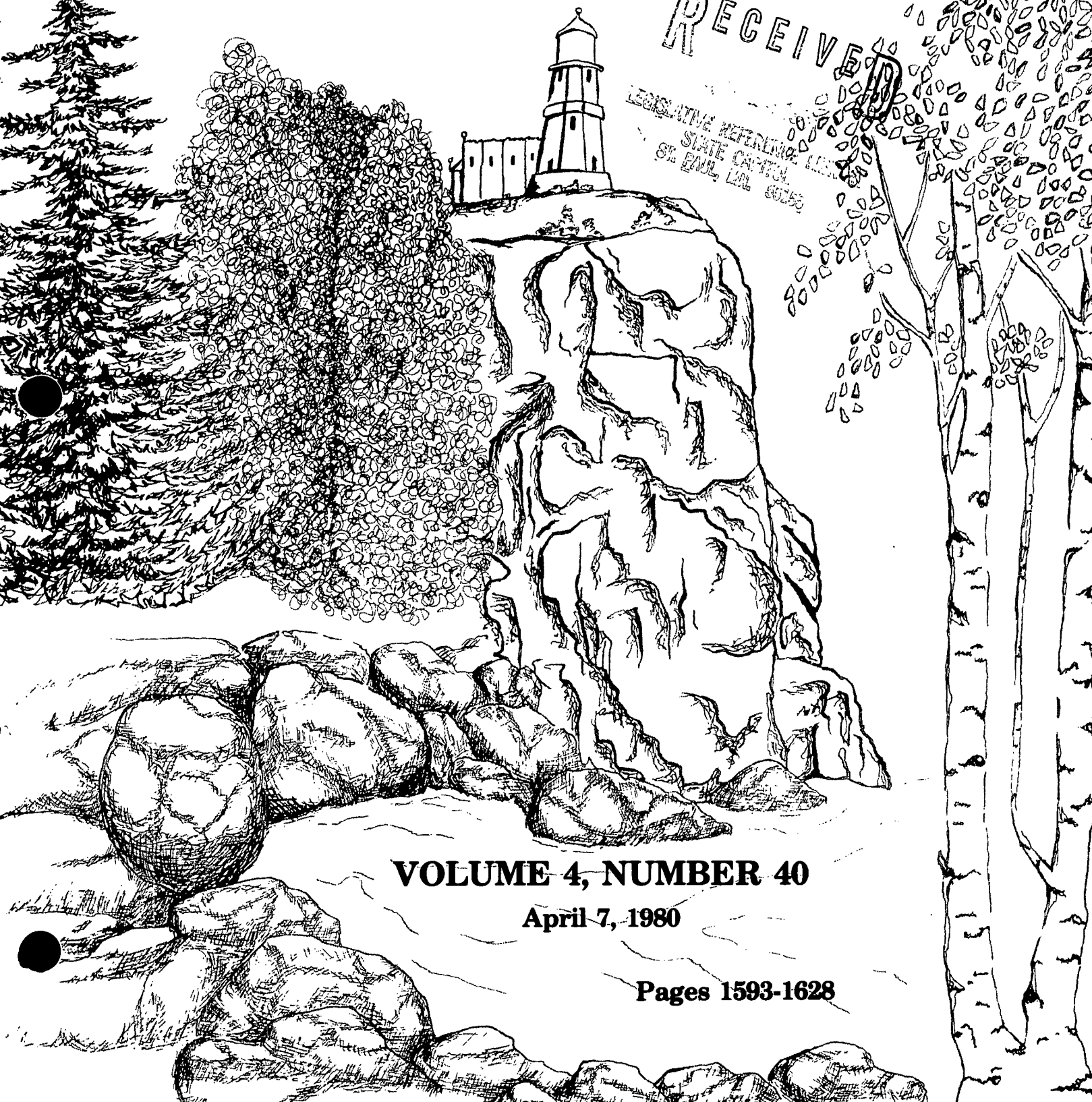
'80 April 7

STATE REGISTER

STATE OF MINNESOTA



VOLUME 4, NUMBER 40

April 7, 1980

Pages 1593-1628

STATE REGISTER

Volume 4 Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
	SCHEDULE FOR VOLUME 4		
41	Monday Mar 31	Monday Apr 7	Monday Apr 14
42	Monday Apr 7	Monday Apr 14	Monday Apr 21
43	Monday Apr 14	Monday Apr 21	Monday Apr 28
44	Monday Apr 21	Monday Apr 28	Monday May 5

*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 are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

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

The *State Register* is published by the State of Minnesota, Office of the State Register, Suite 415, Hamm Building, 408 St. Peter Street, St. Paul, Minnesota 55102, pursuant to Minn. Stat. § 15.0411. Publication is weekly, on Mondays, with an index issue in August. In accordance with expressed legislative intent that the *State Register* be self-supporting, the subscription rate has been established at $118 per year, postpaid to points in the United States. Second class postage paid at St. Paul, Minnesota, Publication Number 326630. (ISSN 0146-7751) No refunds will be made in the event of subscription cancellation. Single issues may be obtained at $2.25 per copy.

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

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

Cover graphic: *Split Rock Lighthouse*, pen and ink drawing by Barbara J. Peterson.

CONTENTS

NOTICE

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

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

The PROPOSED RULES section contains:

- Proposed new rules (including Notice of Hearing).
- Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
- Proposed temporary rules.

The ADOPTED RULES section contains:

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

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

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

Issues 1-13, inclusive
Issues 14-25, inclusive
Issue 26, cumulative for 1-26
Issue 27-38, inclusive
Issue 39, cumulative for 1-39
Issues 40-51, inclusive
Issue 52, cumulative for 1-52

The listings are arranged in the same order as the table of contents of the MCAR.

MCAR AMENDMENTS AND ADDITIONS

THE CRISPUS ATTUCKS HOME was the only institution for Afro-American orphans and old people in Minnesota during the early decades of the 1900s. This picture of the home, which was located in St. Paul, was taken in 1910. (Courtesy of the Minnesota Historical Society)

PROPOSED RULES

Pursuant to Minn. Stat. § 15.0412, subd. 4, agencies must hold public hearings on proposed new rules and/or proposed amendment of existing rules. Notice of intent to hold a hearing must be published in the *State Register* at least 30 days prior to the date set for the hearing, along with the full text of the proposed new rule or amendment. The agency shall make at least one free copy of a proposed rule available to any person requesting it.

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

Energy Agency

Proposed Rule Establishing Materials, Installation, and Labeling Standards for Thermal Insulation Products (6 MCAR §§ 2.2201-2.2210)

Notice of Reopening of Hearing

Notice is hereby given that the public hearing in the above-entitled matter will be reopened at the Commissioner's Meeting Room, 801 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota on May 9, 1980, commencing at 9:00 a.m. and continuing until all persons have had an opportunity to be heard.

A properly noticed hearing in the above-entitled matter was held on June 21-22, 1979. All interested persons had an opportunity to present oral and written comments regarding the proposed rules. Allan W. Klein, the hearing examiner for the original hearing, issued his Report of the Hearing Examiner on August 13, 1979. The agency has not yet adopted the above-referenced rules.

In response to a petition to reopen the hearing by the Owens-Corning Fiberglass Corporation, the Minnesota Energy Agency is reopening the hearing in the above-referenced matter for the limited purpose of taking additional testimony on the following proposed rules: 1) 6 MCAR § 2.2204 E.3.a. regarding the appropriate method for testing the settled density of mineral fiber loose-fill thermal insulation and 2) 6 MCAR § 2.2204 B.7.b. regarding thickness testing for regulated thermal insulation materials.

If adopted the proposed rule, which is the subject of the reopening of the hearing, would establish testing procedures for determining the settled density of blown or poured mineral fiber insulation and the minimum insulation thickness or "representative thickness" required for testing the thermal resistance of regulated thermal insulation materials. With regard to representative thickness testing, the regulated thermal insulation materials include: mineral fibrous, mineral cellular, organic fibrous, and organic and plastic cellular materials, whether in loose-fill, flexible, rigid, or semi-rigid form.

Public Hearings on Agency Rules April 14-19, 1980

Date	Agency and Rule Matter	Time & Place
Apr 15	Public Service Dept. Gas & Electric Utilities' Access to Customer Premises. Hearing Examiner: Harry Seymour Crump	9:30 a.m., Large Hearing Room, 7th Floor, American Center Bldg., 160 E. Kellogg Blvd., St. Paul, MN
Apr 16	Nursing Board Nursing Education Programs. Hearing Examiner: George A. Beck	9:00 a.m., Room 105, Dept. of Health Bldg., 717 Delaware St. S.E., Minneapolis, MN
Apr 17	Transportation Dept. State-Aid Operations under Minn. Stat. chs. 161-162. Hearing Examiner: George Deretich	10:00 a.m., Room 81, State Office Bldg., 435 Park St. (between Aurora & Fuller), St. Paul, MN
Apr 19	Board of Teaching Licensure of Teachers of Special Learning Disabilities—Learning Disabled, Special Learning Disabilities—Emotionally Disturbed, Crippled Children (physically handicapped). Hearing Examiner: Harry Seymour Crump	9:00 a.m., Capitol Square Bldg., Conference Room, 716 A & B, 550 Cedar St., St. Paul, MN 55101

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written material may be submitted by mail to Hearing Examiner Howard L. Kaibel Jr., Room 300, 1745 University Avenue, St. Paul, Minnesota, 55104 telephone (612) 296-8107 either before the hearing or within five working days after the close of the hearing unless the hearing examiner orders a longer period not to exceed 20 calendar days.

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. **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."

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

The full text of the proposed rule was duly published in Volume 3, Number 40 of the *State Register* on April 9, 1979 on pages 1855-1872. One free copy of the proposed rule applicable to this reconvened hearing may be obtained by writing the Minnesota Energy Agency, Attention Marsha K. Battles, 980 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101. Copies will also be available at the door on the date of the hearing.

The agency's authority to promulgate the proposed rule is contained in Minn. Stat. §§ 116H.08(a), 325.984-.989 (1978), especially § 325.985, subd. 1.

Some of the standards that would be imposed by rules are federal, and other standards are incorporated by specific reference. The materials to be incorporated by reference are available for viewing at the Minnesota Energy Agency library. The agency library can respond to inquiries about other places for convenient viewing and copying of the referenced materials, or for acquiring them.

Notice: The proposed rule is subject to change as a result of the rules hearing process. The agency therefore strongly urges those who may be affected in any manner by the substance of the proposed rule applicable to this reopened hearing to participate in the rules hearing process.

Notice is hereby given that the statement of need and reasonableness which the agency presented at the original hearing is available for review at the agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness includes a summary of all of the evidence which the agency presented at the original hearing justifying both the need for and reasonableness of the proposed rule. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

The petition of Owens-Corning Fiberglass Corporation to reopen the hearing in the above captioned proceeding is available for view at the Minnesota Energy Agency Library.

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

March 24, 1980

James H. Main, Acting Director
Energy Agency

Rules as Proposed (all new material)

6 MCAR § 2.2204 Insulation materials standards.

A. Scope. This rule sets forth standards for the product quality and safety of thermal insulation materials specified herein, as well as minimum procedures for testing insulation materials under these standards. Regulated thermal insulation materials which do not demonstrate by tests conformance to these standards shall not be sold, used, distributed or installed in the State of Minnesota.

B. General testing and reporting requirements for regulated thermal insulation materials.

1. All regulated thermal insulation materials shall be tested for compliance to the standards set forth in this rule within 120 days of the effective date of these rules. Testing procedures shall be as follows:

a. Testing shall be performed only at laboratories possessing equipment, facilities, and personnel specified to perform testing required by these rules.

b. The thermal insulation material chosen for testing shall be representative of material produced by the manufacturer during normal production runs.

(1) Manufacturers shall certify in writing to the Energy Agency that the material is representative of the normal production of the plant.

(2) Manufacturers shall submit material to the testing laboratory for testing in its original bag, package, or container, or have sampling of the insulation performed in the production facility by the testing laboratory.

c. Testing shall be performed in accordance with the methods specified under materials standards in 6 MCAR §§ 2.2204 B.7. and 6 MCAR § 2.2204 C.-L., unless otherwise specified by 6 MCAR § 2.2204 B.6.

2. Reporting of test results. Test result reports shall disclose the following information:

a. The name and address of the testing laboratory.

b. The name and address of the manufacturer.

c. The nature of the business relationship between the manufacturer and the testing laboratory; i.e., contractual for the purpose of testing, subsidiary, or in-house.

d. The name, address, and telephone number of a designated contact person at the testing laboratory.

e. The specific test(s) performed by the laboratory.

f. The date of testing.

g. The results of the tests.

3. Availability of test reports. Test reports shall be made available to:

a. The Energy Agency. Upon the request of the director, the manufacturer or his agent shall provide all available information pertaining to the testing program to the Energy Agency. Such information shall include, but shall not be limited to, test procedures and protocols, test equipment specifications and calibrations, the qualifications of test laboratory personnel exclusive of personal identifiers, and full test data.

b. Upon the written request of intermediate and ultimate consumers of insulation, the manufacturer shall make available a summary of the test methods and the results of the tests required by this rule for the materials produced by the manufacturer.

4. Conjunctive compliance testing. Manufacturers of thermal insulation products shall have the option of testing for compliance with this rule as part of a testing program established by the manufacturer 1) to comply with insulation materials standards established by another federal, state, or local governing body, or 2) to verify and substantiate the manufacturer's compliance with these specifications provided that:

a. Test results transmitted to the Energy Agency are not more than 180 days old, unless otherwise specified by rule.

b. The manufacturer certifies to the Energy Agency in writing that the insulation material tested is representative of the insulation material produced on the date that the test results are transmitted to Energy Agency.

c. The test procedure, or the performance level of the material, does not differ in any substantive way from that specified in the appropriate section of this rule.

d. The requirements of 6 MCAR § 2.2204 B.2. are satisfied.

e. The test results demonstrate that the insulation material complies with the standards established by this rule.

5. Substantiation of claims by test. Proof of the claims "does not burn," "non-combustible," or "incombustible" may be obtained by successful completion of ASTM E 136-73, "Tests for non-combustibility of elementary materials." Laminations or other facings affixed to the insulation material shall be removed and separately tested. If the insulation material does not pass the test, or if the lamination does not pass the test, no such claims shall be made.

6. Department of Energy insulation standard notice. If a regulated thermal insulation material complies with a specification for that material established by the United States Department of Energy ("US DOE"), it shall be deemed to comply with the standards established by the Energy Agency, provided that:

a. The US DOE specification is in final form and has been adopted by the Secretary of the US DOE as a rule pursuant to Title II, Section 212 (b) (2) (A) of the National Energy Conservation Policy Act of 1978.

b. The specification of the US DOE applies to all the characteristics of the insulation material regulated by the appropriate Energy Agency Standard. If a characteristic of the product is not covered by a portion of the US DOE specification, then no exception for that characteristic shall be granted from this rule.

c. The quality or safety level of the US DOE specification governing the product is at least as rigorous as provided by the Energy Agency standard.

d. Compliance to the US DOE standard be verified by the test procedures incorporated into that specification.

e. The qualifications of the testing laboratory used by the manufacturer to test for compliance are equivalent to those required by Energy Agency rules.

f. The manufacturer submits documentation of compliance with the US DOE rule specification in the same or substantially similar fashion as is required by 6 MCAR § 2.2204 B.2.

7. Testing for thermal performance. All thermal performance tests required by a materials standard shall be conducted in accordance with this rule, unless additional requirements are imposed within the body of a materials standard.

a. The following ASTM test methods shall be used: ASTM C 177-76, ASTM C 236-66 (Rpd. 1971), and ASTM C 518-76. Manufacturers shall select the appropriate test method for the material unless a specific method or procedure is referenced within a materials specification.

b. Thicknesses. R value testing shall be performed at representative thicknesses of use, which shall be not less than:

(1) Loose-fill materials, 3.5 inches

(2) Batt and blanket fibrous materials, 3.5 inches.

(3) Cellular plastic board materials, 1 inch.

