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STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF REVENUE

In the Matter of the Proposed
Permanent Rules of the Department
of Revenue Relating to Sales and Use
Tax on Utilities and Fuels;
Minnesota Rules, part 8130.1100.

REPORT OF THE
ADMINISTRATIVE LAW JUDGE

The above-entitled matter came on for hearing before Administrative Law Judge Howard L. Kaibel, Jr. on March 8, 1993, at 9:00 a.m. in the Skjegstad Seminar Room of the Minnesota Department of Revenue Building in St. Paul, Minnesota.

This Report is part of a rulemaking proceeding held pursuant to Minn. Stat. §§ 14.131 to 14.20 (1990) to hear public comment, determine whether the Minnesota Department of Revenue ("the Department") has fulfilled all relevant substantive and procedural requirements of law or rule applicable to the adoption of the rules, determine whether the proposed rules are needed and reasonable, and determine whether or not modifications to the rules proposed by the Board after initial publication are substantially different from those originally proposed.

The Department's hearing panel consisted of Joan Tujetsch and Gregory Heck, Staff Attorneys with the Department of Revenue. Twelve persons attended the hearing. Seven persons signed the hearing register. Procedural exhibits from the Department and one public exhibit were received as evidence during the hearing. The hearing continued until all interested persons, groups or associations had an opportunity to be heard.

The record remained open for the submission of written comments until March 15, 1993, five working days following the date of the hearing. Pursuant to Minn. Stat. § 14.15, subd. 1 (1990), another five working days were allowed for the filing of responsive comments. At the close of business on March 22, 1993, the rulemaking record closed for all purposes. Four post-hearing written comments were received from interested persons. The Department representatives submitted written comments responding to matters discussed at the hearing and comments filed during the comment period. In those comments, the staff expressed willingness to add clarifying language to the rule, but proposed no further amendments.

This Report must be available for review to all affected individuals upon request for at least five working days before the agency takes any further action on the rule(s). The agency may then adopt a final rule or modify or withdraw its proposed rule. If the agency staff makes changes in the rule other than those recommended in this report, they must submit the

rule with the complete hearing record to the Chief Administrative Law Judge for a review of the changes prior to final adoption. Upon adoption of a final rule, the agency must submit it to the Revisor of Statutes for a review of the form of the rule. The agency must also give notice to all persons who requested to be informed when the rule is adopted and filed with the Secretary of State.

Based upon all the testimony, exhibits, and written comments, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Procedural Requirements

1. On January 21, 1993, the Department filed the following documents with the Chief Administrative Law Judge:

(a) a copy of the proposed rules as certified by the Revisor of Statutes;

(b) the Order for Hearing;

(c) the Notice of Hearing;

(d) the Statement of Need and Reasonableness (SONAR); and

(e) an estimate of the number of persons who were expected to attend the hearing and an estimate of the length of the Department's presentation.

2. On September 23, 1992, the Department mailed the Notice of Intent to Adopt a Rule Without a Public Hearing to all persons and associations who had registered their names with the Department for the purpose of receiving such notice.

3. On January 20, 1993, the Department mailed the Notice of Hearing to all persons and associations who had submitted a written request for a public hearing.

4. On September 14, 1992, the proposed rules and the Notice of Hearing were published in 17 State Register 564.

5. On February 1, 1993, the Notice of Hearing was published in 17 State Register 1865. That Notice referenced the previous publication of the proposed rule at 17 State Register 564.

6. On February 4, 1993, the Department filed the following documents with the Administrative Law Judge:

(a) the Notice of Hearing as mailed;

(b) a copy of the State Register pages containing the Notice of Hearing and the proposed rules;

(c) an affidavit stating that the Notice of Hearing was mailed on January 20, 1993, to all persons who submitted a written request for a public hearing in response to the Department's Notice of Intent to Adopt a Rule Without a Public Hearing;

(d) a copy of the Notice of Solicitation of Outside Information or Opinions published in 16 State Register 2570, on May 26, 1992, together with the materials received by the Department in response to the solicitations; and

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

7. All documents were available for inspection and copying at the Office of Administrative Hearings from the date of filing to March 22, 1993, the date the rulemaking record closed.

