

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 790

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 3-3-82
DATE FOR REVIEW 3-15-82
DATE DUE 3-23-82

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

Approved ____ Disapproved 3-23-82 Returned to Agency ____

Resubmitted ____ Due ____
Approved ____ Disapproved ____ Returned to Agency ____

Date filed w/Secretary of State ____ Revisor approved 3/8/82 disapproved ____

✓ Rule as Adopted

✓ Rule as Proposed as mailed 7.31. - see SR. for original version

✓ Order Adopting 2.29.82 Date combined with Findings of Fact.

N/A Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
8.6.81 date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency but see HE 4
Additional Notice sent 7.31.81

? ✓ Affidavit of Mailing Notice or rulemaking minor problem with wording ~~see HE 5~~
✓ 7.6.81 At least 30 days prior to hearing/~~adoption~~ See my note
2ND. Affidavit sent 7.31.81

? Mailing list Certificate minor problem with wording
? 2ND Mailing list Cert.

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

✓ Hearing Examiner's Report 9.21.81

✓ Chief Hearing Examiner's Report(s) approving in part, disapproving in part
✓ 9.25.81 ~~Approving~~ H.E.'s Report disapproving Agency action' ✓ 2.19.82
✓ 2.26.82 Approving agency action

✓ Agency's Findings of Fact combined with Order Adopting

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

ATTORNEY GENERAL

ROGER WILLIAMS 3/23/82
Economic Security, T&CS/Weatherization Program

ATTN: Assistant Attorney General Peter Andrews

LARRY D. STARNS 297-3493
Special Assistant
Attorney General

DEPARTMENT OF ECONOMIC SECURITY RULES FOR STATE WEATHERIZATION PROGRAM
ECSEC-81-006-RL, Hearing Record
Our File: RR 790

The rules described above have not been approved for the following reasons:

1. 8 MCAR § 4.0112.D states that the Department of Economic Security will allocate funds by county to "eligible grantees with a demonstrated ability to administer and deliver weatherization services" (emphasis added). Unfortunately, there is no delineation of the criteria which the Department will examine in determining eligibility for receiving funds or what exactly "demonstrated ability" entails. As written, the rule gives the agency unlimited discretion in determining who will be eligible to receive funds. Such unlimited discretion is violative of the Due Process requirements of the Constitution and Minn. Stat. § 15.0412, Subd. 3.

I suggest that you specifically define the term "demonstrated," listing the criteria to be evaluated in determining the applicant's eligibility to receive funding and assigning relative weight values to those criteria to enable the applicant to assess its potential for success.

2. 8 MCAR § 4.0012.G.1 states that grant funds shall not be used to weatherize a previously weatherized dwelling unit "unless approved by the department." Such unlimited discretion to grant variances from the stated rules is impermissible for the same reasons stated in the previous paragraph. Either the agency should remove such discretion entirely, or place reasonable, definable limitations on it by enumerating under what circumstances such variances will be granted.

When submitting these rules after repromulgation, please refer to our above-referenced file number so that we may expedite review of the new rules.

If you have any questions concerning the issues raised in this memorandum, please do not hesitate to call me.

LDS:sll

cc: Ms. Kathy Burek
Mr. Duane Harves
Ms. Ann Bateson

ATTORNEY GENERAL

PETER ANDREWS 3/25/82
Assistant Attorney General

LARRY D. STARNS 297-3493
Special Assistant
Attorney General

DEPARTMENT OF ECONOMIC SECURITY RULES FOR STATE WEATHERIZATION PROGRAM
ECSEC-81-006-RL, Hearing Record
Our File: RR 790

The following suggestions are made with the intent to assist you in clarifying the contents of the above-referenced rules and to promote consistency within their framework.

1. 8 MCAR § 4.0012.C.14 at lines 12-16 states that the mental disability of a handicapped person is to be determined by a "qualified medical person" and a physician or a chiropractor are listed as examples of such person. Perhaps a psychiatrist would also qualify in this category, especially considering the nature of the disability being determined, and you might want to list this type of professional as an alternate.

2. 8 MCAR § 4.0012.D.2 at line 2 states that a grant will be terminated "on the basis of" a public hearing and a determination by the Department that the grantee has been ineffective in meeting the prupose of Minn. Stat. § 268.37. Perhaps a better phrasing would be to say that such determination will be made "after" a public hearing on the matter of compliance with the statutory requirements has been held.

3. 8 MCAR § 4.0012.D.2 at line 5 provides that a ten-day notice requirement is to be imposed prior to the hearing to be held. You should clarify whether such notice is to be in addition to that normally provided in the administrative hearing procedure or whether it is to run concurrently with the regular notice period.

4. 8 MCAR § 4.0012.E.2.a at line 36 states that each application for assistance should include the name and address of the "local agency or office" responsible for administering the program. Perhaps, in the interest of consistency, the word "grantee" should be used instead of "local agency or office." This would help avoid possible confusion.

5. 8 MCAR § 4.0012.E.3 at lines 30-32 is grammatically incorrect in that it fails to use a verb connecting two dependent clauses. The use of "are" where there is presently a comma would remedy this.

6. 8 MCAR § 4.0012.E.4 at line 13 states that a variance for a "dwelling" will be granted under certain circumstances. To avoid confusing the reader, and to insure that only qualifying dwellings are eligible for the variance, it might perhaps be more appropriate to use "eligible dwelling unit" in place of "dwelling."

7. Exhibit 8 MCAR § 4.0012.E.4.-1 at line 17 describes weatherization priorities for "Home Types I-IV." These home types are not described in the rules. To avoid confusion, perhaps the commonly used terminology describing these homes should be parenthetically referenced.

8. Exhibit 8 MCAR § 4.0012.E.4.-1.I.D refers to "conditioned and unconditioned space." Since these terms are not elsewhere defined in these rules, they should either be defined or more commonly used terminology be employed to describe what is meant.

9. Exhibit 8 MCAR § 4.0012.E.4.-1.I.B at line 10 parenthetically describes ratios required with and without vapor barriers, respectively. To clarify the distinction being made, you should insert a semicolon between the words "ratio" and "with."

10. Exhibit 8 MCAR § 4.0012.E.4.-1.I.C contains a misspelling of the word "accessible" which should be corrected.

11. Exhibit 8 MCAR § 4.0012.E.4.-2 at line 34 refers to "Type V Home." As above, there is no definition in the rules for this type of home and parenthetical reference should be made to the commonly used terminology associated with this type of home.

12. Exhibit 8 MCAR § 4.0012.E.4.-2.F.5 refers to "Federal Management Circulars." This terminology appears to refer to what was earlier described as "Office of Management and Budget" circulars. If this is indeed what is meant, perhaps the same terminology should be used to avoid confusion.

13. Exhibit 8 MCAR § 4.0012.E.4-.2.H.1 omits the "periodicity" in evaluation required to be inserted by the Hearing Examiner in his report. Since the Chief Hearing Examiner does not speak to this particular requirement in his report, this requirement should be inserted so that periodic evaluations of project operations are made by the Department.

14. Exhibit 8 MCAR § 4.0012.E.4.2.H.3 requires an audit of "pertinent" records of grantees. Because no description of the types of records to be inspected and of their relationship to weatherization is mentioned, the term "pertinent' is vague and records to be inspected should be more clearly described.

15. Exhibit 8 MCAR § 4.0012.E.4.-2.L.1.c. refers to "standards imposed by law." Such a general reference is vague and could lead to confusion as to what laws and what standards are applicable. If possible, a more specific reference to the relevant laws and standards should be used.

16. Exhibit 8 MCAR § 4.0012.E.4.-2.L.2 refers to the "commissioner" as the party to whom applications for variances should be made. Perhaps, in the interest of consistency, "Department" should be used as it is elsewhere in the rules.

If you have any questions concerning the issues raised in this memorandum, please do not hesitate to call me.

LDS:sll

.0012

AG copy

strike-outs + deletions show changes from rules as originally proposed and as published in SR.

Department of Economic Security

Adopted Rules for the State Weatherization Program

Rule as Adopted

8 MCAR S 4.0012 Weatherization ~~aid~~ HE 10 assistance for low-income people.

A. Purpose. The purpose of this rule is to develop and implement a state weatherization assistance program under the authority of Minn. Stat. S 268.37 in the dwellings of low-income persons in order both to aid those persons least able to afford higher utility costs and to conserve needed energy.

B. Administration of ~~costs~~ HE 12 grants. Grants awarded under this rule shall be administered in accordance with the following:

1. Office of Management and Budget Circular A-102 Revised, entitled "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments" issued September 12, 1977, 42 Federal Register 45828-45891 (1977).

2. Office of Management and Budget Circular A-110 entitled "Grants and Agreements With Institutions of Higher Education, Hospitals, and other Nonprofit Organizations" issued July 30, 1976, 41 Federal Register 32016-32037 (1976).

3. Office of Management and Budget Circular A-73 entitled "Audit of Federal Operations and Programs" issued March 15, 1978, 43 Federal Register 12404-12406 (1978).

4. Office of Management and Budget Circular A-87 entitled "Cost Principles for State and Local Governments" issued January 15, 1981, 46 Federal Register 9548-9554 (1981).

5. Office of Management and Budget Circular A-95, entitled "Evaluation, Review and Coordination of Federal and Federally Assisted Programs and Projects" issued January 13, 1976, 40 Federal Register 2052-2065 (1976).

6. United States Treasury Circular 1082, entitled "Notification to States of Grant-in-Aid Information" issued February 17, 1976, 41 Federal Register 2652 (1976).

7. United States Treasury Circular 1075 entitled,

"Withdrawal of Cash From the Treasury for Advances Under Federal Grant and Other Programs" issued October 14, 1977, 31 Code of Federal Regulations 205 (1980).

C. Definitions. As used in this rule the following terms have the meanings given them.

1. "Agency" means an organization that receives funds under this rule to operate a weatherization program.

2. "Assistant commissioner" means the Assistant Commissioner of the Division of Training and Community Services of the Department of Economic Security.

3. "Community action agency" means a private corporation or public agency ~~established pursuant to the Economic Opportunity Act of 1964, 42 United States Code, Sections 2701-2996(1) (1977 and Supplement III 1980), which is authorized to administer funds received from federal, state, local, or private funding entities to assess, design, operate, finance and oversee antipoverty programs~~ as defined in Minn. Stat. S 268.53, subd. 1. HE 14

4. "Commissioner" means the Commissioner of the Department of Economic Security.

5. "Cosmetic items" means items which ~~when installed will not reduce energy costs in a cost-effective manner. Cosmetic~~ only enhance the esthetic appearance of the property and include such items ~~include~~ as finishes, decorative fenestration, and elevation materials, such as aluminum siding, board and batten, clapboard, brick, stone, shakes and asphalt siding. CHE 2/19 HE 15

6. "Cost of employment" means compensation for services as defined in Office of Management and Budget Circular A-87, 10a, 10b, 13a, 13b and 14. HE 43

~~6.~~ 7. "Department" means the Department of Economic Security.

~~7.~~ 8. "Dwelling unit" means a house or household. It includes stationary mobile homes, homes, apartments, and a group of rooms or a single room occupied as separate living quarters.

~~8.~~ 9. "Elderly person" means a person who is 60 years of age or older.

10. "Eligible dwelling unit" means a dwelling unit that is occupied by a low-income family unit. HE 16

~~9.~~ 11. "Family unit" means all persons living together in a dwelling unit.

~~10.~~ 12. "Grantor" means the Division of Training and Community Services, Department of Economic Security, State of Minnesota.

~~11.~~ 13. "Grantee" means an organization that receives funds under this rule to operate a weatherization program.

~~12.~~ 14. "Handicapped person" means a person who ~~has a permanent physical or mental disability that can be documented by a qualified medical or other professional person~~ , on the basis of an opinion by a qualified medical person, is permanently physically or mentally disabled. A qualified medical person means a qualified physician, or chiropractor authorized to practice his profession in the State of Minnesota. HE 18 and CHE. 9/25 how about psychologists?

15. "Heating degree days" means for any one day when the mean temperature is less than 65 degrees Fahrenheit there exists as many degree days as there are Farenheit degrees difference in temperature between the mean temperature for the day and 65 degrees Fahrenheit. Data for this factor was received from the National Oceanic and Atmospheric Administration in a publication entitled Monthly Normals of Temperature, Precipitation and Heating and Cooling Degree Days, 1941-1970, published by the United States Department of Commerce, August, 1973. HE 19

~~13.~~ 16. "Heating or cooling source" means a device which can raise or lower temperatures within a dwelling unit as part of the permanent heating, ventilating, and air conditioning system installed in the dwelling unit. It includes furnaces, heat pumps, stoves, boilers, heaters, fireplaces, air conditioners, fans, and solar devices.

17. "Independent contractor" means an entity, whether organized for profit or as a non-profit organization and however organized, which furnishes materials or provides labor or both in the weatherization of buildings of low-income persons. HE 20

~~14. "Local applicant" means an agency, a unit of general~~

~~purpose local government, or Indian tribe.~~

~~15.~~ 18. "Indian tribe" means any tribe, band, nation, or other organized group or community of Native Americans, including any Alaska native village, or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, 43 United States Code, Sections 1601-1628 (1977 and Supplement III 1980), which:

a. Is recognized as eligible for special programs and services provided by the United States to Native Americans because of its status as Native American; or

b. Is located on, or in proximity to, a federal or state reservation or rancheria.

~~16.~~ 19. "Low-income" means that total household income in relation to family size which:

a. is at or below 125 percent of the poverty level determined in accordance with criteria established by the Director of the Federal Office of Management and Budget in 45 Code of Federal Regulations 1060 (1981); or

b. is the basis for which cash assistance payments have been paid during the preceding 12-month period under Titles IV and XVI of the Social Security Act, August 14, 1935, Chapter 531, 49 Statutes at Large 620 (codified in scattered sections of 42 United States Code).

HE21

~~17.~~ 20. "Mechanical equipment" means a control device or apparatus which is primarily designed to improve the heating or cooling efficiency of a dwelling unit and which will be permanently affixed to an existing heating or cooling source. It includes a flue damper, clock setback thermostat, filter, and replacement limit switches.

~~18.~~ 21. "Multifamily dwelling unit" means a dwelling unit which is located in a structure containing more than one dwelling unit.

~~19.~~ 22. "Number of low-income, owner-occupied dwelling units in the county" means the number of those dwelling units in a county as determined by the department.

~~20.~~ 23. "Number of low-income, renter-occupied dwelling

units in the county" means the number of those dwelling units in a county as determined by the department.

~~21.~~ 24. "Repair material" means an item necessary for the effective performance or preservation of weatherization materials. Repair material includes lumber used to frame or repair windows and doors which could not otherwise be caulked or weather-stripped, and protective materials, such as paint, used to seal materials installed under this program. Repair material also includes furnace efficiency modifications limited to:

a. Replacement burners ~~designed to substantially increase the energy efficiency of the heating system~~;

b. Devices for modifying fuel openings, including one-time replacement of furnace filters ~~which will increase energy efficiency of the heating system~~; and

c. Electrical or mechanical furnace ignition systems which replace standing gas pilot lights.

~~22.~~ 25. "Regional clearinghouse" means the local Regional Development Commission which has the authority under Title IV of the Intergovernmental Cooperation Act of 1968, 42 United States Code, Sections 4231-4233 (1977), to review and comment with respect to federal and state funded projects.

~~23.~~ 26. "Rental dwelling unit" means a dwelling unit occupied by a person who pays periodic sums of money for the ~~use~~ occupancy of the dwelling unit.

~~24.~~ 27. "Separate living quarters" means those in which the occupants do not regularly live and eat with any other persons in the structure and which have either direct access from the outside of the building or through a common hall, or complete kitchen facilities for the exclusive use of the occupants. The occupants may be a single family, one person living alone, two or more families living together, or any other group of related or unrelated persons who share living arrangements.

~~25.~~ 28. "Single family dwelling unit" means a structure containing no more than one dwelling unit.

~~26.~~ 29. "State" means the State of Minnesota.

HE 22 + CHE 9/25

~~27. "Unit of general purpose local government" means any city, county, town, parish, village or other general purpose political subdivision of the state.~~ HE 23 + CHE 9/25

~~28.~~ 30. "Weatherization crew" means a group of weatherization laborers with a weatherization supervisor.

~~29.~~ 31. "Weatherization laborer" means a person who performs weatherization and repair activities necessary to complete work on eligible ~~households~~ dwelling units. The work may include ~~audits, inspections, and warehouse and inventory control~~ auditing, inspecting, delivery and physical warehousing of weatherization materials and equipment.

~~30.~~ 32. "Weatherization project" means a project conducted in a single geographical area which undertakes to weatherize dwelling units that are thermally inefficient.

~~31.~~ 33. "Weatherization supervisor" means a person who inspects ~~complicated~~ weatherization and repair activities and who is responsible for crew laborers' conduct, performance, and evaluation.

~~32.~~ 34. "Weatherization materials" means materials used to weatherize homes as outlined in Exhibit 8 MCAR S 4.0012 C.~~32~~ 34.-1.

Information included in Exhibit 8 MCAR S 4.0012 C.34.-1 is from 10 Code of Federal Regulations, Sections 456.101-456.914 (1980) amended by 45 Federal Register 63449, 63453, 63793 (1980). HE 24

EXHIBIT 8 MCAR S 4.0012 C.~~32~~ 34.-1

Allowable Weatherization Materials

Number	Title	Date Approved	CFR Section Reference
ANSI/AAMA 1002.9-1977	Voluntary Specification for Aluminum Combination Storm Windows for External Applications	11/1/79	456.813
ANSI/AAMA 1102.7-1977	Voluntary Specification for Aluminum Storm Doors	11/1/79	456.813
ANSI/NWMA I.S. 2-73	Industry Standard for Wood Windows	11/1/79	456.813

ANSI/NWMA I.S. 5-73	Ponderosa Pine Doors	11/1/79	456.813
ASTM C-516-75	Standard Specification for Vermiculite Loose Fill	11/1/79	456.806
ASTM C-520-65 (Reapproved 1975)	Standard Method for Density of Granular Loose-fill Insulation	11/1/79	456.806 456.807
ASTM C-570-72	Specification for Oil and Resin Based Caulking Compound for Building Construction	11/1/79	456.812
ASTM C-578-69	Standard Specification for Preformed, Block-type Cellular Polystyrene Thermal Insulation	11/1/79	456.808
ASTM E-737-80	Standard Practice for the Installation of Storm Windows, Replacement Windows, Multi-glazing, Storm Doors and Replacement Doors	9/17/80	456.911
ASTM C-755-73	HE25 Standard Recommended Practice for Selection for Vapor Barriers for Thermal Insulation	9/17/80	456.903
HH-I-515D (6/78)	Insulation, Thermal (Loose-fill for Pneumatic or Poured Application): Cellulosic or Wood Fiber	11/1/79	456.803 456.804 456.805
HH-I-524B (11-72 and Interim Amendment 1, 1/76)	Insulation Board, Thermal (Polystyrene)	11/1/79	456.808
HH-I-530A (1971 and Interim Amendment 3, 5/76)	Insulation Board, Thermal (Polyurethane and Polyiscocynurate)	11/1/79	456.809
HH-I-558B	Insulation Blocks, Boards,		

(1971 and Interim Amendment 3, 5/76)	Blankets, Felts, Sleeving, and Pipe Fitting Coverings	11/1/79	456.812
HH-I-573B (1968 and Interim Amendment, 1976)	Insulation, Thermal (Flexible Unicellular Sheet and Pipe Covering)	11/1/79	456.812
HH-I-574B (1974 and Interim Amendment 1, 9/76)	Insulation, Thermal (Perlite)	11/1/79	456.807
HH-I-585C (1974 and Interim Amendment 1, 9/76)	Insulation, Thermal (Vermiculite)	11/1/79	456.806
HH-I-1030A (1973 and Interim Amendment 1, 9/76)	Insulation, Thermal (Mineral Fiber for Pneumatic or Poured Application)	11/1/79	456.804 456.805
HH-I-1252B (1976)	Insulation, Thermal Reflective (Aluminum Foil)	11/1/79	456.811
TT-S-001543A (1971)	Sealing Compound, Silicone Rubber Base (for Caulking, Scaling, and Glazing in Buildings and Other Structures)	11/1/79	456.812
TT-S-00227E (1969 and Amendment 3, 10/70)	Sealing Compound, Elastomeric Type, Multi-component (for Caulking, Sealing, and Glazing in Buildings and Other Structures)	11/1/79	456.812
TT-S-001657 (COM-NBS) (1970)	Sealing Compound, Single Component Butyl Rubber Base, Solvent Release Type (for Buildings and Other Types of Construction)	11/1/79	456.812
TT-S-00230C (COM-NBS) (1970 and Amendment 2, 10/70)	Sealing Compound, Elastomeric Type, Single Component, (for Caulking, Sealing, and Glazing in Buildings and Other Structures)	11/1/79	456.812

TT-C-00598C (COM-NBS) (1970)	Caulking Compound, Oil and Resin Type, (for Building Construction)	11/1/79	456.812
TT-P-00791B (CSA-FSS) (1969 and Amendment 2, 1970)	Putty Linseed-Oil Type, (for Wood-Sash-Glazing)	11/1/79	456.812
FHDA 6-79	Industry Standard for Douglas Fir, Western Hemlock, and Sitka Spruce Doors and Blinds	11/1/79	456.813
NBS/PS 26-70	Rigid Polyvinyl-cloride Profile Extrusions	11/1/79	456.813
ASMT C-790-74	Standard Recommended Practices for Use of Latex Sealing Compounds	9/17/80	456.916
ASMT C-797-75	Standard Recommended Practices and Terminology for Use of Oil- and Resin-based Putty and Glazing Compounds	9/17/80	456.916
ASTM C-804-75	Standard Recommended Practices for Use of Solvent Release Type Sealants	9/17/80	456.916
ASTM C-834-76	Specification for Latex Sealing Compounds	11/1/79	456.812
ASTM D-1622-63 (Reapproved 1975)	Standard Method of Test for Apparent Density of Rigid Cellular Plastics	11/1/79	456.810
ASTM E-84-79B	Standard Test Method for Surface Burning Characteristics of Building Materials	11/1/79	456.808 456.809 456.810 456.812
ASTM E-96-66	Standard Test Method for Water Vapor Transmission of Materials in Sheet Form	11/1/79	456.805

~~Information for this exhibit is from 10 Code of Federal Regulations, Sections 456.101-456.914 (1980), amended by 45 Federal Register 63449, 63453, 63793 (1980).~~ HE 24

D. Allocation of funds. The department will allocate funds by county ~~based on the following formula: xd divided by ya =~~ ~~county's allocation~~

~~Where: x = the number of eligible recipients in the county,~~
~~d = number of degree days in the county,~~
~~ya = the sum of xd.~~

~~The formula weights eligible recipients and state degree days. Data on eligible recipients is from the 1970 federal census. The number of eligible recipients is the number of low-income families plus the number of unrelated individuals below 100 percent of poverty less the number of low-rent public housing units.~~

~~The second factor in the formula is "heating degree days." Data for this factor was received from the National Oceanic and Atmospheric Administration in a publication entitled Monthly Normals of Temperature, Precipitation and Heating and Cooling Degree Days, 1941-1970, published by the United States Department of Commerce, August 1973.~~ HE 27

~~E. Reservation allocations. American Indian reservations will receive two percent of the state allocation. All American Indian reservations will receive funds based on the low income population of the state according to the 1970 federal census data~~ to eligible grantees with a demonstrated ability to administer and deliver weatherization services. HE 29 but how do grantees demonstrate?

~~F. Contract period~~ 1. All contracts between the state and a grantee will run for six months beginning July 1.

~~G. Eligible applicants. Applicants' eligibility shall be determined by the commissioner or assistant commissioner.~~

~~1.~~ The commissioner shall allocate funds by geographic area to a public or private nonprofit agency with a demonstrated ability to administer and deliver weatherization services.

2. ~~Paragraph G.1. shall not apply if the commissioner or~~

~~the assistant commissioner~~ A grant shall be terminated if the department determines, on the basis of a public hearing conducted by the Office of Administrative Hearings, that the ~~plan carried out by the~~ grantee has been ineffective in meeting the purpose of ~~the statute~~ Minn. Stat. S 268.37. Notice of the public hearing shall be made ten days prior to the hearing in ~~two local newspapers~~ a legal newspaper in the ~~grantee's service area~~ county in which the grantee is located.

3. In making a determination pursuant to paragraph ~~C~~ D.2., the ~~commissioner or assistant commissioner acting on behalf of the commissioner~~ department shall evaluate the performance of the grantee and shall consider:

a. the extent to which the weatherization project achieves the goals of Minn. Stat. S 268.37 in a timely fashion;

b. the adherance to the plan ~~developed~~ submitted by the grantee;

c. the quality of work performed, through the grantee; and

d. the number, qualifications, and experience of staff members of the grantee.

~~H. Local~~ E. Grant applications. Applications to the department must contain the following information ~~described in this section:~~

1. ~~To be eligible for financial assistance under this rule, a local applicant shall submit an application or plan for state funds and any other funds used to support the plan to the commissioner but not later than thirty days after the announcement~~ A plan for the use of state funds, submitted not later than 30 days after receipt of written notice from the department of the availability of funds for each year. The ~~commissioner~~ department shall review each timely application and if the submission complies with the applicable provisions of this rule, approve a final budget and issue a notice of grant award.

2. Each application shall include:

a. the name and address of the local agency or office

responsible for administering the program;

b. a statement by ~~grantee's responsible authority~~ grantee insuring ~~the following~~ that:

(1) no dwelling unit may be weatherized without written documentation that the ~~dwelling~~ unit is ~~an~~ eligible ~~dwelling unit~~ for weatherization as provided in this rule;

(2) ~~That~~ there is an outreach process used to obtain applications ~~and that~~ together with a description of ~~the~~ that process ~~is included~~; and

(3) ~~The establishment of~~ it shall establish a priority system for client applications ~~giving priority to fuel oil users, elderly, and handicapped persons, and low income persons~~;

~~e. The total number of dwelling units proposed to be weatherized with grant funds from all sources during the fiscal year for which assistance is to be provided listed by the county served. Each application shall indicate percentages of each priority served;~~

~~d.~~ c. a financial schedule which indicates the monthly funding requirements based on projected production;

~~e.~~ d. staffing patterns for all weatherization personnel to allow local program grantees to attain production goals; and

~~f.~~ e. a written review of the plan by the regional clearinghouse.

~~3. The department shall set a minimum production goal for each grantee based on the statewide average cost for material and labor in past programs. This figure will be divided into the agency's grant to establish the minimum number of dwelling units to be weatherized~~ The minimum number of dwelling units to be completed by each grantee, to be established by the department.