(4) Urea-based foam materials, 3.5 inches.

c. One inch unit values. Unit R values per inch shall be derived from R value testing performed as specified in 6 MCAR § 2.2204 B.7.b. (1)-(4)., and shall reflect the effect of additional thicknesses upon unit R values.

d. Conditioning and testing temperatures. Unless otherwise provided within a materials standard, all thermal

performance testing shall be performed on samples which have been conditioned at 73.4° F ± 3.6° F and a relative humidity of 50% ± 5% for 24 hours immediately preceding the tests. The average testing temperature shall be 75° F ± 2° F with at least a 40° F temperature difference between the hot side and the cold side of the testing apparatus.

e. Except as otherwise provided within a materials standard, the thermal performance test results shall be the average of the values obtained from at least three tests.

f. Tolerances. Thermal performance as measured by test shall not be more than 5% below the stated or claimed thermal performance of the insulation material.

C. Materials standard—organic cellulose thermal insulation, for pneumatic or poured application.

1. Incorporated standards. Specified portions of the following standards are incorporated by reference.

a. The interim Safety Standard for Cellulose Insulation of the US CPSC, 43 Federal Register pp. 35240-35258, August 8, 1978.

b. Proposed Amendment, Proposed Interim Safety Standard for Cellulose Insulation of the US CPSC, 44 Federal Register pp. 12889-12903, March 8, 1979.

c. ASTM C 739-77, Standard Specification for Cellulosic Fiber (wood base) Loose Fill Thermal Insulation.

d. ASTM D 591-67 (Rev. 1974) Test for starch in paper.

e. FS HH-I-515D.

2. Materials. The insulation material shall be clean chemically treated cellulosic fiber, virgin or recycled, suitable for pneumatic or poured application. Foreign or contaminated materials shall be excluded. Chemicals shall be introduced to improve flame and combustion resistance, and may be introduced to improve handling characteristics. The basic material shall be capable of proper adhesion to the additive chemicals. The particles of the finished product shall not be so fine as to create a dust hazard, and the added chemicals shall not pose a health hazard.

3. Physical requirements.

a. Flame resistance, flame resistance permanency, and corrosion properties of the cellulose insulation material shall be determined in accordance with the US CPSC Interim Safety Standard for Cellulose Insulation, 43 Federal Register pp. 35240 to 35258 (August 8, 1978). Values achieved shall not exceed those established by the US CPSC.

b. Settled density. Settled density shall be determined in accordance with section 1209.4, Proposed Amendment, Interim Safety Standard for Cellulose Insulation, 44 Federal Register pp. 12889-12905 March 8, 1979.

c. Thermal performance. R value shall be determined in accordance with rule 6 MCAR § 2.2204 B.7. at the settled density of the material as determined above.

d. Moisture absorption. The percent moisture absorption of the material shall be no more than 15% by weight when tested in accordance with section 10.5 of ASTM C 739-77.

e. Odor. A detectable odor of an objectionable nature shall be cause for failure to comply with this standard. The material shall be tested in accordance with ASTM C 739-77, section 10.6. The odor must be observed by two of the three panel members.

f. Starch. Starch presence shall be tested for, using the qualitative test method of ASTM D 591-67. If starch is found to be present, the manufacturer shall chemically treat the material for vermin resistance.

g. Fungi resistance. The insulation material shall be tested for fungi resistance as specified in method 508 of Military Standard 810 referenced in section 4.6.6, FS HH-I-5150, except that spore suspensions shall be prepared using distilled water.

The outside surface of gypsum wallboard untreated for fungi resistance shall be used for the control material. The insulation material shall show no more growth than the control material following exposure.

4. Notice of preemption. 6 MCAR § 2.2204 C.1.a. and 3.a. and b. shall be preempted by a final standard for cellulose insulation material adopted by the US CPSC. In the event of preemption, manufacturers of cellulose insulation materials whose products are used or installed in Minnesota shall submit documentation to demonstrate compliance to the final US CPSC standard.

D. Materials standard—spray on cellulose, water or adhesive mix.

1. Incorporated standards. Specified portion of the following standards are incorporated by reference.

a. The Interim Safety Standard for Cellulose Insulation of the US CPSC, 43 Federal Register pp. 35240-35258, August 8, 1978.

b. United States Department of Housing and Urban Development ("HUD") "Use of Materials Bulletin No. 80" (proposed), September 26, 1978.

c. ASTM D 591-67 (Rev. 1974) Test for starch in paper.

2. Materials. The basic material shall consist of virgin or recycled cellulose fiber, excluding contaminated materials and extraneous foreign matter. Suitable chemicals shall be introduced to improve flame resistance, cohesion, adhesion, and handling characteristics. The added chemicals shall not pose a health hazard. The basic material shall be processed into a form suitable for installation by pneumatic conveying equipment and simultaneous mixing with water and/or adhesive.

3. Physical requirements.

a. Flame resistance, flame resistance permanency and corrosion properties of the insulation material shall be determined in accordance with the US CPSC Interim Safety

Standard for cellulose insulation. Values for these properties shall not exceed those established by the US CPSC. The material shall be tested in its finished form, at a minimum one (1) inch thickness, for flame testing.

b. Density. Density shall be determined in accordance with section 9.1 of the "HUD Use of Materials Bulletin No. 80." The density established by this test shall be used in the preparation of manufacturer's installation guidelines and in the determination of thermal performance.

c. Thermal performance. Thermal performance shall be determined in accordance with 6 MCAR § 2.2204 B.7., at the test-defined density of the material. R value testing shall be performed at a thickness of material of two (2) inches, unless the material is designed for use at a lesser maximum thickness and the material is so designated on the label or label notice by the manufacturer. It shall then be tested at the maximum thickness of suggested use.

d. Moisture absorption. Moisture absorption shall be determined in accordance with HUD Use of Materials Bulletin No. 80, section 9.5 Moisture absorption shall not exceed 15% by weight.

e. Odor emission and fungal resistance of the material shall be tested for and meet the performance levels required in 6 MCAR § 2.2204 C.3.e. and g.

f. Starch. The basic material shall be tested for starch, using the qualitative test method of ASTM D 591-67. If starch is found to be present, the manufacturer shall chemically treat the material for vermin resistance.

E. Materials standard—mineral fiber loose-fill thermal insulation, for ambient temperature application.

1. Incorporated standards. Specified portions of the following standards are incorporated by reference.

a. FS HH-I 1030 B (proposed), dated June 12, 1978.

b. ASTM C 553-70, Standard Specification for Mineral Fiber Blanket and Felt Insulation, (Industrial Type).

c. ASTM E 84-77a, Standard Test Method for Surface Burning Characteristics of Building Materials.

2. Materials. Mineral fiber insulation shall be made from rock, slag, or glass, processed into fibers from a molten state. The insulation shall be mechanically processed to produce fibers suitable for pneumatic or poured application. Chemical binders may be added. The finished product shall contain no more than 20 percent non-fibrous content by weight, retained on a U.S. No. 50 sieve.

3. Physical requirements.

a. Settled density. The settled density shall be determined in accordance with the method specified in Section 4.8.1, of FS HH-I 1030 B (proposed). Settled densities established by this test method shall be used in determining the thermal resistance (R value) of the material. The effective date of this section shall be October 15, 1979.

b. Resistance to combustion, flame. The manufacturer shall have the option of using the critical radiant flux testing method or the ASTM E 84-77a testing method. Test procedures and performance levels for each type of test shall be as specified.

(1) Critical radiant flux of the insulation material shall be equal to or greater than 0.12 watts/cm^2. Testing shall be conducted in accordance with Section 4.8.8 of FS HH-I 1030 B (proposed).

(2) Flame spread shall not exceed a value of 25 when tested in accordance with ASTM E 84-77a. Screen connection factors shall be used.

c. Resistance to combustion, smoldering. Smoldering combustion shall be tested for in accordance with the Standard Method of Test for Smoldering Combustion Characteristics of Materials Used for Thermal Insulation, as specified in section 4.8.9 of FS HH-I 1030 B (proposed). The insulation material shall show no more than a 15% weight loss on each of three specimens.

d. Moisture absorption. Moisture absorption shall not exceed 5% by weight when tested in accordance with section 4.8.3 of FS HH-I 1030 B (proposed).

e. Corrosion. Corrosiveness shall be tested for in accordance with Section 4.8.5 of FS HH-I 1030 B. The steel plate in contact with the insulation material shall show no more corrosion than a steel plate in contact with sterile cotton tested in the same manner.

f. Odor emission. Odor shall be tested for in accordance with section 4.8.4 of FS HH-I 1030 B (proposed). An objectionable odor shall be regarded as cause for failure of the insulation material to comply with this standard when observed by four or more of the panel members.

g. Fungi resistance. Fungi resistance shall be tested for in accordance with method 508 of Military Standard 810 as referenced in section 4.8.6 of FS HH-I 1030 B (proposed) except that spore suspensions shall be prepared using distilled water. The facings of commercial gypsum wallboard untreated for fungal resistance shall be used as the control material. The insulation shall show no more growth than the control material.

h. Thermal performance. R values shall be determined in accordance with 6 MCAR § 2.2204 B.7.

F. Materials standard—mineral fiber batt and blanket thermal insulation (ambient temperature application).

1. Incorporated standards. Specified portions of the following standards are incorporated by reference.

a. FS HH-I-521 F (proposed) dated June 13, 1978.

b. ASTM C 167-64, Rev. 1976, Method of Test for Thickness and Density of Blanket or Batt-type Thermal Insulation Materials.

c. ASTM E 84-77a, Standard Test Method for Surface Burning Characteristics of Building Materials.

d. ASTM E 96-66, Rev. 1972, Method of Test for Water Vapor Transmission of Materials in Sheet Form.

2. Materials. The basic material shall be fibers made from mineral substances such as rock, slag, or glass processed from a molten state into a fibrous form. The insulation blankets shall be flexible units composed of felted mineral fibers in rolls or flat cut pieces (batts). Vapor barrier membranes may be added.

3. Physical requirements.

a. Density. Density shall be determined in accordance with ASTM C 167-64. The density as determined by test shall be used in the determination of thermal resistance.

b. Combustion resistance, flame. The manufacturer shall have the option of utilizing the ASTM E 84-77a test or the critical radiant flux testing method. Test procedures and performance levels for each type of test shall be as specified.

(1) Critical radiant flux of the insulation material shall be equal to or greater than 0.12 watts/cm^2. Testing shall be conducted in accordance with section 4.6.6 of FS HH-I-521 F (proposed).

(2) Flame spread shall not exceed a value of 25 when tested in accordance with ASTM E 84-77a.

(3) Laminated facings and membranes attached to the insulation material and intended for exposed application shall be exposed to the flame or panel during testing. For the purposes of this section, "intended for exposed application" shall mean that the insulation batt or blanket is not clearly marked that it is intended for use only behind suitable ignition barriers. Values obtained shall not exceed the maximum values permitted for the insulation material.

4. Combustion resistance, smoldering. The insulation material shall be tested in accordance with section 4.6.7 of FS HH-I-521 F (proposed). The insulation material shall show no evidence of flaming combustion, and shall show no more than a 15% weight loss on each of three specimens.

d. Moisture.

(1) Moisture absorption. Moisture absorption shall be tested for as specified in section 15 of ASTM C 553-70, and shall not exceed 5% by weight.

(2) Permeability of vapor barriers. Vapor barriers affixed to the insulation material shall be tested in accordance with ASTM E 96-66. Vapor permeability shall not exceed one (1) perm.

e. Corrosion. Corrosiveness of the insulation material shall be determined in accordance with section 4.6.4 of FS HH-I-521 F (proposed). The steel plate in contact with the insulation material shall show no greater corrosion than a steel plate in contact with sterile cotton that has been tested in the same manner.

f. Odor. A detectable odor of an objectionable nature shall constitute failure of the insulation material to comply to this standard. Odor shall be tested for as specified in section 4.8.4 of FS HH-I-521 F (proposed). The odor must be observed by four or more of the panel members.

g. Fungi resistance. Fungi resistance shall be tested for in accordance with method 508 of Military Standard 810 as referenced in section 4.6.5 of FS HH-I-521 F (proposed), except that spore suspensions shall be prepared using distilled water. The facings of commercial gypsum wallboard untreated for fungal resistance shall be used as the control material.

h. Thermal performance. R values shall be determined in accordance with 6 MCAR § 2.2204 B.7.

G. Materials standard—urethane-based foam insulation materials (board type).

1. Incorporated standards. Specified portions of the following standards are incorporated by this reference.

a. ASTM C 209-73, Testing Insulation Board, Structural and Decorative.

b. ASTM C 355-64, Standard Methods of Test for Water Vapor Transmission of Thick Materials.

c. ASTM E 84-77a, Test for the Surface Burning Characteristics of Building Materials.

d. ASTM D 2126-75, Response of Rigid Cellular Plastics to Thermal and Humid Aging.

e. Section 1717, 1976 Uniform Building Code.

2. Materials. The insulation material shall be manufactured mainly by the reaction of an organic polyisocyanate with a polyol resin. The insulation board shall be of uniform texture, reasonably fee of foreign matter, unexpanded material, broken edges and corners, holes, voids and depressions. The insulation board may have laminated membranes and facings affixed; such facings shall be reasonably free of slits and voids.

3. Physical requirements.

a. Combustion resistance. Surface burning characteristics of the insulation material shall be determined in accordance with ASTM E 84-77a, and shall not exceed values of:

Flame Spread Classification	75
Smoke Developed	450

The provisions of this section shall not apply to a product recognized by the International Conference of Building Officials as of the effective date of these rules, as complying with the provisions of section 1717 of the 1976 Uniform Building Code based solely upon diversified testing. The manufacturer of any such product seeking compliance with these rules based solely

upon diversified testing shall provide to the Energy Agency documentation of approval by the International Conference of Building Officials.

b. Thermal performance. R values shall be tested for in accordance with 6 MCAR § 2.2204 B.7., with the following additional requirements.

(1) Conditioning. All foam materials using any substance other than air or pentane as an expanding agent, or other than air as an insulating agent, shall be separately conditioned prior to testing at 73.4°F ± 3.6°F in a room well ventilated with free air for a minimum of 180 days; or by conditioning at 73.4°F ± 3.6°F and 50% ± 5% relative humidity and at 140°F dry heat soak and testing at 30, 60, and 90 day intervals. 6 MCAR § 2.2204 E.3.b.(1) shall become effective 180 days from the date of publication of these rules in the *State Register*. Test results up to one year old will be accepted.

(2) Testing of materials with laminated facings. Insulation board materials for which additional R value is claimed for facings and airspaces shall be tested for thermal performance as a material without airspaces and without additional value from the emittance of the facings. The manufacturer shall have the option to report additional R values for a given system or assembly of materials according to ASTM C 236-66 provided that (a) all details of assembly of system are disclosed on the label or label notice; (b) the limitations as to the attainment of that result are disclosed on the label or the label notice; and (c) the primary R value reported on the label or label notice is that of the material without facings or airspaces.

c. Water absorption. Water absorption of the material shall be determined in accordance with the 24 hour test of ASTM C 209-72. The water absorption shall be reported to the Energy Agency to comply with these rules.

d. Water vapor transmission.

(1) Materials with attached sheet-type vapor barriers. The vapor barrier shall be tested in accordance with ASTM E 96-66. Water vapor permeance shall not exceed 1 perm.

(2) Materials designated as vapor barriers without attached sheet-type vapor barriers. If the material has no attached facings but is designated a vapor barrier, the water vapor transmission shall not exceed 1 perm per ASTM C 355-64.

e. Dimensional stability. The insulation material shall be tested in accordance with ASTM D 2126-75, procedures C and X; procedure X temperatures shall be 140°F. Samples shall be 12 inches by 12 inches minimum size, and shall be tested with any laminated facings attached. The average percent change in length or width shall not exceed ± 10% in 7 days. Delamination of faced samples shall not exceed 25% of the surface area of the sample.

H. Materials standard—polystyrene expanded bead or chip loosefill thermal insulation, for pneumatic or poured applications.

