

Minnesota Attorney General: Administrative Rules Proceedings

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State Register

Judicial Notice Shall Be Taken of Material Published in the *State Register*

The *State Register* is the official publication of the State of Minnesota, containing executive and commissioners' orders, proposed and adopted rules, official and revenue notices, state and non-state contracts, contract awards, grants, a monthly calendar of cases to be heard by the state supreme court, and announcements.

***A Contracts Supplement* is published every Thursday and contains additional state contracts and advertised bids, and the most complete source of state contract awards available in one source.**

Printing Schedule and Submission Deadlines

Vol. 16 Issue Number	*Submission deadline for Adopted and Proposed Rules, Commissioners' Orders**	*Submission deadline for Executive Orders, Contracts, and Official Notices**	Issue Date
48	Monday 11 May	Monday 18 May	Tuesday 26 May
49	Monday 18 May	Friday 22 May	Monday 1 June
50	Friday 22 May	Monday 1 June	Monday 8 June
51	Monday 1 June	Monday 8 June	Monday 15 June

*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 ***State Register*** editorial offices, 504 Rice Street, St. Paul, Minnesota 55103, (612) 296-0929.

The ***State Register*** is published every Monday (Tuesday when Monday is a holiday) by the State of Minnesota, Department of Administration, Print Communications Division, 117 University Avenue, St. Paul, Minnesota 55155, pursuant to *Minnesota Statutes* § 14.46. A ***State Register*** *Contracts Supplement* is published every Thursday. The Monday edition is the vehicle for conveying all information about state agency rulemaking, including official notices; hearing notices; proposed, adopted and emergency rules. It also contains executive orders of the governor; commissioners' orders; state contracts and advertised bids; professional, technical and consulting contracts; non-state public contracts; state grants; decisions of the supreme court; a monthly calendar of scheduled cases before the supreme court; and other announcements. The Thursday edition contains additional state contracts and advertised bids, and the most complete listing of contract awards available in one source.

In accordance with expressed legislative intent that the ***State Register*** be self-supporting, the following subscription rates have been established: the Monday edition costs $140.00 per year and includes an index issue published in August (single issues are available at the address listed above for $3.50 per copy); the combined Monday and Thursday editions cost $195.00 (subscriptions are not available for just the *Contracts Supplement)*; trial subscriptions are available for $60.00, include both the Monday and Thursday edition, last for 13 weeks, and may be converted to a full subscription anytime by making up the price difference. No refunds will be made in the event of subscription cancellation.

Both editions are delivered postpaid to points in the United States, second class postage paid for the Monday edition at St. Paul, MN, first class for the Thursday edition. Publication Number 326630 (ISSN 0146-7751).

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

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Dana B. Badgerow, Commissioner
Department of Administration

Kathi Lynch, Director
Print Communications Division

Paul Hoffman, Acting Editor

Katherine J. Artishon, Assistant Editor
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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:

SENATE

Briefly-Preview—Senate news and committee calendar; published weekly during legislative sessions.

Perspectives—Publication about the Senate.

Session Review—Summarizes actions of the Minnesota Senate.

Contact: Senate Public Information Office
Room 231 State Capitol, St. Paul, MN 55155
(612) 296-0504

HOUSE

Session Weekly—House committees, committee assignments of individual representatives; news on committee meetings and action. House action and bill introductions

This Week—weekly interim bulletin of the House.

Session Summary—Summarizes all bills that both the Minnesota House of Representatives and Minnesota Senate passed during their regular and special sessions.

Contact: House Information Office
Room 175 State Office Building, St. Paul, MN 55155
(612) 296-2146

Subp. 7. **Temporary or transitional housing.** "Temporary or transitional housing" means housing provided for a limited duration not exceeding 24 months and available for occupancy on a continuous 24-hour basis.

4900.3412 ELIGIBILITY.

To be eligible for selection as a recipient of a loan or grant under the program, the application must satisfy the requirements in items A to E.

A. The proposed residential housing must be exclusively for the use of low-income families and individuals.

B. All occupants of permanent housing financed under this part must be offered a written lease that:

(1) complies with *Minnesota Statutes*, section 325G.31;

(2) offers the occupants the option to renew; and

(3) prohibits eviction of an occupant without good cause.

C. The amount of the loan or grant requested must not exceed 50 percent of the total development cost of the proposed residential housing.

D. The application must include a comprehensive plan for the development and management of housing for low-income persons and document the ability of the applicant to develop and maintain that housing for a period of time specified by the agency. At a minimum, this plan must include:

(1) documentation of a need for the type of housing in the proposed geographic area;

(2) a description of the applicants' goals and objectives in meeting the area's need for the type of housing;

(3) a detailed description of how the housing will be developed and managed, including:

(a) a description of the proposed site for the housing;

(b) preliminary architectural plans for the development;

(c) qualifications of the development and management staff; and

(d) a proposed tenant selection plan;

(4) a detailed budget for the development of the proposed housing showing all development costs and the sources of funds to pay them;

(5) a detailed budget for the operation of the housing showing all anticipated operating costs and the proposed rents and other income;

(6) documentation of the experience and fiscal responsibility and capability of the applicant or fiscal agent of the applicant in developing similar housing; and

(7) where the applicant is providing transitional housing, documentation of an ability to provide support services to assist persons in moving into independent or appropriate supportive living situations.

E. Loan or grant funds may not be used for residential care facilities, for facilities that provide housing available for occupancy on less than a 24-hour continuous basis, or for any residential housing that requires occupants to accept board as well as lodging.

4900.3413 ELIGIBLE MORTGAGOR.

To be eligible for selection as a recipient of a loan or grant under the program, an applicant must be an eligible mortgagor as defined in *Minnesota Statutes*, section 462A.03, subdivision 13.

4900.3414 SELECTION CRITERIA.

In addition to priority being given to viable proposals with the total lowest cost per person served, the agency shall take the following criteria into consideration when determining whether an application and applicant will be selected for a loan or grant under the program:

A. the prior experience of the applicant in development and managing similar residential agency;

B. the extent to which grant funds are combined with other funds from private or public sources to make the development economically feasible;

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C. the ability of the applicant to proceed expeditiously with the development;

D. the documented need for this type of residential housing in the proposed geographic area;

E. the cost and quality of the proposed housing;

F. the extent to which the amount of rent to be charged is less than 30 percent of the income of the low-income person leasing the housing unit;

G. the geographic area to be serviced, to the end that a reasonable distribution of low-income housing can be achieved;

H. the extent of community support for this type of development;

I. the extent to which proposals use donated, leased, abandoned, or empty dwellings owned by a public entity or property being sold by the Resolution Trust Corporation or the Department of Housing and Urban Development;

J. the extent to which the applicant has consulted with advocates for the homeless, representatives from neighborhood groups, and representatives from labor organizations in preparing the proposal;

K. if support services are to be provided in conjunction with housing, the availability of funds to pay the ongoing costs of those support services; and

L. the extent to which the structure provides a physical environment that is responsive to the needs of the population to be served.

Department of Revenue

Proposed Permanent Rules Relating to Motor Fuels Taxation

Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Department of Revenue intends to adopt the above entitled rules without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes* section 14.22 to 14.28. The statutory authority to adopt the rules is *Minnesota Statutes* section 270.06, subdivision 13.

All persons have 30 days, through June 25, 1992, in which to submit comments in support of or in opposition to any of the proposed rules or any part or subpart of any of the proposed rules. Comments are encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to *Minnesota Statutes*, section 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Mark D. Pederson, Attorney
Appeals, Legal Services and Criminal Investigation Division
10 River Park Plaza
Mail Station 2220
St. Paul, MN 55146-2220
(612) 296-1902 Extension 126

The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this notice. A free copy of the rule is also available upon request from:

Mark D. Pederson, Attorney
Appeals, Legal Services and Criminal Investigation Division
10 River Park Plaza
Mail Station 2220
St. Paul, MN 55146-2220
(612) 296-1902 Extension 126

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 Mark D. Pederson upon request.

Promulgation of the proposed rules will not result in the expenditure of public moneys by local public bodies, fix or adjust any fees, or have an impact on agricultural land. The affect, if any, that the proposed rule may have on small businesses is further discussed in the **STATEMENT OF NEED AND REASONABLENESS.**

The proposed amended rules will have a positive qualitative impact on small businesses by repealing several reporting requirements. One rule streamlines and clarifies procedures for the annual filing of road tax returns, which is an optional method of filing available only to taxpayers with annual road tax liablity under $500. This method allows qualified taxpayers to file only one yearly return and make only one yearly payment rather than the four returns and four payments required of taxpayers with larger liability. The quantitative impact will be minimal, since the proposed rules and proposed amended rules will not result in an economic impact on small businesses.

If no hearing is required, upon adoption of the rule, the proposed rules and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 adopted rule, must submit the written request to:

Mark D. Pederson, Attorney
Appeals, Legal Services and Criminal Investigation Division
10 River Park Plaza
Mail Station 2220
St. Paul, MN 55146-2220
(612) 296-1902 Extension 126

Dated: 26 May 1992

Dorothy A. McClung
Commissioner of Revenue
State of Minnesota

Rules as Proposed

8125.0200 TERMINAL RECORDS AND REPORTS.

[For text of subps 1 and 2, see M.R.]

Subp. 3. **Manifests to be furnished.** A manifest or a bill of lading shall be issued for each withdrawal from a terminal in this state at the time of such withdrawal. Manifests or bills of lading shall show the following information: state tax number, date shipped, name of carrier, ~~transport permit (MDR) number,~~ origin (point of loading), name of supplier, name and address of distributor who will report and pay the tax ~~and/or fee~~ (consignee), destination, kind of product, and number of gallons. The state tax number may be the manifest or bill of lading number if designated as the state tax number. The required information contained in the manifest or bill of lading shall be filed with the commissioner either as a legible duplicate copy of each ~~such~~ manifest or bill of lading ~~shall be filed with,~~ or in any other format approved by the commissioner. The commissioner will approve alternative formats provided they contain the required information and are presented in an organized and readable manner.

No petroleum product shall be loaded into a tank car, the cargo tank of a tank truck, or a truck transport at any terminal located outside the state for shipment to a Minnesota destination unless the distributor who will report and pay the tax ~~and/or fee~~ (consignee) shall require that a manifest or bill of lading be issued showing the following information: state tax number, date shipped, name of carrier, ~~transport permit (MDR) number,~~ origin (point of loading), name of supplier, name and address of consignee, destination, kind of product, and number of gallons. The state tax number may be the manifest or bill of lading number if designated as the state tax number. The required information contained in the manifest or bill of lading shall be filed with the commissioner either as a legible duplicate copy of ~~such~~ each manifest or bill of lading ~~shall be sent to,~~ or in any other format approved by the commissioner. The commissioner will approve alternative formats provided they contain the required information and are presented in an organized and readable manner.

8125.0300 TRANSPORT REQUIREMENTS.

[For text of subpart 1, see M.R.]

Subp. 2. [See repealer.]

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Subp. 3. [See repealer.]

Subp. 4. [See repealer.]

Subp. 5. **Diversions to be reported.** Any supplier or transporter of petroleum products who diverts a shipment ~~destined to a state other than Minnesota to a Minnesota destination, or who diverts a shipment from one Minnesota destination or consignee to another Minnesota destination or consignee,~~ to any other destination than that which is listed on the manifest shall notify the commissioner within ~~48 hours~~ a reasonable time, setting forth the manifest number (state tax number), date, kind of product, number of gallons, the consignee to whom the shipment has been diverted, and the final destination.

Subp. 6. [See repealer.]

Subp. 7. **Manifest to be carried.** Operators of tank trucks or truck transports transporting petroleum products in this state on which the gasoline tax ~~and/or the inspection fees have~~ has not been assumed shall carry proof of ownership of such material (bill of lading, manifest, invoice, or other identification).

8125.0400 DISTRIBUTOR RECORDS.

[For text of subpart 1, see M.R.]

Subp. 2. **Sales invoices.** A sales invoice shall be made for each bulk sale of petroleum products at the time of the sale, regardless of gallonage. All sales invoices issued for bulk sales shall be machine-numbered serially with numbers of at least three digits, and shall show the following: name and address of distributor printed or rubber-stamped upon the invoice, date of sale, name and address of the purchaser, kind of product, price per gallon, number of gallons, and rate and amount of tax if any. The words "bulk sale," as used in this part, shall mean any sale of a petroleum product dispensed ~~from a truck transport or tankwagon~~ into a fixed or portable storage ~~facility~~ tank. When issued for the purpose of securing refunds or credits of the Minnesota gasoline tax, the invoices shall, in addition to the aforementioned requirements, be prepared at least in duplicate, ~~the original to be marked "Original Invoice"~~ and one copy shall be given to the purchaser. ~~The words "original invoice," as used in this part, shall mean the first or top sheet of an invoice, bearing the original inked or penciled imprint, whether it be typewritten, handwritten, or printed, issued by a seller to a purchaser covering the product or products sold. Whenever the original invoice is unavailable, the commissioner may approve the use of a copy thereof. In such cases, a lost or destroyed invoice affidavit executed by the claimant, together with a supporting statement by the supplier, must be filed.~~

When issued for other than bulk sales and for the purpose of securing refunds or credits of the Minnesota gasoline tax, the invoices or receipts shall show the ~~name~~ names and ~~location~~ locations of the seller and purchaser, date of purchase, number of gallons, ~~and~~ total price, and type of equipment in which the fuel is to be consumed.

