliation conference when a complaint is made by a customer.

This provision is required by 10 C.F.R. § 456.312(b)(3)(iv). It is needed for the same reasons as 6 MCAR §2.2305B.1.a(7).

2. Disclosure of unresolved complaints.

All businesses must inform the Agency in their application for listing of the existence of any unresolved complaints against that business on file with the Consumer Division of the Minnesota Attorney Generals's Office ~~or~~ the Office of Consumer Services. or other governmental consumer complaint offices.

Failure to report this information will result in exclusion from the Master List. The existence of three or more unresolved complaints against an applicant on file with the above agencies involving, but not limited to, the following subject matter shall result in exclusion from the Master List;

a. Misrepresentation of materials used in installation;

b. Improper installation of materials, based on manufacturer's or other standard installation procedure; or

c. False or misleading claims concerning energy savings to be produced by the measure.

10 C.F.R. § 456.312(a)(3) requires that all businesses that agree to comply with the eligibility requirements listed previously be placed on the list, unless it is determined that "such person's agreement is not adequate assurance of compliance with (those) requirements".

The Agency proposes this section to check the past record of each business with the applicable state and local consumer complaint agencies. This is needed to assure that only those businesses with good records participate in this program. This, in turn, will assure a quality list that the customer can trust.

Each business will be asked on the application for the list, whether any unresolved complaints exist. If the business refuses to give this information or knowingly gives false information, this will result in exclusion from the list. This is needed so that all businesses take the listing process seriously. It will also serve to warn certain "fly-by-night" businesses that this program will be seriously enforced.

The applicant will then be checked with the Attorney General's Office, the Office of Consumer Affairs and where applicable with the consumer complaints offices in Minneapolis and St Paul. This will be to check for major unresolved complaints.

The Agency decided upon the level of three complaints for initial exclusion. Since the process is dealing with past actions, it is difficult to exclude a business for one unresolved complaint. Despite the well kept records, it is difficult to know the history of that complaint. However, the Office of Consumer Services has found that three complaints tend to show a pattern of action. This pattern of action will be evaluated as to the seriousness of the com-

plaint, the time period over which complaints were received and the ultimate outcome of the mediation process.

The three subjects listed in the rule are the areas in which OCS has found the greatest number of complaints in the past. These also have generated the largest number of complaints in the energy conservation and renewable resource areas. In addition the existence of other possible important unresolved complaints is not foreclosed by the rule as a reason for exclusion.

The rules in this section and the one following have been recommended by the Audit Subcommittee of the Advisory Committee. Strict rules were proposed so that the list will contain only those businesses that can be expected to provide good performance.

C. Removal from the master list.

1. Any supplier, lender or contractor shall be removed from the Master List for violation of either the eligibility requirements in 6 MCAR §2.2305B or the contract between the lender, contractor or supplier and Agency as required in the same section.

This provision is required by 10 C.F.R. § 456.312(a)(4). It is needed to assure that all businesses on the list continue to meet the eligibility requirements. As stated previously, customers will only use and trust the list, if those businesses that violate the eligibility requirements are removed promptly.

a. Violations shall be reported to the Agency by the post-installation inspectors and the mediators of consumer complaints. The post-installation inspectors and mediators shall also report to the Agency whether the violation has been corrected or not, two weeks after the initial report of this violation.

This provision is needed to begin the delisting process. These reports are the only way that the Agency will know that any violations of the contract on eligibility requirements have occured. It is expected that most, if not all violations or complaints will occur with contractors. These provisions have been written in this light, although they cover all businesses on the list.

This provision is closely tied with those regarding post-installation inspections in 6 MCAR §2.2306 and consumer grievance procedures in 6 MCAR §2.2308. All references to post-installation inspections relate only to contractors in this program.

The two week period is needed to quickly inform the Agency of any violations. It allows enough time for the business to take action on the violation. This time period will have been previously agreed upon in the contract. signed by each business prior to listing.

Again, prompt action against contractors with violations is needed. "Fly-by-night" contractors try to quickly enter a market and leave before anyone discovers their poor or non-existant work. They tend to produce a number of complaints in a short time period. To guard against this type of contractor the process must move swiftly.

Legitimate contractors have expressed no problems with meeting the two week time period for correcting violations after they are reported.

b. Within one (1) week after the Agency receives a report of violation, the Agency shall send written notice to the contractor, lender, or supplier notifying the business of the reported violation. The contractor, lender, and supplier shall correct the violation within two weeks of mailing of the notice or within one week, send to the Agency a written explanation as to why it is not a violation. The Agency

shall review the letter and the report of the inspector and will notify the contractor of its decision.

This provision is needed to direct the Agency to respond to the report of violations promptly and with a written notice. Such a notice is needed to assure that the business receives and understands the violation as well as understands how to respond.

If the business denies that the violation occured, it shall respond in writing. This is needed to allow the Agency to receive and review the businesses response. This response will be reviewed, along with the inspectors report (in the case of a contractor) to decide if a violation still exists.

After this decision, the business will again be notified by the Agency. This provision is needed to assure that all due process rights are given to the business and that the business and the Agency have a chance to clarify any misconceptions.

c. If the contractor, lender or supplier fails to correct the violation within two weeks after it has received notice of the Agency's decision that a violation exists, it shall be temporarily delisted. This temporary delisting shall be in effect for thirty (30) days. The Agency shall then send a second notice to the contractor, lender, or supplier explaining the temporary and permanent delisting procedures and invite a written response from the business prior to the end of the thirty (30) day period. A copy of this notice shall be sent to all participating utilities and heating suppliers. If the violation concerns a contractor, the contractor may see the records of the reported violation.

If no resolution is made within thirty (30) days of mailing of the notice the contractor, lender or supplier will be permanently de-listed.

This provision is required by 10 C.F.R. § 456.312(a)(4)(i)(A-C). It is needed to provide due process to the business, as well as promptly establish procedures for removing the offending business

The temporary delisting occurs to remove the business from the list quickly. Again, this is needed to prevent the business from gaining additional customers while a known violation is being investigated.

Permanent de-listing occurs if the business fails to respond to the notice or, if no satisfactory resolution is made in the thirty day period. Sufficient time is given for the Agency and the business to clarify any misconceptions or remedy the violation.

Only one violation is required for delisting. This requirement is reasonable because legitimate businesses will have little problem in meeting all contract requirements. If there are any problems or misunderstandings, these will be able to be corrected during the process outlined in this section. Since all violations will be investigated, with consistant criteria this eliminates the need for the discovering a pattern of action that was required initially.

2. Any supplier, lender or contractor permanently removed from the Master List shall not be relisted for at least six (6) months after being so de-listed. To be relisted, all violations under the program must be corrected and inspected and all other listing requirements must be met.

10 C.F.R. § 456.312(a)(5) requires that all businesses de-listed shall have an "opportunity to be included anew". This provision is needed to meet this requirement and to establish under what conditions a business will be relisted. It is also needed to prevent businesses removed from the list for immediately reapplying. Previous utility programs were forced to relist contractors immediately after delisting them, because this clause did not exist.

To be relisted all previous program violations must be corrected. If a business could be relisted without correcting past violations, there would be no reason to remove that person from the list. This requirement does not conflict with the three violation rule for being initially placed on the list because the business was on the list already.

6 MCAR §2.2306. Post-Installation inspections.

An additional program benefit is the post-installation inspection required by 10 C.F.R. § 456.313. This inspection occurs on installations arranged pursuant to 6 MCAR §2.2304.