1. Incorporated standards. Specified portions of the following standards are incorporated by this reference.

a. ASTM E 84-77a, Standard Method of Test for the Surface Burning Characteristics of Building Materials.

b. Method of Test for Critical Radiant Flux of Exposed Attic Floor Insulation, section 4.8.7 of FS HH-I-515 D.

c. 6 MCAR § 2.2204 I, Materials standard, polystyrene foam plastic thermal insulation (board type).

d. Section 1717, 1976 Uniform Building Code

2. Materials, classification.

a. Basic material. The basic material shall be beads or chips of expanded polystyrene cellular plastic, manufactured by grinding or chipping of board stock and scrap material, or by the expansion of beads directly to form a loose-fill product. The material shall be reasonably free of unexpanded material and foreign matter.

b. Class I material. Class I insulation shall meet the following flammability standard, per ASTM E 84-77a, tested in loose-fill form with screen correction factors.

Flame Spread	25
Smoke Developed	450

The manufacturer shall have the option of using the Method of Test for Critical Radiant Flux of Exposed Attic Floor Insulation, in accordance with section 4.8.7 of FS HH-I-515 D. Class I materials shall have a critical radiant flux greater than or equal to 0.12 watts/cm^2.

c. Class II material. Class II insulation shall meet the following combustion standards per ASTM E 84-77a, tested in loose-fill form.

Flame Spread	75
Smoke Developed	450

The classification of the material shall be clearly marked on the label or label notice accompanying the insulation.

3. Physical requirements.

a. The material shall be demonstrated by the manufacturer to be capable of compliance with 6 MCAR § 2.2204 I. Substandard or otherwise flawed materials shall not be used.

b. Thermal performance. The material shall be tested in accordance with 6 MCAR § 2.2204 B.7., and with 6 MCAR § 2.2204 I.3.b.(1)-(2), where applicable.

I. Materials standard—polystyrene foam plastic (board type) thermal insulation.

1. Incorporated standards. Specified portions of the following standards are incorporated by this reference.

a. ASTM C 272-53 (Rev. 1976) Water Absorption of Core Materials for Structural Sandwich Constructions.

b. ASTM D 2126-75, Response of Rigid Cellular Plastics to Thermal and Humid Aging.

c. ASTM E 84-77a, Test for Surface Burning Characteristics of Building Materials.

2. Materials. Polystyrene thermal insulation (board type) shall be made either by the expansion of polystyrene beads or granules in a mold, or by the expansion of polystyrene resin in an extrusion process. The insulation shall be uniformly fused or extruded, homogeneous and essentially unicellular. Insulation boards shall be reasonably free of foreign matter, unexpanded material, holes, voids, broken edges and corners, and depressions. The insulation board may have laminated facings and membranes affixed; such facings shall be reasonably free of slits and voids.

3. Physical requirements.

a. Combustion resistance. Surface burning characteristics of the insulation material shall be determined in accordance with ASTM E 84-77a, and shall not exceed the values of:

Flame Spread Classification	75
Smoke Generation	450

The provisions of 6 MCAR § 2.2204 I.3.a. shall not apply to any product recognized by the International Conference of Building Officials as complying with section 1717 of the 1976 Uniform Building Code as of the effective date of these rules, based solely upon diversified testing. The manufacturer of any product seeking to demonstrate compliance with these rules by diversified testing shall provide documentation to the Energy Agency to substantiate this requirement.

b. Thermal performance. Thermal performance shall be tested for in accordance with 6 MCAR § 2.2204 B.7., with the following additional requirements:

(1) Conditioning. All foam materials using any substance other than air or pentane as an expanding agent shall be separately conditioned prior to testing at 73.4°F ± 3.6°F in a room well ventilated with free air for 180 days or, by conditioning at 73.4°F ± 3.6°F and 50% ± 5% relative humidity and at 140° dry heat soak, testing at 30, 60, and 90 day intervals. 6 MCAR § 2.2204 I 3.b. (1) shall become effective 180 days from the date of publication of these rules in the *State Register*. Test results up to one year will be accepted.

(2) Testing of materials with laminated facings. Insulation board materials for which additional value is claimed for facings and air-spaces and without additional credit claimed for the emittance value of the facings. The manufacturer may at his option report additional R values for a given system or assembly of materials according to ASTM C 236-66 provided that; a) all details of assembly or system are disclosed on the label or label notice; b) the limitations as to the attainment of that result are disclosed on the label or the label notice; and c) the primary R value reported on the label or label notice be that of the material without facings or airspaces.

c. Water absorption. Water absorption of the material shall be tested in accordance with ASTM C 272-53. After immersion for 24 hours water absorption shall not exceed 4.0% by volume.

d. Water vapor transmission.

(1) Materials with attached sheet-type vapor barriers. The vapor barrier shall be tested in accordance with ASTM E 96-66. Water vapor permeance shall not exceed 1 perm.

(2) Materials designated as vapor barriers without attached sheet-type vapor barriers. If the material has no attached facings but is designated a vapor barrier, the water vapor transmission of the material shall not exceed 1 perm per ASTM C 355-64.

e. Dimensional stability. The thermal insulation board shall be tested for dimensional stability in accordance with Procedures B, E, and F of ASTM D 2126-75 with the exceptions that the specimens shall be 12 inches by 12 inches by 1 inch, and Procedure F temperatures shall be 140°F, and that samples shall be exposed to these conditions for 7 days. The maximum linear shrinkage shall be 4.0%.

J. Materials standard—perlite loose-fill thermal insulation.

1. Incorporated standards. Specified portions of the following standards are incorporated by this reference.

a. ASTM C 520-65 (Rev. 1975), Method of Test for Density of Granular Loose-fill Thermal Insulation.

b. ASTM E 84-77a., Surface Burning Characteristics of Building Materials.

c. FS HH-I-574 B.

2. Materials. Perlite loose-fill thermal insulation shall be produced by the expansion of natural perlite ore and may be treated to produce specific properties or characteristics. It shall not be damp or dirty following production.

3. Physical characteristics.

a. Density. Density shall be tested in accordance with ASTM C 520-65. The density determined by this test shall be used in determining thermal performance by test.

b. Flame resistance. If the insulation material has any additives introduced to the material for any reason, it shall be tested according to ASTM E 84-77a. Screen correction factors shall be used. The treated material shall not exceed the following value:

Flame Spread Classification	25

c. Thermal performance. Thermal performance of the material shall be tested at its test-determined density according to 6 MCAR § 2.2204 B.7.

d. Water repellency. If the insulation material has been treated for water repellency, it shall be tested in accordance with section 4.4.3 of FS HH-I-574 B. Repellency shall not be less than 175 milliliters of water repelled.

4. Disclosures by the manufacturer. The manufacturer shall disclose to the Energy Agency any treatment of the perlite material and the purpose of the treatment, at the time of submission of materials for compliance. Failure to disclose treatments of the material shall result in a failure of the product to comply with these rules.

K. Materials standard—vermiculite loose fill thermal insulation material.

1. Incorporated standards. Specified portions of the following standards are incorporated by this reference.

a. FS HH-I-585 C.

b. ASTM C 520-65 (Rev. 1975) Method of Test for Density of Granular Loose-fill Thermal Insulation.

c. ASTM E 84-77a., Surface Burning Characteristics of Building Materials.

2. Materials. Vermiculite loose-fill thermal insulation shall be produced by the expanding or exfoliating of natural vermiculite or by grading and heating. It may be treated to produce specific properties or characteristics. It shall not be damp or dirty following production.

3. Physical characteristics.

a. Density. Density shall be tested in accordance with ASTM C 520-65. The density determined by this test shall be used in determining thermal performance by test.

b. Flame resistance. If the insulation material has any additives or treatments introduced to the material for any reason, it shall be tested according to ASTM E 84-77a. Screen correction factors shall be used. The treated material shall not exceed the following value:

Flame Spread Classification 25

c. Thermal performance. Thermal performance of the material shall be tested at its test-determined density according to 6 MCAR § 2.2204 B.7.

d. Water repellency. If the insulation material has been treated for water repellency it shall be tested in accordance with section 4.4.5 of FS HH-I-585 C. Water repelled shall not be less than 175 milliliters.

4. Disclosures by the manufacturer. The manufacturer shall disclose to the Energy Agency treatment of the vermiculite material and the purpose of the treatment at the time of submission of data for compliance. Failure to disclose treatments of the material shall constitute failure of the product to comply with these rules.

L. Materials standard—urea-based foam thermal insulation material.

1. Incorporated standards. The following standards are incorporated by this reference.

a. HUD "Use of Materials Bulletin No. 74."

b. ASTM D 1622-63, (Rev. 1975) Apparent Density of Rigid Cellular Plastics.

c. ASTM E 84-77a., Surface Burning Characteristics of Building Materials.

2. Materials. Acceptable materials shall be urea-based thermosetting foam, suitable for filling closed cavities through small holes and suitable also for filling open cavities by trowelling during foaming prior to enclosure.

3. Uses. Uses shall be as specified above, with the stipulation that urea-based thermal insulation materials shall not be used in attics or ceiling, but only in enclosed building cavities such as walls and partitions. This provision shall also apply to pre-cured, loose-fill, urea-based form products.

4. Physical requirements of urea-based thermal insulations.

a. Quality control. Manufacturers shall ship the resin in sealed containers to their distributors and applicators. If the resin is in a dry, or in a concentrated form, the manufacturer shall provide a system to test mixing water to assure product consistency.

b. Free aldehyde content shall not exceed 1.0% when tested in accordance with section 6.2.1 of HUD "Use of Materials Bulletin No. 74."

c. Curing properties.

(1) Setting time. When tested in accordance with section 6.2.2, HUD "Use of Materials Bulletin No. 74," the foam shall set in not less than 10 seconds and not more than 90 seconds in closed cavities, and not less than 10 seconds and not more than 90 seconds in open cavities. At the setting time, the surface of the foam at the fracture shall be smooth and homogeneous.

(2) Water drainage. When tested as specified in section 6.2.4 HUD "Use of Materials Bulletin No. 74," no water shall leak from the cavity.

(3) Shrinkage during curing. When tested in accordance with HUD "Use of Materials Bulletin No. 74," section 6.2.5, the lineal shrinkage in any direction shall not exceed 4.0%.

(4) Inhibition of fungal growth. Testing shall be as specified in HUD "Use of Materials Bulletin No. 74," section 6.2.6. The area of fungal growth in the test frame

containing the foam specimen shall not be greater than 10% of that in the control test frame, and there shall be no growth on the foam itself.

d. Cured foam properties.

(1) Density. When tested as specified in ASTM D 1622-63, the density of the dry foam shall be within the range of 0.7-0.9 lbs/ft^3 (10.4-15 kg/m^3).

(2) Corrosiveness. The material shall be tested as specified in HUD "Use of Materials Bulletin No. 74," section 6.2.8 (all). For aluminum, copper, and steel there shall not be any perforations when the metal specimens are observed over a chrome reflected 40 W appliance light bulb. For galvanized steel there shall be no pitting of the metal specimen and the loss in mass shall not exceed 0.2g (0.01 oz.)

(3) Water absorption. Water absorption will be determined by means of the floating test. When tested as specified in section 6.2.9.1, HUD "Use of Materials Bulletin No. 74" the water absorption shall not exceed 15% by volume.

(4) Combustion resistance. When tested as specified in ASTM E 84-77a, the flame spread classification shall not exceed 25. Smoke generation shall not exceed 450.

e. Thermal performance. Thermal performance shall be determined in accordance with 6 MCAR § 2.2204 B.7.

Pollution Control Agency

Proposed Amendments to Rules WPC 14, 15, 24 and 25 and Proposed Repeal of WPC 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 21, 23, 26, 29, 31 and 32

Supplemental Notice of Hearing

Notice is hereby given that the hearing in the above-entitled matter will commence on March 31, 1980, and continue on subsequent days as scheduled in the original notice published in the *State Register* on February 25, 1980, (4 S.R. 1330) and, in addition, will continue on Monday, April 28, 1980, at 9:30 a.m., in the MPCA Board Room, 1935 West County Road B2, Roseville, Minnesota, 55113, and at other times and places to be determined by the Hearing Examiner. Please be advised that the Agency will consider additional non-metropolitan locations if there is a substantial interest in continuing the hearing at such locations.

Copies of the following documents are now available and may be obtained by contacting Mr. John McGuire, Division of Water Quality, Minnesota Pollution Control Agency, 1935 West County Road B2, Roseville, Minnesota, 55113, ([612] 296-7242):

1. Statement of Need and Reasonableness
2. Proposed Amendments
3. Testimony of Agency Witnesses

Additional copies of these documents will be available at the hearing at each location.

March 18, 1980

Terry Hoffman
Executive Director

Department of Public Welfare Income Maintenance Bureau

Notice of Withdrawal of Proposed Amendment to 12 MCAR § 2.047 Governing Payment for Abortion Services under the Medical Assistance Program

On November 5, 1979, the Department of Public Welfare published a Notice of Hearing at *State Register*, Volume 4, Number 18, p. 737, (4 S.R. 737) announcing a public hearing to be held on December 11, 1979 concerning a proposed amendment to 12 MCAR § 2.047 (Rule 47) governing payment for abortion services under the Medical Assistance program. The hearing was held, the comments were accepted for twenty days, and the Hearing Examiner issued a report on January 31, 1980.

In light of two recent federal court decisions, *McRae v. Secretary of H.E.W.*, No. 76-C-1804, (E.D.N.Y., January 15, 1980), stay denied, prob. juris. noted, No. 79-1268, 48 L.W. 3535, February 19, 1980, and *Hodgson v. Board of County Commissioners*, No. 4-78 Civ. 525 and 3-79 Civ. 56 (D. Mn., March 12, 1980), the department at this time withdraws its proposed amendments. Also, 12 MCAR § 2.047, originally published at *State Register*, Vol. 4, Number 17, p. 701 (4 S.R. 701), was to become effective only upon further order of the court. Therefore, the entire rule is withdrawn.

ADOPTED RULES

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

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

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

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

State Board for Vocational Education
Department of Education
Vocational-technical Division

Adopted Rules Governing Post-secondary Vocational-technical and Adult Vocational-technical Education

The above-captioned rules (5 MCAR §§ 1.0100-1.0105, 1.01051, 1.0106-1.0110, 1.01101-1.01102, 1.0111-1.0118) proposed and published at *State Register*, Volume 4, Number 17, pp. 708-717, October 29, 1979, are adopted with the following amendments:

Rules as Adopted

Chapter Six: Post-Secondary Vocational-Technical Education

5 MCAR § 1.0110 Reciprocity among states for vocational education.

A. Reciprocity is contingent upon the execution of a reciprocal agreement as prescribed by Minn. Stat. § 136A.08.

~~B. A Minnesota student attending a vocational institute in another state shall be eligible to pay the same tuition charged to residents of the state in which the vocational institute is located. To qualify for tuition reciprocity under this section, the director or other authorized official of the area vocational-technical institute nearest the residence of the student shall grant approval on the prescribed form. In granting approval, the director or other authorized official shall certify that no training opportunity in the program that the student desires is currently available within a reasonable commuting distance.~~

B. To qualify for tuition reciprocity under this section, a Minnesota student desiring to attend a vocational institute in another state shall obtain the approval, on the prescribed form, of the director or other authorized official of the Minnesota area vocational-technical institute nearest the residence of the student.

~~C. Payment of the nonresident tuition differential that exceeds the resident tuition of that state shall be made as prescribed by statute or through agreements executed by the state directors of vocational education of the affected states.~~

~~D. Students arriving in Minnesota from another state as a result of reciprocity agreements will be accommodated provided that such students will not displace Minnesota students with regard to training opportunities in those instances wherein the applications from eligible Minnesota students exceed the capacity of the class.~~

Chapter Six-A: Adult Vocational-Technical Education

5 MCAR § 1.0112 E.3. New programs in adult farm management or an existing program with a new instructor shall reach minimum enrollment of ~~30~~ 42 enrollees within four years. For programs not meeting the minimum requirements school districts shall apply annually to the commissioner of education for an exception to this rule which shall be granted if the school district provides evidence that:

a. An exception would allow enrolled cooperators to complete their program of education, or

b. The instructional quality and efficiency would be improved by the exception.