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

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

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

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

~~[For text of subp 3, see M.R.]~~

Subp. 4. **Records to be retained.** ~~With the exception of sales invoices or receipts issued for other than bulk sales and for the purpose of securing refunds or credits of the Minnesota gasoline tax,~~ Copies of all manifests, bills of lading, invoices, ~~and~~ delivery tickets, and tax returns required to be filed pursuant to *Minnesota Statutes*, chapter 296, as well as all other records relating to the purchase, transfer, sales, and use of petroleum products and special fuel, shall be retained for a period of four years.

8125.0410 DISTRIBUTOR'S LICENSES.

Subpart 1. **Exemption from depositing securities or filing a bond.** The commissioner will determine which distributor license applicants are financially responsible and, as a result, qualify for the statutory exemption from depositing securities or filing a bond, by taking into consideration all relevant factors. Those factors include the following:

A. whether the applicant's financial statement reflects that the applicant's current assets are at least equal to its current liabilities and that the applicant's net worth is at least three times its average quarterly motor fuel tax liability;

B. whether the applicant has failed to file or has been delinquent in filing any motor fuel tax returns;

C. whether the applicant has ever failed to pay its motor fuel tax liability, paid it late, or paid with a check that was later returned by the bank unpaid; and

D. any other evidence of the financial responsibility of the applicant.

Subp. 2. **Seizure.** The seizure authorized by *Minnesota Statutes*, section 296.165, will be performed by the commissioner of revenue or authorized designee in cases where there is an intent to evade the tax imposed by *Minnesota Statutes*, chapter 296. Intent to evade the tax will be presumed if the manifest either does not list a shipper or lists a shipper not a licensed distributor under *Minnesota Statutes*, chapter 296, and the consignee is not listed or is not a licensed distributor under *Minnesota Statutes*, chapter 296.

8125.0500 DISTRIBUTOR AND DEALER CREDITS AND REFUNDS.

Subpart 1. **Distributor credits, how allowed.** The credits under *Minnesota Statutes*, section 296.14, subdivision 2, shall be allowed as follows:

[For text of items A to C, see M.R.]

D. under ~~clause~~ clauses (4) and (5), credit shall be taken only when supported by a credit memorandum issued by the commissioner. Such credit memorandum will reflect the adjustment for the allowance for evaporation and loss;

E. under clause (6), credit shall be taken after computing the allowance for evaporation and loss.

[For text of subp 2, see M.R.]

8125.0600 DEALER RECORDS.

[For text of subpart 1, see M.R.]

Subp. 2. **Sales invoices.** When issued for the purpose of securing refunds or credits of the Minnesota gasoline tax, sales invoices representing bulk sales shall be machine-numbered serially with numbers of at least three digits, and shall show the following: name and address of the dealer printed or rubber-stamped upon the invoice, date of sale, name and address of the purchaser, kind of product, price per gallon, number of gallons, and rate and amount of tax. They shall be prepared at least in duplicate~~, the original to be marked "Original Invoice"~~ and one copy shall be given to the purchaser. The words "bulk sale," as used in this part, shall mean any sale of a petroleum product dispensed ~~from a truck transport or tankwagon~~ into a fixed or portable storage ~~facility~~ tank. ~~The words "original invoice," as used in this part, shall mean the first or top sheet of an invoice, bearing the original inked or penciled imprint, whether it be typewritten, handwritten, or printed, issued by a seller to a purchaser covering the product or products sold. Whenever the original invoice is unavailable, the commissioner may approve the use of a copy thereof. In such cases, a lost or destroyed invoice affidavit executed by the claimant, together with a supporting statement by the supplier, must be filed.~~

When issued for other than bulk sales and for the purpose of securing refunds or credits of the Minnesota gasoline tax, the invoices or receipts shall show the ~~name~~ names and ~~location~~ locations of the seller and purchaser, date of purchase, number of gallons, ~~and~~ total price, and type of equipment in which the fuel is to be consumed.

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

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

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

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

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

Subp. 3. [See repealer.]

8125.0700 SPECIAL FUEL REQUIREMENTS.

Subpart 1. [See repealer.]

Subp. 2. **Sales invoices.** Sales invoices issued for sales of special fuel made by a distributor or a special fuel dealer shall bear the name and address of the purchaser, date of sale, type of product, number of gallons, price per gallon, and total amount of sale. ~~The words "Special Fuel" shall be written or printed on each sales invoice at the time of sale or delivery.~~ Sales invoices shall have the name and address of the distributor or special fuel dealer making the sale printed or rubber-stamped thereon and shall be machine-numbered serially with numbers of at least three digits and issued in sequence. A separate sales invoice book shall be maintained for special fuel sales, and one copy of each such sales invoice shall be retained in the special fuel sales invoice book, unless otherwise

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authorized by the commissioner. Sales invoices issued for fuel other than for use as special fuel shall show the kind of fuel, type of equipment in which the fuel is to be consumed, and the name and address of the purchaser.

Subp. 3. **Meter readings and inventories.** Distributors, special fuel dealers, and bulk purchasers shall at the end of each month take and record:

A. through ~~an~~ a mechanical accumulating meter in working order, meter readings ~~for~~ on each pump through which special fuel is dispensed; and

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

Subp. 4. **Users' records and reports.** All users of special fuel shall keep a true and accurate record of all purchases, sales, transfers, and use of special fuel and shall retain all such records for a period of four years. ~~Users of special fuel (except licensed distributors, special fuel dealers, and bulk purchasers required to file monthly reports) shall file an annual information report showing the number of gallons used, miles traveled, and such other information as the commissioner may prescribe, for each licensed motor vehicle. This report shall be filed on or before March 1 of each year for the preceding calendar year.~~

Subp. 5. [See repealer.]

Subp. 6. [See repealer.]

Subp. 7. **Records to be retained.** Copies of all manifests, bills of lading, invoices, sales and delivery tickets, tax returns required to be filed pursuant to *Minnesota Statutes*, chapter 296, as well as all other records relating to the purchase, transfer, sales, and use of special fuel, shall be retained for a period of four years.

[For text of subp 8, see M.R.]

Subp. 9. [See repealer.]

8125.1300 REFUNDS AND CREDITS ~~ON AVIATION GASOLINE AND SPECIAL FUEL TAX~~.

~~Claims for refund of the tax paid on aviation gasoline or on special fuel for aircraft must be filed on or before April 15 of the year following the year in which the fuel was purchased. Any such claim filed during the 15-day period from April 16 to April 30 may be honored less a penalty of 25 percent of the amount of the approved refund claim. The postmark on the envelope in which the claim is mailed determines the date of filing.~~

~~Each claim must be accompanied by the original invoice receipted for payment by the supplier. The words "original invoice," as used in this part, shall mean the first or top sheet of an invoice, bearing the original inked or penciled imprint, whether it be typewritten, handwritten, or printed, issued by a seller to a purchaser covering the product or products sold. Whenever the original invoice is unavailable, the commissioner may approve the use of a copy thereof. In such cases, a lost or destroyed invoice affidavit executed by the claimant, together with a supporting statement by the supplier, must be filed.~~

Subpart 1. **Ethanol development fund.** When the total claims made by producers of ethanol or wet alcohol under *Minnesota Statutes*, section 41A.09, subdivision 3, in any quarter exceed the remaining money allowed to be paid from the fund for that fiscal year or biennium, the commissioner shall reduce all claims proportionately. Each claimant shall receive a portion of the available money based on the percentage that the claimant's allowable claims in the quarter bears to all allowable claims in the quarter. Allowable claims do not include any portion of a claim which, if paid, would allow the claimant total payments in excess of the maximum annual payments allowable to a claimant in a fiscal year.

Claims for payment may be made only for ethanol or wet alcohol produced during the three calendar months preceding the month the claim is required to be filed. No payments will be made for claims filed after the due date.

Once the total amount of money appropriated to the fund for a fiscal year or biennium has been paid, no further payments will be made in that fiscal year or biennium. Unpaid claims may not be carried forward to a future year.

Subp. 2. **Public transit systems.** The exemption from the gasoline excise tax for gasoline purchased by a transit system in *Minnesota Statutes*, section 296.02, subdivision 1a, applies only to gasoline purchased by a transit system which is actually used by the transit system for purposes necessary in carrying out its responsibility to provide public transportation as defined in *Minnesota Statutes*, sections 174.24 and 473.384. Gasoline that is used for purposes that are not necessary in carrying out the transit system's responsibility to provide public transportation is not exempt from taxation.

Subp. 3. **Gasoline used in aircraft.** Refunds for gasoline, other than aviation gasoline, purchased and used to produce or generate power for propelling aircraft shall be issued only to those claimants who have received approval to use such gasoline from the Federal Aviation Administration as evidenced by a supplemental type certificate.

8125.1400 ROAD TAX.

Subpart 1. [See repealer.]

Subp. 2. **Vehicles exempted from road tax.** The following vehicles are exempted from the road tax law:

A. all ~~straight~~ trucks having ~~only two axles~~ a gross weight of 26,000 pounds or less;

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

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

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

Subp. 3. [See repealer.]

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

Subp. 5. **Annual ~~affidavit instead of quarterly report~~ return.** ~~The commissioner may exempt from the quarterly reporting requirements those motor carriers all or substantially all of whose mileage is within the state of Minnesota and require in such instances an annual affidavit attesting to the intrastate or substantially intrastate character of their operations provided that the enforcement of this law is not adversely affected thereby and that the commissioner is satisfied that an equitable amount of motor fuel is purchased in Minnesota by such carriers. The affidavit shall be on a form prescribed and furnished by the commissioner.~~ If a motor carrier has a road tax liability of less than $1,000 in a base year, the motor carrier, for the qualifying year, may elect to file an annual return and make an annual payment of the tax due, and is thereafter relieved from filing quarterly returns and making quarterly payments under *Minnesota Statutes*, section 296.17, subdivision 11. The annual return and payment are due on or before the last day of January of the calendar year following the calendar year the road tax liability accrued. The Department of Revenue, applying the criteria of this subpart, will annually determine which motor carriers are eligible to file an annual return and notify those motor carriers who qualify. Motor carriers who have not filed all road tax returns and paid all road tax due for the base year are not eligible to file an annual return. Only those motor carriers so notified by the Department of Revenue are eligible to elect to file an annual return. At the time of notification, eligible motor carriers may still elect to file returns and make payments quarterly. Motor carriers who make an election are required to make all returns and payments required by *Minnesota Statutes*, section 296.17, in the calendar year for which the election was made, and are subject to all applicable penalties. Motor carriers who elect to file annually may file refund claims annually, but not quarterly.

"Base year" means the most recent period of four consecutive quarters for which the Department of Revenue has compiled data on all motor carriers road tax for that period. The first base year is the four-consecutive quarter period beginning October 1990 and ending September 1991.

"Qualifying year" means the calendar year for which the Department of Revenue notifies the motor carrier that it is eligible to file an annual return. The first qualifying year is the 1992 calendar year.

Subp. 6. **Records and invoices.** An accurate record must be kept by all motor carriers of the following:

A. the miles traveled within and without Minnesota;

B. the miles traveled in Minnesota;

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

D. the number of gallons of retail and bulk fuel purchased in Minnesota.

[For text of subp 7, see M.R.]

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

Subp. 8. [See repealer.]

[For text of subps 9 and 10, see M.R.]

REPEALER. *Minnesota Rules*, parts 8125.0300, subparts 2, 3, 4, and 6; 8125.0600, subpart 3; 8125.0700, subparts 1, 5, 6, and 9; 8125.0800; and 8125.1400, subparts 1, 3, and 8, are repealed.

Adopted Rules

The adoption of a rule becomes effective after the requirements of Minn. Stat. §14.14-14.28 have been met and five working days after the rule is published in *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 strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

An emergency rule becomes effective five working days after the approval of the Attorney General as specified in Minn. Stat. §14.33 and upon the approval of the Revisor of Statutes as specified in §14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted emergency rule will be published in the manner provided for adopted rules under §14.18.

Department of Human Services

Adopted Permanent Rules Relating to Health Care Programs

The rules proposed and published at *State Register*, Volume 16, Number 22, pages 1258-1265, November 25, 1991 (16 SR 1258), are adopted with the following modifications:

Rules as Adopted

9505.1718 SCREENING STANDARDS FOR AN EPSDT CLINIC.

Subp. 13. **Laboratory tests.** Laboratory tests must be done according to items A to F.