~~4. If the grantee determines that it cannot fulfill its obligations under the plan in whole or part, the grantee may request an amendment or revision of the existing approved plan and resubmit a new plan or amendments within 30 days after the~~

~~written notice of request for consideration. The request from the grantee must be in a writing detailing its specific views with supporting data and arguments~~ The grantee shall insure that no eligible dwelling unit shall receive more than $750 in material and that each dwelling unit shall be weatherized according to the priority list established by the department as found in Exhibit 8 MCAR S 4.0012 E.4.-1 or Exhibit 8 MCAR S 4.0012 E.4.-2. The department shall waive the $750 restriction for individual eligible dwelling units on written application documenting that the material costs on the applicant's dwelling exceed $750 and that all activities are eligible according to the agency's priority list. A waiver will be granted if the dwelling exceeds 1500 square feet, or is two story, or requires in excess of 16 storm windows. If a waiver is granted, the total material expenditures cannot exceed $1,000.

Exhibit 8 MCAR S 4.0012 E.4.-1

WEATHERIZATION PRIORITIES FOR HOME TYPES I-IV 8-28-81

Weatherization deliverers will follow the priority list given below. If the particular activity listed currently exists or cannot be done, then an explanation must be made on the Retro Tech Job Sheet. If the client will not permit certain activities, then a statement with an explanation of the refusal to permit work, signed by the client, must be in the file.

Priorities

I. General Heat Waste

A. Caulk all exterior envelope infiltration points including:

1. Window and door frames.
2. Sill plates.
3. Foundation cracks.
4. Corners of buildings.
5. Under door sills.
6. Around all electrical & plumbing entrances.
7. All other infiltration areas.

B. Install hot water heater jackets except where a vent damper is present.

C. Insulate hot water pipes in accesible unheated space.

D. Weatherstrip moveable windows and doors between conditioned and unconditioned space, including basement doors, attic scuttles and knee wall entrances.

E. Install gaskets on electrical boxes located on the interior side of exterior walls.

F. Replace or reset broken or loose glass.

II. Insulate Attic area

A. To R-38

B. Vent in accordance with FHA/HUD Minimum Property Standards. (No vapor barrier 1 to 150 ratio with vapor barrier 1 to 300 ratio.)

C. Insulate attic scuttle doors to R-30; dam access area allowing entry to attic.

III. Insulate exterior walls to minimum of R-11.

IV. Insulate rim joist area to a minimum of R-19 with vapor barrier on warm side.

V. Insulate above grade foundation walls to R-11. When insulation is applied to interior side of the foundation wall, extend insulation 2 feet below grade.

On crawl space, either insulate perimeter foundation wall to R-11 or floor to minimum of R-19 where freezing of pipes is not a factor.

VI. Install storm windows on single glazed windows where storm windows are missing or existing storm windows are deteriorated beyond repair.

VII. Install new primary doors and windows only where old ones are beyond repair and cannot be weatherstripped.

Optional Items--Only after all of the required items are completed and if maximum material limit has not been reached.

I. Clock set back thermostats.

II. Storm doors.

Exhibit 8 MCAR S 4.0012 E.4.-2

MOBILE HOME PRIORITIES 8-28-81

Priorities for Type V Home

I. General Heat Waste

A. Caulk all exterior envelope infiltration points including:

1. Window and door frames.
2. Corners of buildings.
3. Under door sills.
4. Around all electrical and plumbing entrances.
5. Along all siding seams.
6. Around all "through the wall" accessories.

B. Install hot water heater jackets on electrical water heaters, or

Insulate water heater closet on gas and oil fired water heaters.

C. Insulate hot water pipes where accessible.

D. Replace all worn weather stripping on all moveable windows.

E. Weatherstrip all exterior prime doors.

F. Replace or reset broken or loose glass.

II. Insulate ceiling to maximum extent possible not to exceed R-38 and install at least two 8 inch round vents or equivalent.

III. Insulate floor to maximum extent possible not to exceed R-38.

IV. Install storm windows on those single glazed windows where the original storm is either missing or damaged beyond repair.

V. Install new prime doors and windows where existing ones are beyond repair.

Optional Items (Only after all required items are completed.)

I. Replace damaged or missing storm door.

II. Repair and tighten skirting--certify that permanent vent equaling 36 sq. in. per 25 lineal feet of skirt is installed if skirting repair is done.

~~5. The department shall set a maximum material limit of $750 and shall establish a weatherization priority list that is to be followed in the expenditure of funds.~~

~~I.~~ F. Allowable expenditures. Expenditures ~~allowed for grants under this rule must conform to the following guidelines.~~

~~1. To the maximum extent practical, the grant funds provided under this rule shall be used for administration, purchase of labor, supervision, materials, equipment, tools, and~~

HE37

HE39 + CHE 9/25

~~related matter.~~ ~~Allowable expenditures~~ shall be limited to:

~~a.~~ 1. the cost of purchase, delivery, and storage of weatherization materials~~.~~; ~~The cost, determined by a local grantee, shall not exceed an average dollar value per dwelling unit established by the grantee in that grantee's plan of:~~ HE 40 + CHE 9/25.

~~(1)~~ 2. transportation of weatherization materials, tools, equipment, and work crews to a storage site and to the ~~site of the weatherization~~ dwelling work site;

~~(2)~~ 3. maintenance, operation, and insurance of vehicles ~~used~~ to transport ~~weatherization materials~~ items in 2.;

~~(3)~~ 4. maintenance of tools and equipment;

~~(4) purchase or lease~~ 5. purchases of tools, equipment, and vehicles. All purchases with an acquisition value of $300 or more must have written approval from the department. ~~Purchase or lease of items with a value in excess of $50 must have prior approval in every instance.~~ Purchasing must follow procedures outlined in Federal Management Circulars A-87, A-102, ~~A-87~~ and A-110~~.~~ ~~All purchases over $300 must have written approval of the department.~~; HE 41

6. payments to an independent contractor for furnishing materials or providing labor or both in the weatherization of dwellings of low-income persons; HE 42

~~(5)~~ 7. the cost of employment of weatherization supervisors;

~~(6)~~ 8. the cost of employment of weatherization ~~labors~~ laborers; HE 43

~~(7)~~ 9. the cost, not to exceed $150 per dwelling unit, ~~of incidental repairs, including~~ HE 44 for repair materials and repairs to the heating source necessary to make the installation of weatherization materials effective; ~~and~~

~~(8)~~ 10. building permits where applicable;

~~b.~~ 11. the cost of liability insurance for weatherization projects for personal injury and property damage;

~~c. allowable~~ CHE 2/9 12. administrative expenses not to exceed ~~each agency's base administrative~~ 7.5 percent of each grantee's allocation; HE 45.

d. 13. weatherization of a building containing eligible rental dwelling units where not less than 66 percent of the rental units in the building are eligible dwelling units, and where the grantee enters into a written agreement with the landlord and or landlord's agent granting permission to do the weatherization work and guaranteeing that rents will not be raised due to the weatherization work, and no undue or excessive enhancement occurs to the value of the dwelling units. HE 46

2. G. Unallowable expenditures. Grant funds awarded under this rule shall not be used for any of these the following purposes:

a. 1. to weatherize a dwelling unit which has been weatherized previously with grant funds from the United States Department of Energy or state assistance under Minn. Stat. S 268.37 or this rule, unless such dwelling unit has been damaged by fire, flood, or an act of God, and repair of the damage to weatherization materials is not paid for by insurance or unless approved by the department; ? this appears to add new concept.

b. 2. to weatherize a dwelling unit which is vacant or designated for acquisition or clearance by a federal, state, or local government program within 12 months from the date weatherization of the dwelling unit would be scheduled to be completed; or

c. 3. to purchase cosmetic items, remodeling items, or a heating or cooling source.

3. Grantees wishing to use funds for other expenses related to the delivery of the weatherization program in accordance with Minn. Stat. S 268.31 must make application to the assistant commissioner who will act on behalf of the commissioner. Documentation must be included to substantiate any request.

J. H. Oversight responsibility. The projects of the grantees shall be supervised by the department in the following manner: HE 48 + CHE 9/25.

1. The commissioner, or the assistant commissioner on behalf of the commissioner, shall monitor and evaluate

Monitoring and periodic evaluation of the operation of projects carried out by the grantees receiving financial assistance under this rule through on-site inspections ~~or through other means~~, reviews of reports submitted by grantees and inspection of their books and records.

2. The department ~~shall make periodic evaluations of weatherization programs carried out by the grantee.~~ HE 49 CHE 9/25.

~~3. The commissioner, the assistant commissioner, or their appropriate authorized representatives~~ shall have access to any books, documents, papers, information, and records of any weatherization project receiving financial assistance under the law for the purpose of audit and examination.

~~4.~~ 3. The commissioner shall conduct an annual audit of the pertinent records of a grantee receiving financial assistance under this rule. HE 50 CHE 9/25

~~K.~~ I. Record keeping. ~~Each grantee receiving state financial assistance under this rule shall keep records the commissioner requires, including records which fully disclose the amount and disposition by each grantee of funds received under this rule, the total cost of the weatherization project to implement the grantee plan for which the assistance was given or used, including all sources and amounts of funds for the project or program, and other records the commissioner deems necessary for an effective audit and performance evaluation.~~ Record keeping shall be in accordance with Federal Management Circular A-87 ~~and any further requirements of this rule or requirements the commissioner may otherwise establish consistent with this rule~~. Each grantee receiving state financial assistance under this rule shall keep records the department requires, including records which fully disclose the amount and disposition by each grantee of funds received under this rule, the total cost of the weatherization project to implement the grantee plan for which the assistance was given or used, including all sources and amounts of funds for the project or program, and other records the department deems necessary for an effective audit and performance evaluation. HE 5 CHE 9/25

~~L.~~ J. Monthly reports. Each grantee receiving financial assistance under this rule shall submit a monthly program performance report and a monthly financial report or invoice to the ~~commissioner~~ department.

~~M. Eligible dwellings. No dwelling unit shall be eligible for weatherization assistance under this rule unless it is occupied by a family unit whose income is at or below 125 percent of the poverty level determined in accordance with criteria established by the Director of the Federal Office of Management and Budget based on household income for the 12 months before application.~~

HE 52 + CHE 9/25

~~N.~~ K. Granting process. ~~Once the~~ After approval of an application for a grant ~~has been approved~~, the ~~commissioner~~ department shall notify the grantee, in writing, of the approval ~~, and any conditions shall be specified~~. A grant contract shall be signed by the ~~commissioner or the assistant commissioner and the authorized local agency representative~~ department and the grantee. The grant contract shall specify ~~that~~ what report requirements and other grant requirements shall be met prior to any obligation of funds. Payments on grant contracts shall be made on the basis of grantee activity in the program. Cash on hand in excess of 30 day program requirements shall not be delivered. Payments to grantees shall be reviewed in comparison to expenditures to determine cash needs. Expenditures shall be reported monthly on forms to be supplied by the department. Grantees shall be required to project the next month's cash needs on the previous month's expenditure report. If the grantee determines that it cannot fulfill its obligations under the plan in whole or part, the grantee may request an amendment or revision of the existing approved plan and resubmit a new plan or amendments within 30 days after the written notice of request for consideration. The request from the grantee must be in writing detailing its specific views with supporting data and arguments.

HE 53

~~O. Fiscal responsibility. No funds shall be released to a grantee receiving financial assistance under this rule until it~~

HE 55

~~has submitted to the assistant commissioner a statement certifying that the grantee:~~

~~1. Has an established accounting system with internal controls adequate to safeguard its assets;~~

~~2. Has operating efficiency and reliable accounting data;~~

~~3. Promotes operating efficiency and encourages compliance with prescribed management policies; and~~

~~4. Has additional fiscal responsibility and accounting requirements the assistant commissioner may require consistent with these rules. The statement may be furnished by a certified public accountant, a duly licensed public accountant, or, in the case of a public agency, the appropriate public financial officer who accepts responsibility for providing required financial services to that agency.~~

HE 55 + CHE 9/25

~~P. Severability. The provisions of this rule shall be severable and if any phrase, clause, sentence, or provision is declared illegal or of no effect, the validity of the remainder of this rule and its applicability to any person or circumstance shall not be affected.~~

HE 56

~~Q.~~ L. Variances. ~~Variances may be granted in the following~~ situations.

CHE 2/9

1. The ~~commissioner may~~ department shall grant a variance ~~to this rule upon the request of the grantor~~ items listed in Exhibit 8 MCAR S 4.0012 C.34.-1 where it appears that:

a. ~~Changes have occurred which require revised standards and procedures to be specified by the grantor~~ product or test standards have changed; and

b. ~~The rationale for the rule in question can be met or exceeded by the specific alternatives which the grantor proposes to substitute;~~

HE 57 + CHE 9/25

~~c.~~ granting ~~of~~ the variance would not adversely affect the public health or safety; and

~~d.~~ c. granting of the variance would not conflict with standards imposed by law.

2. A grantee may submit a request for a variance in writing to the commissioner documenting the need for inclusion

CHE 2/9

why not be consistent and use "department"?

or exclusion of additional or existing items found in Exhibit 8 MCAR S 4.0012 C.34.-1. If the agency initiates the variance as a result of a United States Department of Energy directive it will notify all grantees in accordance with 8 MCAR S 4.0012 L.3. If a request for a variance is denied, the applicant shall be notified, in writing, of the reasons for the denial.

CHE 2/9

~~2.~~ 3. The ~~commissioner~~ department shall~~, within 30 days after receipt of a request for a variance,~~ notify ~~the grantor~~ all grantees, in writing ~~of the granting or denial of the~~, that a variance ~~and the reasons therefore. A variance may be conditioned on alternative practices proposed by the grantor or imposed by the commissioner~~ has been granted. Notification will be issued within 30 days after the granting of the variance.

CHE 2/9

See CHE 2/9 comment re this ?

~~3. Variances may be of limited duration, and may be revoked if a material change occurs in the circumstances which justified the variance.~~

Aug 6 rules submitted at hearing

Final mailed

Rule as Proposed (all new material)

8 MCAR § 4.0012 Weatherization assistanee for low income people.

A. Purpose. The purpose of this rule is to develop and implement a state weatherization assistance program under the authority of Minn. Stat. § 268.37 in the dwellings of low-income persons in order both to aid those persons least able to afford higher utility costs and to conserve needed energy.

B. Administration of grants. Grants awarded under this rule shall be administered in accordance with the following:

1. Office of Management and Budget Circular A-102 Revised, entitled "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments" issued September 12, 1977, 42 Federal Register 45828-45891 (1977).

2. Office of Management and Budget Circular A-110 entitled "Grants and Agreements With Institutions of Higher Education, Hospitals, and other Nonprofit Organizations" issued July 30, 1976, 41 Federal Register 32016-32037 (1976).

3. Office of Management and Budget Circular A-73 entitled "Audit of Federal Operations and Programs" issued March 15, 1978, 43 Federal Register 12404-12406 (1978).

4. Office of Management and Budget Circular A-87 entitled "Cost Principles for State and Local Governments" issued January 15, 1981, 46 Federal Register 9548-9554 (1981).

5. Office of Management and Budget Circular A-95, entitled "Evaluation, Review and Coordination of Federal and Federally Assisted Programs and Projects" issued January 13, 1976, 40 Federal Register 2052-2065 (1976).

6. United States Treasury Circular 1082, entitled "Notification to States of Grant-in-Aid Information" issued February 17, 1976, 41 Federal Register 2652 (1976).

7. United States Treasury Circular 1075 entitled, "Withdrawal of Cash From the Treasury for Advances Under Federal Grant and Other Programs" issued October 14, 1977, 31 Code of Federal Regulations 205 (1980).

C. Definitions. As used in this rule the following terms have the meanings given them.

1. "Agency" means an organization that receives funds under this rule to operate a weatherization program.

2. "Assistant commissioner" means the Assistant Commissioner of the Division of Training and Community Services of the Department of Economic Security.

3. "Community action agency" means a private corporation or public agency ~~established pursuant to the Economic Opportunity Act of 1964, 42 United States Code, Sections 2701-2996(1) (1977 and Supplement III 1980),~~ which is authorized to administer funds received from federal, state, local, or private funding entities to assess, design, operate, finance and oversee antipoverty programs.

4. "Commissioner" means the Commissioner of the Department of Economic Security.

5. "Cosmetic items" ~~means items which when installed will not reduce energy costs in a cost-effective manner. Cosmetic items include finishes, decorative fenestration, and elevation materials, such as aluminum siding, board and batten clapboard, brick, shakes and asphalt siding.~~

~~6.~~ "Department" means the Department of Economic Security.

~~7.~~ "Dwelling unit" means a house or household. It includes stationary mobile homes, homes, apartments, and a group of rooms or a single room occupied as separate living quarters.

9 ~~8~~. "Elderly person" means a person who is 60 years of age or older.

10 ~~9~~. "Eligible Dwelling Unit" means a dwelling that is occupied by a low-income family unit.

~~10. "Eligible Recipients" means the number of low income families plus the number of unrelated individuals below 100 percent of poverty less the number of low rent public housing units.~~

10 ~~11~~. "Family unit" means all persons living together in a dwelling unit.

12 ~~12~~. "Grantor" means the Division of Training and Community Services, Department of Economic Security, State of Minnesota.

13 ~~13~~. "Grantee" means an organization that receives funds under this rule to operate a weatherization program.

14 ~~14~~. "Handicapped person" means a person who, on the basis of an opinion by a qualified medical person, is permanently physically or mentally disabled. Add language from report H.E 18

15 ~~15~~. "Heating Degree Days" means for any one day when the mean temperature is less than 65° F. there exists as many degree days as there are Farenheit degrees difference in temperature between the mean temperature for the day and 65° F. add language from report H.E 19

16 ~~16~~. "Heating or cooling source" means a device which can raise or lower temperatures within a dwelling unit as part of the permanent heating, ventilating, and air conditioning system installed in the dwelling unit. It includes furnaces, heat pumps, stoves, boilers, heaters, fireplaces, air conditioners, fans, and solar devices.

17 ~~17~~. Insert definition of "Independent Contractor" H.E. 20.

18. "Indian tribe" means any tribe, band, nation, or other organized group or community of Native Americans, including any Alaska native village, or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, 43 United States Code, Sections 1601-1628 (1977 and Supplement III 1980), which:

a. Is recognized as eligible for special programs and services provided by the United States to Native Americans because of its status as Native Americans; or

b. Is located on, or in proximity to, a federal or

state reservation or rancheria.

H.E. 21

19 ~~18.~~ "Low income" ~~means that total household income in relation to family size is at or below 125 percent of the poverty level determined in accordance with criteria established by the Director of the Federal Office of Management and Budget in 45 Code of Federal Regulations 1060 (1981), or is the basis for which cash assistance payments have been paid during the preceding 12 month period under Title IV or Title XVI of the Social Security Act.~~ Use language from Hearing Committee report

20 ~~19.~~ "Mechanical equipment" means a control device or apparatus which is primarily designed to improve the heating or cooling efficiency of a dwelling unit and which will be permanently affixed to an existing heating or cooling source. It includes a flue damper, clock setback thermostat, filter, and replacement limit switches.

21 ~~20.~~ "Multifamily dwelling unit" means a dwelling unit which is located in a structure containing more than one dwelling unit.

22 ~~21.~~ "Number of low-income, owner-occupied dwelling units in the county" means the number of those dwelling units in a county as determined by the department using the most recent, available census data.

23 ~~22.~~ "Number of low-income, renter-occupied dwelling units in the county" means the number of those dwelling units in a county as determined by the department using the most recent, available census data.

24 ~~23.~~ "Repair material" means an item necessary for the effective performance or preservation of weatherization materials. Repair material includes lumber used to frame or repair windows and doors which could not otherwise be caulked or weather-stripped, and protective materials, such as paint, used to seal materials installed under this program. Repair material also includes furnace efficiency modifications limited to:

a. Replacement burners ~~designed to substantially increase the energy efficiency of the heating system~~

b. Devices for modifying fuel openings, including

one-time replacement of furnace filters ~~which will increase energy efficiency of the heating system~~; and

c. Electrical or mechanical furnace ignition systems which replace standing gas pilot lights.

25 ~~24.~~ "Regional clearinghouse" means the local Regional Development Commission which has the authority under Title IV of the Intergovernmental Cooperation Act of 1968, 42 United States Code, Sections 4231-4233 (1977), to review and comment with respect to federal and state funded projects.

26 ~~25.~~ "Rental dwelling unit" means a dwelling unit occupied by a person who pays periodic sums of money for the occupancy of the dwelling unit.

27 ~~26.~~ "Separate living quarters" means those in which the occupants do not regularly live and eat with any other persons in the structure and which have either direct access from the outside of the building or through a common hall, or complete kitchen facilities for the exclusive use of the occupants. The occupants may be a single family, one person living alone, two or more families living together, or any other group of related or unrelated persons who share living arrangements.

28 ~~27.~~ "Single family dwelling unit" means a structure containing no more than one dwelling unit.

29 ~~28.~~ "State" means the State of Minnesota.

~~29. "Unit of general purpose local government" means any city, county, town, parish, village or other general purpose political subdivision of the state.~~

30 ~~29~~ ~~30~~. "Weatherization crew" means a group of weatherization laborers with a weatherization supervisor.

31 ~~30~~ ~~31.~~ "Weatherization laborer" means a person who performs weatherization and repair activities necessary to complete work on eligible dwelling units. The work may include auditing, inspecting, delivery and physical warehousing of weatherization materials and equipment.

32 ~~31~~ ~~32.~~ "Weatherization project" means a project conducted in a single geographical area which undertakes to weatherize dwelling units that are thermally inefficient.

33 ~~34.33.~~ "Weatherization supervisor" means a person who inspects weatherization and repair activities and who is responsible for crew laborers' conduct, performance, and evaluation.

Draft Report #2 4

Write up in formate used in report

34 ~~33 34.~~ "Weatherization materials" ~~means materials used to weatherize homes as outlined in Exhibit 8 MCAR § 4.0012 C.34.-1. Information included in this exhibit is from 10 Code of Federal Regulations, Sections 456.101-456.914 (1980), amended by 45 Federal Register 63449, 63453, 63793 (1980).~~

~~33~~ 34.

EXHIBIT 8 MCAR § 4.0012 C.~~34~~.-1

Allowable Weatherization Materials

Number	Title	Date Approved	CFR Section Reference
ANSI/AAMA 1002.9-1977	Voluntary Specification for Aluminum Combination Storm Windows for External Applications	11/1/79	456.813
ANSI/AAMA 1102.7-1977	Voluntary Specification for Aluminum Storm Doors	11/1/79	456.813
ANSI/NWMA I.S. 2-73	Industry Standard for Wood Windows	11/1/79	456.813
ANSI/NWMA I.S. 5-73	Ponderosa Pine Doors	11/1/79	456.813
ASTM C-516-75	Standard Specification for Vermiculite Loose Fill	11/1/79	456.806
ASTM C-520-65 (Reapproved 1975)	Standard Method for Density of Granular Loose-fill Insulation	11/1/79	456.806 456.807
ASTM C-570-72	Specification for Oil and Resin Based Caulking Compound for Building Construction	11/1/79	456.812
ASTM C-578-69	Standard Specification for Prefomed, Block-typed Cellular Polystyrene Thermal Insulation	11/1/79	456.808

ASTM D-737-80	Standard Practice for the Installation of Storm Windows, Replacement Windows, Multi-Glazing, Storm Doors and Replacement Doors	9/17/80	456.911
ASTM C-755-73	Standard Recommended Practice for Selection for Vapor Barriers for Thermal Insulation	9/17/80	456.903
HH-I-515D (6/78)	Insualtion, Thermal (Loose-fill for Pneumatic or Poured Application): Cellulosic or Wood Fiber	11/1/79	456.803 456.804 456.805
HH-I-524B (11-72 and Interim Amendment 1, 1/76)	Insulation Board, Thermal (Polystyrene)	11/1/79	456.808
HH-I-530A (1971 and Interim Amendment 3, 5/76)	Insulation Board, Thermal (Polyurethane and Polyiscocynurate)	11/1/79	456.809
HH-I-558B (1971 and Interim Amendment 3,5/76)	Insulation Blocks, Boards, Blankets, Felts, Sleeving, and Pipe Fitting Coverings	11/1/79	456.812
HH-I-573B (1968 and Interim Amendment, 1976)	Insulation, Thermal (Flexible Unicellular Sheet and Pipe Covering)	11/1/79	456.812
HH-I-574B (1974 and Interim Amendment 1, 9/76)	Insulation, Thermal (Perlite)	11/1/79	456.807
HH-I-585C (1974 and Interim Amendment 1, 9/76)	Insulation, Thermal (Vermiculite)	11/1/79	456.806
HH-I-1030A (1973 and Interim Amendment 1, 9/76)	Insulation, Thermal (Mineral Fiber for Pneumatic or Poured Application)	11/1/79	456.804 456.805

HH-I-1252B (1976)	Insulation, Thermal Reflective (Aluminum Foil)	11/1/79	456.811
TT-S-001543A (1971)	Sealing Compound, Silicone Rubber Base (for Caulking, Scaling, and Glazing in Buildings and Other Structures)	11/1/79	456.812
~~TT-S-0027E~~ TT-S-00227E (1969 and Amendment 3, 10/70)	Sealing Compound, Elastomeric Type, Multi-Component (for Caulking, Sealing, and Glazing in Buildings and Other Structures)	11/1/79	456.812
TT-S-001657 (COM-NBS) (1970)	Sealing Compound, Single Component Butyl Rubber Base, Solvent Release Type (for Buildings and Other types of Construction)	11/1/79	456.812
TT-S-00230C (COM-NBS) (1970 and Amendment 2, 10/70)	Sealing Compound, Elastomeric Type, Single Component, (for Caulking, Sealing, and Glazing in Buildings and Other Structures)	11/1/79	456.812
TT-C-00598C (COM-NBS) (1970)	Caulking Compound, Oil and Resin Type, (for Building Construction)	11/1/79	456.812
TT-P-00791B (CSA-FSS) (1969 and Amendment 2, 1970)	Putty Linseed-Oil Type, (for Wood-Sash-Glazing)	11/1/79	456.812
FHDA 6-79	Industry Standard for Douglas Fir, Western Hemlock, and Sitka Spruce Doors and Blinds	11/1/79	456.813
NBS/PS 26-70	Rigid Polyvinyl-cloride Profile Extrusions	11/1/79	456.813
ASMT C-790-74	Standard Recommended Practices for Use of Latex Sealing Compounds	9/17/80	456.916
ASMT C-797-75	Standard Recommended Practices and Terminology for Use of Oil and Resin-Based Putty and Glazing Compounds.	9/17/80	456.916

ASTM C-804-75	Standard Recommended Practices for Use of Solvent Release Type Sealants	9/17/80	456.916
ASTM C-834-76	Specification for Latex Sealing Compounds	11/1/79	456.812
ASTM D-1622-63 (Reapproved 1975)	Standard Method of Test for Apparent Density of Rigid Cellular Plastics	11/1/79	456.810
ASTM E-84-79B	Standard Test Method for Surface Burning Characteristics of Building Materials	11/1/79	456.808 456.809 456.810 456.812
ASTM E-96-66	Standard Test Method for Water Vapor Transmission of Materials in Sheet Form	11/1/79	456.805
BOCA Research Report No. 72-23		11/1/79	456.813

D. Allocation of funds. The department will allocate funds by county to eligible grantee's with a demonstrated ability to administer and deliver weatherization services. ~~Each county's allocation will be based on the following formula: xd divided by ya = county's allocation~~

~~Where: x = the number of eligible recipients in the county; d = the number of heating degree days in the county; ya = the sum of xd~~

Howuth comments

1. Grant period. All contracts between the state and a grantee will run for six months beginning July 1.

~~2. Indian Reservation allocations. American Indian reservations will receive two percent of the state allocation. Each reservation will receive funds based on the low income population of the state according to the latest available census data.~~

locate in old mill

Draft Report
use language in report

~~2.~~ 3. ~~A grant may be terminated if the department determines, on the basis of public hearing conducted by it, that the grantee has been ineffective in meeting the purpose of the statute. Notice of the public hearing shall be made ten days prior to the hearing in two local newspapers in the grantees service area.~~

3 4. In making a determination pursuant to paragraph D.2., the Department shall evaluate the performance of the grantee and shall consider:

a. The extent to which the weatherization project achieves the goals of Minn. Stat. § 268.37 in a timely fashion;

b. The adherance to the plan submitted by the grantee;

c. The quality of work performed, through the grantee, and

d. The number, qualifications, and experience of staff members of the grantee.

