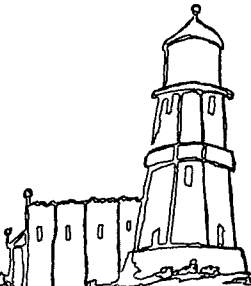


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STATE REGISTER

STATE OF MINNESOTA



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VOLUME 4, NUMBER 48

June 2, 1980

Pages 1877-1908



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			
49	Friday May 23	Monday June 2	Monday June 9
50	Monday June 2	Monday June 9	Monday June 16
51	Monday June 9	Monday June 16	Monday June 23
52	Monday June 16	Monday June 23	Monday June 30

*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*.

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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	Issue 39, cumulative for 1-39
Issues 14-25, inclusive	Issues 40-51, inclusive
Issue 26, cumulative for 1-26	Issue 52, cumulative for 1-52
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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.

Department of Administration Building Code Division

Proposed Amendments to Rules for Energy Conservation Standards for Existing Residences, and Proposed Rules for Certification of Evaluators for Energy Disclosure Program

Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held in the Conference Room, 408 Metro Square Building, 7th and Robert Street, St. Paul, Minnesota on July 3, 1980, commencing at 9:00 a.m. and continuing until all persons have had an opportunity to be heard.

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 materials may be submitted by mail to Richard Luis, Office of Hearing Examiners, Room 300, 175 University Avenue, St. Paul, Min-

nesota 55105, either before the hearing or within 5 working days after the close of the hearing. The Hearing Examiner may extend the time for receipt of written comments for a period not to exceed twenty (20) calendar days from the date of the hearing.

The hearing will commence with the matter of proposed amendments to rules for Energy Conservation Standards for Existing Residences. These rules add additional mandatory standards for residential rental property if economically feasible pursuant to Minn. Stat. § 116H.129, subd. 3. In addition the proposed rules provide for 22 standards, which will be used as a basis for evaluation of residences at the time of sale. The proposed rules incorporate methods for calculating energy savings and determining economic feasibility. Generally the amendments expand the rules to include requirements for reduction of energy usage by mechanical or electrical systems.

The hearing will also consider proposed rules for Certification of Evaluators for Energy Disclosure Program. These rules provide procedures for a disclosure program; outline requirements for certification and performance of energy evaluators, including revocation; and, further, provide provisions regarding conflict of interest, non-endorsement, certification fees, and bonding requirements for energy evaluators.

The proposed rules are subject to change as a result of the rules hearing process. The agency therefore strongly urges those who are potentially affected in any manner by the substance of the proposed rules to participate in the rules hearing process.

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."

PROPOSED RULES

Copies of the proposed rules will be available at the door on the date of the hearing and one free copy can be obtained by writing to the Building Code Division, 408 Metro Square Building, 7th and Robert Streets, St. Paul, Minnesota 55101. The agency's authority to promulgate the proposed rules is contained in Minn. Stat. § 116H.129, subs. 1, 5, 6 and 7 (1978).

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

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

Please be advised that pursuant to Minn. Stat. § 10A.01, subd. 11 (1978) any individual: (a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than \$250, not including *his own* travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or (b) who spends more than \$250, not including *his own* traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials must register with the State Ethical Practices Board as a lobbyist within five days of the commencement of such activity by the individual. The state provides certain exceptions. Questions should be directed to the State Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, phone (612) 296-5615.

Adoption of the proposed rules by the agency will not require the expenditure of public monies by local public bodies.

May 16, 1980

James J. Hiniker, Commissioner
Department of Administration

Amendments as Proposed (Energy Conservation Standards for Existing Residences)

2 MCAR § 1.16201 Authority. These rules are promulgated pursuant to Minn. Stat. § 116H.129 (1978).

2 MCAR § 1.16202 Enforcement. The Minnesota Energy Agency shall conduct random inspections of certain renter occupied residences as provided in Minn. Stat. § 116H.129, subs. 3 and 4 (1978).