B. A child aged one to five years must initially be screened for lead through the use of either an erythrocyte protoporphyrin (EP) test or a direct blood lead screening test until December 31, 1992. Beginning January 1, 1993, a child age one to five must initially be screened using a direct blood lead screening test. Either capillary or venous blood may be used as the specimen for the direct blood lead test. Blood tests must be performed at a minimum of once at 12 months of age and once at 24 months of age or whenever the history indicates that there are risk factors for lead poisoning. When the result of the EP or capillary blood test is greater than the maximum allowable level set by the Centers for Disease Control of the United States Public Health Service, the child must be referred for a venous blood lead test. A child with a venous blood lead level greater than the maximum allowable level set by the Centers for Disease Control must be referred for diagnosis and treatment.

Subp. 15. **Schedule of age related screening standards.** An early and periodic screening, diagnosis, and treatment screening for a child at a specific age must include, at a minimum, the screening requirements of subparts 2 to 14 as provided by the following schedule:

Schedule of age related screening standards

B. Early Childhood:

Standards	Age				
	15 months	18 months	24 months	3 years	4 years
Health History	X	X	X	X	X
Assessment of Physical Growth:					
Height	X	X	X	X	X
Weight	X	X	X	X	X
Head Circumference	X	X	X	X	X
Physical Examination	X	X	X	X	X
Vision	X	X	X	X	X
Hearing	X	X	X	X	X
Blood Pressure				X	X

MSM
7/6/92

RULE REVIEW CHECKLIST

File No. 1926
DATE RECEIVED ~~7-28-92~~ 7-6-92
REVIEW DATE 7/15/92
DUE DATE 7/20/92
~~(DIS)~~APPROVED 7/20/92
WITHDRAWN _____

Docket No. 05.0009.0748
ADOPTED W/O HEARING _____
EMERGENCY RULE _____
TO REVISOR ON 7/6/92
REVISOR (DIS)APPROVED 7/7/92
FILED W/SEC. OF STATE 7-20-92
RETURNED TO AGENCY 7-20-92

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)
July 15, 1991 Date published in State Register
_____ Comments

~~Petition for Adoption of a Rule~~

✓ ~~Board's Authorizing Resolution~~
_____ ~~Date adopted~~

✓ Proposed Rule
✓ Revisor's Certificate

✓ Notice of Intent to Adopt Rule
270.06 subd 13 Statutory Authority
NA Small Business Statement
NA Expenditure of public money statement
May 26, 1992 Signature

✓ Statement of Need and Reasonableness (if applicable)
No Statement Small Business Statement
NA Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
May 21, 1992 Dated 30/25 days before adoption
✓ Notice attached indicates it is attached
_____ Copy of rule or summary attached

✓ Publication in State Register
May 26, 1992 Date 30/25 days before adoption

✓ 180-day deadline from:
✓ Effective date of law requiring rule (14.12) (both rules) ~~amendments don't apply~~
✓ end of ~~comment~~ period (§ 14.26) (rules without hearing)
_____ effective date of statutory authority (§ 14.29) (emergency rules)

~~Resolution Adopting~~
_____ Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
July 1, 1992 Date

~~Written~~ Requests, Submissions or Comments

✓ Declaration of Attorney
Barry Dellon Name of SAAG representing agency

Notice of Submission to Attorney General (if applicable)

Affidavit of Mailing Notice to Attorney General (if applicable)

Rules and

STATE OF MINNESOTA

Office of the Attorney General

TO : FRAN GERTEN
Department of Revenue
Petroleum Division
10 River Park Plaza
St. Paul

DATE : July 20, 1992

FROM : MARY JO MURRAY
Special Assistant
Attorney General

PHONE : 296-3258

SUBJECT : In the Matter of the Adopted Rule Relating to Motor Fuels Taxation

The above-referenced rule has been approved as to its legality by the Attorney General on July 20, 1992.

Enclosed is your copy of the approved rule. This office has already filed two copies with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submissions or comments along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of the notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

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

Enclosures
cc: Barry R. Greller
William Brown, Chief Judge
MaryAnn Hruby

MJM:jj.rules.av5

Department of Revenue

Adopted Permanent Rules Relating to Motor Fuels Taxation

Rules as Adopted

8125.0200 TERMINAL RECORDS AND REPORTS.

[For text of subps 1 and 2, see M.R.]

Subp. 3. **Manifests to be furnished.** A manifest or a bill of lading shall be issued for each withdrawal from a terminal in this state at the time of such withdrawal. Manifests or bills of lading shall show the following information: state tax number, date shipped, name of carrier, origin (point of loading), name of supplier, name and address of distributor who will report and pay the tax (consignee), destination, kind of product, and number of gallons. The state tax number may be the manifest or bill of lading number if designated as the state tax number. The required information contained in the manifest or bill of lading shall be filed with the commissioner either as a legible duplicate copy of each manifest or bill of lading, or in any other format approved by the commissioner. The commissioner will approve alternative formats provided they contain the required information and are presented in an organized and readable manner.

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

legible duplicate copy of each manifest or bill of lading, or in any other format approved by the commissioner. The commissioner will approve alternative formats provided they contain the required information and are presented in an organized and readable manner.

8125.0300 TRANSPORT REQUIREMENTS.

[For text of subpart 1, see M.R.]

Subp. 2. [See repealer.]

Subp. 3. [See repealer.]

Subp. 4. [See repealer.]

Subp. 5. **Diversions to be reported.** Any supplier or transporter of petroleum products who diverts a shipment to any other destination than that which is listed on the manifest shall notify the commissioner within a reasonable time, setting forth the manifest number (state tax number), date, kind of product, number of gallons, the consignee to whom the shipment has been diverted, and the final destination.

Subp. 6. [See repealer.]

Subp. 7. **Manifest to be carried.** Operators of tank trucks or truck transports transporting petroleum products in this state on which the gasoline tax has not been assumed shall carry proof of ownership of such material (bill of lading, manifest, invoice, or other identification).

8125.0400 DISTRIBUTOR RECORDS.

[For text of subpart 1, see M.R.]

Subp. 2. **Sales invoices.** A sales invoice shall be made for each bulk sale of petroleum products at the time of the sale, regardless of gallonage. All sales invoices issued for bulk sales shall be machine-numbered serially with numbers of at least three digits, and shall show the following: name and address of distributor printed or rubber-stamped upon the invoice, date of sale, name and address of the purchaser, kind of product, price per gallon, number of gallons, and rate and amount of tax if any. The words "bulk sale," as used in this part, shall mean any sale of a petroleum product dispensed into

a fixed or portable storage tank. When issued for the purpose of securing refunds or credits of the Minnesota gasoline tax, the invoices shall, in addition to the aforementioned requirements, be prepared at least in duplicate, and one copy shall be given to the purchaser.

When issued for other than bulk sales and for the purpose of securing refunds or credits of the Minnesota gasoline tax, the invoices or receipts shall show the names and locations of the seller and purchaser, date of purchase, number of gallons, total price, and type of equipment in which the fuel is to be consumed.

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

[For text of subp 3, see M.R.]

Subp. 4. **Records to be retained.** Copies of all manifests, bills of lading, invoices, delivery tickets, and tax returns required to be filed pursuant to Minnesota Statutes, chapter 296, as well as all other records relating to the purchase, transfer, sales, and use of petroleum products and special fuel, shall be retained for a period of four years.

8125.0410 DISTRIBUTOR'S LICENSES.

Subpart 1. **Exemption from depositing securities or filing a bond.** The commissioner will determine which distributor license applicants are financially responsible and, as a result, qualify for the statutory exemption from depositing securities or filing a bond, by taking into consideration all relevant factors. Those factors include the following:

A. whether the applicant's financial statement reflects that the applicant's current assets are at least equal to its current liabilities and that the applicant's net worth is at least three times its average quarterly motor fuel tax liability;

B. whether the applicant has failed to file or has been delinquent in filing any motor fuel tax returns;

C. whether the applicant has ever failed to pay its motor fuel tax liability, paid it late, or paid with a check that was later returned by the bank unpaid; and

D. any other evidence of the financial responsibility of the applicant.

Subp. 2. **Seizure.** The seizure authorized by Minnesota Statutes, section 296.165, will be performed by the commissioner of revenue or authorized designee in cases where there is an intent to evade the tax imposed by Minnesota Statutes, chapter 296. Intent to evade the tax will be presumed if the manifest either does not list a shipper or lists a shipper not a licensed distributor under Minnesota Statutes, chapter 296, and the consignee is not listed or is not a licensed distributor under Minnesota Statutes, chapter 296.

8125.0500 DISTRIBUTOR AND DEALER CREDITS AND REFUNDS.

Subpart 1. **Distributor credits, how allowed.** The credits under Minnesota Statutes, section 296.14, subdivision 2, shall be allowed as follows:

[For text of items A to C, see M.R.]

D. under clauses (4) and (5), credit shall be taken only when supported by a credit memorandum issued by the commissioner. Such credit memorandum will reflect the adjustment for the allowance for evaporation and loss;

E. under clause (6), credit shall be taken after computing the allowance for evaporation and loss.

[For text of subp 2, see M.R.]

8125.0600 DEALER RECORDS.

[For text of subpart 1, see M.R.]

Subp. 2. **Sales invoices.** When issued for the purpose of securing refunds or credits of the Minnesota gasoline tax, sales invoices representing bulk sales shall be machine-numbered serially with numbers of at least three digits, and shall show the following: name and address of the dealer printed or rubber-stamped upon the invoice, date of sale, name and address of the purchaser, kind of product, price per gallon, number of

gallons, and rate and amount of tax. They shall be prepared at least in duplicate and one copy shall be given to the purchaser. The words "bulk sale," as used in this part, shall mean any sale of a petroleum product dispensed into a fixed or portable storage tank.

When issued for other than bulk sales and for the purpose of securing refunds or credits of the Minnesota gasoline tax, the invoices or receipts shall show the names and locations of the seller and purchaser, date of purchase, number of gallons, total price, and type of equipment in which the fuel is to be consumed.

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

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

Subp. 3. [See repealer.]

8125.0700 SPECIAL FUEL REQUIREMENTS.

Subpart 1. [See repealer.]

Subp. 2. **Sales invoices.** Sales invoices issued for sales of special fuel made by a distributor or a special fuel dealer shall bear the name and address of the purchaser, date of sale, type of product, number of gallons, price per gallon, and total amount of sale. Sales invoices shall have the name and address of the distributor or special fuel dealer making the sale printed or rubber-stamped thereon and shall be machine-numbered serially with numbers of at least three digits and issued in sequence. A separate sales invoice book shall be maintained for special fuel sales, and one copy of each such sales invoice shall be retained in the special fuel sales invoice book, unless otherwise authorized by the commissioner. Sales invoices issued for fuel other than for use as special fuel shall show the kind of fuel, type of equipment in which the fuel is to be consumed,

and the name and address of the purchaser.

Subp. 3. **Meter readings and inventories.** Distributors, special fuel dealers, and bulk purchasers shall at the end of each month take and record:

A. through a mechanical accumulating meter in working order, meter readings on each pump through which special fuel is dispensed; and

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

Subp. 4. **Users' records and reports.** All users of special fuel shall keep a true and accurate record of all purchases, sales, transfers, and use of special fuel and shall retain all such records for a period of four years.

Subp. 5. [See repealer.]

Subp. 6. [See repealer.]

Subp. 7. **Records to be retained.** Copies of all manifests, bills of lading, invoices, sales and delivery tickets, tax returns required to be filed pursuant to Minnesota Statutes, chapter 296, as well as all other records relating to the purchase, transfer, sales, and use of special fuel, shall be retained for a period of four years.

[For text of subp 8, see M.R.]

Subp. 9. [See repealer.]

8125.1300 REFUNDS AND CREDITS.

Subpart 1. **Ethanol development fund.** When the total claims made by producers of ethanol or wet alcohol under Minnesota Statutes, section 41A.09, subdivision 3, in any quarter exceed the remaining money allowed to be paid from the fund for that fiscal year or biennium, the commissioner shall reduce all claims proportionately. Each claimant shall receive a portion of the available money based on the percentage that the claimant's allowable claims in the quarter bears to all allowable claims in the quarter. Allowable claims do not include any portion of a claim which, if paid, would allow the claimant total payments in excess of the maximum annual payments

allowable to a claimant in a fiscal year.

Claims for payment may be made only for ethanol or wet alcohol produced during the three calendar months preceding the month the claim is required to be filed. No payments will be made for claims filed after the due date.

Once the total amount of money appropriated to the fund for a fiscal year or biennium has been paid, no further payments will be made in that fiscal year or biennium. Unpaid claims may not be carried forward to a future year.

Subp. 2. **Public transit systems.** The exemption from the gasoline excise tax for gasoline purchased by a transit system in Minnesota Statutes, section 296.02, subdivision 1a, applies only to gasoline purchased by a transit system which is actually used by the transit system for purposes necessary in carrying out its responsibility to provide public transportation as defined in Minnesota Statutes, sections 174.24 and 473.384. Gasoline that is used for purposes that are not necessary in carrying out the transit system's responsibility to provide public transportation is not exempt from taxation.

Subp. 3. **Gasoline used in aircraft.** Refunds for gasoline, other than aviation gasoline, purchased and used to produce or generate power for propelling aircraft shall be issued only to those claimants who have received approval to use such gasoline from the Federal Aviation Administration as evidenced by a supplemental type certificate.