Random inspections occur for most program measures. These are items, whose installation is not considered hazardous, but need standards to assure effective use and energy savings. Mandatory inspections are required for those items considered to be more hazardous if installed incorrectly. Two of those items, intermitent ignition devices and vent dampers must currently be inspected in municipalities which have adopted the state building code.

These inspections were included by Congress, because of a concern for consumer protection and, in some cases, the safety of the customer. Tennessee Valley Authority found in their post-installation inspection progr a violation rate of 75% in the first year. They attribute this to a lack of familiarity by many contractors with the standards for installation of energy conservation measures. They, in turn, have used their inspection program to educate contractors to three standards.

Effective post-installation inspections will also enable the Agency to keep disreputable contractors off the Master List. As state in the previous section, this is important to maintain customer confidence in the contractors on the list.

The Agency has choosen the covered utilities to provide this service, because of their experience and the availability of manpower. The utilities are able to subcontract this service, form a third party inspection service to conduct all inspections, or implement any other system to the conduct the inspections. The Agency realizes the potential cost for this service and therefore allows the utilities to develop the most cost effective service.

There have been several other suggestions for inspectors. The most frequent ones were to use building inspectors or state-hired inspectors. There are serious problems with each of these proposals.

Building inspectors are logical choices for this program. They already do inspect many of the installations and they would not need much additional training.

The primary reason that building code officials have not been chosen is that the Agency has no authority over these officials. The legislature have not given the Agency the necessary authority to charge this function to them. In addition, the state building code is not enforced statewide. At present over half of the counties do not have a building code. A uniform system of inspections could not be set up using these officials. However, this does not preclude the utilities from arranging with individual city or county building code departments to conduct these inspections.

As to a system of state hired inspectors, there appear no way this type of system can be set up. Neither the federal or state government is willing to pay for these inspectors.

Only covered utilities are required to provide an inspection system for their installation arrangements by the federal rules. To include this requirement would create a enormoius burden on the non-regulated utilities or home heating suppliers. Heating suppliers in particular, do not have the same cost recovery system or the manpower, that the covered utilities have and would need to charge extensive fees to carry out this service. For this reason an exemption from providing the post-installation inspections is necessary.

A. Inspection procedures.

1. Each covered utility shall arrange to conduct the post-installation inspections of its customers required in this section. By ~~Dec. 15, 1980~~ February 15, 1981 each covered utility shall submit to the Agency, for approval, its plans for conducting the inspections and for coordinating these inspection with the Agency and the Office of Consumer Services.

This provision is needed to set the responsibility for the post-installation inspections with the covered utilities. It is also needed to assure that the plans for the inspections meet the requirements of this rule.

The utilities must submit their plans to the Agency by February 15, 1981. This is needed to adequately review those plans before they need to be fully implemented. Sufficient lead time is needed for the utilities to plan their inspections program, train the inspectors and make any necessary arrangements before the first inspection is required.

At present, all other states submitting RCS plans to the Department of Energy are requiring the utilities to be responsible for conducting these inspections.

2. No person shall conduct or perform an inspection unless he or she has been qualified by the Agency, pursuant to 6 MCAR §2.2307C.

This provision is required by 10 C.F.R. § 456.313(a)(2)(i) and (b)(2)(i) It is needed to assure that inspectors will be adequately trained and qualified before they conduct such inspections. 6 MCAR §2.2307 discusses the necessary training for inspectors.

3. No inspector shall conduct an inspection if he or she has financial interest in the contractor whose work is to be inspected.

This provision is required by 10 C.F.R. § 456.313(a)(2)(ii) and (b)(2)(i It is needed to assure that no conflict of interest arises in the con-

ducting o[redacted]n inspection. An inspector mu[redacted] be impartial, in order to gain the customer's trust and to insure a fair and accurate inspection.

4. During the inspection, the inspector shall determine whether:

   a. The installation conforms with DOE installation standards; and

   b. In the case of a consumer complaint, the complaint is justified.

The first part of this provision is required by 10 C.F.R. § 456.313(a)(3) and (b)(3). It is needed to describe the purpose of the inspection. The second requirement is needed to coordinate the inspections with the consumer complaint process. This provision would allow for a much stronger and meaningful consumer complaint process. It would give the consumer mediators an additional tool in the grievance procedure to validate any complaints against a contractor.

5. An inspection report shall be developed by the Agency. The inspector shall use this report to certify that the installation meets all DOE installations standards.

   Within five (5) days of the inspection, the inspector shall report to the customer, the contractor and the Agency whether or not any violations of the installation standards were found. If the Agency determines that a violation exists the contractor shall correct any violation within two (2) weeks of receipt of the report and shall arrange for a reinspection of the installation within one week after correction.

This provision is based on requirements in 10 C.F.R. § 456.313(a)(4) and (b)(4). This provision is closely tied with the previously discussed delisting provisions in 6 MCAR §2.2305.

It is requires the use of a report form developed by the Agency so that all reports are uniform and contain the needed information. It also directs the inspector to send copies of the inspection to the concerned parties--the customer, who wants to know how the work was done, the contractor who is responsible for the work, and the Agency, which needs the information for the delisting of contractors.

If the Agency and the contractors agree that a violation exists, another inspection is required after the contractor completes the required work. This is needed to assure that the work is finally completed without any violations.

The short time period is necessary because of the potentially hazardous nature of certain violations, especially with those measure connected with the customer's electrical or gas supply systems and to ensure that all complaints are dealt with in an expeditious manner.

B. Mandatory inspections.

All installations of the following measures shall be inspected within one week of installation:

1. Flue opening modifications;
2. Electric or mechanical ignition systems;
3. Wind energy devices; and
4. Solar domestic hot water systems.

This provision is required by 10 C.F.R. § 456.313(a) which requires the inspection of the first three items. On September 24, 1980, 10 C.F.R. § 456 was amended to include previously reserved sections of 10 C.F.R. § 456.314(b-d) which now includes solar domestic hot water heating as an item subject to mandatory inspections.

These mandatory inspections are needed for two reasons. For the first two items, they are needed to insure a safe installation of the measure. Since these measures will be installed on a gas appliance, it is important that they are installed correctly: A build-up of gas or carbon monoxide could occur if installed improperly. This type of inspection is currently done in those areas of the state which have adopted the Uniform Building Code.

The wind system inspection is required because of its interconnection with the home's electrical supply. Improper installation could result

in a fire. In addition, improper mounting of the system on its tower could cause additional problems or even injury.

Finally, solar domestic hot water systems are included because of their connection with the plumbing system in the home. Certain systems use ethylene glycol as a fluid and improper installation could result in poisoning. Also, since this measure has only been recently introduced to the marketplace, many installers are not yet familiar with standards for a safe and effective installation.

C. Random inspections.

1. Four of the first ten arranged installations made by each contractor of each of the following program measures shall be inspected:

   a. Ceiling insulation;

   b. Floor insulation; and

   c. Wall insulation. ~~and~~

   d. ~~Solar domestic hot water systems~~

This provision is required by 10 C.F.R. § 456.313(b)(1)(i). It is needed to insure that these measures are installed correctly in a home.

The Tennessee Valley Authority experience mentioned earlier, found that the area of installation of insulating materials, there were large numbers of installation that did not meet the program standards. Their standards, like the DOE installation standards for this program, were based on accepted industry practice. A significant number of contractors did not know these standards well enough to follow them in the TVA area.

For this program, a random inspection of these installations is required. Most violations of the insulation standards are not dangerous and therefore do not need immediate inspections like the other mandatorily inspected measures. This requirement will allow for a good

cross section of each contractors work without having to inspect each job.

It is expected that early in program, many violations will be discovered, due to a lack of full understanding as to industry standards. If it is found that Minnesota does not have the same problems that the TVA did, the Agency will propose a reduction in the number of inspections required, at a future date.

