

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 838
resubmission w/l 8-5-82

RULE REVIEW CHECKLIST

DATE RULE RECEIVED ~~7-22-82~~ 8-13-82
DATE FOR REVIEW ~~7-30-82~~
DATE DUE ~~8-5-82~~ 8-23-82

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

Approved ~~8-10-82~~ Disapproved _____ Returned to Agency _____

Resubmitted 8-13-82 Due 8-23-82
Approved 8-16-82 Disapproved _____ Returned to Agency 8-17-82

Date filed w/Secretary of State 8-16-82 Revisor approved 7/26/82 disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed see SR.

✓ Order Adopting 7.21.82 Date combined with FofF.

N/A Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

✓ Affidavit of Mailing Notice or rulemaking
5.21.82 At least 30 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
5.31.82 At least 30/~~20~~ days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

Chief Hearing Examiner's Report(s)
_____ Approving H.E.'s Report
_____ 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, 2 comments received + replies by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

N/A Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

See our File No. 741 for Temp. Rules on same subject — virtually identical.

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : KENT E. EKLUND
Comm. of Energy, Planning & Develop.

DATE: 8/16/82

ATTN: CHRISTIE B. ELLER, Spec. Ass't. Atty. Gen.

FROM : TED A. MARTINEZ
Special Assistant
Attorney General

PHONE: 296-4692

SUBJECT: In the Matter of the Proposed Adoption of Rules of the Department of Energy, Planning and Development Governing the Petroleum Products State Set-Aside Program; 6 MCAR §§ 2.0108-2.0116

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

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

1. Affixation of stamps of the Attorney General and Secretary of State;

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

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

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

LDS:drw
Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL - Bremer Tower **Office Memorandum**

TO : JUDITH WEHRWEIN
Office of Attorney General
Administration - Rules Review

PAUL E. ROHDE
Office of Revisor of Statutes

DATE: July 21, 1982

FROM : CHRISTIE B. ELLER CBE
Special Assistant Attorney General

PHONE: 6-9200

SUBJECT: In the Matter of the Proposed Adoption of Rules of the Department of Energy, Planning and Development, Governing the Petroleum Products State Set-Aside Program; 6 MCAR §§ 2.0108-2.0116

On behalf of the Department of Energy, Planning and Development, Energy Division, I enclose copies of those documents required to be submitted to the Attorney General by Minn. Stat. § 15.0412, subd. 4(h) (1981 Supp.) and 1 MCAR § 1.203 and to the Revisor by Minn. Stat. § 15.0412, subd. 10 (1981 Supp.). You will note that no notice or affidavit of mailing notice of submission to the Attorney General (1 MCAR § 1.203k) is enclosed since no one requested such notice.

CBE:bl

Enclosures

cc: Chris Gilchrist

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL - Bremer Tower **Office Memorandum**

TO : TED MARTINEZ
Special Assistant Attorney General

DATE: August 11, 1982

FROM : CHRISTIE B. ELLER CBE
Special Assistant Attorney General

PHONE: 6-9200

SUBJECT: In the Matter of the Proposed Adoption of Rules of the Department of Energy, Planning and Development, Governing the Petroleum Products State Set-Aside Program; 6 MCAR §§ 2.0108-2.0116.

On behalf of the Department of Energy, Planning and Development, I hereby resubmit the rules after modification of a non-substantive error.

CBE/smo

Department of Energy, Planning and Development
Energy Division

Adopted Rules Governing the Petroleum Products State Set-Aside Program

Rules as Adopted

6 MCAR S 2.0108 Authority. Rules 6 MCAR SS 2.0108-2.0116 are adopted pursuant to Minn. Stat. S 116H.095, subd. 7.

6 MCAR S 2.0109 Purpose. Rules 6 MCAR SS 2.0108-2.0116 govern the administration of the state petroleum product set-aside program. The state set-aside program provides emergency petroleum supplies to relieve the hardship caused by shortages of refined petroleum products or other emergencies. The purpose of the program is to minimize the adverse impacts of shortages and dislocations on the state's citizens and economy.

6 MCAR S 2.0110 Definitions.

A. Applicability. For the purposes of 6 MCAR SS 2.0108-2.0116 the terms defined in this rule have the meanings given them.

B. Agriculture. "Agriculture" means certain activities in food production, processing, and sales as set out in the Standard Industrial Classification Manual, 1972 edition.

1. Included activities are:

a. activities listed in Division A, Agriculture, Forestry and Fishing, except those excluded by B.2.;

b. activities listed in Division D, Manufacturing, including grain and seed drying under Major Group 20, Food and Kindred Products, except those excluded by B.2.;

c. activities listed in codes 1475, 2141, 2411, 2421, 2873, 2874, 2875, 2879, and 5462; and

d. activities of potash mining listed in code 1474, dicalcium phosphate production listed in code 2819, farm to market hauling and log trucking listed in code 4212, and farm irrigation systems listed in code 4971.

2. Excluded activities are:

a. classification codes 0742, 0752, 0781, 0782, 0849, and non-food producing activities in codes 0271 and 0279 within Division A, Agriculture, Forestry, and Fishing; and

b. classification codes 2047, 2067, and 2085 within Major Group 20, Food and Kindred Products in Division D, Manufacturing.

C. Assignment. "Assignment" means an order by the office or the board to a prime supplier to release state set-aside product to a specific person.

D. Average product use. "Average product use" means the volume of product purchased during the same month last year.

E. Board. "Board" means the state set-aside appeals board.

F. Cargo and freight hauling. "Cargo and freight hauling" means hauling by any truck with a gross vehicle weight of 20,000 pounds or more and the shipping of goods by rail or water.

G. Commissioner. "Commissioner" means the Commissioner of the Minnesota Department of Energy, Planning and Development.

H. Current month requirement. "Current month requirement" means the volume of product needed by an end user to meet its supply need for the present month.

I. Decision. "Decision" means the ruling of the board about any appeal.

J. Department. "Department" means the Minnesota Department of Energy, Planning and Development.

K. Emergency services. "Emergency services" means activities immediately necessary to preserve the health or safety of the citizens. Emergency services include: ambulance operation; city, county, state, and federal law enforcement; firefighting; mobilized national guard; and Red Cross services.

L. End user. "End user" means a final consumer of motor gasoline or middle distillate.

M. Energy production. "Energy production" means the manufacturing, processing, storage, or transportation of primary energy sources including electricity, natural gas, or petroleum products. Energy production excludes electric utilities whose

needs for electrical energy can be met by purchase from members of the Mid-Continent Area Power Pool.

N. Essential services. "Essential services" means activities that provide continuing public health and safety services. They include: energy production; government services; maintenance vehicles for telecommunication services; postal services; sanitation services; and cargo and freight hauling.

O. Fuel coordinator. "Fuel coordinator" means city council or county board appointed individuals who verify state set-aside applications.

P. Government services. "Government services" include: activities of the judicial branch of government; jail and prison activities; meetings of elected political officials; the Division of Emergency Services ~~Operations Center~~ city, county, and state activities; hearings of mobilized Local Energy Conservation Boards; ~~hearing~~ hearings of the Office of Administrative Hearings; and minimum services to provide Aid For Dependent Children, food stamps, Social Security Income, and Social Security checks.

Q. Middle distillates. "Middle distillates" means distillates obtained between kerosene and lubricating oil fractions in the refining process, including kerosene, number one and number two heating oil, and number one and number two diesel fuel.

R. Motor gasoline. "Motor gasoline" means a liquid mixture of hydrocarbons produced by the distillation of petroleum and used chiefly as a fuel in internal combustion engines.

S. Office. "Office" means the unit within the department responsible for the state set-aside program.

T. Officer. "Officer" means the individual who manages the office and who has authority to sign orders and documents for the state set-aside program.

U. Order. "Order" means a written document signed by the officer or the commissioner directing a prime supplier to release a product for an assignment. The office may telephone

an order to the prime supplier, but the office shall promptly send the written order to the prime supplier's representative. The order is effective the day it is signed by the officer or commissioner.

V. Passenger transportation. "Passenger transportation" means conventional public transit service which operates on a fixed route and is available to the public for a fare, intercity bus transportation, van pools, subscription buses, tour and charter bus transportation, bus transportation of pupils for educational purposes, taxicabs licensed to conduct business in a municipality, rail passenger transportation, aviation ground support for regularly scheduled airlines, and special transportation services for the elderly or handicapped.

W. Person. "Person" means an individual and any legally existing business, government unit, or institution.

X. Plant protection. "Plant protection" means sufficient heat and power to keep from freezing pipes and damaging equipment.

Y. Postal service. "Postal service" means the delivery of first, second, or third class United States mail.

Z. Prime supplier. "Prime supplier" means the producer or supplier now or hereafter making the first sale of middle distillates or motor gasoline subject to the state set-aside program for consumption within the state.

AA. Prime supplier's representative. "Prime supplier's representative" means an individual who is authorized to act as liaison for the prime supplier in regular activities of the state set-aside program.

BB. Retail outlet. "Retail outlet" means a person who sells refined petroleum products from fixed tanks in a fixed location to end users in retail volumes.

CC. Sanitation services. "Sanitation services" means the activities of a person who supplies water to the public through public utilities, or collects or disposes gaseous, liquid, or solid wastes for the public.

DD. Service. "Service" means personal service or service by

certified United States mail, postage prepaid, addressed to a person at the person's last known address.

EE. Shortfall. "Shortfall" means the amount by which demand exceeds supply of crude oil or refined petroleum products during any month.

FF. State. "State" means the state of Minnesota.

GG. State set-aside. "State set-aside" means the amount of middle distillates or motor gasoline required to be made available by a prime supplier for utilization by the commissioner to resolve or mitigate emergencies or hardships due to shortages of supply.

HH. Supplier. "Supplier" means a person, other than the United States Department of Defense, who furnishes a refined petroleum product or crude oil to end users, other suppliers, wholesale purchaser-consumers, or wholesale purchaser-resellers.

II. Wholesale purchaser-consumer. "Wholesale purchaser-consumer" means an end user who purchases truck transport volumes of middle distillate or motor gasoline or both from a prime supplier.

JJ. Wholesale purchaser-reseller. "Wholesale purchaser-reseller" means a person who obtains petroleum product from a supplier and, without additional refining, sells or transfers the product to other purchasers.

6 MCAR S 2.0111 Prime supplier's obligations.

A. Monthly reports. Each prime supplier and producer or supplier making the first sale of propane or residual fuel oil within the state shall submit to the office a monthly report. The report shall be submitted in time to be received by the office each month no later than the 25th day of the month. The report shall include actual volumes of product sold in the previous month and the forecasted volumes of product to be delivered in the month following the month in which the report is submitted.

1. The following petroleum products shall be included in each monthly report:

a. propane (consumer grade);

b. motor gasoline (total);

c. unleaded motor gasoline;

d. kerosene;

e. number 1 distillate;

f. number 2 heating oil;

g. diesel fuel;

h. aviation gasoline;

i. kerosene base jet fuel;

j. naphtha base jet fuel;

k. number 4 distillate;

l. residual fuel oil with sulfur content equal to or less than one percent; and

m. residual fuel oil with sulfur content greater than one percent.

2. The monthly reports shall be submitted in a standardized form approved by the office.

B. Prime supplier's representative. Each prime supplier shall report to the office the name, mailing address, and telephone number of a representative to act for the company regarding state set-aside. The duties of this representative shall include confirming monthly state set-aside volumes and accepting and processing state set-aside orders.

C. Nonpublic data. Reports submitted pursuant to this rule are nonpublic data in accordance with Minn. Stat. S 15.1682.

6 MCAR S 2.0112 Applications.

A. Who may apply. The following persons may apply for state set-aside if they are supplied middle distillate or motor gasoline or both directly by a prime supplier:

1. a wholesale purchaser-consumer or an end user seeking an assignment because of hardship or emergency; or

2. wholesale purchaser-resellers seeking assignments to supply their traditional wholesale-purchaser and end user accounts because of hardship or emergency.

B. Form of application. An applicant shall submit an application to the office for each month of hardship or emergency.

1. Except as provided in 2., applications shall be submitted in writing on forms approved by the office and signed by the applicant. Each application shall be verified and signed by a fuel coordinator attesting to the applicant's need for state set-aside products. The office may request reasonable additional information from an applicant as needed to support the claim of hardship or emergency.

2. An application may be made orally when extraordinary circumstances make it impossible for the applicant to submit a written application. When an oral application is made, the fuel coordinator shall orally certify to the office that the applicant has an emergency or hardship situation. It is the responsibility of the applicant to insure both that the fuel coordinator contacts the office and that the written application is submitted within five days following the oral application. If the written application is not submitted within five days following the oral application, the office may refuse to accept future oral requests from that applicant.

6 MCAR S 2.0113 Evaluation criteria.

A. Middle distillates. The amount of middle distillates available for state set-aside is a volume equal to four percent of all prime suppliers' monthly supply estimate as stated in the monthly report filed pursuant to 6 MCAR S 2.0111. Applicants shall specify the gallons requested for each end user category and the reason for any need of volumes in excess of contract volumes. All assignments shall be based on the following priorities:

1. First priority middle distillate users include:

a. agriculture;

b. emergency services;

c. essential services;

d. heating customers with no alternate source of fuel, including hospitals, multi-unit housing, nursing homes, and residences;

e. major industrial and commercial activities whose continued operation is essential to the economic well-being of

an area, including auto manufacturing and mining;

f. minimum plant and building protection; and

g. passenger transportation.

2. Second priority middle distillate users are heating customers on interruptible natural gas or another primary source of fuel. They include hospitals, multi-unit housing, nursing homes, and residences.

3. Third priority middle distillate users include government buildings, for heating; industrial and commercial activities not included in 1.; and schools.

4. Notwithstanding the priorities stated in 1. to 3., when an energy supply fuel oil emergency has been declared pursuant to Minn. Stat. S 116H.09 and 6 MCAR SS 2.3101-2.3120, the priorities stated in 6 MCAR S 2.3111 shall apply.

B. Motor gasoline. The volume of motor gasoline available for state set-aside is a volume equal to three percent of all prime suppliers' monthly supply estimate as stated in the monthly report filed pursuant to 6 MCAR S 2.0111. The office may assign state set-aside motor gasoline volumes, when the applicant submits accurate and complete documentation, based on the following criteria.

1. Agricultural motor gasoline shortfall.

a. If the traditional supplier of an agricultural operation is unable to supply average motor gasoline use, the office may release amounts of state set-aside equal to the shortfall. The office may require the applicant to list the name, telephone number, and average motor gasoline use of the ultimate consumer.

b. If unusual weather conditions, natural disasters, or other extreme occurrences require more than average motor gasoline use, the office may make a state set-aside assignment to satisfy the greater requirement. In these cases, the applicant shall provide the office with the current monthly requirement and a justification for the request.

2. Community or area hardship.

a. If a supplier pullout produces a shortfall of motor

gasoline in a local area, a wholesale purchaser-reseller in the area may apply for a state set-aside assignment. The applicant shall submit the name, address, and approximate gallons per month sold by the supplier who has pulled out.

b. State set-aside may be assigned to alleviate a shortfall caused by the closing of a motor gasoline retail outlet in a community. The applicant must certify that residents would have to drive 20 or more miles round trip to obtain motor gasoline between the hours of 7:00 a.m. and 8:00 p.m. and provide the office with the name, address, and approximate gallons per month sold of all retail outlets which have opened or closed in the last calendar year within a ten-mile radius of the retail outlet requesting the state set-aside assignment.

c. A wholesale purchaser-reseller may receive an assignment on the basis of unusual growth if the applicant can demonstrate the existence of a shortfall because of a population increase in the community of over ten percent since 1980, new business in the community employing 500 or more employees since 1980, or relocation of a highway since 1980.

d. The office may assign state set-aside motor gasoline to a retail outlet that has historically remained open 24 hours a day and provided emergency road service.

3. The office may assign state set-aside motor gasoline to alleviate a shortage of motor gasoline due to a natural disaster including: floods; blizzards; fire; high winds; and tornadoes. Applicants shall state the nature of the disaster, the number of gallons sold, and to whom.

4. The office may assign state set-aside motor gasoline to meet the requirements of certain priority vehicles because of a shortfall. Applicants may apply for state set-aside to make up the difference between 100 percent of contract volume and the amount of supply currently available for the following types of priority vehicles: emergency services, essential services, and passenger transportation services.

6 MCAR S 2.0114 Application processing procedures.

A. Investigations. The office may initiate an investigation of any statement in an application and utilize in its evaluation of the application any relevant facts obtained by the investigation. The office may solicit and accept information from third persons relevant to any application, provided that the applicant is afforded an opportunity to respond.

B. Additional information. If the office determines that the application does not have sufficient information to support a decision, it may request the necessary additional information from the applicant. If the applicant repeatedly or willfully fails to supply additional information, the office may deny the application.

C. Processing. The office shall process applications each month for that month as follows:

1. Applications made by wholesale purchaser-consumers or by wholesale purchaser-resellers on behalf of wholesale purchaser-consumers or end users shall be processed within five working days after receipt.

2. Except when the applicant applies for state set-aside under 6 MCAR S 2.0113 B.2. or 3., applications that are made by or on the behalf of retail outlets shall be processed within five working days after the 15th day of the month.

3. Applications needing additional information shall be processed within five working days after receipt of the requested information.

D. Implementation. State set-aside assignments shall be implemented as follows:

1. Upon approval or modification of a request for state set-aside product, the office shall issue an order authorizing the assignment and serve it on the prime supplier from whom the state set-aside product is to be drawn.

a. An order issued by the office is effective the date it is signed by the officer or the commissioner, unless stayed, modified, suspended, or rescinded.

b. The order represents a call upon the prime supplier's state set-aside volume for the month of issuance even

if delivery cannot be made until the following month.

c. The applicant shall arrange for receipt of the product within ten days from the date of the order.

2. Upon denial of an application, the office shall notify the applicant in writing, stating the reason for denial.

6 MCAR S 2.0115 Appeals process.

A. Applicability. Within ten days after the effective date of an order or the mailing date of a denial, any person aggrieved may appeal in writing to the commissioner. The written appeal shall include:

1. the reason for the appeal, including why the action by the office is deemed unwise or unjust;

2. the names, addresses, and telephone numbers of any persons whom it is believed might be injured by the order being appealed; and

3. the objective of the appeal, including reversal of the office action, modification of the action, or other remedies.

B. Commissioner's action. Within five days of receipt of the appeal, the commissioner shall:

1. set a hearing date at least ten days after initiation of the appeal;

2. serve all interested parties with a copy of the appeal and notice of the time and place of the hearing; and

3. issue a stay of the order if:

a. it appears probable that a party may suffer serious injury;

b. the order appears in conflict with Minn. Stat. S 116H.095, or other law; or

c. it appears probable that the board will grant the appeal.