E.5. New programs in adult small business management or an existing program with a new instructor shall ~~reach minimum enrollment of 30 enrollees within three years~~ have three years to reach minimum enrollment as specified in E.4. above. For programs not meeting the minimum requirements school districts shall apply annually to the Commissioner of Education for an exception to this rule which shall be granted if the school district provides evidence that:

a. An exception would allow enrolled cooperators to complete their program of education, or,

b. The instructional quality and efficiency would be improved by the exception.

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. 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."

Department of Health Environmental Health Division

Adopted Rules Relating to Clean Indoor Air

The following rules (7 MCAR §§ 1.442-1.444) proposed and published at *State Register*, Volume 3, Number 46 pp. 2061-2065, May 21, 1979, are adopted with the following amendments:

Rules As Adopted

7 MCAR § 1.442 D. ~~"Educational facilities" means any location used for instruction of enrolled students, including but not limited to, day care centers, nursery schools, elementary schools, middle schools, junior and senior high schools, vocational schools, colleges and universities. This classification shall include all areas supportive of instruction which are under the responsibility of the school administration, including but not limited to classrooms, lounges, study area and libraries.~~

[Reletter E.-Q. as D.-P.]

7 MCAR § 1.443 General provisions.

A. ~~General Prohibition.~~ Smoking shall be prohibited in all sections of public places or public meetings except in areas designated as Smoking Permitted areas. The responsible person shall make arrangements for an acceptable smoke-free area as defined in 7 MCAR § 1.442 A. The size and location of any smoking-permitted area shall be determined such that toxic effects of smoking are minimized in the adjacent No Smoking area.

~~B. Notice to be posted. To advise persons of the existence of No Smoking and Smoking Permitted areas, the statement "Smoking is prohibited except in designated areas" shall be conspicuously posted at all major entrances to any public place.~~

B. ~~C.~~ Smoking Permitted area.

1. If smoking is to be permitted in an area of a public place or public meeting, the responsible person shall designate such area as Smoking Permitted. One and only one Smoking Permitted area shall be designated per room. However, rooms containing at least 20,000 square feet (1,858 square meters) in total floor space may designate more than one Smoking Permitted area and shall otherwise comply with these rules.

2. In a public place which contains two or more rooms which are used for the same activity, the responsible person may designate one entire room as Smoking Permitted as long as at least a portion of one other comparable room has been designated as a No Smoking area.

3. ~~Entry or exit areas, ticket areas, registration areas, common traffic areas or similar sections of public places shall not be designated in their entirety as a Smoking Permitted area if non-smokers would be required to use the area to participate in activities for which the public place is intended. This rule shall not be construed to prevent designation of a Smoking Permitted area in a portion of the establishment which non-smokers must briefly cross to reach the intended activity.~~

In the case of a public place consisting of a single room in which a Smoking Permitted area is designated, the responsible person shall be responsible for reserving and clearly designating a No Smoking area on one side of the room.

4. The size of the designated Smoking Permitted area shall not be more than proportionate to the preference of users of that location for a Smoking Permitted area, as can be demonstrated by a responsible person. The proportional preference of users of a Smoking Permitted area in that location may be demonstrated by the responsible person by evidence of any of the following:

a. the percentage of users of the location who express a preference for a Smoking Permitted area when the responsible person asks all users for their preference, or

b. the percentage of users of the location who request or select a Smoking Permitted area when the responsible person does not ask all users for their preference, or

c. the percentage of users who are determined by the proprietor to prefer a Smoking Permitted area by an alternate method which reasonably indicates the user's preference. ~~In no case shall the smoke-free area measure less than 200 square feet, or 30 percent of the total public area, whichever is greater. For the purpose of these calculations, total public area does not include hallways, foyers or similar waiting areas.~~

~~5. Smoking is permitted in a private office. "Private office" means an enclosed room in an office which is occupied exclusively by smokers, even though such room may occasionally be visited by non-smokers.~~

~~D. Single Room. In the case of a public place consisting of a single room in which a Smoking Permitted area is designated, the responsible person shall be responsible for reserving and clearly designating a No Smoking area on one side of the room.~~

C. ~~E.~~ Signs.

~~1. All signs which are used to identify a bar that has been designated as a smoking area in its entirety shall use the statement, "This establishment is a Smoking Area in its entirety," or a similar statement. The sign shall be conspicuously posted either on all outside entrances or in a position clearly visible on entry into the establishment.~~

1. To advise persons of the existence of No Smoking and Smoking Permitted areas, No Smoking and Smoking Permitted signs shall be posted in the appropriate areas. In addition, the statement "Smoking is prohibited except in designated areas" shall be conspicuously posted at all major entrances to any public place.

2. All signs which are used to identify a location where the responsible person prohibits smoking in an entire public place or public meeting shall use the statement, "No smoking is permitted in this entire establishment," or a similar statement. The sign shall be conspicuously posted either on all outside entrances or in a position within the establishment.

3. All signs which are used to identify a Smoking Permitted area shall use the words "Smoking Permitted" and/or use the international smoking symbol. Signs which are used to identify a No Smoking area shall use the words "No Smoking" and/or the international no-smoking symbol.

7. All signs which are used to identify a bar that has been designated as a smoking area in its entirety shall use the statement, "This establishment is a Smoking Area in its entirety," or a similar statement. The sign shall be conspicuously posted either on all outside entrances or in a position clearly visible on entry into the establishment.

8. ~~7.~~ A restaurant or other public place which has controlled seating (an employee directs patrons to seating or waiting areas) must ask each person whether he prefers a Smoking Permitted or a No Smoking area before directing that person to a seat in the appropriate area. At least one sign advising the public of this mechanism shall be conspicuously posted at all entrances normally used by the public. Similarly a restaurant or other public place which takes advance reservations shall ask the person's preference for a Smoking Permitted or No Smoking area at the time the reservation is made. A restaurant or other public place which uses controlled seating as defined above shall be exempt from the sign requirements contained in 7 MCAR § 1.443 ~~E.~~ C. 3., 4., 5. and 6.

~~F. Acceptable smoke-free area. The responsible person shall make arrangements for an acceptable smoke-free area as defined in 7 MCAR § 1.442 A. The size and location of any Smoking Permitted area shall be determined such that toxic effects of smoking are minimized in the adjacent No Smoking area.~~

D. ~~G.~~ Permissible ash trays. Portable ash trays are banned in all No Smoking areas. Only ash stands and permanent ash trays may be used at or near the entrance to a No Smoking area. Such ash stands and permanent ash trays shall be conspicuously labelled with the following message placed on or near the ash stand:

SMOKING IS PROHIBITED
PLEASE EXTINGUISH ALL SMOKING MATERIALS IMMEDIATELY

7 MCAR § 1.444 B. Places of work.

1. As an alternative to 7 MCAR § 1.443 C.B.1. requiring one and only one Smoking Permitted area per room, a place of work which is not customarily frequented by the general public may contain several, separate No Smoking and Smoking Permitted areas within the same room provided each No Smoking area is at least 200 square feet (18.2 square meters) in area. Such No Smoking areas must comply with the requirements for an acceptable smoke-free area as defined in 7 MCAR § 1.442 A.2. Under this alternative for places of work which are not customarily frequented by the general public, the responsible person shall not be required to comply with sign provisions of 7 MCAR § 1.443 ~~B.~~ C., but the responsible person must conspicuously post at least one sign on each floor which states, "Smoking is prohibited except in designated smoking areas."

2. These rules shall not apply to a private residence when the residence is not customarily used as a "place of work."

3. Any "factory, warehouse or similar place of work," as defined in 7 MCAR § 1.442 ~~E.~~ D., shall be regulated by rules of the Department of Labor and Industry.

C. Offices.

~~1. Smoking is permitted in a private office. "Private office" means an enclosed room in an office which is occupied exclusively by smokers, even though such room may occasionally be visited by non-smokers.~~

2. When a public place which is a factory, warehouse or similar place of work contains an office which is incidental but related to the primary operation, such office shall for the purposes of this act, be regulated under rules of the Department of Labor and Industry.

D. Restaurants.

3. A restaurant shall be deemed to be in compliance with these rules if 30% of the seats in the eating area are designated as "Smoking Prohibited."

H. Common areas. Entry or exit areas, ticket areas, registration areas, common traffic areas or similar sections of public places shall not be designated in their entirety as a Smoking Permitted area if non-smokers would be required to use the area to participate in activities for which the public place is intended. These rules shall not be construed to prevent designation of a Smoking Permitted area in a portion of the establishment which non-smokers must briefly cross to reach the intended activity.

Department of Public Welfare
Mental Health Bureau

Notice of Extension of Adopted Temporary Rule Governing Community Support Services for Chronically Mentally Ill Persons

The proposed temporary rule published at *State Register*, Vol. 4, Number 20, pp. 802-805, November 19, 1979 (4 S.R. 802), approved by the Attorney General on December 27, 1979, and published as adopted at *State Register*, Vol. 4, Number 29, p. 1174, January 1, 1980 (4 S.R. 1174), is continued in effect until July 3, 1980.

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike-outs~~ indicate deletions from proposed rule language. **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."

TAX COURT

Pursuant to Minn. Stat. § 271.06, subd. 1, an appeal to the tax court may be taken from any official order of the Commissioner of Revenue regarding any tax, fee or assessment, or any matter concerning the tax laws listed in § 271.01, subd. 5, by an interested or affected person, by any political subdivision of the state, by the Attorney General in behalf of the state, or by any resident taxpayer of the state in behalf of the state in case the Attorney General, upon request, shall refuse to appeal. Decisions of the tax court are printed in the *State Register*, except in the case of appeals dealing with property valuation, assessment, or taxation for property tax purposes.

State of Minnesota
County of Rock

Tax Court
Regular Division

Christensen Corporation, Appellant,

vs.

Commissioner of Revenue, Appellee.
Docket No. 2536

Order dated March 18, 1980

This is an appeal from an Order of the Commissioner of Revenue assessing additional sales and use tax against the appellant for materials purchased by the appellant in the construction of a new gymnasium for Southwest Minnesota Christian High School, a tax exempt entity holding a sales and use tax exemption certificate.

The issues are whether the appellant was a materials and labor contractor, rather than a purchasing agent, for the purpose of determining the taxability of its purchase and use of building materials used in the construction of Southwest Minnesota Christian High School's new gymnasium, and whether in a tax case, parol evidence is admissible for the purpose of contradicting the terms of a written contract upon which the incidence of sales and use taxation depends.

The taxpayer in the instant case is Christensen Corporation, and not Southwest Minnesota Christian High School.

The above entitled matter came on for hearing before the undersigned, Chief Judge of the above entitled court, on the 17th day of April, 1979, commencing at the hour of 10:00 o'clock a.m., at the County Courthouse of Rock County, at Luverne, Minnesota.

The appellant was represented by its attorney, Mr. Benjamin Vander Kooi, P.O. Box 116, Luverne, Minnesota 56156, and the appellee was represented by Special Assistant Attorney General Mr. Paul R. Kempainen, Department of Revenue, Centennial Office Building, St. Paul, Minnesota 55145.

The court, having heard and considered all the evidence adduced at the hearing, and having reviewed all of the files and records herein and being fully advised in the premises, now makes the following:

Findings of Fact

John Knapp

1. The appellant, Christensen Corporation (hereinafter, "Christensen"), is a Minnesota corporation engaged in the construction contracting business with its main offices located in Luverne, Minnesota. Its president and sole owner is Mr. Virgil Christensen.

2. In March of 1972, the appellant began negotiations for the construction of a new gymnasium with the Southwest Minnesota Christian High School (hereinafter, "SWMCH"), a tax exempt entity holding sales and use tax exemption certificate number 21929. The high school's old gymnasium had burned down on March 17, 1972, and the school board of SWMCH had formed a special building committee to contract for the erection of a new one. All of Christensen's negotiations were with this committee.

3. During the course of the negotiations, on April 11, 1972, the chairman of the school's building committee, Mr. Richard Pranger, sent a letter to the Department of Revenue concerning the sales and use tax implications of building the new gymnasium. Mr. D. D. Barney of the Sales and Use Tax Division replied by a letter dated April 18, 1972, which enclosed a copy of the pertinent regulation, Department Ruling Number 35. His letter ended with the express direction that:

> "The agreement between your organization and the contractor should meet the requirements set forth in the enclosed Department Ruling Number 35."

4. A copy of the Department Ruling Number 35 was received into evidence and it reads as follows with regard to the taxation of building materials used in construction jobs done by contractors for exempt entities:

> The exemption from the tax on the sale of tangible personal property to the United States or to the State of Minnesota, and to other public agencies, as well as to corporations and other institutions exempt under the several clauses of Minn. Stat. § 297A.25, subd. 1 does not extend to building materials, supplies and equipment purchased by a contractor under an agreement to erect a building or to alter, repair or improve real estate for such exempt entity.
>
> * * *
>
> In some instances, the exempt entity, in addition to contracting with a contractor for the erection of a building or the alteration or repair of real estate, appoints and designates the contractor as "purchasing agent" for such exempt entity in connection with the construction contract. In such situations, the department will recognize the agency relationship asserted only if the written contract clearly sets forth:

(1) that such appointment has been made; (2) that title to all materials and supplies purchased pursuant to such appointment shall immediately vest in the owner or principal at point of delivery; (3) that the risk of loss with respect to such materials and supplies is that of the owner or principal; and (4) that the owner or principal, and not the agent, shall have responsibility for all defective materials and supplies, including those incorporated into realty purchased in such manner. In the event that the contract in question does not specify as to risk of loss, other competent evidence, such as insurance coverage will suffice. Any contractor who has been appointed agent for the purchase of materials and supplies, as specified above, shall furnish adequate notification to all vendors and suppliers of such agency relationship and shall make it clear to such vendors that the obligation for payment is that of the owner and not the contractor-agent. All purchase orders and other documents furnished to the vendor shall clearly reflect the agency relationship.

5. On May 10, 1972, Christensen and SWMCH entered into a lump-sum written contract, under which Christensen agreed to furnish all materials and labor necessary for the construction of the new gymnasium. Article 1 of the contract defined the scope of the work as follows:

The Contractor shall furnish all of the materials and perform all of the work shown on the Drawings and described in the Specifications entitled:

Gymnasium addition for Southwest Minnesota Christian High School and addendum #1 hereby attached and made a part of this contract.

Article 3 of the contract set forth the contract sum as follows:

The Owner shall pay the Contractor for the performance of the Contract, subject to additions and deductions provided therein, in current funds as follows:

$231,182.00

The above sum is subject to further savings of sales tax and negotiated sub-bids. The latter being with full consent of the board.

6. There was no provision in the contract signed May 10, 1972, appointing Christensen as the "purchasing agent" of SWMCH. Nor was there any provision stating that title to all materials immediately vested in SWMCH at the point of delivery; or that the risk of loss with respect to such materials was that of SWMCH; or that SWMCH, and not Christensen, would be responsible for any defective materials.

7. A total of seven written change orders were added to the original contract. But these change orders were only for changes in material specifications and did not affect the amount of labor, profit and overhead which had been included in the original lump sum of $231,182.00

8. The contract signed by Christensen and SWMCH on May 10, 1972, was on a standard American Institute of Architects construction contract, and was prepared by Christensen, a layman, not familiar with legal requirements. It was Christensen's testimony that this contract form, signed on May 10, 1972, was the final written agreement between the parties.

9. During the construction of the gymnasium all suppliers and subcontractors were provided with the following written statement:

Pursuant to a tax ruling No. 35, July 1970, by Rufus T. Logan, Minnesota Commissioner of Taxation, Southwest Christian High School will be able to use their certificate of exempt status No. 21929 on this project.

Southwest Minnesota Christian High School has by board action designated the Christensen Corporation, Luverne, Minnesota, as its purchasing agent in connection with this construction contract.