Nature of the Proposed Rules

8. Minn. Rule 8130.1100 was adopted in 1978 to implement the taxation of utilities. Under Minn. Stat. § 297A.01, subd. 3(f), the furnishing for consideration of electricity, gas, water, steam, and telephone service constitute sales and purchases. Sales are taxed by Minn. Stat. § 297A.02. Use of tangible personal property or services are subject to a use tax in the same amount as the sales tax (if no sales tax was paid) by Minn. Stat. § 297A.14. Minn. Stat. § 297A.25, subd. 23, exempts certain residential heating fuels from taxation. The Department is altering Minn. Rule 8130.1100 to reflect changes in the taxable status of residential heating fuels.

The proposed rules modify the location of references to telephone services, conform provisions with statutory changes, and establish definitions. In addition, the application of the sales tax statute to certain transfers is clarified.

Statutory Authority

9. In its Notice of Hearing and SONAR, the Department cites Minn. Stat. § 270.06 as statutory authority for issuance of the proposed rules. Subdivision 13 provides that the Commissioner of Revenue shall:

> 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.

The Department has adequately documented statutory authority to promulgate these rules.

Small Business Considerations in Rulemaking

10. Minn. Stat. § 14.115, subd. 2, requires that state agencies proposing rules which may affect small businesses must consider methods for reducing adverse impact on those businesses. In its Notice of Hearing and

SONAR, the Department indicated that the impact of the proposed rules on small businesses had been considered. It does not expect that any additional burden on small businesses will be imposed by these rules. No commentator maintained that any exemption for small businesses was appropriate. To exempt small businesses from any part of the proposed rules would be contrary to the intent of the sales and use tax statutes. The Department has met the requirements of Minn. Stat. § 14.115, subd. 2.

Fiscal Note

11. Minn. Stat. § 14.11, subd. 1, requires agencies proposing rules that will require the expenditure of public funds in excess of $100,000 per year by local public bodies to publish an estimate of the total cost to local public bodies for the two years immediately following adoption of the rule. In its Notice of Hearing, the Department stated that the proposed rules would not require any expenditure of public money by local units of government At the hearing, Steve Downer of the Minnesota Municipal Utilities Association (MMUA) objected to this conclusion. MMUA argues that the Department must comply with the fiscal note requirement, contending that the administrative costs will be imposed by the rules in excess of $100,000 per year for all affected municipal utilities.

In its post-hearing comment, the Department contended that the proposed rules will not require expenditures in excess of the $100,000 limit. The only specific evidence in the record concerning administrative costs imposed is a statement from Jim Daly, Manager of Rochester Public Utilities Information Systems. Daly estimated that 800 hours of programming time would be required for:

> changes to data storage tables, billing calculation and adjustment controls, processing programs, on-line displays, reports, audit totals and links to the accounting system. In addition, all routines would have to be tested to ensure that they are working properly, the data would have to be converted to new data table formats and employees would have to be trained to understand how to work with the system changes.

Rochester Public Utilities estimated the staff cost at $20.00 per hour. Assuming that the total hour estimate is correct, Rochester will be required to spend $16,000 to bring its computer into compliance with the new tax structure. If that amount were typical, seven municipal utilities would be enough to exceed the $100,000 per year threshold.

Although impacted cities were asked to submit estimates at the hearing, there has been no suggestion that any other municipality uses a computer system so complicated that 800 hours of reprogramming time would be needed to change items from nontaxable to taxable treatment throughout the utility's accounting system. Rochester Public Utilities did not specify whether all of the 800 hours was required solely by the rule change, or whether any portion of the 800 hours would be coextensive with reprogramming that would have to be performed on any computer system with at least annual changes.

The Department argues that the changes merely conform its rules to applicable statutes. The modifications to the rules, including those that would require a change from nontaxable to taxable treatment of some items, are required by Minn. Stat. chap. 297A. At the hearing, the Department expressed surprise at the estimate of reprogramming costs given by Rochester Public Utilities. The Department pointed out in its post-hearing comment that the rule language is required by statute, not a change in Department policy, and that most utilities are already charging sales tax on the items challenged by MMUA and Rochester Public Utilities.