C. State set-aside appeals board. The state set-aside appeals board consists of:

1. the commissioner or the ~~director's~~ commissioner's designee, as chairperson;

2. the Commissioner of the Minnesota Department of Agriculture or designee thereof;

3. the Director of the Office of Consumer Services of the Minnesota Department of Commerce or designee thereof;

4. the Director of the Office of Emergency Services of the Minnesota Department of Public Safety or designee thereof; and

5. the Chairperson of the Minnesota Public Utilities Commission or designee thereof.

D. Decisions on appeals. The commissioner plus any two or more additional members may hear and decide appeals.

E. Informal disposition. At any time during the proceedings, the affected parties may conclude a mutually acceptable settlement of the appeal.

6 MCAR S 2.0116 Hearings.

A. Rights of the parties to the hearing. Affected parties have a right to:

1. a hearing before the board;

2. representation by an attorney;

3. present public evidence;

4. present witnesses who will testify under oath;

5. cross-examine witnesses; and

6. present rebuttal testimony and argument.

B. Rules of evidence.

1. The board shall admit and consider any reasonable evidence.

2. The board may exclude evidence it determines to be immaterial, irrelevant, or repetitious.

3. The board shall consider only the evidence which is entered into the public record of the hearing.

4. If the board desires to use technical facts within its specialized knowledge or publicly accepted facts that were not part of the evidence presented, the board shall notify the parties and give them an opportunity to rebut those facts. After the rebutting evidence is received and reviewed, the board shall review all the evidence when making the decision.

C. Public record of the hearing. The board shall prepare an official record which shall include:

1. all pleadings, motions, and intermediate rulings;

2. evidence received or considered;

3. a statement of facts not introduced in evidence but considered by the board and questions of those facts by affected persons including rebuttals and objections;

4. proposed findings and exceptions;

5. any decision, opinion, or report by the board; and

6. all memoranda or data submitted to the board by the office except advice of the office's attorney.

D. Verbatim record. The board shall make a verbatim record of the hearing on recording equipment. Any party may request that a court reporter make the record, but that person shall pay the court reporter's fee. The board shall transcribe the record only upon request and only if the requestor agrees to pay for the cost of transcribing.

E. Hearing procedure.

1. If the appellant fails to appear, the board may declare a default and deny the appeal.

2. After opening the hearing, the chairperson shall read the rights of the parties to the hearing and the rules regarding evidence from A. and B. The chairperson shall also call for the parties to present any written matter that they wish to introduce as an exhibit and offer as evidence.

3. A representative of the office shall introduce the jurisdictional exhibits including the written appeal received by the commissioner, the notice of hearing, and any agreements entered into by the parties to the appeal.

4. The appellant may make an opening statement. Other parties may make statements in the order determined by the board.

5. After opening statements, the appellant may present its case. Other parties may present their cases in the order determined by the board.

6. The board shall determine the order for cross-examining witnesses.

7. The parties may next give oral or written rebuttal evidence and final arguments in the order determined by the

board.

8. After final arguments, the board may: close the hearing; announce the time and place of the next hearing; or continue the hearing to some future time. The board shall give a five day written notice to all parties prior to holding a continued hearing.

F. Decorum. The chairperson may take action to insure the orderly conduct of public business at the hearing, as authorized by Minn. Stat. S 624.72, subd. 3.

G. Decision.

1. Within five days after the hearing is closed, the board shall issue its decision on the appeal.

2. The decision shall state that the denial or order of the office was modified, reversed, or upheld. If modified or reversed, the decision must state exactly what action is required. The decision shall state the conclusions of fact and law used to reach the ruling.

3. The commissioner shall, by the close of the working day following the decision, serve a copy of the decision on the parties to the hearing.

Repealer. Rules EA 101-107 of the Energy Agency are repealed.

July 26, 1982
AR0209

OFFICE OF THE REVISOR OF STATUTES

Certificate of Approval of Adopted Rules

Agency: Department of Energy, Planning and Development
Energy Division

Rule Numbers: 6 MCAR SS 2.0108 - 2.0116

Rule Title: Adopted Rules Governing the Petroleum Products State Set-Aside Program

Type of Rules: Permanent X

Temporary _____

Documents Incorporated by Reference:

Standard Industrial Classification Manual, 1972 ed.
Executive Office of the President
Office of Management and Budget

The attached rules are approved as to form subject to the following editorial changes:

Page 2, Line 3, delete "non-food" and insert "nonfood "

Steven C. Cross
Revisor of Statutes

APPROVED AS TO LEGALITY
Aug 16 1982
WARREN SPANNAUS, ATTORNEY GENERAL
BY _____
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
AUG 16 1982
Joan Anderson Growe
Secretary of State
3:40 PM

Name: Linda Jessen
Linda Jessen
Title: Assistant Revisor

Phone: 297-2953

DEPARTMENT OF ENERGY, PLANNING AND DEVELOPMENT

ENERGY DIVISION

Proposed Rules Governing the Petroleum Products State Set-Aside Program

Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Department of Energy, Planning and Development, hereinafter "Department", intends to adopt the above-entitled rules without a public hearing. The Commissioner has determined that the adoption of the rules will not be controversial and has elected to follow the procedures set out in Minn. Stat. § 15.0412, subd. 4h.

In its 1981 session, the Minnesota Legislature enacted the State Set-Aside Program, Laws of 1981, Chapter 356, Section 136, for the purpose of granting the Department authority to exercise specific power to deal with shortages of refined petroleum products. The state set-aside program provides emergency petroleum supplies to relieve the hardship caused by shortages, thus minimizing the adverse impacts on the state's citizens and economy.

Temporary rules for the set-aside program were promulgated last year. Those rules were published in the State Register on November 23, 1981 (6 S.R. 1021-22). The Department is now proposing rules which are very similar to those published on November 23, 1981. Copies of the rules as now proposed may be obtained by writing or calling Mr. Chris Gilchrist at the address or telephone number given below.

Please be advised that you have an opportunity for the 30-day period following publication of this notice and the proposed rules to submit comments in writing on the proposed rules and to object to the lack of public hearing on the proposed rules. Your written comments or request for hearings should be submitted to the Department of Energy, Planning and Development, Energy Division, c/o Chris Gilchrist, 980 American Center Building, 150 East Kellogg Boulevard, Saint Paul, Minnesota 55101. Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, no public hearing will be held. If seven or more persons request hearings on the proposed rules, the Department will order public hearings in accordance with Minn. Stat. § 15.0412, subds. 4-4f. The Department may modify the proposed rules if modification is supported by the data and views submitted in written comments and if no substantial change results from the modification.

If no hearing is required, and the Department decides to adopt the rules as proposed, or as modified if written comments justify modification, the Department will submit to the Attorney General for review of form, legality and substantial change the following documents: this notice with the rules as proposed, the rules as adopted, the order adopting the rules, any written comments received by the Department, the Department's Statement of Need and Reasonableness supporting adoption of the rules, and any written comments received by the Department in response to the earlier notices seeking outside opinions. Any

person may request notification of the date the Department makes the submission to the Attorney General. If you desire to be so notified you must inform the Department in writing during the 30-day comment period. 8

The Department has prepared a Statement of Need and Reasonableness in support of the proposed rules which is also available from the Department by writing to the address indicated above or calling 612/296-1732.

The Department's authority to promulgate the proposed rules can be found in Minn. Stat. § 116H.095. 9

Please be advised that Minnesota Statutes Chapter 10A requires each lobbyist to register with the Ethical Practices Board within five days after he/she becomes a lobbyist. Lobbying includes attempting to influence rulemaking by communicating or using others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, Telephone 612/296-5615.

Dated: 5/13/82

Assistant Commissioner
Energy Division

STATE OF MINNESOTA
Department of Energy, Planning and Development

In the Matter of the Proposed Adoption of Rules of the Department of Energy, Planning and Development Governing the Petroleum Products State Set-Aside Program; 6 MCAR §§ 2.0108-2.0116

SUPPLEMENTAL FINDING, CONCLUSION AND ORDER READOPTING RULES

FINDING

1. That the Department proposes to adopt the following change to proposed rule 6 MCAR § 2.0115C.1. for the reason given:

a. The commissioner or the ~~director's~~ commissioner's designee, as chairperson;

This change will correct a deficiency in the rules noted by the attorney general. The deficiency relates to an inadvertant reference to "the director's designee" instead of "the commissioner's designee." Prior to the recent merger of the Energy Agency into the Department of Energy, Planning and Development, the Energy Agency was headed by a director. Now the new department is headed by a commissioner.

As a result of an oversight, one reference to "director's" instead of to "commissioner's" was made in the rules as proposed, The change is not substantive, and no person receiving and reviewing the rule as proposed will be adversely affected by the change.

Based upon the foregoing finding, I make the following:

CONCLUSION

1. The Commissioner concludes that the minor modification to 6 MCAR § 2.015C.1. is needed and reasonable and does not constitute a substantial change

ORDER

NOW, THEREFORE, IT IS ORDERED that these rules identified as rules governing the Petroleum Products State Set-Aside Program are readopted this 12th day of August, 1982, pursuant to the authority vested in me by Minn. Stat. §§ 116H.08(a) and 116H.095, subd. 7 (Supp. 1981).

STATE OF MINNESOTA
Department of Energy,
Planning and Development

Kent E. Eklund
Commissioner

STATE OF MINNESOTA
Department of Energy, Planning and Development

In the Matter of the Proposed Adoption of Rules of the Department of Energy, Planning and Development Governing the Petroleum Products State Set-Aside Program; 6 MCAR §§ 2.0108-2.0116

FINDINGS OF FACT, CONCLUSIONS AND ORDER ADOPTING RULES

Notice of Intent to Adopt Rules without a public hearing regarding the above-entitled matter was published in the State Register (6 S.R. 2005-2012) on May 31, 1982. On May 21, 1982, Notice of Intent to Adopt Rules Without a Public Hearing was served upon all persons, associations, and other interested groups registered with the Department of Energy, Planning and Development's Energy Division for that purpose. The Notice afforded interested parties 30 days in which to submit comments on the proposed rules, and to request that a public hearing be held.

The Department of Energy, Planning and Development (hereinafter "Department") received two written comments during that period. One party requested that a public hearing be held. No one requested that he or she be informed when these rules are submitted to the Attorney General's Office.

After affording interested persons an opportunity to submit comments on the proposed rules for 30 days after notice, receiving fewer than seven written requests for a public hearing within the 30-day comment period, reviewing and considering the comments, having considered all the evidence adduced upon the records, files and proceedings herein, I find the following:

FINDINGS

1. The Department received written comments on the rules from Phil Lutzi, Sr., Director of the Nicollet County Office of Civil Defense.

a. He first suggests that 6 MCAR § 2.0110.K. be amended to include civil defense or emergency services directors and coordinators so that such individuals would be granted a priority status under the rules. The Department agrees that such individuals should receive priority, but believes it is more appropriate to do so by amending 6 MCAR § 2.0110.P. relating to government services. See Finding No. 3 infra.

b. Mr. Lutzi next suggests that the appropriate fuel coordinator be notified of any investigations of applications under 6 MCAR § 2.0114.A. Since an application must be verified by the appropriate fuel coordinator under 6 MCAR § 2.0112.B.1., the Department expects that the appropriate fuel coordinators will ordinarily be involved in investigations. Thus, the Department feels that such a requirement is unnecessary and that the rule is necessary and reasonable as proposed for the reasons set forth in the Statement of Need and Reasonableness.

c. Mr. Lutzi also raises a question regarding references in the rules to "days" and "working days". He suggests that "days" be defined so that there is no misunderstanding as to whether the references to days are to calendar days or working days. The Department does not agree that such a definition is necessary since "day" is defined in Minn. Stat. § 645.45 (9) (1980) to mean calendar day unless otherwise specified. Minn. Stat. § 645.001 (1981 Supp.) specifically provides that the definitions in Minn. Stat. ch. 645 govern all rules. Accordingly, in these rules, "days" refers to calendar days unless working days is specified. Thus, the Department does not feel that a definition of days is needed in the rules.

2. The Department received written comments on the rules from Commissioner James J. Hiniker, Jr., and Don Johnson of the Department of Administration. The Department has carefully reviewed the comments and believes they reflect a misunderstanding of the purpose of the Petroleum Set-Aside Program. Accordingly, the Department believes the rules are necessary and reasonable as proposed, and as modified by these findings, for the reasons set forth in the Statement of Need and Reasonableness and these findings.

3. That the Department proposes to adopt the following changes to proposed rule 6 MCAR § 2.0110 P. for the reasons given:

> P. Government services. "Government services" include: activities of the judicial branch of government; jail and prison activities; meetings of elected political officials; the Division of Emergency Services ~~Operations Center~~ city, county and state activities; hearings of mobilized Local Energy Conservation Boards; ~~hearing~~ hearings of the Office of Administrative Hearings; and minimum services to provide Aid for Dependent Children, food stamps, Social Security Income, and Social Security Income, and Social Security checks.

The first change is the deletion of "Operations Center" and the insertion of "city, county and state." This change is intended to clarify that all activities of the Division of Emergency Services are included within the definition of government services, including activities at the city and county level as well as at the state level. This change will address the comment of Mr. Lutzi discussed in Finding 1(a), supra, and provide that civil defense or emergency service directors and coordinators at all levels be given priority under the rules. The second change will correct a typographical error. Substitution of "hearings" for "hearing" is appropriate to make the reference parallel to other references in the definition which are all plural. The Department contends these two changes are not substantive, and that no person receiving and reviewing the rule as proposed will be adversely affected by the change. This rule is both needed and reasonable to provide a definition of the services of government which must be provided even in times of emergency.

4. That the Department proposes to adopt the following change to proposed rule 6 MCAR § 2.0113 A.1.a. for the reason given:

1. First priority middle distillate users include:

a. Agriculture~~,~~;

This change will correct a typographical error which was made in the rules as published in 6 S.R. 2005-2012. The typographical error was not contained in the revisor's draft of the rules. The change is not substantive, and no person receiving and reviewing the rule as proposed will be adversely affected by the change.

Based upon the foregoing findings, I make the following:

CONCLUSIONS

1. The Department gave proper notice of its intent to adopt the proposed rules without public hearing.

2. The Department has fulfilled the procedural requirements of Minn. Stat. § 15.0412 and all other procedural requirements of law or rule.

3. The Department has statutory authority to adopt the proposed rules and has fulfilled all other substantive requirements of law or rule within the meaning of the Minnesota Administrative Procedure Act.

4. The Department has demonstrated the need for and reasonableness of its proposed rules in its Statement of Need and Reasonableness and the foregoing findings.

ORDER

Notice of intent to adopt the above-entitled rules without a public hearing was published in the State Register on May 31, 1982 (6 S.R. 2005-2012) and was sent by depositing in the State of Minnesota's Central Mail system for first class mailing or delivery by Inter-Office mail, or in the United States Mail, to all persons on the list maintained by the Energy Division of the Department pursuant to Minn. Stat. § 15.0412, subd. 4, on May 21, 1982. After affording interested and affected persons an opportunity to submit comments for 30 days after notice, receiving fewer than seven written requests for public hearing within the 30-day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED that these rules identified as rules governing the Petroleum Products State Set-Aside Program are adopted this 21st day of July, 1982, pursuant to the authority vested in me by Minn. Stat. §§ 116H.08(a) and 116H.095, subd. 7 (Supp. 1981).

STATE OF MINNESOTA,
Department of Energy,
Planning and Development

Kent E. Ekhund

Commissioner

STATE OF MINNESOTA

DEPARTMENT OF ENERGY,

PLANNING AND DEVELOPMENT

In the Matter of the Proposed Adoption of Rules of the Department of Energy, Planning and Development, Energy Division, Governing the Petroleum Products State Set-Aside Program; 6 MCAR §§ 2.0108-2.0116.

ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

IT IS ORDERED this 17th day of May 1982, that a Notice of Intent to Adopt Rules with a Public Hearing in the above-entitled matter be given to all persons who have registered their names with the Energy Division of the Department of Energy, Planning and Development for that purpose and be published in the State Register with the proposed rules.

DEPARTMENT OF ENERGY, PLANNING AND DEVELOPMENT

Kent Eklund

KENT EKLUND
Commissioner

STATE OF MINNESOTA

DEPARTMENT OF ENERGY,

PLANNING AND DEVELOPMENT

In the Matter of the Proposed
Adoption of Rules of the
Department of Energy, Planning
and Development, Energy Division,
Governing the Petroleum Products
State Set-Aside Program;
6 MCAR §§ 2.0108-2.0116.

AFFIDAVIT
OF
MAILING

Cheri Bauer being first duly sworn,

deposes and says:

That on the 21 day of May, 1982, at the City of Saint Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Intent to Amend Rules Without Public Hearing by depositing in the State of Minnesota Central Mail System for first class mailing or delivery by Inter-Office mail, or in the United States mail at the 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 Energy Division of the Department of Energy, Planning and Development for the purpose of receiving notice of the proposed adoption of rules by this agency.

Cheri Bauer

Subscribed and sworn to before me
this 21 day of May, 1982.

Karla V. Sand

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

STATE OF MINNESOTA

DEPARTMENT OF ENERGY,

PLANNING AND DEVELOPMENT

In the Matter of the Proposed
Adoption of Rules of the
Department of Energy, Planning
and Development, Energy Division,
Governing the Petroleum Products
State Set-Aside Program;
6 MCAR §§ 2.0108-2.0116.