E. Grant Applications. Applications to the department must contain the following information:

1. A plan for the use of state funds, submitted not later than thirty days after receipt of written notice from the Department of the availability of funds for each year. The Department shall review each timely application and if the submission complies with the applicable provisions of this rule, approve a final budget and issue a notice of grant award.

2. Each application shall include:

a. The name and address of the local agency or office responsible for administering the program;

b. A statement by grantee ~~responsible authority~~ insuring that:

(1) No dwelling unit shall be weatherized without written documentation that the unit is eligible for weatherization as provided in this rule; and

(2) There is an outreach process used to obtain applications together with a description of that process, and

#34

(3) Use language in report ~~It shall adhere to a priority system for client applications, giving priority to fuel oil users, elderly and handicapped persons.~~

~~c. The total number of dwelling units proposed to be weatherized with grant funds from all sources during the fiscal year for which assistance is to be provided listed by the county served. Each application shall indicate percentages of each~~

~~priority served;~~

~~c~~ d. A financial schedule which indicates the monthly funding requirements based on projected production;

~~d~~ e. Staffing patterns for all weatherization personnel to allow local program grantees to attain production goals; and

~~e~~ f. A written review of the plan by the regional clearinghouse.

3. The minimum number of dwelling units to be completed by each grantee, to be established by the department. ~~based on the state wide average cost for material and labor in past programs~~.

4. The grantee shall insure that no eligible dwelling unit shall receive more than $750. in material and that each dwelling unit shall be weatherized according to the priority list established by the Department. The Department, for good cause, may waive the $750. restriction for individual eligible dwelling units on written application therefore. #37 Add language in report

~~F.~~ Allowable expenditures. ~~Grant funds shall be used for administration, purchase of labor, supervision, materials, equipment and tools. Allowable~~ Expenditures shall be limited to:

1. The cost of purchase, delivery, and storage of weatherization materials.

2. Transportation of weatherization materials, tools, equipment and work crews to a storage site and to the dwelling work site:

3. Maintenance, operation and insurance of vehicles to transport items in paragraph F.2.

4. Maintenance of tools and equipment;

use language in report.

5. ~~Purchase or lease of tools, equipment, and vehicles. Purchase or lease of items with a value in excess of $50. must have prior approval in every instance. Purchasing must follow procedures outlined in Federal Management Circulars A-102, A-87 and A-110. All purchases over $300. must have written approval of the department.~~ parts & drawings

6. Add language from Hearing Examiners report HE 42

~~7~~. The cost of employment of weatherization supervisors.

8. The cost of employment of weatherization laborers

9. The cost, not to exceed $150. per dwelling unit, ~~of incidental repairs~~, for ~~including~~ repair materials and repairs to the heating source necessary to make the installation of weatherization materials effective.

10. Building permits where applicable.

~~10.~~ The cost of liability insurance for weatherization projects for personal injury and property damage.

12. Allowable administrative expenses not to exceed 7.5 percent each ~~agency's base administrative~~ grantee's allocation.

13. Weatherization of a building containing eligible rental dwelling units where not less than 66 percent of the rental units in the building are eligible dwelling units and where the grantee enters into a written agreement with the landlord or landlord's agent granting permission to do the weatherization work and guaranteeing that rents will not be raised due to the weatherization work. ~~and no undue or excessive enhancement occurs to the value of the dwelling units.~~

G. Unallowable expenditures. Grant funds shall not be used for any of the following purposes:

1. To weatherize a dwelling unit which has been weatherized previously with grant funds from the United States Department of Energy or state assistance under Minn. Stat. § 268.37 or this rule, unless such dwelling unit has been damaged by fire, flood, or an act of God, and repair of the damage to weatherization materials is not paid for by insurance; or unless approved by dept.

2. To weatherize a dwelling unit which is vacant or designated for acquisition or clearance by a federal, state, or local government program within 12 months from the date weatherization of the dwelling unit would be scheduled to be completed; or

3. To purchase cosmetic items, remodeling items, or a heating or cooling source.

H. Oversight responsibility. The projects of the grantees shall be supervised by the Department in the following manner:

1. Monitoring and evaluation of the operation of projects carried out by the grantees receiving financial

assistance under this rule through on-site inspections, review of reports submitted by grantees and inspection of their books and records.

2. The Department shall have access to any books, documents, papers, information, and records of any weatherization project receiving financial assistance under the law for the purpose of audit and examination.

3. The commissioner ~~may~~ shall conduct an annual audit of the pertinent records of a grantee receiving financial assistance under this rule.

I. Record keeping. Record keeping shall be in accordance with Federal management Circular A-87 ~~and any other requirements the commissioner may establish consistant with the program~~.

J. Monthly reports. Each grantee receiving financial assistance under this rule shall submit a monthly program performance report and a monthly financial report or invoice to the Department.

K. Granting process. After approval of an application for a grant, the Department shall notify the grantee in writing, of the approval. A grant contract shall be signed by the Department and the grantee. The grant contract shall specify what report requirements and other grant requirements shall be met prior to any obligation of funds. Payments on grant contracts shall be made on the basis of grantee activity in the program. Cash on hand in excess of thirty day program requirements shall not be delivered. Payments to grantees shall be reviewed in comparison to expenditures to determine cash needs. Expenditures shall be reported monthly on forms to be supplied by the Department. Grantees shall be required to project the next month's cash needs on the previous month's expenditure report. If the grantee determines that ~~is~~ cannot fulfill its obligations under the plan in whole or part, the grantee may request an amendment or revision of the existing approved plan and resubmit a new plan or amendments within 30 days after the written notice of request for consideration. The request from the grantee must be in a writing detailing its specific views with

supporting data and arguments.

L. Fiscal responsibility. No funds shall be released to a grantee ~~receiving~~ financial assistance until it has submitted to the ~~Department a statement certifying that the~~ grantee:

1. Has an established accounting system with internal controls adequate to safeguard its assets;

2. Has operating efficiency and reliable accounting data;

3. Promotes operating efficiency and encourages compliance with prescribed management policies.

The certifying statement may be furnished by a certified public accountant, a duly licensed public accountant, or, in the case of a public agency, the appropriate public financial officer who accepts responsibility for providing required financial services to that agency.

M. Severability. The provisions of this rule shall be severable and if any phrase, clause, sentence, or provision is declared illegal or of no effect, the validity of the remainder of this rule and its applicability to any person or circumstance shall not be affected.

withdrawn all

Add Variance section "L" as typed in report.

SF-00006-02

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT Economic Security
T&CS/Weatherization Program

TO : Judith Wehrwein
Attorney General's Office

DATE: 3-4-82

FROM : Roger Williams

PHONE: 296-5744

SUBJECT: Proposed Rules for State Weatherization Program.
ECSEC-81-006-RL, Hearing Record.

Enclosed please find the Hearing Record for the Weatherization Assistance for Low-Income Persons Program. Documents attached include:

1. Rules--Original plus 3 copies.
2. Order to Adopt Rules.
3. Order for Hearing.
4. Affidavit for Mailing (2 documents).
5. Mailing List Certification.
6. All sets of rules--State Register, Amended and proposed at hearing.
7. Hearing Examiner's Report.
8. Chief Hearing Examiner's Report (2).
9. Statement of Need and Reasonableness.
10. Hearing Transcript.
11. Copies of testimony presented at hearing.
12. Certificate of Compliance with rule-making procedure.
13. Copy of Notice of Submission to Attorney General's Office.
14. Affidavit of Mailing.

Also enclosed:

a. Copy of agencies' response to testimony.

b. Statement that rules will not cause additional local expenditures.

c. Hearing registration list.

d. Statement of agencies' presenters.

To: Larry
Date: 3/12/82
Re: Economic Security – Weatherization rules

Rules as Adopted

p. 10, line 29. .0012. D.
It is not clear what is necessary in order for a grantee to demonstrate administrative and delivery capability.

.0012 D. 1.
p. 11 line 5-7 It is not clear that referenced Notice is an addition to Notice required by OAH.

.0012 E. 2. a.
p. 11 line 36 For greater clarity, it would be preferable to have this read "applicant" rather than "local agency or office"

.0012 E. 4. -1 Exhibits
p. 13, line 17 Home Types "I-IV" are not defined in these rules – how is the reader to know what "type" is meant

p. 13 line 36 "accesible" should be "accessible"

p. 14 line 2. "conditioned space" is not defined in these rules. How is the reader to know what it is?

p. 14 line 14 [My editorial comment. I assume these priorities are to be taken in order as set out. It seems incredible that insulating exterior walls – a most costly and complex business, not to speak of hazardous when done with urea formaldehyde

is set ahead of more feasible and less costly steps like insulation of rim joist area, storm windows, installation of set-back thermostat. This prioritization seems cock-eyed and as poorly conceived as most sections of these rules]

.0012 Gr. 1

p. 17 line 17 The addition of "unless approved by department appears to add a new concept to exception from what is an unallowable expenditure.

.0012 L. 2.

p. 20 line 36. After all the comments of HE and CHE 9/25 which contradict, it would seem preferable at least to be consistent and use "department" rather than "commissioner" in this section.

.0012 L 3

p. 21 line 9 CHE 2/9 notes implication of requirement to notify "all grantees" yet agency has retained the phrase. Perhaps we should check if this is an oversight

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT

Office Memorandum

RECEIVED
AUG 5 1981
ADMINISTRATIVE HEARINGS

TO : All Persons requesting notification of hearing of proposed adoption of rules by the Department of Economic Security

DATE: July 31, 1981

FROM : Rolf Middleton
Commissioner

PHONE: (612)296-5752

SUBJECT: Proposed Rules for the State Weatherization Program

Please take notice that the Department of Economic Security will move on August 6, 1981 at 9:30 A.M. of said day to amend the proposed rules previously submitted in the above matter by substituting the attached as the proposed rule in place of the rules heretofore submitted. In the opinion of the Department the changes in the proposed amended rules, attached hereto, are not substantive.

ECSEC-81-006-RL

Exhibit No. 1

File No.

RECEIVED
JUN 22 1981
ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA

DEPARTMENT OF ECONOMIC SECURITY

In the Matter of the Proposed Adoption
of Rules of the State of Minnesota
Governing Weatherization

ORDER FOR HEARING

IT IS ORDERED this 19th day of June, 1981, that a public hearing on the proposed rules captioned above be held in the large hearing room, 7th floor, American Center Building, 150 East Kellogg Blvd., St. Paul, Minnesota, on August 6, 1981, commencing at 9:30 A.M., and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard.

IT IS FURTHER ORDERED, that notice of said hearing be given to all persons who have registered their names with the State Department of Economic Security for that purpose and be published in the State Register.

STATE OF MINNESOTA

Rolf Middleton

Rolf Middleton, Commissioner
Department of Economic Security

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT

Office Memorandum

RECEIVED
JUL 7 1981
ADMINISTRATIVE HEARINGS

TO : All Persons requesting notification of hearing of proposed adoption of rules by the Department of Economic Security

DATE: July 6, 1981

FROM : Alan Chapman, Supervisor
State Weatherization Program

PHONE: (612)296-5752

SUBJECT: Notice of Hearing for the Department of Economic Security's State Weatherization Program

Notice is hereby given that a public hearing in the above entitled matter will be held pursuant to Minn. Stat. § 15.0412, Subd. 4 (1980) at 9:30 A.M. in the large hearing room on the 7th floor of the American Center Building, 150 East Kellogg Blvd., St. Paul, Minnesota 55101, on August 6, 1981.

All interested or affected persons will have the opportunity to participate. Statements may be made orally and written material may be submitted at the hearing. In addition, written material may be submitted by mail to Hearing Examiner, Richard Luis, Office of Administrative Hearings, Room 300, 1745 University Avenue, St. Paul, Minnesota, 55140, telephone (612)296-8114. Unless a longer period, not to exceed twenty calendar days, is ordered by the hearing examiner at the hearing, the record will remain open for the inclusion of written material for five (5) working days after the hearing ends. The proposed rules are subject to changes as a result of the rules hearing process. The agency, therefore, strongly urges those who may be affected in any manner by the substance of the proposed rules to be considered in this hearing to participate in the rules hearing process. In addition it is suggested, to save time and avoid duplication, that those persons, organizations or associations having common viewpoints or interests in these proceedings join together where possible and present a single statement on behalf of such interests. All such statements will be entered with and become a part of the record.

The rule hearing procedure is governed by Minn. Stat. § § 15.0411-15.0417 and 15.052 (1980) and by 9 MCAR § § 2.101-2.113. All questions and statements about procedure may be directed to the Hearing Examiner. All questions related to the content of the rules may be directed to Alan Chapman, Director of the State Weatherization Program, Minnesota Department of Economic Security, 690 American Center Building, 150 East Kellogg Blvd., St. Paul, Minnesota, 55101, Telephone (612)296-5752. One free copy of the rules will also be available upon request from Alan Chapman.

Minn. Stat. § 268.37 Subd. 3 (1979 Supp) provides that the Commissioner of Economic Security shall promulgate rules to administer the weatherization grants program. The rules shall describe: (a) procedures for administration of grants, (b) data to be reported by grant recipients, and (c) other matters the Commissioner deems relevant for the proper administration of the grant program. The purpose of these standards is to facilitate the implementation of rules in accordance with Minn. Stat. § 268.37 (1979 Supp.).

The proposed rules, if adopted, would replace Department of Economic Security rules 8 MCAR § 4.4010 which are available upon request at the Department of Economic Security. The proposed rules are minimum standards for the operation of the weatherization assistance program for low-income persons in the State of Minnesota and include: (1) a Statement of Purpose, (2) administration of costs, (3) definitions, (4) allocation of funds, (5) contract period, (6) eligible applicants, (7) local applications, (8) oversight responsibility, (9) record keeping, fiscal responsibilities and reporting, (10) the grant process, (11) severability, and (12) variances.

Minn. Stat. Ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he/she commences lobbying. A lobbyist is defined in Minn. Stat. § 1014.01, subd. 11 (1980) 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 (5) hours in any month or more than $250., not including his/her 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/her 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.

The statute provides certain exception. 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 (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 agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notifications 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 rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

Exhibit No. 2

File No.

Date

RECEIVED
JUL 10 1981
ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Adoption of Rules of the State Minnesota Governing Weatherization

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

Susan Walt, being first duly sworn deposes and says:

That on the 6th day of July, 19 81, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of (Hearing/Intent to Adopt Rules Without Public Hearing) by depositing in the (State of Minnesota Central Mail System for United States mailing (or) United States mail) at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the State Minnesota for the purpose of receiving notice of the proposed adoption of rules by this Department of Economic Security

Susan Walt

Subscribed and sworn to before me
this 6th day of July, 1981.

Mary L. Le Vasseur

MARY L. LE VASSEUR
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Commission Expires Aug. 11, 1985

RC

In the Matter of the Proposed Adoption of Rules of the State Minnesota Governing Weatherization

AFFIDAVIT OF MAILING

RECEIVED
AUG 10 1981
ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

Patricia M. Palmer, being first duly sworn deposes and says:

That on the 31st day of July, 19 81, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of (Hearing/Intent to Adopt Rules Without Public Hearing) by depositing in the (State of Minnesota Central Mail System for United States mailing (or) United States mail) at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the State Minnesota for the purpose of receiving notice of the proposed adoption of rules by this Department of Economic Security.

Patricia M. Palmer

Subscribed and sworn to before me
this 31st day of July, 1981.

VICTOR G. PEREZ
WASHINGTON COUNTY
NOTARY PUBLIC - MINNESOTA
MY COMMISSION EXPIRES AUG 5, 1982

Exhibit E

STATE OF MINNESOTA

COUNTY OF RAMSEY

RECEIVED
AUG 10 1981
ADMINISTRATIVE HEARINGS

CERTIFICATE

In the Matter of the Proposed Adoption of Rules of the State of Minnesota Governing Weatherization

---

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. § 15.0412, subd. 4, that their names be placed on file with and maintained by the State of Minnesota for the purpose of receiving notice of the proposed adoption of rules by this Dept of Economic Security is accurate and complete as of 8:00 A.M., this 31 day of July, 1981.

Bruce A. Lindsey

Bruce A. Lindsey

RECEIVED
AUG 10 1981
ADMINISTRATIVE HEARINGS

Executive Director
Anoka Community Action Program
7150 E. River Road
Fridley, MN 55432

Executive Director
Arrowhead Economic Opportunity Agency
P.O. Box 944
Virginia, MN 55792

Executive Director
Bi-County Community Action Council
P.O. Box 553
Bemidji, MN 56601

Executive Director
Clay Wilkin Opportunity Council
2700 - 12th Ave. South
Moorhead, MN 56560

Executive Director
Dakota County Human Services
357 - 9th Ave. No.
South St. Paul, MN 55075

Executive Director
Duluth Community Action Program
206 West 4th St.
Duluth, MN 55806

Executive Director
Goodhue-Rice-Wabasha Citizens Action Council
P.O. Box 157
Zumbrota, MN 55992

Executive Director
Inter-County Community Council
P.O. Box 187
Oklee, MN 56742

Executive Director
Koochiching-Itasca Action Council
Taconite School P.O. Box 117
Taconite, MN 55786

Executive Director
Lakes & Pines Community Action Council
129 W. Forest Avenue
Mora, MN 55051

Executive Director
Mahube Community Action Agency
P.O. Box 747

Executive Director
Minn. Valley Action Council
P.O. Box 3327
Mankato, MN 56001

Executive Director
Northwest Comm. Action Council
P.O. Box 195
Badger, MN 56714

Executive Director
Ottertail-Wadena Comm. Action Council
P.O. Box "L"
New York Mills, MN 56567

Executive Director
Prairie Five Comm. Action Council
7th & Washington Sts. Suite 302
Montevideo, MN 56265

Executive Director
Ramsey Action Programs
100 Market Suqare
509 Sibley Street
St. Paul, MN 55101

Executive Director
Region 6 E. Comm. Action Agency
P.O. Box 1359
Willmar, MN 56201

Executive Director
Scott-Carver Economic Council
Sixth & Oak
Carver, MN 55315

Executive Director
SEMCAC
P.O. Box 549
Rushford, MN 55971

Executive Director
Southwestern MN Opportunity Council
P.O. Box 393
Worthington, MN 56187

Executive Director
Tri-County Action Programs, Inc.
728 So. Benton Dr.

Tri County Comm. Action Progra
404 - 2nd Ave. N.E.
Little Falls, MN 56345

Executive Director
Tri-Valley Opportunity Council
P.O. Box 607
Crookston, MN 56716

Executive Director
Washington County Weatherizati
Program
7024 Stillwater Blvd.
Oakdale, MN 55119

Executive Director
West Central MN Comm. Action, I
P.O. Box 3026
Elbow Lake, MN 56531

Executive Director
Western Community Action Counc
P.O. Box 246
Marshall, MN 56258

Executive Director
Wright County Comm. Action, In
P.O. Box 39
Waverly, MN 55390

Executive Director
Mpls. Comm. Action Agency
237 - 239 City Hall
Mpls., MN 55415

Executive Director
Hennepin County Dept. of CETA
1st Level So.
Nennepin County Govt. Ctr.
Mpls., MN 55487

DIRECTORY

INDIAN COMMUNITIES

RESERVATION	ADDRESS	DIRECTOR	COORDINATOR
Indian Affairs Intertribal Board 612/296-3611	N-360 Griggs Midway Bldg. 1821 University Avenue St. Paul, MN 55104	Donald G. Gurnoe, Jr.	George Baptiste Admin. Assistant
Fond du Lac Reservation 612/879-4593	105 University Road Cloquet, MN 55720	Donald Wiesen	Dennis Olson
Grand Portage Reservation 218/475-2277	Grand Portage, Minnesota 55605	Ronald Sherer	Linda Caribou
Leech Lake Reservation 218/335-2207 Ext. 324	P.O. Box 308 Cass Lake, MN 56633	Roger Aitken	John Morrow
Mille Lacs Reservation 612/532-4163	Star Route Onamia, MN 56359	Henry Davis	Frances Boswell
Nett Lake Reservation (Boise Fort) 218/757-3261	Nett Lake, Minnesota 55772	Fred McDougal	Jeneal Goggleye
Red Lake Reservation 218/679-3336	Red Lake, Minnesota 56671	Peter Strong	Bill Strong
White Earth Reservation 218/983-3285	P.O. Box 418 White Earth 56591	Mrs. Germain Riegert	Joe Holt
MN/Dakota Indian Housing Authority 612/544-8118	6009 Wayzata Boulevard Room 225 St. Louis Park, MN 55416	Dan Hoffman Housing Director	Marlene Helgemoe Grant Administrator
Upper Sioux Indian Community 612/564-4504	Granite Falls, Minnesota 56241	Corrine Ske	Anite Eckohawk
Lower Sioux Indian Community 507/697-4616 - 697-6421	Morton, Minnesota 56270	Rita Dallenback	
Prairie Island Indian Community 612/388-8889	Route 2 Welch, MN 55089	Norman Campbell, Chairman	
Shakopee/Mdewankanton Sioux Community 612/445-4523	Route 1 Shakopee, MN 55379	Amy Stade	Edith Crooks

Alan W. Ingram, Exec. Director
Nat'l Assoc. of Social Workers
Minnesota Chapter
614 Portland
St. Paul, MN 55102

Judy A. Rakow, Energy Coord.
Ramsey County Board of
Commissioners
316 Courthouse
St. Paul, MN 55102

Kris Anne Monteith, Manager
S&FA Reporting Svcs., Inc.
1101 15th Street N.W.
Washington, D.C. 20005

Linda Ewen
Anoka County Financial Services
Department
Courthouse, Third Floor
Anoka, MN 55303

Virginia Watkins
P.O. Box 1348
Minnetonka, MN 55343

Marylee Fithian
905 Park Avenue South
Minneapolis, MN 55404

Courey, Schwinn, Kodadek, and
Reece, P.A.
1830 Soo Line Building
Minneapolis, MN 55402

~~Donald Buckner~~
Director, OSCC
690 American Center Building
St. Paul, MN 55101

Western Minnesota Legal Servic
407 West Litchfield Avenue
Willmar, MN 56201

Director
Central Minnesota Legal Svcs.
222 Grain Exchange Building
323 Fourth Avenue South
Minneapolis, MN 55415

Donald E. Montgomery
6300 Walker Street, Suite 109
Highway 7 and Wooddale
Minneapolis, MN 55416

Jean Dawson, Editor
The Minnesota Government Repor
B-12, Press Room, State Capitc
Building
VIA INTEROFFICE MAIL

Abe Rosenthal
Executive Vice President
Minnesota Transport Svcs. Assn.
1821 University Avenue (N310)
St. Paul, MN 55104

Thomas M. Polt
Attorney at Law
McCarthy Building
Eyota, MN 55934

Phillips Legislative Service I
459 Rice Street
St. Paul, MN 55103

Pamela Parker, Long Term Care
Ombudsman
Minnesota Board on Aging
204 Metro Square Building
St. Paul, MN 55101

Janice M. Devens
Director
Human Service Agency
Wright County Courthouse
Buffalo, MN 55313

Martha Eaves, Attorney at Law
Legal Assistance of Ramsey Co.
370 Selby Avenue
St. Paul, MN 55102

R.J. Barto, Plant Manager
Midland Glass Company, Inc.
P.O. Box 69
Shakopee, MN 55379

Eric W. Ingvaldson
1036 Midland Bank Building
Minneapolis, MN 55401

Government Center Library
C-2359 Government Center
300 South 6th Street
Minneapolis, MN 55487

Mary Samoszuk, Admin. Assistant
Minnesota Higher Ed. Coord. Bd.
Suite 400 Capital Square Bldg.
550 Cedar Street
St. Paul, MN 55101

Citizen's Energy Coalition
Griggs-Midway Building,
Suite S-281
St. Paul, MN 55104

Conrad M. Fredin,
Attorney at Law
811 First National Bank Bldg.
Duluth, MN 55802

Broeker, Hartfeldt, Hedges, and
Grant, Attorneys at Law
2850 Metro Drive, Suite 800
Minneapolis, MN 55420

Terry Anderson, Director, RD
Multi-Resource Centers, Inc.
1900 Chicago Avenue
Minneapolis, MN 55404

Kris Juliar
Sara Johnston-Rodriguez
Region Nine Development Comm.
410 South 5 Street, PO Box 336
Mankato, MN 56001

Pam Schmidt
Region Nine Development Comm.
410 South 5 Street
P.O. Box 3367
Mankato, MN 56001

National Handicap Housing
Institute, Inc.
12 South 6th Street, Suite 1216
Minneapolis, MN 55402

Kenneth McCormick
Hennepin County Economic
Assistance Department
A-1009 Hennepin Co. Govt. Cntr
Minneapolis, MN 55487

Vernon Vick
Local Vocational Director
Roseville Area Schools
1251 West County Road B-2
Roseville, MN 55113

Government Relations Department
United Way of Minneapolis Area
414 South 8th Street
Minneapolis, MN 55404

John G. Pidgeon
City Manager
2215 West Old Shakopee Road
Bloomington, MN 55431

Herbert W. Meyer
City Manager's Office
2215 West Old Shakopee Road
Bloomington, MN 55431

Susan P. Robertson
Executive Director, LCRAR
Room 430, State Office Building
St. Paul, MN 55403

Rick Carter
MN Association of Health Care Facilities
2850 Metro Drive, Suite 429
Minneapolis, MN 55420

James C. Shipman,
Executive Director
Association of Minnesota Countys
2305 Ford Parkway
St. Paul, MN 55116

Mel Duncan
ACT
1509 Nicollet Avenue
Minneapolis, MN 55403

Glen Shaw, Executive Director
Southwest & West Central Educational Coop Service Unit
Southwest State University
Marshall, MN 56258

Wendy M. Borsheim
Minnesota Retail Merchants Assn.
1180 Metro Square Building
St. Paul, MN 55101