The Department also argued alternatively that, since municipal utility companies perform a proprietary and not a governmental function, Minn. Stat. § 14.11 does not apply. The Department cites Fabbrizi v. Village of Hibbing, 66 N.W.2d 7 (Minn. 1954); De Vries v. City of Austin, 110 N.W.2d 529, (Minn. 1961); and 13B Dunnell Minn. Digest 2d Municipal Tort Liability § 1.01 (3d ed. 1981) in support of this proposition. The Department maintains that "while a municipality is operating in a proprietary capacity they (sic) should be treated as if they (sic) were a private corporation." Department Response, at 2.

All the authority cited by the Department stands for, is the proposition that a municipality acting in a proprietary function is responsible for its own torts. Minn. Stat. § 14.11 requires state agencies adopting rules to perform a fiscal analysis when those rules will impose significant costs on local governments. Whether the rule affects a proprietary or governmental function is irrelevant to the analysis required by the Legislature.

The record does not demonstrate the rules will cause municipalities to incur costs of more than $100,000 during either the first or second year following adoption of the rules. The Department is not required to prepare a fiscal note.

Impact on Agricultural Land

12. Minn. Stat. § 14.11, subd. 2 (1990), requires that agencies proposing rules that have a "direct and substantial adverse impact on agricultural land in the state" comply with the requirements set forth in Minn. Stat. §§ 17.80 to 17.84 (1990). Under those statutory provisions, adverse impact is deemed to include acquisition of farmland for a nonagricultural purpose, granting a permit for the nonagricultural use of farmland, the lease of state-owned land for nonagricultural purposes, or granting or loaning state funds for uses incompatible with agriculture. Minn. Stat. § 17.81, subd. 2 (1990). Because the proposed rules will not have a direct and substantial adverse impact on agricultural land, Minn. Stat. § 14.11, subd. 2 (1990), does not apply.

Outside Information Solicited

13. In formulating these proposed rules, the Department published a notice soliciting outside information and opinions in the State Register in May, 1992. East Grand Forks Water & Light Department; Roy Trullinger, Jr., City Clerk and Treasurer of the City of St. James; Willmar Municipal Utilities; and Janesville Municipal Utilities submitted responses to that notice.

Substantive Provisions

14. The Department must establish the need for and reasonableness of the proposed rules by an affirmative presentation of facts. The Department prepared a Statement of Need and Reasonableness (SONAR) in support of the adoption of the proposed rules and supplemented its SONAR at the hearing.

The question of whether a rule is reasonable focuses on whether it has a rational basis. The Minnesota Court of Appeals has held a rule to be reasonable if it is rationally related to the end sought to be achieved by the statute. Broen Memorial Home v. Minnesota Department of Human Services, 364 N.W.2d 436, 440 (Minn.App. 1985); Blocker Outdoor Advertising Company v. Minnesota Department of Transportation, 347 N.W.2d 88, 91 (Minn.App. 1984). The Supreme Court of Minnesota has further defined the burden by requiring that the agency "explain on what evidence it is relying and how the evidence connects rationally with the agency's choice of action to be taken." Manufactured Housing Institute v. Pettersen, 347 N.W.2d 238, 244 (Minn. 1984).

This Report is generally limited to the discussion of the portions of the proposed rules that received significant critical comment. Because most sections of the proposed rules were not opposed and were adequately supported by the SONAR, a detailed discussion of each section of the proposed rules is unnecessary. The need for and reasonableness of the provisions that are not discussed in this Report have been demonstrated by an affirmative presentation of facts, and such provisions are specifically authorized by statute. Three changes were proposed by the Department from the rules as published in the State Register. The Report will assess whether these changes, as well as those suggested by commentators or suggested by the Administrative Law Judge are substantial changes.

Other than the fiscal notice issue considered above, only two issues occupied the majority of the commentators' attention. The first is whether a corporation owned by a municipality must collect tax on utility service provided to the municipality. The second is whether reconnection charges are properly considered taxable services, or whether they constitute a penalty for nonpayment which is nontaxable.