MAILING LIST
CERTIFICATE

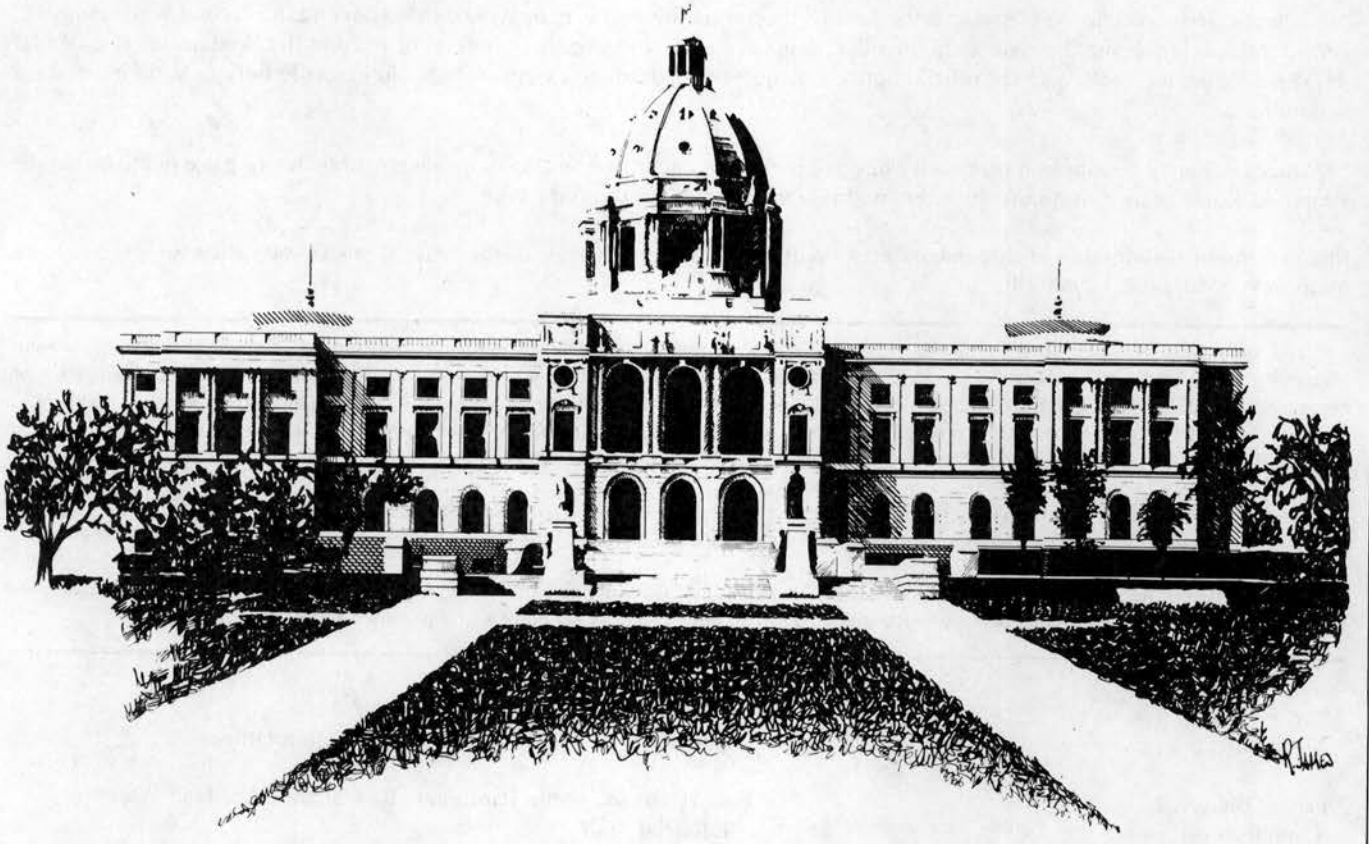
I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. § 15.0412, subd. 4, that their names be placed on file with and maintained by the Energy Division of the Department of Energy, Planning, and Development for the purpose of receiving notice of the proposed adoption of rules by this agency is accurate and complete as of 3:00 p.M., this 18 day of May, 1982.

Karla V. Sand

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

STATE REGISTER

STATE OF MINNESOTA



VOLUME 6, NUMBER 48

May 31, 1982

Pages 1993-2036

STATE REGISTER

Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
	SCHEDULE FOR VOLUME 6		
49	Monday May 24	Friday May 28	Monday June 7
50	Monday May 31	Monday June 7	Monday June 14
51	Monday June 7	Monday June 14	Monday June 21
52	Monday June 14	Monday June 21	Monday June 28

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

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

Instructions for submission of documents may be obtained from the Office of the State Register, 506 Rice Street, St. Paul, Minnesota 55103, (612) 296-0930.

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

Albert H. Quie
Governor

James J. Hiniker, Jr.
Commissioner
Department of Administration

Stephen A. Ordahl
Director
State Register and
Public Documents Division

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

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

The PROPOSED RULES section contains:

- Calendar of Public Hearings on Proposed Rules.
- Proposed new rules (including Notice of Hearing and/or Notice of Intent to Adopt Rules without A Hearing).
- Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
- Proposed temporary rules.

The ADOPTED RULES section contains:

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

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

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

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PROPOSED RULES

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

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

and

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

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

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

Department of Economic Security
Community Services and Training Division

Proposed Rules Governing Weatherization Assistance for Low-Income Persons Program

Notice of Intent to Adopt Rules without a Public Hearing

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

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

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

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

Alan Chapman, Supervisor
Weatherization Assistance Program
Department of Economic Security
690 American Center Bldg.
150 E. Kellogg Blvd.
St. Paul, MN 55101

Authority for the adoption of these rules is contained in Minnesota Statutes § 268.37. Additionally, a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from Roger Williams, Weatherization Assistance Program, Department of Economic Security, 690 American Center Bldg., 150 E. Kellogg Blvd., St. Paul, Minnesota, 55101, Telephone No. 612/296-5744, upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the statement of need and reasonableness, all written comments received, and the final rules as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Roger Williams, Weatherization Assistance Program, Department of Economic Security, 690 American Center Bldg., 150 E. Kellogg Blvd., St. Paul, Minnesota.

The rules proposed for adoption relate to the following matters:

Documents used in the administration of grants as listed in the rule.

Definitions as they apply to the rule and to grants are provided. The rule describes the process for the allocation of funds to grantees, the grant application process, weatherization priority work process, allowable expenditures and record keeping and reporting procedures. The rules also include a variance format to be used in relation to the allowable materials list.

Copies of this notice and the proposed rules are available and may be obtained by contacting Roger Williams, Weatherization Assistance Program. Department of Economic Security, 690 American Center Bldg., 150 E. Kellogg Blvd., St. Paul, Minnesota, 55101.

Rolf Middleton
Commissioner of State Department of Economic Security

Rule as Proposed (all new material)

8 MCAR § 4.0012 Weatherization 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 'Minnesota Statutes,' section 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. "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments," issued as Office of Management and Budget Circular A-102 Revised and found in the 'Federal Register,' volume 42, pages 45828-45891 (1977).

2. "Grants and Agreements With Institutions of Higher Education, Hospitals, and other Nonprofit Organizations," issued as Office of Management and Budget Circular A-110 and found in the 'Federal Register,' volume 41, pages 32016-32037 (1976).

3. "Audit of Federal Operations and Programs," issued as Office of Management and Budget Circular A-73 and found in the 'Federal Register,' volume 43, pages 12404-12406 (1978).

4. "Cost Principles for State and Local Governments," issued as Office of Management and Budget Circular A-87 and found in the 'Federal Register,' volume 46, pages 9548-9554 (1981).

5. "Evaluation, Review and Coordination of Federal and Federally Assisted Programs and Projects," issued as Office of Management and Budget Circular A-95 and found in the 'Federal Register,' volume 40, pages 2052-2065 (1976).

6. "Notification to States of Grant-in-Aid Information," issued as United States Treasury Circular 1082 and found in the 'Federal Register,' volume 41, page 2652 (1976).

7. "Withdrawal of Cash From the Treasury for Advances Under Federal Grant and Other Programs," issued as United States Treasury Circular 1075 and found in the 'Code of Federal Regulations,' title 31, section 205 (1980).

C. Definitions. As used in 8 MCAR § 4.0012 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 as defined in 'Minnesota Statutes,' section 268.53, subdivision 1.

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

5. "Conditioned space" means an area inside the building envelope where the air temperature can be altered by a heating or cooling device.

6. "Cosmetic items" means items that only enhance the esthetic appearance of the property. Some examples of "cosmetic items" are finishes, decorative fenestration, and elevation materials such as aluminum siding, board and batten, clapboard, brick, stone, shakes and asphalt siding.

7. "Cost of employment" means compensation for services as defined in Office of Management and Budget Circular A-87, Attachment B, A.10, A.13, and A.14, as cited in B.4.

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

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

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

11. "Eligible dwelling unit" means a dwelling unit that is occupied by a low-income family unit.

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

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

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

15. "Handicapped person" means a person who, in the opinion of a qualified medical person, is permanently physically or mentally disabled. "Qualified medical person" means a qualified physician or chiropractor authorized to practice his profession in the State of Minnesota.

16. "Heating degree days" means the difference in temperature, in degrees Fahrenheit between the mean temperature for the day and 65 degrees Fahrenheit on any day when the mean temperature is less than 65 degrees Fahrenheit. Data for this factor is from 'Monthly Normals of Temperature, Precipitation and Heating and Cooling Degree Days, 1941-1970,' issued by the National Oceanic and Atmospheric Administration (United States Department of Commerce, 1973).

17. "Heating or cooling source" means a device that can raise or lower temperatures in 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.

18. "Independent contractor" means an entity that furnishes materials or provides labor or both in the weatherization of buildings of low-income persons.

19. "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 under the Alaska Native Claims Settlement Act, 'United States Code,' title 43, 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 near a federal or state reservation or rancheria.

20. "Low-income" means having a 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 'Code of Federal Regulations,' title 45, section 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, 'Statutes at Large,' volume 49, page 620, chapter 531 (1935), codified in scattered sections of 'United States Code,' volume 42.

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

22. "Multifamily dwelling unit" means a dwelling unit that is located in a structure containing more than one dwelling unit.

23. "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.

24. "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.

25. "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 that 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;

b. devices for modifying fuel openings, including one-time replacement of furnace filters; and

c. electrical or mechanical furnace ignition systems that replace standing gas pilot lights.

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

27. "Rental dwelling unit" means a dwelling unit occupied by a person who pays periodic sums of money to occupy the dwelling unit.

28. "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.

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

30. "State" means the State of Minnesota.

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

32. "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.

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

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

35. "Weatherization materials" means materials used to weatherize homes as defined in 'Code of Federal Regulations,' title 10, sections 456.101-456.914 (1980) amended by 'Federal Register,' volume 45, pages 63449, 63453, 63793 (1980).

D. Allocation of funds. The department shall allocate funds by county to eligible grantees with a demonstrated ability to administer and deliver weatherization services. The department shall determine whether or not a grantee has a demonstrated ability to administer and deliver weatherization services by taking into account the criteria in 3. Equal weight shall be given to each of the criterion. The department shall also allocate funds to eligible grantees who have been engaged in contracting for the construction and repair of real property.

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

2. A grant shall be terminated if the department determines, after a public hearing conducted by the Office of Administrative Hearings, that the grantee has been ineffective in meeting the purpose of 'Minnesota Statutes,' section 268.37.

3. In making a determination under 2., the department shall evaluate the performance of the grantee and shall consider:

a. how quickly the weatherization project achieves the goals of 'Minnesota Statutes,' section 268.37;

b. whether the grantee has adhered to the plan submitted;

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.

1. Applications to the department must contain a plan for the use of state funds which is submitted not later than 30 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 must include:

a. the name and address of the grantee responsible for administering the program;

b. a financial schedule which indicates the monthly funding requirements based on projected production;

c. staffing patterns for all weatherization personnel to allow local program grantees to attain production goals;

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d. a written review of the plan by the regional clearinghouse; and

e. a statement by grantee ensuring that:

(1) no dwelling unit may be weatherized without written documentation that the unit is eligible for weatherization as provided in 8 MCAR § 4.0012;

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

(3) it will establish a priority system for client applications.

3. Each application must state the minimum number of dwelling units to be completed by each grantee which are to be established by the department.

4. The grantee shall insure that no eligible dwelling unit receives more than $750 in material and that each dwelling unit is weatherized according to the priority list established by the department as found in Exhibit 8 MCAR § 4.0012 E.4.-1 or Exhibit 8 MCAR § 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 eligible dwelling exceeds 1500 square feet, or is two story, or requires more than 16 storm windows. If a waiver is granted, the total material expenditures may not exceed $1,000. For purposes of Exhibit 8 MCAR § 4.0012 E.4.-1 and Exhibit 8 MCAR § 4.0012 E.4.-2, home types have the following meanings:

a. "Type I" means homes with accessible attics;

b. "Type II" means homes with inaccessible basements;

c. "Type III" means homes with solid walls;

d. "Type IV" means homes with knee wall construction;

e. "Type V" means mobile homes.

Exhibit 8 MCAR § 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 accessible unheated space.

D. Weatherstrip movable 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. Vents 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 § 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.

F. Allowable expenditures. Expenditures shall be limited to:

1. the cost of purchase, delivery, and storage of weatherization materials;

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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 2.;

4. maintenance of tools and equipment;

5. purchases of tools, equipment, and vehicles;

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

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, for repair materials and repairs to the heating source necessary to make the installation of weatherization materials effective;

10. building permits where applicable;

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

12. administrative expenses not to exceed 7.5 percent of each grantee's allocation;

13. weatherization of a building containing eligible rental dwelling units if at least 66 percent of the rental units in the building are eligible dwelling units and if the landlord or landlord's agent agrees in writing that the grantee may do the weatherization work and that rents will not be raised because of the weatherization work.

All purchases in 5. with an acquisition value of $300 or more must have written approval from the department. Purchasing must follow procedures outlined in Office of Management and Budget Circulars A-87, A-102, and A-110, as cited in B.

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

1. to weatherize a dwelling unit that has been weatherized previously with grant funds from the United States Department of Energy or state assistance under 'Minnesota Statutes,' section 268.37 or 8 MCAR § 4.0012, unless the 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;

2. to weatherize a dwelling unit that 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 department shall supervise the projects of the grantees in the following manner:

1. At least once every three months the department shall monitor and evaluate the operation of projects carried out by the grantees receiving financial assistance under 8 MCAR § 4.0012 through on-site inspections, reviews of reports submitted by grantees and inspection of their books and records.

2. The grantee shall give the department access, for the purpose of audit and examination, to any books, documents, papers, information, and records of any weatherization project receiving financial assistance under 8 MCAR § 4.0012.

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

I. Record keeping. Record keeping shall be in accordance with Office of Management and Budget Circular A-87 as cited in B.4. 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 8 MCAR § 4.0012, the total cost of the weatherization project 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.

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. When the department approves an application for a grant, it shall notify the grantee, in writing, of the approval. The department and the grantee shall sign a grant contract. The grant contract must specify what report requirements and other grant requirements must 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. Grantees shall report expenditures monthly on forms to be supplied by the department. The department shall require the grantees 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.

L. Variances.

1. The department shall grant a variance to the use of materials required by 8 MCAR § 4.0012 C.35. if it appears that:

a. product or test standards have changed; and

b. granting the variance would not adversely affect the public health or safety; and

c. granting the variance would not conflict with applicable building codes.

2. A grantee may submit to the department a written request for a variance documenting the need to include or exclude additional or existing materials required by 8 MCAR § 4.0012 C.35. 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 3. If the agency denies a request for a variance it shall notify the applicant, in writing, of the reasons for the denial.

3. The department shall notify all grantees, in writing, that a variance has been granted. Notification will be issued within 30 days after the granting of the variance.

Department of Energy, Planning and Development Energy Division

Proposed Rules Governing the Petroleum Products State Set-Aside Program

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Department of Energy, Planning and Development, hereinafter "department," intends to adopt the above-entitled rules without a public hearing. The commissioner has determined that the adoption of the rules will not be controversial and has elected to follow the procedures set out in Minn. Stat. § 15.0412, subd. 4h.

In its 1981 session, the Minnesota Legislature enacted the State Set-Aside Program, Laws of 1981, Chapter 356, Section 136, for the purpose of granting the department authority to exercise specific power to deal with shortages of refined petroleum products. The state set-aside program provides emergency petroleum supplies to relieve the hardship caused by shortages, thus minimizing the adverse impacts on the state's citizens and economy.

Temporary rules for the set-aside program were promulgated last year. Those rules were published in the *State Register* on November 23, 1981 (6 S.R. 1021-22). The department is now proposing rules which are very similar to those published on November 23, 1981. Copies of the rules as now proposed may be obtained by writing or calling Mr. Chris Gilchrist at the address or telephone number given below.

Please be advised that you have an opportunity for the 30-day period following publication of this notice and the proposed rules to submit comments in writing on the proposed rules and to object to the lack of public hearing on the proposed rules. Your written comments or request for hearings should be submitted to the Department of Energy, Planning and Development, Energy Division, c/o Chris Gilchrist, 980 American Center Building, 150 East Kellogg Boulevard, Saint Paul, Minnesota 55101. Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, no public hearing will be held. If seven or more persons request hearings on the proposed rules, the department will order public hearings in accordance with Minn. Stat. § 15.0412, subds. 4-4f. The department may modify the proposed rules if modification is supported by the data and views submitted in written comments and if no substantial change results from the modification.

If no hearing is required, and the department decides to adopt the rules as proposed, or as modified if written comments justify modification, the department will submit to the Attorney General for review of form, legality and substantial change the following documents: this notice with the rules as proposed, the rules as adopted, the order adopting the rules, any written comments received by the department, the department's statement of need and reasonableness supporting adoption of the

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rules, and any written comments received by the department in response to the earlier notices seeking outside opinions. Any person may request notification of the date the department makes the submission to the Attorney General. If you desire to be so notified you must inform the department in writing during the 30-day comment period.

The department has prepared a statement of need and reasonableness in support of the proposed rules which is also available from the department by writing to the address indicated above or calling (612) 296-1732.

The department's authority to promulgate the proposed rules can be found in Minn. Stat. § 116H.095.

Please be advised that Minnesota Statutes ch. 10A requires each lobbyist to register with the Ethical Practices Board within five days after he/she becomes a lobbyist. Lobbying includes attempting to influence rulemaking by communicating or using others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, Telephone (612) 296-5615.

Rules as Proposed (all new material)

6 MCAR § 2.0108 Authority. Rules 6 MCAR §§ 2.0108-2.0116 are adopted pursuant to Minn. Stat. § 116H.095, subd. 7.

6 MCAR § 2.0109 Purpose. Rules 6 MCAR §§ 2.0108-2.0116 govern the administration of the state petroleum product set-aside program. The state set-aside program provides emergency petroleum supplies to relieve the hardship caused by shortages of refined petroleum products or other emergencies. The purpose of the program is to minimize the adverse impacts of shortages and dislocations on the state's citizens and economy.

6 MCAR § 2.0110 Definitions.

A. Applicability. For the purposes of 6 MCAR §§ 2.0108-2.0116 the terms defined in this rule have the meanings given them.

B. Agriculture. "Agriculture" means certain activities in food production, processing, and sales as set out in the Standard Industrial Classification Manual, 1972 edition.

1. Included activities are:

a. activities listed in Division A, Agriculture, Forestry and Fishing, except those excluded by B.2.;

b. activities listed in Division D, Manufacturing, including grain and seed drying under Major Group 20, Food and Kindred Products, except those excluded by B.2.;

c. activities listed in codes 1475, 2141, 2411, 2421, 2873, 2874, 2875, 2879, and 5462; and

d. activities of potash mining listed in code 1474, dicalcium phosphate production listed in code 2819, farm to market hauling and log trucking listed in code 4212, and farm irrigation systems listed in code 4971.

2. Excluded activities are:

a. classification codes 0742, 0752, 0781, 0782, 0849, and non-food producing activities in codes 0271 and 0279 within Division A, Agriculture, Forestry, and Fishing; and

b. classification codes 2047, 2067, and 2085 within Major Group 20, Food and Kindred Products in Division D, Manufacturing.

C. Assignment. "Assignment" means an order by the office or the board to a prime supplier to release state set-aside product to a specific person.