MN Association of Rehabilitation Facilities
Griggs-Midway Building, Ste. 331
1821 University Avenue
St. Paul, MN 55104

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

Alternatives for Autistic People
3725 47th Avenue South
Minneapolis, MN 55406

United Handicapped Federation
1951 University Avenue
St. Paul, MN 55104

F. James Rybak
Office of Economic Opportunity
MN Department of Economic Sec.
690 American Center Building
St. Paul, MN 55101

Kristine E. Boswell
Associate Director, MARC
2344 Nicollet Avenue South
Minneapolis, MN 55404

Paul M. Leegard,
Personnel Administrator
White Motor-Hopkins
130 9th Avenue South
Hopkins, MN 55343

MN State Council for the Handicapped; Attn: Steve Becker
208 Metro Square Building
7th and Robert Streets
St. Paul, MN 55101

T. J. Lavell,
Deputy Commissioner
Department of Veterans Affairs
Veterans Service Building
St. Paul, MN 55155

Kay Bonner Nee
MAVSSA
141S Griggs-Midway Building
1821 University Avenue
St. Paul, MN 55104

George C. Mastor
General Counsel, Legal Div.
Minnesota Gas Co.
300 Peavey Building
Minneapolis, MN 55402

Kent E. Eklund
MN Department of Economic Dev.
480 Cedar Street
St. Paul, MN 55101

Robert F. Carolan
Dakota County Attorney
Dakota County Govt. Center
1560 Highway 55
Hastings, MN 55303

David A. Waage
Employee Relations Director
Dakota County Govt. Center
1560 West Highway 55
Hastings, MN 55303

Richard C. Buske
MN Department of Economic Dev.
480 Cedar Street
St. Paul, MN 55101

Bonnie Bannanno
Office of Hearing Examiners
Room 300
1745 University Avenue
St. Paul, MN 55104

Mark G. Sexton
Tri-County Community Action Program
404 N.E. 2nd Avenue
Little Falls, MN 56345

Charles Schaffer
MN Department of Economic Dev.
480 Cedar Street
St. Paul, MN 55101

Peter S. Popovich
314 Minnesota Building
St. Paul, MN 55101

Kent T. Michaelson,
Acting Director
Personnel & Labor Relations
2215 West Old Shakopee Road
Bloomington, MN 55431

Alice Anderson
175 South Western Street
St. Paul, MN 55102

Pete Lansdowne
Southern MN Legal Services
310 Medical Arts Building
Albert Lea, MN 56007

Ella Gross
1001 Penn No.
Minneapolis, MN 55411

Nancy A. Nelson
1308 West 24th Street
Minneapolis, MN 55405

Charles Thomas
529 South 5th Street
Mankato, MN 56001

Luddens Perry
Box 194
Staples, MN 56479

Barbara Johnson
1636 Taylor Avenue
St. Paul, MN 55104

D.E. Grammer
4410 East 4th Street
Hibbing, MN 55746

Public Interest Advocacy Clin
Hamline Univ. School of Law
St. Paul, MN 55104

Steve Melcher
2904 West 3rd Street
Duluth, MN 55806

Kristin Larson
2215 West 21st Street
Minneapolis, MN 55405

Jay Adams
2504 Girard Avenue South
Minneapolis, MN 55405

Gloria Rixen
Route 1
Hancock, MN 56244

Betty Schmidt
311 East 8th
Morris, MN 56267

John B. Lennes, Jr.
MACI
480 Cedar Street
St. Paul, MN 55101

John M. Broeker
2850 Metro Drive, Suite 800
Minneapolis, MN 55420

Martha Eaves, Attorney at Law
So. MN Regional Legal Services
Inc.
60 East Fourth Street
St. Paul, MN 55101

Miller A. Frieson, ACSW,
Director
Range Mental Health Center
624 South 13th Street
Virginia, MN 55792

Allyson Ashley, ACSW Exec. Dir.
Southwestern Mental Health Ctr.
2 Round Wind Road
Luverne, MN 56156

Frundt, Frundt & Johnson
117 West 5th Street
Blue Earth, MN 56013

RC

EXHIBIT E

RECEIVED
JUL 15 1981
ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Adoption
of Rules of the State of Minnesota
Governing Weatherization

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. 15.0412, subd. 4, that their names be placed on file with and maintained by the State of Minnesota for the purpose of receiving notice of the proposed adoption of rules by this Department of Economic Security is accurate and complete as of 8:00 A.M., this 6 day of July, 1981.

Bruce Lindsey

Bruce Lindsey
Procedures Coordinator

Exhibit No. 3

File No.

Date

Exhibit E

RECEIVED

JUL 10 1981

ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Adoption of Rules of the State of Minnesota Governing Weatherization

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. § 15.0412, subd. 4, that their names be placed on file with and maintained by the State of Minnesota for the purpose of receiving notice of the proposed adoption of rules by this Department of Economic Security is accurate and complete as of 12:00 A.M., this 17th day of June, 1981.

Bruce Lindsey

Bruce Lindsey
Procedures Coordinator

Exhibit No. 7
File No.
Date

RECEIVED
JUL 10 1981
ADMINISTRATIVE HEARINGS

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.

Department of Economic Security

Proposed Rules for the State Weatherization Program

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 (1980) at 9:30 a.m. in the large hearing room on the 7th floor of the American Center Building, 150 East Kellogg Blvd., St. Paul, Minnesota 55101, on August 6, 1981.

All interested or affected persons will have the opportunity to participate. Statements may be made orally and written material may be submitted at the hearing. In addition, written material may be submitted by mail to Hearing Examiner, Richard Luis, Office of Administrative Hearings, Room 300, 1745 University Avenue, St. Paul, Minnesota, 55140, telephone (612) 296-8114. Unless a longer period, not to exceed twenty calendar days, is ordered by the hearing examiner at the hearing, the record will remain open for the inclusion of written material for five (5) working days after the hearing ends. The proposed rules are subject to changes as a result of the rules hearing process. The agency, therefore, strongly urges those who may be affected in any manner by the substance of the proposed rules to be considered in this hearing to participate in the rules hearing process. In addition it is suggested, to save time and avoid duplication, that those persons, organizations or associations having common viewpoints or interests in these proceedings join together where possible and present a single statement on behalf of such interests. All such statements will be entered with and become a part of the record.

The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052 (1980) and by 9 MCAR §§ 2.101-2.113. All questions and statements about procedure may be directed to the hearing examiner. All questions related to the content of the rules may be directed to Alan Chapman, Director of the State Weatherization Program, Minnesota Department of Economic Security, 690 American Center Building, 150 East Kellogg Blvd., St. Paul, Minnesota, 55101, telephone (612) 296-5752. One free copy of the rules will also be available upon request from Alan Chapman.

Minn. Stat. § 268.37, subd. 3 (1979 Supp.) provides that the Commissioner of Economic Security shall promulgate rules to administer the weatherization grants program. The rules shall describe: (a) procedures for administration of grants, (b) data to be reported by grant recipients, and (c) other matters the commissioner deems relevant for the proper administration of the grant program. The purpose of these standards is to facilitate the implementation of rules in accordance with Minn. Stat. § 268.37 (1979 Supp.).

The proposed rules, if adopted, would replace Department of Economic Security rules 8 MCAR § 4.4010 which are available upon request at the Department of Economic Security. The proposed rules are minimum standards for the operation of the weatherization assistance program for low-income persons in the State of Minnesota and include: (1) a Statement of Purpose, (2) administration of costs, (3) definitions, (4) allocation of funds, (5) contract period, (6) eligible applicants, (7) local

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applications, (8) oversight responsibility, (9) record keeping, fiscal responsibilities and reporting, (10) the grant process, (11) severability, and (12) variances.

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he/she commences lobbying. A lobbyist is defined in Minn. Stat. § 1014.01, subd. 11 (1980) 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 (5) hours in any month or more than $250, not including his/her 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/her 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.

The statute provides certain exception. 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 (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 agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notifications 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 rules. Copies of the statement of need and reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

June 22, 1981

Rolf Middleton, Commissioner
Department of Economic Security

Rule as Proposed (all new material)

8 MCAR § 4.0012 Weatherization aid for low-income people.

A. Purpose. The purpose of this rule is to develop and implement a state weatherization assistance program under the authority of Minn. Stat. § 268.37 in the dwellings of low-income persons in order both to aid those persons least able to afford higher utility costs and to conserve needed energy.

B. Administration of costs. Grants awarded under this rule shall be administered in accordance with the following:

1. Office of Management and Budget Circular A-102 Revised, entitled "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments" issued September 12, 1977, 42 Federal Register 45828-45891 (1977).

2. Office of Management and Budget Circular A-110 entitled "Grants and Agreements With Institutions of Higher Education, Hospitals, and other Nonprofit Organizations" issued July 30, 1976, 41 Federal Register 32016-32037 (1976).

3. Office of Management and Budget Circular A-73 entitled "Audit of Federal Operations and Programs" issued March 15, 1978, 43 Federal Register 12404-12406 (1978).

4. Office of Management and Budget Circular A-87 entitled "Cost Principles for State and Local Governments" issued January 15, 1981, 46 Federal Register 9548-9554 (1981).

5. Office of Management and Budget Circular A-95, entitled "Evaluation, Review and Coordination of Federal and Federally Assisted Programs and Projects" issued January 13, 1976, 40 Federal Register 2052-2065 (1976).

6. United States Treasury Circular 1082, entitled "Notification to States of Grant-in-Aid Information" issued February 17, 1976, 41 Federal Register 2652 (1976).

7. United States Treasury Circular 1075 entitled, "Withdrawal of Cash From the Treasury for Advances Under Federal Grant and Other Programs" issued October 14, 1977, 31 Code of Federal Regulations 205 (1980).

C. Definitions. As used in this rule the following terms have the meanings given them.

1. "Agency" means an organization that receives funds under this rule to operate a weatherization program.

2. "Assistant commissioner" means the Assistant Commissioner of the Division of Training and Community Services of the Department of Economic Security.

3. "Community action agency" means a private corporation or public agency established pursuant to the Economic Opportunity Act of 1964, 42 United States Code, Sections 2701-2996(1) (1977 and Supplement III 1980), which is authorized to administer funds received from federal, state, local, or private funding entities to assess, design, operate, finance and oversee antipoverty programs.

4. "Commissioner" means the Commissioner of the Department of Economic Security.

5. "Cosmetic items" means items which when installed will not reduce energy costs in a cost-effective manner. Cosmetic items include finishes, decorative fenestration, and elevation materials, such as aluminum siding, board and batten clapboard, brick, shakes and asphalt siding.

6. "Department" means the Department of Economic Security.

7. "Dwelling unit" means a house or household. It includes stationary mobile homes, homes, apartments, and a group of rooms or a single room occupied as separate living quarters.

8. "Elderly person" means a person who is 60 years of age or older.

9. "Family unit" means all persons living together in a dwelling unit.

10. "Grantor" means the Division of Training and Community Services, Department of Economic Security, State of Minnesota.

11. "Grantee" means an organization that receives funds under this rule to operate a weatherization program.

12. "Handicapped person" means a person who has a permanent physical or mental disability that can be documented by a qualified medical or other professional person.

13. "Heating or cooling source" means a device which can raise or lower temperatures within a dwelling unit as part of the permanent heating, ventilating, and air conditioning system installed in the dwelling unit. It includes furnaces, heat pumps, stoves, boilers, heaters, fireplaces, air conditioners, fans, and solar devices.

14. "Local applicant" means an agency, a unit of general purpose local government, or Indian tribe.

15. "Indian tribe" means any tribe, band, nation, or other organized group or community of Native Americans, including any Alaska native village, or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, 43 United States Code, Sections 1601-1628 (1977 and Supplement III 1980), which:

a. Is recognized as eligible for special programs and services provided by the United States to Native Americans because of its status as Native American; or

b. Is located on, or in proximity to, a federal or state reservation or rancheria.

16. "Low income" means that total household income in relation to family size is at or below 125 percent of the poverty level determined in accordance with criteria established by the Director of the Federal Office of Management and Budget in 45 Code of Federal Regulations 1060 (1981).

17. "Mechanical equipment" means a control device or apparatus which is primarily designed to improve the heating or cooling efficiency of a dwelling unit and which will be permanently affixed to an existing heating or cooling source. It includes a flue damper, clock setback thermostat, filter, and replacement limit switches.

18. "Multifamily dwelling unit" means a dwelling unit which is located in a structure containing more than one dwelling unit.

19. "Number of low-income, owner-occupied dwelling units in the county" means the number of those dwelling units in a county as determined by the department.

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20. "Number of low-income, renter-occupied dwelling units in the county" means the number of those dwelling units in a county as determined by the department.

21. "Repair material" means an item necessary for the effective performance or preservation of weatherization materials. Repair material includes lumber used to frame or repair windows and doors which could not otherwise be caulked or weather-stripped, and protective materials, such as paint, used to seal materials installed under this program. Repair material also includes furnace efficiency modifications limited to:

a. Replacement burners designed to substantially increase the energy efficiency of the heating system;

b. Devices for modifying fuel openings, including one-time replacement of furnace filters which will increase energy efficiency of the heating system; and

c. Electrical or mechanical furnace ignition systems which replace standing gas pilot lights.

22. "Regional clearinghouse" means the local Regional Development Commission which has the authority under Title IV of the Intergovernmental Cooperation Act of 1968, 42 United States Code, Sections 4231-4233 (1977), to review and comment with respect to federal and state funded projects.

23. "Rental dwelling unit" means a dwelling unit occupied by a person who pays periodic sums of money for the use of the dwelling unit.

24. "Separate living quarters" means those in which the occupants do not regularly live and eat with any other persons in the structure and which have either direct access from the outside of the building or through a common hall, or complete kitchen facilities for the exclusive use of the occupants. The occupants may be a single family, one person living alone, two or more families living together, or any other group of related or unrelated persons who share living arrangements.

25. "Single family dwelling unit" means a structure containing no more than one dwelling unit.

26. "State" means the State of Minnesota.

27. "Unit of general purpose local government" means any city, county, town, parish, village or other general purpose political subdivision of the state.

28. "Weatherization crew" means a group of weatherization laborers with a weatherization supervisor.

29. "Weatherization laborer" means a person who performs weatherization and repair activities necessary to complete work on eligible households. The work may include audits, inspections, and warehouse and inventory control.

30. "Weatherization project" means a project conducted in a single geographical area which undertakes to weatherize dwelling units that are thermally inefficient.

31. "Weatherization supervisor" means a person who inspects complicated weatherization and repair activities and who is responsible for crew laborers' conduct, performance, and evaluation.

32. "Weatherization materials" means materials used to weatherize homes as outlined in Exhibit 8 MCAR § 4.0012 C.32.-1.

Exhibit 8 MCAR § 4.0012 C.32.-1
Allowable Weatherization Materials

Number	Title	Date Approved	CFR Section Reference
ANSI / AAMA 1002.9-1977	Voluntary Specification for Aluminum Combination Storm Windows for External Applications	11/1/79	456.813
ANSI / AAMA 1102.7-1977	Voluntary Specification for Aluminum Storm Doors	11/1/79	456.813
ANSI / NWMA I.S. 2-73	Industry Standard for Wood Windows	11/1/79	456.813
ANSI / NWMA I.S. 5-73	Ponderosa Pine Doors	11/1/79	456.813
ASTM C-516-75	Standard Specification for Vermiculite Loose Fill	11/1/79	456.806
ASTM C-520-65 (Reapproved 1975)	Standard Method for Density of Granular Loose-fill Insulation	11/1/79	456.806 456.807

ASTM C-570-72	Specification for Oil and Resin Based Caulking Compound for Building Construction	11/1/79	456.812
ASTM C-578-69	Standard Specification for Preformed, Block-Type Cellular Polystyrene Thermal Insulation	11/1/79	456.808
ASTM E-737-80	Standard Practice for the Installation of Storm Windows, Replacement Windows, Multi-Glazing, Storm Doors and Replacement Doors	9/17/80	456.911
ASTM C-755-73	Standard Recommended Practice for Selection for Vapor Barriers for Thermal Insulation	9/17/80	456.903
HH-I-515D (6/78)	Insulation, Thermal (Loose-fill for Pneumatic or Poured Application): Cellulosic or Wood Fiber	11/1/79	456.803 456.804 456.805
HH-I-524B (11-72 and Interim Amendment 1, 1/76)	Insulation Board, Thermal (Polystyrene)	11/1/79	456.808
HH-I-530A (1971 and Interim Amendment 3, 5/76)	Insulation Board, Thermal (Polyurethane and Polyiscocynurate)	11/1/79	456.809
HH-I-558B (1971 and Interim Amendment 3, 5/76)	Insulation Blocks, Boards, Blankets, Felts, Sleeving, and Pipe Fitting Coverings	11/1/79	456.812
HH-I-573B (1968 and Interim Amendment, 1976)	Insulation, Thermal (Flexible Unicellular Sheet and Pipe Covering)	11/1/79	456.812
HH-I-574B (1974 and Interim Amendment 1, 9/76)	Insulation, Thermal (Perlite)	11/1/79	456.807
HH-I-585C (1974 and Interim Amendment 1, 9/76)	Insulation, Thermal (Vermiculite)	11/1/79	456.806
HH-I-1030A (1973 and Interim Amendment 1, 9/76)	Insulation, Thermal (Mineral Fiber for Pneumatic or Poured Application)	11/1/79	456.804 456.805
HH-I-1252B (1976)	Insulation, Thermal Reflective (Aluminum Foil)	11/1/79	456.811
TT-S-001543A (1971)	Sealing Compound, Silicone Rubber Base (for Caulking, Scaling, and Glazing in Buildings and Other Structures)	11/1/79	456.812
TT-S-00227E (1969 and Amendment 3, 10/70)	Sealing Compound, Elastomeric Type, Multi-Component (for Caulking, Sealing, and Glazing in Buildings and Other Structures)	11/1/79	456.812
TT-S-001657 (COM-NBS) (1970)	Sealing Compound, Single Component Butyl Rubber Base, Solvent Release Type (for Buildings and Other Types of Construction)	11/1/79	456.812
TT-S-00230C (COM-NBS) (1970 and Amendment 2, 10/70)	Sealing Compound, Elastomeric Type, Single Component, (for Caulking, Sealing, and Glazing in Buildings and Other Structures)	11/1/79	456.812

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TT-C-00598C (COM-NBS) (1970)	Caulking Compound, Oil and Resin Type, (for Building Construction)	11/1/79	456.812
TT-P-00791B (CSA-FSS) (1969 and Amendment 2, 1970)	Putty Linseed-Oil Type, (for Wood-Sash-Glazing)	11/1/79	456.812
FHDA 6-79	Industry Standard for Douglas Fir, Western Hemlock, and Sitka Spruce Doors and Blinds	11/1/79	456.813
NBS / PS 26-70	Rigid Polyvinyl-cloride Profile Extrusions	11/1/79	456.813
ASMT C-790-74	Standard Recommended Practices for Use of Latex Sealing Compounds	9/17/80	456.916
ASMT C-797-75	Standard Recommended Practices and Terminology for Use of Oil- and Resin-Based Putty and Glazing Compounds	9/17/80	456.916
ASTM C-804-75	Standard Recommended Practices for Use of Solvent Release Type Sealants	9/17/80	456.916
ASTM C-834-76	Specification for Latex Sealing Compounds	11/1/79	456.812
ASTM D-1622-63 (Reapproved 1975)	Standard Method of Test for Apparent Density of Rigid Cellular Plastics	11/1/79	456.810
ASTM E-84-79B	Standard Test Method for Surface Burning Characteristics of Building Materials	11/1/79	456.808 456.809 456.810 456.812
ASTM E-96-66	Standard Test Method for Water Vapor Transmission of Materials in Sheet Form	11/1/79	456.805
BOCA Research Report No. 72-23		11/1/79	456.813

Information for this exhibit is from 10 Code of Federal Regulations, Sections 456.101-456.914 (1980), amended by 45 Federal Register 63449, 63453, 63793 (1980).

D. Allocation of funds. The department will allocate funds by county based on the following formula: xd divided by ya = county's allocation

Where: x = the number of eligible recipients in the county;
d = number of degree days in the county;
ya = the sum of xd.

The formula weights eligible recipients and state degree days. Data on eligible recipients is from the 1970 federal census. The number of eligible recipients is the number of low-income families plus the number of unrelated individuals below 100 percent of poverty less the number of low-rent public housing units.

The second factor in the formula is "heating degree days." Data for this factor was received from the National Oceanic and Atmospheric Administration in a publication entitled Monthly Normals of Temperature, Precipitation and Heating and Cooling Degree Days, 1941-1970, published by the United States Department of Commerce, August 1973.

E. Reservation allocations. American Indian reservations will receive two percent of the state allocation. All American Indian reservations will receive funds based on the low income population of the state according to the 1970 federal census data.

F. Contract period. All contracts between the state and grantee will run for six months beginning July 1.

G. Eligible applicants. Applicants' eligibility shall be determined by the commissioner or assistant commissioner.

1. The commissioner shall allocate funds by geographic area to a public or private nonprofit agency with a demonstrated ability to administer and deliver weatherization services.

2. Paragraph G.1. shall not apply if the commissioner or the assistant commissioner determines on the basis of a public hearing that the plan carried out by the grantee has been ineffective in meeting the purpose of the statute. Notice of the public hearing shall be made ten days prior to the hearing in two local newspapers in the grantee's service area.

3. In making a determination pursuant to paragraph G.2., the commissioner or assistant commissioner acting on behalf of the commissioner shall evaluate the performance of the grantee and shall consider:

a. The extent to which the weatherization project achieves the goals of Minn. Stat. § 268.37 in a timely fashion;

b. The adherance to the plan developed by the grantee;

c. The quality of work performed; and

d. The number, qualifications, and experience of staff members.

H. Local applications. Applications must contain the information described in this section.

1. To be eligible for financial assistance under this rule, a local applicant shall submit an application or plan for state funds and any other funds used to support the plan to the commissioner but not later than thirty days after the announcement of availability of funds for each year. The commissioner shall review each timely application and if the submission complies with the applicable provisions of this rule, approve a final budget and issue a notice of grant award.

2. Each application shall include:

a. The name and address of the local agency or office responsible for administering the program;

b. A statement by grantee's responsible authority insuring the following:

(1) No dwelling unit may be weatherized without documentation that the dwelling unit is an eligible dwelling unit as provided in this rule;

(2) That there is an outreach process used to obtain applications and that a description of the process is included; and

(3) The establishment of a priority system for client applications giving priority to fuel oil users, elderly, and handicapped persons, and low income persons;

c. The total number of dwelling units proposed to be weatherized with grant funds from all sources during the fiscal year for which assistance is to be provided listed by the county served. Each application shall indicate percentages of each priority served;

d. A financial schedule which indicates the monthly funding requirements based on projected production;

e. Staffing patterns for all weatherization personnel to allow local program grantees to attain production goals; and

f. A review of the plan by the regional clearinghouse.

3. The department shall set a minimum production goal for each grantee based on the statewide average cost for material and labor in past programs. This figure will be divided into the agency's grant to establish the minimum number of dwelling units to be weatherized.

4. If the grantee determines that it cannot fulfill its obligations under the plan in whole or part, the grantee may request an amendment or revision of the existing approved plan and resubmit a new plan or amendments within 30 days after the written notice of request for consideration. The request from the grantee must be in a writing detailing its specific views with supporting data and arguments.

5. The department shall set a maximum material limit of $750 and shall establish a weatherization priority list that is to be followed in the expenditure of funds.

I. Allowable expenditures. Expenditures allowed for grants under this rule must conform to the following guidelines.

1. To the maximum extent practical, the grant funds provided under this rule shall be used for administration, purchase of labor, supervision, materials, equipment, tools, and related matter. Allowable expenditures shall be limited to:

a. The cost of purchase, delivery, and storage of weatherization materials. The cost, determined by a local grantee, shall not exceed an average dollar value per dwelling unit established by the grantee in that grantee's plan of:

(1) Transportation of weatherization materials, tools, equipment, and work crews to a storage site and to the site of the weatherization work;

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(2) Maintenance, operation, and insurance of vehicles used to transport weatherization materials;

(3) Maintenance of tools and equipment;

(4) Purchase or lease of tools, equipment, and vehicles. Purchase or lease of items with a value in excess of $50 must have prior approval in every instance. Purchasing must follow procedures outlined in Federal Management Circulars A-102, A-87 and A-110. All purchases over $300 must have written approval of the department.

(5) The cost of employment of weatherization supervisors;

(6) The cost of employment of weatherization labors;

(7) The cost, not to exceed $150 per dwelling unit, of incidental repairs, including repair materials and repairs to the heating source necessary to make the installation of weatherization materials effective; and

(8) Building permits where applicable;

b. The cost of liability insurance for weatherization projects for personal injury and property damage;

c. Allowable administrative expenses not to exceed each agency's base administrative allocation;

d. Weatherization of a building containing rental dwelling units where not less than 66 percent of the rental units in the building are eligible units; the grantee enters into a written agreement with the landlord and landlord's agent granting permission to do the weatherization work and guaranteeing that rents will not be raised due to the weatherization work; and no undue or excessive enhancement occurs to the value of the dwelling units.

2. Grant funds awarded under this rule shall not be used for any of these purposes:

a. To weatherize a dwelling unit which has been weatherized previously with grant funds from the United States Department of Energy or state assistance under Minn. Stat. § 268.37 or this rule, unless such dwelling unit has been damaged by fire, flood, or an act of God, and repair of the damage to weatherization materials is not paid for by insurance;

b. To weatherize a dwelling unit which is vacant or designated for acquisition or clearance by a federal, state, or local government program within 12 months from the date weatherization of the dwelling unit would be scheduled to be completed; or

c. To purchase cosmetic items, remodeling items, or a heating or cooling source.

3. Grantees wishing to use funds for other expenses related to the delivery of the weatherization program in accordance with Minn. Stat. § 268.31 must make application to the assistant commissioner who will act on behalf of the commissioner. Documentation must be included to substantiate any request.

J. Oversight responsibility. The projects of the grantees shall be supervised in the following manner:

1. The commissioner, or the assistant commissioner on behalf of the commissioner, shall monitor and evaluate the operation of projects carried out by the grantees receiving financial assistance under this rule through on-site inspections or through other means.

2. The department shall make periodic evaluations of weatherization programs carried out by the grantee.

3. The commissioner, the assistant commissioner, or their appropriate authorized representatives shall have access to any books, documents, papers, information, and records of any weatherization project receiving financial assistance under the law for the purpose of audit and examination.

4. The commissioner shall conduct an annual audit of the pertinent records of a grantee receiving financial assistance under this rule.

K. Record keeping. Each grantee receiving state financial assistance under this rule shall keep records the commissioner requires, including records which fully disclose the amount and disposition by each grantee of funds received under this rule, the total cost of the weatherization project to implement the grantee plan for which the assistance was given or used, including all sources and amounts of funds for the project or program, and other records the commissioner deems necessary for an effective audit and performance evaluation. Record keeping shall be in accordance with Federal Management Circular A-87 and any further requirements of this rule or requirements the commissioner may otherwise establish consistent with this rule.