2. Ten percent of all utility arranged installations of each program measure listed in 6 MCAR §2.2306C.1 shall be inspected each year. The inspections required in 6 MCAR §2.2306C.1 shall count toward the fulfillment of this requirement.

This provision is required by 10 C.F.R. § 456.313(b)(1)(ii). This is needed to provide for a minimum amount of inspections under this program. This will guarantee that at least ten percent of all arranged installations will be inspected in each catagory of measures.

3. At least one inspection shall be conducted each year of the arranged installations of the following measures for each contractor on the Master List:

   a. Ceiling insulation;

   b. Floor insulation;

   c. Wall insulation;

   d. Water heater insulation;

   e. Storm or thermal windows;

   f. Storm or thermal doors;

   g. Replacement burner (oil); and

   h. ~~Solar domestic hot water systems;~~

   h. Replacement of solar swimming pool heaters.

Before April 1, 1982, the utility, or its designated inspection agency, shall determine whether all listed contractors have been inspected at

least once by that date. Any contractor whose work has not been inspected by that time shall then be inspected. An additional inspection shall be required for any contractor whose installation has been found in violation of these rules. This review shall be done annually thereafter.

10 C.F.R. § 456.313(b)(1)(iii) requires an inspection of the above measures at least once during the life of the program of the work of each contractor. The Agency proposes to have a minimum of one inspection per year for the life of the program. This provision is needed to assure that each contractor has his or her work inspected. This, along with the other inspections, help to guarantee that all listed contractors are understanding and are complying with the installation standards.

The reinspection provision is required by 10 C.F.R. § 456.313(b)(1)(iv).

This is needed to assure that all contractors are complying with the installation standards in all installations. It will assist in determining if there is a consistent pattern of violations in the contractors work.

D. Inspections as a result of consumer complaints.

1. Within two (2) weeks of the receipt by the Office of Consumer Services of any customer complaint concerning arranged installation of the measures listed in 6 MCAR §2.2306B.1 and C.3, an inspection shall be conducted to determine the existence of any violations of these rules. Within five (5) days after the inspection, a copy of the inspection report shall be sent to the Office of Consumer Services.

This provision is needed to investigate violations as a result of a consumer complaint. The consumer complaint procedure is described in 6 MCAR §2.2308. This inspection will give the customer considerable leverage against a contractor. If a violation is found, not only

does the customer have an unbiased report of the violation, but the warning and delisting procedures described earlier go into effect. In addition to the inspection report received by the other parties listed in 6 MCAR §2.2306A.5., once is sent to the Office of Consumer Services for use in the conciliation procedures.

2. All inspections conducted as a result of a consumer complaint shall be counted toward the fulfillment of the inspection requirements in 6 MCAR §2.2306C.1, 2 and 3.

This provision is needed so that the previous provision does not significantly increase the number of inspections required. Inspections as a result of customer complaints will probably discover the largest number of violations of the installation standards. Since the prime reason to randomly inspect contractor's work is to uncover violations, this provision will go a long way to fulfilling that goal.

.6 MCAR §2.2307. Qualification Procedures for Auditors and Inspectors.

This section deals with the certification of auditors and qualification procedures for inspectors. 10 C.F.R. § 456.314 requires the State to train, certify or otherwise qualify auditors, inspectors and certain installers for this program.

The auditor has two roles. The first is to conduct the audit and to answer questions. The other role is to motivate the customer to take action. Therefore, it is necessary for auditors to be well trained. They will be the direct link between the utilities or heating supplier and the customer. The auditors will be on the "front lines" of the program and will be the person to whom the customer will relate. If an auditor is not well equipped to deal with the customer, whether in knowledge, skills, style or habits, the program is likely to fail.

To assure that these auditors can meet the demands of the program, the Agency has decided to train and certify auditors. Certification will give the Agency control over the initial selection of people permitted to become auditors. This method is reasonable because the Agency has considerable expertise in programs in the energy field. This expertise will assure well trained individuals for the program.

Inspectors will have another important job under the MECS Program. As stated previously, they will be inspecting for compliance with the DOE standards for installation of materials. As with auditors, it is necessary to assure that they are competentto do their job, according to these rules.

The Agency has chosen not to certify inspectors but only require training. One reason for this is cost. The Agency expects that perhaps only twenty or thirty inspectors will be required by the program. The cost to develop a state training and certification program would be high. A more cost effective alternative is for the state to require the utilities to be

responsible for actual training of inspectors.

Another reason for not certifying inspectors is that most utilities already have competent people on their staff that can fill this role. These people usually have many years of training in other areas of residential energy use and can easily learn the skills necessary to properly inspect an installation. Each utility can more reasonably provide a training course specifically tailored to their inspectors.

The qualification procedures required by 10 C.F.R. § 456.314(b-d) for installers of certain measures are not included in these rules. The Department of Energy has only recently promulgated standards for these measures and qualification procedures have not yet been developed. They will be subject to rulemaking within a few months.

A. Prohibition of discrimination.

No person shall be denied the right to become an auditor or inspector on the basis of race, religion, nationality, creed, age or sexual preference.

This provision is required by 10 C.F.R. § 456.314(g)(1). It is needed to assure that all auditors and inspectors are chosen on an nondiscriminatory basis. The initial responsibility to enforce this will be that of the utilities and heating suppliers.

B. Auditors.

1. Training

a. No person shall be eligible for certification pursuant to 6 MCAR §2.2307B.2, unless he or she has first participated in a training course which has been approved by the Agency and which coveres the subject matter tested in the auditor's certification examination.

This provision is needed to require all auditor candidates to first participate in a training course. Training is necessary because of the large amount of information that an auditor must be able to know and transmit to the customer. Only with a comprehensive training

program, can the Agency be assured that the auditor candidates are exposed to all of the information that they must know.

The Agency has developed a training course based on Department of Energy supplied materials as well as materials developed specifically for Minnesota. This course is expected to be eighty hours in length. The Agency also expects to approve other training courses offered by private firms or other states.

b. Any present auditor with six (6) months experience who has completed twenty-five (25) audits, or any registered engineer or any architect shall be permitted to take an Agency approved orientation session, in lieu of the requirements of 6 MCAR §2.2307B.1.a.

This provision is needed to allow certain people, already trained, to directly take the certification exam. The Agency realizes that certain people have already had considerable training in audit techniques through previous study or experience. These people should be able to take the certification exam without attending a two week training course.

The orientation session will discuss the Minnesota audit requirements for this program and provide certain materials developed, such as a training manual, to these auditor candidates. If a candidate feels that their previous experience will not be sufficient, they will be able to take the training course.

c. Two months prior to the first public offer of the audit, the participating utility and heating supplier shall submit to the Agency for approval, a plan to develop and administer a program of in-service training for the continued education of certified auditors. The Agency shall approve a plan if it reviews and updates the material listed in 6 MCAR §2.2307B.2.b., provides the auditors with additional technical information and the program measures and audit techniques and reviews the communications skills needed for the interaction with the customer.

This provision is needed to update the skills of the auditors once the program begins. The Agency and the utilities on the Advisory Committee realized that a two-week training is not enough to assure high-quality auditors. For this reason, an in-service training plan is required.

This in-service training will be able to concentrate on the problems that the auditors are having in the field, update the auditors on any new information and deal with problems related to communications with the customer. These types of needs will be best met by the utility or heating supplier because they will be able to better identify the immediate problems that the auditor is having.

The time period for submittal of this plan is reasonable because the utilities and heating suppliers have been planning this program for many months. The plan does not have to include detailed curriculum. It should discuss how in-service training will be provided to all auditors, what means will be used and how often it will be offered.