D. Average product use. "Average product use" means the volume of product purchased during the same month last year.

E. Board. "Board" means the state set-aside appeals board.

F. Cargo and freight hauling. "Cargo and freight hauling" means hauling by any truck with a gross vehicle weight of 20,000 pounds or more and the shipping of goods by rail or water.

G. Commissioner. "Commissioner" means the Commissioner of the Minnesota Department of Energy, Planning and Development.

H. Current month requirement. "Current month requirement" means the volume of product needed by an end user to meet its supply need for the present month.

I. Decision. "Decision" means the ruling of the board about any appeal.

J. Department. "Department" means the Minnesota Department of Energy, Planning and Development.

K. Emergency services. "Emergency services" means activities immediately necessary to preserve the health or safety of

the citizens. Emergency services include: ambulance operation; city, county, state, and federal law enforcement; firefighting; mobilized national guard; and Red Cross services.

L. End user. "End user" means a final consumer of motor gasoline or middle distillate.

M. Energy production. "Energy production" means the manufacturing, processing, storage, or transportation of primary energy sources including electricity, natural gas, or petroleum products. Energy production excludes electric utilities whose needs for electrical energy can be met by purchase from members of the Mid-Continent Area Power Pool.

N. Essential services. "Essential services" means activities that provide continuing public health and safety services. They include: energy production; government services; maintenance vehicles for telecommunication services; postal services; sanitation services; and cargo and freight hauling.

O. Fuel coordinator. "Fuel coordinator" means city council or county board appointed individuals who verify state set-aside applications.

P. Government services. "Government services" include: activities of the judicial branch of government; jail and prison activities; meetings of elected political officials; the Division of Emergency Services Operations Center activities; hearings of mobilized Local Energy Conservation Boards; hearing of the Office of Administrative Hearings; and minimum services to provide Aid For Dependent Children, food stamps, Social Security Income, and Social Security checks.

Q. Middle distillates. "Middle distillates" means distillates obtained between kerosene and lubricating oil fractions in the refining process, including kerosene, number one and number two heating oil, and number one and number two diesel fuel.

R. Motor gasoline. "Motor gasoline" means a liquid mixture of hydrocarbons produced by the distillation of petroleum and used chiefly as a fuel in internal combustion engines.

S. Office. "Office" means the unit within the department responsible for the state set-aside program.

T. Officer. "Officer" means the individual who manages the office and who has authority to sign orders and documents for the state set-aside program.

U. Order. "Order" means a written document signed by the officer or the commissioner directing a prime supplier to release a product for an assignment. The office may telephone an order to the prime supplier, but the office shall promptly send the written order to the prime supplier's representative. The order is effective the day it is signed by the officer or commissioner.

V. Passenger transportation. "Passenger transportation" means conventional public transit service which operates on a fixed route and is available to the public for a fare, intercity bus transportation, van pools, subscription buses, tour and charter bus transportation, bus transportation of pupils for educational purposes, taxicabs licensed to conduct business in a municipality, rail passenger transportation, aviation ground support for regularly scheduled airlines, and special transportation services for the elderly or handicapped.

W. Person. "Person" means an individual and any legally existing business, government unit, or institution.

X. Plant protection. "Plant protection" means sufficient heat and power to keep from freezing pipes and damaging equipment.

Y. Postal service. "Postal service" means the delivery of first, second, or third class United States mail.

Z. Prime supplier. "Prime supplier" means the producer or supplier now or hereafter making the first sale of middle distillates or motor gasoline subject to the state set-aside program for consumption within the state.

AA. Prime supplier's representative. "Prime supplier's representative" means an individual who is authorized to act as liaison for the prime supplier in regular activities of the state set-aside program.

BB. Retail outlet. "Retail outlet" means a person who sells refined petroleum products from fixed tanks in a fixed location to end users in retail volumes.

CC. Sanitation services. "Sanitation services" means the activities of a person who supplies water to the public through public utilities, or collects or disposes gaseous, liquid, or solid wastes for the public.

DD. Service. "Service" means personal service or service by certified United States mail, postage prepaid, addressed to a person at the person's last known address.

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EE. Shortfall. "Shortfall" means the amount by which demand exceeds supply of crude oil or refined petroleum products during any month.

FF. State. "State" means the state of Minnesota.

GG. State set-aside. "State set-aside" means the amount of middle distillates or motor gasoline required to be made available by a prime supplier for utilization by the commissioner to resolve or mitigate emergencies or hardships due to shortages of supply.

HH. Supplier. "Supplier" means a person, other than the United States Department of Defense, who furnishes a refined petroleum product or crude oil to end users, other suppliers, wholesale purchaser-consumers, or wholesale purchaser-resellers.

II. Wholesale purchaser-consumer. "Wholesale purchaser-consumer" means an end user who purchases truck transport volumes of middle distillate or motor gasoline or both from a prime supplier.

JJ. Wholesale purchaser-reseller. "Wholesale purchaser-reseller" means a person who obtains petroleum product from a supplier and, without additional refining, sells or transfers the product to other purchasers.

6 MCAR § 2.0111 Prime supplier's obligations.

A. Monthly reports. Each prime supplier and producer or supplier making the first sale of propane or residual fuel oil within the state shall submit to the office a monthly report. The report shall be submitted in time to be received by the office each month no later than the 25th day of the month. The report shall include actual volumes of product sold in the previous month and the forecasted volumes of product to be delivered in the month following the month in which the report is submitted.

1. The following petroleum products shall be included in each monthly report:
   a. propane (consumer grade);
   b. motor gasoline (total);
   c. unleaded motor gasoline;
   d. kerosene;
   e. number 1 distillate;
   f. number 2 heating oil;
   g. diesel fuel;
   h. aviation gasoline;
   i. kerosene base jet fuel;
   j. naphtha base jet fuel;
   k. number 4 distillate;
   l. residual fuel oil with sulfur content equal to or less than one percent; and
   m. residual fuel oil with sulfur content greater than one percent.
2. The monthly reports shall be submitted in a standardized form approved by the office.

B. Prime supplier's representative. Each prime supplier shall report to the office the name, mailing address, and telephone number of a representative to act for the company regarding state set-aside. The duties of this representative shall include confirming monthly state set-aside volumes and accepting and processing state set-aside orders.

C. Nonpublic data. Reports submitted pursuant to this rule are nonpublic data in accordance with Minn. Stat. § 15.1682.

6 MCAR § 2.0112 Applications.

A. Who may apply. The following persons may apply for state set-aside if they are supplied middle distillate or motor gasoline or both directly by a prime supplier:

1. a wholesale purchaser-consumer or an end user seeking an assignment because of hardship or emergency; or

2. wholesale purchaser-resellers seeking assignments to supply their traditional wholesale-purchaser and end user accounts because of hardship or emergency.

B. Form of application. An applicant shall submit an application to the office for each month of hardship or emergency.

1. Except as provided in 2., applications shall be submitted in writing on forms approved by the office and signed by the applicant. Each application shall be verified and signed by a fuel coordinator attesting to the applicant's need for state set-aside

products. The office may request reasonable additional information from an applicant as needed to support the claim of hardship or emergency.

2. An application may be made orally when extraordinary circumstances make it impossible for the applicant to submit a written application. When an oral application is made, the fuel coordinator shall orally certify to the office that the applicant has an emergency or hardship situation. It is the responsibility of the applicant to insure both that the fuel coordinator contacts the office and that the written application is submitted within five days following the oral application. If the written application is not submitted within five days following the oral application, the office may refuse to accept future oral requests from that applicant.

6 MCAR § 2.0113 Evaluation criteria.

A. Middle distillates. The amount of middle distillates available for state set-aside is a volume equal to four percent of all prime suppliers' monthly supply estimate as stated in the monthly report filed pursuant to 6 MCAR § 2.0111. Applicants shall specify the gallons requested for each end user category and the reason for any need of volumes in excess of contract volumes. All assignments shall be based on the following priorities:

1. First priority ~~middle~~ distillate users include:

a. agriculture,

b. emergency services;

c. essential services;

d. heating customers with no alternate source of fuel, including hospitals, multi-unit housing, nursing homes, and residences;

e. major industrial and commercial activities whose continued operation is essential to the economic well-being of an area, including auto manufacturing and mining;

f. minimum plant and building protection; and

g. passenger transportation.

2. Second priority middle distillate users are heating customers on interruptible natural gas or another primary source of fuel. They include hospitals, multi-unit housing, nursing homes, and residences.

3. Third priority middle distillate users include government buildings, for heating; industrial and commercial activities not included in 1.; and schools.

4. Notwithstanding the priorities stated in 1. to 3., when an energy supply fuel oil emergency has been declared pursuant to Minn. Stat. § 116H.09 and 6 MCAR §§ 2.3101-2.3120, the priorities stated in 6 MCAR § 2.3111 shall apply.

B. Motor gasoline. The volume of motor gasoline available for state set-aside is a volume equal to three percent of all prime suppliers' monthly supply estimate as stated in the monthly report filed pursuant to 6 MCAR § 2.0111. The office may assign state set-aside motor gasoline volumes, when the applicant submits accurate and complete documentation, based on the following criteria.

1. Agricultural motor gasoline shortfall.

a. If the traditional supplier of an agricultural operation is unable to supply average motor gasoline use, the office may release amounts of state set-aside equal to the shortfall. The office may require the applicant to list the name, telephone number, and average motor gasoline use of the ultimate consumer.

b. If unusual weather conditions, natural disasters, or other extreme occurrences require more than average motor gasoline use, the office may make a state set-aside assignment to satisfy the greater requirement. In these cases, the applicant shall provide the office with the current monthly requirement and a justification for the request.

2. Community or area hardship.

a. If a supplier pullout produces a shortfall of motor gasoline in a local area, a wholesale purchaser-reseller in the area may apply for a state set-aside assignment. The applicant shall submit the name, address, and approximate gallons per month sold by the supplier who has pulled out.

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b. State set-aside may be assigned to alleviate a shortfall caused by the closing of a motor gasoline retail outlet in a community. The applicant must certify that residents would have to drive 20 or more miles round trip to obtain motor gasoline between the hours of 7:00 a.m. and 8:00 p.m. and provide the office with the name, address, and approximate gallons per month sold of all retail outlets which have opened or closed in the last calendar year within a ten-mile radius of the retail outlet requesting the state set-aside assignment.

c. A wholesale purchaser-reseller may receive an assignment on the basis of unusual growth if the applicant can demonstrate the existence of a shortfall because of a population increase in the community of over ten percent since 1980, new business in the community employing 500 or more employees since 1980, or relocation of a highway since 1980.

d. The office may assign state set-aside motor gasoline to a retail outlet that has historically remained open 24 hours a day and provided emergency road service.

3. The office may assign state set-aside motor gasoline to alleviate a shortage of motor gasoline due to a natural disaster including: floods; blizzards; fire; high winds; and tornadoes. Applicants shall state the nature of the disaster, the number of gallons sold, and to whom.

4. The office may assign state set-aside motor gasoline to meet the requirements of certain priority vehicles because of a shortfall. Applicants may apply for state set-aside to make up the difference between 100 percent of contract volume and the amount of supply currently available for the following types of priority vehicles: emergency services, essential services, and passenger transportation services.

6 MCAR § 2.0114 Application processing procedures.

A. Investigations. The office may initiate an investigation of any statement in an application and utilize in its evaluation of the application any relevant facts obtained by the investigation. The office may solicit and accept information from third persons relevant to any application, provided that the applicant is afforded an opportunity to respond.

B. Additional information. If the office determines that the application does not have sufficient information to support a decision, it may request the necessary additional information from the applicant. If the applicant repeatedly or willfully fails to supply additional information, the office may deny the application.

C. Processing. The office shall process applications each month for that month as follows:

1. Applications made by wholesale purchaser-consumers or by wholesale purchaser-resellers on behalf of wholesale purchaser-consumers or end users shall be processed within five working days after receipt.

2. Except when the applicant applies for state set-aside under 6 MCAR § 2.0113 B.2. or 3., applications that are made by or on the behalf of retail outlets shall be processed within five working days after the 15th day of the month.

3. Applications needing additional information shall be processed within five working days after receipt of the requested information.

D. Implementation. State set-aside assignments shall be implemented as follows:

1. Upon approval or modification of a request for state set-aside product, the office shall issue an order authorizing the assignment and serve it on the prime supplier from whom the state set-aside product is to be drawn.

a. An order issued by the office is effective the date it is signed by the officer or the commissioner, unless stayed, modified, suspended, or rescinded.

b. The order represents a call upon the prime supplier's state set-aside volume for the month of issuance even if delivery cannot be made until the following month.

c. The applicant shall arrange for receipt of the product within ten days from the date of the order.

2. Upon denial of an application, the office shall notify the applicant in writing, stating the reason for denial.

6 MCAR § 2.0115 Appeals process.

A. Applicability. Within ten days after the effective date of an order or the mailing date of a denial, any person aggrieved may appeal in writing to the commissioner. The written appeal shall include:

1. the reason for the appeal, including why the action by the office is deemed unwise or unjust;

2. the names, addresses, and telephone numbers of any persons whom it is believed might be injured by the order being appealed; and

3. the objective of the appeal, including reversal of the office action, modification of the action, or other remedies.

B. Commissioner's action. Within five days of receipt of the appeal, the commissioner shall:

1. set a hearing date at least ten days after initiation of the appeal;

2. serve all interested parties with a copy of the appeal and notice of the time and place of the hearing; and

3. issue a stay of the order if:

a. it appears probable that a party may suffer serious injury;

b. the order appears in conflict with Minn. Stat. § 116H.095, or other law; or

c. it appears probable that the board will grant the appeal.

C. State set-aside appeals board. The state set-aside appeals board consists of:

1. the commissioner or the director's designee, as chairperson;

2. the Commissioner of the Minnesota Department of Agriculture or designee thereof;

3. the Director of the Office of Consumer Services of the Minnesota Department of Commerce or designee thereof;

4. the Director of the Office of Emergency Services of the Minnesota Department of Public Safety or designee thereof; and

5. the Chairperson of the Minnesota Public Utilities Commission or designee thereof.

D. Decisions on appeals. The commissioner plus any two or more additional members may hear and decide appeals.

E. Informal disposition. At any time during the proceedings, the affected parties may conclude a mutually acceptable settlement of the appeal.

6 MCAR § 2.0116 Hearings.

A. Rights of the parties to the hearing. Affected parties have a right to:

1. a hearing before the board;

2. representation by an attorney;

3. present public evidence;

4. present witnesses who will testify under oath;

5. cross-examine witnesses; and

6. present rebuttal testimony and argument.

B. Rules of evidence.

1. The board shall admit and consider any reasonable evidence.

2. The board may exclude evidence it determines to be immaterial, irrelevant, or repetitious.

3. The board shall consider only the evidence which is entered into the public record of the hearing.

4. If the board desires to use technical facts within its specialized knowledge or publicly accepted facts that were not part of the evidence presented, the board shall notify the parties and give them an opportunity to rebut those facts. After the rebutting evidence is received and reviewed, the board shall review all the evidence when making the decision.

C. Public record of the hearing. The board shall prepare an official record which shall include:

1. all pleadings, motions, and intermediate rulings;

2. evidence received or considered;

3. a statement of facts not introduced in evidence but considered by the board and questions of those facts by affected persons including rebuttals and objections;

4. proposed findings and exceptions;

5. any decision, opinion, or report by the board; and

6. all memoranda or data submitted to the board by the office except advice of the office's attorney.

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D. Verbatim record. The board shall make a verbatim record of the hearing on recording equipment. Any party may request that a court reporter make the record, but that person shall pay the court reporter's fee. The board shall transcribe the record only upon request and only if the requestor agrees to pay for the cost of transcribing.

E. Hearing procedure.

1. If the appellant fails to appear, the board may declare a default and deny the appeal.

2. After opening the hearing, the chairperson shall read the rights of the parties to the hearing and the rules regarding evidence from A. and B. The chairperson shall also call for the parties to present any written matter that they wish to introduce as an exhibit and offer as evidence.

3. A representative of the office shall introduce the jurisdictional exhibits including the written appeal received by the commissioner, the notice of hearing, and any agreements entered into by the parties to the appeal.

4. The appellant may make an opening statement. Other parties may make statements in the order determined by the board.

5. After opening statements, the appellant may present its case. Other parties may present their cases in the order determined by the board.

6. The board shall determine the order for cross-examining witnesses.

7. The parties may next give oral or written rebuttal evidence and final arguments in the order determined by the board.

8. After final arguments, the board may: close the hearing; announce the time and place of the next hearing; or continue the hearing to some future time. The board shall give a five day written notice to all parties prior to holding a continued hearing.

F. Decorum. The chairperson may take action to insure the orderly conduct of public business at the hearing, as authorized by Minn. Stat. § 624.72, subd. 3.

G. Decision.

1. Within five days after the hearing is closed, the board shall issue its decision on the appeal.

2. The decision shall state that the denial or order of the office was modified, reversed, or upheld. If modified or reversed, the decision must state exactly what action is required. The decision shall state the conclusions of fact and law used to reach the ruling.

3. The commissioner shall, by the close of the working day following the decision, serve a copy of the decision on the parties to the hearing.

Repealer. Rules EA 101-107 of the Energy Agency are repealed.

Department of Health
Health Systems Division

Proposed Criteria for Waivers of Certificate of Need Review Pursuant to Laws of Minnesota 1982, Chapter 614, § 6

Notice is hereby given that the Minnesota Commissioner of Health proposes to adopt the above-entitled criteria without a public hearing. The procedure for adopting the criteria is prescribed in Laws of Minnesota 1982, Chapter 614, § 6.

This notice invites written comments on the proposed criteria for the new grounds for waivers of Certificate of Need Review which were added as clauses (c) and (d) to Minn. Stat. § 145.835, subd. 4 (1980) by Laws of Minnesota 1982, Chapter 614, § 6. These clauses authorize the commissioner to grant waivers if the construction or modification is exclusively for ambulatory care services or for an experimental or demonstration project. The proposed criteria set forth below would be used to determine when such waivers shall be granted.

Written comments to the proposed criteria must be submitted by July 1, 1982. Interested persons may submit written comments to Kent E. Peterson, Chief, Planning and Resources Development Section, Minnesota Department of Health, 717 Delaware Street Southeast, Minneapolis, Minnesota 55440. Questions may be directed to Mr. Peterson at (612) 296-5365.

Criteria and Procedures for Decisions on Granting Waiver of Certificate of Need Review for Ambulatory Care Services, Experimental Projects and Demonstration Projects.

A. A request for a waiver under Laws of Minnesota 1982, Chapter 614, § 6, clauses (c) or (d) must be submitted in writing by the applicant to the HSA in the form and according to the procedure specified in 7 MCAR §1.662 D.3., with the exception of the

requirement specified in 7 MCAR § 1.662 D.3.e. The request must also be accompanied by information relating to the criteria specified in paragraph C. that the applicant wishes to submit in support of the request.