Therefore, please be informed the obligation for payment of this purchase order is that of the owner and not the Christensen Corporation. All invoices shall be mailed to Southwest Minnesota Christian High School, Box 194, Luverne, Minnesota.

10. The address for the mailing of invoices given at the end of this statement was not that of SWMCH, but was the mailing address of the appellant, Christensen Corporation; and all invoices for materials were in fact submitted to Christensen. Christensen then incorporated the invoices into its monthly statement of account by which SWMCH was billed for the contract work.

11. On each monthly statement of account, Christensen began with the lump sum figure of $231,182.00 set forth in the written contract of May 10, 1972. After taking into account any change orders, Christensen then calculated the value of the work done to the date of the billing, including the amounts stated on the invoices of the suppliers and subcontractors. The statements then gave a credit for the amounts of these invoices which SWMCH was to pay directly to the suppliers or subcontractors, and the remaining balance was the amount paid by SWMCH to Christensen.

12. After SWMCH received the monthly statements, the building committee issued checks to the suppliers and subcontractors for their invoice amounts, and also to Christensen and for the "balance due" figure shown on each statement.

13. Builders' risk insurance was purchased by SWMCH on the construction project, but no evidence was introduced as to the exact terms of the policy.

14. Supervision of the actual construction site was under the control of Christensen through a job superintendent who was on the job at least eight hours a day. Although the chairman of the school's building committee was also present at the job site and apparently assumed some responsibilities, Christensen's job superintendent also inspected, signed for, and supervised the unloading of building materials at the site.

15. Upon a sales and use tax audit of Christensen by the Department of Revenue, it was determined that the requirements for appointing Christensen the purchasing agent of SWMCH, as set forth in Department Ruling No. 35, had not been met. Therefore, the commissioner determined that Christensen's purchase and use of the building materials and supplies necessary for fulfilling its contract was subject to Minnesota use tax. Other purchases made by Christensen, not related to its SWMCH contract, were also audited and determined to be taxable.

16. On October 14, 1977, the commissioner issued his order assessing additional use tax against Christensen in the amount of $2,766.87, plus a penalty of $10.00, and statutory interest. Of this amount $2,057.29 in tax was attributable to the SWMCH contract and $709.58 in tax, plus the $10.00 penalty, was attributable to other purchases.

17. Appellant took a timely appeal from the commissioner's order, but at trial challenged only the additional tax attributable to the SWMCH contract.

Conclusions of Fact and Law

1. In its contract with Southwest Minnesota Christian High School the Christensen Corporation was a lump sum materials and labor contractor within the meaning of Minn. Stat. § 297A.01, subd. 4.

2. For purposes of determining the incidence of sales and use taxation, parol evidence may not be used to alter or contradict the terms of the written contract between Christensen and Southwest Minnesota Christian High School dated May 10, 1972.

3. Christensen Corporation and not SWMCH is liable for the use tax assessed as a result of its purchase and use of building materials in fulfillment of its contract to build a new gymnasium for the Southwest Minnesota Christian High School.

4. The Order of the Commissioner of Revenue herein dated October 14, 1977, is correct and proper and should be affirmed in all respects.

Decision

The Order of the Commissioner of Revenue is hereby affirmed. The tax is assessed upon the appellant, with no obligation on the part of Southwest Minnesota Christian High School to reimburse the appellant.

John Knapp, Chief Judge
Minnesota Tax Court

Memorandum

The statute here in question is Minn. Stat. § 297A.01, Subd. 4. That statutory provision reads in relevant part as follows:

> A "retail sale" or "sale at retail" means a sale for any purpose other than resale in the regular course of business . . . *Sales of building materials, supplies and equipment to owners, contractors, subcontractors or builders for the erection of buildings or the alteration, repair or improvement of real property are "retail sales" or "sales at retail"* in whatever quantity sold and whether or not for purpose of resale in the form of real property or otherwise. (Emphasis added)

This statute reflects a legislative policy that construction contractors, subcontractors and builders who purchase and use materials for incorporation into a building are liable for either the sales tax or the complementary use tax as the ultimate users of such materials while they remain personal property and before they become part of the realty. *County of Hennepin v. State of Minnesota*, 263 N.W. 2d 639, 640, fn. 1 (Minn., 1978).

The imposition of the sales and use tax upon construction contractors in this manner remains the same whether they contract to build for non-exempt or exempt entities. The applicable regulation which was in effect during the taxable periods at issue herein, Department Ruling No. 35, made this point clear in its very first paragraph:

> The exemption from the tax on the sale of tangible personal property to the United States or to the State of Minnesota, and to other public agencies, as well as to corporations and other institutions exempt under the several clauses of Minn. Stat. § 297A.35, subd. 1, *does not extend to building materials, supplies, and equipment purchased by a contractor under an agreement to erect a building or to alter, repair or improve real estate for such exempt entity.* (Emphasis added)

Of course, the law does not prevent tax exempt entities from directly buying their own building materials without payment of sales and use tax. One method of doing this which is recognized by the Department of Revenue is for the tax exempt entity to appoint an erection contractor as its "purchasing agent."

The Department of Revenue, under its authority to issue rules and regulations having the force and effect of law, Minn. Stat. § 297A.29, issued Department Ruling No. 35. This ruling set forth very explicitly the conditions which must be met before a contractor would be recognized as the "purchasing agent" of the exempt entity.

All parties in the instant case seem to agree that the guidelines for establishing an agency relationship set forth in Department Ruling No. 35 are controlling of the present case. The testimony and exhibits make it clear that both SWMCH and Christensen were using Ruling No. 35 as the basis and justification of their attempt to create a tax exempt transaction.

However, for all their good intentions, the evidence is clear that the requirements explicitly set forth in Department Ruling No. 35 were not followed by the parties to the transaction. No doubt one reason for this was that Ruling No. 35 was apparently never passed around or read at any meeting of the building committee of SWMCH; instead, the committee blindly relied upon the advice of Virgil Christensen.

Essentially, Ruling No. 35's requirements for the recognition of an agency relationship are as follows:

1. The contract must be in writing

2. The written contract must clearly set forth the appointment as agent.

3. The contract must clearly state that title to all materials purchased by the agent will vest immediately in the principal at the point of delivery.

4. The contract must clearly state that risk of loss for all materials is that of the principal. However, other competent evidence will suffice to establish this point.

5. The contract must clearly state that the principal has responsibility for all defective materials.

6. Finally, the agent must adequately notify all vendors of the agency relationship.

By applying Rule No. 35 to the instant case, it is clear that Christensen must be considered a contractor subject to tax upon its purchase and use of building materials for its construction contract with SWMCH. By the express terms of Article I of its written contract with SWMCH, Christensen contracted to " . . . furnish all the materials and perform all of the work . . ." for the new gymnasium. Moreover, it contracted to do so for a lump sum consideration, with no breakdown as to cost of materials or labor. The appellant simply was not able to show that it had been appointed a "purchasing agent." It is therefore obvious that it is subject to taxation upon the purchase and use of materials for the fulfillment of its contract with SWMCH.

These requirements are perfectly reasonable in light of the need to prevent sham agencies from being entered into for no other purpose than to avoid taxation. Despite the clear statement of these requirements in Ruling No. 35, only two seemed to have been met by parties. Christensen did send small slips of paper to its vendors of building materials, notifying them of Christensen's belief that it was a purchasing agent for SWMCH, and SWMCH did purchase builder's risk insurance on the construction project.

The commissioner contends that an agency relationship will only be recognized if all six requirements of Ruling No. 35 are met. In the instant case, it is not necessary for us to determine whether or not all six requirements must be met because it is so obvious that no written contract existed between Christensen and SWMCH appointing the former as the purchasing agent of the latter. We consider that to be a minimal requirement, but we purposely make no ruling as to whether or not all six requirements must be met.

The only written agreement signed between the parties was on a standard contract form. Article 1 of this written agreement clearly states that Christensen had the responsibility to " . . . furnish all of the materials and perform all of the work . . ." to build the gymnasium. Article 3 of this written agreement set forth Christensen's consideration as a lump sum, with no breakdown as to cost of materials or labor, nor any mention of SWMCH paying for the materials directly. There was no mention of an agency agreement.

The billing process used by the parties followed through with the theory of a lump sum contract. All supplier's invoices were submitted to Christensen first and not SWMCH. Christensen then incorporated these bills into its own monthly statement of account, which included both labor and materials and began all its calculations with the lump sum contract figure of $231,182.00. Direct payments by SWMCH to the suppliers were listed as a credit against this lump sum consideration with the balance paid to Christensen. The evidence is clear that the lump sum contract price was the original basis upon which everything else was determined.

Taking into account both the written contract of May 10, 1972, and this billing procedure, it becomes obvious that Christensen was nothing more than a materials and labor contractor on a lump sum basis. As such it fits into the definition of a taxable contractor as set forth in Minn. Stat. § 297A.01, subd. 4, and explained by the Supreme Court in *County of Hennepin, supra*. Christensen did not meet the requirements of a tax exempt "purchasing agent" set down in Department Ruling No. 35.

In an effort to show that SWMCH had appointed Christensen as its purchasing agent, the appellant presented oral testimony at trial which contradicted the express terms of its written contract dated May 10, 1972. This testimony was objected to by counsel for the commissioner as a violation of the parol evidence rule, and a motion to strike such testimony was made and renewed. The court noted these objections and reserved its ruling so that the point could be discussed in the briefs. The court now finds it necessary to sustain the objection.

The general rule against parol evidence is still quite valid in this state. It holds that parol evidence will not be admitted to contradict, rather than clarify, the terms of a written agreement. This rule was applied by the Minnesota Supreme Court just recently in the case of *Republic National Life Insurance Co. v. Lorraine Realty, et. al.*, 279 N.W. 2d 349 (March 30, 1979).

It is true, of course, that the parol evidence rule does not ordinarily apply between a stranger to the instrument and a party. 7 A Dunnell Digest (3rd Ed.) § 3396. But a well recognized exception to this limitation of the rule exists in cases where the rights of the stranger originate in the written contract, or are founded upon it. *Minneapolis, St. Paul & Sault Ste. Marie Ry Co. v. Home Insurance Co.*, 55 Minn. 236, 56 N.W. 815 (1893); 7A Dunnell Digest (3rd Ed.) § 3396, second sentence.

In the *Mpls., St. Paul & Sault Ste. Marie Ry* case the plaintiff railroad had sought to introduce parol evidence of oral agreements with its shippers that it would procure insurance on their grain which was being shipped in order to contradict the written bills of lading between the railroad and its shippers which expressly provided that the railroad would not be liable for any loss of or damage to the grain. The defendant insurance company objected on the basis of the parol evidence rule, even though it was a stranger to the contracts evidenced by the bills of lading. According to Justice Mitchell's opinion in the case, 55 Minn. at 241:

> One ground on which (plaintiff's) counsel seek to sustain the admissibility of this oral evidence is that the rule against varying a written contract by parol applies only to controversies between parties to the instrument and their privies, and not to controversies between strangers to the contract, or between one of the parties to the instrument and a stranger to it.

However, the Supreme Court rejected this argument and held that the defendant insurance company could invoke the parol evidence rule. Justice Mitchell's opinion for the Court, 55 Minn. at 241-242, reads as follows:

> The rule is as stated, with this limitation, however: that the right in the latter class of cases to vary a written contract by parol is limited to rights independent of the instrument. *As to rights which originate in the relation established by the written contract, or are founded upon it, the rule against varying it by parol applies.* Browne, Parol Ev. § 28; *Sayre v. Burdick*, 47 Minn. 367, (50 N.W. Rep. 245;) *Wodock v. Robinson*, 148 Pa. St. 503, (24 Atl. Rep. 73). (Emphasis added)

In the present case the rights of the State of Minnesota depend upon the incidence of the use tax being imposed. This issue clearly originates in, and is founded upon, the nature of the contractual relation between Christensen and SWMCH. Because that relationship was embodied in a clear and unambiguous written contract, the state has every right to rely upon the terms of that contract for purposes of enforcing its sales and use tax laws. Therefore, the commissioner may properly invoke the parol evidence rule in order to exclude Christensen's oral testimony contradicting the terms of its written contract with SWMCH.

Numerous court decisions have held that in tax cases the taxing authorities, though obviously strangers to any contract between two private parties, may nevertheless invoke the parol evidence rule in order to prevent taxpayers from varying the tax effects of their written agreements through oral testimony. See, e.g., *Clark v. United States*, 341 F. 2d 691 (9th Cir., 1965); *C.I.R. v. Dwight's Estate*, 205 F. 2d 298 (2nd Cir., 1953); *Jurs v. C.I.R.*, 147 F. 2d 805 (9th Cir., 1945); *Pugh v. C.I.R.*, 49 F. 2d 76 (5th Cir., 1931).

An example of the courts' approach can be found in *Jurs, supra*, 147 F. 2d at 810, where the 9th Circuit quoted with approval the following statement of the 5th Circuit in the *Pugh* case, *supra:*

"The proposal is to give this recorded instrument an effect according to the wish of the parties rather than that attributable to it by law, and thus to control as against the United States the application of the tax laws. While it is sometimes broadly stated that the parol evidence rule has no application to any save parties to the instrument and their privies, *** yet when an instrument is executed as the final embodiment of an agreement, and becomes the act of the parties, and where the parol evidence is offered merely to vary the legal effect of its terms, the rule operates to protect all whose rights depend upon the instrument though not parties to it. *** *That by some other form of instrument the rights of the United States would have been different is beside the question. The parties abide by this instrument as they made it. The law, and not their wish or understanding, must control its legal effect on the incidence of taxation.* The Board did not err in disregarding the parol evidence." (Emphasis added).

Under these authorities, in this particular tax case, the commissioner clearly has the right to invoke the rule against the admissibility of parol evidence which would contradict the terms of the written contract between Christensen and SWMCH.

Even if it were admissible, the oral testimony presented by the appellant to vary the terms of the contract is so vague that this court could not make a determination as to when or how the Board of SWMCH appointed Christensen as its agent. Mr. Henry Kramer, the school's principal, testified that he could not remember the date the alleged appointment was made and that he could only "assume" it was before April 18, 1972. Mr. Melvin VanEssen, who was secretary of the building committee, also could not recall when the meeting occurred. Even though Mr. VanEssen had the minutes of the building committee in the court room with him, they were not introduced into evidence. The court can only assume that the minutes contained no record of any agency appointment.

State of Minnesota **Tax Court**

County of Ramsey **Regular Division**

Frederick C. Bolton, III, **Appellant,**

—vs—

The Commissioner of Revenue, **Appellee.**
Docket No. 2600 **Order Dated March 18, 1980.**

This is an appeal from an Order of the Commissioner of Revenue dated February 8, 1978, assessing additional income taxes due in the amount of $1,164.00, plus statutory interest, for the taxable year ended December 31, 1974.

The issue is whether or not the appellant and his wife continued to be residents and domiciled in the State of Minnesota for income tax purposes from September 1, 1974, through December 31, 1974.

The trial of this case was held on August 22, 1979, before the Honorable John Knapp at the Tax Court's Hearing Room in Saint Paul, Minnesota. The evidence consisted of oral testimony and exhibits received at the trial, and from the files and records herein.

Warren E. Peterson, Esquire, for Appellant,
Richard W. Davis, Special Assistant Attorney General,
for the Appellee.

Decision

The Order of the Commissioner of Revenue assessing additional income tax against the appellant is hereby affirmed.

Findings of Fact

John Knapp

1. Appellant Frederick C. Bolton, and his wife, Robbie J. Bolton, were legal residents and domiciliaries of the State of Minnesota from July 1, 1966, until at least August 31, 1974.

2. The period in question is September 1, 1974 through December 31, 1974.

3. Appellant Frederick C. Bolton has been employed as an airline pilot for Northwest Orient Airlines, Inc. since July, 1966. Appellant's principal flight duty station, the base where his flights began and ended, was Minneapolis-St. Paul during the period in question. During the

period in question Northwest Airlines sent all its mailings directed to Frederick Bolton, including his W-2 statements, to his Mendota Heights, Minnesota home. In fact, the Mendota Heights, Minnesota, address was typed on Mr. Bolton's 1974 W-2 statement.