L. Monthly reports. Each grantee receiving financial assistance under this rule shall submit a monthly program performance report and a monthly financial report or invoice to the commissioner.

M. Eligible dwellings. No dwelling unit shall be eligible for weatherization assistance under this rule unless it is occupied by a family unit whose income is at or below 125 percent of the poverty level determined in accordance with criteria established by the Director of the Federal Office of Management and Budget based on household income for the 12 months before application.

N. Granting process. Once the application for a grant has been approved, the commissioner shall notify the grantee of the approval, and any conditions shall be specified. A grant contract shall be signed by the commissioner or the assistant commissioner and the authorized local agency representative. The grant contract shall specify that report requirements and other grant requirements shall be met prior to any obligation of funds. Payments on grant contracts shall be made on the basis of grantee activity in the program. Cash on hand in excess of thirty day program requirements shall not be delivered. Payments to grantees shall be reviewed in comparison to expenditures to determine cash needs. Expenditures shall be reported monthly on forms to be supplied by the department. Grantees shall be required to project the next month's cash needs on the previous month's expenditure report.

O. Fiscal responsibility. No funds shall be released to a grantee receiving financial assistance under this rule until it has submitted to the assistant commissioner a statement certifying that the grantee:

1. Has an established accounting system with internal controls adequate to safeguard its assets;

2. Has operating efficiency and reliable accounting data;

3. Promotes operating efficiency and encourages compliance with prescribed management policies; and

4. Has additional fiscal responsibility and accounting requirements the assistant commissioner may require consistent with these rules. The statement may be furnished by a certified public accountant, a duly licensed public accountant, or, in the case of a public agency, the appropriate public financial officer who accepts responsibility for providing required financial services to that agency.

P. Severability. The provisions of this rule shall be severable and if any phrase, clause, sentence, or provision is declared illegal or of no effect, the validity of the remainder of this rule and its applicability to any person or circumstance shall not be affected.

Q. Variances. Variances may be granted in the following situations.

1. The commissioner may grant a variance to this rule upon the request of the grantor where it appears that:

a. Changes have occurred which require revised standards and procedures to be specified by the grantor;

b. The rationale for the rule in question can be met or exceeded by the specific alternatives which the grantor proposes to substitute;

c. Granting of the variance would not adversely affect the public health or safety; and

d. Granting of the variance would not conflict with standards imposed by law.

2. The commissioner shall, within 30 days after receipt of a request for a variance, notify the grantor in writing of the granting or denial of the variance and the reasons therefore. A variance may be conditioned on alternative practices proposed by the grantor or imposed by the commissioner.

3. Variances may be of limited duration, and may be revoked if a material change occurs in the circumstances which justified the variance.

Department of Public Welfare
Social Services Division

Proposed Amendment of Rules Governing All Vending Stands and Business Enterprises of the Services for the Blind (12 MCAR § 2.079)

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the State Department of Public Welfare proposes to amend the above-entitled rule without a public hearing. The commissioner has determined that the proposed amendment of this rule will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. § 15.0412, subds. 4h (1980).

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.

STATE OF MINNESOTA)
(ss.
COUNTY OF RAMSEY)

AFFIDAVIT OF SERVICE

Eileen A. Gaiovnik, being first duly sworn, deposes and says that on the 25th day of September, 1981, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Reports of the Chief Hearing Examiner and the Hearing Examiner, ECSEC-81-006-RL

unstamped, by placing in the designated tray to be collected by messenger for delivery to the central mailing station as required by Minn. Stat. § 16.54 (1974), a true and correct copy thereof on all persons at the addresses shown on the attached mailing list.

Eileen A. Gaiovnik

Subscribed and sworn to before me this
25th day of September, 1981.

Susan C. Wojcik

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

Mr. Rolf Middleton, Commissioner
Department of Economic Security
390 North Robert Street
St. Paul, Minnesota 55101

Mr. Peter C. Andrews
Assistant Attorney General
1100 Bremer Tower
Seventh Place and Minnesota Street
St. Paul, Minnesota 55101

ECSEC-81-006-RL

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF ECONOMIC SECURITY

In the Matter of the Proposed Rule of the Department of Economic Security for the Administration of Grants by the State Home Weatherization Program, 8 MCAR § 4.0012.

REPORT OF THE HEARING EXAMINER

Pursuant to an Order for Hearing issued on June 19, 1981 by Rolf Middleton, Commissioner of the Department of Economic Security, the above-entitled matter came on for hearing before Richard C. Luis, duly appointed Hearing Examiner, at 9:30 a.m. on August 6, 1981 in the Large Hearing Room, Seventh Floor, American Center Building, 160 E. Kellogg Boulevard, St. Paul, Minnesota. This is a rulemaking proceeding conducted pursuant to Minn. Stat. Ch. 15 to determine whether the Department of Economic Security has authority to adopt the rules proposed and whether they are necessary and reasonable and may be adopted.

Peter C. Andrews, Assistant Attorney General, Eleventh Floor, Bremer Tower, Seventh Place and Minnesota Street, St. Paul, Minnesota 55101, appeared as counsel for the Weatherization Program Unit, Division of Training and Community Services, Minnesota Department of Economic Security (hereinafter the "Department"). Appearing as witnesses for the Department were Allan Chapman, Director, and Roger Williams, Monitor-Supervisor of the Weatherization Program Unit, 690 American Center Building, 160 E. Kellogg Boulevard, St. Paul, Minnesota 55101.

Nine members of the general public spoke at the hearing, commenting on various proposals made by the Department. Twenty-one persons signed the hearing register. The hearing continued until all persons so wishing had had an opportunity to be heard. Subsequent to the hearing, and prior to the expiration of the allotted time period, written comments were received by the Hearing Examiner. Those comments are part of the record submitted to the Commissioner along with this Report.

The Commissioner of Economic Security 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 Commissioner of actions which will correct the defects and the Commissioner 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 Commissioner may either adopt the Hearing Examiner's recommendations to cure the defects or, in the alternative, if the Commissioner 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 Commissioner 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 Commissioner shall submit the rule to the Attorney General for review of form and legality. If the Commissioner 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 Commissioner 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 Requirements

1. On June 22, 1981, the Department of Economic Security filed the following documents with the Chief Hearing Examiner:

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

2. On June 22, 1981, the Chief Hearing Examiner issued an Order pursuant to Minn. Stat. § 15.0412, subd. 4e (1980), approving the adoption by reference of 14 different documents in exess of 3,000 words which would exceed five pages of publication in the State Register. These documents were listed in the Order of the Chief Hearing Examiner which is being submitted to the Commissioner along with the record in this matter as Department's Exhibit 8. The Order of the Chief Hearing Examiner has been available for inspection by the public from the date of its issuance.

3. On July 6, 1981, a Notice of Hearing and a copy of the proposed rules were published at 6 State Register 5.

4. On July 6, 1981, the Department of Economic Security mailed the Notice of Hearing to all persons and associations who had registered their names with the Department for the purpose of receiving such notice. Although the Notice of Hearing as published in the State Register represented to the parties that the Notice had been signed by the Commissioner of Economic Security, Rolf Middleton, the Notice as mailed was actually signed by Allan Chapman, Director of the Weatherization Program Unit of the Department's Training and Community Services Division. The Hearing Examiner finds this procedural defect is technical only since there is no requirement of law or rule as to who must sign the Notice of Hearing.

5. On July 10, 1981, the Department filed the following documents:

(a) The Notice of Hearing as mailed.
(b) The Department's certification that its mailing list was accurate and complete as of June 17, 1981. Since the Notice of Hearing was mailed on July 6, 1981, and the possibility existed that the persons then registered with the Department for receipt of notice of proposed adoption of its rules may be different than the persons so registered on

June 17, 1981, it became necessary for the Department to file a separate document certifying that its mailing list was accurate and complete as of July 6, 1981. This document was not filed until July 15, 1981, which is a technical violation of the "25-day before the hearing" filing time requirement of 9 MCAR § 2.105 B. Absent any evidence that anyone on the Department's list was overlooked by the July 6th mailing, the Hearing Examiner finds this procedural defect to be technical in nature and not fatal to this rules proceeding.

(c) The Affidavit of Mailing the Notice to all persons on the Department's list.

(d) The Statement of Need and Reasonableness.

(e) The names of Department personnel who would represent the Agency at the hearing.

(f) A photocopy of 6 State Register 5-13, the pages on which the Notice of Hearing and proposed rules were published. 9 MCAR § 2.105 I. specifies that the State Register copy in which the Notice and rule amendments were published should be submitted. In this case, the Department should have submitted a copy of the entire pamphlet, Vol. 6, No. 1, of the State Register. The Hearing Examiner has compared the pages in the Number with the pages submitted, however, and finds that they match. Therefore, the Hearing Examiner finds this procedural defect to be technical only and without prejudice to anyone.

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

6. The record remained open through August 21, 1981 for the receipt of written comments and statements, as ordered by the Hearing Examiner prior to the close of the hearing.

Statutory Authority

7. The Department cites Minn. Stat. § 268.37, subd. 3 (1979 Supp.) as the statutory authority for adoption of the proposed rules. That statute provides:

> The commissioner shall promulgate temporary rules as necessary to administer the grants program by July 1, 1979 and shall promulgate permanent rules by July 1, 1980. The rules shall describe: (a) procedures for the administration of grants, (b) data to be reported by grant recipients, and (c) other matters the commissioner finds necessary for the proper administration of the grant program including compliance with relevant federal regulations. Weatherization assistance shall be given to households where the total income does not exceed 125% of the poverty level as updated by the federal office of management and budget poverty guidelines.

The Hearing Examiner finds that the Department has documented its general statutory authority to make rules for the administration of grants under the State Home Weatherization Program.

Proposed Amendments to the Proposed Rules

8. On July 31, 1981, the Department remailed its proposed rules to all persons on its mailing list. This remailed package was slightly shorter than the version published in the State Register and made approximately 45 changes in the originally-published rule. The Department notified all persons on its mailing list that its intention was to introduce the mailed package in substitution for the originally-published rules at the August 6, 1981 hearing.

The Hearing Examiner finds that the legal effect of this mailing and the motion made at the hearing for substitution is that each and every change made by the Department must be considered as an amendment to the originally-published rule within the meaning of the term "rules as last proposed" in 9 MCAR § 2.110 B. As such, the Hearing Examiner has reviewed each change to determine whether it constitutes a substantial change from the originally-published proposal, to determine the need for and reasonableness of each change, and to find whether or not adoption of each change would violate any relevant, substantive

and/or procedural requirement of law or rule. For the sake of economy in organization of this Report, those considerations are explored in detail in subsequent findings. Any of the above-described changes not specifically discussed in the balance of this Report are found to be necessary and reasonable and do not constitute substantial changes from the proposal published in the State Register. It is further found that the Department has statutory authority to adopt any of the above-described changes not specifically discussed in the balance of this Report. It is noted here that many of the changes are strictly editorial, involving only relettering, renumbering, relocation, spelling or grammatical corrections, and clarifications.

Discussion of the Proposed Rule and Amendments Thereto

9. The Hearing Examiner has decided to discuss the specific proposals as found and identified in the rules as last proposed by the Department, with reference to its predecessor in the rules as published, wherever appropriate. To whatever extent practical, the rules will be discussed in order of appearance as last proposed.

10. In the rule's Title, the word "assistance" is proposed in substitution for the word "aid". This is not a substantial change and is found by the Hearing Examiner to be necessary and reasonable. ✓ p.1

11. Section A (Purpose) is unchanged from the original publication. The Hearing Examiner finds the language of the Section to correctly state the objectives of the weatherization program under the enabling legislation, and specifically finds the Section to be necessary and reasonable.

12. Section B (Administration of Grants) is different from the originally-published version only in that the word "grants" is substituted for the word "costs" in the Section's title. This is not a substantial change and, in fact, better clarifies the Section's purpose of listing the federal management circulars that will be followed in managing the funds granted. Federal management circulars are utilized because the State of Minnesota has not developed comparable documents and because of the Department's desire to parallel the federal grant system as much as possible in order to properly match funds. The Hearing Examiner finds Section B as finally submitted to be necessary and reasonable. ✓ 9.1

13. Section C (Definitions) as finally submitted contains several changes from the originally-published rule. These changes, and other comments on this Section, will be addressed below, following the order used in the rule as finally proposed.

✓ 14. In its final proposal, the Department endorsed a suggestion made at the hearing by Dan Homuth to the effect that subsection C.3. be changed to define "Community action agency" as found at Minn. Laws 1981. Ch. 367, § 3, subd. 1 (to be codified as Minn. Stat. § 268.53, subd. 1). This proposal is contrary to Minn. Stat. § 15.0412, subd. 1, which prohibits an agency from adopting a rule which duplicates language contained in Minnesota Statutes unless the Hearing Examiner determines that duplication of the language is crucial to the ability of a person affected by the rule to comprehend its meaning and effect. The Hearing Examiner declines to so determine here. The Department's remedy is to reference the statutory definition or adopt the rule as originally published, which the Hearing Examiner finds to be necessary and reasonable. A reference to the statutory definition would not be a substantial change. ✓ so referenced 9.2

15. Subsection C.5. defines "cosmetic items". This definition, with its application at subsection G.3., prohibits funding for the installation of items which, when installed, "will not reduce energy costs in a cost-effective manner.", and follows that phrase with examples. While the intent is laudable, the rule as proposed fails to set any standard as to what will be meant by "cost-effective". This is a violation of Minn. Stat. §§ 15.0411, subd. 3, and 15.0412, subd. 4c, violating a substantive provision of law in that the Department cannot vest such broad discretion in itself as it has by failing to define "cost-effective". Any proposed rule is illegal, and thus violative of substantive provisions of law, when it is phrased so as to permit an administrator unfettered or unbridled discretion in making a decision. See, Minn. Stat. § 15.0411, subd. 3 (1980), which defines "rule", in part, as "every agency statement . . . made to implement or make specific the law enforced or administered . . . " (Emphasis supplied) In order to correct this defect, subsection C.5. should be withdrawn or a definition of "cost effective" added to the rule. rewritten P.2

16. Subsection C.9. proposes the addition of a definition for "Eligible dwelling unit", which was not in the definitions section of the original version. This definition replaces, in part, section M ("Eligible dwellings") of the originally-published rule proposal. The subsection must also be read in conjunction with subsection C.18, the definition of "low income", in order to have meaning. To the extent that this subsection conforms to subsection C.18, which will be discussed below, the Hearing Examiner finds that its addition is not a substantial change and is needed and reasonable. added as C.10 P.3

17. Subsection C.10 defines "Eligible recipients", and has been relocated from its former position in section D. of the originally published rules. The need for and reasonableness of this definition has not been demonstrated on the record. The term "families" should be defined. In addition, no rationale has been advanced for subtracting low-rent public housing units from the total. It is also a violation of substantive provisions of law to only add in unrelated individuals who are below 100% of "poverty" (which is also undefined unless it refers to subsection C.18, discussed below) while adding in low income families who are at 125% of "poverty" because it denies households of unrelated individuals equal protection of the law without any showing of why the distinction has been made. The Department's reasoning, that only data reflecting unrelated individuals under 100% of the poverty level are available, cannot stand as a rational basis for the distinction in the absence of a showing that the proportional representation of each county will not change. The "remedy" to correct the defects in this subsection is to either withdraw it in its entirety, or reduce the figure for low income families from 125% to 100% at subsection C.18. This last remedy, however, would constitute a substantial, and illegal, change in subsection C.18. (See discussion at Finding of Fact 21).

In addition, the proposed subsection conflicts with the enabling legislation as found at Minn. Stat. Ch. 268.37, subd. 3 (1979 Supp.), which reads in relevant part:

> . . . Weatherization assistance shall be given to households where the total income does not exceed 125% of the poverty level as updated by the federal office of management and budget poverty guidelines.

The above-quoted statutory provision makes it apparent that the Department has no statutory authority to adopt rule subsection C.10. as finally proposed.

Therefore, this subsection cannot be adopted at this time and must be withdrawn.

18. Subsection C.14. defines "handicapped person". The determination of who is such a person is left to a "qualified" medical person, but who is a qualified medical person is not clear. If these types of persons are not enumerated, the rule is impermissibly vague and leaves overly-broad discretion in the Commissioner or the Department to decide who is "qualified". The rule cannot be adopted as it was proposed because it violates substantive provisions of law. See Finding of Fact 15. In order to cure the defect, the type of persons meant by the term "qualified medical person" must be listed.

19. Subsection C.15. defines "Heating degree days". The originally published proposal, at § D., includes a reference for where the data to determine this factor can be found. That reference was approved for incorporation by the Chief Hearing Examiner in his Order of June 22, 1981, but it has been deleted from the final proposal. Without that reference, the rule record contains no meaningful standard for the concept of "mean" temperature, and as such, is impermissibly vague and ambiguous. The rule as finally proposed violates substantive provisions of law. See Finding of Fact 15. It cannot be adopted as finally proposed. In order to cure this defect, the reference deleted from § D. of the rules as published in the State Register should be re-inserted.

20. In its final submission before the close of the record, the Department proposed insertion of a new definition, this for "Independent contractor". It reads:

> "'Independent contractor' means an entity, whether organized for profit or as a non-profit organization and however organized, which furnishes materials or provides labor or both in the weatherization of buildings of low income persons."

The Hearing Examiner finds the addition of this definition to be necessary and reasonable, and not a substantial change from the originally-published rule.

21. Subsection C.18. defines "Low Income". The record reflects that the Department has not demonstrated the need for and reasonableness of its definition as proposed by an affirmative presentation of facts because the grammar and organization of the definition as proposed make it confusing and ambiguous. The Department's rationale would support the need for and reasonableness of the definition, and correct the present defect, if it were re-written along the lines of the definition found in 10 C.F.R. § 440.3, to wit:

> "Low income" means that total household income relation to family size (1) which is at or below 125% of the poverty level determined in accordance with criteria established by the Director of the Federal Office of Management and Budget in 45 Code of Federal Regulations 1060 (1981); or (2) which is the basis for which cash assistance payments have been paid during the preceding 12-month period under Titles IV and XVI of the Social Security Act.

The Department is cautioned against lowering the figure in this subsection from 125% of "poverty" to "100%". This would be a substantial change in the rules as originally published and thus, could not be adopted. See, Minn. Stat. § 15.0412, subd. 4(d) and 9 MCAR § 2.111. Such a change also conflicts with Minn. Stat. § 268.37, subd. 3 (1979 Supp.), and the Department is without statutory authority to adopt it. (See discussion at Finding of Fact 17). It is found that substitution of the definition as suggested above would not be a substantial change and is necessary and reasonable.

22. Subsection C.23. defines "Repair material". This definition specifies in part that such materials include replacement burners designed to "substantially increase" energy efficiency. This term is vague and undefined. In the absence of some objective standards as to what is meant by "substantially", the decision-maker is left with overly broad discretion. In addition, the decision-maker is not identified. Until the above-described defects are corrected, with the addition of standards and identification of the decision-making authority, subsection C.23.a. cannot be adopted because it is in violation of substantive provisions of law. See Finding of Fact 15. The same defect and remedy apply to subsection C.23.b. regarding furnace filters which "will increase energy efficiency of the heating systems". Standards which will clarify the meaning of increased energy efficiency must be specified, and the decision-making authority identified. Until these defects are corrected, subsection C.23 cannot be adopted.

see deletions p. 5.

23. Subsection C.29., as proposed, defines "Unit of general purpose local government" as any city, county, town, parish, village or "other general purpose political subdivision of the state". Parishes, as governmental units, are found only in Louisiana, and therefore, should be excised from this rule. This definition also fails to define what is meant by "general purpose" or to list what other subdivisions exist, if any. In the absence of such clarifications, the subsection is vague, confusing and redundant. As such, it cannot be adopted in the form finally proposed because it violates substantive provisions of law, as explained at Finding of Fact 15. In order to cure this defect, the subsection should be withdrawn or clarified as specified herein.

deleted in entirety p6

24. At proposed Subsection C.34., which has been moved from the end of Exhibit 8 MCAR § 4.0012 C.34.-1., to the beginning thereof, the Hearing Examiner suggests changing the phrase "this exhibit" in the second sentence to "Exhibit 8 MCAR § 4.0012 C.34-1." for clarity purposes. In addition, the second sentence should be inserted as a separate paragraph. These changes, if adopted, are editorial and clarifying only and not substantial in nature. The Hearing Examiner finds the suggested changes to be needed and reasonable.

changed p. 6

25. In the listing of materials under Exhibit 8 MCAR § 4.0012 C.34-1., the tenth in line, No. "STM C-755-73" is a misprint. It should read "ASTM-C-755-73". If this change is made it would be a necessary and reasonable clarification only, and not a substantial change. The same analysis applies to the clerical change suggested for the 15th through 18th Numbers listed, where the closing parentheses have been left out; for the 20th Number down the line, which is missing the dash after the "S"; for the 21st entry, which should read "00227" instead of "0027"; and at the 25th item, where the first parentheses, in front of the word "for" in the Title column, was not printed.

OK p. 7

OK p. 7-9

26. At the hearing, the Department proposed addition of the following amendment to follow the listing of items in subsection C.34.:

withdrawn.

> "Items necessary to improve ventilation. Material used as patch to reduce infiltration and repair materials necessary to protect weatherization materials. Commercial availability."

The Hearing Examiner finds that the need for and reasonableness of this amendment has not been established on the record by the Department because no facts appear in the record to support its inclusion as written. The wording is un-

clear, especially as to where "commercial availability" fits into the scheme (as a "Number", "Title", both, or neither), nor can the reader tell where the language is supposed to be placed in the rule. The language itself is also vague and overly broad, without specific standards to determine what items or materials will qualify as "necessary." This is a violation of substantive provisions of law. See Finding of Fact 15. Therefore, the amendment, as proposed, cannot be adopted. In order to cure this defect, the Department should withdraw the amendment or rearrange and clarify it.

27. Section D. (Allocation of funds) contains a formula proposed for distributing appropriated funds to the various counties in Minnesota. The formula finally proposed differs from the version published in the State Register by eliminating the two explanatory paragraphs that originally followed the formula. It is the contention of the Department that these explanations appear elsewhere in the rule, but the Hearing Examiner does not find that to be the case. Their removal is a substantial change. As a result, this section cannot be adopted as proposed. The explanatory paragraphs should be re-inserted, but cannot be re-inserted in their entirety as originally published because they violate the constitutional principle of equal protection of the law and run afoul of Minn. Stat. § 238.37, subd. 3 (1979 Supp.) for the same reasons as stated in Findings of Fact 17 and 21. The remedy for these defects lies in either withdrawing the Section or reinserting the originally-published provision with the defects corrected as specified at Findings 17 and 21.

The Hearing Examiner also finds that the Department has failed to demonstrate the need for and reasonableness of the body of the formula itself. It cannot be adopted as proposed. The formula is inconsistent with 10 C.F.R. § 440.10(b), from which it was allegedly derived. In addition, the concept "ya" is called "the sum of xd" in the rule, whereas xd indicates a product of multiplication, not of addition. In addition, while the reasoning behind multiplying the number of potential recipients in the county by the county's degree days is consistent with giving greater weight to the colder counties, the theory behind dividing that product by some lesser number (the sum of the two numbers used to yield the product, all whole numbers) has not been demonstrated. Presumably, the counties' allocation would be a percentage of the statewide grant, but this formula yields a whole number, not a percentage. In the absence of any concrete examples to the contrary on the record, the record in this matter does not support a showing of need and reasonableness by the Department for the adoption of this formula. The remedy to cure this defect is withdrawal of the formula.

withdrawn p. 10

As to clerical matters in this Section, the word "eligible" is misspelled, and the apostrophe should be deleted from the word "grantees".

28. Subsection D.1., which reads "All contracts between the state and a grantee will run for six months beginning July 1." caused much controversy and drew opposition from the local agencies which will have to administer the program. The subsection's opponents want a longer contract period, which will serve to cut down on administrative overhead and allow for easier manipulation of funds, but the Department's policy in this area is to encourage the completion of work on projects as fast as possible. The Department's decision to limit the grant period to six months is within its discretion and, as such, is found to be necessary and reasonable because it has a rational basis.

29. Subsection D.2. mandates a 2% allocation of the state grant funds to American Indian reservations. The record reflects no showing as to the need for or reasonableness of this rule. Absent such a showing, the rule must be withdrawn. In addition, the proposal allocates funds to each reservation without stating the basis for that allocation, and is, therefore, impermissibly vague. As such, it violates substantive provisions of law, as noted in Finding 15.

30. Subsection D.3. vests overly broad authority in the Department and is too vague in saying that a grant "may" be terminated if the grantee has been "ineffective in meeting the purpose of the statute". If the rule is adopted as proposed, it would imply that the grant may not be terminated, either. Because of those defects, the proposal violates substantive provisions of law. See Finding 15. In order to correct this defect, the rule must be made mandatory (or withdrawn). The term "ineffective" should be cross-referenced to subsection D.4., which sets out the standards for making the decision. "The statute" presumably refers to Minn. Stat. § 268.37. This should be identified.

The subsection, as proposed, also violates due process of law principles, a substantive violation of law, in that it allows for a public hearing but fails to specify who shall conduct it and under what standards the hearing shall proceed. In order to correct this defect, the subsection should be withdrawn or standards and specifications added as to who will conduct the hearing, how notice will be served to the grantee, and what hearing procedures are contemplated. The terms "local newspapers" and "service area" also lack definition, and must be clarified before the rule can be adopted. In addition, an apostrophe should be inserted in the word "grantees" in the last sentence.

31. Subsection D.4. (G.3. in the originally-published version) enumerates the standards to be used in determining when a grantee has been "ineffective" in meeting the objectives of Minn. Stat. § 268.37 (1979 Supp.). The final proposal substitutes "the Department" for the "Commissioner or Assistant Commissioner acting on behalf of the Commissioner" in the originally-published version. This is a substantial change resulting in a rule fundamentally different than that contained in the State Register, which implied that a final decision would emanate only from the top rung of the Department of Economic Security. Therefore, subsection D.4. cannot be adopted as finally proposed unless the Commissioner is restored as the decision-making authority.

32. Subsection E.1. replaces H.1. of the originally-published proposal, but makes a substantial change and therefore cannot be adopted. The original rule said that the Commissioner was to have the duty of reviewing grant applications, approving the budget, and issuing a Notice of Grant Award. In substituting "Department" for "Commissioner", the Department has proposed a rule that differs fundamentally from that contained in the Notice of Hearing, which implied that the supreme authority in the Department would be making the decisions in this regard. In order to remedy this defect, the subsection must be withdrawn or the word "Commissioner" reinserted where applicable.

33. Subsection E.2.b.(1) suffers from impermissible vagueness because the rule leaves "responsible authority" undefined. This provision cannot be adopted as proposed because it violates substantive provisions of law. See Finding of Fact 15. A definition should be inserted to correct this defect so that the reader will know who has the responsibility granted. Such an addition would be reasonable and necessary and not a substantial change.