2. Certification.

   a. No person shall participate in the MECS Program as an auditor, unless he or she has first passed a certification examination conducted by the Agency.

This provision is needed so that the Agency can certify each candidate. Each candidate that takes a training course or orientation session will be tested to insure that they have learned and can transmit the information that an auditor must use in his or her job. This further assures that all auditors will be highly qualified for their work.

b. The certification examination shall test for the following qualifications:

(1) A general understanding of the three types of heat transfer and the effects of temperature and humidity on heat transfer;

(2) A general understanding of residential construction terminology and components;

(3) A general knowledge of the operation of the heating and cooling systems used in residential buildings, including the need and provision for combustion air;

(4) A general knowledge of the different types of each applicable program measure, of the advantages and disadvantages and applications of each, and of the DOE installation standards;

(5) The capability to conduct the MECS energy audit including:

(a) A working knowledge of the energy conserving practices defined in this plan,

(b) The ability to determine the applicability of each of the program measures, and

(c) A proficiency in the auditing procedures for each applicable program measure established in 6 MCAR §2.230

(6) A working ability to calculate the steady state efficiency of furnaces or boilers;

(7) An understanding of the nature of solar energy and its residential applications including:

(a) Insulation,

(b) Shading,

(c) Heat capture and transport, and

(d) Heat transfer for hot water;

(8) An understanding of the nature of wind energy and its residential applications including:

(a) Wind availability,

(b) Effects of obstruction,

(c) Wind capture,

(d) Power generation,

(e) Interfaces with residential and utility power lines; and

(9) A working knowledge of building and fire codes related to the installation and safety of wood burning appliances.

This section, except for item (9) is required by 10 C.F.R. § 456.314(a). It is needed to describe the minimum subject areas that the auditors must know and be tested on. The auditor must be competent in these areas to conduct an audit under this program and to discuss the audit results with the customer. Item 9 is needed to answer questions on wood heating safety, an area of great concern by the public in Minnesota.

c. These examinations shall be conducted by the Agency and offered at the following times:

(1) Within two (2) days after the completion of each state-sponsored training course or orientation session, or

(2) Once a month, until February, 1982, with a minimum of two examinations per year afterward.

This provision is needed to set the dates for offering the certification exam. The public will be aware of the date. Most auditors will be trained and certified in the first year of the program. Therefore, it is necessary to offer the certification exam more often during that time. After that, the utilities and heating suppliers will be adding personnel slowly. The amount of testing will reflect the program needs for certified auditors.

d. Certification shall be valid for one year.

This provision, by setting a time limit on certification provides another means to control the quality of auditors. One year is reasonable, because this is a new program and changes can be

expected to occur in the first year. The auditors must learn about these changes and to incorporate them into their audits.

e. After one year, each auditor must be recertified. Re-certification procedures shall be as follows:

(1) One month prior to the date of certificate expiration, the auditor shall attend a recertification course, as required by the Agency. Attendance in this course shall recertify the auditor for the next year.

(2) The recertification course requirement for auditors shall be eliminated for any particular year, if the Agency determines that no changes were made in the MECS Program that year.

(3) This recertification shall occur annually, for the life of the program.

This provision is needed to describe the recertification procedures. As stated above, the program is expected to change in the first years. Attendance in a recertification course will allow the auditors to be updated in a uniform fashion. Since these changes will be ones made for the entire program, it is appropriate for the Agency to take the responsibility, as it did in the initial training, to see that all auditors have this information.

If, in later years no changes have been made, then recertification shall be automatic. This is appropriate since the primary reason for recertification is to update and train auditors in any program changes.

f. Any person who is certified to conduct Residential Conservation Services audits in another state shall not be required to take the training course established in 6 MCAR §2.2307B.1, but shall be required to pass the Minnesota certification examination.

This provision is needed to provide reciprocity with other states surrounding Minnesota. Many utilities in Minnesota also have service areas in other states. Since most of the program will be the same in all other states, auditors will have received similar training. This provision will allow those utilities to use their auditors from those other states, provided the auditors pass the Minnesota certification. Iowa, Wisconsin, South Dakota and Nebraska have similar reciprocity provisions in their plans. North Dakota has not yet submitted their program to the Department of Energy for approval.

C. Inspectors.

1. Qualifications to conduct random inspections.

a. No person shall participate in the MECS Program as a general inspector unless he or she has been qualified. To become qualified each person must first take a training course, which has been approved by the Agency.

This provision is needed to require that all inspector candidates participate in a training course to become qualified. As stated in the introduction to this section, only training is required of inspectors. Training is needed to assure that all inspectors are knowledgable in the many subject areas that are included in the installation standards.

b. The training course shall cover the following subject matters:

(1) The measures listed in 6 MCAR §2.2306C.3;

(2) Methodology to evaluate whether the installation of a measure conforms to DOE installation standards;

(3) The MECS recommended standards for R-values for each insulation measure, pursuant to 6 MCAR §2.2303D.1.

This provision is required by 10 C.F.R. § 456.314(e). It is needed to describe the subject areas and skills that the inspector must learn to become qualified. It also describes to the utilities who will be conducting the training which subject areas need to be covered.

c. Each covered utility shall submit to the Agency for approval a plan for the training of general inspectors, as required in 6 MCAR s2.2307C.1.a, ~~by January 15, 1980~~ by February 15, 1981 The Agency shall approve a plan if it ensures coverage of the subject matter pursuant to 6 MCAR §2.2307C.1.b.

This provision is needed to assign responsibility for this training to the covered utilities. As stated previously, only the covered utilities will be providing inspections. The temporary rules required the utilities involved to provide the training plan by January 15, 1980. This rule is needed to assure that the inspectors will be trained in all subject matters required by these rules.

d. Each covered utility shall notify the Agency of each person qualified as a general inspector, within two weeks after that person has been qualified.

This provision is needed because the Agency is required by 10 C.F.R. § 456.318(b)(6) to keep a list of individuals qualified as inspectors. The Agency must receive this information from the utilities in order to maintain such a list. Since the utilities will be holding the class for qualification. This will not be an unreasonable burden on them. The two week period will not create a burden on the utility and will allow the Agency to maintain compliance with 10C.F.R.§ 456.318(b)(6)(i).

2. Qualifications to conduct mandatory inspections.

a. No person shall participate in the MECS Program as a specialized inspector unless he or shee has been qualified.

To become qualified each person must first take training courses which have been approved by the Agency. Each person shall only be qualified to inspect those measures for which that person has been trained.

This provision is needed for similar reasons to those given for 6 MCAR §2.2307.C.1. Since these inspections will require a higher level of expertise than a general inspection, inspectors will only be qualified to inspect for those measures in which training has been received. This is needed because each measure requires a very different training and understanding of different, complicated systems of a residence.

b. The training courses shall cover:

(1) The following subject matter concerning flue opening modifications and electrical or mechanical ignition systems:

(a) Applicable State and Federal codes and regulations;

(b) An understanding of gas appliances used in residential buildings, including basic system requirements, components and operation, and an understanding of potential malfunctions of gas appliances;

(c) An understanding of gas appliance controls and safety controls, including automatic gas valves, limit switches, and thermostats;

(d) An understanding of basic furnace and boiler circuitry, including electrical components, and the use of appropriate meters for testing gas appliance circuitry;

(e) An understanding of the purpose, general structure, and operational systems of vent dampers including the advantages and disadvantages of each type; an ability to service and install electrical, mechanical,

and thermal vent dampers;

(f) An understanding of the purpose, basic system requirements and components, and operation of electrical or mechanical ignition systems; an ability to service and install the system, an understanding of schematic diagrams and potential malfunctions of the system;

(g) An understanding of the types of vents, draft diverters and heat transfer components; an understanding of venting theory including ventilation air, dilution air, vent sizing, and venting installation procedures; an ability to perform leak and spillage checks, and to use instrumentation to measure carbon monoxide and carbon dioxide emissions from gas appliances;

(h) An understanding of proper combustion and proper flame characteristics and gas piping procedures; and

(i) An understanding of the methodology to evaluate whether the installation of the measures conform with DOE installation standards.