2 MCAR § 1.16203 Purpose and scope. The purpose of these rules is to establish minimum energy efficiency standards for existing residences. Such standards shall be applicable to certain rental residences as provided in Minn. Stat. § 116H.129, subs. 3 and 4 (1978) and shall be utilized in the energy disclosure program required by Minn. Stat. § 116H.129, subs. 5, 6, and 7 (1978), and shall be applicable to certain rental residences as provided in Minn. Stat. Sec. 116H.129, Subs. 3 and 4 (1978).

The scope of these standards addresses ~~two~~ the following areas of energy savings:

A. The reduction of air infiltration as it relates to air leakage through the exterior envelope.

Caution: When infiltration is reduced it may be necessary to provide combustion air by other means as provided for in the Minnesota State Building Code.

B. The improvement of the thermal efficiency of the structure as it relates to the transfer of heat through the exterior envelope.

C. Reduction of energy usage by mechanical or electrical systems.

The rules also contain the methods for calculating energy savings and determining the economic feasibility of each minimum energy efficiency standard for each residence.

2 MCAR § 1.16204 Definitions.

A. Accessible. Shall mean exposed, without the removal of permanent parts of the structure.

B. Attic. The space between the ceiling joists and the rafters immediately above. The space between rafters formed where interior finish material is affixed directly to the rafters shall ~~not~~ be construed to be an attic space.

C. Clock thermostats. Shall mean a device which is designed to reduce energy consumption by regulating the demand on the heating or cooling system in which it is installed, and uses:

1. A temperature control device for interior spaces incorporating more than one temperature control level, and

2. A clock or other automatic mechanism for switching from one control level to another.

~~D. E.~~ Conditioned space. Space enclosed within a building that is heated or cooled by an energy-using system.

~~E. D.~~ Degree day. Shall mean degree day, heating. A unit, based upon temperature difference and time, used in estimating fuel consumption and specifying nominal heating load of a building in winter. For any one day, when the mean temperature is less than 65°F (18°C) there exist as many Degree Days as there are Fahrenheit (Celsius) degrees difference in temperature between the mean temperature for the day and 65°F (18°C).

F.E. Economic feasibility. For the purpose of these rules, the test of economic feasibility is met when the savings in energy procurement costs, based on residential energy costs as certified by the Minnesota Energy Agency director in the *State Register*, exceed the cost of acquiring and installing each energy conserving item required to meet the minimum energy conservation standards as set forth at 2 MCAR § 1.16205, amortized over the subsequent 5 10-year period.

G. Electric load management devices. Shall mean customer owned or leased devices that reduce the maximum kilowatt demand on an electric utility and which are either:

1. Part of a radio, ripple or other utility controlled load switching system on the customer's premises;
2. Clock-controlled load switching devices;
3. Interlocks, and other load actuated, load-limiting devices; or
4. Energy storage devices with control systems.

H.F. Exterior envelope. The elements of a building which enclose conditioned spaces and through which thermal energy may be transferred to or from the exterior.

I.G. Fireplace stove. A chimney-connected, solid fuel-burning stove having part of its fire chamber open to the room.

J. Floor insulation. A material as described in definition M which is installed between the first level conditioned area of a building and an unconditioned basement, a crawl space or the outside beneath it.

K. Flow restrictors. A device placed in a shower head to limit the maximum flow to three gallons per minute, or a shower head with built in provisions for limiting the maximum flow to three gallons per minute.

L. Furnace efficiency modification. Shall mean:

1. Replacement furnace or boiler, including a heat pump, which replaces an existing furnace or boiler of the same fuel type and which reduces the amount of fuel consumed due to an increase in combustion efficiency, improved heat generation or reduced heat losses.

2. Furnace replacement burner (oil) means a device which atomizes the fuel oil, mixes it with air, and ignites the fuel-air mixture, and is an integral part of an oil-fired furnace or boiler including the combustion chamber, and which because of its design, achieves a reduction in the oil used from that used by the device which it replaces.

3. Vent dampers, means an automatically operated damper installed in the vent connector of a gas fired furnace, water heater, or boiler which:

- a. Is installed downstream from the drafthood; and

b. Conserves energy by substantially reducing the flow of heated air through the chimney when the furnace or heater is not in operation.