B. The HSA shall not proceed with a recommendation until complete information is received. If any additional information is requested of an applicant, it must be relevant to the criteria specified in paragraph C.

C. The HSA recommendation and subsequent decision by the commissioner must be based upon evidence that the project for which a waiver is requested substantially fulfills the following criteria:

1. The project must be described in sufficient detail so that a determination of the appropriate type of state licensure and federal certification can be made. If state licensure is required, there must be reasonable assurance that the project would meet relevant licensure requirements. If federal certification is to be sought, there must be reasonable assurance that the project would meet the requirements.

2. The applicant must demonstrate how comparative price information on the services provided as a result of the project will be disseminated. Such information must be in a manner consistent with Laws of Minnesota 1982, Chapter 614, § 2.

3. The applicant must demonstrate that, by the end of the second full year of operation of the project, the prices for the services provided as a result of the project will be set at a level which will generate revenue sufficient to cover all expenses. This information on projected revenues and expenses must also demonstrate that any negative disparity between the expenses of providing services under the project and revenue derived from provision of those services must be obtained from profit, surplus, retained earnings, venture capital or the like, and not through direct subsidy of the project from charges to patients receiving health services other than those to be provided as a result of the project.

4. For proposed experimental or demonstration projects, the applicant shall provide evidence that the service to be provided or the method of providing the service:

a. Is a service or service delivery method which is not currently available to the patients proposed to be served by the project;

b. Is based upon successful past experience or upon a well defined theory related to the service or service delivery method, for which the experience or theory indicates a likelihood that improved economic efficiency or effectiveness will occur as a result of the project;

c. Has identified sources of funding, both capital and operating; and

d. Is accompanied by an ongoing evaluation method scientifically designed to provide conclusions about improvements in the cost and quality of, and access to, the services to be provided as a result of the project; such evaluation method must also identify qualified personnel to be responsible for designing and conducting evaluation of the project.

D. Within 30 days of the receipt of a request accompanied by complete information, the HSA must submit to the commissioner its recommendation for granting or denying the waiver or the HSA shall indicate that no recommendation to the commissioner will be made. If the HSA fails to act within 30 days or if the applicant feels that the HSA has requested information not reasonably related to the criteria in paragraph C, the applicant may petition the commissioner for the granting of the waiver without receipt of an HSA recommendation. Any recommendation must be accompanied by supporting rationale based on the criteria in paragraph C.

E. Within 30 days of receipt of the recommendation of the HSA, the commissioner must notify the applicant and the HSA of the decision.

F. Waivers granted under Laws of Minnesota 1982, Chapter 614, § 6 (c) or (d) are subject to the requirements of 7 MCAR § 1.662 D.8., 9., and 10., 7 MCAR §§ 1.664 D. and E., and Laws of Minnesota 1982, Chapter 614, § 7, subd. 4.

May 17, 1982

George R. Pettersen, M.D.
Commissioner of Health

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Department of Revenue
Income Tax Division

Proposed Rule Relating to Subtraction for Interest on United States Government Obligations (13 MCAR § 1.6007)

Notice of Intent to Adopt a Rule without a Public Hearing

Notice is hereby given that the Department of Revenue proposes to adopt the above-entitled rule without a public hearing. The commissioner has determined that the proposed adoption of this rule will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statute § 15.0412, subd. 4h (1981).

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

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

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

Ms. Patricia A. Lien
Attorney, Legal Research
Minnesota Department of Revenue
Centennial Office Building
St. Paul, Minnesota 55145
Telephone: (612) 296-1022

Authority for the adoption of the proposed rule is in Minnesota Statutes § 290.52. A statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rule has been prepared and is available from Ms. Lien upon request. A copy of the proposed rule is also available from Ms. Lien.

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

The purpose of the proposed rule is to define which obligations are obligations of the United States and qualify for the subtraction from federal adjusted gross income provided for in Minnesota Statute § 290.01, subd. 20(b)(1). Presently, no rule exists that governs the determination of which obligations quality for the subtraction. The rule is proposed for the convenience of the taxpayer and the agency in deciding which obligations are exempt from Minnesota income tax.

May 14, 1982

Clyde E. Allen, Jr.
Commissioner of Revenue

Rule as Proposed (all new material)

13 MCAR § 1.6007 Subtraction for interest on United States government obligations. Minn. Stat. § 290.01, subd. 20, clause (b)(1) allows an individual taxpayer, an estate, or a trust to subtract the amount of interest earned on certain obligations of the United States government from federal adjusted gross income. To qualify for this subtraction, the obligation must meet the following conditions:

A. The interest income on the obligation must have been included in federal adjusted gross income for the taxable year that the subtraction is claimed. If only a portion of the interest income on an obligation has been included in federal adjusted gross income, only the included portion may be subtracted.

B. The obligation must be an obligation of the United States of America, whether through an agency, authority, commission, or instrumentality of the United States. This means that the full faith and credit of the United States must be pledged to the payment of the underlying obligation.

C. The obligation must be in writing, bear interest, contain a binding promise by the United States to pay specified sums on

specified dates, be specifically authorized by Congress, and be supported by a pledge of full faith and credit of the United States. Open accounts and other unsettled claims or demands are not obligations of the United States for purposes of this subtraction.

D. The obligation must be a direct and primary obligation of the United States. If the primary obligor is not the United States and the United States is merely an insurer or guarantor and has only a secondary or contingent liability, the interest income is not exempt. If the primary obligor is not the United States but the United States pays all or part of the interest on the obligation, the interest income is not exempt. If the obligation was originally a private obligation and if the obligee later gives up all rights against the original obligor as part of an insurance endorsement or otherwise, and agrees to look only to the United States for payment of both principal and interest, then the obligation has become a primary obligation of the United States and the interest income from it is exempt from state taxation.

E. Exhibits.

1. Rule 13 MCAR § 1.6007 E., exhibit I contains a list of securities that have been determined to be exempt from Minnesota income tax and for which a subtraction is allowed.

2. Rule 13 MCAR § 1.6007 E., exhibit II contains a list of securities that have been determined to be taxable by the State of Minnesota and for which no subtraction is allowed.

3. Rule 13 MCAR § 1.6007 E., exhibits III and IV contain lists of various federal agencies or related organizations that either generally issue exempt obligations or generally issue taxable obligations. These lists are not intended to be conclusive on the taxable status of any particular obligation issued by or in conjunction with a listed agency or organization. Even though a listed agency generally only issues either exempt obligations or taxable obligations, it does not follow that each and every obligation carrying the name of that particular agency is either exempt or taxable. An agency may issue its own obligations that are exempt and also may handle private obligations that are not exempt. For example, the agency may administer, purchase and sell, insure, or guarantee an otherwise private obligation. Such action by the agency does not convert a private obligation into a direct and primary obligation of the United States of America and, therefore, does not make the private obligation tax exempt. The taxable status of each obligation must be determined separately in accordance with A.-D.

13 MCAR § 1.6007 E., EXHIBIT I

Exempt Obligations Listed Name of Security

Name of Security	Agency	Authority as amended through 1-1-82
1. Banks for Cooperative bonds	Banks for Cooperatives	12 USC § 2134
2. Farmers Home Administration notes, as defined in Tobak v. Commissioner	Farmers Home Administration	31 USC § 742, Tabak v. Commissioner, docket number 2244 Minn. tax court (March 10, 1977)
3. Consolidated collateral trust debentures	Federal Intermediate Credit Banks	12 USC § 2079
4. Consolidated discount notes	Federal Home Loan Banks	12 USC § 1433
5. Consolidated Federal Home Loan Bank notes	Federal Home Loan Banks	12 USC § 1433
6. Consolidated Federal Farm Loan bond	Federal Land Banks	12 USC § 2055
7. Federal Farm Credit Banks consolidated systemwide bond	Federal Land Banks, Federal Intermediate Credit Banks	12 USC §§ 2055, 2079, and 2134
8. U.S. freedom shares	U.S. Treasury Department	31 USC §§ 742, 753, and 757c
9. U.S. savings bonds	U.S. Treasury Department	31 USC §§ 742, 753, and 757c
10. U.S. Treasury bills	U.S. Treasury Department	31 USC §§ 742, 753, and 757c
11. U.S. Treasury bonds	U.S. Treasury Department	31 USC §§ 742, 753, and 757c
12. U.S. Treasury certificates of indebtedness	U.S. Treasury Department	31 USC §§ 742, 753, and 757c
13. United States notes	U.S. Treasury Department	31 USC §§ 742, 753, and 757c

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13 MCAR § 1.6007 E., EXHIBIT II
Taxable Obligations Listed by Name of Security

Name of Security	Agency	Authority as amended through 1-1-82
1. Certificate of beneficial interest (CBI's)	Export-Import Bank of the U.S. (Eximbank)	12 USC §§ 635 and 635d
2. Eximbank debentures	Export-Import Bank of the U.S. (Eximbank)	12 USC § 635
3. Participation certificates (PC's)	Export-Import Bank of the U.S. (Eximbank)	12 USC § 635
4. Federal Assets Financing Trust participation certificates	Government National Mortgage Association (GNMA)	1717(c) and 1721
5. Federal Assets Liquidation Trust participation certificates	Government National Mortgage Association (GNMA)	12 USC §§ 1717(c), 1721, and 1723 c
6. GNMA mortgage-backed bonds	Government National Mortgage Association (GNMA)	12 USC §§ 1717(c) and 1721
7. GNMA pass-through securities	Government National Mortgage Association (GNMA)	12 USC §§ 1717(c) and 1721
8. Government Mortgage Liquidation Trust participation certificates	Government National Mortgage Association (GNMA)	12 USC §§ 1717(c) and 1721
9. National Government Securities Trust	Government National Mortgage Association (GNMA)	12 USC §§ 1717(c) and 1721
10. Mortgage participation certificates (PC's)	Federal Home Loan Mortgage Corporation	12 USC §§ 1452(d) and 1455
11. Guaranteed mortgage certificates (GMC's)	Federal Home Loan Mortgage Corporation	12 USC §§ 1452(d) and 1455
12. New communities debentures	Privately issued under HUD program	42 USC §§ 3902 and 4514
13. Certificate of beneficial ownership (CBO's)	Farmers Home Administration	7 USC §§ 1922-1928
14. SBIC debentures	Small Business Investment Companies	15 USC § 687(e)

13 MCAR § 1.6007 E., EXHIBIT III
Agencies Which Generally Issue Exempt Obligations

NOTICE: This listing is only a guide and is not conclusive on the issue of the taxable status of an obligation. Each obligation issued by a listed agengy must be separately analyzed according to A.-D.

Name of Instrumentality	Types of Securities	Authority as amended through 1-1-82
1. Bank for Cooperatives	Notes, debentures, and other obligations issued by the instrumentality	12 USC § 2134
2. Commodity Credit Corporation	Bonds, notes, debentures, and other similar obligations	15 USC § 713a-5
3. Federal Deposit Insurance Corporation	All notes, debentures, bonds, or other obligations	12 USC § 1825
4. Federal Farm Credit Administration	Obligations	12 USC §§ 2055, 2079, 2134, and 2098
5. Federal Home Loan Banks	Notes, debentures, bonds, and other obligations issued by the bank	12 USC § 1433
6. Federal Intermediate Credit Banks	Notes, bonds, and debentures issued by the instrumentality	12 USC § 2079
7. Federal Land Bank Associations	Notes, bonds, debentures, and other obligations issued by the instrumentality	12 USC § 2055
8. Federal Land Banks	(a)Mortgages held by the instrumentality	12 USC § 2055
	(b) Notes, bonds, debentures, and other obligations issued by the instrumentality	12 USC § 2055
9. Federal Savings & Loan Insurance Corporation	All notes, debentures, bonds, or other obligations	12 USC § 1725(e)

10. General Insurance Fund of the Dept. of Housing and Urban Development, including	Debentures	
(i) Rental Housing Insurance		(i) 12 USC § 1713(i)
(ii) Rental Housing Project		(ii) 12 USC § 1747g(g)
(iii) War Housing Insurance		(iii) 12 USC § 1739(d)
(iv) Armed Services Hosuing		(iv) 12 USC § 1748b(f)
(v) National Defense Housing Insurance		(v) 12 USC § 1750c(d)
(vi) Neighborhood Conservation Housing Insurance		(vi) 12 USC § 1715k(h)(7)
11. Panama Canal bonds	Bonds	31 USC §§ 744 and 745
12. Production Credit Associations	Notes, debentures, and other obligations issued by the instrumentality	12 USC § 2098
13. Puerto Rico	Bonds	48 USC § 745
14. Tennessee Valley Authority	Bonds	16 USC § 831n-4(d)
15. U.S. Postal Service	Obligations	39 USC § 2005(d)(4)
16. Virgin Islands	Bonds	48 USC § 1574

13 MCAR § 1.6007 E., EXHIBIT IV
Organizations Which Generally Issue Taxable Obligations

NOTICE: This listing is only a guide and is not conclusive on the issue of the taxable status of an obligation. Each obligation issued by a listed agency must be separately analyzed according to A.-D.

Name of Organization	Types of Securities	Authority as amended through 1-1-82
1. Asian Development Bank	Obligations	22 USC §§ 285-285t
2. District of Columbia Armory Board	Obligations	31 USC § 742a(a)
3. Environmental Financial Authority	Obligations	33 USC § 1281 note, P.L. 92-500 § 12(j)
4. Export-Import Bank	Notes, debentures, bonds, or other obligations	12 USC §§ 635-635n
5. Farmers Home Administration	Obligations	7 USC §§ 1922-1928
6. Federal Home Loan Mortgage Corporation	Obligations	12 USC § 1455
7. Federal National Mortgage Association (FNMA)	Obligations, mortgage-backed securities, subordinated obligations, participation certificates (PC's)	12 USC § 1719(e)
8. Government National Mortgage Association (GNMA)	Obligations, mortgage-backed securities, participation certificates (PC's)	12 USC §§ 1717(c), 1721, and 1723c
9. Inter-American Development Bank	Obligations	22 USC §§ 283-283z
10. International Bank for Reconstruction and Development (World Banks)	Obligations	22 USC §§ 286-286r
11. International Monetary Fund	Obligations	22 USC §§ 286-286r
12. Maritime Administration, Merchant Marine	Private obligations guaranteed by agency	46 USC § 1273
13. National Consumer Cooperative Bank	Obligations	12 USC § 3017(d)
14. New community development corporations	Bonds, debentures, notes, and other obligations issued on behalf of private new community developers and state land development agencies wich are guaranteed by HUD	42 USC §§ 3902 and 4514

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15. Small Business Investment Companies	Debenture bonds, promissory notes, and other obligations	15 USC § 687(e)
16. Washington Metropolitan Area Transit Authority (WMATA)	Bonds	40 USC §§ 651-671
17. Federal Financing Bank	Obligations issued by the bank	12 USC § 2283 and 31 USC § 742
18. Federal Reserve banks	Obligations	12 USC § 502 and 12 USC § 531

Department of Public Safety
State Fire Marshal Division

Notice of Withdrawal of Rules Governing Amendments to the *Uniform Fire Code*

The rules proposed and published at *State Register,* Volume 6, Number 43, pp. 1781, April 26, 1982 (6 S.R. 1781) are withdrawn in their entirety by the Department of Public Safety. The department intends to propose for adoption more recent editions of the *Uniform Fire Code* and the *National Fire Codes,* and will publish such notice within the next few months.

Department of Public Welfare
Mental Health Bureau

Extension of Temporary Rule Concerning Grants for Services to Adult Mentally Ill Persons in Residential Facilities

Notice is hereby given that Temporary Rule 1 (12 MCAR § 2.001 Temporary), Grants for Services to Adult Mentally Ill Persons in Residential Facilities, effective December 30, 1981 and published in the *State Register* as adopted at Volume 6, Number 31, pages 1370 and 1371 is being continued in effect for an additional 180 days. This continuation is in accordance with Chapter 562, 1982 Laws of Minnesota.

The new expiration date for Temporary Rule 1 will be December 25, 1982, or the date Temporary Rule 1 is replaced by permanent rules; whichever date is earlier.

Department of Public Welfare

Proposed Rule Governing Standards for the Licensing of Private Child-Care or Child-Placing Agencies, (12 MCAR § 2.004)

Notice of Hearing

A public hearing concerning the above-entitled matter will be held in Room D, Veterans Service Building, 20 West 12th Street and Columbus Avenue, St. Paul, Minnesota 55155, on June 30, 1982 commencing at 10:30 a.m. and continuing until all interested persons have an opportunity to be heard. The proposed amendment may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed amendment, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Thomas J. Triplett, Hearing Examiner, Office of Administrative Hearings, 618 East 22nd Street, Minneapolis, Minnesota 55404, (612) 870-4700 either before the hearing or within five working days after the public hearing ends. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052 and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

Notice is hereby given that 25 days prior to the hearing, a statement of need and reasonableness will be available for review at the agency and at the Office of Administrative Hearings. This statement of need and reasonableness will include a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the

reasonableness of the proposed rule or rules. Copies of the statement of need and reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

Rule 4 governs the operation of agencies engaged in, or seeking to engage in, child placement or other child-welfare services in Minnesota and sets forth the requirements necessary for such agencies to be licensed.

Rule 4 contains the procedures for licensure of such agencies; organizational and administrative standards for such agencies; social service, health service and educational standards for such agencies, and standards for how expense reimbursement from families who receive children for adoption is handled.

The proposed amendment to Rule 4 is in D.6.b. The amendment makes specific that the case work supervisor in such an agency shall hold a master's degree in social work from an accredited school of social work.

The agency's authority to adopt the proposed rule is contained in Minn. Stat. § 245.802.

The adoption of this rule will not require expenditure of public monies by local public bodies totaling or exceeding $100,000 in either of the two years immediately following adoption of the rule.

Copies of the proposed rule are now available and at least one free copy may be obtained by writing to John Buzzell, Director, Division of Licensing, Department of Public Welfare, First Floor Centennial Building, St. Paul, Minnesota 55155, telephone (612) 296-2539. Additional copies will be available at the hearing. If you have any questions on the content of the proposed amendment, contact John Buzzell.

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

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

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

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

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

May 14, 1982

Arthur E. Noot
Commissioner of Public Welfare

Rule as Proposed

12 MCAR § 2.004 Standards for the licensing of private child-caring or placing agencies.

A.-C. [Unchanged.]

D. Organization and administration.

1.-5. [Unchanged.]

6. Qualifications of personnel~~:~~.

a. The executive or director shall have had training and responsible experience in work with children and their families and demonstrated executive ability.

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b. The case-work supervisor shall ~~be a graduate of~~ hold a master's degree in social work from an accredited school of social work ~~or have successfully completed two years in such a school~~. In addition, the case-work supervisor must have had a minimum of two years experience in a family and children's agency, or in a children's agency, as a case worker or case-worker supervisor. In agencies not having a case-work supervisor, the executive or case worker shall meet these qualifications.

c. Case workers shall be at least college graduates.

d. Where an agency currently licensed does not meet these requirements, future changes in personnel shall conform to these requirements.