4. During the period in question, and for 4 years prior thereto, appellant and his wife owned a home at 1206 Culligan Lane, Mendota Heights, Minnesota. Appellant applied for, and was granted, a homestead classification for the home located at 1206 Culligan Lane in both 1974 and 1975. Appellant realized a substantial property tax reduction as a result of the "homestead" classification.

5. Appellant and his wife did not purchase or rent a house, apartment, condominium or townhouse in the State of Florida during the period in question. In fact, as of February, 1976, they had not purchased a dwelling in the State of Florida. Instead, whenever they were in Florida, appellant and his wife stayed with one or the other's parents. Bolton retained his home in Minnesota so that he and his wife would have a place in which to live when they were in Minnesota and for use during the summertime. Bolton did not purchase a home in Florida because he was not in a financial position to do so, and because he and his wife were not certain where in Florida they wanted to live.

6. During the period in question appellant owned all of the stock and was the president of Bolton Investments, Inc. Bolton Investments, Inc. operated a sauna business in downtown St. Paul and one in St. Paul Park, Minnesota, during the period in question. In addition Bolton attempted to acquire a third sauna business during 1974. Robbie Bolton was employed by Bolton Investments, Inc. during 1974 and performed certain bookkeeping and other miscellaneous duties for the corporation for which she received $1,200 as compensation. Bolton expended more than $8,000 for improvements and equipment in connection with his business during July, 1974. In addition, he loaned approximately $20,000 to the corporation during 1974. On the corporation's 1974 and 1975 Minnesota subchapter S tax returns, both of which were signed by Bolton and prepared by the same Minnesota-based accountant who prepared Bolton's personal income tax returns, appellant's home address was listed at 1206 Culligan Lane, Mendoata Heights, Minnesota. Bolton Investments' checking account during the period in question was located at the First National Bank of St. Paul, Minnesota. The address which appeared on the corporation's check blanks was 1206 Culligan Lane, Mendota Heights, Minnesota, and all statements of account were sent by the First National Bank to that address.

7. Appellant and his wife's joint personal checking account was located at the First National Bank of St. Paul, Minnesota, during the period in question. The address printed on their check blanks was 1206 Culligan Lane, St. Paul, Minnesota. All checking account statements and cancelled checks for the account were sent to the appellant and his wife at their Mendota Heights, Minnesota, home. Neither appellant nor his wife had a checking account in Florida during the period in question.

8. Appellant Frederick Bolton had a savings account at the Northwest Airlines Employees' Credit Union during the entire period in question. All statements of account were sent by the Credit Union to appellant at 1206 Culligan Lane, Mendota Heights, Minnesota. Neither appellant nor his wife had individual or joint savings account in the State of Florida during the period in question.

9. Appellant maintained charge accounts at Dayton's and Shopper's Charge Service both of which were located in the State of Minnesota during the period in question. In each case, the billing statements for goods purchased were sent to 1206 Culligan Lane, Mendota Heights, Minnesota.

10. During the period in question appellant had numerous charge accounts with national businesses, including Sears, Amoco Oil Co., Phillips Petroleum Co. and American Express Co. In each case, the billing statements for goods purchased from these businesses were sent to Appellant's Minnesota address.

11. During the period in question appellant licensed and registered a 1970 Saab automobile and a 1968 Oldsmobile Cutlass automobile in the State of Minnesota. Appellant, through his father, purchased a 1966 Plymouth automobile in the State of Florida.

12. Appellant was a member of the C. G. Rein Tennis Clubs located in the St. Paul, Minnesota, area during the period in question.

13. Appellant and his wife were treated by numerous doctors, dentists and a hospital in the State of Minnesota during 1974. There is no evidence that during the same period of time Frederick Bolton and/or his wife were treated by doctors, dentists or hospitals located in Florida.

14. Appellant and his wife made contributions to charities located in the State of Minnesota during 1974. There is no evidence that during the same period of time appellant or his wife contributed to charities located in the State of Florida.

15. Appellant registered to vote in Florida on September 11, 1974. He obtained a Florida driver's license at the same time. Even though appellant's wife was also in Florida on September 11, 1974, she did not, and has not, obtained a Florida driver's license. Appellant's wife also did not register to vote in the State of Florida. Rather, Robbie Bolton was registered to vote in the State of Minnesota during the period in question and actually voted in Minnesota in 1974, 1976 and 1978.

16. Appellant's 1974 federal and state income tax returns were prepared by a Minnesota-based accountant. Appellant claimed a deduction for a home office located at 1206 Culligan Lane, Mendota Heights, Minnesota, for the full 1974 calendar year. The office was used in connection with the operation of Bolton Investments, Inc.

17. Appellant rented a "page boy" during the full year of 1974. A "page boy" is a radio receiver which emits a "beep" when a signal is transmitted to it. That "beep" is a signal that someone is attempting to contact the person carrying the "page boy." That person in turn contacts the answering service for the message. The "page boy" has a limited useful radius of approximately 20 miles. Appellant rented the "page boy" so that Northwest Airlines could get in touch with him when he was on reserve status. Appellant testified that even though he was on reserve only through January, 1974, he has retained the "page boy" through the present time.

18. Appellant subscribed to Reader's Digest, Consumer Report and Flying Magazine during the period in question. The magazines were sent to 1206 Culligan Lane, Mendota Heights, Minnesota, during the period in question.

19. Appellant and his wife employed an interior decorator for their home at 1206 Culligan Lane, Mendota Heights, Minnesota, during 1974. During the period in question alone appellant issued checks to the interior decorator of over $1,600. In October, 1974, appellant and his wife

purchased a dining room table and buffet for their Minnesota home for a cost in excess of $1,000. The Boltons took delivery of the dining room table in October, 1974, and the buffet in April 1975. The Boltons also purchased a mattress, boxspring and bedframe from Dayton's in August, 1974, for use in their Minnesota home. The cost incurred by the Boltons was approximately $400. During the period in question, the Boltons paid for insulation they had installed in their home at 1206 Culligan Lane, Mendota Heights, Minnesota. The cost of the project was $236. Finally, during the period in question, the Boltons had certain ornamental iron work done to their Mendota Heights, Minnesota, home at a cost of $271.

20. Bolton and his wife had two dogs and two cats during the period in question. Appellant's animals were treated on several occasions during the period in question by a veterinarian located in West St. Paul, Minnesota.

21. During the period in question, July 1, 1974, through December 31, 1974, appellant Frederick Bolton spent 48 days in the performance of his duties as a pilot for Northwest Airlines. Appellant Frederick Bolton indicates that he spent 45 days in the State of Florida during the period in question. For evidence of the specific days upon which he was physically present in the State of Florida, appellant Bolton relied on a few cancelled checks, but for the most part upon his personal recollection. At the hearing his wife was not present nor did he call any witnesses. Appellant and his wife vacationed in London, England, for 10 days during the period in question. Appellant claims to have been in Minnesota for 19 days during the period in question. Frederick Bolton was in Minnesota for both Christmas and New Year's Eve of 1974. In fact, appellant and his wife gave a tennis party for friends in Minnesota on New Year's Eve.

22. During the period in question Ms. Lona Dee Dagel was employed by Bolton Investments, Inc. and Frederick Bolton as the manager of the two sauna locations. During the period in question Ms. Dagel was in frequent personal contact with Frederick Bolton. There was no established pattern of personal contact. Sometimes they would meet daily, other times two to three times per week, and sometimes once every two weeks. Those periods during which Bolton and Dagel did not meet for more than a week were infrequent and occurred only when he was in Florida *on vacation* or he was on a flight in connection with his employment with Northwest Airlines. The meetings between Dagel and Bolton most often took place at one of the sauna locations. The meetings lasted from one-half to one hour. On two occasions Dagel was in Bolton's Mendota Heights, Minnesota, house; once in the fall of 1974, and the other in spring of 1975. On one visit Bolton showed Dagel that he had a great deal of bookwork to do in connection with Bolton Investments, Inc. On the other occasion Bolton showed Dagel how he and his wife had been remodeling their home. In addition to their personal meetings, Dagel and Bolton were in frequent phone contact concerning business during the period in question. Dagel recalled being in telephone contact with Bolton three to five times per week in addition to their personal contacts. Sometimes Bolton initiated the telephone call and at other times Dagel would. On occasion employees other than Dagel would call Bolton at home. Dagel stated that there was no problem in reaching Bolton by phone during the period in question unless no one was at home. On those occasions Dagel would merely attempt to phone later the same day and on most occasions would find someone home. Dagel testified that she did not find it difficult to reach either Bolton or his wife at their Minnesota home during the period in question. Dagel also testified that she did not have any more difficulty reaching Bolton after September 1, 1974, than she had in reaching him prior to September 1, 1974. As a general rule, Bolton would tell Dagel in advance when he was going on a flight or on vacation. On only two or three occasions during the period from September 1, 1974, through December 31, 1974, did Bolton tell Dagel that he was going to Florida. Dagel reviewed appellant's Exhibit F which encompasses Bolton's recollection of the time he spent in Florida and Minnesota during the period in question. It was Dagel's opinion that Bolton's estimate of the time he spent in Florida was overstated and that he was in the State of Minnesota more than he indicated on the exhibit.

23. Appellant's wife, Robbie Bolton, was not present in court to testify. Bolton's recollection of his wife's physical presence is encompassed in appellant's Exhibit G. Bolton's recollection is that his wife was in Florida 50 days during the period in question and in Minnesota 62 days. It was Bolton's testimony that his wife was not happy about her husband's intention to change his domicile. Bolton testified that during the period in question he and his wife were very seldom together except for the vacation time they spent in London.

Conclusion of Law

During the period of September 1, 1974, through December 31, 1974, appellant and his wife remained domiciled in Minnesota within the meaning of Minn. Stat. § 290.01, subd. 7. Therefore, appellant's entire income for that period is assignable to Minnesota under Minn. Stat. § 290.17 (1).

Memorandum

Minn. Stat. § 290.17 (1) (1974), provides that the entire income of all resident taxpayers shall be assigned to this state for income tax purposes. The term "resident" is defined in Minn. Stat. § 290.01, subd. 7, as follows:

Resident. The term "resident" means any individual domiciled in Minnesota and any other individual maintaining an abode therein during any portion of the tax year who shall not, during the whole of such year, have been domiciled outside the state.

A further definition of "resident" is found in Income Tax Regulations 2001 (7), which reads in relevant part as follows:

The term "resident" means any individual domiciled in Minnesota, and any other individual maintaining an abode therein during any portion of a tax year who shall, during any portion of such year, have been domiciled within the state.

Residence, as defined in the Act, is practically synonymous with domicile. The residence of any person is held to be in that place in which his habitation is fixed, without any present intentions of removing therefrom, and to which, whenever he is absent, he intends to return.

A person who leaves his home to go into another state for temporary purposes only is not considered to have lost his residence. But if a person removes to another state with the intention of remaining there for an indefinite time as a place of permanent residence, he shall be considered to have lost his residence in this state.

The place where a man's family resides shall be considered his residence, and *the residence of a wife is usually that of her husband*, unless there is affirmative evidence to the contrary or unless the husband and wife are permanently separated.

* * *

The mere intention to acquire a new residence, without the fact of removal, does not change the status of the taxpayer, *nor does the fact of removal, without the intention to remain, change his status. The presumption is that one's domicile is the place where he lives. A domicile once shown to exist is presumed to continue until the contrary is shown.* An absence of intention to abandon a residence is equivalent to an intention to retain the existing one. No positive rule can be adopted with respect to the evidence necessary to prove an intention to change a domicile but such intention may be proved by acts and declarations, and *of the two forms of evidence, acts are generally conceded more weight than declarations.* A person who is temporarily employed within the state does not require a residence in the state, if during such period he is domiciled without the state.

While the exercise of one's voting franchise is presumptive evidence of residence, such evidence may be overcome by a showing of the facts involved in the determination of residence. Casting an illegal vote does not of itself establish residence for income tax purposes. (Emphasis added)

The relevant authorities on the subject make it clear that once a domicile is established in Minnesota, it is presumed to continue to exist until another domicile is proven to have been established elsewhere. This rule on the continuing quality of a domicile is clearly set forth in American Law Institute, Restatement, Conflict of Laws, Chapter 2, Section 23, as follows:

A domicile once established continues until it is superseded by a new domicile.

See also, this court's decision in *McCutchan v. Commissioner of Taxation*, Dkt. No. 563 (Jan. 20, 1956).

The legal test for establishing "domicile" requires bodily presence in a given jurisdiction coupled with an intention to make such place one's home. *In re Estate of Smith*, 242 Minn. 85, 64 N.W. 2d 129 (1954); *Miller's Estate v. Commissioner of Taxation*, 240 Minn. 18, 59 N.W. 2d 925 (1953). In the instant case, the appellant was bodily present in the State of Florida for short visits during the period from September 1, 1974, through December 31, 1974. However, the precise issue to be resolved on this appeal is whether the facts establish the required intention to make Florida the permanent home of appellant and his wife after September 1, 1974.

It is clear that the issue of intention is one of fact, and that *all* the facts of a particular case must be taken into account. No one factor can be deemed controlling. As the Supreme Court held in *In re Estate of Smith, supra*, 242 Minn. at 89, 64 N.W. 2d at 131:

The question of domicile is one of fact. Intention may be gathered both from act and from declaration.

The Supreme Court went on to quote from its previous decision in *Seecomb v. Bovey*, 135 Minn. 353, 356, 160 N.W. 1018, 1019, as follows:

"With respect to the evidence necessary to establish the intention to change the domicile, no positive rule can be adopted, but the intention may be gathered both from acts and declarations. Acts are generally regarded as more important than declarations, and written declarations are usually more reliable than oral ones."

Thus, to transfer one's domicile to another state, it is necessary to show by actions as well as words that the person intends to make a new home in the new community. A few incidental contacts are not enough. As this Court said in *Coulter v. Commissioner of Taxation*, Dkt. No. 257 (October 8, 1946):

Domicile is not something either easily abandoned or accidentally changed. It is a reflection of the true situation which prevails in the life of a man or of a family. *A domicile is not lost with a changed abode when deep roots remain embedded in the social and economic life of the old community.* Nor is a new domicile acquired unless and until actual residence has been supplemented by good faith intent, and, as time passes, *intent must be implemented by action, which in fact, integrates one's life with the new community.* (Emphasis added)

Prior to September 1, 1974, there is no question that the appellant and his wife were domiciled in Minnesota and had been since 1966. During this period of time the appellant and his wife established many social, financial and employment connections in this state. The facts clearly show that the vast majority of these connections remained fully intact throughout the period in question.

Throughout the period in question, and for 4 years prior thereto, appellant and his wife owned a home at 1206 Culligan Lane, Mendota Heights, Minnesota. It is significant that appellant applied for, and was granted, a homestead classification for his Mendota Heights, Minnesota, home in both 1974 and 1975. As a result of the homestead classification, appellant realized a substantial property tax reduction. Appellant and his wife did not purchase or rent a house, apartment, condominium or townhouse in the State of Florida during the period in question. Instead, whenever they were in Florida, appellant and his wife stayed with one or the other's parents. Bolton retained his home in Minnesota so that he and his wife would have a place in which to live when they were in Minnesota and for their use during the summertime. On the other hand, Bolton did not purchase a home in Florida because he was not in a financial position to do so and because he and his wife were not certain where in Florida they wanted to live. Appellant claimed a deduction for a home office located at 1206 Culligan Lane, Mendota Heights, Minnesota, for the full 1974 calendar year. The office was used in connection with the operation of Bolton Investments, Inc.

Appellant Frederick Bolton maintained his long-standing employment with a Minnesota employer, Northwest Orient Airlines, Inc. throughout the period in question. All flight schedules flown by Bolton during the period in question began and ended in Minnesota. During the period in question Northwest Airlines sent all of its mailings directed to appellant, including his W-2 statements, to his Mendota Heights, Minnesota, home. In fact, Northwest Airlines typed Bolton's Mendota Heights, Minnesota, address on his 1974 W-2 statement. There was no evidence presented that Mr. Bolton even attempted to find other employment, either in the State of Florida or elsewhere.