4. Electronic ignition system, means a device which, when installed on a natural gas fired, force air furnace, automatically ignites the gas burner and replaces a gas pilot light.

M.H. Insulation. Any material or assembly of materials used primarily to provide resistance to heat flow in building structures, including but not limited to mineral fibrous, mineral cellular, organic fibrous, organic cellular, or reflective materials, whether in loose fill, flexible, or semi-rigid form.

N. Passive solar. Shall mean systems that make the most efficient use of, or enhance the use of, natural forces—including solar insolation, winds, night time coolness and opportunity to lose heat by radiation to the night sky—to heat or cool living space by the use of conductive, convective or radiant energy transfer. Passive solar systems include only:

1. Direct gain glazing system. A system using south-facing (+ or - 45 deg. of true south) panels of insulated glass, plastic, or other transparent substances that admit the sun's rays into the living space where the heat is retained. Glazing is either double or single equipped with moveable insulation.

2. Indirect gain system. A system using panels of insulated glass, plastic, or other (similar) transparent substances that direct the sun's rays onto specially constructed thermal walls, floors, ceilings, rockbeds, or containers of water or other fluids where heat is stored and radiated.

3. Solaria/sunspace system. A structure primarily of glass, plastic, or (similar) transparent material which is attached to the south-facing (+ or - 45 deg. of true south) wall of a structure which allows for air circulation to bring heat into the residence, and which is able to be closed off from the residential structure during periods of low solar insolation.

4. Window heat gain retardant. Shall mean those mechanisms which significantly reduce summer heat gain through south facing (+ or - 45 deg. of true south) windows by use of devices such as awnings, insulated rollup shades (external or internal), metal or plastic solar screen, or moveable rigid insulation.

O.F. Positive shut-off. A manual shut-off device which will can be utilized to produce a seal to inhibit the flow of air when a fireplace or fireplace stove is not operating. i.e. damper in fireplace, damper at top of flue, damper in connector pipe, or doors (glass or other) on fireplace or fireplace stove.

P.J. "R" value. The measure of resistance to heat flow through a material or the reciprocal of the heat flow through a material expressed in British thermal units per hour per square foot per degree Fahrenheit at 75 degrees Fahrenheit (24°C) mean temperature.

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."

PROPOSED RULES

Q. Replacement solar swimming pool heaters. Shall mean devices which are used solely for the purpose of using the sun's energy to heat swimming pool water and which replaces a swimming pool heater which uses electricity, gas or other fossil fuel.

R.K. Residence. Means any dwelling for habitation either seasonally, meaning all or a portion of the months of December through March, or permanently by one or more persons. A residence may be owned or rented and may be part of a multi-family dwelling or multi-purpose building, but shall not include buildings such as hotels, hospitals, motels, dormitories, sanitariums, nursing homes, schools and other buildings used for educational purposes, or correctional institutions. A mobile home as defined in Minn. Stat. § 168.011, subd. 8, shall be a residence for purposes of these rules.

S.L. Rim joist. That portion of the exterior envelope between the top of the foundation wall and the sub-floor immediately above. The perimeter of the floor joists.

T.M. Single glazed. Windows with one sheet of glazing separating the conditioned space from the exterior. For the purposes of these rules non-conditioned enclosed porches, vestibules, or other appurtenances are considered the equivalent of one layer of glazing.

U. Solar domestic water heater. Shall mean equipment designed to absorb the sun's energy and to use this energy to heat water for use in a residential building other than for space heating, including thermosiphon hot water heaters.

V. Storm door. Shall mean a second door, installed outside or inside a primary door, creating an insulating air space.

W. Thermal door shall mean:

1. A door with enhanced resistance to heat flow through the glass area by affixing two or more sheets of glazing material, or

2. A primary exterior door with an "R" value of at least

X. Storm window. Shall mean a window or glazing material placed outside or inside of a window sash (prime window) creating an air space, to provide greater resistance to heat flow than the glazed window sash alone.

Y. Thermal duct insulation. Shall mean a material primarily designed to resist heat flow which is installed on a heating or cooling duct within unconditioned space or area of a building.