Minnesota Rule 8130.1100 - Utilities and Residential Heating Fuels

Subpart 1 - Applicable Law

15. Subpart 1 of part 8130.1100 is altered by removing the references to telephone services. In addition, the reference to water as a taxable sale of utilities is modified by adding the statutory exemption for residential water use. Further, Minn. Stat. § 297A.25, subdivision 23 is referenced for an exemption for residential heating fuels from sales and use tax. Three items are added to cover the specific situations presented by sales of fuel oil, coal, wood, steam, hot water, propane gas, natural gas, and electricity. Except for natural gas and electricity, the listed fuels are exempt under item A if sold to a residential customer for residential use. Under item B, natural gas sold for residential use to a residential customer, metered, billed as residential users, and used as the primary source of heat for the heating season is exempt. Item C sets the same standards for exempting sales of electricity. The new language is needed and reasonable to carry out the

statutory mandate that utilities and fuels used as the primary source of heat be exempt from sales and use tax.

Subpart 2 - Definitions

16. The existing language of subpart 2 is devoted to exempting coin operated telephone service. The proposed rules replace that language with definitions for the remainder of part 8130.1100. None of the definitions received critical comment during the rulemaking proceeding. The Department altered item A to clarify the effect of one sentence. The sentence reads:

> Each qualifying customer must receive six months of service exempt from taxation.

Originally, that sentence was located under the definition of "billing month." The Department explained that, at that location, the reader would not have enough information for the sentence to make sense. The Department moved the sentence to subpart 3(B), where the effect of "billing months" on the exempt status of residential heating fuels is explained. The Department has shown that its definitions are needed and reasonable to clarify terms used in the rules. Modifying the rule to locate the six-months exempt requirement in subpart 3(B) clarifies the rule and does not constitute a substantial change.

Subpart 3 - Exceptions

17. The utilities and fuels exempt from sales or use tax are identified in items A, B and C of subpart 3. Item A exempts certain fuels used in making items intended for retail sale. The item also cites Minn. Rule part 8130.5500 and Minn. Stat. § 297A.25, subd. 9. The sales and use tax exemptions contained in item A are based on the statutory provision cited. Item A is needed and reasonable, as proposed.

Item B has been modified as identified in the foregoing Finding. This item exempts primary heating fuels for the billing months of the heating season. When the exempt fuel is natural gas or electricity, any other gas or electricity purchased through the same meter is also exempt. This provision removes the problem inherent in trying to separate heating from other uses when only one meter measures the gas or electricity. Six months has been set aside as the heating season. Item B is needed and reasonable, as modified.

The six month limitation is not used in item C. Fuel oil, coal, wood, steam, hot water, propane gas, and LP gas sold to residential customers are exempt year-round under item C. This different treatment reflects the limited uses of the energy sources in item C as opposed to natural gas and electricity. Item C is needed and reasonable, as proposed.

The title of subpart 3 is "Exceptions." The Administrative Law Judge notes that the term used throughout the subpart is "exempt." While using "exceptions" to mean "exemptions" is not so confusing as to constitute a defect, the Judge suggests that "Exemptions" be used as the title for subpart 3, to remain consistent. That modification, should the Department choose to make it, does not constitute a substantial change.

Subpart 4 - Charges Included in Sales Price.

18. Under subpart 4, all charges associated with the delivery of utility services are included in the price. To the extent the utilities are taxable, the additional charges are also taxable. A list of charges is included as examples of what must be included in the price. Item B, fee for safe drinking water testing program (sometimes called a connection fee), was deleted at the suggestion of a number of commentators requesting a hearing. The language in item B was added as an exception to what is included in the price of utilities. Several commentators withdrew their request for hearing on learning that the Department would make this change. Those commentators had indicated that the connection fee had nothing to do with providing utility service and would amount to a tax on a tax. The change to subpart 4 is needed, reasonable, and does not constitute a substantial change.

Moorhead Public Service Department; John R. Gilman, Superintendent of Utilities for the City of New Ulm; MMUA; and Rochester Public Utilities objected to the inclusion of "reconnection fee" in the sales price of the utility. They maintain that a "reconnection fee" is not a fee for service, but merely a penalty for the customer's nonpayment of a bill. In its post-hearing comment, the Department stated:

> First, if the reconnection fee is solely a penalty for nonpayment, is not a condition for receiving service, and does not require the use of labor or materials, the department would agree that the fee would not be required to be included in the sales price and therefore would not be subject to tax. We would be willing to add clarifying language to that effect.
>
> If, however, the reconnection fee is for the act of hooking-up the utility service after disconnection due to nonpayment, the request of the customer, or for any other reason, it would clearly be part of and integral to providing or furnishing utility service and would be included in the sales price under Minn. Stat. section 297A.01, subd. 8 and City of Bloomington vs. Commissioner of Revenue, Docket No. 2837 (April 14, 1980).