34. Subsection E.2.b.(3) replaces subsection H.2.b.(3) of the rule as proposed in the State Register. The final proposal deletes "low income persons" from the list of those who have priority. This is a substantial change because it results in a rule fundamentally different from that originally proposed. It also affects classes of persons not represented at the hearing (low income persons, for whom priority was originally represented). Therefore, the proposal cannot be adopted. The remedy for this defect is to reinsert the priority of low income persons.

remains deleted but with other deletions appears OK p. 12

However, this subsection, as originally proposed, is impermissibly vague and cannot be adopted. As such, it is violative of substantive provisions of law, as noted at Finding 15. No standards are set as to order of priority or as to how the uniformity of the priority systems will be assured by the applicants. This defect can only be cured by withdrawing the proposal.

contradicted by CHE 9/25

35. Subsection E.2.c. mandates that each application for a grant "indicate percentages of each priority served". The meaning of this clause is unclear and confusing to the reader. Its necessity and reasonableness have not been established by an affirmative presentation of facts in the record. It is also vague and non-specific, thus violating substantive provisions of law. See Finding of Fact 15. In order to cure these defects, the subsection should be withdrawn.

entire section deleted p. 12

36. Subsection E.3., as finally proposed, leaves it to the applicant agency to set a minimum goal, upon application, of the number of units to be weatherized during the grant period. This is a substantial change from its predecessor, originally published as subsection H.3., which mandated the Department to set the goal. Since the final proposal results in a rule fundamentally different from that contained in the Notice of Hearing, it cannot be adopted. In order to cure this defect, the proposal should be withdrawn and the original language reinserted regarding the Department's powers. However, the basis for determination under either proposal is something called "state-wide average cost for material and labor in past programs". Without further refinement of this concept, either proposal is impermissibly vague and violates substantive provisions of law, as noted at Finding 15. To cure that defect, the subsection should be withdrawn or modified to reflect what is meant, either with an additional definition, or by definition within the subsection.

reworded p. 12

37. Subsection E.4. as proposed refers to a "priority list established by the Department". The rule fails to make clear where the list is kept, how it is distributed, and what standards will be used to set priorities. It is, therefore, impermissibly vague, and cannot be adopted as proposed without resolving the problems noted because it violates substantive provisions of law. See Finding of Fact 15. In addition, waiver is available from the requirement "for good cause", but what constitutes "good cause" is left unresolved. As such, it is violative of substantive provisions of law, as noted at Finding 15. The subsection's last sentence may not be adopted until "good cause" is defined or examples listed.

new sections containing priority lists have been inserted p. 13-15

38. The title of Section F. (Allowable expenditures) is followed by a paragraph which is not indented. The paragraph should be indented or started right after the title. The suggested change is clerical, not substantial in nature, and is found to be necessary and reasonable.

39. The introduction to Section F. replaces, in part, subsection I.1. as published in the State Register. The originally published provision allowed for use of funds for the listed purposes "to the maximum extent practical". The final proposal cuts this "slack" out and results in a rule fundamentally different from that originally proposed. Therefore, the rule as finally proposed cannot be adopted. To cure this defect, the rule should be withdrawn. This is so because the originally proposed rule is defective as well in the absence of any standards delineating how the "maximum extent practical" is to be determined. The absence of such standards is a violation of substantive provisions of law. See Finding 15.

40. Section I., as originally proposed, had four cost factors added into the concept of "allowable expenditures". One such factor was "cost of purchase, delivery and storage of weatherization materials". Section F., as finally proposed, eliminates the concept of "cost of purchase, delivery and storage of weatherization materials" as a separate cost factor. This is a substantial change, resulting in a rule fundamentally different from that proposed in the State Register. In order to correct this defect, the old scheme of "cost of purchase, delivery and storage of weatherization materials", as a separate cost factor, should be reinserted. Such a change is found by the Hearing Examiner to be necessary and reasonable.

41. Subsection F.5., as finally proposed, requires "prior approval" for every purchase of tools, equipment and vehicles with a value over $50, but fails to specify who will give that approval or how that approval is to be obtained. This is impermissibly vague and violates substantive provisions of law, as noted at Finding of Fact 15. The subsection cannot be adopted as worded. The defect can be cured by withdrawal of the subsection or clarification of whom the approval is to come from and how. In addition, the Department has apparently rejected the suggestion made by several participants in the public hearing to raise the threshhold amount before approval is required from $50 to $300. This is a policy decision to be made by the Department and is within its discretion. If, upon final adoption, an amount up to $300 is inserted, it will not be a substantial change because the record reflects debate on the subject. Such a change will be necessary and reasonable, as well. It is suggested that the listing of management circulars in this subsection be in numerical order.

42. The Department, in conjunction with Insulation Contractors Association Northwest (ICAN), proposed in comments received before the close of the record to add a new subsection, as F.6., in the adopted rules as an allowable expenditure. It reads:

> 6. Payments to an independent contractor for furnishing materials or providing labor or both in the weatherization of dwellings of low income persons.

The Hearing Examiner finds that this additional allowable expenditure is not a substantial change and that its adoption is necessary and reasonable.

43. Subsections F.6. and 7. as finally proposed list, as a cost factor, the "cost of employment" of weatherization supervisors and laborers, respectively. "Laborers" is misspelled at F.7. In addition, the term "cost of employment" lacks definition. Absent this definition, too much discretion is vested in the authority who determines the figure, which is a violation of substantive provisions of law. See Finding 15. The subsections, therefore,

cannot be adopted at this time, and must be withdrawn or clarified by either internal definition of "cost of employment" or separate definition in the Definitions section.

44. Subsection F.8., as finally proposed, allows for the cost of "incidental repairs" without defining the concept. As in the above Finding of Fact, the problem here is that too much discretion is allowed in determining what constitutes qualifications for the receipt of money unless the term is defined. As finally proposed, the subsection violates substantive provisions of law. See Finding of Fact 15. The defect can be cured by withdrawal of the subsection or by defining the term.

45. Subsection F.11., as proposed, is impermissibly vague, and therefore, is violative of substantive provisions of law, as noted at Finding 15. "Allowable administrative expenses" vests too much discretion in the agency and "base administrative allocation" lacks definition. The rule should be withdrawn in order to cure the defect, or "allowable administrative expenses" delineated, and "base administrative allocation" defined.

46. The last clause of subsection F.12., as finally proposed, is impermissibly vague, violating substantive provisions of law, since the concept of "no undue or excessive enhancement", absent definition or clarification, vests overly broad discretion in the Department and in the grantee. See Finding of Fact 15. This last clause should be withdrawn or standards added to the rule. In addition, it is suggested that a semicolon be inserted after "work" and before "and" for clarification purposes.

47. Controversy arose at the hearing over the subsection finally submitted as G.1. (section G. is "Unallowable expenditures"), because those in opposition want to be able to re-enter a previously-weatherized dwelling in order to "finish the job". The Department's view is to maximize the number of units worked on, and therefore, returning to previously weatherized units should be prohibited. That decision, and the rule, are found to have a rational basis and therefore, are found to be necessary and reasonable.

48. The lead clause in Section H. (Oversight responsibility), fails to specify who in the Department shall supervise the grantees' projects. This was formerly the Commissioner's responsibility, or the Assistant Commissioner on his behalf, as noted in the originally-published version of the rules in the State Register, and to simply state the "Department" now has that duty is a substantial change. Section H. cannot be adopted unless the responsibility remains as outlined in the originally proposed subsection J.1. (with the Commissioner or Assistant Commissioner on the Commissioner's behalf) or with the Commissioner "or his designee". Adoption of the last suggested change would not constitute a substantial change and is found by the Hearing Examiner to be necessary and reasonable.

49. Section H., as finally proposed, differs from its originally-published predecessor, Section J., in one other important respect. The original proposal provided, at J.2., for periodic evaluations of weatherization programs carried out by grantees. The deletion of the requirement of periodicity in evaluation results in a rule fundamentally different from that originally proposed and thus constitutes a substantial change. The Section cannot be adopted as finally proposed. In order to cure this defect, the requirement of periodic evaluations must be reinserted.

50. Subsection H.3. is modelled upon originally-published Subsection J.4., with one important, and fatal, difference. The annual audit by the Commissioner is no longer mandatory under the final proposal. This results in a fundamentally different rule than that originally proposed and thus, cannot be adopted. To cure the defect, the audit must be made mandatory or the subsection withdrawn.

made mandatory p. 18

In addition, retention of the word "may" vests overly-broad discretion in the Commissioner, who, theoretically, would never be required to conduct the audit. Such a result is impermissible and violates substantive provisions of law, as noted at Finding 15. Corrective action which would cure the defect is specified in the preceding paragraph.

51. Section I., as finally proposed, has been modelled on the originally-published Section K. (Record keeping). The difference is that the first complete sentence of the originally-published Section was deleted, and the word "program" was substituted for "rule" in the last sentence. The single word substitution is not a substantial change. However, the Hearing Examiner finds that the rule, as finally proposed, cannot be adopted because it is a substantial change. The original proposal specified record-keeping duties, and the successor lacks this specificity. As a result, adoption of the last proposal would result in a rule fundamentally different from the originally-proposed rule, which was specific. The remedy to cure this defect is adoption of original Section K. or withdrawal of the Section.

specifics not included p. 18

52. Section M. of the originally-proposed rule was entitled "Eligible dwellings". It has been excised from the rule as finally proposed. The Department argues that Section M. was subsumed by other parts of the surviving proposal, but the Hearing Examiner cannot agree. The record fails to demonstrate, by an affirmative presentation of fact, that the thought crystallized by "original" Section M. appears elsewhere in the rule, and the thought is essential for a proper understanding of the rule. Its deletion constitutes a substantial change, and therefore, the rule cannot be adopted unless it is restored. Therefore, Section M. must be retained, so long as it is consistent with the provisions of Findings 17, 21 and 27.

not retained p. 19

53. Section K. (Granting process) of the final proposal makes some changes from its predecessor, Section N. of the original publication. It is suggested that "Department" in the first sentence of the final proposal be amended to "Commissioner, or his/her designee". In the eighth full sentence of finally-proposed Section K., the word "is" should be changed to "it" to correct a misprint. If the suggested change is not adopted, and only the clerical changes made, the surviving rule is, nevertheless, found to be necessary and reasonable.

not amended p. 19

54. Section L. (Fiscal responsibility) as finally proposed substitutes "Department" for "Assistant Commissioner" as the recipient of the certifying statement outlined in the section. It is suggested that the language be modified to "Assistant Commissioner or his/her designee". If this modification is not made, however, the finally-proposed language is found to be necessary and reasonable.

55. With respect to Section L., the Department has failed to demonstrate the need for and reasonableness of assigning the determining of "operating efficiency" and "compliance with prescribed management policies" to an accountant or financial officer. In addition, the terms are not defined and, standing

alone, are impermissibly vague. Finally, the Section vests overly-broad discretion in the reporter of financial status by using the word "may" in its last complete sentence. This implies either that no reports have to be furnished, or that someone else, other than one presumably schooled in finances and/or accounting will be allowed to vouch for the grantees' financial responsibility. Neither proposal (State Register or final submission) can be adopted at this time because they violate substantive provisions of law, as noted at Finding of Fact 15. In order to cure the above-cited defects, the "fiscal responsibility" sections of each proposal (State Register and final) must be withdrawn. withdraw p 19,20

56. Section M. (Severability) has been made redundant by Minn. Laws 1981, Ch. 253, § 35 (to be codified as Minn. Stat. § 645.001), which makes Minn. Stat. § 645.20 applicable to rules as well as statutes. That statute provides for the same result as the proposed rule, and the Hearing Examiner is unable to find that duplication of the statute is crucial to an understanding of the rule under Minn. Stat. § 15.0412, subd. 1. Therefore, there is no statutory authority for Section M., and it must be withdrawn. deleted p. 20

57. Section Q (Variances) of the rule originally published in the State Register has been deleted by the Department in its final proposal. The Hearing Examiner finds that deletion to be a substantial change, because the originally-published rules held out the representation to the public that a variance procedure would be part of the rules. To remove that representation results in a rule fundamentally different from that contained in the Notice published in the State Register. In order to cure this defect, the Department must adopt a variance procedure. reinserted p. 20 with change

It is also found that the Department has failed to demonstrate the need for and reasonableness of deleting the Variance Section by an affirmative presentation of facts. The argument made by the Department at the hearing was that the variance provisions were only intended to cover the variations or changes in materials from those specified at subsection C.34, but the Hearing Examiner finds the language to be much broader. It is noted that no variance may be granted by an agency of the State unless it adopts rules setting forth procedures and standards by which variances will be granted and denied. See, Minn. Stat. § 15.0412, subd. 1(a). The variance provisions of Section Q., as published in the State Register, do not meet this statutory mandate because the procedures of how to apply for a variance are left unclear. This is violative of substantive provisions of law, and any variance procedures finally adopted must adhere to the mandates of the above-noted statute in order to correct this defect.

C O N C L U S I O N S

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

CONCLUSIONS

1. That the Department of Economic Security gave proper notice of the hearing in this matter.

2. That the Department of Economic Security has fulfilled the procedural requirements of Minn. Stat. § 15.0412, subd. 4-4f (1980) and all other procedural requirements of law or rule, except as noted at Findings 4 and 5; that

the procedural irregularities noted at those Findings are technical in nature, and no corrective action is needed in the absence of any evidence of prejudice to interested parties.

3. That the Department of Economic Security 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 14, 15, 17, 18, 19, 22, 23, 26, 27, 29, 30, 33, 34, 35, 36, 37, 39, 41, 43, 44, 45, 46, 50, 55, 56 and 57.

4. That the Department of Economic Security 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 Findings 17, 21, 26, 27, 29, 35, 55 and 57.

5. That the amendments and additions to the proposed rules which were suggested by the Department of Economic Security after publication of the proposed rules in the State Register do not result in rules which are substantially different from the proposed 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.), except as noted at Findings 27, 31, 32, 34, 36, 39, 40, 48, 49, 50, 51, 52, and 57

6. That the Hearing Examiner has suggested action to correct the defects cited in Conclusions 3, 4 and 5 as noted at Findings 14, 15, 17, 18, 19, 21, 22, 23, 26, 27, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 41, 43, 44, 45, 46, 48, 49, 50, 51, 52, 55, 56 and 57.

7. That due to Conclusions 3, 4, 5 and 6, 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 Department of Economic Security 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 21st day of September, 1981.

Richard C. Luis

RICHARD C. LUIS
Hearing Examiner

ECSEC-81-006-RL

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF ECONOMIC SECURITY

In the Matter of the Proposed Rule of the Department of Economic Security for the Administration of Grants by the State Home Weatherization Program 8 MCAR § 4.0012.

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 except as hereinafter discussed 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.

Finding 18. The examiner has indicated that the defect in the proposed rule can be cured by including a list of the type of persons included within the phrase "qualified medical person". The department may also cure this defect by including a definition of the phrase which is sufficiently specific to enable a person of average intelligence to determine its applicability. A specific definition may be preferable to a "list" in that the latter might unintentionally exclude an otherwise qualified person.

defined p. 3

Finding 22. The examiner finds that the term "substantially" requires definition and that the rule must include the naming of the "decision-maker", which is approved. However, the second part of the finding requiring a definition or standards to clarify the phrase "which will increase energy efficiency" is not approved. Use of the word "substantially" must include a specific definition or include specific standards by which a named "decision-

this is deleted p. 5

maker" will make the determination. However, a simple increase in energy efficiency can mean as little as one percent and, as such, is easily definable and measurable.

Finding 23. The examiner's finding is approved but the department can cure the defect by deleting everything but the phrase "means any political subdivision of the state". If that results in a definition broader than intended, a list of those types of political subdivisions not included could be added. While it is not necessary to do so, if the department determines that the phrase "political subdivision" is sufficient, it is suggested that the entire defintion be deleted and that the phrase "political subdivision" be inserted for the phrase "unit of general purpose local government" wherever that latter phrase appears in the rules. deleted p. 6

Finding 26. The only testimony in the record to support the inclusion of the amendment is a statement by Roger Williams in response to the examiner's request to "tell us why this is necessary and reasonable". The response was that the department's "materials list didn't contain sections that addressed this issue and they're crucial to the delivery of the weatherization program, and proper insulation weatherization materials". The examiner's finding is approved. However, as the agency has totally failed to make an affirmative presentation of facts estblishing the need for and reasonableness of the amendment, the only way to cure the defect is to withdraw the amendment. Rephrasing it may cure the vagueness problem but cannot cure a deficient record. withdrawn.

Finding 31. (It is noted that on page ten, line one of the rules as finally proposed, the rule contains a reference to "paragraph G.2.". This is a carryover from the rules as originally proposed which should be changed to the proper section if the rule is adopted.) The examiner has found, in this finding and in others, that changing the words "Commissioner" or "Assistant Commissioner" to "Department" constitutes a substantial change in the rule which would require a new hearing after proper notice. This finding was based on the determination that the change resulted in a fundamentally different rule in that the decision-maker was changed. The finding is not approved for two reasons:

First, as the Chief Executive Officer of a state agency, the Commissioner is ultimately responsible for all decisions made by the agency, regardless by whom actually made. The commissioner also has statutory authority to delegate such responsibilities to agency personnel. Therefore, the use of either of the terms gives the same result. "department" substituted for "commissioner" p. 11

Second, the concept of "substantial change", as found in the Minnesota Administrative Procedure Act, is a legislatively created device is insure that the public will not have rules adopted without their knowledge and opportunity to be heard. As such, it is a "notice" problem. It is also clear that by including this device within the APA, the legislature has given its approval to the concept that an agency should be able to amend its rules in response to public reaction, as long as the public has had notice of the basic or fundamental thrust of the rule. Therefore, one of the tests applied is whether the amendment results in a rule fundamentally different from that which was proposed in the initial notice to the public. In each case, when applying this test, it must be determined what the basic or fundamental thrust

or purpose of the rule was when first proposed. In this instance, the basic purpose of the rule, D.4., was to provide that the performance of the grantee was to be measured and the standards to be used in the measurement. The amendment makes no change in the basic or fundamental purpose of the rule.

Finding 32. For the reasons stated in the discussion of Finding 31 above, the examiner's determination relating to the question of "substantial change" is not approved. In this instance, the basic or fundamental purpose of the rule is to establish a time frame for submission and review of applications.

Finding 33. The examiner has referenced rule E.2.b.(1) in this finding. The correct citation should be to E.2.b. which contains the phrase "responsible authority". Without a definition of that phrase, no part of the rule can be adopted. Otherwise, the examiner's finding is approved.

Finding 34. The examiner's determination that the deletion of "and low income persons" constitutes a substantial change is approved as stated and for the reason that, being raised for the first and only time in a lengthy and confusing amendment document (Exhibit 9) without any discussion by the agency at the hearing, it cannot be said to have been raised in such a fashion so as to invite public reaction. The phrase must be inserted.

The second paragraph of the finding relating to vagueness is not approved. This rule requires only that the application include a statement by the applicant that it will adhere to a priority system, without dictating what the priority system must be. As such, it is almost a "non-rule". The definition of a priority system is left to the applicant. Therefore, the rule is not impermissibly vague.

Finding 35. That portion of this finding relating to the clarity or vagueness of the last sentence of rule subsection E.2.c. is not approved. While the language could be made more specific, it is not so vague as to be impermissible. However, that portion of the finding relating to need and reasonableness is approved. Unless the department can point out any facts in the record to support the subsection, it must be withdrawn.

Finding 36. The basic or fundamental "thrust" or purpose of subsection E.3., as initially proposed and as finally proposed, is to establish, in an application, a minimum goal for the number of dwelling units to be completed. Changing the party responsible for establishing this minimum number from the grantor to the grantee does not change this basic or fundamental purpose and is therefore not such a change as would require a new notice and hearing. Therefore, that portion of the examiner's finding relating to "substantial change" is not approved. However, that portion of the finding relating to the "state-wide average cost for material and labor in past programs" is approved.

Finding 37. The examiner's finding is approved with the exception that the failure of the department to state, in the rule, where the list is kept or how it is distributed, do not render the rule impermissibly vague. It would be "nice" if the department would include this information but it is not necessary. The balance of the finding is approved as written.

Finding 39. The examiner's finding presents a preplexing problem or, a "Catch 22", for the department. The deletion of the phrase "to the maximum extent practical" does result in a substantial change in that the rule as initially proposed left some room for grantee discretion while the rule as finally proposed is considerably more restrictive. However, the above-quoted

phrase, if reinserted in the rule to cure the "substantial change" defect, makes the rule impermissibly vague. Therefore, the rule must either be withdrawn or the above-quoted phrase reinserted but defined with some standards or criteria which will make the rule a "specific" statement as required by law.

see deletions p. 15, 16

Finding 40. This finding is not approved. It appears that the examiner merely overlooked or did not see the language of finally proposed rule subsection F.1. which is the exact language found in initially proposed rule subsection I.1.a. Both allow the same expenditure for "the cost of purchase, delivery, and storage of weatherization materials".

OK p. 16

Finding 48. For the reasoning discussed above concerning Finding 31, the examiner's finding relating to "substantial change" by deleting "Commissioner" and inserting "Department" is not approved. However, the examiner's suggestion of adding "or his designee" is a good suggestion and the department could use it in lieu of its proposal if it so chooses.

"department" reinstated. p. 17

Findings 49 and 50. The examiner's findings are not entirely approved. The basic or fundamental purpose of rule section H (formerly section J) is to provide certain standards for review by the department. The original proposal contained certain mandatory review requirements which were obviously impossible to carry out. Making the sections permissive rather than mandatory does not change the basic or fundamental purpose of the rule. Further, as the change affects only the department's responsibilities, it does not affect a class of persons not represented at the hearing. For reasons stated previously, changing the term "Commissioner" to "Department" does not constitute a substantial change. However, use of the word "may" rather than "shall" in subsection H.e. does vest overly-broad discretion in the agency. The Chief Hearing Examiner does not believe that the fact that the Commissioner might never conduct an audit makes the rule defective as stated by the examiner. However, the rule must state specific standards, criteria or reasons why or under what circumstances an audit might be conducted. Agency discretion is permissible if standards or criteria are listed which would allow a reviewing body to determine whether the exercise of the discretion was arbitrary, capricious or an otherwise abuse of discretion. The rule must either revert to the mandatory "shall" or include specific standards or criteria.

reverted to "shall" p. 18

Finding 51. The finding, as stated, is not approved. The language which was deleted in the finally proposed rule was redundant in that Federal Management Circular A-87 contains the same or similar requirements. However, the examiner should have found that the rule grants overly-broad discretion in the agency by allowing the commissioner to establish "any other requirements", presumably outside of the rulemaking process. The Chief Hearing Examiner does not have the authority to insert a new finding but is limited to approving or disapproving the findings of the examiner and telling the agencies how to cure the defects found by the examiner. Should the department choose to cure this "discretion" defect prior to adopting the rule, the phrase "and any other requirements the Commissioner may establish consistent with the program" must either be deleted entirely or specific standards and criteria added.

Finding 52. The examiner's finding is not approved. The deletion of initially proposed section M is not a substantial change. In fact, as originally proposed, it was redundant because all of the elements contained in the rule as proposed are found in the definition section of the rule. In the finally proposed section C, the appropriate definitions include subsections 7, 9, and 18, which are the definitions for the phrases "dwelling unit", "eligible dwelling unit" and "low income".

Finding 55. The examiner has interpreted the use of the word "may" in the last paragraph to mean that no statements would have to be furnished. Such an interpretation would be wrong as it would conflict with the mandatory language of the first sentence of the section which requires the filing of a statement prior to the release of any funds. While the use of the discretionary word "may" is imperssible when it grants unfettered discretion to the regulating agency, it is permissible when the discretion is given to the party being regulated. Hbwever, this does not resolve the department's problems with this section.

entire section deleted p. 19, 20

The only testimony in the record from the department justifying this rule is one sentence in the Statement of Need and Reasonableness which says: "This section is needed to insure that grantees have developed and have in place a reliable and responsible fiscal department." While this statement may justify the need for a rule of some kind on the subject, it is not sufficient, as pointed out by the examiner, to justify the specific elements of the rule, especially the requirement that a certified public accountant, a duly licensed public accountant or the appropriate public financial officer certify the statement.

Finally, the last sentence of the rule, as written, could be interpreted in two ways. First, it must be interpreted as giving the grantee the discretion of choosing one of the three classes of persons listed or anyone else of their choice to submit the statement. Second, if it was intended that the grantee select from only one of the three classes of persons listed, the word "shall" must be used which would then result in a substantial change in the rule in that the grantee's option would be removed.

The examiner's finding, as modified herein, is approved. This defect can only be cured by withdrawal of the section.

Finding 57. This finding is approved with one exception. An agency need not make an affirmative presentation of facts establishing the need for or reasonableness of withdrawing a proposed rule from consideration.

In order to correct the defects enumerated by the Hearing Examiner or the Chief Hearing Examiner, the agency shall either take the action recommended by the Hearing Examiner or the Chief 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 or the Chief 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 or the Chief 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: September 25th, 1981.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

ECSEC-81-006-RL

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF ECONOMIC SECURITY

IN THE MATTER OF THE PROPOSED RULE OF THE DEPARTMENT OF ECONOMIC SECURITY FOR THE ADMINISTRATION OF GRANTS BY THE STATE HOME WEATHERIZATION PROGRAM, 8 MCAR § 4.0012.

REPORT OF THE CHIEF HEARING EXAMINER

The above-entitled matter was submitted to the Chief Hearing Examiner for review pursuant to the provisions of Minn. Stat. § 15.0412, subd. 4d (1980). At the time of the submission, the agency did not submit the record of the proceeding nor did it submit any agency order adopting rules.

Based on a review of the Hearing Examiner's Report dated September 21, 1981, the Chief Hearing Examiner's Report dated September 25, 1981, the rules as published in the State Register, the rules as finally proposed at the hearing and the rules as submitted which carry the Revisor of Statutes date of January 19, 1982, the Chief Hearing Examiner finds that, except as discussed below, the agency has corrected the defects in the rules.

The exceptions are:

8 MCAR § 4.0012 C.5. While the agency has not taken the specific action recommended to cure the defect found in this definition, it has nearly satisfied the problem raised in the Examiner's report. As now drafted, it would exclude items which are not only esthetic but energy-efficient. To cure this defect, the rule must be further amended by adding the word "only" prior to the word "enhance" or by adding other words to clarify the purpose and intent of the rule. added p. 2

8 MCAR § 4.0012 E.4. The defects found in this rule have not been cured. The language proposed by the agency is defective for several reasons. The rule still discusses the "priority list" without enumerating what standards are used in establishing the list. As such, the rule is still vague. The use of the word "may" in the second sentence creates illegal discretion in the agency to waive or not waive the $750.00 restriction. It must be changed to "shall". Without benefit of the record or of findings by the agency, one cannot determine if the "good cause" items listed in the rule are supported by the record nor can one tell if they are the only items which will be considered as "good cause". If they are, the phrase "good cause" can be deleted and the rule redrafted appropriately. Redrafting may not resolve the question of the need and reasonableness of the rule, depending on what the record shows. One cannot tell, from reading the language, whether a waiver will occur because the "cost" exceeds $750.00 or there is justification for exceeding the $750.00 limit. Again, absent the record and findings by the agency, no final determination can be made other than that the last sentence, as drafted, is ambiguous. changed p. 13 + priority lists inserted

8 MCAR § 4.0012 F.12. The word "allowable" is redundant as this entire section F relates to "allowable expenditures". If it is intended to further modify administrative expenses, it is vague. Again, without the record or findings by the agency, it cannot be said that the 7.5% figure is supported by the record as reasonable. Absent such a showing in the record, the rule must be withdrawn. deleted p. 16 p. 16 Must be left as is because of requirements of the law.