8125.1400 ROAD TAX.

Subpart 1. [See repealer.]

Subp. 2. **Vehicles exempted from road tax.** The following vehicles are exempted from the road tax law:

A. all trucks having a gross weight of 26,000 pounds or less;

B. all motor vehicles having three or more axles on which is permanently mounted a corn sheller, feed grinder, back hoe, crane, well-drilling machine, or other similar equipment and the use of which on the public highways of this state is

only for transporting the special equipment to and from the site of operation.

Subp. 3. [See repealer.]

Subp. 4. **Reports of motor carriers and payment of tax.** All reports must be accompanied by a remittance for the full amount of the tax shown to be due on the report. If no travel takes place in Minnesota during any quarter, a report must be filed, with the word "None" written in the appropriate column on line 4 of the return. The person who is responsible for the payment of the motor fuel used in the vehicle is liable for the filing of the report whether the vehicle is owned or leased.

Subp. 5. **Annual return.** If a motor carrier has a road tax liability of less than $1,000 in a base year, the motor carrier, for the qualifying year, may elect to file an annual return and make an annual payment of the tax due, and is thereafter relieved from filing quarterly returns and making quarterly payments under Minnesota Statutes, section 296.17, subdivision 11. The annual return and payment are due on or before the last day of January of the calendar year following the calendar year the road tax liability accrued. The Department of Revenue, applying the criteria of this subpart, will annually determine which motor carriers are eligible to file an annual return and notify those motor carriers who qualify. Motor carriers who have not filed all road tax returns and paid all road tax due for the base year are not eligible to file an annual return. Only those motor carriers so notified by the Department of Revenue are eligible to elect to file an annual return. At the time of notification, eligible motor carriers may still elect to file returns and make payments quarterly. Motor carriers who make an election are required to make all returns and payments required by Minnesota Statutes, section 296.17, in the calendar year for which the election was made, and are subject to all applicable penalties. Motor carriers who elect to file annually may file refund claims annually, but not quarterly.

"Base year" means the most recent period of four consecutive quarters for which the Department of Revenue has

compiled data on all motor carriers road tax for that period. The first base year is the four-consecutive quarter period beginning October 1990 and ending September 1991.

"Qualifying year" means the calendar year for which the Department of Revenue notifies the motor carrier that it is eligible to file an annual return. The first qualifying year is the 1992 calendar year.

Subp. 6. **Records and invoices.** An accurate record must be kept by all motor carriers of the following:

A. the miles traveled within and without Minnesota;

B. the miles traveled in Minnesota;

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

D. the number of gallons of retail and bulk fuel purchased in Minnesota.

[For text of subp 7, see M.R.]

Subp. 8. [See repealer.]

[For text of subps 9 and 10, see M.R.]

REPEALER. Minnesota Rules, parts 8125.0300, subparts 2, 3, 4, and 6; 8125.0600, subpart 3; 8125.0700, subparts 1, 5, 6, and 9; 8125.0800; and 8125.1400, subparts 1, 3, and 8, are repealed.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

JUL 20 1992

Joan Anderson Growe
Secretary of State

2:25 AM
PRB

APPROVED AS TO FORM AND LEGALITY
July 20 1992
HUBERT H. HUMPHREY III
ATTORNEY GENERAL
BY
SPECIAL ASSISTANT ATTORNEY GENERAL

Stat Authority 270.06 subd 13
Administer and enforce the assessment and collection of state taxes and from time to time, make publish, and distribute rules for the administration and enforcement of state tax laws. The rules have the force of law.

end of comment period
June 25, 1992

STATE OF MINNESOTA
DEPARTMENT OF REVENUE

In the Matter of the Proposed Adoption of New and Amended Rules Relating to Motor Fuels Taxation (Minnesota Rules Parts 8125.0200 to 8125.0800, and parts 8125.1300 to 8125.1400).

STATEMENT OF NEED AND REASONABLENESS

This document has been prepared as a verbatim affirmative presentation of the facts necessary to establish the statutory authority, need for, and reasonableness of the proposed amendments to the existing rules and the proposed new rules. It is submitted pursuant to Minnesota Statutes Section 14.23 and Minnesota Rules Part 1400.0500 requiring a Statement of Need and Reasonableness.

A Notice of Intent to Solicit Outside Opinion regarding Motor Fuels Taxation was published in the State Register on July 15, 1991. The notice specifically mentioned these rules and invited interested persons to submit comments or suggestions in writing to the Department by July 30, 1991. No written comments were submitted.

This rulemaking proceeding proposes to amend the motor fuel tax rules substantially, as well as to add new rules. These rules were last amended in the early 1980's. Since that time, the Minnesota Legislature has annually amended portions of Minnesota Statutes Chapter 296. It is necessary to amend the rules so that they comply with the changes made in the law and in Department administration of the law. Most of the changes involve the repeal of outdated information and duplicative statutory language.

IMPACT ON SMALL BUSINESS

The impact of these rules on small businesses has been considered. The proposed rules do not impose new filing or payment requirements on small businesses and therefore are not expected to place any additional financial or administrative burden on small businesses. Where possible, reporting and compliance requirements have been simplified, consolidated, made less stringent or eliminated.

AUTHORITY TO ADOPT RULES

Minnesota Statutes section 270.06(13) provides that the Commissioner of Revenue shall promulgate rules concerning the administration of state tax laws. More specifically, Minnesota Statutes section 296.27 enables the Commissioner of Revenue to make rules relating to the administration and enforcement of laws regulating the sale, distribution and use of petroleum products and special fuel, so long as the rules are reasonable and not inconsistent with the law. Minnesota Statutes section 296.17, subdivision 11, provides that the Commissioner of Revenue may by rule exempt from quarterly filing of road tax returns and payment of road tax and authorize an annual filing of road tax returns and payment of road tax for motor carriers "whose mileage is all or substantially all and those motor carriers whose mileage is minimal within this state." Minnesota Statutes 41A, subdivision 4 authorizes the Commissioner of Revenue to promulgate rules for the administration of the Ethanol Development Fund.

RULE-BY-RULE ANALYSIS

The following is an analysis of the amendments to, and repeal of, existing rules as well as an analysis of the proposed new rules

RULE 8125.0200 TERMINAL RECORDS AND REPORTS

This rule sets out the reports to be maintained by terminal operators. The amendments to subpart 3 eliminate the requirement to report two items. The requirement to report the transport permit number was deleted because Minnesota Statutes, section 296.10, which required transport operators to secure such permits, was repealed. See 1985 Minn. Laws,

First Special Session, chapter 13, section 376, subdivision 1. The requirement to report the name of the distributor who will pay the inspection fee was deleted because Minnesota Statutes, section 239.78 now requires the supplier to pay the inspection fee rather than the distributor. 1991 Minn. Laws, chapter 235, Article 1, Section 5. A provision was added to broaden the manner in which information may be submitted to the commissioner. This will lessen the administrative burden on the taxpayer by allowing for consolidated reports (e.g. computer printouts).

RULE 8125.0300 TRANSPORT REQUIREMENTS

Subparts 2, 3 and 4. These three subparts regarding transport permits were deleted as obsolete. See explanation in part 8125.0200, supra.

Subpart 5. Form and grammatical changes were made to clarify and simplify existing language. The 48 hour period for reporting diversions was made less stringent. While these reports are necessary so that the commissioner may determine the correct tax, the 48 hour limit imposed an unreasonable burden on affected taxpayers, particularly since the short reporting period time was not essential to the determination of the correct tax liability.

Subpart 6. This subpart was deleted because it is covered by Minnesota Statutes, section 115.061 which refers to matters under the control of the Minnesota Pollution Control Agency, rather than the Department of Revenue. Under that statute, any person who spills a substance which may cause pollution of the "waters of the state" must notify the MPCA. "Waters of the state" includes drainage systems and underground bodies of water. Minn. Stat. § 115.01, subdivision 9. Thus, a transporter who spills a petroleum product must notify the MPCA because the petroleum will inevitably run off and contaminate the groundwater. There is no need for additional notice to be given to the Commissioner of Revenue.

Subpart 7. The reference to the inspection fee was deleted as obsolete. See explanation in part 8125.0200, supra. Following the amendment of

Minnesota Statutes 239.78, the operator can no longer be made to assume the inspection fee.

RULE 8125.0400 DISTRIBUTOR RECORDS

Subpart 2. Language that limited what a petroleum product could be dispensed from to be considered a "bulk sale" was deleted. The type of vehicle from which a product is dispensed is an irrelevant factor in determining whether a transaction is a "bulk sale". Language was added to clarify that the product referred to is that which is dispensed into a storage "tank" rather than the more ambiguous term "facility", whether that tank is fixed or portable. Two provisions regarding the use of an original invoice were stricken as unnecessary and outdated. The requirement that the original invoice be given to the purchaser is no longer necessary since the department will now allow refund claims based on copies of invoices. Two items were added to the list of information which must be reported on invoices. The name of the purchaser must be listed so that the Department can verify the transaction. The type of equipment in which the product is to be consumed must be reported because refunds are only allowed for petroleum products used in certain types of equipment. See Minn. Stat. § 296.18, subdivision 1. The last three provisions of the subpart were deleted because they refer to a requirement under the control of the Department of Public Service, which no longer requires the inclusion of that information on the invoice.

Subpart 4. This subpart was amended to make it consistent with Minnesota Statutes, section 296.21, subdivision 1, which requires certain parties to maintain records regarding all motor fuels transactions "in a manner approved by the commissioner". The existing language narrowed the scope of the rule by requiring taxpayers to retain only some records regarding petroleum products. The requirement to retain petroleum tax returns was added as a means to speed up the audit process. It will allow field auditors the opportunity to obtain returns that may become relevant during an audit without having to stop the audit process for a trip to St. Paul so that the auditor can obtain the Department's copies.

RULE 8125.0410 DISTRIBUTOR'S LICENSES

Subpart 1. Minnesota Statutes, section 296.06, subdivision 2(4), provides that the commissioner must determine that an applicant for a distributor license is "financially responsible" before granting an exemption from depositing securities or filing a bond to secure payment of motor fuels taxes. The purpose of this subpart is to set forth the type of information the commissioner will consider in making that determination.

Item A. The Statute requires that an applicant submit and the commissioner review and take into consideration the applicant's financial statements. This item describes how the commissioner will analyze the data on the financial statement. The first factor is whether, at a minimum, the applicant is solvent based on a comparison of current assets and liabilities. The second factor is whether the applicant's net worth is at least three times its average quarterly motor fuels tax liability. These factors directly relate to the applicant's ability to pay the tax. If an applicant is insolvent or owes more than one third of their net worth in motor fuels taxes, an exemption from the security requirement, which is meant to insure the payment of the tax, is unwarranted.

Item B. In determining whether to require a bond, or the amount of the bond required, the commissioner must be able to ascertain the amount of tax owed. This determination cannot be made if the applicant does not file returns in a timely manner. Whether the applicant has failed to file or has been delinquent in filing motor fuels tax returns is a relevant indication of whether they will file the required returns and pay the tax in the future.

Item C. This factor is reasonable because it would not be rational for the commissioner to allow an applicant an exemption from providing security for payment of the tax if the applicant has failed to meet motor fuels tax obligations in a timely manner in the past.

Item D. This provision is necessary so that the commissioner may consider any other evidence of the applicant's financial responsibility. It is reasonable because the statute provides that the commissioner can make the determination by reviewing the applicant's financial statement "or otherwise". Minn. Stat. §296.06, subdivision 2(4).

Subpart 2. The legislature recently enacted a law which allows the commissioner to seize gasoline or special fuel and the vehicle transporting that product if it is being transported in violation of the law that requires a licensed distributor to receive petroleum products in this state before any of several business actions may be made regarding those products. (Minn. Stat. §296.06, subdivision 1) 1991 Minn. Laws Chapter 291, Article 9, Section 14. This subpart sets forth standards by which seizure will be warranted under the new statute. The seizure will occur when there appears to be an intent to evade the motor fuels tax by delivering gasoline or special fuels to any party other than a licensed distributor (as defined in Chapter 296.). Since intent is subjective, the commissioner must look at objective evidence of that intent. The commissioner will presume an intent to evade the tax when the trip manifest in the transporter's possession lists neither a shipper nor a consignee who is a licensed distributor or lists no shipper and no consignee.

RULE 8125.0500 DISTRIBUTOR AND DEALER CREDITS AND REFUNDS

Subpart 1 of this rule clarifies how the distributor and dealer credits and refunds are computed. Item D was amended and Item E was added to make the rule consistent with Minnesota Statutes, section 296.14, subdivision 2.

RULE 8125.0600 DEALER RECORDS

Subpart 2. Unnecessary language was stricken and language was added to clarify the requirements under this rule. See explanation for Rule 8125.0400, supra.

Subpart 3. This subpart was deleted because it improperly narrows the requirement covered by Minnesota Statutes, section 296.21.

RULE 8125.0700 SPECIAL FUEL REQUIREMENTS

Subpart 1. This subpart was deleted because the information is covered by Rule 8125.1200 and Minnesota Statutes, Section 296.21, and because it did not provide the reader with information which assisted in understanding the requirement to retain records and make them accessible.