The Department did not, however, suggest exactly what language would be added to the proposed rule. MMUA supported the Department's willingness to modify the subpart.

The utility providers have complete control of what they entitle charges on a customer's bill or what terms are contained in a service contract. If a utility chooses to call a fee imposed on nonpaying customers a penalty, it is free to do so. Of course, the amount of that fee will have to be approved by the Public Utilities Commission. So long as the utility providers are listing the charge as a reconnection fee, however, the providers are implying that this fee is for a service rendered. Such a fee must be included in the sale price and its tax treatment calculated accordingly.

Regarding any change to clarify the rule, the Department has identified three characteristics: penalty for nonpayment, not a condition for receiving service, and not requiring the use of labor or materials. It is hard to

imagine a charge which is "not a condition for receiving service." Adding that characteristic would confuse the rule and is not needed or reasonable. Including the reconnection fee in the sale price is consistent with the statutory treatment of that service. Item G is needed and reasonable, as proposed. It would not be a substantial change to add a specific clarification exempting reconnection penalties that do not involve labor or materials.

19. Moorhead Public Service Department argued that "service connection charges" should not be included in the sale price. The rationale for including that charge is the same for including reconnection fees. There is no basis on which to claim such a charge is a penalty for nonpayment. Item H is needed and reasonable, as proposed.

Subpart 5 - Credits Determined Before and After the Sale

20. Subpart 5 distinguishes between credits determined before the sale, which are not included in the sales price, and credits determined after the sale, which are included in the amount subject to sales tax. Examples of each situation are set out in items A-C. No comments or objections were raised toward this subpart. The Department has demonstrated that subpart 5 is needed and reasonable, as proposed.

Subpart 6 - Commercial and Residential Use

21. Subpart 6 distinguishes between commercial use and residential use in particular locations combining residential and commercial space. Two items set out basic principles of deciding whether a location is more residential or more commercial. The third item sets out examples of a residence used as a commercial property. No objections were raised to the language included in subpart 6. However, Willmar Municipal Utilities and MMUA objected to the utility provider being required to "police" whether the location is a residence or commercial site. In response to this concern, the Department added the following item D:

> Where a building houses both residential quarters and commercial operations, a utility's good faith reliance upon their customer's claiming of the residential heating fuel exemption will relieve the utility from liability for the tax if it is later determined that the exemption was erroneously claimed. Although the utility is under no duty to ascertain beyond all reasonable doubt that less than 50 percent of the building is used for commercial operations, the provision that the utility act in good faith requires the utility to exercise reasonable care and judgment before allowing the exemption.

The proposed item D was not objected to by any other commentator, but it could be improved by substituting the following language:

> Where a building houses both residential quarters and commercial operations, a utility's good faith reliance upon

its customer's claiming of the residential heating fuel exemption will relieve the utility from liability for the tax if it is later determined that the exemption was improperly claimed. The utility must exercise reasonable care and judgment before allowing the customer to use the exemption for the utility to be relieved of liability under this item.

The suggested language corrects a grammar problem and deletes unnecessary language. "Improperly" is substituted for "erroneously" to ensure that fraudulent claims as well as mistaken claims are included. The Department's language is not defective and the modified language is merely a suggestion. Using either version, item D is needed and reasonable. Neither version constitutes a substantial change.

Subpart 7 - Residential Heating Fuel

22. Particular types of residential heating fuel are identified in subpart 7 and assumed to be for residential heating. See Finding 17, above. However, these fuels are considered taxable if not delivered to a residence or if they are picked up by the customer. Where the customer picks up the fuel, the sale is nontaxable if the customer indicates in writing that the fuel is for residential heating. Specific treatment of firewood, artificial logs, fuel for fish houses, and monthly payments for residential customers on billing plans are detailed in items B-E. No objections were raised to subpart 7, and that subpart has been shown to be needed and reasonable.