E.-I. [Unchanged.]

ADOPTED RULES

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

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

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

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

Department of Natural Resources

Commissioner's Order No. 2115 Relating to the Taking of Fish for Commercial Purposes and Permits for the Removal of Fish from Lake of the Woods, Superseding Commissioner's Order Nos. 1924 and 2070

Pursuant to authority vested in me by law, I, Joseph N. Alexander, Commissioner of Natural Resources, do hereby prescribe the following regulations relating to commercial fishing and to the issuance of permits for the removal of fish from Lake of the Woods.

After having determined that it would be in the best interest of the natural resources of the State of Minnesota, I have in this order incorporated those suggestions to me from the negotiated agreement between sport fishing and commercial fishing interests that was consummated February 2, 1982 at 4 P.M. Those suggestions are as follows:

1. No commercial fishing within a two-mile corridor along the Minnesota, U.S.A.-Ontario, Canada, border from Pine Island, on the south to the southern boundary of the area known as Little Traverse Bay, on the north.

2. No commercial fishing in the area known as Little Traverse Bay during July and August. During the remainder of the commercial fishing season, the number of gill net fishermen shall be not more than two (2), who shall fish not more than 3,000 feet of gill net each. The aggregate maximum of gill net being fished shall at no time exceed 6,000 feet. Holders of current commercial fishing license numbers five (5) and fourteen (14) shall be the only gill net fishermen eligible to place gill nets in the waters of Little Traverse Bay.

3. The Commissioner will extend the commercial fishing season in Little Traverse Bay to November 15.

4. In the years 1982, 1983 and 1984 commercial gill net licenses will be transferable, but in no instance shall there be more than ten (10) nor more than 30,000 feet of gill net operating in Minnesota waters.

5. All other prior existing restrictions relating to closed areas, minimum depths, size limits, etc., will remain in force.

6. In 1985, the department will have a public meeting of interested parties and re-evaluate the status of fish population, catch, fish management and matters related thereto. After the meeting the Commissioner will determine what steps are necessary to further protect the natural resources of this state which might include the changing of commercial license practices. There is no intention as of now or in the future of establishing a priority in license rights among the ten gill net license holders themselves or their assignees, or an assurance that said licenses shall be reissued or renewed at the end of any license year.

7. Periodic public meetings with sport and commercial interest groups will be held in the interim to exchange information. Data collected by the department's lake studies and the intensive population structure study in Little Traverse Bay plus voluntary harvest figures provided by resorts and launch operators will be reported.

8. It is my intention that this order remain in effect for three (3) years unless I find it not to be in the best interest of the natural resources of the State of Minnesota.

NOW THEREFORE, the following regulations shall apply:

Section 1. SPECIES.

a. No fish shall be taken by commercial fishing or permit from Lake of the Woods except as provided in this order.

b. Except as provided under Section 7-L of this order, fish of the following species and length, fork length measure, may be taken by licensed commercial fishermen:

(1) walleyed pike, not less than 15 inches;

(2) great northern pike or pickerel, not less than 18 inches;

(3) sand pike or sauger and perch—any length;

(4) inland commercial fish (M.S. 102.285, Subd. 1)—any length.

c. All fish taken by commercial fishermen, or under permit, which are not within the provisions of this order shall be returned to the waters of the lake. Fish taken under this order, except inland commercial fish, shall be transported to the licensee's or permittee's regular fishing base with heads and skins intact.

Sec. 2. SEASON.

The commercial fishing season shall be restricted to June 1 through October 31, both dates inclusive. In Little Traverse Bay only, the season shall extend to November 15 inclusive.

Sec. 3. COMMERCIAL FISHING IS PROHIBITED:

a. Within 500 feet of the mouth of any stream;

b. Within two (2) miles of the outside end of the breakwater at the mouth of the Warroad River;

c. Within two (2) miles of the lakeside shoreline of Pine Island;

d. In Four Mile Bay and Zippel Bay;

e. Within an area bounded on the south by a line from Sugar Point in Section 17, Township 167 North, Range 33 West in Lake of the Woods County, easterly to Squaw Island Light in Canadian waters; on the east by the international boundary; on the north by a line from a point on the international boundary midway between Buckets Island and Magnuson Island, thence southeasterly to the easterly shore of Magnuson Island, thence southerly and westerly along said shore to the line between Section 23 and Section 24, Township 168 North, Range 34 West, thence south to the Shore of the mainland in Section 26, Township 168 North, Range 34 West; and on the west by the mainland back to Sugar Point;

f. Within a two-mile corridor west of the international boundary between Minnesota and Ontario extending from Pine Island on the south, to the southern boundary of the area known as Little Traverse Bay as defined in Sec. 4 on the north;

g. During the months of July and August in the area known as Little Traverse Bay.

Sec. 4. LITTLE TRAVERSE BAY

Is that area of Lake of the Woods bounded on the south by a line from Driftwood Point Light southeasterly to the western most tip of Garden Island; thence along the island shoreline to the eastern most tip of Garden Island; thence northeasterly to the northwest tip of North West Point of Big Island in Canadian waters, and bounded on the east by the international boundary, and bounded on the north by a line from Squaw Island Light in Canadian waters westerly to Sugar Point on the U.S. mainland, Township 167 North, Range 33 West in Lake of the Woods County, and bounded on the west by the mainland shoreline between Sugar Point and Driftwood Point Light.

Sec. 5. GEAR.

a. Mesh measurement for the purposes of these regulations shall mean the distance between the extreme opposite knots or

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corners of a single mesh, taken between the thumb and forefingers and applying enough pressure laterally to allow the opposite sides of the mesh to meet.

For the purposes of these regulations and of any other applicable laws or regulations, any entire net or lot of netting shall be deemed to be of the same mesh size as the majority of ten or more meshes in any part of the net or lot at least three meshes removed from the selvage or side lines selected at random and measured as herein prescribed by a conservation officer or other officer authorized to enforce the laws relating to wild animals.

b. Fyke and staked trap nets. No licensee shall operate more than ten (10) of either type and the aggregate total for both types shall not exceed eighty (80).

(1) Staked trap nets shall comply with the following requirements. The crib shall not exceed twenty-two (22) feet on any side with the top open and breaching the waters surface. The size of the mesh in the crib shall be not less than two and one-half (2½) inches or more than four (4) inches stretch measure. The lead shall not exceed 400 feet in length.

(2) Fyke nets shall comply with the following requirements. The size of the mesh in the crib shall be not less than two and one-half (2½) inches or more than four (4) inches, stretch measure. The wings shall not exceed 100 feet in length and the lead shall not exceed 300 feet in length. The hoops shall not exceed six (6) feet in height.

c. Submerged trap nets. No licensee shall operate more than eight (8) submerged trap nets and the aggregate total shall not exceed 160. Submerged trap nets shall comply with the following requirements: the heart and crib shall be of mesh size not less than two and one-half (2½) inches or more than three (3) inches, stretch measure. The height of any part of the heart, crib or lead shall not exceed twelve (12) feet. The length of the lead shall not exceed 300 feet.

d. Pound nets. No licensee shall operate more than six (6) pound nets and the aggregate total shall not exceed fifty (50). Pound nets shall comply with the following requirements. There shall be no limitation on the size of the crib. The mesh of the crib shall be of a size not less than two and one-half (2½) inches, stretch measure. The crib shall have an opening at the top breaching the waters surface. The lead shall not exceed fifty (50) rods in length.

e. Gill nets. No licensee shall operate more than 3,000 feet of gill net and the aggregate total shall not exceed 30,000 feet. Gill nets shall be not less than four (4) inch mesh, stretch measure and not more than 30 meshes in height when in operation.

Sec. 6. ADDITIONAL RESTRICTIONS FOR CERTAIN GEAR.

a. Pound, staked trap, and fyke nets shall have no depth limitation. They shall be restricted to an area defined by section, township and range displayed on the face of the license.

b. Submerged trap nets shall have no depth minimum in areas A and B at any time (see map attached), nor in areas C and D (see map attached) from October 15 to Ocober 31, both dates inclusive. In area D from June 20 to October 14, both dates inclusive, no portion of a net shall be in water less than 15 feet deep. Along the southern shoreline of area C from June 1 to October 14, both dates inclusive, no portion of a net shall be in water less than 15 feet deep. Portions of the lake closed to commercial fishing remain so.

c. In the area defined as Little Traverse Bay (Sec. 4) the number of gill net fishermen shall not exceed two (2)—license numbers 5 and 14. There shall be no depth restriction on gill nets set in this area. Each assigned fisherman shall fish not more than 3,000 feet of gill net and they are not restricted to Little Traverse Bay. Other gear may be fished in the area but not during the months of July and August.

d. Gill nets set in the area bounded on the north by the southern boundary of Little Traverse Bay, on the east by the international boundary corridor, on the south by the mutual boundary of Township 165 N., and Township 166 N., and on the west by shoreline (sandy beach) during the period June 1 to October 14, both dates inclusive, shall be set in water not less than twelve (12) feet deep. There shall be no depth restriction on gill nets set in this area during the period October 15 to October 31, both dates inclusive.

e. Gill nets set in Big Traverse Bay during the period June 1 to October 14, both dates inclusive, shall be set in waters not less than fifteen (15) feet. From October 15-31, both dates inclusive, there shall be no depth minimum.

f. The gill net season in Muskeg Bay west of a line from Buffalo Point Light, southeasterly to Willow Creek shall be June 20 to October 31, both dates inclusive. Gill nets set in this area shall be set in water not less than fifteen (15) feet from June 20-October 14, both dates inclusive. From October 15-31, both dates inclusive, there shall be no depth minimum.

g. No gill net or submerged trap net shall be placed in Northwest Angle Inlet west of a line from a point on the international boundary midway between Buckets Island and Magnuson Island; thence southeasterly to the easterly shore of Magnuson Island; thence southerly and westerly along said shore to the line between Section 23 and Section 24, Township 168 North, Range 34 West; thence south to the shore of the mainland in Section 26, Township 168 North, Range 34 West.

Sec. 7. OPERATIONS.

a. Trap nets, pound nets, submerged trap nets and fyke nets may not be set in strings of more than two (2) without authorization from the local conservation officer.

Gill nets may be set in connected strings of any number within the licensee's limit. Gill nets and submerged trap nets shall contain a buoy at each end of each net or string of nets, and each buoy shall be marked with a yellow or blaze orange flag displaying not less than one square foot of surface, rising not less than three feet above the water. Attached to the staff of each buoy shall be an identification tag. The tag shall be of metal or permanent material and the minimum size shall be two and one-half (2½) inches by five-eighths (⅝) inch. Each tag shall bear the operator's name and license number engraved upon it. Tags identifying gill net sets shall also have the length of the gill net, in feet, for each set. No gill net fisherman shall have more than six (6) sets.

b. Within ten days after the closing date of the commercial fishing season, each commercial fisherman shall remove from the lake all net stakes set by him.

c. No commercial fisherman shall use any type of net except as specified in his license, nor operate in any area except as designated in his license.

d. All nets shall be lifted and emptied of fish at least once in every 48-hour period, unless a longer period is granted by the commissioner or his authorized agent.

e. All fishermen required to make reports under the provisions of Sec. 98.51, Subd. 3, of the Minnesota Statutes shall report to the commissioner of natural resources on blanks to be furnished by him, accurate, detailed information regarding their activities, which shall include the number of pounds and varieties of fish taken, amounts returned to the water, and any other information pertaining to the commercial fishing activities required by the commissioner. Monthly reports must be submitted by the 10th day of the following month to: Area Fisheries Headquarters, Route 1, box 1193, Baudette, Minnesota 56623.

f. In issuing licenses for commercial fishing on Lake of the Woods for any year, priority shall be given to the holders of such licenses for the preceding year whose applications for new licenses are received at least 30 days before the opening of the fishing season herein prescribed. In case the holder of a license for commercial fishing hereunder shall surrender his license before the expiration of the season covered thereby, and shall endorse the application for a new license in lieu thereof made by a qualified applicant who has acquired the fishing equipment or facilities of such holder, the director of the division of fish and wildlife, in his discretion, with the approval of the commissioner, may issue such new license to such applicant. Except as otherwise hereinbefore provided, licenses shall be issued to qualified applicants in order of receipt of applications up to the maximum permissible under the provisions hereof. In case a licensee dies or surrenders or forfeits his license for any reason, no subsequent license shall be issued for the amount of gill nets previously authorized under such license, nor may any subsequent transfer to anyone take place, and such amount of gill nets shall be deducted from the maximum amount permitted for the lake.

g. In the event of a reduction in the aggregate amount of allowable feet of net or the elimination of any or all of the licenses available, nothing in this order shall give any priority among the current license holders or their assignees in any manner other than as is stated in provision f, nor is there any assurance that any license will be reissued or renewed.

h. No license to take fish commercially in Lake of the Woods, shall be issued to any person or member of his household or employee engaged in the business of conducting a summer resort. Also, no license to take fish with any type of net in Lake of the Woods, shall be issued to any person, firm or corporation holding a fish buyer's license or a fish peddler's license for any international boundary waters, nor shall such a fish buyer's or peddler's license be issued to any person, firm or corporation holding a license to take fish with any type of net in Lake of the Woods. For any one season a licensed fisherman shall be restricted to either a master or a helper Lake of the Woods commercial fishing license.

i. In case of the death of a licensed commercial fisherman during the fishing season, his legal representative or successor in interest shall succeed to the rights of the deceased license holder, and may continue operations under the license until the expiration thereof.

j. With the exception of submerged trap net licenses, which may be issued to holders of gill net licenses in lieu of licenses for gill nets, no person shall be licensed to fish with more than one type of gear.

k. Helper's licenses shall be transfered only upon written approval of an authorized conservation officer or other agent of

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the director of the division of fish and wildlife. No person shall be issued more than one helper's license and that license to be restricted to one specific commercial fishing license.

l. The director of the division of fish and wildlife or the regional administrator may issue permits for the removal of inland commercial fish at such time and under such conditions as he may deem necessary; and in addition, the director of fish and wildlife may issue experimental fishing permits under such conditions as he may deem desirable.

Sec. 8. Commissioner's Order Nos. 1924 and 2070 are hereby superseded.

Dated at Saint Paul, Minnesota, this 13th day of May, 1982.

Joseph N. Alexander
Commissioner of Natural Resources

SUPREME COURT

Decisions Filed Friday, May 21, 1982

Compiled by John McCarthy, Clerk

81-461 Jack Gartner, Appellant, v. Robert E. Eikill, *et al.* St. Louis County.

Ignorance on the part of all parties to a real estate transaction of a development restriction in a zoning ordinance may be considered a mutual mistake of fact justifying the rescission of the conveyance.

Reversed. Amdahl, C. J.

81-848 Luella Elizabeth Thompson, Appellant, v. The Estate of Raymond Paul Petroff and Marlene Campbell, authorized representative. Yellow Medicine County.

Minnesota's survival statute Minn. Stat. § 573.01 (1980), which provides that personal injury causes of action survive the death of the defendant only if based on negligence, strict liability, statutory liability, or breach of warranty, violates the equal protection clause of the Minnesota Constitution because no rational basis exists for the nonsurvivability of causes of action arising from intentional torts.

Because the purpose of punitive damages is only to deter and to punish persons who commit certain wrongful acts, punitive damages may not be recovered from the estate of a deceased tortfeasor.

Reversed and remanded. Amdahl, C. J.

81-500 Nancy Carol Faus, petitioner, v. John Jay Faus, Appellant. Hennepin County.

Dependents' claims for support or maintenance are not subject to the statutory exemption of firefighter's pensions from "garnishment, execution, or other legal process." Minn. Stat. § 69.51 (1980).

Trial court did not abuse its discretion by awarding homestead to respondent, nor did it exceed its statutory power, which permits the court to award, in a proper case, up to one-half of a party's non-marital property to the spouse in need.

Trial court did not abuse its discretion in awarding to respondent future increases or decreases in the value of appellant's vested pension units.

Trial court did not abuse its discretion in awarding maintenance.

Affirmed as modified. Amdahl, C. J.

81-943/Sp. In Re the Marriage of: Debbie Peterson, etc., petitioner, v. Terry Peterson, Appellant. Itasca County.

Amdahl, C. J.

51652 State of Minnesota v. Patrick E. Walker, Appellant. Todd County.

The defendant's arrest for theft held based on probable cause.

The prosecution of defendant for theft rather than for cattle rustling was proper.

A structure attached to a barn was a "building" as that term is used in the burglary statute.

The defendant was not prejudiced by the unintentional elicitation of evidence that he was given a *Miranda* warning.

The trial court did not err in admitting a police officer's opinion testimony that defendant's boots made footprints found at the scene of the crime.

Affirmed. Otis, J.

81-584 State of Minnesota v. William Pierce Burgess, Appellant. Ramsey County.

Evidence of appellant's participation in an aggravated robbery was sufficient to support a conviction.

The appellant was not prejudiced by admission of prior consistent statements of an accomplice which the accomplice made before trial but after a prior inconsistent statement.

The trial court properly imposed consecutive sentences on appellant who was convicted of multiple crimes against different persons.

Affirmed. Otis, J.

81-638/Sp. Louis N. Ritten & Company, Inc., Relator, v. The Commissioner of Revenue. Tax Court.

Commodities futures brokerage company that is incorporated under the laws of Minnesota, maintains an office in this state and derives most of its commissions from services provided to Minnesota customers is not engaged exclusively in interstate commerce and is therefore taxable pursuant to Minn. Stat. § 290.02 (1971).

Affirmed. Peterson, J.

49881, 51995, 81-112 General Drivers, Local #346, for Itself and on Behalf of Dennis Murdock, Appellant, v. 49881 Aitkin County Board and Aitkin County Sheriff William Sobey, and Louis Chalich as Sheriff of Cass County, v. 51995 George Jacobs, Arbitrator, Cass County, Law Enforcement Labor Services, Inc., *et al.*, Appellants, and County of Pope, v. 81-112 Pope County Deputy Sheriffs' Association, *et al.*, Gerald Moe, Sheriff of Pope County, Appellant. 49881—Aitkin County, 51995—Cass County, 81-112—Pope County.

Sheriffs are not employers under Minn. Stat. § 179.63, subd. 4 (1980) for the purpose of collective bargaining agreements negotiated pursuant to the Public Employment Labor Relations Act of 1971.

A sheriff's powers over the discharge from employment of deputies under Minn. Stat. § 387.14 (1980) are modified by Minn. Stat. § 179.63, subd. 4 (1980) and may be the subject of a collective bargaining agreement negotiated pursuant to the Public Employment Labor Relations Act of 1971.

Deputy Sheriffs appointed pursuant to Minn. Stat. § 387.14 (1980) who are also veterans are entitled to a veteran's preference hearing under Minn. Stat. § 197.46 (1980).