Subpart 2. Outdated and unnecessary language was stricken regarding the sales invoice and two items were added to the information required to be listed on the invoice. The type of product and type of equipment in which the product is to be consumed are necessary to determine special fuels taxation and the availability of refunds. See Minn. Stat. §§ 296.025 and 296.18.

Subpart 3. Item A was amended to clarify that a mechanical accumulating meter must be on each pump rather than an electronic meter accumulating data on all of the pumps as a whole. This is necessary because a mechanical accumulating meter provides more accurate data than an electronic one. If the electricity that serves an electronic meter is cut off, the meter zeroes out and the owner must estimate the amount of special fuel dispensed.

Subpart 4. Provisions requiring the filing of an annual information return by users of special fuel were repealed. The purpose for requiring the filing of an annual reconciliation of special fuel taxes paid is to help determine that the correct tax has been paid. However, the commissioner has discovered that other investigatory tools are far superior in making that determination. As such the commissioner seldom used information from the annual returns. The requirement to file annual reconciliation returns for special fuel taxes paid therefore merely imposes an unnecessary and burdensome duty on the users of special fuels who must

file such returns and on the commissioner who must receive and maintain such returns.

Subpart 5. This subpart was repealed. Mileage reports were required only upon demand, and the commissioner rarely if ever made such demand. The information that could be gained from these reports is more readily accessible through other means.

Subpart 6. This subpart was repealed. The purpose for requiring the filing of monthly bulk sale reports is to help determine that the correct tax has been paid. However, the commissioner has discovered that other investigatory tools are far superior in making that determination. As such the commissioner seldom uses information from the monthly bulk sale reports. The requirement to file monthly bulk sale reports therefore merely imposes an unnecessary and burdensome duty on bulk sellers who must file such returns and on the commissioner who must receive and maintain such returns.

Subpart 7. This subpart was amended to add petroleum tax returns to the list of documents to be retained by the taxpayer. See explanation to Rule 8125.0400, subdivision 4.

Subpart 9. This subpart was deleted because it refers to matters under the control of the Department of Public Service, rather than the Department of Revenue, and duplicates language found in Minnesota Statutes, section 239.79.

RULE 8125.0800 OTHER TAXABLE PRODUCTS

This rule was repealed because it contains information comprehensively covered by Minnesota Statutes, section 296.01, subdivision 3. The products listed in this rule are all included in the definition of "gasoline" in the statute.

RULE 8125.1300 REFUNDS AND CREDITS

The heading was amended to broaden the scope of the rule. The first paragraph was deleted because it duplicates language found in Minnesota Statutes, section 296.18. The second paragraph was deleted as outdated and unnecessary. The statute provides that an original invoice must accompany the refund claim. The Department no longer requires the other items described in that paragraph.

Subpart 1. Minnesota Statutes, section 41A.09, subdivision 3 limits the total amount of money that may be paid from the Ethanol Development Fund each fiscal year/biennium. Since no funds can be paid in excess of that limit, this subpart was added to provide a formula for proration when the allowable claims made in a quarter exceed the remaining available funds. Under this subpart, each claimant will be paid the same percentage of available funds as the percentage that the claimant's allowable claim bears to the total allowable claims made by all claimants in that quarter. This is a fair and equitable formula which will allow each claimant to share in any available funds. The formula is also one that can be easily administered by the commissioner. The statutorily fixed quarterly due dates and quarterly pay out dates allow the commissioner the opportunity to calculate all claims in a quarter and prorate all claims in a quarter before any claims have been paid for that quarter.

Minnesota Statutes 41A.09 subd. 3(c) limits the amount that may be paid to one producer to three million dollars in a fiscal year. Before determining the portion of available funds to be paid to each claimant, the claim of any claimant who is claiming an amount that, if paid would allow the claimant to receive more than three million dollars in a fiscal year, will be reduced to the maximum claim that could be paid in the quarter without going over the three million dollar limit. This will ensure that all claimants will share in reductions caused by any proration. Furthermore, if the allowable claim was based on the total claim before this adjustment, additional prorations would have to be made if the allowable claim would result in a payment that would exceed the maximum allowable payment.

All claims must be filed by the due date. The statute is clear that each producer "shall file" by the due date and there are no statutory provisions that would allow the commissioner to extend those deadlines. Furthermore, late filed returns would make it difficult if not impossible for the commissioner to process all claims in a quarter and make any necessary prorations before the date the claims must be paid.

The statute provides that claims must be based on production of ethanol in the preceding three calendar months. The last two sentences of the subpart merely clarify that amounts that were not paid for any reason, including amounts not paid because of the proration announced in this subpart or because the claimant reached the maximum that can be paid to a claimant in a fiscal year, cannot be carried over into future years.

Subpart 2. Minnesota Statutes, section 296.02, subdivision 1a exempts from taxation gasoline purchased by a transit system receiving financial assistance from the Department of Transportation for providing public transportation as defined by Minn. Stat. §174.24 and §473.384.

Under this subpart, gasoline that qualifies for the exemption includes fuel necessary to operate vehicles while they are used for public transportation as well as other gasoline that is necessary to operate such a transit system. It does not include gasoline purchased by a transit system but used in a business that is not part of a transit system. Nor does it include fuel used for personal use or any other use not necessary for the operation of the transit system.

These are reasonable limitations necessary to carry out legislative intent which was to provide an exemption for fuel purchased with state subsidized funds. Taxing subsidized purchases would mean that the state was receiving, through taxation, money which it had granted as a subsidy. Taxing fuel which is not used for purposes necessary to carry out the obligation to provide public transportation will not result in the return of money granted as a subsidy because the cost of fuel used for such non-transit purposes is not included in the definition of "total operating cost"

of the transit system and therefore not eligible for subsidy. See Minnesota Statutes section 174.24 subdivision 3 and Minnesota Rules, part 8835.0110 subdivision 19 and part 8835.0220.

Subpart 3. The Federal Aviation Act provides that use of gasoline, other than aviation gasoline, in aircraft is subject to approval by the Federal Aviation Administration. See, 49 U.S.C. §1421(e). Such approval is given in the form of a supplemental type certificate. 14 C.F.R. 21.111-21.119. This subpart provides that refunds for gasoline used in aircraft, other than aviation gasoline, will be issued only to claimants who have received that approval. Under no circumstances will the Department encourage aircraft users to violate U.S.C. 1421(e), by paying refund claims paid based on taxes paid for fuel used in violation of that federal law.

RULE 8125.1400 ROAD TAX

Subpart 1. This subpart was deleted because it is inconsistent with current law. See Minn. Stat. §296.17, subdivision 7(b).

Subpart 2. This subpart was amended to eliminate unnecessary provisions and to conform it to current law.

Item A. This item was amended to bring it into conformity with current law. See Minn. Stat. §296.17. The road tax is to be paid by "motor carriers", which are defined as "a person who operates or causes to be operated a commercial motor vehicle on a highway in this state". Id:, §296.17, subdivision 8. The definition of "commercial motor vehicle" includes only those vehicles weighing in excess of 26,000 pounds. Minn. Stat. §296.17, subdivision 7. This item merely confirms that those vehicles weighing 26,000 pounds or less are exempted from the road tax.

Item C. This item was deleted because it duplicates language found in Minnesota Statutes, section 296.17, subdivision 9.

Item D. This item was deleted in part because it duplicates language found in Minnesota Statutes 296.17, subdivision 9. The remainder of the

item is outdated because it applies to "reciprocal agreements". Those agreements were in regard to licensing of motor vehicles whereby a allowed motor vehicles licensed in one state to be operated in another without obtaining a license from the other state. Minnesota is no longer a party to any reciprocal agreements, but rather is a member of one interstate fuel tax compact. See Minn. Stat. § 296.17, subdivision 9a.

Subpart 3. The first provision was deleted because it duplicates language found in Minnesota Statutes, section 296.17, subdivision 17(b).

Items A & B. These items were deleted as outdated and unnecessary. The fee has statutorily increased since these items were promulgated. The procedures outlined are not exclusive and are unnecessarily specific.

The last sentence was deleted because it duplicates language found in Minnesota Statutes, section 296.17, subdivision 17(a).

Subpart 4. The first two sentences were deleted because they duplicate language found in Minnesota Statutes, section 296.17, subdivision 11. One nonsubstantive gender change was made.

Subpart 5. The existing language was replaced by more procedurally specific language. The underlying authority is found in Minnesota Statutes, section 296.17, subdivision 11 which allows the commissioner to promulgate rules proscribing annual returns for motor carriers whose mileage is minimal within Minnesota and for motor carriers, whose mileage is all or substantially all within Minnesota. The maximum road tax liability amount for qualification under the rule, $l,000 annually, is intended to limit the application of the rule to motor carriers whose mileage is minimal within Minnesota. The second category of motor carriers, those whose mileage is all or substantially all within Minnesota, do not normally file road tax returns. Those carriers are most likely licensed in one of the states surrounding Minnesota, all of which belong to the interstate fuel tax compact of which Minnesota is a member. Minnesota Statutes, section 296.17, subdivision 9a governs those carriers.

The purpose of the subpart is to simplify the filing and payment requirements for those motor carriers who file quarterly road tax returns while, at the same time, reducing the state's administrative costs.

Motor carriers who qualify under the rule are not required to file returns and pay tax quarterly, as required by current law. Rather they are eligible to file one return and make one payment annually on January 31st in the year following the calendar year in which the liability accrued. This will significantly lessen the administrative burden on the motor carriers since they will be required to file just one return annually instead of four. It will also lessen the administrative costs of the Department of Revenue. There will be fewer forms to produce, mail, and process, and fewer demands to produce and mail to nonfilers. In addition, this will enable Department personnel to process other returns in a more timely manner, and reduces the number of physical and electronic records the Department must store.

The Department of Revenue will determine which motor carriers qualify to file an annual return and notify them of their eligibility. This is necessary to enable the Department to maintain a record of which motor carriers are in the group filing annual returns. To make the determination, the Department will need to examine all four quarterly returns, or the annual return of those motor carriers already on the annual filing system. This is the only practical way to verify that the motor carrier is liable for less than $1,000 of road tax. This is one reason that the subpart provides that motor carriers who have not filed all required returns or have not paid all road tax due are not eligible to elect to file an annual return. Another reason is that the Department is less likely to secure payment of tax and compliance with filing requirements if due dates are liberalized for a motor carrier currently delinquent in filing a return or in payment of tax.

The rule is not mandatory. Motor carriers may elect to file quarterly returns. Those who elect to do so are subject to all applicable payment and filing requirements. This is necessary to ensure that all motor carriers in the quarterly system are similarly treated. In addition, annual

filers may only make refund claims annually rather than quarterly. This is necessary because the allowance of quarterly refund claims by annual filers would undermine the purpose of the rule. The motor carrier would have to file an information return to substantiate the claim for refund. The motor carriers' administrative burden and the Department's administrative costs would increase because there would be five returns annually (four quarterly refund claims and the annual return) rather than four returns annually under the current system.

"Base year" is defined as the most recent four consecutive quarters for which the Department has compiled data on all motor carriers and provides that the first base year is the four-consecutive quarter period beginning October 1990 and ending September 1991. This definition is necessary to inform motor carriers of the time period the Department will use to determine the motor carriers' eligibility.

"Qualifying year" is defined as the year for which the Department notifies the motor carrier that it is eligible to file an annual return and provides that the first qualifying year is the 1992 calendar year. This definition is necessary to inform motor carriers of the year in which they will be eligible to file an annual return.

Subpart 6. Item D was amended to clarify that the report must list the number of gallons of retail fuel and the number of gallons of bulk fuel purchased in Minnesota. The reporting of both is necessary because the tax is paid at the time of purchasing retail fuel but not at the time of purchasing bulk fuel.

Subpart 8. This subpart was deleted because it duplicates language found in Minnesota Statutes 296.17, subdivision 14.

3. Part 7105.0090, subp. 5, item E. Diplomas. Diplomas would include an expiration date for accreditation that is four years after the date on which the student passed the examination.

The MPCA is also providing notice that it may solicit opinions concerning additional amendments to *Minnesota Rules* ch. 7105 at a later date. The amendment of MPCA rules is authorized by *Minnesota Statutes* § 116.07, subd. 4 (1990).

The MPCA requests information and opinions concerning the subject matter of these rules. Interested persons or groups may submit data or views in writing or orally. Written or oral statements or comments should be directed to:

Minnesota Pollution Control Agency
Hazardous Waste Division
Thomas P. Clark
520 Lafayette Road North
St. Paul, Minnesota 55155
Telephone: (612) 297-8617

Oral statements will be received from 8:00 a.m. to 4:00 p.m., Monday through Friday. All statements of information and opinion will be accepted until August 15, 1991. Any written materials received by the MPCA shall become part of the rulemaking record in the event that the rule is amended.

Dated: 8 July 1991

Charles W. Williams
Commissioner

Minnesota State Retirement System

Board of Directors, Regular Meeting

A regular meeting of the Board of Directors, Minnesota State Retirement System, will be held on Friday, July 19, 1991 at 8:30 a.m. in the office of the System, 529 Jackson Street, St. Paul, Minnesota.