Subpart 8 - Sales of Utility Services by Local Governments to Themselves

23. Minn. Stat. § 297A.25, subd. 11 provides exemptions from sales tax for sales to various governmental entities. That subdivision was amended by 1992 Laws of Minnesota Chap. 511, Art. 8, Sec. 15, to delete the exemption for "political subdivisions of the state." Thus, the purchase of utility services by municipalities is now a taxable transaction. However, some of these municipalities are also involved in the provision of utility service. This involvement raises a question as to whether a taxable transaction has occurred between a municipal utility provider and the municipality.

The Department addressed this issue in subpart 8, which treats a sale as taxable when the sale is from a utility operated by a local unit of government as a separate corporation. Where the utility is not separately incorporated, the transfer is merely a book transfer and not a taxable sale. At the hearing the Department amplified that a separate corporation would have filed incorporation documents with the Minnesota Secretary of State's office or otherwise taken some formal action to become a separate entity.

The City of New Ulm Public Utilities Commission objected to the subpart as a "provision to apply sales tax to utility sales from one city department to another." If this commentator has correctly stated the relationship of the utility providers to the City of New Ulm, all unincorporated departments, there would be no sales tax imposed on those transfers. However, if any of these "departments" are incorporated, a new entity separate from the City of New Ulm would have been created and a transfer between these two entities would no longer be exempt from sales tax by state law.

MMUA argued that incorporation should not be the test to determine the tax status of the transfer. MMUA stated:

> A bill for electricity from a municipal utility to a city should not be taxable, however. That is because the people paying the bill and resulting tax are the same people that are not taxed if the utility is governed by the city council - that is to say the citizens of the city.

MMUA also pointed out that public utility commissions are marked by separate accounts in the city treasury under Minn. Stat. § 412.371.

MMUA's argument does not reach the underlying basis of the Department's action, that is the removal of the sales tax exemption for local public bodies. The Department has no option but to consider whether a transfer has taken place. If the purchasing or producing entity has a legal existence apart from the municipality it is separate. The same is true between any two entities. To adopt MMUA's suggestion would require the Department to examine the ownership of a corporation and determine whether the municipality owns the corporation to conclude whether the sale is subject to sales tax. This is not the present practice of the Department and it is not consistent with the general principles of underlying the sales tax. Any local public body which does not wish to incur a sales tax liability must ensure that its utility operations are not being conducted by a separate corporation. The Department has shown that subpart 8 is needed and reasonable, as proposed.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Minnesota Department of Revenue gave proper notice of this rulemaking hearing.

2. The Department has fulfilled the procedural requirements of Minn. Stat. § 14.14, subds. 1, 1a, and 2, and all other procedural requirements of law or rule so as to allow it to adopt the proposed rules.

3. The Department has demonstrated its statutory authority to adopt the proposed rules, and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 14.05, subd. 1, 14.15, subd. 3, and 14.50(i) and (ii) (1990).

4. The Department has demonstrated the need for and reasonableness of the proposed rules by an affirmative presentation of facts in the record within the meaning of Minn. Stat. §§ 14.14, subd. 2, and 14.50(iii) (1990).

5. The additions and amendments to the proposed rules which were suggested by the Department after publication of the proposed rules in the State Register do not result in rules which are substantially different from the proposed rules as published in the State Register within the meaning of Minn. Stat. § 14.15, subd. 3 (1990), and Minn. Rules pts. 1400.1000, subp. 1 and 1400.1100 (1991).

6. Any Findings which might properly be termed conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such.

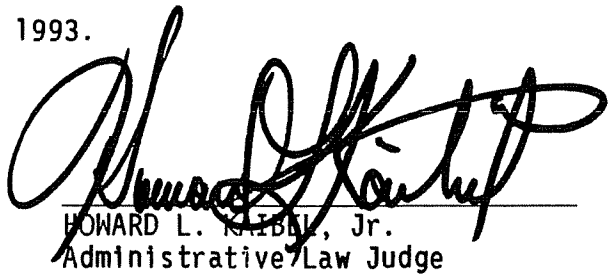
7. A Finding or Conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the Department from further modification of the proposed rules based upon an examination of the public comments, provided that no substantial change is made from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

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the proposed rules be adopted in accordance with the Findings and Conclusions in this Report.

Dated this 21st day of April, 1993.



HOWARD L. KAIBEL, Jr.
Administrative Law Judge

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