This section is required by 10 C.F.R. § 456.314(b) as amended and published on September 24, 1980. It is needed to cover all subject matter and skills that an inspector must know and use to inspect the safe and effective installation of these measures. The dangers of a hazardous installation are great, so an inspector must be skilled in these areas. All gas utilities presently have such people on their staff. Most electric utilities do not.

(2) The following subject matter concerning wind energy devices:

(a) An understanding of the structural characteristics of wind energy devices;

(b) An understanding of national and local codes governing the electrical interconnection between the wind energy device and the residential and/or utility electrical system; and

(c) Methodology to evaluate whether the installation of a wind energy device conforms with DOE installation standards.

This section is required by 10 C.F.R. § 456.314(c) as amended and published on September 24, 1980. It is needed to cover all subject matters and skills that an inspector must know and use to inspect wind energy devices. Again, many hazards can occur with an unsafe installation of this measure. Most utilities do not presently have people with these skills on their staff.

(3) The following subject matter concerning solar domestic hot water systems:

(a) The residential construction methods employed in the region and the characteristics of structures that would preclude a safe and enduring solar installation;

(b) The applicable provisions of the HUD Intermediate Minimum Property Standards Supplement, Solar Heating and Domestic Hot Water Systems 4930.2, 1977 Edition.

(c) The design, operation, installation and degradation of residential hot water and heating systems with which the solar devices will interconnect; and

(d) The connection of the solar devices into the existing residential systems, including testing for satisfactory performance of the solar devices and the modified system, according to the requirements of the HUD Intermediate Minimum Property Standards Supplement, Solar Heating and Domestic Hot Water System 4930.2,

1977 Edition.

(e) Methodology to evaluate whether the installation of a solar domestic hot water system conforms with DOE installation standards.

This section is required by 10 C.F.R. § 456.314(d) as amended and published on September 24, 1980. It is needed to cover all subject matter and skills that an inspector must know and use to inspect domestic hot water systems. As with the previous measures, an improper installation can result in many problems. Presently, most utilities do not have skilled people on their staff that can evaluate this measure.

c. Each covered utility shall submit to the Agency for approval a plan for the training of specialized inspectors as required in 6 MCAR s2.2307C.2.a. ~~January 15, 1980~~ by February 15, 1981 The Agency shall approve a plan if it ensures coverage of the subject matter pursuant to 6 MCAR §2.2307C.2.b.

This provision is needed for similar reasons as 6 MCAR §2.2307C.1.c.

d. Each covered utility shall notfiy the Agency of each person qualified as a specialized inspector, within two weeks after that person has been qualified.

This provision is needed for similar reasons as 6 MCAR §2.2307C.1.d.

C MCAR §2.2308. Consumer grievance procedures.

Another benefit required in this program is the provision of a consumer compliant procedure for resolving complaints arising from this program. While 10 C.F.R. § 456.315 requires a several step process which includes a conference, a redress proceeding and a right to initiate civil action, only the conference (10 C.F.R. § 456.315 (a)) needs to be addressed in these rules. The redress proceedings and civil action will utilize the states existing court system, and the procedural and substantive rights already established by Minnesota State.

The consumer grievance procedures were mandated by congress to provide for consumer protection. The insulation and solar industries, in particular have produced a large number of consumer complaints nationwide and in Minnesota. A complaint procedure is necessary to help consumers with any problems that arise.

The Office of Consumer Services of the Minnesota Department of Commerce will be responsible for mediating consumer complaints under these rules. They already provide this type of service for all consumers. All parts of this section were drafted by that Office in consultation with the Agency and the Advisory Committee.

This section is closely tied with the previously discussed 6 MCAR §2.2305 Listing services and 6 MCAR §2.2306 Post-Installation inspection. By following up on consumer complaints, the Agency can also maintain the quality of the Master List of contractors.

A. Conciliation conference.

1. OCS shall be responsible for the mediation of customer complaints against lenders, suppliers, contractors, and participating utilities and heating suppliers which are acting as lenders, suppliers, or contractors under the MECS Program.

This provision is needed to assign responsibility for this service to OCS. The Agency has no expertise in the consumer complaint area and as a matter of practice, already refers people to OCS. OCS has

been involved with the development of the original plan and rules since early this year, when the planning process began. These provisions will not change the way the OCS presently operates but will only define their participation in this particular program.

2. Before utilizing the OCS Mediation Service customers shall be directed by the participating utilities and heating suppliers or OCS to first bring their complaint to the attention of the contractor, supplier, lender, or participating utility or heating supplier which is acting as a lender, supplier or contractor. If the complaint is not resolved, the customer shall fill out a MECS customer complaint form supplied by OCS.

This is needed to direct the utilities and heating suppliers who will receive complaints first. OCS already utilizes these procedures in processing complaints. Many consumers do not contact the business they are complaining about, cutting off the most important line of communication. As a practice, OCS will only offer their service if this first step is taken by a customer.

3. Within three working days of receipt of a written MECS customer complaint, an OCS mediator will contact the customer and the party complained against to ascertain their positions in regard to the complaint. If necessary, the OCS mediator shall conduct a conciliation conference between the parties in person or by phone.

This is needed to describe the process that OCS will use in conducting the mediation. OCS will use their usual methods of mediation including their "circuit riders" who travel around the state conducting mediation sessions in the cities in which the problems are occuring.

4. OCS shall report to the Agency, the name of any lender, supplier or contractor which, after two weeks notice from OCS has failed:

a. To respond to attempts to contact it; or

b. To actively participate in good faith in the mediation process within 30 days of initial contact; or

c. To correct program violations or take remedial measures agreed to in mediation within two (2) weeks after agreement.

This provision is needed to notify the Agency to begin the notification and delisting procedures. All businesses signed a contract to participate in the program that stated that they will participate in a consumer grievance procedure. Failure to do so violates the contract and delisting can occur. Similarly, if a business fails to correct program violations, this information is needed for the Agency to begin delisting.

These procedures will give the customer more assurance that complaints are dealt with in a fair and equitable manner. It will also give the business greater incentive to follow up on customer complaints under this program.

B. Annual report.

The Office of Consumer Services shall submit to the Agency by May 15 each year, up to and including May 15, 1986, a report containing the following information for the twelve (12) month period ending the preceeding April:

1. The number and nature of complaints against suppliers, contractors and lenders which have been handled through the conciliation conference; and

2. The number and function of employees within OCS assigned to the MECS Program.

This provision is needed because the Agency is required by 10 C.F.R. §456.318(a)(6) and (11) to give this information to the Department of Energy in an annual report. Since only OCS has the information, only they can provide it to the Agency for this annual report.

6 MCAR §2.2309. Customer payments.

A final benefit of this program, related to the arrangement service, is the offering of loans by the utility or heating supplier. Congress permits these loans as a way of enlarging the possibilities open to the customer of finding financing. This section is needed to describe the minimum Department of Energy rules for such programs as they relate to the customer.