Department of Revenue

Petroleum Division

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rules Governing Motor Fuels Taxation, Including the Amendment of *Minnesota Rules*, Parts 8125.0200 Through 8125.1400

NOTICE IS HEREBY GIVEN that the Minnesota Department of Revenue is seeking information or opinions from sources outside the agency in preparing to propose rules governing motor fuels taxation, including the amendment of *Minnesota Rules*, parts 8125.0200 through 8125.1400. The adoption of this rule is authorized by *Minnesota Statutes*, section 270.06 (13) which requires the commissioner of revenue to promulgate rules for the administration and enforcement of state tax laws, and section 296.27 which enables the commissioner of revenue to make rules relating specifically to the administration and enforcement of laws regulating the sale, distribution and use of petroleum products and special fuel, so long as the rules are reasonable and not inconsistent with the law.

The Minnesota Department of Revenue requests information and opinions concerning subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to:

Fran Gerten	10 River Park Plaza
Department of Revenue	Mail Station 3333
Petroleum Division	St. Paul, MN 55146-3333

Oral statements will be received during regular business hours over the telephone at (612) 297-3360 and in person at the above address.

All statements of information and opinions shall be accepted until July 30, 1991. Any written material received by the Minnesota Department of Revenue shall become part of the rulemaking record to be submitted to the Attorney General or Administrative Law Judge in the event that the rule is adopted.

Dated: 2 July 1991

Fran Gerten
Attorney

Department of Revenue

Proposed Permanent Rules Relating to Motor Fuels Taxation

Rules as Proposed

8125.0200 TERMINAL RECORDS AND REPORTS.

[For text of subps 1 and 2, see M.R.]

Subp. 3. **Manifests to be furnished.** A manifest or a bill of lading shall be issued for each withdrawal from a terminal in this state at the time of such withdrawal. Manifests or bills of lading shall show the following information: state tax number, date shipped, name of carrier, ~~transport permit (MDR) number,~~ origin (point of loading), name of supplier, name and address of distributor who will report and pay the tax ~~and/or fee~~ (consignee), destination, kind of product, and number of gallons. The state tax number may be the manifest or bill of lading number if designated as the state tax number. The required information contained in the manifest or bill of lading shall be filed with the commissioner either as a legible duplicate copy of each ~~such~~ manifest or bill of lading ~~shall be filed with~~, or in any other format approved by the commissioner. The commissioner will approve alternative formats provided they contain the required information and are presented in an organized and readable manner.

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

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number. The required information contained in the manifest or bill of lading shall be filed with the commissioner either as a legible duplicate copy of ~~such~~ each manifest or bill of lading ~~shall be sent to~~, or in any other format approved by the commissioner. The commissioner will approve alternative formats provided they contain the required information and are presented in an organized and readable manner.

8125.0300 TRANSPORT REQUIREMENTS.

[For text of subpart 1, see M.R.]

Subp. 2. [See repealer.]

Subp. 3. [See repealer.]

Subp. 4. [See repealer.]

Subp. 5. **Diversions to be reported.** Any supplier or transporter of petroleum products who diverts a shipment ~~destined to a state other than Minnesota to a Minnesota destination, or who diverts a shipment from one Minnesota destination or consignee to another Minnesota destination or consignee,~~ to any other destination than that which is listed on the manifest shall notify the commissioner within ~~48 hours~~ a reasonable time, setting forth the manifest number (state tax number), date, kind of product, number of gallons, the consignee to whom the shipment has been diverted, and the final destination.

Subp. 6. [See repealer.]

Subp. 7. **Manifest to be carried.** Operators of tank trucks or truck transports transporting petroleum products in this state on which the gasoline tax ~~and/or the inspection fees have~~ has not been assumed shall carry proof of ownership of such material (bill of lading, manifest, invoice, or other identification).

8125.0400 DISTRIBUTOR RECORDS.

[For text of subpart 1, see M.R.]

Subp. 2. **Sales invoices.** A sales invoice shall be made for each bulk sale of petroleum products at the time of the sale, regardless of gallonage. All sales invoices issued for

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

When issued for other than bulk sales and for the purpose of securing refunds or credits of the Minnesota gasoline tax, the invoices or receipts shall show the ~~name~~ names and ~~location~~ locations of the seller and purchaser, date of purchase, number of gallons, ~~and~~ total price, and type of equipment in which the fuel is to be consumed.

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

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

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

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

[For text of subp 3, see M.R.]

Subp. 4. **Records to be retained.** ~~With-the-exception-of sales-invoices-or-receipts-issued-for-other-than-bulk-sales-and for-the-purpose-of-securing-refunds-or-credits-of-the-Minnesota gasoline-tax,~~ Copies of all manifests, bills of lading, invoices, ~~and~~ delivery tickets, and tax returns required to be filed pursuant to Minnesota Statutes, chapter 296, as well as all other records relating to the purchase, transfer, sales, and use of petroleum products and special fuel, shall be retained for a period of four years.

8125.0410 DISTRIBUTOR'S LICENSES.

Subpart 1. **Exemption from depositing securities or filing a bond.** The commissioner will determine which distributor license applicants are financially responsible and, as a result, qualify for the statutory exemption from depositing securities or filing a bond, by taking into consideration all relevant factors. Those factors include the following:

A. whether the applicant's financial statement reflects that the applicant's current assets are at least equal to its current liabilities and that the applicant's net worth is at least three times its average quarterly motor fuel tax liability;

B. whether the applicant has failed to file or has been delinquent in filing any motor fuel tax returns;

C. whether the applicant has ever failed to pay its motor fuel tax liability, paid it late, or paid with a check that was later returned by the bank unpaid; and

D. any other evidence of the financial responsibility of the applicant.

Subp. 2. **Seizure.** The seizure authorized by Minnesota Statutes, section 296.165, will be performed by the commissioner of revenue or authorized designee in cases where there is an intent to evade the tax imposed by Minnesota Statutes, chapter

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296. Intent to evade the tax will be presumed if the manifest either does not list a shipper or lists a shipper not a licensed distributor under Minnesota Statutes, chapter 296, and the consignee is not listed or is not a licensed distributor under Minnesota Statutes, chapter 296.

8125.0500 DISTRIBUTOR AND DEALER CREDITS AND REFUNDS.

Subpart 1. **Distributor credits, how allowed.** The credits under Minnesota Statutes, section 296.14, subdivision 2, shall be allowed as follows:

[For text of items A to C, see M.R.]

D. under ~~clause~~ clauses (4) and (5), credit shall be taken only when supported by a credit memorandum issued by the commissioner. Such credit memorandum will reflect the adjustment for the allowance for evaporation and loss;

E. under clause (6), credit shall be taken after computing the allowance for evaporation and loss.

[For text of subp 2, see M.R.]

8125.0600 DEALER RECORDS.

[For text of subpart 1, see M.R.]

Subp. 2. **Sales invoices.** When issued for the purpose of securing refunds or credits of the Minnesota gasoline tax, sales invoices representing bulk sales shall be machine-numbered serially with numbers of at least three digits, and shall show the following: name and address of the dealer printed or rubber-stamped upon the invoice, date of sale, name and address of the purchaser, kind of product, price per gallon, number of gallons, and rate and amount of tax. They shall be prepared at least in duplicate~~,-the-original-to-be-marked-"Original-invoice"~~ and one copy shall be given to the purchaser. The words "bulk sale," as used in this part, shall mean any sale of a petroleum product dispensed ~~from-a-truck-transport-or-tankwagon~~ into a fixed or portable storage ~~facility~~ tank. ~~The-words-"original-invoice,"-as-used-in-this-part,-shall-mean-the-first-or-top-sheet-of-an-invoice,-bearing-the-original-inked-or-penciled-imprint,-whether-it-be-typewritten,-handwritten,-or-printed,~~

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

When issued for other than bulk sales and for the purpose of securing refunds or credits of the Minnesota gasoline tax, the invoices or receipts shall show the ~~name~~ names and ~~location~~ locations of the seller and purchaser, date of purchase, number of gallons, ~~and~~ total price, and type of equipment in which the fuel is to be consumed.

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

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

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

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

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

Subp. 3. [See repealer.]

8125.0700 SPECIAL FUEL REQUIREMENTS.

Subpart 1. [See repealer.]

Subp. 2. **Sales invoices.** Sales invoices issued for sales of special fuel made by a distributor or a special fuel dealer shall bear the name and address of the purchaser, date of sale, type of product, number of gallons, price per gallon, and total amount of sale. ~~The words "Special Fuel" shall be written or printed on each sales invoice at the time of sale or delivery.~~

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Sales invoices shall have the name and address of the distributor or special fuel dealer making the sale printed or rubber-stamped thereon and shall be machine-numbered serially with numbers of at least three digits and issued in sequence. A separate sales invoice book shall be maintained for special fuel sales, and one copy of each such sales invoice shall be retained in the special fuel sales invoice book, unless otherwise authorized by the commissioner. Sales invoices issued for fuel other than for use as special fuel shall show the kind of fuel, type of equipment in which the fuel is to be consumed, and the name and address of the purchaser.

Subp. 3. **Meter readings and inventories.** Distributors, special fuel dealers, and bulk purchasers shall at the end of each month take and record:

A. through ~~an~~ a mechanical accumulating meter in working order, meter readings ~~for~~ on each pump through which special fuel is dispensed; and

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

Subp. 4. **Users' records and reports.** All users of special fuel shall keep a true and accurate record of all purchases, sales, transfers, and use of special fuel and shall retain all such records for a period of four years. ~~Users of special fuel (except licensed distributors, special fuel dealers, and bulk purchasers required to file monthly reports) shall file an annual information report showing the number of gallons used, miles traveled, and such other information as the commissioner may prescribe, for each licensed motor vehicle. This report shall be filed on or before March 1 of each year for the preceding calendar year.~~

Subp. 5. [See repealer.]

Subp. 6. [See repealer.]

Subp. 7. **Records to be retained.** Copies of all manifests, bills of lading, invoices, sales and delivery tickets, tax returns required to be filed pursuant to Minnesota Statutes, chapter 296, as well as all other records relating to the

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purchase, transfer, sales, and use of special fuel, shall be retained for a period of four years.

[For text of subp 8, see M.R.]

Subp. 9. [See repealer.]

8125.1300 REFUNDS AND CREDITS ~~ON AVIATION GASOLINE AND SPECIAL FUEL TAX.~~

~~Claims for refund of the tax paid on aviation gasoline or on special fuel for aircraft must be filed on or before April 15 of the year following the year in which the fuel was purchased. Any such claim filed during the 15 day period from April 16 to April 30 may be honored less a penalty of 25 percent of the amount of the approved refund claim. The postmark on the envelope in which the claim is mailed determines the date of filing.~~

~~Each claim must be accompanied by the original invoice receipted for payment by the supplier. The words "original invoice," as used in this part, shall mean the first or top sheet of an invoice, bearing the original inked or pencilled imprint, whether it be typewritten, handwritten, or printed, issued by a seller to a purchaser covering the product or products sold. Whenever the original invoice is unavailable, the commissioner may approve the use of a copy thereof. In such cases, a lost or destroyed invoice affidavit executed by the claimant, together with a supporting statement by the supplier, must be filed.~~

Subpart 1. **Ethanol development fund.** When the total claims made by producers of ethanol or wet alcohol under Minnesota Statutes, section 41A.09, subdivision 3, in any quarter exceed the remaining money allowed to be paid from the fund for that fiscal year or biennium, the commissioner shall reduce all claims proportionately. Each claimant shall receive a portion of the available money based on the percentage that the claimant's allowable claims in the quarter bears to all allowable claims in the quarter. Allowable claims do not include any portion of a claim which, if paid, would allow the

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claimant total payments in excess of the maximum annual payments allowable to a claimant in a fiscal year.

Claims for payment may be made only for ethanol or wet alcohol produced during the three calendar months preceding the month the claim is required to be filed. No payments will be made for claims filed after the due date.

Once the total amount of money appropriated to the fund for a fiscal year or biennium has been paid, no further payments will be made in that fiscal year or biennium. Unpaid claims may not be carried forward to a future year.

Subp. 2. **Public transit systems.** The exemption from the gasoline excise tax for gasoline purchased by a transit system in Minnesota Statutes, section 296.02, subdivision 1a, applies only to gasoline purchased by a transit system which is actually used by the transit system for purposes necessary in carrying out its responsibility to provide public transportation as defined in Minnesota Statutes, sections 174.24 and 473.384. Gasoline that is used for purposes that are not necessary in carrying out the transit system's responsibility to provide public transportation is not exempt from taxation.

Subp. 3. **Gasoline used in aircraft.** Refunds for gasoline, other than aviation gasoline, purchased and used to produce or generate power for propelling aircraft shall be issued only to those claimants who have received approval to use such gasoline from the Federal Aviation Administration as evidenced by a supplemental type certificate.

8125.1400 ROAD TAX.

Subpart 1. [See repealer.]