All of the facts herein clearly show that the appellant and his wife continued to maintain strong ties to the State of Minnesota in the form of home and business ownership and in the form of numerous and significant social, financial and employment relationships.

The appellant relies primarily on his personal declarations as evidence of intent to transfer domicile to the State of Florida, together with the fact that he purchased a used automobile in Florida, registered to vote in Florida and took out Florida driver's license.

Bolton's declarations are clearly not entitled to a great deal of weight in this case. The rule is clear that in determining the intent to change a domicile, actions will speak louder than declarations. *In re Estate of Smith, supra.* In the instant case, the actions of the appellant, and the absence of even the most preliminary actions by his wife, during the last quarter of 1974, prove that they still considered Minnesota their home and place of abode.

Obviously, a major motive behind appellant's alleged move to Florida was to reduce his overall income tax burden. Of course, there is absolutely nothing wrong with this motive *per se*, because every taxpayer has the undoubted right to use whatever legal means are available to lower his overall tax burden. *Gregory v. Helvering*, 293 U.S. 465, 55 S.Ct. 266 (1934). However, the existence of this tax avoidance motive can nevertheless be legitimately taken into account when assessing the probative value of the taxpayer's own declarations. See, *Texas v. Florida*, 306 U.S. 398, 425, 59 S.Ct. 563, 576 (1939). Bolton's tax avoidance motive clearly results in his declarations of intent being nothing more than self-serving statements. They are therefore entitled to little, if any, probative value.

The other facts presented by the Appellant, i.e., that he registered to vote in Florida, and took out Florida driver's license, are similarly limited in their evidentiary value. Bearing in mind the fact that registering to vote is voluntary, and the fact that few driver's license applications are ever subjected to investigation on residence grounds, it can be seen that neither of these actions amount to conclusive evidence of a change of domicile.

Once a domicile is established in Minnesota, it is presumed to continue until another domicile is proven to have been established elsewhere. *American Law Institute, Restatement, Conflict of Laws,* Chapter 2, Section 23; *McCutchan v. Commissioner of Taxation, supra; Sarek v. Commissioner of Revenue*, Dkt. No. 2524 (Apr. 19, 1979). To establish a new "domicile" the taxpayer must establish actual physical presence in the new jurisdiction and must establish his intention to make the new jurisdiction his home. *In re Estate of Smith, supra; Miller's Estate v. Commissioner of Taxation, supra.*

Appellant claims that in 1973 he resigned as a Junior Warden in the church because of his intention to move to the State of Florida in 1974. At the same time, however, appellant was remodeling his Minnesota home. He opened a second sauna location and was attempting to acquire a third sauna location. In addition, he retained his "page boy" long beyond the point in time when he claims that he no longer had a need for it. These facts more than counter Bolton's claim with respect to the significance of his resignation from his Minnesota church position, especially in view of the fact that Bolton does not claim to have re-established his interest in a church in Florida after his alleged change of domicile to the State of Florida.

Appellant refers to the Florida address which appears on certain certificates and licenses issued to him as being evidence of the fact that he changed his domicile from Minnesota to Florida. It is important to note that each of the certificates and/or licenses was issued prior to September 1, 1974, at a point in time when Bolton claims that he was a Minnesota resident and had been since 1966. The address which appeared on the certificates and licenses was 1191 Grove Street, Clearwater, Florida, which is the address of his parents. In response to a question by appellee's counsel, Bolton, a 46-year-old married man of substantial financial means, stated for the record that he had always intended to return to Florida to live with his parents.

The appellant herein relies on the case of *Miller's Estate v. Commissioner of Taxation,* 240 Minn. 18, 59 N.W. 2d, 925 to support his position. Appellant asserts that the Miller case contains facts which are "strikingly similar to the present case." An examination of Findings of Fact in the Miller case demonstrates how woefully inadequate the appellant's actions to change his domicile were in comparison to those of Addison Miller. Miller purchased and completely furnished a home in Florida and made extensive repairs and improvements to the Florida property; he sold and/or turned over to trusted associates the vast majority of his business interests in Minnesota; he put his Minnesota house up for sale; he became a member of a Roman Catholic Parish in Florida and regularly attended church and made contributions; he resigned from certain social and athletic clubs in Minnesota and took out non-resident memberships in others; and he joined various business organizations in Florida. This court can only conclude that there was no similarity at all between the facts in the Miller case and the facts in the instant case.

The testimony of Lona Dee Dagel totally contradicts appellant's testimony concerning his limited physical presence in Minnesota during the period in question. Ms. Dagel testified that during the period in question she was employed by Bolton Investments, Inc. and Frederick Bolton as the manager of the corporation's 2 sauna locations. During the period in question Ms. Dagel was in frequent personal contact with Frederick Bolton. There was no established pattern of personal contact. Sometimes they would meet daily, other times two or three times per week, and sometimes once every two weeks. In addition to their personal meetings, Dagel and Bolton were in frequent phone contact concerning business during the period in question. Dagel testified that she was in telephone contact with Bolton three to five times per week in addition to their personal contacts. Sometimes Bolton initiated the telephone call and at other times Dagel initiated the same. Dagel testified that there was no problem in reaching Bolton by phone during the period in question unless no one was at home, and on those occasions Dagel would merely attempt to phone later the same day and on most occasions would find someone home. Dagel testified that she did not find it difficult to reach either Bolton or his wife at their Minnesota home during the period in question and also testified that she did not have any more difficulty reaching Bolton after September 1, 1974, than she had in reaching him prior to September 1, 1974.

Appellant did not abandon his domicile in Minnesota and did not establish a new domicile in Florida. He admitted that he really didn't know where he wanted to establish his domicile in Florida. In order to prove the establishment of a new domicile, the abandonment of the old domicile must be proven, as well as the establishment of a new domicile in a specific case—not somewhere in Florida. In the instant case, the appellant testified that he intended to establish a domicile somewhere in Florida, but was only able to prove that he spent some time with his parents in Florida and some time with his wife's parents in Florida. Even if appellant's testimony were taken as true, it would not be sufficient to prove the establishment of a new domicile in Florida.

John Knapp, Chief Judge

SUPREME COURT

Decisions Filed Friday, March 28, 1980

50064/416 Hubbard Broadcasting, Inc. vs. C. A. Loescher, Appellant. Ramsey County.

Good faith in obtaining a temporary restraining order is no defense to recovery of damages on an injunction bond, and a trial court does not have discretion to deny recovery of damages that were proximately caused by an erroneously issued temporary restraining order on this ground.

An employee has no duty to mitigate damages when the employer has obtained a temporary restraining order enjoining the employee from all other local employment of a similar nature.

The collateral source rule is properly invoked in a contract case if its application places the responsibility for losses on the party causing them without overcompensating the invoker.

Because defendant sustained recoverable monetary damages, he may recover on the injunction bond.

Reversed and remanded. Sheran, C. J. Took no part, Kelly, J.

50044/117 State of Minnesota vs. Arthur Werner Steinke, Appellant. Carver County.

Sufficient evidence exists to support the jury verdict.

Mere inconsistency in the testimony elicited by defense counsel on cross-examination of a state's expert witness does not require the conclusion that the witness committed perjury mandating a new trial.

The prosecutor did not commit prejudicial misconduct in his examination of witnesses or in his closing argument, nor did the trial court commit prejudicial error in its evidentiary rulings or its instructions to the jury.

Affirmed. Sheran, C. J.

49542/101 State of Minnesota vs. Del F. Mar, Appellant. Hennepin County.

The evidence is held to be sufficient to support a judgment of conviction for criminal sexual conduct in the second degree.

In a prosecution for sexual assault where the accused was charged with attempting to force the complainant into prostitution, it was proper to exclude testimony offered by defendant that the victim was homosexual.

Affirmed. Otis, J.

50087/114 SSM Investments, a co-partnership consisting of Arvid W. Skog, Thomas E. McKee and Richard J. Sybrant, Appellant, vs. Kenneth M. Siemers, Deceased, et al. Aitkin County.

In this action to determine adverse claims, plaintiff established by clear and convincing evidence the existence of the elements required to obtain title by adverse possession, including continuous possession of the property in dispute for the fifteen-year period required by Minn. Stat. § 541.02 (1978).

Reversed, Otis, J. Took no part, Todd, J.

49874/12 Tri-State Land Company, Appellant, vs. City of Shoreview. Ramsey County.

Upon an appeal from a contested special assessment pursuant to Minn. Stat. § 429.081 (1978), when the issue presented is the constitutional claim that a special assessment exceeds the benefit from an improvement to the assessed property, the trial court must independently review the evidence relating to the value of the assessments rather than defer to the decision of the taxing authority.

Reversed and remanded with instructions. Rogosheske, J.

50265/100 Larry Glenn Schultz, petitioner, Appellant, vs. State of Minnesota. Steele County.

Evidence held sufficient to support petitioner's convictions of sex offenses.

Where trial court asked jurors to decide whether they were hopelessly deadlocked or wished to adjourn for the night and resume deliberations in the morning and where jurors adjourned for the night and reached their verdict in the morning, *held,* trial court did not coerce the jury into reaching a verdict.

Trial court did not commit prejudicial error in failing to order individual polling of jurors where defense counsel, when offered a chance to have the jurors polled, refused.

Affirmed. Rogosheske, J.

50256, 50257, 50283, 50284, 50285/509 The City of Minneapolis, petitioner, vs. Angus Wurtele, et al., respondents-below, Bessie M. Seeley, et al., respondents-below, Appellants, R. E. Short Co., respondent-below, Appellant, Robert R. Biglow and Hartley Nordin, respondents-below, Appellants, vs. Oxford Development Corporation, intervenor, Oxford Properties, U.S., Ltd. and MCC Development Company, Inc., intervenors. Hennepin County.

The trial court's finding that there is a legitimate public purpose served by the condemnation of property for the city center project in this development district is supported by the evidence.

Viewed in light of the principle of substantial compliance, the city council adequately met the procedural requirements set by Minn. Stat. ch. 472A (1978) for designation of a development district. The council sufficiently complied with the requirements of notice, consultation with a properly chosen advisory board, provision of relocation services, and consultation with the school board and county board of commissioners.

The city was not required to attempt to negotiate the appellants' property as a prerequisite to petitioning for condemnation.

In the context of this case, the city has shown that it required appellants' property prior to the filing of an award and therefore was entitled to "quick take" the property under Minn. Stat. § 117.042 (1976).

Affirmed. Peterson, J.

49964/454 Patrick A. Haugen, Appellant, vs. Town of Waltham. Mower County.

The provisions of Minn. Stat. § 65B.51 (1978) which requires the deduction of future economic loss benefits from a tort recovery, shall be unenforceable pending further legislative enactments relating to this subject matter because the provision faces significant constitutional barriers and is incapable of any practical application.

Reversed and remanded with instructions to enter judgment consistent with this opinion. Todd, J.

49229/30 State Bank of Young America, Appellant, vs. Vidmar Iron Works, Inc. Carver County.

The renewal of a promissory note does not discharge the original debt, but only operates to extend the time for payment. The renewal of a secured note does not extinguish the security interest.

The Uniform Commercial Code does not require a debtor to have "title" to collateral before a security interest may attach, but only requires that the debtor have "rights in the collateral." A company fabricating finished goods out of raw materials for the owner of the raw materials has rights in the goods to the extent of the amount due under the fabrication contract, which rights are sufficient to allow an inventory security interest to attach to the goods.

A perfected security interest remains valid despite a change in the corporate name or form of the debtor for a statutory period of 4 months.

The appellant took sufficient steps to notify the respondent to make payments to it. Oral notice was sufficient under the circumstances.

The Uniform Commercial Code imposes on all parties to a commercial transaction an obligation of good faith. An agreement to prefer an unsecured creditor to a secured creditor does not comport with good faith.

Reversed and remanded. Yetka, J.

49443, 49459/24 State of Minnesota vs. Roger William Engholm, Appellant (49443) State of Minnesota vs. Marlin Fred Engholm, Appellant (49459). Crow Wing County.

Here the officers had specific and articulable facts which, taken together with rational inferences, reasonably warranted the attempt to stop the defendant motorist. Resistance to this stop is therefore a proper basis for a conviction of obstructing legal process.

Constitutionality of a statute cannot be challenged for the first time on appeal. In addition, the defendants' argument on constitutionality is frivolous.

Affirmed. Scott, J.

50198/85 Reiss Greenhouses, Inc., Relator, vs. County of Hennepin. Tax Court.

Minn. Stat. § 273.111, subd. 3 (2) (1978) was intended to apply in situations where the subject property is used for agricultural purposes as defined in § 273.111, subd. 6, and the seven-year possession requirement is met, irrespective of whether the land in question is owned by a corporation or an individual.

Reversed. Scott, J. Took no part, Sheran, C. J.

50030/6 Bernard W. Topash, Relator, vs. The Commissioner of Revenue. Tax Court.

The State of Minnesota does not have jurisdiction to tax income earned within the Red Lake Indian Reservation by an Indian residing within the reservation but enrolled in a tribe other than the Red Lake Band of Chippewa Indians.

Reversed. Wahl, J.

45556/268 (1975) Jeffrey D. Savchuk vs. Randal Rush and State Farm Mutual Automobile Insurance Company, garnishee, Appellants. Hennepin County.

Pursuant to the mandate of the United States Supreme Court dated February 20, 1980, this court's decision in *Savchuk v. Rush*, 272 N.W.2d 288 (Minn. 1978) is vacated and set aside.

Reversed. Per Curiam.

STATE CONTRACTS

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

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

Department of Commerce Consumer Division

Notice of Request for Proposals for Rate Design Consulting

I. Introduction

The Office of Consumer Services of the Minnesota Department of Commerce, which is statutorily charged with representing the interests of the state's residential utility consumers in Public Service Commission proceedings, is soliciting proposals from qualified consultants to perform work in connection with the petition of Minnesota Power & Light for authority to increase its rates. The petition is currently before the Minnesota Public Service Commission and a hearing in the matter has been ordered.

II. Requisite Qualifications

Respondents must be able to demonstrate substantial experience and expertise in the economic and regulatory aspects of the electric and/or other energy-related industries. Attention will be given to respondents who can demonstrate experience in preparation and presentation of testimony before regulatory bodies in such areas as rate of return, cost of service, rate design and other financial issues.

III. Scope of Work

A. Assist the Office of Consumer Services in preparation for and in conducting cross-examination of witnesses presenting direct, rebuttal and surrebuttal testimony for the company and other intervenors regarding the risks associated with serving different classes of customers.

The witnesses filing direct testimony on behalf of the company on this issue are:

Kenneth A. Johnson
Assistant Treasurer
Minnesota Power & Light

Herbert J. Edwards, Jr.
Regional Vice President
of Ebasco Business Consulting Company

Cross examination of company witnesses is presently scheduled to begin May 28, 1980.

B. To review the company tariff design and analyze effects of variations in usage by class and assess the probability of usage variability. To prepare and present pre-filed direct, rebuttal and surrebuttal testimony regarding overall conclusions as to the risk to the company of serving each class and the reasonableness of the company's proposed revenue allocations. This will include appearing before a hearing examiner for purposes of cross-examination by parties to the proceeding. Intervenor testimony must be filed by July 11, 1980.

C. Assist in preparation of the Brief, Reply Brief, Exceptions to the Hearing Examiner's Report, and Reply Exceptions. It is expected that Briefing will occur in September.

D. Assist in preparation of the oral argument before the commission. Oral argument is expected in December.

E. Assist in any post-order motions and appeals to the courts. The commission's initial order is expected in January, 1981.

IV. Format for Proposal

The respondent's proposal should include a summary of the respondent's qualifications and experience. The proposal should attempt to address, as specifically as possible, all work tasks to be performed throughout the proceeding and identify personnel who will be responsible for performing the work. Cost estimates should be detailed as possible and should include estimates for professional services and out-of-pocket expenses, such as travel, lodging, etc.