In addition this section discusses how the customer is billed for program costs. The Minnesota legislative in its past session provided that covered utilities may not charge to the customer more than ten dollars for program costs. This legislation, Minn. Laws, Chapter 579, Section 12, to be codified as Minn. Stat. 215B.165 subd. 1, eliminates the need for any such rules required by 10 C.F.R. § 456.319(b).

The original rules were amended in July by the passage of the Energy Security Act. New proposed rules were published on October 8. These federal rules, incorporated in this state rule, change the loan provisions for utilities and heating suppliers.

A. Customer billing.

1. Each covered utility and heating supplier, when billing the customer for any costs it incurred under the MECS, including arranged loans, shall identify and list the charges separately on the billing for the charges. The customer shall be allowed to include payment for those charges with payment for the utility bill.

This provision is required by 10 C.F.R. § 456.311(a)(1). It is needed so that the customer can accurately identify the actual charges for program services on the fuel bill. Presently, all other costs are listed this way to allow customers to fully understand what charges exist and how much is being charged.

Also, as current practice, customers are permitted to pay all program charges together. This eases the repayment of such charges for the customer by not requiring separate statements or payments.

2. When receiving a payment from a customer that includes payment for utility service or fuel and payment for any MECS service, the covered utility and heating supplier shall credit the payment to utility service or fuel first, and then credit the remainder to MECS Program charges, unless the customer specifies otherwise.

This provision is required by 10 C.F.R. § 456.311(a)(2). It is needed to clarify the responsibility of the utility or heating supplier in charging the customer's account. Since the utility or heating supplier may not terminate service because of non payment of MECS charges (10 C.F.R. § 456.311(c)), this rule is needed to assure that the utility or heating supplier does not attempt to cut-off service by declaring that fuel charges have not been paid.

B. Loan payments.

1. If the lender agrees, a loan arranged by a covered utility pursuant to 6 MCAR §2.2304A. may be repaid by the customer as part of the periodic utility bill. The utility may recover from the lender the cost incurred by the utility in charging out this repayment.

This provision is required by 10 C.F.R. § 456.311(b)(1) as proposed and published on October 8, 1980. Under the provisions of the Energy Security Act, Congress has significantly reduced the restraints on utility arranged loans. This is needed to allow the utility to provide for more innovative financing programs.

This provision is also needed to describe the conditions under which a utility managed loan is repaid through the utility's billing procedures. Since this type of billing may not be in accordance with lending institutions policy, the institution and the customer must both agree to this repayment schedule.

2. If the lender agrees, any loan for the purchase or installation of program measures made or arranged by a heating supplier shall be subject to the following requirements:

   a. The heating supplier shall allow the customer to repay the loan over a period of not less than three years, unless the customer chooses a shorter repayment schedule. The heating supplier may impose a minimum periodic payment of five dollars ($5).

   b. A lump-sum payment of outstanding principal and interest may be required by the lender upon default in payment by the customer.

   c. No penalty shall be imposed by a heating supplier or a lender for payment of all or any portion of an outstanding loan prior to the date that such payment would be due.

This provision is required by 10 C.F.R. § 456.311(b)(2) as proposed and published on October 8, 1980. These federal rules were originally required by 10 C.F.R. § 456.311(b)(1-3) and were only amended to drop all references to utilities. This provision is needed to carry out the program that Congress envisioned for heating suppliers.

C. Termination of service.

No participating utility or heating supplier shall terminate or restrict utility or fuel service upon customer default or non-payment of any MECS Program charges and loans.

This provision is required by 10 C.F.R. § 456.311(c). It is needed to protect the customer from undue pressure from the utility or heating supplier. It forces the utility or heating supplier to use other, legal methods of collecting payments from the customer. Congress did not want the utilities or heating supplies to be affected by the customer's participation in MECS when making decisions on the continued provision of fuel service to that customer.

6 MCAR §2.2310. Utility supply, installation and financing.

This section describes the utility's responsibilities in supplying installing and financing measures under this program. The utilities are governed under 10 C.F.R. § 456.501-509, as proposed and published on November 7, 1979 and October 8, 1979, as to how they may run programs for supply and financing of measures. The rules in this section are needed to d scribe how those other programs interact with MECS.

A. Survey of utilities.

1. Each covered utility which supplies or installs any program resource measure:

   a. Shall be listed as a supplier or contractor pursuant to 6 MCAR §2.2305, in the same manner and subject to the same requirements as any other supplier or contractor;

   b. Shall charge fair and reasonable prices for the supply or installation of program measures;

   c. Shall not discriminate unfairly among eligible customers in undertaking the above described activities.

This section is required by 10 C.F.R. § 456.304(a) and (d). It is needed to assure that the monopoly status of the utility does not allow it to interfere with the free commerce of small businesses. And that all utilities treat all customers fairly.

It also requires the Agency to treat each utility in the same manner as other businesses in the listing process.

2. Beginning in April, 1981, the Agency shall conduct an annual survey of prices charged for the supply or installation of goods and services comparable to those the covered utilities supply or install. If the Agency determines that the prices charged by covered utilities for the supply and installation of program measures are significantly different from the typical local prices and

interest rates disclosed in the Agency's survey, or the Agency receives complaints from contractors or suppliers regarding the prices, the Agency shall notify the covered utility of disparity in prices and request a written justification with supporting documentation. This documentation with copies of the survey shall then be sent to the Minnesota Attorney General's Office, Anti-Trust Division.

This provision is required by 10 C.F.R. § 456.304(d). It is needed to assure that the utilities offering supply or installation programs are not unfairly taking advantage of the customer by overcharging or restricting commerce by significantly undercharging the customer. At present, no other agency or department in the state investigates such practices., by utilities any charges of restraint of trade would be referred to the Attorney General's Office.

B. Financing.

Whenever a covered utility undertakes to finance its own lending program for program measures through financial institutions, the utility shall seek such funds from institutions located in the area covered by the lending program. However, if the covered utility determines that this limitation is disadvantagous to its customers, or not feasible, the limitation shall not apply.

This provision is required by 10 C.F.R. § 456.304(d)(3) as proposed and published on October 9, 1980. It is needed to meet the Congressional intent for local financing of such programs. This financing will tend to keep locally deposited monies in the state which will benefit the local economy.

6 MCAR §2.2311. Reporting and recordkeeping.

The Agency must submit an annual report to the Department of Energy. The provisions of this section require that the covered utilities and heating suppliers submit this information to the Agency so that this report, as required by 10 C.F.R. § 456.318 can be filed.

The information provided will allow the Agency and Department of Energy to evaluate the MECS program and to monitor the activities of each of the participants. The evaluation will provide the Agency with information to change the program to make it more effective and to propose amendments to these rules.

This report is due at the Department of Energy on July 1 of each year, starting in 1981. Therefore, all reports to the Agency are due on May 15 of that year. This time period allows the reporters forty-five days to compile the necessary data and send it to the Agency. It then allows the Agency forty-five days to prepare the report and send it to the Department of Energy.

A. Annual report.

Each covered utility and heating supplier shall submit to the Agency by May 15 of each year up to and including May 15, 1986, a report containing the following information for the twelve (12) month period ending the preceeding April:

1. The approximate number of customers in its system and, if available, the percentage of that number for whom the covered utility or heating supplier provides the primary heating fuel;
2. A copy of the program announcement;
3. The number of requiests for each of the following services as well as the number of requests fulfilled:
   a. Program audit,
   b. Installation arrangement,

c. Financing arrangement, and

d. Billing service for repayment of loans;

4. The number of installations of program measures installed by, supplied by, or financed by the covered utility or heating supplier;

5. The number and results of post-installation inspections, including description of violations;

6. The number and function of employees assigned to the program; and

7. The costs incurred, including that portion of the cost paid by individual customers for services received and that portion paid by all ratepayers, in providing each type of the following services:

a. the program audit,

b. installation arrangement,

c. loan arrangement, and

d. post-installation inspections.