Subp. 2. **Vehicles exempted from road tax.** The following vehicles are exempted from the road tax law:

A. all ~~straight~~ trucks having ~~only two axles~~ a gross weight of 26,000 pounds or less;

B. all motor vehicles having three or more axles on which is permanently mounted a corn sheller, feed grinder, back hoe, crane, well-drilling machine, or other similar equipment

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and the use of which on the public highways of this state is only for transporting the special equipment to and from the site of operation;

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

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

Subp. 3. [See repealer.]

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

Subp. 5. **Annual ~~affidavit-instead-of-quarterly~~ report** return. ~~The-commissioner-may-exempt-from-the-quarterly reporting-requirements-those-motor-carriers-all-or-substantially all-of-whose-mileage-is-within-the-state-of-Minnesota-and require-in-such-instances-an-annual-affidavit-attesting-to-the intrastate-or-substantially-intrastate-character-of-their~~

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~~operations-provided-that-the-enforcement-of-this-law-is-not adversely-affected-thereby-and-that-the-commissioner-is satisfied-that-an-equitable-amount-of-motor-fuel-is-purchased-in Minnesota-by-such-carriers.--The-affidavit-shall-be-on-a-form prescribed-and-furnished-by-the-commissioner.~~ If a motor carrier has a road tax liability of less than $1,000 in a base year, the motor carrier, for the qualifying year, may elect to file an annual return and make an annual payment of the tax due, and is thereafter relieved from filing quarterly returns and making quarterly payments under Minnesota Statutes, section 296.17, subdivision 11. The annual return and payment are due on or before the last day of January of the calendar year following the calendar year the road tax liability accrued. The Department of Revenue, applying the criteria of this subpart, will annually determine which motor carriers are eligible to file an annual return and notify those motor carriers who qualify. Motor carriers who have not filed all road tax returns and paid all road tax due for the base year are not eligible to file an annual return. Only those motor carriers so notified by the Department of Revenue are eligible to elect to file an annual return. At the time of notification, eligible motor carriers may still elect to file returns and make payments quarterly. Motor carriers who make an election are required to make all returns and payments required by Minnesota Statutes, section 296.17, in the calendar year for which the election was made, and are subject to all applicable penalties. Motor carriers who elect to file annually may file refund claims annually, but not quarterly.

"Base year" means the most recent period of four consecutive quarters for which the Department of Revenue has compiled data on all motor carriers road tax for that period. The first base year is the four-consecutive quarter period beginning October 1990 and ending September 1991.

"Qualifying year" means the calendar year for which the Department of Revenue notifies the motor carrier that it is eligible to file an annual return. The first qualifying year is

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the 1992 calendar year.

Subp. 6. **Records and invoices.** An accurate record must be kept by all motor carriers of the following:

A. the miles traveled within and without Minnesota;

B. the miles traveled in Minnesota;

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

D. the number of gallons of retail and bulk fuel purchased in Minnesota.

[For text of subp 7, see M.R.]

Subp. 8. [See repealer.]

[For text of subps 9 and 10, see M.R.]

REPEALER. Minnesota Rules, parts 8125.0300, subparts 2, 3, 4, and 6; 8125.0600, subpart 3; 8125.0700, subparts 1, 5, 6, and 9; 8125.0800; and 8125.1400, subparts 1, 3, and 8, are repealed.

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Motor Fuels Taxation

AGENCY: Department of Revenue

MINNESOTA RULES: Chapter 8125

The attached rules are approved for publication in the State Register

Janet M. Rahm
Assistant Deputy Revisor

STATE OF MINNESOTA
DEPARTMENT OF REVENUE
APPEALS AND LEGAL SERVICES DIVISION

IN THE MATTER OF THE PROPOSED ADOPTION OF PERMANENT RULES OF THE STATE OF MINNESOTA GOVERNING THE PROPOSED PERMANENT RULES RELATING TO MOTOR FUELS TAXATION

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING AND CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA }
}ss.
COUNTY OF RAMSEY }

Margaret A. Connolly, being sworn says:

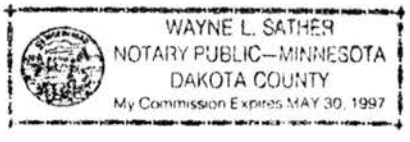
I hereby certify that the list of persons and associations who have requested, pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 or 14.30, that their names be placed on the state Department of Revenue rulemaking mailing list is accurate, complete, and current as of this 21st day of May, 1992.

That on the 21st day of May, 1992, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt A Rule Without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, with postage prepaid, to all two hundred fifty-six persons and associations on the aforementioned mailing list.

Margaret A. Connolly
MARGARET A. CONNOLLY
SECRETARY, SENIOR TYPIST 4

Subscribed and sworn to
before me this
21st day of May, 1992

Wayne L. Sather
WAYNE L. SATHER



DEPARTMENT OF REVENUE

In the Matter of the Proposed Adoption of Permanent Rules of the State of Minnesota Governing the Proposed Permanent Rules Relating to Motor Fuels Taxation

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

(1) **NOTICE IS HEREBY GIVEN** that the Minnesota Department of Revenue intends to adopt the above entitled rules without a public hearing following the procedures set forth in the Administrative Procedures Act for adopting rules without a public hearing in *Minnesota Statutes* section 14.22 to 14.28. The statutory authority to adopt the rules is *Minnesota Statutes* section 270.06, subdivision 13.

(2) All persons have 30 days, through June 25, 1992, in which to submit comments in support of or in opposition to any of the proposed rules or any part or subpart of any of the proposed rules. Comments are encouraged. (3) Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. (4) If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. (5) Any person requesting a public hearing should state his or her name and address, and is encourage to identify the portion of the proposed rule addressed, the reason for the request and any change proposed. (7) If a public hearing is required, the agency will proceed pursuant to *Minnesota Statutes* section 14.131 to 14.20.

(5) Comments or written request for a public hearing must be submitted to:

Mark D. Pederson, Attorney
Appeals, Legal Services and Criminal Investigation Division
10 River Park Plaza
Mail Station 2220
St. Paul, MN 55146-2220
(612) 296-1902 Extension 126

(8) The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

(11) A copy of the proposed rule is attached to this notice. A free copy of the rule is also available upon request from:

Mark D. Pederson, Attorney
Appeals, Legal Services and Criminal Investigation Division
10 River Park Plaza
Mail Station 2220
St. Paul, MN 55146-2220
(612) 296-1902 Extension 126

(12) **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 Mark D. Pederson upon request.

(13) Promulgation of the proposed rules will not result in the expenditure of public moneys by local public bodies, fix or adjust any fees, or have an impact on agricultural land. The affect, if any, that the proposed rule may have on small businesses is further discussed in the Statement of Need and Reasonableness.

(14) The proposed amended rules will have a positive qualitative impact on small businesses by repealing several reporting requirements. One rule streamlines and clarifies procedures for the annual filing of road tax returns, which is an optional method of filing available only to taxpayers with annual road tax liability under

$500. This method allows qualified taxpayers to file only one yearly return and make only one yearly payment rather than the four returns and four payments required of taxpayers with larger liability. The quantitative impact will be minimal, since the proposed rules and proposed amended rules will not result in an economic impact on small businesses.

(9) If no hearing is required, upon adoption of the rule, the proposed rules and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 adopted rule, must submit the written request to:

Mark D. Pederson, Attorney
Appeals, Legal Services and Criminal Investigation Division
10 River Park Plaza
Mail Station 2220
St. Paul, MN 55146-2220
(612) 296-1902 Extension 126

Dated: May 26, 1992

Dorothy A. McClung
Commissioner of Revenue
State of Minnesota

Department of Revenue

Proposed Permanent Rules Relating to Motor Fuels Taxation

Rules as Proposed

8125.0200 TERMINAL RECORDS AND REPORTS.

[For text of subps 1 and 2, see M.R.]

Subp. 3. **Manifests to be furnished.** A manifest or a bill of lading shall be issued for each withdrawal from a terminal in this state at the time of such withdrawal. Manifests or bills of lading shall show the following information: state tax number, date shipped, name of carrier, ~~transport permit (MBR) number,~~ origin (point of loading), name of supplier, name and address of distributor who will report and pay the tax ~~and/or fee~~ (consignee), destination, kind of product, and number of gallons. The state tax number may be the manifest or bill of lading number if designated as the state tax number. The required information contained in the manifest or bill of lading shall be filed with the commissioner either as a legible duplicate copy of each ~~such~~ manifest or bill of lading ~~shall be filed with~~, or in any other format approved by the commissioner. The commissioner will approve alternative formats provided they contain the required information and are presented in an organized and readable manner.

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

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number. The required information contained in the manifest or bill of lading shall be filed with the commissioner either as a legible duplicate copy of ~~such~~ each manifest or bill of lading ~~shall be sent to~~, or in any other format approved by the commissioner. The commissioner will approve alternative formats provided they contain the required information and are presented in an organized and readable manner.

8125.0300 TRANSPORT REQUIREMENTS.

[For text of subpart 1, see M.R.]

Subp. 2. [See repealer.]

Subp. 3. [See repealer.]

Subp. 4. [See repealer.]

Subp. 5. **Diversions to be reported.** Any supplier or transporter of petroleum products who diverts a shipment ~~destined to a state other than Minnesota to a Minnesota destination, or who diverts a shipment from one Minnesota destination or consignee to another Minnesota destination or consignee,~~ to any other destination than that which is listed on the manifest shall notify the commissioner within ~~48 hours~~ a reasonable time, setting forth the manifest number (state tax number), date, kind of product, number of gallons, the consignee to whom the shipment has been diverted, and the final destination.

Subp. 6. [See repealer.]

Subp. 7. **Manifest to be carried.** Operators of tank trucks or truck transports transporting petroleum products in this state on which the gasoline tax ~~and/or the inspection fees have~~ has not been assumed shall carry proof of ownership of such material (bill of lading, manifest, invoice, or other identification).

8125.0400 DISTRIBUTOR RECORDS.

[For text of subpart 1, see M.R.]

Subp. 2. **Sales invoices.** A sales invoice shall be made for each bulk sale of petroleum products at the time of the sale, regardless of gallonage. All sales invoices issued for

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

When issued for other than bulk sales and for the purpose of securing refunds or credits of the Minnesota gasoline tax, the invoices or receipts shall show the ~~name~~ names and ~~location~~ locations of the seller and purchaser, date of purchase, number of gallons, ~~and~~ total price, and type of equipment in which the fuel is to be consumed.

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

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

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

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

[For text of subp 3, see M.R.]

Subp. 4. Records to be retained. ~~With-the-exception-of sales-invoices-or-receipts-issued-for-other-than-bulk-sales-and for-the-purpose-of-securing-refunds-or-credits-of-the-Minnesota gasoline-tax,~~ Copies of all manifests, bills of lading, invoices, ~~and~~ delivery tickets, and tax returns required to be filed pursuant to Minnesota Statutes, chapter 296, as well as all other records relating to the purchase, transfer, sales, and use of petroleum products and special fuel, shall be retained for a period of four years.

8125.0410 DISTRIBUTOR'S LICENSES.

Subpart 1. Exemption from depositing securities or filing a bond. The commissioner will determine which distributor license applicants are financially responsible and, as a result, qualify for the statutory exemption from depositing securities or filing a bond, by taking into consideration all relevant factors. Those factors include the following:

A. whether the applicant's financial statement reflects that the applicant's current assets are at least equal to its current liabilities and that the applicant's net worth is at least three times its average quarterly motor fuel tax liability;

B. whether the applicant has failed to file or has been delinquent in filing any motor fuel tax returns;

C. whether the applicant has ever failed to pay its motor fuel tax liability, paid it late, or paid with a check that was later returned by the bank unpaid; and

D. any other evidence of the financial responsibility of the applicant.

Subp. 2. Seizure. The seizure authorized by Minnesota Statutes, section 296.165, will be performed by the commissioner of revenue or authorized designee in cases where there is an intent to evade the tax imposed by Minnesota Statutes, chapter

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296. Intent to evade the tax will be presumed if the manifest either does not list a shipper or lists a shipper not a licensed distributor under Minnesota Statutes, chapter 296, and the consignee is not listed or is not a licensed distributor under Minnesota Statutes, chapter 296.

8125.0500 DISTRIBUTOR AND DEALER CREDITS AND REFUNDS.

Subpart 1. **Distributor credits, how allowed.** The credits under Minnesota Statutes, section 296.14, subdivision 2, shall be allowed as follows:

[For text of items A to C, see M.R.]

D. under ~~clause~~ clauses (4) and (5), credit shall be taken only when supported by a credit memorandum issued by the commissioner. Such credit memorandum will reflect the adjustment for the allowance for evaporation and loss;

E. under clause (6), credit shall be taken after computing the allowance for evaporation and loss.

[For text of subp 2, see M.R.]

8125.0600 DEALER RECORDS.

[For text of subpart 1, see M.R.]