The temporary restraining order and permanent injunction issued in Case No. 51995 are vacated.

No unfair labor practices were committed by the parties in refusing to consent to arbitration pending a court determination of the validity of the collective bargaining agreements negotiated pursuant to the Public Employment Labor Relations Act of 1971.

Case No. 49881 is reversed, Case No. 51995 is reversed, and Case No. 81-112 is affirmed. Yetka, J.

81-323 Stillwater Leased Housing Associates, etc., *et al.* v. Kraus-Anderson Construction Company, (formerly Kraus-Anderson of Minneapolis, Inc.), Appellant. Hennepin County.

Application of the balancing test, as set forth in *Prestressed Concrete, Inc. v. Adolfson & Peterson, Inc.*, 308 Minn. 20, 240 N.W.2d 551 (1976), to the facts of this case results in the conclusion that arbitration should be compelled, particularly in view of this state's policies in favor of arbitration and where the dispute is clearly within the scope of arbitration.

Reversed and remanded for the issuance of an order to compel arbitration. Yetka, J. Took no part, Kelley, J.

81-1262/Sp. Gerald George Smith, Appellant, v. State of Minnesota. Redwood County.

District court properly denied petition seeking postconviction relief from 1970 conviction for third-degree murder.

Affirmed. Scott, J.

51026 Raymond O'Bert, Appellant, v. George Anderson, individually and as Sheriff of Kanabec County, Minnesota, *et al.* Wright County.

Per Curiam.

STATE CONTRACTS

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

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

Department of Administration Contract Management Division

Extension of Time to File Proposals for Court Reporting and Transcription Services

The due date for the receipt of final proposals for the above-captioned services is extended to 4:30 p.m. on June 4, 1982. The initial request for proposals was published on April 12, 1982 at 6 S.R. 1721-1722.

Department of Commerce Consumer Services Offices

Notice of Request for Proposals for Rate Design and Cost Studies for Northwestern Bell Telephone Company

Krista L. Sanda, Director of the Office of Consumer Services of the Minnesota Department of Commerce, is soliciting proposals from qualified consultants to perform an analysis of local exchange rate structures, service charges, cost of service evaluations, capital recovery, depreciation rates, migration strategy and related telephone rate design in connection with the petition of Northwestern Bell Telephone Company for authority to increase its rates by a total additional annual revenue of $89,974,000. Respondents may address one or more issues in this case. The petition is currently before the Minnesota Public Utilities Commission and a hearing will be held.

Final submission date: June 30, 1982.

Estimated cost: $2,000-$25,000 depending upon scope of proposal.

Contact by phone at (612) 296-6032 or in writing to:

Leonard A. Nelson, Manager
Residential Utility Consumer Unit
Office of Consumer Services
Minnesota Department of Commerce
162 Metro Square Building
7th and Robert Streets
St. Paul, MN 55101

State University System

Notice of Request for Proposals for Survey of Alumni and Employers

The State University System is requesting proposals for a survey of graduates and employers of graduates from Metropolitan State University. This request for proposal would include various types of information on Metro U graduates that would be beneficial in our major campaign. The study would also be used by various divisions within the university as reference for subsequent planning. The requested services are outlined in the Request for Proposal (RFP) Statement of Work. The formal RFP may be requested and inquiries should be directed to:

Dr. C. J. Carter
Metropolitan State University
121 Metro Square Building
St. Paul, MN 55101
Phone: (612) 296-4452

It is anticipated that the activities to accomplish this survey will not exceed a total cost to the State of $12,000. The deadline for submission of completed proposals will be the close at 4:30 p.m. on June 8, 1982.

OFFICIAL NOTICES

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

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

Department of Agriculture
Agronomy Services Division

Notice of Special Local Need Registration for "Atroban Insecticide Ear Tags"

Pursuant to Minnesota Statutes § 18A.23, and 3 MCAR § 1.0338 B., the Minnesota Department of Agriculture on May 18, 1982, issued a Special Local Need (SLN) Registration for "Atroban Insecticide Ear Tags," manufactured by the Burroughs Wellcome Company, 3030 Cornwallis Road, Research Triangle Park, North Carolina 27709.

The Commissioner of Agriculture, based upon information in the application, has deemed it in the public interest to issue such a registration, and has deemed that the information in the application indicates that the pesticide does not have the potential for unreasonable adverse environmental effects.

This Special Local Need (SLN) Registration would permit the use of this product on dairy and beef cattle and calves to control horn flies, face flies, spinose ear ticks, and aid in the control of stable flies and house flies.

The application and other data required under Minnesota Statutes §§ 18A.22, subd. 2 (a-d), 18A.23, and 40 CFR 162.150-162.158, subpart B, relative to this registration (identified as SLN #82-0008), is on file for inspection at:

Minnesota Department of Agriculture
Agronomy Services Division
Pesticide Control Section
90 West Plato Boulevard
Saint Paul, Minnesota 55107
Telephone: (612) 296-8547

A federal or state agency, a local unit of government, or any person or group of persons filing with the Commissioner a petition that contains the signatures and addresses of 500 or more individuals of legal voting age has thirty (30) days to file written objections with the Commissioner of Agriculture regarding the issuance of this Special Local Need (SLN) Registration. Upon receipt of such objections and when it is deemed in the best interest of the environment or the health, welfare, and safety of the public, the Commissioner of Agriculture shall order a hearing pursuant to Minnesota Statutes, Chapter 15, for the purpose of revoking, amending, or upholding this registration.

May 18, 1982

Mark W. Seetin, Commissioner

State Department of Education
Instruction Division

Notice of Public Meeting

The Minnesota Special Education Advisory Council will hold a two day meeting on June 7 and 8, 1982. The meeting is scheduled to begin at 9:00 a.m. on the 7th in the Walnut Room of the Capp Towers Best Western Hotel in Downtown St. Paul. Agenda items include: Proposed Staff/Student Ratio Rules; Development of TMR Criteria; Report on Discretionary Projects, and the SEAC End-Of-Year Report.

For additional information contact Barbara Burke, Special Education Section, at (612) 297-3620.

Ethical Practices Board

1982 Campaign Expenditure Limits

In accordance with Minn. Stat. §§ 10A.25, subds. 2 and 7, and 10A.255, the following campaign expenditure limits will be applicable in calendar year 1982.

OFFICE	ELECTION YEAR
Governor and Lt. Governor	$1,270,800
Attorney General	$ 211,800
Secretary of State, State Treasurer, State Auditor (each)	$ 105,900
State Senator	$ 31,770
State Representative	$ 15,885

Ethical Practices Board

Notice and Order Granting the 1982 Minnesota Socialist Workers Campaign Committees Limited Exemption from Campaign Finance Disclosure

Official Notice

Pursuant to Minn. Stat. § 10A.20, subds. 8 and 10, the Ethical Practices Board has granted a limited exemption from disclosure as set forth in its order adopted May 7, 1982. Minn. Stat. § 10A.20, subd. 10 provides that if the board receives a written objection from any party within 20 days after publication of its order in the *State Register*, the board shall hold a contested case hearing. Written objections shall be filed with the Ethical Practices Board, 41 State Office Building, St. Paul, MN 55155. Written objections must be submitted not later than 12 o'clock noon, on Monday, June 21, 1982.

Order

The application of the 1982 Minnesota Socialist Workers Campaign Committee, Registration Number 1-1348-0600, a principal campaign committee, and the 1982 Minnesota Socialist Workers Campaign Committee, Registration Number 2-0381-0509, a political party committee, for exemptions from the campaign financing disclosure provisions of Minn. Stat. § 10A.20, subd. 3(b) and (d) came duly before the Ethical Practices Board on May 7, 1982.

After having fully considered the material submitted by these committees, the Board makes the following:

FINDINGS

1. The pattern of ongoing harassment of members of the Socialist Workers Party noted in the Board's exemption granted in 1978 continues into the present.

a. On February 27 and March 2, 1982, a party member and his father were subjected to inquiries from a federal agency in St. Paul, Minn.

b. Repeated threats and violence toward, and vandalism and defacement of Socialist Workers Party offices in St. Paul and in Virginia, Minn. occurred from 1978 to March, 1982. In St. Paul on December 26, 1978, June 7, 1979, and April 18, 1981, vandalism occurred at Party offices. Bomb threats were made by telephone on December 2, 1980, and April 11, 1981. In Virginia on May 16 and 17, 1980, and March 13 and 27, 1982, vandalism occurred at Party offices, and in June, 1980, the home of a Socialist Workers Party candidate for U.S. Representative was defaced in Virginia.

c. Threats were made against the life of a Socialist Workers Party candidate for U.S. Representative in Virginia, May 15 to 31, 1980. In Virginia Socialist Workers Party members have been subjected to physical violence (August 16, 1980), harassment by hostile fellow workers (summer and fall, 1980; July 18, 19, and 21, 1980; October, 1981 to the present), and threat of loss of employment (March 31 and April 20, 1982).

d. Fear of public disclosure of identification with the Socialist Workers Party continues to affect members' freedom to associate with others and to receive contributions to campaigns for Socialist Workers Party candidates.

2. No Socialist Workers Party candidate has been elected to local, state, or federal office in Minnesota. In 1978, the only Socialist Workers Party candidates for statewide office sought the offices of governor and lieutenant governor. They polled 6,287 votes, .4% of the total vote cast for that office. The Socialist Workers 1978 Campaign Committees raised a total of $4,455.79, made campaign expenditures of $2,912.67, and reported total cash balances of $86.12 when the committees terminated, September 5, 1978 and December 13, 1978. In 1980, three Socialist Workers Party candidates sought election in Minnesota and received 1.2% of the total votes cast for the offices they sought.

CONCLUSION

The 1982 Minnesota Socialist Workers Campaign Committees, Registration Numbers 1-1348-0600 and 2-0381-0509, have satisfied the standard of proof imposed by Minn. Stat. § 10A.20, subds. 8 and 10.

ORDER

In accordance with Minn. Stat. § 10A.20, subds. 8 and 10, the 1982 Minnesota Socialist Workers Campaign Committees, Registration Numbers 1-1348-0600 and 2-0281-0509 are hereby granted a limited exemption from the reporting requirements of Minn. Stat. § 10A.20, subd. 3(b) and (d) regarding disclosure of the names, addresses, and employers of contributors.

In lieu of these disclosure requirements, each committee shall identify and report contributions by assigning a separate number of each contributor, in correlation with each contributor, instead of listing the name, address and employer of each contributor.

Except as specially provided in this exemption, said committees shall in all respects comply with the provisions of Minn. Stat. ch. 10A.

May 24, 1982

Mary Ann McCoy, Executive Director

Department of Finance

Notice of Maximum Interest Rate for Municipal Obligations

Pursuant to Laws of Minnesota 1982, Chapter 523 Commissioner of Finance, Allan L. Rudell, announced today that the maximum interest rate for municipal obligations in the month of June will be 13 percent per annum. Obligations which are payable wholly or in part from the proceeds of special assessments or which are not secured by general obligations of the municipality may bear an interest rate of up to 14 percent per annum.

The maximum interest rate for obligations authorized by resolution prior to April 1, 1982 shall be 12 percent per annum.

Pollution Control Agency
Air Quality Division

Application of Northern States Power Company for a Permit to Conduct a Trial Burn of Waste Oil Contaminated with Polychlorinated Biphenyls at its High Bridge Plant in St. Paul, Minnesota

Order for Hearing and Notice Thereof

It is hereby ordered and notice is hereby given that a contested case hearing concerning the above-entitled matter will be held by the Minnesota Pollution Control Agency (agency) beginning on Monday, August 9, 1982, at Room 83 of the State Office Building, 435 Park Street, St. Paul, Minnesota, at 9:00 a.m. Additional days of hearing are scheduled at the same location as follows:

Date	*Time*
Tuesday, August 10, 1982	1:00 p.m. and 7:00 p.m.
Wednesday, August 11, 1982	9:00 a.m.
Thursday, August 12, 1982	1:00 p.m. and 7:00 p.m.
Friday, August 13, 1982	9:00 a.m.

The hearing will be held before Kent Roberts, Office of Administrative Hearings, 400 Summit Bank Building, 310 4th Avenue South, Minneapolis, Minnesota 55415, telephone (612) 341-7612, a hearing examiner appointed by the chief hearing examiner of the State of Minnesota.

The purpose of the hearing will be to receive and consider evidence bearing upon the application of Northern States Power Company (NSP) for authorization to conduct a trial burn of 20,000 to 25,000 gallons of NSP generated mineral oil dielectric fluid (MODEF) contaminated with low level (approximately 100 parts per million) polychlorinated biphenyls in Boiler No. 12 at the High Bridge Generating Plant in St. Paul, Minnesota. NSP estimates that the trial burn would take two days to complete, burning approximately 12 hours per day.

The director of the agency has recommended that NSP's application be granted subject to certain limitations and requirements. The director has recommended that the permit issued to NSP for the operation of the High Bridge plant include special conditions authorizing the trial burn and imposing upon NSP limitations and operating conditions relating to the conduct of the trial burn.

All parties have the right to be represented by legal counsel, themselves, or any other representative of their choice, if not

otherwise prohibited as the unauthorized practice of law. The hearing will be conducted pursuant to the contested case procedures set out in Minn. Stat. §§ 15.0411-15.052, the rules of the Office of Administrative Hearings, 9 MCAR §§ 2.201-2.299, and the Agency Rules of Procedure, Minn. Rules MPCA 1-13, to the extent that the latter rules do not conflict with the former rules. Questions concerning informal disposition or discovery may be directed to Special Assistant Attorney General Jocelyn F. Olson, (612) 296-7343, Minnesota Pollution Control Agency, 1935 West County Road B2, Roseville, Minnesota 55113.

The agency is authorized to hold the hearing and to issue permits for the emission of air contaminants pursuant to Minn. Stat. §§ 116.07, subd. 4a and 116.075 (1980) and Minn. Rule APC 3 (6 MCAR § 4.4003) and MPCA 9 (6 MCAR § 4.3009). Minn. Stat. § 116D.04, subd. 6 (1980) is also relevant to this proceeding.

The applicant, NSP, is a party to the hearing at the present time, pursuant to Minn. Rule MPCA 9. In addition, the agency staff filed a Petition to Intervene as a party and was granted party status by the hearing examiner on May 18, 1982.

Any other person who desires to become a party to this case must submit a timely Petition to Intervene pursuant to 9 MCAR § 2.210, showing how that person's legal rights, duties and privileges may be affected by a decision in this case. The Petition must also set forth the grounds and purposes for which intervention is sought and indicate petitioner's statutory right to intervene should one exist. A party to a case has the right to present evidence and argument with respect to the issues and to cross-examine witnesses. Interested persons may present oral or written statements at the hearing without becoming parties.

Any person desiring to intervene as a party must submit to the hearing examiner and serve upon all existing parties a Petition to Intervene by July 15, 1982. Copies of any Petition to Intervene must be served upon the following:

Ms. Jo Ann McGuire
Attorney for Northern States Power Company
414 Nicollet Mall
Minneapolis, MN 55401

Ms. Jocelyn F. Olson
Attorney for Pollution Control Agency Staff
Minnesota Pollution Control Agency
1935 West County Road B2
Roseville, MN 55113

A Notice of Appearance form, enclosed with this Order, must be filed with the hearing examiner on or before July 30, 1982, if a party intends to appear at the hearing. In addition, the agency requests that a copy of the Notice of Appearance be served upon the persons named above.

A prehearing conference will be held at 10:00 a.m. on July 19, 1982, at the Office of Administrative Hearings, 400 Summit Bank Building, 310 4th Avenue South, Minneapolis, Minnesota 55415. All parties and all persons filing a timely Petition to Intervene should attend this prehearing conference.

Persons who do not file a Petition to Intervene will nevertheless be allowed to offer testimony and introduce exhibits, note his/her appearance but no person shall become, or be deemed to have become, a party by reason of such participation. Persons offering testimony or exhibits may be questioned by parties to the hearing.

All persons are advised that no factual information or evidence which is not part of the hearing record shall be considered by the hearing examiner or the agency in determination of the above-entitled matter. Persons attending the hearing should bring all factual information or evidence bearing on the case which they wish to have included in the record.

It is hereby ordered that each party to this proceeding shall prefile written testimony of any witness which the party intends to call at the hearing. Written testimony shall be hand delivered to the hearing examiner and to each other party on or before Friday, July 30, 1982.

Interested persons are hereby advised that, beginning on Monday, August 2, 1982, a copy of each party's prefiled written testimony will be on file for public inspection at the agency's offices at 1935 West County Road B2, Roseville, Minnesota and at the following locations:

St. Paul Public Library
Central Library
90 West 4th Street
St. Paul, Minnesota

St. Paul Public Library
Riverview Branch
1 East George
St. Paul, Minnesota

The procedural rules are available for inspection at the Office of Administrative Hearings or may be purchased from the Documents Section of the Department of Administration, 117 University Avenue, St. Paul, Minnesota 55155, telephone (612) 296-2874. Copies of rules and other documents pertinent to the permit application are available for review by all interested persons during normal business hours at the Minnesota Pollution Control Agency, 1935 West County Road B2, Roseville, Minnesota 55113.

The applicant, Northern States Power Company, is hereby advised that, pursuant to 9 MCAR § 2.204 A.9., its failure to appear at the hearing may result in denial of its application for a permit.

If persons have good reason for requesting a delay of the hearing the request must be made in writing to the hearing examiner in accordance with 9 MCAR § 2.217 E. A copy of the request must be served upon Jocelyn F. Olson and Jo Ann McGuire at the address stated above and also upon any other parties to the hearing.

Louis J. Breimhurst
Executive Director

Department of Transportation

Amended Order and Notice of Street and Highway Routes Designated and Permitted to Carry the Gross Weights Allowed under Minn. Stat. § 169.832

Order No. 66690

Whereas, the Commissioner of Transportation has made his Order No. 66400 as amended by Orders Nos. 66446, 66550 and 66628, designating and permitting certain street and highway routes, or segments of those routes, to carry the gross weights allowed under Minnesota Statutes § 169.832, and

Whereas, the commissioner has determined that the additional following routes, or segment of routes, should be designated to carry the gross weights allowed under Minnesota Statutes § 169.832.