V. Estimated Cost: $15,000.00-20,000.00

If you have any questions regarding the foregoing, please contact Cecil Callahan.

Responses to this Request for Proposals must be submitted by April 25, 1980 and directed to:

Cecil Callahan, Specialist
Residential Utility Consumer Unit
Office of Consumer Services
Minnesota Department of Commerce
128 Metro Square Building
Seventh and Robert Streets
St. Paul, Minnesota 55101
612/296-7534

Department of Economic Security
Employment and Training Division
Balance of State Office, Displaced Homemaker Program (DHP)

Notice of Request for Proposals for Displaced Homemaker Program (DHP)

1. Agency name and address: Minnesota Department of Economic Security, Employment and Training Division, Balance of State Office, 690 American Center Building, 160 East Kellogg Boulevard, St. Paul, Minnesota 55101.

2. Contact person: Persons or organizations wishing to receive this request for proposal package, or who would like additional information, may write the contracting officer, Roger Villa, at the address above, or call (612) 296-6065.

3. Description: A notice of RFP has been issued on April 7, 1980 for the purpose of contracting with a community based organization that is qualified to provide outreach, orientation and a structured series of workshops for Displaced Homemakers in Economic Development Region IX, to establish and maintain cooperative linkages with the Comprehensive Employment and Training Centers and appropriate Job Service Offices in that region so that Displaced Homemakers may be better able to participate in training and placement programs offered by those offices.

4. Cost: One award will be granted, not to exceed a total of $25,000.

5. Final proposal submission date: Proposals must be received by 4:30 p.m. April 28, 1980.

Higher Education Coordinating Board

Notice of Request for Proposals for Evaluation of Post-secondary Education Regional Centers

The Minnesota Higher Education Coordinating Board is seeking the services of a management consultant to evaluate the current operations of the three Board administered post-secondary education regional centers. The analysis should include an evaluation of each center's organization, financial support and programs, an assessment of regional response to center services, an assessment of the current need for the centers, and future planning and program alternatives for the centers.

Those interested in receiving requests for proposals should contact:

Susan A. Powell
Director of Program Planning and Coordination
Minnesota Higher Education Coordinating Board
400 Capitol Square Building
550 Cedar Street
St. Paul, MN 55101
(612) 296-9672

Proposals will be accepted until 4:00 p.m., April 30, 1980.

Housing Finance Agency

Notice of Request for Proposals for Auditing Services

The Minnesota Housing Finance Agency intends to engage the services of a certified public accounting firm for its annual audit and cold comfort reviews for the year ended June 30, 1980, and subsequent three years. The estimated amount of contract for the annual audit is $20,000. Inquiries should be addressed to Alan L. Hans, Director of Finance, Minnesota Housing Finance Agency, 333 Sibley Street, St. Paul, Minnesota 55101, (612) 296-9813.

Department of Public Welfare
Mental Health Bureau

Notice of Request for Proposals to Provide Program and System Design and Development; and Data Processing Services for the Minnesota Developmental Programming System Case Management Battery (MDPS-CMB)

Notice is hereby given that the Mental Retardation Division, Department of Public Welfare, is soliciting professional assistance in implementing the MDPS-CMB, 1) in each of its eight state hospitals for the mentally retarded, 2) in each of its 87 county social service agencies, and 3) select residential and day programs statewise.

I. Scope of the Project

The MDPS-CMB is comprised of two discrete types of data:

demographic and behavioral. The MDPS-Case Management System represents a comprehensive set of materials and data processing services that collect, analyze and store (on magnetic tape) demographic and behavioral data for approximately 14,000 persons in Minnesota on an annual basis. Approximately 500 bites of data are annually collected on each client for analysis of change in behavioral functioning over time and for program planning purposes. Data analysis procedures must produce a minimum of 50 separate reports for each of approximately 300 organizational units with system capability to cross tabulate any of the approximately 500 bites of data collected on each client. Each MDPS-CMB must also produce a three-page individual profile that will be returned to the county of legal responsibility and, if appropriate, to the state hospital of residence. This project shall be funded for one year beginning July 1, 1980.

II. Objective

The objective of the contractor shall be to update the MDPS-CMB on all those clients who have an annual review during a 12-month period and provide aggregate analyses for purposes of service planning and evaluation.

III. Project Tasks

1. To revise and print 15,000 MDPS-CMB booklets for use July 1, 1980 through June 30, 1981. The revised form shall not exceed a 12-page, machine readable booklet that includes all behavioral and demographic data as specified by the Department of Public Welfare.

2. To develop programs to read and edit the completed bookets and to print individual behavioral profile reports on each person on whom a booklet is completed and returned to the contractor. *Minimum* turnaround time from receipt of forms by contractor to receipt of returned profiles *shall not exceed* ten working days. Error listings must be provided to the Department of Public Welfare on quarterly basis.

3. To receive and scan each completed assessment and produce individual profiles on each client assessed.

4. Develop at least 50 summary routines for aggregate state, county and facility data analysis as specified by the Department of Public Welfare.

5. To distribute all summary runs to 107 developmental achievement centers, 87 county social service agencies, 225 community residential facilities, and eight state hospitals using the DPW distribution guidelines.

6. All programs shall be compatible with an existing data base so as to permit trend analysis year by year. The system must integrate current client information with past client information (i.e. develop and regularly update a history file).

7. Contractor will assume handling and postage costs for returns of reports (individual profiles and aggregate analysis).

8. To develop and maintain a system for logging and sorting forms received from the county social service departments and state hospitals.

9. To maintain "on-line" computer file for access by DPW on individual and/or group analysis for special requests by DPW, service providers, social service agencies and state hospitals.

10. Contractor will provide a 40-hour per week technical assistance telephone number to handle all requests and queries on special data analysis requests from the DPW.

11. To develop jointly with DPW program evaluation designs at the state, county and service provider level, which meet or exceed design specifications for program/service evaluation developed by Developmental Disabilities Office, U.S. Department of HEW.

12. To provide complete program and system documentation to DPW including programs used to generate individual profiles and state and local aggregate analyses. County social service agencies have the opportunity to purchase at cost copies of their history and current data tapes on their clients.

The following will be considered minimum contents of the proposal:

A. A restatement of the objective to show or demonstrate the responder's view of the nature of the project.

B. Identify and describe the deliverables to be provided by the responder with time lines specified.

C. Outline the responder's background and experience with particular emphasis on local and state government work. Identify personnel to conduct the project and detail their training and work experience. No change in personnel assigned to the project will be permitted without the approval of the State Project Director or Manager.

D. Responder will prepare a detailed cost and work plan which will identify the major tasks to be accomplished and be used as a scheduling and managing tool as well as the basis for invoicing.

E. Identify the level of the department's participation in the project as well as any other services to be provided to the department.

V. Evaluation

All proposals received by the deadline will be evaluated by representatives of the Department of Public Welfare. In some instances, an interview will be part of the evaluation process. Weighted factors upon which proposals will be judged include, but are not limited to the following:

A. Expressed understanding of project objectives: 30

B. Project work plan: 30

C. Project cost detail: 20

D. Qualifications of both company and personnel: 20

(Experience of project personnel will be given greater weight than that of the firm.)

Evaluation and selection will be completed by May 15, 1980. Results will be sent immediately by mail to all responders.

The estimated amount of the contract will not exceed $65,000. Responses must be received by May 1, 1980 by 3:30 p.m.

Direct inquiries to:
Mr. Robert F. Meyer, Program Specialist
Mental Retardation Division
Mental Health Bureau
Department of Public Welfare
4th Floor Centennial Office Bldg.
658 Cedar Street
St. Paul, Minnesota 55155
Phone: (612) 296-2147

State Planning Agency Environmental Quality Board

Amended Notice of Request for Proposal for Professional Service Contract

This notice amends the original Notice of Request for Proposals for Professional Service Contract published at *State Register*, Volume 4, Number 36, p. 1476.

The Environmental Quality Board requires the services of a qualified consultant to conduct a study and present a documented report on the "Right of Way Compatability Analysis." This project will address the technical, economic and institutional issues associated with the use of, or paralleling of existing rights of way—transmission, highway, railroad, pipeline, communication—and up-grading existing transmission facilities.

Estimated fee range: $90,000.00

Time: Contract Award May 9, 1980.

Firms/individuals desiring consideration should send their response to:

Larry Hartman
Power Plant Siting Program
Environmental Quality Board
15B Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
(612) 296-5089

Request for Proposal is available upon request.

All responses should be sent in no later than 5:00 p.m., April 28, 1980. Late responses will not be accepted.

State Planning Agency Rural Development Council

Notice of Request for Proposals for a Minnesota Rural Leadership Program

The Minnesota Rural Development Council is presently requesting proposals from Minnesota institutions of higher education which are interested in conducting the Second Minnesota Rural Leadership Program.

The purpose of this program is to provide a learning experience up to 40 hours for a maximum of 100 participants from rural Minnesota. These leaders will learn first hand the process of rural development leadership and be provided with general "process" skills as well as specific "content" information concerning rural development. The Minnesota Rural Development Council has budgeted $20,000 as its share, for the purpose of co-sponsoring the program. It is expected that the host institution will provide some hard and soft match not to exceed $20,000.

The Request for Proposal guidelines to be used in the preparation of the application, along with a supplementary information packet, are available upon request from the address listed below. Deadline for notification of intent to submit a proposal is May 1, 1980. Final proposal deadline is May 12, 1980. To obtain a Request for Proposal packet, please write to:

Richard A. Woodbury
Director, Information & Education
Minnesota State Planning Agency
101 Capitol Square Building
St. Paul, Minnesota 55101

Department of Transportation Surveying and Mapping Division

Notice of Availability of Contract for Photogrammetric Services, Fiscal Year 1981 (July 1, 1980 to June 30, 1981)

The Minnesota Department of Transportation desires an aerial surveys firm to provide the following photogrammetric services conforming to Mn/DOT specifications:

1. Aerial Vertical Photography

Provide negatives taken by the contractor using a precision aerial camera. The negatives shall be suitable for printing photo-

graphs and transparencies and for use in the state's photogrammetric instruments for analytical aerial triangulation and map compilation. The state may call for the use of panchromatic, color negative or infrared color emulsions in obtaining the photography.

2. Aerial Oblique Photography

Provide negatives taken by the contractor suitable for printing photography for illustrative purposes.

3. Photographic Laboratory Services

Provide from aerial negatives, rectified, ratioed and controlled photographic enlargements and mosaics, 9½" x 9½" diapositives on glass or film suitable for photogrammetric compilation of topographic mapping, screened photographic film positives from mosaic negatives, and continuous roll photographic film positives of topographic mapping from scribed originals on 36" wide roll.

4. Map Compilation

Provide map compilation by Wild A-10 Autograph or equivalent type instrument for the compilation of topographic maps or photogrammetric cross-sections.

Firms interested in submitting a proposal for this contract should write for additional information. Requests for additional information will not be considered if delivered after 4:30 p.m., April 28, 1980.

Send your response to:

E. R. Larson, Director
Office of Surveying and Mapping
Room 711, Transportation Building
St. Paul, Minnesota 55155

OFFICIAL NOTICES

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

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

Environmental Quality Board

Notice of Intent to Solicit Outside Opinions or Information Concerning Revisions to Rules Relating to Environmental Review Program

Pursuant to Minn. Stat. § 15.0412, subd. 6, notice is hereby given that the Minnesota Environmental Quality Board is soliciting information and opinions from sources outside the agency for the purpose of revising the existing environmental review program rules, 6 MCAR § 3.021 *et. seq.* Such rules are authorized by Minn. Stat. § 116.04.

Any persons desiring to submit information or comment on the subject may do so either orally or in writing. All statements of information and comment on the subject may do so either orally or in writing. All statements of information and comment must be received by May 5, 1980. Any written material received by this date will become part of the record of any rules hearing held on this subject.

Written or oral information and comment should be addressed to:

Thomas Rulland, Manager
Environmental Management Programs
Capitol Square Building, Room 100
550 Cedar Street
St. Paul, Minnesota 55101
(612) 296-2319

March 28, 1980

Arthur E. Sidner, Chairman
Environmental Quality Board

Minnesota Teachers Retirement Association

Notice of Availability of Actuarial Consultation Contract (7/1/80-6/30/82)

Contact Person: Harvey W. Schmidt, Minnesota Teachers Retirement Association, 302 Capitol Square Building, St. Paul, MN 55101, Tel. (612) 296-2409.

Project description: Provide actuarial consultant services to Association; prepare and submit actuarial valuations, actuarial surveys and reports as required in Minn. Stat. § 356.215; assist in the preparation of the certification of funds required from the state; consult with the director of the board and staff on any matters of actuarial nature; make any necessary special statistical studies in connection with proposed legislation; and perform any other services of an actuarial nature which the Board may deem desirable.

Final submission date—April 30, 1980.

Department of Transportation

Notice of Intent to Solicit Opinion Concerning A Proposed Rule Relating to Operating Standards for Special Transportation Services

Notice is hereby given that the Minnesota Department of Transportation is considering the adoption of standards for the operation of vehicles used to provide special transportation services, which are reasonably necessary to protect the health and safety of individuals using those services.

Special transportation service means motor vehicle transportation provided on a regular basis by a public or private entity or person that is designed exclusively or primarily to serve individuals who are elderly, handicapped, disabled or economically disadvantaged and who are unable to use regular means of transportation.

The proposed standards are authorized by Minn. Stat. § 174.30 (1979 Supp.) which requires the commissioner to adopt standards which include but are not limited to:

(a) Qualifications of drivers and attendants including driver training requirements;

(b) Safety equipment required for vehicle;

(c) General requirements concerning maintenance of standard equipment of vehicles; and

(d) Minimum insurance requirements.

The proposed operating standards will not apply to transportation provided by a common carrier operating on fixed routes and schedules, a taxi, or volunteer driver using a private automobile, a school bus as defined in Minn. Stat. § 169.01, subd. 6, or an emergency ambulance regulated under Minn. Stat. ch. 144.

All interested or affected persons or groups may submit information on this subject. Written or oral information and comment should be addressed to:

Allan J. Schenkelberg, Director
Modal Planning Section
Room 820, Transportation Building
Mn/DOT
John Ireland Boulevard
St. Paul, Minnesota 55155

All statements of information and comment must be received by April 30, 1980. Any written material received by this date will become part of the record of any rules hearing held on this subject.

Richard P. Braun
Commissioner of Transportation

STATE OF MINNESOTA
OFFICE OF THE STATE REGISTER

Suite 415, Hamm Building
408 St. Peter Street
St. Paul, Minnesota 55102
(612) 296-8239

ORDER FORM

State Register. Minnesota's official weekly publication for agency rules and notices, executive orders of the governor, state contracts, Supreme Court and Tax Court decisions.

_____ Annual subscription $118.00

_____ Single copies $2.25 each

Finding Aids Annual. Contains cumulative findings aids to Volume 3 of the *State Register,* including MCAR Amendments and Additions, Executive Orders List, Executive Orders Index, Agency Index, Subject Matter Index.

_____Single copy $3.00 + $.12 (sales tax) = $3.12*each

The 1979-80 Audio Visual Catalog. A 275-page catalog of state agency films, slides and tapes available to the public.

_____Single copy $4.50 + $.18 (sales tax) = $4.68*each

***Minnesota Code of Agency Rules* (MCAR).** The permanent, 15 volume set of state agency rules. An indispensable reference work for the practice of administrative law.

_____ 15 volume set $325.00, includes the annual update service subscription for the year of order (a $140.00 value) and a set of MCAR binders

Minnesota Guidebook to State Agency Services. Detailed listing of grants, information, materials and services available from each state agency, with over 2,000 individual offices listed.

_____ Single copy $6.25 + $.25 (sales tax) = $6.50* each

*To avoid Minnesota sales tax, please include your Certificate of Exempt Status issued by the Minnesota Department of Revenue.

Please enclose full amount for items ordered. Make check or money order payable to "Office of the State Register."

Name_____

Attention of: _____

Street _____

City _____ State _____ Zip _____

Telephone_____

FOR LEGISLATIVE NEWS

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

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

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

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

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