This section is required by 10 C.F.R. § 456.318(a)(5). This information is solely kept by the utilities and heating suppliers. In order to compile the annual report, it must be provided to the Agency. To require the utilities or heating suppliers to supply this information more often or to require the Agency to keep these files continously would create an unnecessary burden on all parties. It is therefore reasonable to only require their information once a year.

B. Recordkeeping requirements.

1. Each covered utilities and heating supplier shall keep the following records and shall be kept for the periods indicated:

a. For five (5) years from the date of the program audit, the name and address of each customer who receives a program audit;

b. For five (5) years from the date of the program audit, a copy of the data collected and the estimated cost and savings information for each customer who receives a program audit.

c. For five (5) years form the date of the request, each request for a furnace audit;

d. For five (5) years from the date of the arrangement, the name and address of each customer for whom installation or financing of measures was arranged; and

e. For two (2) years from the date of the program audit, the total amount and cost of fuel purchased for the period of twelve months prior to and twelve months following each audit. This information is only required for those utilities and heating suppliers which supply the primary heating fuel to the customer.

2. This information shall be made available to the Agency upon request.

This section is required by 10 C.F.R. § 456.318(b). It is needed to allow the Department of Energy, the Agency, the utility or heating supplier to conduct an effective evaluation of the program and its services. Without this information, it would not be known how well the program is working and what potential trouble spots exist. It is vital to the provision of quality services that this information is kept and evaluated.

In addition, the information is needed to provide a new customer a copy of the audit, as required in 6 MCAR §2.2302A.1.b.

6 MCAR §2.2312. Heating suppliers.

This program, as envisioned by Congress, also includes heating suppliers. Heating suppliers are not required to participate, unlike covered utilities. Their participation is completely voluntary. However, 10 C.F.R. § 456.317 requires the heating suppliers to offer certain parts of the program if they agree to participate.

The federal rules were written with the consultation and comment of several national heating supplier organizations. These organizations tend to represent the East Coast suppliers because these suppliers provide a significant amount of product to their customers and provide for service to a large portion of the residential sector. The largest fuel oil jobber in New York has his own deepwater port, tankers and supplies more fuel oil than the entire state of Minnesota uses!

The Minnesota situation is obviously quite different. While Minnesota fuel oil jobbers supply over thirty percent of all homes in the state, this is quite small compared to the Eastern states. In addition, the average jobber only has 300-700 customers and has two or three employees, frequently husband and wife. This means that the federal rules, written for large jobbers similar to utilities, will not work well with small heating suppliers.

The disincentives for a small supplier to participate are therefore great. The federal rule, as written, guarentees that no heating supplier in the state would be able to participate. But since this market is quite large in Minnesota, especially in small cities without access to natural gas, the Agency has a strong desire for suppliers to be included in MECS.

The federal rules allow the state to waiver certain provisions of the plan if it is found that "the resources of (a) supplier do not enable it to comply with particular requirement(s)". This waiver provision will

be used broadly in Minnesota to allow for the participation of jobbers.

The items that cannot be waived are necessary to meet the Department of Energy rules as well as to ensure a meaningful program for the customers of heating suppliers. These rules were written in conjunction with the Northwest Petroleum Association. And while these rules do not exclude other heating suppliers, such as propane dealers, from participating none have shown any interest of doing so at this time.

A. Any heating supplier may apply to the Agency to participate in the MECS Program.

This provision is needed because heating suppliers are not required to participate by federal rule. Only by applying to participate will the Agency be able to identify those suppliers.

B. Any heating supplier or association of heating suppliers may apply to the Agency for a waiver of any requirement of this plan, except those listed in 6 MCAR §2.2312.C. All waivers that do not substantially limit either the delivery of services described in this plan or the conservation potential of the program shall be approved by the Agency.

This provision is required by 10 C.F.R. § 456.317(c). It is needed to allow the Agency to adopt the program to the contraints of heating suppliers in Minnesota. Certain requirements are needed due to the federal rule or the necessity of providing minimal MECS services. However, waivers of other particular requirements in this rule are encouraged by the Agency, if they willencourage heating supplier participation.

Allowing any association toapply for such waivers on behalf of its members further eases the burdens of small suppliers in dealing with the necessary paperwork and approval process required.

The Agency's primary concern is that the conservation potential for the MEC program is not affected. This could be negatively affected by offering

significantly reduced services or partial audits. The Agency is also concerned that the public have a consistent image of the benefits of MECS. Therefore, any waivers of the audit requirements or certain of the other informational services cannot be allowed. Participation or non-participation in this program does not prohibit heating suppliers from developing other conservation programs.

C. The following requirements of these rules shall not be waived:

1. The calculation procedures in Appendix A and the ban on advertising in program announcements offered, as established in 6 MCAR §2.2302A.2.b.

This provision is required by 10 C.F.R. § 456.317(c)(3). The heating suppliers are not required to offer these announcements and must abide by this provision of such an announcement is sent out. It is needed for similar reasons as was given for the utilities in the above listed section.

2. The reporting and recordkeeping requirements, pursuant to 6 MCAR §2.2311.

This provision is required by 10 C.F.R. §§ 456.317(7)(ii-iii). It is needed to evaluate the program, provide annual report information to the Department of Energy and provide a copy of an audit to a new customer. This requirement will not place a great or difficult burden on heating suppliers.

3. The on-site energy audit, pursuant to 6 MCAR §2.2303.

This provision is needed because the audit is the primary benefit to the customer under this program. Without the audit and all its measures, the same information could not be provided to the customer.

4. The arrangement service for the financing of program measures, pursuant to 6 MCAR §2.2304A,C, and D.

This provision is needed to provide the benefits of the financing arrangement service. The heating supplier is provided with all of the information necessary for this service by the Agency. It is therefore, not difficult nor burdensome for the heating supplier to offer this service.

5. The distribution of Master Lists developed, pursuant to 6 MCAR §2.2305.

This provision is needed to provide the benefits of the Master List to the customer. Again, the lists will be provided by the Agency and will only require the heating supplier to distribute them.

6. The offer of the consumer complaint process, pursuant to 6 MCAR §2.2308, and

This provision is needed to describe to the customer the consumer grievance procedures. These procedures are available to all customers around the state. This provision will be quite easy to carry out.

7. The exclusive use of certified auditors, pursuant to 6 MCAR §2.2307.

This provision is required by 10 C.F.R. § 456.317(c)(5). It is needed to assure all auditors will be certified and trained. Without such certification, the quality of the auditors work cannot be maintained.

D. Any participating heating supplier may voluntarily withdraw from this program after completing all outstanding services offered to its customers.

This provision is needed to assure that if a heating supplier withdraws from the program, all services will be provided to customers. This will prevent customer complaints that services were offered and never carried out. Once a heating supplier decides to withdraw from the program, the supplier is not required to accept new customers for program services.

E. A participating heating supplier which does not provide MECS services or does not comply with the requirements listed in 6 MCAR §2.2312.C., shall be excluded by the Agency from participating in the MECS Program.

This provision is needed to assure that only those heating suppliers providing services and meeting the requirements of these rules are allowed to participate in the program. While it seems obvious, this provision is necessary so that the public does not get confused as to the benefits of the MECS program. If heating suppliers do not care to meet the requirements and for some reason does not want to withdraw, the Agency must be able to exclude such suppliers.

Appendix A. Procedures for calculating energy savings for program measures and practices.