Z. Thermal pipe insulation. Shall mean a material primarily designed to resist flow which is installed on a heating or cooling pipe within unconditioned space or area of a building.

AA.N. U-value (U-factor or $U =$ thermal transmittance). The thermal transmission of heat in unit time through unit area of a particular body or assembly, including its boundary films divided by the difference between the environmental temperatures on either side of the body or assembly; $Btu/(hr \cdot ft^2 \cdot F)$. Also the reciprocal of total R-Value.

BB. Water heater insulation. Shall mean a material primarily

designed to resist heat flow which is suitable for wrapping around the exterior surface of the water heater casing.

CC. Wall insulation. Shall mean insulation installed within or on the walls between conditioned spaces of a building and unconditioned spaces of a building or the outside.

DD.Ø. Weatherstripping. Material permanently affixed to limit infiltration of air, usually made of metal, wood, felt, neoprene, expanded foam, or a combination thereof.

EE. Wind energy device. Shall mean equipment that uses wind energy to produce energy in any form for personal residential purposes.

2 MCAR § 1.16205 Minimum energy efficiency standards.

A. Where demonstrated to be economically feasible pursuant to 2 MCAR § 1.16206, 2 MCAR § 1.16207, and 2 MCAR § 1.16208 the following shall be standards for existing residences. Pursuant to Minn. Stat. § 116H.129, subds. 3 and 5 (1978) residential rental buildings built before January 1, 1976, which are not in compliance with these standards shall be modified to be in compliance within the economic feasibility defined in 2 MCAR § 1.16204 by January 1, 1980 with respect to caulking and weatherstripping and by July 1, 1983 with respect to all provisions herein. A partial attainment of these standards shall be required if shown by calculations to be economically feasible even though full compliance will not meet criteria of economic feasibility. These standards shall also provide a basis for evaluation of residences at time of sale.

B. The following standards 1 thru 10 shall apply to residential rental buildings as described in Minn. Stat. § 116H.129, subd. 3.

1. Install weatherstripping between exterior operable window sash and frames and between exterior doors and frames.

Exception: Weatherstripping not required on storm doors or storm windows.

2. Caulk, gasket or otherwise seal accessible exterior joints between foundation and rim joist, around window and door frames, between wall and roof, between wall panels, at penetrations for utility services through walls, floors, and roofs and all other openings in the exterior envelope.

3. Install positive shut-offs for all fireplaces or fireplace stoves.

4. Install insulation in accessible attics to achieve a minimum total "R" value of 19.

5. Install insulation in all accessible rim joist areas to achieve a minimum total "R" value of 11.

6. Install insulation in accessible walls and/or floors enclosing conditioned spaces to achieve a minimum total "R" value of 11. Accessible walls shall include above-grade foundation walls of basements, cellars or crawl spaces.

7. Install storm windows and/or thermal windows on all single glazed exterior window units enclosing conditioned space.

8. Install storm doors and/or thermal doors on all exterior door openings into conditioned spaces unless a single door, enclosed porch, vestibule, or other appurtenance provides a double door effect or provides an "R" value of 2 or more.

9. Install clock thermostat in tenant dwelling unit where such thermostat controls the tenants heating or cooling systems, and the tenant directly purchases fuel.

10. Install flow restrictors on all shower heads.

C. The following standards 1 thru 22 shall be applicable to those residences requiring disclosure of certain energy characteristics pursuant to Minn. Stat. § 116H.129, subs. 5 and 7.

1. Caulk, gasket or otherwise seal accessible exterior joints between foundation and rim joist, around windows and door frames, between wall and roof, between wall panels, at penetrations for utility services through walls, floors, and roofs and all other openings in the exterior envelope. Caulking, gasketing or sealing may be accomplished either on the exterior or interior of the exterior envelope.

2. Install weatherstripping between exterior openable window sash and frames and between exterior doors and frames.

Exception: Weatherstripping not required on storm doors or storm windows.