IT IS HEREBY ORDERED that Commissioner of Transportation Order No. 66400 is amended effective June 1, 1982 by adding the following designated streets and highway routes, or segment of routes, as follows:

TRUNK HIGHWAYS

T.H. 4 — In St. James from Jct. C.S.A.H. 12 North and West to Weston Avenue. (Seasonal)

T.H. 43 — From Jct. T.H. 61 in Winona to Wisconsin Border. (Seasonal)

— From Jct. I-90 to Jct. T.H. 61 in Winona. (12 month)

T.H. 61 — From one (1) mile north of T.H. 60 at Wabasha to South Jct. T.H. 63 in Lake City. (Seasonal)

CITY STREETS

St. James — 11th Street from Jct. C.S.A.H. 14 and C.S.A.H. 56 to 8th Avenue North. (Seasonal)

COUNTY ROADS

Wabasha County

— C.S.A.H. 9 from T.H. 61 to South 10th Street (C.S.A.H. 62) in City of Lake City. (Seasonal)

— C.S.A.H. 62 to Lakewood Avenue (C.S.A.H. 9) West to T.H. 63 in City of Lake City. (Seasonal)

Watonwan County

— C.S.A.H. 12 from Jct. T.H. 60 to Jct. T.H. 4 and C.S.A.H. 14 in St. James (Seasonal)

— C.S.A.H. 14 (11th Street South in St. James) from Jct. T.H. 4 to Jct. C.S.A.H. 56 (1st Avenue South). (Seasonal)

— C.S.A.H. 56 (1st Avenue South in St. James) from Jct. C.S.A.H. 14 to Jct. T.H. 4 (Seasonal)

Dated this 24th of May, 1982.

Richard P. Braun
Commissioner of Transportation

STATE OF MINNESOTA

State Register and Public Documents Division
117 University Avenue
St. Paul, Minnesota 55155

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FOR LEGISLATIVE NEWS

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

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

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

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

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

STATE OF MINNESOTA

DEPARTMENT OF ENERGY, PLANNING AND DEVELOPMENT

In the Matter of the Proposed
Adoption of Rules of the Department
of Energy, Planning and Development
Governing State Petroleum Product
Set-Aside Program, 6 MCAR
§§ 2.0108-2.0116.

STATEMENT
OF NEED AND
REASONABLENESS

INTRODUCTION

In its 1981 session, the Minnesota Legislature established the state set-aside program. Minn. Stat. § 116H.095. Proposed temporary rules were published in the State Register on September 7, 1981 (6 S.R. 347-53). These rules became effective on October 26, 1981, and were published on November 23, 1981 (6 S.R. 1021-22).

During the 1982 session, the Legislature amended section 116H.095. Minn. Laws 1982, ch. 563, §§ 5, 6. The changes are reflected in 6 MCAR § 2.0113.

RULES

The format used in preparing this Statement of Need and Reasonableness is that a discussion of the need for and reasonableness of each rule follows its number and heading.

6 MCAR § 2.0108 Authority

This rule sets out the statutory authority and requirement for promulgating these rules.

6 MCAR § 2.0109 Purpose

This rule is necessary for interested parties to know the reason for the rules and the purpose of the set-aside program. The rule paraphrases the purpose of the program as stated in subdivision 1 of Minn. Stat. § 116H.095.

6 MCAR § 2.0110 Definitions

A. Applicability. The department included in this rule definitions of terms which are used often in the rules but which might not be understood by the reader, and terms which are used as a shorthand expression of a larger concept.

B. Agriculture. This definition is necessary because: agricultural activities are an important and vital part of the State's economy; they use considerable amounts of petroleum; and the purpose of the program is to minimize the adverse impacts of shortages of petroleum. It is reasonable to specifically describe the activities which can qualify for relief since the term agriculture is broad. It is reasonable to incorporate portions of the Standard Industrial Classification Manual by reference in the definition because it contains standardized definitions in sufficient detail and is available to interested parties at public libraries.

1. Included activities. This exhaustive list is reasonable and necessary to ensure that the department does not arbitrarily exclude a legitimate food producing and processing activity from program eligibility. It is also reasonable to use this list because the now-defunct federal set-aside program used it and in the past applicants used it in set-aside applications.

2. Excluded activities. It is necessary and reasonable to exclude the listed activities because they do not satisfy the purpose of the program to mitigate hardships on essential segments of the economy. They cannot be viewed that way because, as non-food producing, they are not necessary to sustain life.

C. Assignment. This definition is necessary because the word defined expresses an essential concept used frequently in the rules.

D. Average product use. This definition is needed and reasonable because it establishes a measurement of historical consumption for comparison use in the evaluation of applications.

E. Board. This definition is necessary to explain a shorthand term that appears in the rules.

F. Cargo and freight handling. This definition is necessary because it defines one of the activities included in essential services (addressed in rule 6 MCAR § 2.0110 N) and given first priority treatment in 6 MCAR § 2.0113. It is reasonable because the criterion is accepted in the industry and was used under previous federal rules.

G. Commissioner. This definition is necessary to identify the person responsible for the administration of the set-aside program and especially for the appeals process established in 6 MCAR § 2.0115.

H. Current month requirement. This definition is reasonable in view of the program purpose because it links an applicant's requirement to actual supply needs.

I. Decision. This definition is necessary to identify a term used in 6 MCAR § 2.0115.

J. Department. This definition is necessary to identify the short term used in the rules to refer to the state department charged with implementing and administering the set-aside program.

K. Emergency services. This definition is necessary to explain a term used in the first priority evaluation criteria of 6 MCAR § 2.0113. The list of activities included in the definition is generally accepted by governmental entities as a complete list of the activities necessary for the preservation of health and safety.

L. End user. This definition is necessary to clarify a term used throughout the rules to describe the ultimate recipient of state set-aside product.

M. Energy production. This definition is necessary to clarify a term included in the definition of "essential services" in 6 MCAR § 2.0110 N. The exclusion of electrical utilities who have access to power pool electrical energy is reasonable because no true hardship exists in that case when petroleum is in short supply.

N. Essential services. This definition is necessary and reasonable as a specification of the type of activity considered and used in the application of the evaluation criteria. Essential services are priority uses of set-aside product.

O. Fuel coordinator. This definition is necessary so that interested persons can understand the selection and role of these persons who play a key role in the administration of the set-aside program set up in the rules.

P. Government services. This definition is necessary to specify the type of activity included in this term as it is used in applying the evaluation criteria of 6 MCAR § 2.0113. The list of activities includes the services the government must provide even in times of emergency.

Q. Middle distillates. This definition is the generally accepted definition for the term used in the rules. It duplicates statutory language. Minn. Stat. § 116H.095, subd. 3(a).

R. Motor gasoline. This definition is the generally accepted definition for the term used in the rules. It duplicates statutory language. Minn. Stat. § 116H.095, subd. 3(b).

S. Office. This definition is necessary to indicate to interested parties the entity that is responsible for the general administration of the program.

T. Officer. This definition is necessary in order to indicate to interested parties the person principally responsible for authorizing the release of state set-aside product.

U. Order. This definition is necessary to explain a term that appears several times in the rules. It is reasonable to allow the issuance of orders by telephone because of the emergency nature of the program so long as any telephone order is followed by written documentation.

V. Passenger transportation This definition is necessary to specify the types of activities included in this term as it is used in the eligibility criteria of 6 MCAR § 2.0113.

W. Person. This definition is needed to clarify to interested persons the meaning of this term as it is used throughout the rules.

X. Plant protection. This definition is necessary to specify the type of activity that is included in this term as it is used in the eligibility criteria of 6 MCAR § 2.0113. .

Y. Postal service. This definition is necessary to specify the type of activity that is included in this term as it is used in the eligibility criteria of 6 MCAR § 2.0113.

Z. Prime supplier. This definition is necessary to clarify to interested persons the meaning of a term essential to the implementation of the rules. It is the prime suppliers who must allocate the petroleum products subject to state set-aside orders. The rule repeats the statutory definition of the term. Minn. Stat. § 116H.095, subd. 3(c).

AA. Prime supplier's representative. This definition is necessary to identify to interested parties the person responsible for acting on behalf of the prime supplier regarding the program.

BB. Retail outlet. This definition is necessary to specifically define a term as it is used in the rules.

CC. Sanitation services. This definition is necessary to specify the type of activity that is included in this term used in the eligibility criteria of 6 MCAR § 2.0113.

DD. Service. This definition is necessary to explain a term used in 6 MCAR §§ 2.0115 and 2.0116.

EE. Shortfall. This definition is necessary to clarify for interested parties the meaning of this general term as it is used in the rules.

FF. State. This definition is necessary to explicitly state the meaning of this shorthand term used throughout the rules.

GG. State set-aside. This definition is necessary to fully explain a term vital to the comprehension of the rules since they regulate a program defined by the term. The definition is reasonable as a statement of the concept as developed in the predecessor federal programs. It is also a duplication of statutory language in Minn. Stat. § 116H.095, subd. 3(d).

HH. Supplier. This definition is necessary to indicate to interested persons the meaning of a term essential to these rules.

II. Wholesale purchaser - consumer and
JJ. Wholesale purchaser - reseller.

These definitions are necessary to distinguish the two types of applicants eligible for participation in the set-aside program, as set out in 6 MCAR § 2.0112.

2.0111 Prime supplier's obligations

A. Monthly reports. The monthly reports covered by this rule are required by the enabling statute, Minn. Stat. § 116H.095, subds. 5 and 7. The information in the reports is necessary to determine each prime supplier's monthly state set-aside obligation. The requirement is reasonable because it is a continuation of a longstanding obligation.

1. The list of products to be included is reasonable because information on them is already being provided to the office. This list corresponds to the products reported by prime suppliers on the Federal Energy Information Administration's form 25. The information is vital to the office's ability to monitor short-term supplies as provided for in Minn. Stat. §§ 116H.095, subd. 7, and

116H.10. In view of this responsibility, it is necessary that the office continue to receive this information.

2. The requirement for a standard form is reasonable and necessary to ensure reporting consistency.

B. Prime supplier's representative. This rule is necessary to ensure prompt communication with the office on behalf of a prime supplier with regard to the state set-aside program. It is reasonable to require each prime supplier to designate a representative so the office will know whom to contact on set-aside matters. The requirement is also expressed in Minn. Stat. § 116H.095, subd. 6.

C. Nonpublic data. This rule is necessary to inform interested parties that the information collected pursuant to 6 MCAR § 2.0111 will be considered "non-public" as that term is defined in section 15.162, subdivision 5c, of Minnesota Statutes. This is reasonable because the information is used for the analysis of short-term supplies and thus is a part of the legislative requirement of sections 116H.095, subdivision 7, and 116H.10. Since this is the case the data is "non-public" as provided by Minn. Stat. § 15.1682.

2.0112 Applications.

A. Who may apply. This rule is necessary to specify who is eligible to apply directly to the office for set-aside product. Applications are in essence limited to persons supplied directly by a prime supplier. This is how the program operated in the past under both state and federal auspices. The petroleum industry is familiar and comfortable with this procedure. It is reasonable to limit the number of contacts with the office so that requests can be expedited. This strategy is also reasonable since it does not preclude anyone from ultimately receiving set-aside product. The applicants are actually applying on behalf of the end user or ultimate consumer.

B. Form of application. This rule is necessary to ensure that all cases are documented on a monthly basis. Since there is at least one fuel coordinator in each county, applications are reasonably available. Verification by fuel coordinator is reasonable because fuel coordinators are officials of local government who are familiar with the immediate needs of the constituents. They are in a better position to make an initial judgment as to the validity of the alleged hardship than is the state office.

A provision for oral applications is necessary and reasonable to ensure that the office can legitimately respond to extreme emergency situations. It is also reasonable to insist, however, that proper written documentation quickly follow such a request and that non-compliance with this simple request be subject to some future inconvenience.

2.0113 Evaluation criteria

A. Middle distillates. The volume of middle distillates available for state set-aside is set out in Minn. Stat. § 116H.095, subd. 4. It is reasonable to require applicants to state the amount of gallons requested for each category because the total request may involve more than one priority category. Since the program is intended only to mitigate a shortfall arising from a temporary shortage, it is reasonable to require applicants to state why their needs are in excess of contract volumes.

1. First priority middle distillate users are those activities most important to the welfare of the State's populace and economy. This listing of activities is reasonable in light of the purpose of the program as stated in the enabling legislation and 6 MCAR § 2.0109. The meanings of the terms and phrases used to describe first priority uses are given in 6 MCAR § 2.0110.

2. It is necessary to distinguish among types of users. The second priority middle distillate uses category is reasonable because the activities included in it are not affected by a temporary shortage of petroleum products. The list of second priority users is necessary to indicate to interested parties the types of activities that are included in the category.

3. Third priority uses are placed here because all of these activities could be curtailed in the event of a shortage. The first category is necessary to distinguish between Government Services as part of the first priority Essential Services activity and other "non-essential government functions." The listing of the other two third priority users is necessary to indicate to interested parties the type of activity that could be reasonably curtailed.

4. The set-aside program is designed to deal with spot shortages and temporary dislocations of the petroleum market. The priority considerations in those circumstances differ slightly from those during a more severe petroleum supply emergency declared by the Legislature or Executive Council pursuant to section 116H.09. The set-aside program becomes one of several measures usable during such an emergency. This rule acknowledges the obvious, i.e., that the priorities of a declared energy emergency take precedence over the set-aside priorities.

B. Motor gasoline. The appropriate volume subject to set-aside is set out in the enabling statute in section 116H.095, subdivision 4. This rule is necessary to indicate to interested parties that motor gasoline assignment decisions will be based on the criteria listed.

1. Agricultural shortfall. Since the goal of this program is to mitigate the effect of a petroleum shortage on the citizens and economy, the use of set-aside for agriculture is reasonable. A large portion of the State's economy and population are dependent on this sector. All agricultural activities defined in 6 MCAR § 2.0110 B. are included under this criterion.

The rule is necessary to ensure that agricultural users receive product in the event of other suppliers' pull-out or extreme occurrences. In providing this language, the office acknowledges that a situation could exist where an agricultural user would require more than average product use, as defined in 6 MCAR § 2.0110 D.

2. Community or area hardship.

a. Supplier pull-out. This rule is necessary to ensure that the program could provide relief from such an occurrence. The office recognizes that a release of state set-aside product for the good of the community may be necessary, but wants to ensure that there is indeed a hardship. It is, therefore, reasonable to require information from the applicant regarding the pullout.

b. Retail outlet closing. As in 2.a. above, this rule is necessary to ensure that genuine hardships are mitigated wherever possible. The certification requirement is reasonable to help ensure that the product is used for its intended purpose.

c. Unusual growth. The rule is necessary to ensure that the program can fully meet its objective. The office recognizes that growth in a particular area could cause a hardship in the event of a temporary petroleum shortage. It is also recognized that the program cannot be a panacea. Thus, the criteria for determining growth as it pertains to an applicant's eligibility for set-aside is reasonable in that it requires the occurrence of one of three measurable occurrences since 1980.

d. Twenty-four hour service. This rule recognizes the important service that all-day businesses render to cititens in an area. In a temporary petroleum shortage the continuation of this service could be vital. The language is reasonable in that the eligibility requirement is based on past availability of this service.

3. Natural disasters. The types of occurrences listed are temporary and unexpected. Since the program is intended to respond to temporary petroleum shortages this criterion is basic to its purpose. The rule is reasonable because it requires the applicant to demonstrate the amount of the shortage that can be attributed to the disaster.

4. Priority vehicles. This rule is necessary to ensure that certain vehicles have priority status should a shortfall exist. The criterion is reasonable for these types of vehicles as they are defined in 6 MCAR § 2.0110.

2.0114 Application processing procedures

A. Investigations and B. Additional information. These rules are necessary and reasonable for the office to ensure the integrity of the program. It is the intention of the office to make every reasonable effort to verify the validity of each applicant's need and that assignments are based strictly on the evaluation criteria contained in 6 MCAR § 2.0113.

C. Processing. This rule is necessary so that applicants are aware of the appropriate time frame, and that the office will respond promptly. In most situations applicants are able to anticipate their supply needs. Thus, a five working day lead time on processing is reasonable. Retail outlets will likely be applying under one of three categories: community or area hardships, natural disaster, or priority vehicles. In the case of priority vehicles, the maximum release possible is the amount of the shortfall. It is the experience of the office that these shortfalls can be anticipated, and that it would be very rare for an outlet to be receiving less that 50 percent of the needed contract volumes. Thus, processing these applications after the 15th of the month is reasonable.

D. Implementation. This rule is necessary so that the prime supplier, applicant, and office are all aware of the procedures and their obligations. It is reasonable for an order to be served on the prime supplier. This step is also necessary to ensure proper communication between the office and the prime supplier. It is necessary to impose the three requirements regarding the order so that misunderstandings between the parties can be minimized. It is reasonable to require the office to state to applicants the reason for a denial.

2.0115 Appeals process

A. Applicability. This rule is necessary so that any person aggrieved by the administration of the program has recourse. The language is also reasonable in that it sets out the steps to be followed in initiating such an appeal.

B. Commissioner's action. The rule is necessary so that the time frame and responses that must be taken by the commissioner are established.

C. State set-aside appeals board. The rule is necessary to identify the members of the board. The composition of the board is reasonable because it includes representatives from a wide variety of constituent-oriented state agencies.

D. Decisions on appeals. Due to the requirement to promptly hear each appeal, this rule is needed for decisions to be made by panels made up of fewer members than the full board.

E. Informal disposition. This rule recognizes that the parties may be able to settle the appeal without the board. It is reasonable and efficient to allow the parties to do so.

2.0116 Hearings

A. Rights of the parties to the hearing. It is necessary and reasonable to establish the basic procedural rights due to each party. Notice to parties is required by rule 6 MCAR § 2.0115. This rule primarily ensures an adequate opportunity to be heard.

B. Rules of evidence. The rule is necessary to limit what the board may consider on appeal. It is also reasonable to allow the parties to rebut facts not part of the evidence presented at the hearing.

C. Public record of the hearing. This rule is needed to specify what is included in the public record for the board to consider.

D. Verbatim record. The requirement that a party requesting a court reporter pay the reporter's fee is reasonable since tape recording is an adequate verbatim record in view of the expected brevity of these processes.

E. Hearing procedure. This rule is necessary to standardize the hearing procedure. It reflects standard administrative hearing procedures - a logical and reasonable progression of proof and argument.

F. Decorum. The inclusion of this rule is reasonable so that the hearing is conducted orderly and in the best interests of the parties.

G. Decision. This rule is necessary to specify when the board must make its decision and what the decision must include. It is reasonable to require the board to state the factual and legal bases for its decisions. The short time limits are reasonable in the emergency circumstances being dealt with.

Date: May 19, 1982

DEPARTMENT OF ENERGY PLANNING AND DEVELOPMENT

By Duke Lee Duehl
of its Energy Division

In the Matter of the Proposed Adoption of Rules of the Department of Energy, Planning and Development Governing Petroleum Product State Set-Aside Program, 6 MCAR §§ 2.0108-2.0116

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Christie B. Eller, Special Assistant Attorney General, 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.

Dated: 8-13-82

Christie B Eller

Christie B. Eller
Special Assistant
Attorney General

In the Matter of the Proposed Adoption of Rules of the Department of Energy, Planning and Development Governing Petroleum Product State Set-Aside Program, 6 MCAR §§ 2.0108-2.0116

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Christie B. Eller, Special Assistant Attorney General, 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.

Dated: July 21, 1982

Christie B. Eller

Christie B. Eller
Special Assistant
Attorney General