Subp. 2. **Sales invoices.** When issued for the purpose of securing refunds or credits of the Minnesota gasoline tax, sales invoices representing bulk sales shall be machine-numbered serially with numbers of at least three digits, and shall show the following: name and address of the dealer printed or rubber-stamped upon the invoice, date of sale, name and address of the purchaser, kind of product, price per gallon, number of gallons, and rate and amount of tax. They shall be prepared at least in duplicate~~, the original to be marked "Original Invoice"~~ and one copy shall be given to the purchaser. The words "bulk sale," as used in this part, shall mean any sale of a petroleum product dispensed ~~from a truck transport or tankwagon~~ into a fixed or portable storage ~~facility~~ tank. ~~The words "original invoice," as used in this part, shall mean the first or top sheet of an invoice, bearing the original inked or pencilled imprint, whether it be typewritten, handwritten, or printed,~~

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

When issued for other than bulk sales and for the purpose of securing refunds or credits of the Minnesota gasoline tax, the invoices or receipts shall show the ~~name~~ names and ~~location~~ locations of the seller and purchaser, date of purchase, number of gallons, ~~and~~ total price, and type of equipment in which the fuel is to be consumed.

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

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

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

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

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

Subp. 3. [See repealer.]

8125.0700 SPECIAL FUEL REQUIREMENTS.

Subpart 1. [See repealer.]

Subp. 2. **Sales invoices.** Sales invoices issued for sales of special fuel made by a distributor or a special fuel dealer shall bear the name and address of the purchaser, date of sale, type of product, number of gallons, price per gallon, and total amount of sale. ~~The words "Special Fuel" shall be written or printed on each sales invoice at the time of sale or delivery.~~

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Sales invoices shall have the name and address of the distributor or special fuel dealer making the sale printed or rubber-stamped thereon and shall be machine-numbered serially with numbers of at least three digits and issued in sequence. A separate sales invoice book shall be maintained for special fuel sales, and one copy of each such sales invoice shall be retained in the special fuel sales invoice book, unless otherwise authorized by the commissioner. Sales invoices issued for fuel other than for use as special fuel shall show the kind of fuel, type of equipment in which the fuel is to be consumed, and the name and address of the purchaser.

Subp. 3. **Meter readings and inventories.** Distributors, special fuel dealers, and bulk purchasers shall at the end of each month take and record:

A. through ~~an~~ a mechanical accumulating meter in working order, meter readings ~~for~~ on each pump through which special fuel is dispensed; and

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

Subp. 4. **Users' records and reports.** All users of special fuel shall keep a true and accurate record of all purchases, sales, transfers, and use of special fuel and shall retain all such records for a period of four years. ~~Users of special fuel (except licensed distributors, special fuel dealers, and bulk purchasers required to file monthly reports) shall file an annual information report showing the number of gallons used, miles traveled, and such other information as the commissioner may prescribe, for each licensed motor vehicle. This report shall be filed on or before March 1 of each year for the preceding calendar year.~~

Subp. 5. [See repealer.]

Subp. 6. [See repealer.]

Subp. 7. **Records to be retained.** Copies of all manifests, bills of lading, invoices, sales and delivery tickets, tax returns required to be filed pursuant to Minnesota Statutes, chapter 296, as well as all other records relating to the

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purchase, transfer, sales, and use of special fuel, shall be retained for a period of four years.

[For text of subp 8, see M.R.]

Subp. 9. [See repealer.]

8125.1300 REFUNDS AND CREDITS ~~ON AVIATION GASOLINE AND SPECIAL FUEL TAX~~.

~~Claims for refund of the tax paid on aviation gasoline or on special fuel for aircraft must be filed on or before April 15 of the year following the year in which the fuel was purchased. Any such claim filed during the 15 day period from April 16 to April 30 may be honored less a penalty of 25 percent of the amount of the approved refund claim. The postmark on the envelope in which the claim is mailed determines the date of filing.~~

~~Each claim must be accompanied by the original invoice receipted for payment by the supplier. The words "original invoice," as used in this part, shall mean the first or top sheet of an invoice, bearing the original inked or pencilled imprint, whether it be typewritten, handwritten, or printed, issued by a seller to a purchaser covering the product or products sold. Whenever the original invoice is unavailable, the commissioner may approve the use of a copy thereof. In such cases, a lost or destroyed invoice affidavit executed by the claimant, together with a supporting statement by the supplier, must be filed.~~

Subpart 1. Ethanol development fund. When the total claims made by producers of ethanol or wet alcohol under Minnesota Statutes, section 41A.09, subdivision 3, in any quarter exceed the remaining money allowed to be paid from the fund for that fiscal year or biennium, the commissioner shall reduce all claims proportionately. Each claimant shall receive a portion of the available money based on the percentage that the claimant's allowable claims in the quarter bears to all allowable claims in the quarter. Allowable claims do not include any portion of a claim which, if paid, would allow the

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claimant total payments in excess of the maximum annual payments allowable to a claimant in a fiscal year.

Claims for payment may be made only for ethanol or wet alcohol produced during the three calendar months preceding the month the claim is required to be filed. No payments will be made for claims filed after the due date.

Once the total amount of money appropriated to the fund for a fiscal year or biennium has been paid, no further payments will be made in that fiscal year or biennium. Unpaid claims may not be carried forward to a future year.

Subp. 2. **Public transit systems.** The exemption from the gasoline excise tax for gasoline purchased by a transit system in Minnesota Statutes, section 296.02, subdivision 1a, applies only to gasoline purchased by a transit system which is actually used by the transit system for purposes necessary in carrying out its responsibility to provide public transportation as defined in Minnesota Statutes, sections 174.24 and 473.384. Gasoline that is used for purposes that are not necessary in carrying out the transit system's responsibility to provide public transportation is not exempt from taxation.

Subp. 3. **Gasoline used in aircraft.** Refunds for gasoline, other than aviation gasoline, purchased and used to produce or generate power for propelling aircraft shall be issued only to those claimants who have received approval to use such gasoline from the Federal Aviation Administration as evidenced by a supplemental type certificate.

8125.1400 ROAD TAX.

Subpart 1. [See repealer.]

Subp. 2. **Vehicles exempted from road tax.** The following vehicles are exempted from the road tax law:

A. all ~~straight~~ trucks having ~~only two axles~~ a gross weight of 26,000 pounds or less;

B. all motor vehicles having three or more axles on which is permanently mounted a corn sheller, feed grinder, back hoe, crane, well-drilling machine, or other similar equipment

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and the use of which on the public highways of this state is only for transporting the special equipment to and from the site of operation;

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

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

Subp. 3. [See repealer.]

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

Subp. 5. Annual ~~affidavit-instead-of-quarterly~~ report <u>return</u>. ~~The-commissioner-may-exempt-from-the-quarterly reporting-requirements-those-motor-carriers-all-or-substantially all-of-whose-mileage-is-within-the-state-of-Minnesota-and require-in-such-instances-an-annual-affidavit-attesting-to-the intrastate-or-substantially-intrastate-character-of-their~~

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~~operations-provided-that-the-enforcement-of-this-law-is-not adversely-affected-thereby-and-that-the-commissioner-is satisfied-that-an-equitable-amount-of-motor-fuel-is-purchased-in Minnesota-by-such-carriers.--The-affidavit-shall-be-on-a-form prescribed-and-furnished-by-the-commissioner.~~ If a motor carrier has a road tax liability of less than $1,000 in a base year, the motor carrier, for the qualifying year, may elect to file an annual return and make an annual payment of the tax due, and is thereafter relieved from filing quarterly returns and making quarterly payments under Minnesota Statutes, section 296.17, subdivision 11. The annual return and payment are due on or before the last day of January of the calendar year following the calendar year the road tax liability accrued. The Department of Revenue, applying the criteria of this subpart, will annually determine which motor carriers are eligible to file an annual return and notify those motor carriers who qualify. Motor carriers who have not filed all road tax returns and paid all road tax due for the base year are not eligible to file an annual return. Only those motor carriers so notified by the Department of Revenue are eligible to elect to file an annual return. At the time of notification, eligible motor carriers may still elect to file returns and make payments quarterly. Motor carriers who make an election are required to make all returns and payments required by Minnesota Statutes, section 296.17, in the calendar year for which the election was made, and are subject to all applicable penalties. Motor carriers who elect to file annually may file refund claims annually, but not quarterly.

"Base year" means the most recent period of four consecutive quarters for which the Department of Revenue has compiled data on all motor carriers road tax for that period. The first base year is the four-consecutive quarter period beginning October 1990 and ending September 1991.

"Qualifying year" means the calendar year for which the Department of Revenue notifies the motor carrier that it is eligible to file an annual return. The first qualifying year is

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the 1992 calendar year.

Subp. 6. **Records and invoices.** An accurate record must be kept by all motor carriers of the following:

A. the miles traveled within and without Minnesota;

B. the miles traveled in Minnesota;

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

D. the number of gallons of retail and bulk fuel purchased in Minnesota.

[For text of subp 7, see M.R.]

Subp. 8. [See repealer.]

[For text of subps 9 and 10, see M.R.]

REPEALER. Minnesota Rules, parts 8125.0300, subparts 2, 3, 4, and 6; 8125.0600, subpart 3; 8125.0700, subparts 1, 5, 6, and 9; 8125.0800; and 8125.1400, subparts 1, 3, and 8, are repealed.

Approved by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Motor Fuels Taxation

AGENCY: Department of Revenue

MINNESOTA RULES: Chapter 8125

The attached rules are approved for publication in the State Register

Janet M. Rahm
Assistant Deputy Revisor

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

In the Matter of the Proposed Adoption of New and Amended Rules of the Minnesota Department of Revenue Relating to Motor Fuels Taxation	**FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING**

(1) Notice of the Commissioner of Revenue's intent to adopt the above-entitled rule was published in the State Register on May 26, 1992, and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, §§14.14 subdivision 1a and 14.22 on May 21, 1992. (2) The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking list and published in the State Register and was available to the public.

(4) All persons were given the opportunity to submit comment on the rules for 30 days after notice of proposed rulemaking. (5) No requests for a public hearing on the rules were received by the agency.

(7) No submissions or comments on the rules were received by the agency. No requests for notice of submission of the rules to the attorney general were received by the agency.

(8) Based on the evidence in the record before the agency, I find the following:

The above captioned rules are needed and reasonable.

(9) Now therefore, it is ordered that the rules identified as Minnesota Rules parts 8125.0200 to 8125.0800, and parts 8125.1300 to 8125.1400 are adopted this 1 day of July, 1992, pursuant to authority vested in me by Minnesota Statutes, §§ 41A.09, subdivision 4, 270.06(13), 296.17, subdivision 11, and 296.27.

Dorothy A. McClung

Dorothy A. McClung

Commissioner of Revenue
State of Minnesota

MINNESOTA Department of Revenue

Appeals, Legal Services, and

Criminal Investigation Division

Mail Station 2220
St. Paul, MN 55146-2220
Phone (612) 296-1022
Fax (612) 296-8229

July 2, 1992

Julie Jackson
Attorney General Office

Mark D. Pederson
Attorney, Appeals and Legal Services

Dear Ms. Jackson,

Enclosed are four copies of the adopted permanent rules relating to motor fuels taxation as adopted. Please add these to the motor fuels taxation file which was directed to Christie Eller and delivered to your office on July 1, 1992.

Thank you very much.

Sincerely,

Mark D. Pederson

An equal opportunity employer

MINNESOTA Department of Revenue

Appeals, Legal Services, and

Criminal Investigation Division

Mail Station 2220
St. Paul, MN 55146-2220
Phone (612) 296-1022
Fax (612) 296-8229

July 1, 1992

Christie Eller
Assistant Attorney General
Public Finance Division
525 Park Street suite 500
St. Paul, Minnesota 55103

Dear Ms. Eller:
Enclosed are the following documents in the matter of the proposed rules of the Department of Revenue regarding motor fuels taxation.

1. a photocopy of the notice of solicitation of outside opinion as published in the State Register;

2. a copy of the proposed rule with certificate of approval as to form by the revisor of statutes;

3. the notice of intent to adopt a rule without a public hearing as mailed;

4. the statement of need and reasonableness;

5. the affidavit of mailing the notice of intent;

6. a copy of the notice of intent as published in the State Register;

7. four copies of the rules as adopted, approved as to form by the revisor of statutes;

8. the Findings of Fact, Conclusions, and Order adopting the rules; and

9. the Declaration of Counsel.

The Department of Revenue received no written submissions or comments on the rules, which is being adopted exactly as originally published in the State Register. The Department of Revenue received no requests for notice of submission to the Attorney General.

These documents are submitted for your review and approval pursuant to Minnesota Statutes, chapter 14.

Sincerely,

Mark D. Pederson
Attorney, Legal Services
An equal opportunity employer

In the Matter of the Adoption
of New and Amended Rules of
the Minnesota Department of Revenue
Relating to Motor Fuels Taxation
(Minnesota Rules Parts 8125.0200
to 8125.0800, and Parts 8125.1300
to 8125.1400).

DECLARATION OF COUNSEL

I, Barry R. Greller, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule, and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is 0748.

Dated: July 1, 1992.

Barry R. Greller

BARRY R. GRELLER
Special Assistant
Attorney General

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