This appendix is needed to provide consistent, accurate information to the covered utilities for use in their program announcements. 10 C.F.R. § 456. 306(d) requires that all cost and savings estimates be "substantially the same", except for "variations in the characteristics of typical homes and in price and climate data applicable in different parts of the state."

These calculations and estimates are from two primary sources. The first is the ASHRAE (American Society of Heating, Refrigeration and Air Conditioning Engineers) Journals. This journal is used as the basis for most heat loss calculations in the field.

The second source was the Department of Energy RCS model audit. This audit was developed by Oak Ridge National Laboratory, for use in the RCS program. It was used to arrive a certain heating correction factors necessary for the calculations.

The General Energy Savings equation provides a method for calculating energy savings for each measure.. It was adopted from the DOE model audit for Minnesota climatical conditions. It requires a calculation of heat loss ($\triangle$H) for each measure.

The subsequent calculations, with a few exceptions noted below, calculate the heat loss through a part of the exterior envelop of the residence. Calculating heat loss in a home is difficult to do. The only completely accurate method is to measure actual heat loss through a section of residence. Unfortunately to do this, all other variables that may affect heat loss must remain constant. Such variables as the number of people in the residence, the time of their occupancy, their particular lifestyles and even the weather are difficult, if not impossible to control.

6 MCAR §2.2313. Non-Regulated utility program.

The rules for this program have been written to include for the voluntary participation of non-regulated utilities. These utilities, such as rural electric cooperatives (RECs) and municipal utilities are all too small to be included in the definition of a covered utility in this program. There are no provisions in the federal rule for their participation.

These utilities, in particular the RECs, have requested the Agency to include them in the MECS program. For these reasons the Agency has chosen to write additional rules for their voluntary participation.

The rules in this section are quite similar to the heating supplier rules in 6 MCAR §2.2312. The only difference is that the federal rule does not exclude any provisions from the waiver process. This allows the Agency to eliminate certain additional restrictions.

Most non-regulated utilities do not have the same types of resources, funds or staffing that the covered utilities have. For this reason, it is necessary to design a program that they can realistically carry out. It is also necessary to realize that these utilities are not regulated by the state and are sensitive to the issues of state regulation. Therefore any rules that infringe on this freedom have been waived.

This section has been developed by the Agency in consultation with the Minnesota Rural Electric Association, the statewide association of co-operatives and the Minnesota Municipal Utilities Association.

Non-regulated utility program.

A. Any non-regulated utility may apply to the Agency for inclusion in the MECS Program.

B. A non-regulated utility or an association of non-regulated utilities may apply for a waiver of any requirement in this rule, except as

For these reasons, calculations have been developed that approximate heat loss in a residence. The heat loss calculations found in the ASHRAE Journals are considered the standards for the energy field and are used consistently in the industry. These have been used for this appendix.

Several of the calculations are solved directly for $\Delta E$(energy savings). This occurs for measures that are related to the water heating system or space heating and cooling systems of a residence. These calculations were taken from the DOE model audit. Actual tests of the different measures are made and from these results a calculation is developed. This calculation is then tested to predict results in other trials. From this trial and error process, an energy savings calculation was developed for each measure.

The calculations for the practices for the most part have been developed by the latter method. Infact, for many of the practices listed a direct percentage savings is indicated. These savings have been arrived at by testing and measuring for each practice.

The use of the energy index was described earlier in 6 MCAR §2.2303C.3.

noted in 6 MCAR §2.2313C. All waivers that do not substantially limit either the delivery of services listed or the conservation potential of the program shall be approved.

These provisions are needed for similar reasons to those in 6 MCAR §2.2312 A and B.

C. The following requirements of these rules shall not be waived:

1. The on-site program audit, pursant to 6 MCAR §2.2303.
2. The arrangement services for the financing of program measures, pursuant to 6 MCAR §2.2304A, C, and D.
3. The distribution Master Lists developed pursuant to 6 MCAR §2.2305.
4. The offer of the consumer complaint process, excluding post-installation inspections, pursuant to 6 MCAR §2.2308.
5. The exclusive use of certified auditors, pursuant to 6 MCAR §2.2307.

This section is needed for similar reasons as those in 6 MCAR §2.2312C(3-7), The rules in 6 MCAR §2.2312C(1-2) are not needed because they are not required by the federal rule.

D. The following requirements of this rule shall not be required for non-regulated utilities;

1. Program Promotion, pursuant to 6 MCAR §2.2302.

This provision is needed to eliminate non-regulated utilities from compliance with the program promotion rules. These utilities have sufficient other communications means with which to contact their customers. Requiring a program announcement is unnecessary.

2. Post-installation Inspection Services, pursuant to 6 MCAR §2.2306.

The need for this provision has been discussed in 6 MCAR §2.2306.

3. Customer Payments, 6 MCAR §2.2309A and B.

This provision is needed because the non-regulated utilities are already required to follow certain rules promulgated by other federal agencies concerning such loans.

4. Reporting and Recordkeeping, pursuant to 6 MCAR §2.2311.

This provision is needed for similar reasons as above.

E. Any participating non-regulated utility may voluntarily withdraw from this program after completing all outstanding services offered to its customers.

F. A participating non-regulated utility which does not comply with the requirements listed in 6 MCAR §2.2312C shall be excluded by the Agency from participating in the MECS Program.

These provisions are needed for similar reasons as those in 6 MCAR §2.2312D and E.

STATEMENT OF COMPLIANCE WITH

RULEMAKING PROCEDURES

I, Special Assistant Attorney General James E. Lackner, do hereby declare that I have examined the proposed rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

James E. Lackner
Special Assistant
Attorney General

Dated: 4/23/81

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Adoption of Rules of the Minnesota Energy Agency for the Establishment of the Minnesota Energy Conservation Service Program, 6 MCAR §§ 2.2300-2.2313.

AFFIDAVIT OF MAILING NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

STATE OF MINNESOTA )
) ss.
COUNTY OF RAMSEY )

Jodie Nelson, being first duly sworn, deposes and says:

That on the 24 day of April, 1981, in the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Submission to the Attorney General by depositing in the State of Minnesota Central Mail System for first class mailing (or) in the United States mail at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached list of persons who requested notice that the hearing record has been submitted to the Attorney General.

Jodie D Nelson

Subscribed and sworn to before me this 24th day of April, 1981.

Karla V. Sand

KARLA V. SAND
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Commission Expires Jan. 26, 1986.

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STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Adoption of Rules of the Minnesota Energy Agency Establishing the Minnesota Energy Conservation Service Program, 6 MCAR §§ 2.2300-2.2313.

NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minnesota Statutes, section 15.0412:

PLEASE TAKE NOTICE that the above-captioned rules have been submitted to the Office of the Attorney General on this date, April 24 , 1981, for review as to form and legality. Pursuant to 1 MCAR § 1.206C., the Attorney General will retain the rules for at least 10 days after receipt to allow any person or association to oomment on the legality of the rules, after which that Office will conduct its review. If you desire to comment on the legality of the above-captioned rules, you should direct your comments to the Office of the Attorney General, G-25 State Administration Building, 50 Sherburne Avenue, Saint Paul, Minnesota 55155, telephone (612) 296-7030. Please note that the above-cited rule of the Attorney General also provides that a copy of any written comments submitted to the Attorney General must be submitted simultaneously to this agency.

If you are interested in determining what changes, if any, were made in the proposed rules after the hearing and before submission to the Attorney General you may contact Ted Grindal, G25 Administration Building, St. Paul, Minnesota 55155, telephone (612) 296-1288.

Mark Mason, Director
Minnesota Energy Agency