3. Furnace efficiency modifications.

a. Install replacement energy efficient system if furnace and or boiler is older than 5 years.

b. Install replacement burner, if oil fired furnace or boiler is older than 5 years.

c. Install vent dampers on gas fired furnace, water-heaters, and boilers, if the combustion air or draft dilution air is taken from a conditioned space.

d. Install electronic ignition systems on natural gas fired forced air heating systems.

4. Replace central air conditioner with energy efficient model if older than five (5) years.

5. Install insulation in attic to achieve a minimum total "R" value of R-44 and provide ventilation as per current State Building Code. (Applicable if existing is R-30 or less.)

6. Install insulation in or on walls to achieve a minimum "R" value of 11.

7. Install floor insulation in floors over unconditioned spaces to achieve a minimum "R" value of 19. (Applicable if existing is R-9 or less.)

8. Install insulation in accessible rim joist areas to achieve a minimum "R" value of 19. (Applicable if existing is R-9 or less.)

9. Install insulation on or in foundation walls above grade to achieve a minimum "R" value of 11.

10. Install thermal duct insulation on all ducts, and or plenums installed in unconditioned spaces to achieve a minimum "R" value of 3.

11. Install thermal pipe insulation on all piping, containing heated water in unconditioned spaces, having a temperature difference exceeding 50 degrees F. (10C) between ambient temperature and piping temperature to achieve a minimum "R" value of 4.

12. Install water heater insulation on water heaters. Water heater insulation shall have a minimum "R" value of 3.

13. Install storm windows on all single glazed exterior window units enclosing conditioned space.

or

Install thermal windows on all single glazed exterior window units enclosing conditioned space, where primary window is in need of replacement.

14. Install storm or thermal doors on all exterior door openings into conditioned spaces unless a single door, enclosed porch, vestibule, or other appurtenance provides a double door effect or provides a "R" value of 2 or more.

15. Electric load management devices—applicable if such devices are available through the electric utility.

a. Radio or ripple control system.

b. Clock-controlled load switching.

c. Interlocks and other load switching devices.

d. Energy storage devices.

16. Install clock thermostat—applicable if house has a thermostat and existing heating or cooling system is compatible.

17. Install positive shut-off's for all fireplaces or fireplace stoves.

18. Install solar domestic hot water heater—applicable if a site exists which is free of major obstruction to solar radiation.

19. Install wind energy systems—applicable if lot is larger than .75 acres, there is no major wind obstruction and the tower is sited at least (50) fifty feet from property line or right of way for electrical transmission or distribution lines.

20. Install solar swimming pool heater to replace or supplement existing fossil fuel heater. Applicable where site is free of obstruction to solar radiation.

21. Passive solar/install

a. Direct gain glazing systems—applicable if residence has a south facing wall or roof which is free of obstruction to solar radiation.

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PROPOSED RULES

b. Indirect gain—applicable if site is free of obstruction to solar radiation.

c. Solar/sunspace systems—applicable if living space has a south-facing wall and is free of major obstruction to solar radiation.

Caution: Sleeping rooms must have exterior egress windows or doors—refer to UBC Sec. 1204.

d. Window heat gain retardants—applicable if residence has a south-facing window that is not shaded from summer sunshine, and space is mechanically cooled.

22. Install thermal shutters, shades and/or draperies on exterior windows and glass doors. Devices shall have a minimum "R" value of 2.

2 MCAR § 1.16206 Procedures for calculating energy savings and determining economic feasibility. The calculation of the energy savings and the determination of the economic feasibility for each of the minimum energy efficiency standards shall be computed in a manner specific to each residence, i.e., on a case by case basis. This determination shall be performed according to the following procedures.

A. Determine the values of the general energy savings equation (2 MCAR § 1.16207) which are specific to each residence. These values include degree days, heating system efficiency and the heating value of the fuel but do not include the design heat loss per degree Fahrenheit (ΔH).

B. Calculate design heat per degree Fahrenheit (ΔH) for the standard under consideration using the equations outlined in 2 MCAR § 1.16207.A. through 2 MCAR § 1.16207.H. U.

C. Calculate the quantity of annual energy savings for the standard under consideration by substituting the calculated value of ΔH into the general energy savings equation and solving for energy savings (ΔE).