8 MCAR § 4.0012 L. While the agency has complied with that portion of the Examiner's finding requiring the reinsertion of the variance rule, it has failed to comply with the balance of the finding. The use of the discretionary word "may" (page 18, line 2) is improper. The word "shall" must be inserted instead. The rule as published in the State Register was a general variance rule. The submitted rule would restrict the variances to items listed in "Exhibit 8 MCAR § 4.0012 C.34.-1". As such, it greatly restricts the rule as initially proposed and is a substantial change in the rule which requires a new notice and hearing.

OK. p. 20

Minn. Stat. § 15.0412, subd. 1(a), requires that any variance rule must include a procedure for applying for a variance. As no procedure is established, the rule fails to comply with a substantive provision of law and cannot be adopted absent such compliance.

inserted p. 20

The rule as originally published provided for notification of both successful and unsuccessful applicants for a variance. As now proposed, there would be no notification of unsuccessful applicants for a variance. This constitutes a substantial change in the rule. It can be cured by adding an identical notification procedure for unsuccessful variance applicants. In this same section, by using "all grantees" (page 18, line 19) the rule could be read as requiring notification of all successful variance applications be sent to each and every person who has ever received a grant. Without findings, the agency's intent cannot be stated with any certainty. (One can only speculate that the agency would not willingly impose such an onerous and expensive procedure on itself in these times of budgetary difficulties.)

added p. 21

still there!

✓ Miscellaneous. In addition to the foregoing, the review of the rules has indicated a few grammatical, etc., errors which the agency may wish to correct now rather than waiting for the Revisor of Statutes or the Attorney General to require the changes. These areas are as follows:

✓1. Page 3, line 34, the word "organized" is misspelled.

✓2. Page 12, line 30, for clarification purposes, a comma could be inserted after "grantee".

✓3. Page 13, line 7, the word "therefore" should be "therefor".

✓4. Page 14, line 8, the word "labors" should be "laborers".

✓5. Page 14, line 36, insert "the" between "by" and "department".

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 4d, the rules shall not be adopted until the defects in the rules, as enumerated herein, have been corrected and the rules resubmitted to the Chief Hearing Examiner for review.

Dated: February 19th, 1982.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

ECSEC-81-006-RL

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF ECONOMIC SECURITY

IN THE MATTER OF THE PROPOSED RULE OF THE DEPARTMENT OF ECONOMIC SECURITY FOR THE ADMINISTRATION OF GRANTS BY THE STATE HOME WEATHERIZATION PROGRAM, 8 MCAR c 4.0012

ORDER OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on August 6, 1981, before Richard C. Luis, 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 Department of Economic Security and;

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

WHEREAS, the Department of Economic Security 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 and that the Department of Economic Security has cured the defects in the rule as required.

NOW, THEREFORE, upon receipt of this Order, the Department of Economic Security has the responsibility of submitting the complete hearing record and the rules as adopted by the Department of Economic Security to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. § 15.0412, subd. 4e and 4f.

Dated: February 26, 1982.

DUANE R. HARVES
Chief Hearing Examiner

ECSEC-81-006-RL

STATE OF MINNESOTA
DEPARTMENT OF ECONOMIC SECURITY

ORDER TO ADOPT RULES AND
FINDINGS OF FACT

In the matter of the proposed rule of the Department of Economic Security for the Administration of Grants by the Home Weatherization Program, 8 MCAR C 4.0012.

On August 6, 1981, a hearing was held on the above entitled matter before Richard C. Luis, a Hearing Examiner of the State Office of Administrative Hearings in compliance with Minn. Stat. § 15.0412, subd. 4.

Based on the Hearing Examiner's report of September 21, 1981, and the Chief Hearing Examiner's report of September 25, 1981, and the Chief Hearing Examiner's report of February 19, 1982, on the rules as published in the State Register, the rules as finally proposed at the hearing and the rules as submitted which carry the Revisor of Statutes date of January 19, 1982, the Department issues the following findings of fact and issues an order to adopt the rules as corrected.

1. The Department change the word aid to assistance in the rule's title to correspond to the title of the federally funded weatherization program.

2. The Department change the word costs to grants in 8 MCAR § 4.0012 B for clarity purposes.

3. In 8 MCAR § 4.0012 C 3, the definition of community action agency, the Department is citing language in Minn. Stat. § 268.53, subd. 1 instead of the previous published citation as that act has expired and no longer valid.

4. Item 8 MCAR § 4.0012 C.5, the language that would require standards was removed and the word only was inserted before the word enhance for clarity purposes.

5. 8 MCAR § 4.0012 C.10 of the amended rules has been withdrawn on the recommendation of the Hearing Examiner.

6. 8 MCAR 4.0012 C 6 "Cost of employment" has been included to

give specific definition to allowable expenditures for labor on the weatherization program.

7. "Eligible dwelling unit" was inserted to replace "eligible dwellings" and give more specificity to this term.

8. Handicapped persons was rewritten to clarify the definition of a qualified medical person.

9. Heating degree days was reinserted as originally published.

10. "Independent contractor" was included because of testimony presented at the hearing and its inclusion was found not to be a substantial change.

11. "Local applicant" was withdrawn.

12. "Low income". This definition uses the wording as it is found in the Hearing Examiner's report. It also includes a catagorical eligibility statement to make it compatible with the federal weatherization program.

13. C.24 a. The language was removed eliminating the necessity of defining "substantially".

14. C 24.b implied quantitative language and was removed.

15. 26.c. The word "occupancy" was inserted in place of "use" for clarity purposes.

16. "Unit of general purpose local government" was withdrawn.

17. C.31, "households" was withdrawn and "dwelling units" inserted to be consistent with terminology found elsewhere in the rule. Other language was rewritten for grammatical purposes.

18. C.33. The word "complicated" has been withdrawn.

19. C.34. The heading for the materials list has been rewritten for editorial and clarity purposes. Most of this statement was originally published at the end of the materials list.

20. The formula in Section D, Allocation of funds, has been withdrawn. In addition reservation allocations language has also been withdrawn at the Hearing Examiner's recommendation. Language was inserted to clarify who could receive the funds.

21. "Eligible applicants". Language has been withdrawn.

22. Language for terminating a grant (D.2) has been changed to clarify the process for termination.

23. Language in D.3 has been changed to drop commissioner and

assistant commissioner to department. This change was made in other sections of the report also.

24. D.3. b, c. d, language was added for clarity purposes.

25. Section E. Language was added to clarify the grant application process.

26. Section E.1 was rewritten to clarify the application process.

27. Section E. 2.b. The language referring to "responsible authority" has been removed and "grantee" has been inserted.

28. Section E.2.b. (1), (2). Language was deleted and inserted for clarity purposes.

29. E.3.c as originally published has been withdrawn as recommended by the Hearing Examiner.

30. E.3 language was rewritten to indicate that the Department will establish the number of dwelling units to be completed by a grantee.

31. E.4 section has been rewritten to indicate a priority list is now included in the rules and to define the waiver process.

32. Section F. Introductory language has been removed at the Hearing Examiner's request.

33. Section F.5. has been rewritten to delete language requiring an agency to obtain prior approval on purchasing items with an acquisition value in excess of $50.

34. Section F.6. was included because of testimony presented at the hearing by the Independent Contractor's Association Northwest and found necessary and reasonable by the Hearing Examiner.

35. "Incidental repairs" in Section F.9. has been withdrawn as recommended.

36. The word "allowable" in F.12 has been deleted. However, the 7.5 percent administrative figure must remain, as that is the limit set by the alw. (See Laws of Minnesota for 1981, second special session, ch. 3, pg. 2596.)

37. Section F.13. Language referring to undue or excessive enhancement has been withdrawn.

38. Section I. Record keeping. Language was deleted and clarifying language was inserted to indicate what document and standards a grantee must follow.

39. Section K. Granting process has been changed for clarity purposes.

40. Fiscal responsibility section was withdrawn as recommended by the Hearing Examienr.

41. Severability section has been withdrawn as recommended by the Hearing Examiner.

42. Section L. Variances has been reinserted and clarifying language added to indicate the process for applying for and the granting of a variance.

The above corrections and changes comply with finding of fact of the Hearing examiner and the Chief Hearing Examiner. Therefore, I order that these rules for the Weatherization Assistance for Low-Income Persons program be adopted.

Dated: February 29, 1982.

Rolf Middleton

Rolf Middleton, Commissioner

RECEIVED
JUL 10 1981
ADMINISTRATIVE HEARINGS

Exhibit No. 3

File No.

STATE OF MINNESOTA

OFFICE OF HEARING EXAMINERS

Statement of Need and Reasonableness

In the Matter of Proposed Rules Relating to the Operation of the State of Minnesota's Weatherization Program for Low Income People.

Minn. Stat. § 268.37 authorizes the State of Minnesota to operate a weatherization program for low income persons. It also directs the Commissioner of the Department of Economic Security to promulgate rules to facilitate the delivery of the above mentioned program. A public hearing will be conducted in accordance to Minn. Stat. §§ 15.0411 - 15.0417 and 15.052 (1980) and 9 MCAR §§ 2.101 - 2.113.

The agency will not be utilizing any non-staff expert witnesses to present testimony on its behalf.

The rules as authorized by Minn. Stat. § 268.37 are necessary to provide and set limits for grantees in the delivery of the weatherization program.

The following is a sectional breakdown of need and reasonableness of rules under 8MCAR § 4.0012.

8MCAR § 4.0012 A
Purpose - to establish the objectives of the program under the enabling legislation.

8MCAR § 4.0012 B
Administration of Costs - this section indicates which Federal management circulars are to followed for the management of the local grants by grantees. Federal management circulars are utilized because the State of Minnesota has not developed any comparable documents.

8MCAR § 4.0012 C
Definitions - the definitions contained in this rule pertain only to this program. Contained in the definitions section is Exhibit 8MCAR § 4.0012 C.32-1 Allowable Weatherization Materials. This definition indicates what materials are allowable for grantees to install in dwellings to be weatherized. This definition also includes the specific test standard that the material must meet along with the approval date and the reference to the Residential Conservation Services (RCS) Act CFR 456.101 et. al. Section References.

8MCAR § 4.0012 D
Allocation of funds - provides the formula for allocating the funds appropriated under this law to geographic areas for the delivery of the weatherization program. The staff felt this formula provided the most euqitable distribution of funds.

8MCAR § 4.0012 E
Reservation Allocations - provide for the separate allocation of funds under this law to provide weatherization aid to all Indian Reservations in Minnesota.

8MCAR § 4.0012 F
Contract period - this section defines the length of the contract periods for grants issued under this law by the State of Minnesota. This enables the grantees to maintain a high level of production.

8MCAR § 4.0012 G
Eligible applicants - this section provides the basis for the commissioner or the assistant commissioner to select grantees to deliver the weatherization program.

8MCAR § 4.0012 H
Local Applications - this section provides the criteria for the information a grantee must submit to the state before a grant is awarded. The state staff feels it is better to have the grantees establish their priorities and goals within the framework of the given criteria thereby allowing for variances in local conditions.

Under 8MCAR § 4.0012 H. 5. the state establishes a material maximum that the agency feels will enable grantees to do an effective job of weatherizing homes. All grantees will have the same material maximum.

8MCAR § 4.0012 I
Allowable Expenditures - the agency staff feels that all of the items in this section are necessary for the effective delivery of the weatherization program. This section allows for the separation of funds into 3 main areas: administration, program support and materials. 8MCAR § 4.0012 I.a.(4) provides for more state control over equipment and vehicle purchases. This is necessary since all purchases under this rule are property of the state. 8MCAR § 4.0012 I.a.(7)- agency staff feels that this is a just amount of money to spend on making repairs to a dwelling before weatherization activities commence. 8MCAR § 4.0012 I.d. sets criteria for weatherizing rental dwellings. The agency staff feels that this is necessary to protect the client and to provide proper weatherization for the entire dwelling. 8MCAR § 4.0012 I.z. - agency staff feels that the items covered in this section are not allowable expenditure. This helps insure that grantees will spend funds only on dwellings not previously weatherized by funds under this act or other programs funded by the state of Minnesota or the Department of Energy and administered by this department. 8MCAR § 4.0012 I.3. - the state feels it is necessary to provide an expenditure waiver cost for exceptional dwellings or other related activities.

8MCAR § 4.0012 J
Oversight Responsibility - sets criteria that the state feels is necessary to monitor and maintain effective control over the program

8MCAR § 4.0012 K
Record Keeping - the agency staff feels it is necessary to require the grantees to maintain such records so that all costs can be tracked to weatherized dwellings. Financial record keeping must meet standards imposed by certified auditors.

8MCAR § 4.0012 L
Monthly reports - the agency staff feels it is necessary to require monthly reports from grantees in order to maintain a semblance of fiscal control and to provide accountability in production performance.

8MCAR § 4.0012 M
Eligible Dwellings - grantees will not do any dwellings where the total household income exceeds 125% of poverty level. This section is in accord with the law and eliminates some categorical eligibility found in previously funded weatherization programs.

8MCAR § 4.0012 N
Granting Process - the state reserves the right to attach special conditions to grantee agreements. This would be done if the grantee's plan fails to meet the specifications required by the state.

8MCAR § 4.0012 O
Fiscal Responsibility - this section is needed to insure that grantees have developed and have in place a reliable and responsible fiscal department.

8MCAR § 4.0012 P
Severability - this section indicates to all affected persons that if any part of the rule is declared null and void the rest of the rule is not effected.

8MCAR § 4.0112 Q
Variances - this section is necessary to set out procedures for granting variances in the rule. This is done primarily because of anticipated technical changes that would be reflected in the material list contained in this rule Exhibit 8MCAR § 4.0012 C.32.-1

RALPH T. KEYES
ATTORNEY AT LAW
1631 BROOKS AVENUE WEST
ST. PAUL, MINNESOTA 55113
PHONE: 612/636-1942

RECEIVED
AUG 21 1981
ADMINISTRATIVE
HEARINGS

August 20, 1981

Office of Hearing Examiners
1745 University Avenue, Room 300
St. Paul, MN 55104

Attention: Richard Luis

Re: Department of Economic Security Weatherization Rules

At the hearing before you on August 6, 1981 on the above-referenced matter, I testified on behalf of Insulation Contractors Association Northwest. The thrust of my testimony was that the rules for the weatherization of dwellings of low income persons should not preclude a grantee from using and paying for materials, labor and services provided by private sector contractors.

A spokesperson for the department stated it was not the intention to preclude the use of contractors. He agreed to include this concept in the department's suggested changes in the proposed rules as submitted to your office based on the public hearing on August 6, 1981.

I have met with department representatives. We have agreed on suggested amendments to the proposed rules which would satisfy my client. The department is to include the amendments in their comments to you.

So that you are fully advised on the matter, especially the agreement of my client, I am enclosing a copy of the amendments agreed to. I respectfully request your agreement that the amendments be included in the proposed rules.

Very truly yours,

Ralph T. Keyes

Ralph T. Keyes
for Insulation Contractors Association Northwest

RTK/kjw

Enclosure

RECEIVED
AUG 21 1981
ADMINISTRATIVE
HEARINGS

August 19, 1981

SUGGESTED ADDITIONS TO WEATHERIZATION RULES

SUBMITTED BY INSULATION CONTRACTORS ASSOCIATION NORTHWEST (ICAN)

1. In "C" Definitions.

   Page 3, after line 26 insert:

   17. "Independent contractor" means an entity, whether organized for profit or as a non-profit organization and however organized, which furnishes materials or provides labor or both in the weatherization of dwellings of low income persons.

2. Renumber following items in sequence

3. In "F" Allowable expenditures.

   Page 11, after line 33 insert:

   6. Payments to an independent contractor for furnishing materials or providing labor or both in the weatherization of dwellings of low income persons.

4. Renumber following items in sequence.

RECEIVED
AUG 21 1981
ADMINISTRATIVE HEARINGS

**ST. PAUL INTER AGENCY
ENERGY COALITION
100 South Robert Street
St. Paul, MN 55107**

August 21, 1981

Richard Luis, Hearing Examiner
Office of Administrative Hearings
Room 300
1745 University Ave.
St. Paul, Minnesota 55104

Re: Proposed Rules for the Minnesota Weatherization Program, Minn. Stat. § 268.37.

INTRODUCTION

The following comments are being made in response to the Proposed Rules for the State Weatherization Program which were published in the State Register Monday, July 6, 1981 and subsequently amended on Thursday, August 6, 1981. These comments are on behalf of the St. Paul Inter Agency Energy Coalition, an organization that is made up of representatives from various agencies in the city of St. Paul that allocate resources to meet the energy needs of St. Paul residents. The organization is composed of representatives from social service agencies, advocacy agencies, and utility providers. The provision of energy to low and moderate income people is a very important issue for the Inter Agency Energy Coalition. St Paul's low and moderate income residents have been hit very hard by the costs of energy that has been increasing much faster than many utility customer's ability to afford.

The costs of all goods and services are rising at a very rapid pace. Substantial increases in the cost of heating fuels from all sources is extracting a greater percentage of families d-sposable incomes. Without an effective weatherization program households on fixed incomes and the working poor will not be able to keep their utility bills at a man-

ageable level. The great financial burden on many households and the sacrifices people must make to pay the cost of energy bills points out the need for a conservation program geared to produce the maximum number of weatherized residences for low income Minnesotans. As a result, the Inter Agency Energy Coalition has a strong interest in the operation of a fair and effective energy conservation program that will enhance the ability of low income Minnesotans to afford to maintain a supply of energy needed to maintain life in the city of St. Paul and the state of Minnesota.

DISCUSSION

The proposed weatherization rules contain a number of excellent provisions. But the primary focus of these comments are on suggested improvements in the rules. Some of the areas in which these proposed rules are superior to the prior rules are: 1) the allowance of $750 in material expenditures per eligible dwelling unit; 2) the provision for waiver of the $750 restriction for good cause on written application; 3) the DES suggestion to delete the requirement of prior approval for the purchase or lease of any item valued in excess of $50 and the suggested addition of the phrase " $300 per item " before written authorization from the department is required. The above mentioned factors will decrease the administrative costs of the program. Accordingly, a larger percentage of the available funds will toward direct weatherization assistance.

The comments that follow address major areas of concern, followed by some specific suggestions.

1. 8 MCAR § 4.0012 D, Allocation of Funds.

The number of low income Minnesotans eligible to participate in the weatherization program is a fundamental guide as to the proper method of determining how best to target the funds

to meet the purposes of Minn. Stat. § 268.37. One goal articulated in the Act is to produce the maximum number of weatherized units for low income persons. The DES suggests that the allocation formula provides the most equitable distribution of funds. However, by excluding the number of low rent public housing units from the allocation formula a substantial question exists as to whether the funds are going to areas where the need for weatherization assistance is greatest. Large numbers of low income people live in public low rent housing. Since low rent public housing is encompassed within the phrase " eligible dwelling unit " for purposes of energy conservation assistance those units should also be counted as eligible recipients to determine the appropriate amount of funds that should be allocated in a given area of the State. The Inter Agency Energy Coalition beleives that the overall purpose of the weatherization program will be met by modifying the proposed rules consistant with the foregoing recommendation.

On a similar point, the definition of " eligible recipients " as proposed suggests two standards in defining the term. One standard relates to low income families at or below 125% of the poverty level and the other standard relates to unrelated individuals below 100% of poverty. We would recommend that one standard be used to determine eligible recipients. Since Minn. Stat. § 268.37 subd. 3 provides that " Weatherization assistance shall be given to households where the total income does not exceed 125% of the poverty level as updated by the federal office of management and budget poverty guidelines." that standard should be used in all cases. In This respect, the proposed rules appear to be inconsistant with the Act. In addition, the dual standard may increase the cost of implementing the program.

2. 8MCAR § 4.0012 D 1, Contract Period.
The Coalition suggests that additional flexibility may be needed in this area to allow for the effective coordination of the federal and state weatherization programs. Accordingly, the contract period should extend beyond the six months suggested in the proposed rules. This issue is of particular concern given the uncertainty surrounding the delivery of federal residential weatherization funds to the state.

3. 8 MCAR § 4.0012 E 2.b. (3), Priority System for Client Applications.
Overall the priority system is good in that it affords the grantee agencies some descretion in setting up its program to meet local needs within the general guidelines set by the rules. However, the proposed rules do not take into consideration the cost of energy from natural gas sources which has been constantly increasing since the federal deregulation. If If the energy needs of low income Minnesotan's is to be met in the future, conservation measures should begin to address those energy needs now.

4. 8 MCAR § 4.0012 D. 3., Grant Terminations.
It is absolutely essential that there be some criteria established to indicate when the DES is justified in terminating a grant. The public participation proposed in this process is fine, but everyone affected should know those factors which might trigger a public hearing to terminate a grant. The adopted rules should also provide some guidance as to the manner and authority under which the hearing shall proceed.

CONCLUSION

For the foregoing reasons, the St Paul Inter Agency Energy Coalition submits that this much needed program will better serve low income Minnesotans in a fair and effective manner upon the incorporation of the suggested modifications recommended herein.

Date August 21, 1981

Respectfully submitted,

By Harold Turner

For the St Paul Inter Agency
Energy Coalition

RL

TRI-COUNTY ACTION PROGRAMS, INC.

TRI-CAP

Telephone: (612) 251-1612
728 South Benton Drive
Sauk Rapids, Minnesota 56379

Hearing Examiner
State of Minnesota Office of Hearing Examiner
Room 300
1745 University Ave
St. Paul, MN 55104

RECEIVED
AUG 12 1981
ADMINISTRATIVE HEARINGS

Re: Minnesota Stat. 15.0412
Subd. 4(1980)

Gentlemen:

I testified on the Department of Economic Security Weatherization Program proposed rules on August 6, 1981. My testmony was in support of dropping the 6 month contract provision outlined in Section D, item 1.(lines 32 &33 on page # 9) I testified that the Department of Ecnomic Security was in fact violating the intent of the law by mandating that these funds be expended within 6 months in light of the fact that Federal funds are available.

You had requested that I furnish you with the law to verify my statements. I have enclosed a copy of H.F. No. 1446 which includes the language I referred to and also H.F. No. 7 of the Special Session which contains identical language. I would like to quote the language which, to me, indicates how these funds are to be administered. "If federal funds are not made available for the Weatherization program, the appropriation for this program in the second year shall be available in the first year." Also, "If the appropriation is insufficient to fully fund each agency, the insufficiency shall be prorated annually among the agencies.

It is my belief that the Department of Economic Security acted in haste in determining that the funds should be spent in 6 months rather than (2) two years. By so doing they have forced agencies to maintain higher levels of expenditures than would normally be the case. Also, there will probably be a delay in Federal funding coming to the State and as a result agencies could be forced to lay-off weatherization staff when they could have been maintained with State funds as the legislature desired. In our case over 50 employees would be terminated and possibly 600 or more in the entire state.

All we sought from the department was a one year contract with provision to spend down the available funds at our discretion. As it now stands we have to maintain a production level for 6 months and then at a moment's notice terminate the entire program. This makes for an administrative "nightmare".

I hope this information will help you to understand where the deliverer's of the program differ with the Department of Economic Security on this particular point.

Sincerely yours,

Richard E. Holm
Executive Director

An Equal Opportunity Employer

Enclosure (1)

closure.

Any savings in excess of the $7,000,000 projected to result from the closure of the hospital may be directed by the commissioner of public welfare into funding for community facilities for mentally ill, chemically dependent, and mentally retarded persons.

Nursing Homes

Approved Complement -

By June 30, 1983 - 617

Current Expense

$ 1,710,700 $ 1,888,200

Salaries

$11,238,300 $11,298,000

Repairs and Betterments

$ 146,500

Special Equipment

$ 68,300

Mental Health Support

$ 592,000 $ 579,600

Any unexpended balance remaining in the first year for special equipment and repairs and betterments does not cancel but is available for the second year of the biennium.

The information for the budgets for the nursing homes and hospitals shall be submitted to the 1983 legislature on an individual institution basis.

Positions and administrative money may be transferred between the various activities within each subdivision in this section.

Work activity centers in state hospitals shall make available up to 25 percent of their capacity for community referrals. The community referrals will be funded by the division of vocational rehabilitation, will provide sheltered work and work activity, and will be certified under Minnesota Statutes, Chapter 129A.

Sec. 3. COMMISSIONER OF ECONOMIC SECURITY

Total Department Appropriation 27,145,600 23,535,100

The amounts that may be expended from this appropriation for each program are as follows:

shall be expended for administration of the weatherization program. The department shall provide supplemental administrative funds to compensate for administrative expense associated with the weatherization of rental property. Unexpended administrative funds, and all other state weatherization funds, may be used for labor, materials or repair of equipment, as necessary.

If federal funds are not made available for the Weatherization program, the appropriation for this program in the second year shall be available in the first year. This program is sunsetted when this appropriation expires.

Money appropriated for community action agencies shall be allocated annually under either clause (a) or (b), whichever is more advantageous to the agency.

If the appropriation is insufficient to fully fund each agency, the insufficiency shall be prorated annually among the agencies.

(a) In proportion to the size of the poverty level population served by the agency when compared to the size of the poverty level population in the state; or

(b) If the appropriation of funds for community action agencies shall be equal to or more than that available in fiscal years 1979 and 1980, there shall be in place a "hold-harmless" provision for the allocation of funds among community action agencies. "Hold-harmless" is the amount of funding received by a community action program under the Economic Opportunity Grant Program in the previous fiscal year.

"Poverty level population" means the number of people whose household income is below the poverty line established by the United States Department of Commerce, Bureau of the Census.

The appropriation for the displaced homemaker program includes funds for the purpose of making grants to programs to provide employment and support services to displaced homemakers.

This appropriation contains $3,050,000 in fiscal year 1982 for fuel assistance, but it is not available unless it is required to match federal fuel assistance money. Any unexpended balance remaining in the first year from the $3,050,000 shall not cancel, but shall be available for the second year.

SECOND SPECIAL SESSION
H.F. No. 7
CHAPTER No. 3

AN ACT

relating to the organization and operation of state government; correcting a provision relating to the weatherization program in the omnibus health, welfare, and corrections appropriations bill; amending Laws 1981, Chapter 360, Section 3.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Laws 1981, Chapter 360, Section 3, is amended to read:

Sec. 3. COMMISSIONER OF ECONOMIC SECURITY

Total Department Appropriation	27,145,600	23,535,100

The amounts that may be expended from this appropriation for each program are as follows:

The amounts shown in the program totals are reduced by $300,300 the first year and $312,000 the second year.

Job Service

$ 3,924,100	$ 3,924,100

The appropriation in job service for the summer youth program is available immediately to provide the same level of program for each summer of the biennium as was provided during the summer of 1980. If the appropriation for either year is insufficient, the appropriation from the other year is available for it.

Vocational Rehabilitation Services

$11,764,300	$12,819,500

Money received from workers' compensation carriers for services provided by the division of vocational rehabilitation for the benefit of injured workers shall be deposited in the accounts of the division of vocational rehabilitation and reported in the same ratio to state and federal money expended. If the deposits of the state's share exceed the amount shown on worksheets of the conferees of the senate and house of representatives, the commissioner of finance shall reduce the amounts available from the general appropriation for the division of vocational rehabilitation by the amount of the excess. The federal share of these recoupments shall be deposited as required by federal law, regulation, and guideline.

The commissioner of economic security may expend money received from school districts, governmental subdivisions, mental health authorities, and private nonprofit organizations for the purpose of conducting joint or cooperative vocational rehabilitation programs, and this money is appropriated for these purposes.

Any federal money received in excess of the estimates shown in the 1981 budget document shall reduce the state appropriation available by a like dollar amount, unless otherwise directed by the governor, after he has consulted with the legislative advisory commission.

Training and Community Services

$11,757,500 $ 7,103,500

~~Local delivery agencies for the weatherization program shall use a minimum of $25,000 for administrative expenses.~~ No However, no more than 7.5 percent of the total state allocation shall be expended for administration of the weatherization program. The department shall provide supplemental administrative funds to compensate for administrative expense associated with the weatherization of rental property. Unexpended administrative funds, and all other state weatherization funds, may be used

for labor, materials or repair of equipment, as necessary.

If federal funds are not made available for the Weatherization program, the appropriation for this program in the second year shall be available in the first year. This program is sunsetted when this appropriation expires.

Money appropriated for community action agencies shall be allocated annually under either clause (a) or (b), whichever is more advantageous to the agency.

If the appropriation is insufficient to fully fund each agency, the insufficiency shall be prorated annually among the agencies.

(a) In proportion to the size of the poverty level population served by the agency when compared to the size of the poverty level population in the state; or

(b) If the appropriation of funds for community action agencies shall be equal to or more than that available in fiscal years 1979 and 1980, there shall be in place a "hold-harmless" provision for the allocation of funds among community action agencies. "Hold-harmless" is the amount of funding received by a community action program under the Economic Opportunity Grant Program in the previous fiscal year.

"Poverty level population" means the number of people whose household income is below the poverty line established by the United States Department of Commerce, Bureau of the Census.

The appropriation for the displaced homemaker program includes funds for the purpose of making grants to programs to provide employment and support services to displaced homemakers.

This appropriation contains $3,050,000 in fiscal year 1982 for fuel assistance, but it is not available unless it is required to match federal fuel assistance money. Any unexpended balance remaining in the first year from the $3,050,000 shall not cancel, but shall be available for the second year.

SECOND SPECIAL SESSION
H. F. No. 7

Harry A. Sieben, Jr.
Speaker of the House of Representatives.

Jack Davies
President of the Senate.

Passed the House of Representatives this 1st day of July in the year of Our Lord one thousand nine hundred and eighty-one.

Edward A. Burdick
Chief Clerk, House of Representatives.

Passed the Senate this 2nd day of July in the year of Our Lord one thousand nine hundred and eighty-one.

Patrick E. Flahaven
Secretary of the Senate.

Approved

July 9, 1981

Albert H. Quie
Governor of the State of Minnesota.

Filed July 9, 1981

Joan Anderson Growe
Secretary of State.

MINNESOTA CAP ASSOCIATION, INC.

GRIGGS-MIDWAY BUILDING, SUITE S-281
1821 UNIVERSITY AVENUE
ST. PAUL, MINNESOTA 55104
612/645-4159

RECEIVED
AUG 13 1981
ADMINISTRATIVE HEARINGS

August 12, 1981

Mr. Richard Luis
Administrative Hearings
Room 300
1745 University Avenue
St. Paul, Minnesota 55104

Dear Mr. Luis:

The following is a recap of the items I brought up at the Rules Hearing for the State of Minnesota Weatherization Program on August 6, 1981:

1. C-3 (pg. 2, 19-25) the definition of a "Community Action Agency" ought to incorporate a reference to the Minnesota Community Action Act (Chapter 367, Minnesota Statues).

2. C-18 (pg. 4, 2-9) on line 6, after "(1981)", insert "or by the Commissioner" and incorporate the D.O.E. definition of income determination for self-employed persons.

3. C-34 (pg. 6, 5-9) on line 9 add to the sentence "or other commercially available, necessary materials for weatherization which meet the standards of the Minnesota State Building Code".

4. D-1 (pg. 9, 32-33) on line 33 add new sentence "The Commissioner shall have the authority to extend the contracts beyond the current contract period and to realocate funds."

5. F-5 (pg. 11, 28-33) section to read "Purchase or lease of tools, equipment, and vehicle with a value of more than $300 per item must have prior written approval from the department. Purchasing must follow procedures outlined in Federal Management Circulars A-102, A-87 and A-110."

The future does not belong to those who are content with today... Rather it will belong to those who can blend vision, reason, and courage in a personal commitment.....

Robert Kennedy

6. G-1 (pg. 12, 20-25) on line 25 add ",or unless approval is granted by the department."

Yours truly,

Roger Isenberg
Energy Education Coordinator

RI/kr

cc: Brenda Joachim
Don Borham
Susan Askelen
Dick Cazin
Mike MacAlister
Byron Zuidema
Dick Harris

RECEIVED
AUG 18 1981
ADMINISTRATIVE
HEARINGS

TESTIMONY PREPARED
for the
PUBLIC HEARING
regarding

STATE RULES
for the
STATE LOW INCOME WEATHERIZATION PROGRAM
(8 MCAR S 4.012)

August 6, 1981

DULUTH COMMUNITY ACTION PROGRAM
1305 London Road
Duluth, Minnesota
(218) 723-3796

During the last three years many of the more restrictive regulations governing the low income weatherization program have been relaxed or improved by the Department of Energy (DOE). In addition, the Appropriations from the State during the last two years have enabled us to offer a professional, efficient program which is adequately staffed and equipped. We are hoping that the Proposed State Rules will be amended to eliminate some remaining problems.

pg. 9
lines 32-33
8 MCAR 54.012
Section 0.1

Contract period

When these rules were drafted it appeared almost certain that there would be no federal program in 1982. However, it now looks as though Minnesota's share of the continued DOE program will be 7.5 million and will be available on January 1 of 1982. We feel it is necessary that a provision for contract extension be written into the rules so that local agencies can revise plans for the best use of State funds when the rules for the federal program are finalized.

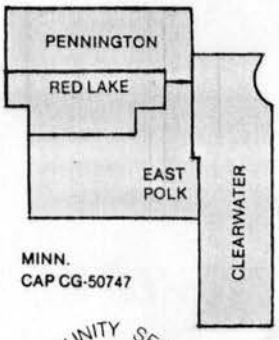
pg. 12
lines 20-25
8 MCAR S 4.012
Section G. 1.

Weatherization of previously weatherized units:

During the early years of the DOE program, 1977-78 and early 1979, problems in the regulations and budget restrictions did not allow for adequate work on eligible units. For instance, until the State appropriated weatherization funds to pay for labor, Duluth's program was plagued with a lack of skilled labor and had a large turnover rate. Federal specifications for ventilation were later proven inadequate. Also, DOE issued instructions, which were later res-

cinded, ordering us not to insulate attics which contained knob and tube wiring. Therefore, through no fault of our own, much of the work performed during this time was not complete and could in fact contribute to structural damage. Insulation of attics (prohibited by DOE) and infiltration work (inadequate due to lack of labor) are the two most cost effective means of reducing heat loss, and yet many units completed during the mentioned time frame were left incomplete. Improper venting, both of attic spaces and walls, can contribute to the rotting of structural members of a home. We have already seen cases where this kind of damage is taking place in homes we worked on. We feel very strongly that provisions should be included in these rules to correct potentially damaging situations and complete those cost effective items which were not included originally. In addition to saving energy, we could save potential liability and litigation problems for local agencies the State and DOE.

RL





Inter-County Community Council, Inc.

Community Services Administration
Community Action Program for
Clearwater, East Polk, Pennington and Red Lake Counties

P.O. Box 187, Oklee, Minnesota 56742
Dial 218-796-5144

July 24, 1981

RECEIVED
JUL 28 1981
ADMINISTRATIVE HEARINGS

Equal Opportunity Employer
BOARD OF DIRECTORS:

Lloyd Wold, Chairman
Trail

Arnold Higdem, Vice Chairman
Bagley

Clayton Steenerson, Secretary
Clearbrook

Maurice Ferden, Treas.
Fosston

Russell Huotari
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LeRoy Stumpf
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Clifford Fischer
Gonvick

Charles Newland
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Margaret Swenson
Bagley

Mrs. Ruby Ostenaa
McIntosh

Larry Oak
Fosston

Leo Altendorf
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Carl Amren
St. Hilaire

Mrs. Ardis Race
Goodridge

Donald Appell
St. Hilaire

Connie Peoples
Brooks

Elida Capistran
Mentor

Rev. Robert Schurr
Red Lake Falls

Leander Berberich
Brooks

Mr. Alan Chapman
Minn. Dept. of Economic Security
690 American Center Bldg.
150 East Kellogg Boulevard
St. Paul, Minnesota 55101

Dear Alan Chapman:

It has come to our attention that there is a possibility of the availability of weatherization funds on the federal level. I have been informed that pending legislation indicates the need for state match.

The state is in the process of publishing rules for the weatherization program. I feel the rules should indicate that the present state program operational dates be set from July 1, 1981 to June 30, 1982. Current CSA contracts could then be extended and operated in conjunction with federal programs using state funds as match.

Sincerely,

Roy A. Jorgenson

Roy A. Jorgenson
Executive Director

RAJ/pf

CC: Commissioner O'Donnell
Robert Melby
Dennis Trandem
Richard Luis, Hearing Examiner

RAMSEY ACTION PROGRAMS, INC.

RECEIVED
AUG 21 1981
ADMINISTRATIVE HEARINGS

August 19, 1981

Chairman
Scott Metcalf

Vice-Chair
Bob Weyandt

Secretary
Kathy Guerin

Treasurer
Barbara Robinson

Executive Director
James R. Brown

Deputy Director
Leroy Cunningham

Mr. Richard Luis
Hearing Examiner
1745 University Ave., RM 300
St. Paul, MN 55104

Dear Mr. Luis,

Ramsey Action Programs would like to take this opportunity to offer comments on the weatherization rule proposed by the Department of Economic Security (8 MCAR 4.0012). In general, we concur with changes suggested at the public hearing by the Minnesota CAP Association and the Minnesota CAP Directors Association. However, we also recommend the additional changes listed below.

We believe that incorporation of these additional changes would clarify and reduce confusion in administration of the rule, would enhance the program, and would ensure equitable distribution of available funds across Minnesota. Therefore, we recommend that the rule not be adopted without them.

1. C.10. This definition should be changed to avoid confusion and possible inequities. There are two ways in which this could be done.

   The first way to change it would be to delete the definition entirely, since the function it serves could also be covered by existing definition C.18. As now stated in the rule,C.10. appears to be inconsistent with C.11. C.11. would consider a dwelling unit occupied by a single person or by two or more unrelated individuals to be a family unit. C.10. leaves their status unclear.

   The second possible clarifying change would be to substitute at the end of definition C.10. language such as the following:

   > "...(N)umber of low income families (as 'low income' is defined in C.18. below) plus the number of unrelated individuals below 125% of poverty (or a consistent level determined by the Commissioner)."

COMMUNITY SERVICES ADMINISTRATION

WEATHERIZATION OFFICE
3220 LABORE ROAD, VADNAIS HEIGHTS, MINNESOTA • (612) 482-7749

"An Affirmative Action/Equal Opportunity Employer."

and to clarify C.11.

Either of these changes would eliminate the inequities which are now built into definition C.10. Counting some low income people at one income level and others at a different level is unfair, since both the low income families and the unrelated individuals are eligible to apply to have their homes weatherized. Similarly, subtracting low rent public housing units from eligible recipients is inequitable, since the families that live in those units are eligible to have their homes weatherized.

In summary, any definition of "eligible recipients" should include all the low income people who are in fact eligible to receive weatherization services, and all should be counted on a comparable basis.

2. C.14. As written, this definition does not include all the same people who are regarded as "handicapped" for purposes of protection under civil rights legislation, and there is no rational reason to exclude some of these people (in contrast with rules such as the state building code, in which only some handicapped people require physical accessibility; all handicapped low income people need weatherized homes). It is important to note that the agencies which are weatherization grantees are required to comply with civil rights laws for handicapped people, using the definitions in those laws; applying a different definition here could create administrative difficulties (e.g. Would a physician's statement be needed for intake?).

Therefore, language such as the following would be preferable to that which now appears in the rule:

> "'Handicapped person' means a person who is handicapped as defined in Section 504 of the Rehabilitation Act of 1973 as amended (29 USCA 701 (7) (b)) or who, on the basis of an opinion by a qualified medical person, is permanently physically or mentally disabled."

Since the Section 504 definition includes those handicapped people mentioned in the present C.14. definition, the last clause of this suggested revised language could be omitted as redundant.

3. C.34. The citation given here is somewhat confusing, since the most recent DOE materials list, which has been used by previous DOE weatherization grantees (10 CFR 440.19(a), as published in the Federal Register 2/27/80, pp. 13040-13041) is not included.

4. D. It would be desirable to revise line 29 of page 9 to read:

"x = eligible low income households in the county"

This change would be needed only to correspond to the preferred change in the definition of C.10. above.

According to the present formula, low income households who are eligible

to have their dwelling units weatherizaed are excluded from the allocation formula.

Consequently, low income families in counties such as Ramsey and Hennepin, which have large numbers of low rent public housing units, are penalized because they will receive less funds proportionally to the number of low income people and eligible dwelling units in the county. Presently total allocation is at a reduced amount, and the grantee is less able to serve all those who need the assistance. To a lesser extent, the proposal to count unrelated individuals at a lower income level also penalizes counties with large numbers of households consisting of unrelated individuals. Since this is also true of Ramsey and Hennepin countries, they are doubly penalized by the proposed formula.

As stated previously, we believe that these proposed changes would be in the best interest of all low income people, and we urge you to incorporate them immediately. Thank you for your consideration of these comments.

Sincerely,

James R. Brown
Executive Director

cc: Allan Chapman, DES

If you wish to be notified when the Hearing Examiner's Report is available, please put your name and address on one of the envelopes supplied.

RULE HEARING REGISTER

PLEASE PRINT CLEARLY

I

NAME	REPRESENTING	COMPLETE ADDRESS	TELEPHONE	CHECK HERE IF YOU WISH TO MAKE A STATEMENT AT THE HEARING	CHECK HERE IF YOU WISH TO BE NOTIFIED BY THE AGENCY WHEN THE HEARING RECORD HAS BEEN SUBMITTED TO THE ATTORNEY GENERAL
Ted Mueller	MN. Rural Edc. Assn	4901 W. 77th St, MPLS 55435	835-2614		
Don Homuth	Koochiching - Itasca Action Council	Box 117 Taconite, MN	218-245-2302	✓	
Ralph T. Keyes	Insulation Contractors N.W.	555 Park St. Suite 140, St. Paul 55103	612-293-9933	✓	✓
Brenda Joachim	Scott-Carver Economic Council	6th & Oak St Carver MN 55315	612 448-2302		
Dick Glaske	Coalition Rural Schools CAC	Box 157, Zumbrota Mn. 55992	507 732-7391		
Mary Ann Senjem	Semcac	Box 549, Rushford Mn. 55971	(507) 864-7741		
Jerry T. Olson	Semcac	Box 549, Rushford, Mn. 55971	(507) 864-7741	✓	
Richard Hahn	Tri Cap	226 So Benton Dr Sauk Rapids 56379	251-1612	✓	
Dan Bonham	MVAC	PO Box 3327 Mankato Mn 56001	507-387-4135	✓	
Mark Comara	Lakes + Pines CAC	129 West Forest Mora	679-1800		
David Sabie	MCAA	239 City Hall Mpls 55408	348 8858		✓
Roger Williams	DES	690 Amer. Ctr Bldg St. Pa.	296-5744	NA	
Roger Lonberg	MN CAP Assn	1891 Clemens Ave St Pa	645-4159	X	
Susan Askelin	Duluth Cap	1305 London Rd. Duluth, MN.	218-723-3796	✓	✓
Mark Ulters	DAkota Co. HRA	2805 dodd Rd EAgan MN	612 452-7255		—
Peter C. Andrews	Dept of Econ. Sec.	1100 Bremer Tower, St. Paul 55101	296 3834		
Richard Crazin	Arrowhead CAP	3rd ave 6th St. So Virginia 55792	218 749-2912	✓	✓
Michael Hamberg	Dakota County Human Services	357 9th Ave N So St Paul MN	457-0644		
Bill Drew	DES	690 Am. Center Bldg	297-3416		

If you wish to be notified when the Hearing Examiner's Report is available, please put your name and address on one of the envelopes supplied.

RULE HEARING REGISTER

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II

NAME	REPRESENTING	COMPLETE ADDRESS	TELEPHONE	CHECK HERE IF YOU WISH TO MAKE A STATEMENT AT THE HEARING	CHECK HERE IF YOU WISH TO BE NOTIFIED BY THE AGENCY WHEN THE HEARING RECORD HAS BEEN SUBMITTED TO THE ATTORNEY GENERAL
Robert Pollock	Insulation (ICAA) Contractors Assoc	2400 E. 26th ST. Mpls 55406	721-2491		✓
	DLS				

SF-00006-02

Exhibit No. 4

DEPARTMENT File No.

Date

STATE OF MINNESOTA

Office Memorandum

RECEIVED
JUL 10 1981
ADMINISTRATIVE HEARINGS

TO : Richard Luis

DATE: July 9, 1981

FROM : Roger Williams

PHONE: 296-5744

SUBJECT: Agency personnel representing the agency at the hearing for proposed rules for the weatherization assistance for low income people program.

Alan Chapman - Program Supervisor

Mark Kaszynski - Contract Specialist

Roger Williams - Monitor Supervisor

Ned Hoffman - Training Specialist

DEPARTMENT OF ECONOMIC SECURITY'S COMMENTS ON TESTIMONY PRESENTED AT THE PUBLIC HEARING REGARDING THE STATE OF MINNESOTAS DWELLING WEATHERIZATION FOR LOW INCOME PERSONS PROGRAM 8 MCAR §§4.0012 CONDUCTED AT THE AMERICAN CENTER BUILDING ON AUGUST 6, 1981, 9:30 A.M.

Persons presenting testimony at the hearing were:

Presenter	Representing
Don Homuth	Community Action Agency Directors
Ralph Keyes	Insulation Contractors Association Northwest
Jerry Olson	Southeast Minnesota Community Action Council
Richard Holm	Tri County Action Programs
Roger Isenberg	Minnesota CAP Association
Don Borham	Minnesota Valley Action Council
Richard Cazin	Arrowhead Economic Opportunity Agency
Susan Askelin	Duluth Community Action Programs

Department means Department of Economic Security. DOE means the Federal Department of Energy.

Don Homuth commented on the definition of community action agencies as found in the proposed rule at 8 MCAR §§ 4.0012 c.3. Mr. Homuth recommended the substitution of the Definition found in the proposed new law coded as Minnesota Statutes, chapter 268A.02 Sec. 3, Subd. 1. This definition would replace the current citation to the Economic Opportunity Act of 1964, 42 USC. Sections 2701-2996 (1977 and Supplement III 1980). The Department recommends the adoption of this substitution.

RECEIVED
AUG 21 1981
ADMINISTRATIVE HEARINGS

Mr. Ralph Keyes commented that the organization he represents would like to submit and discuss proposals with the Department regarding the involvement of private insulation contractors with the weatherization process. The Department concurs with the following comments and recommends their inclusion in the proposed rule. This will cause a renumbering in the rules.

In "C" Definitions. Page 3, after line 26 insert: 17. "Independent contractor" means an entity, whether organized for profit or as a non-profit organization and however organized, which furnishes materials or provides labor or both in the weatherization of dwellings of low income persons.

In "F" Allowable expenditures. Page 11, after line 33 insert: 6. Payments to an independent contractor for furnishing materials or providing labor or both in the weatherization of dwellings of low income persons.

Richard Holm discussed 8 MCAR §§ 4.0012 F.5, regarding the approval of equipment, tools and vehicle purchases or leases in excess of $50 by the Department. The Department recommends the removal of the first sentence in 8 MCAR §§ 4.0012 F.5 beginning with the word "purchase" and ending with the word "instance". The remainder of 8 MCAR §§ 4.0012 F.5 will remain as printed.

Roger Isenberg commented on an income definition to be contained in the rules regarding self-employed persons. The Department uses and intends to use the Department of Energy definition of

income (copy enclosed). The DOE weatherization program is run in conjunction with the State program and, therefore, many definitions are carried over from the Federal program. The DOE income definitions address Mr. Isenbergs concern. This definition was distributed to all grantees in June of 1980. For these reasons the Department does not feel it is necessary to add any language to the proposed rule.

Mr. Isenberg as well as Ms. Susan Askelin commented on the rule prohibiting returning to homes weatherized previously with DOE and/or state funds, 8 MCAR §§ 4.0012 G.1. This prohibition exists in the DOE rules and for the sake of consistency was inserted in the proposed rules. In response to their statements that an inadequate amount of Federal money was available for weatherization, the Department disagrees, and in its opinion sufficient funds have been available to perform an adequate job of weatherization. The Department will, however, order further work on homes previously weatherized if safety problems have arisen as a result of previous weatherization work. In addition, the Department feels that there are a considerable number of eligible dwelling units which need to be weatherized, and this is the area that agencies should be concentrating their efforts.

Mr. Isenberg commented on Exhibit 8 MCAR §§ 4.0012 C.34-1 that lists allowable weatherization materials. He feels the phrase "commercial availability" should be inserted after the exhibit section. It is the Departments position that the materials must meet the test standards listed in the first column of the exhibit in the proposed rules. However with the adoption of the

amendment introduced by the department pertaining to infiltration and other weatherization protection materials, the phrase "commercial availability" has already been inserted. This allows grantees to purchase these materials as needed from local suppliers.

Mr. Dick Cazin commented that he would like to see the proposed rules address the problem of weatherizing rental duplexes. The proposed rules at 8 MCAR §§ 4.0012 H.12 and also DOE rules 10 CFR §§ 440.15(b) state that an entire building can be weatherized if two thirds of the dwelling units are eligible dwelling units. The Department and DOE feel that if only one of the two units is eligible, then only the eligible unit can be weatherized. The Department does not feel any other statement on rental units is necessary since the current language of the DOE regulations and the proposed rule set the limits for weatherizing rental units.

All presenters except Mr. Keyes identified a need for one year contract periods 8 MCAR §§ 4.0012 D.1. Their reasoning was that a one year contract period would allow the Federal government to decide if the federal weatherization program would continue. If that decision were positive, the presenter's programs would be in operation when new Federal funds were received by the State.

The Department requested the six month contract period to enable the grantees to obtain specific levels of weatherization service in each area served by local grantees in a six month period, since the Departments program objective is to have completed weatherization work on as many eligible homes as practicable in

the shortest period of time to save energy for low-income families.

The Department has found during the last two years that local program grantees are more responsive to Department monitoring and contract requirements with the shorter six month contracts.

In response to the concern that there are insufficient State weatherization funds, it should be noted that the Department has sufficient State funding to operate its program at the current level through April of 1982. There will be ample time to distribute Federal funds if they are appropriated by the Congress of the United States.

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

STATE OF MINNESOTA

DEPARTMENT DES/Weatherization

Office Memorandum

TO : Richard Luis
Hearing Examiner

DATE: 8-17-81

FROM : Roger Williams

PHONE: 296-5744

SUBJECT: Minnesota Laws 1981, Ch. 360, Article I, Sec. 14.

The rules, when finally adopted, will not cause any increase in expenditures. The purpose of the rules is to set forth the manner of making grants to various agencies for the purpose of carrying out the weatherization program in the State of Minnesota from funds appropriated by the legislature to the Department of Economic Security for that purpose.

The proposed rules will not have the effect of increasing the amount to be spent over the amount appropriated by the legislature.

Minnesota Laws 1981, Ch. 360, Article I, Sec. 14, are not applicable in this matter.

RW:cr
cc: Mary Jo Richardson, Asst. Commissioner
Alan Chapman, Supervisor

RECEIVED
AUG 21 1981
ADMINISTRATIVE HEARINGS

Exhibi

In the Matter of the Proposed Adoption of Rules of the State Dept. of Economic Security Governing Weatherization Assistance for Low-Income Persons Program

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, [~~Special~~ Assistant Attorney General] Peter Andrews, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative 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.

[~~Special~~ Assistant Attorney General]

Dated: 3/2/82

Exhibit K

In the Matter of the Proposed Adoption of Rules of the State Dept. of Economic Security Governing Weatherization Assistance for Low-Income Persons

AFFIDAVIT OF MAILING NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

Catherine Ross, being first duly sworn, deposes and says:

That on the 3 day of March, 19 82, in the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Submission to the Attorney General by depositing in the [State of Minnesota Central Mail System for United States mailing (or) United States mail] at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who requested notice that the rules in the above-entitled matter have been submitted to the Attorney General.

Catherine Ross

Subscribed and sworn to before me this 3rd day of March, 1982.

Mary L. Lebassoue
Notary Public, Ramsey Co.
Comm. expires 8/25/82

Persons requesting notification on when hearing record has been submitted to the Attorney General's Office.

Ralph Keyes
Insulation Contractors N.W.
555 Park St., Suite 140
St. Paul, MN 55103

David Sabe
Minneapolis CAA
239 City Hall
Minneapolis, MN 55415

Susan Askelin
Duluth CAP
1305 London Rd.
Duluth, MN 55805

Mark Ulfers
Dakota County HRA
2805 Dodd Rd.
Eagan, MN 55121

Richard Cazin
Arrowhead Economic Opportunity Agency
P.O. Box 944
Virginia, MN 55792

Robert Pollock
Insulation Contractors N.W.
2400 E. 26th St.
Minneapolis, MN 55406

Exhibit L

STATE OF MINNESOTA

DEPARTMENT OF ECONOMIC SECURITY

In the Matter of the Proposed Adoption of Rules of the State Dept. of Economic Security Governing Weatherization Assistance for Low-Income Persons Program

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, March 3, 1982, for review as to form and legality. Pursuant to 1 MCAR § 1.206 B., the Attorney General will not approve the rules for at least 10 calendar days after receipt to allow any person or association time to comment on the legality of the rules, after which that Office will complete 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/publication in the State Register] and before submission to the Attorney General, you may contact Roger Williams 612/296-5744

Rolf Middleton