D. Determine the price per unit of energy (P) for the annual energy savings quantity.

E. Determine the cost of the energy saving improvement (c) proposed to meet the standard under consideration.

F. Calculate the payback period (T) for the standard under consideration by substituting the values of P, C and ΔE into the general payback equation (2 MCAR § 1.16208) and solving for the payback period in years.

G. If the payback period is less than ~~five~~ ten years the energy saving improvement meets the economic feasibility requirement.

H. Repeat the above procedure for each of the energy efficiency standards.

2 MCAR § 1.16207 General energy savings equations. The following equations shall be used to calculate energy savings for each of the energy efficiency standards.

Equation A*:

$$\Delta E = \Delta H \times \frac{D \times 21.7}{N \times V} \frac{14.4}{V}$$

Where

ΔE = The quantity of annual energy savings in the appropriate energy units, e.g. hundreds of cubic feet of natural gas, gallons of fuel oil, or kilowatt hours of electricity.

ΔH = The difference in design heat loss per degree Fahrenheit between the improved condition and the existing condition for infiltration and/or thermal transmission. Equations for calculating ΔH are listed in subsequent subsections.

D = The normalized annual degree days as published by the National Oceanic and Atmospheric Administration (NOAA).

N = The ~~rated full load~~ seasonal operating efficiency of the heating system.

V = The heating value of the fuel type, consistent with ΔE and ΔH .

*Equation (A) is derived from the ASHRAE Handbook, 1976 Systems, pp. 43.1-43.18, and Department of Energy, Residential Conservation Service Model Audit.

A. Install window and door weatherstripping. The following equation shall be used to calculate ΔH for energy efficiency standards B-1 & C-2 (2 MCAR § 1.16205 A-).

Equation #1:

$$\Delta H = 1.08 \times (q_0 - q_1) \times L$$

Where:

q_0 = The infiltration value in cubic feet per minute per lineal foot of crack, $\frac{CFM}{ft}$, for the existing window or door weatherstripping condition before improvement;

q_1 = The infiltration value in cubic feet per minute per lineal foot of crack, $\frac{CFM}{ft}$, for the proposed window or door weatherstripping condition after improvement;

L = The length of the crack in feet which is under consideration for weatherstripping.

B. Caulk, Gasket or Seal Joints. The following equation shall be used to calculate ΔH for energy efficiency standards B-2 & C-1 (2 MCAR § 1.16205A-).

Equation #2:

$$\Delta H = 1.08 \times (q_0 - q_1) \times L$$

Where:

q_0 = The infiltration value in cubic feet per minute per lineal foot of crack, $\frac{CFM}{ft}$, for the existing crack before improvement;

q_1 = The infiltration value in cubic feet per minute per lineal foot of crack, $\frac{CFM}{ft}$, for the proposed crack seal after improvement;

L = The crack length in feet for the crack under consideration.

C. Install positive shut-offs. The following equation shall be used to calculate ΔH for energy efficiency standards B-3 & C-17 (2 MCAR § 1.16205A-).

Equation #3:

$$\Delta H = 1.08 \times (q_0 - q_1) \times A$$

Where:

q_0 = The infiltration value in cubic feet per minute per square foot, $\frac{CFM}{ft.^2}$, for the existing condition before improvement;

q_1 = The infiltration value in cubic feet per minute per square foot, $\frac{CFM}{ft.^2}$, for the proposed condition after improvement with a positive shut-off;

A = The cross sectional area of the flue or connector in square feet.

D. Install attic insulation. The following equation shall be used to calculate ΔH for energy efficiency standards B-4 & C-5 (2 MCAR § 1.6205A-).

Equation #4:

$$\Delta H = \left(\frac{1}{R_0} - \frac{1}{R_1} \right) \times A$$

Where:

R_0 = The total R-value of the attic/ceiling/roof assembly including existing insulation before improvement;

R_1 = The total R-value of the proposed attic/ceiling/roof assembly including existing insulation and additional insulation after improvement;

A = The area of the attic/ceiling/roof assembly in square feet separating conditioned spaced from unconditioned space.

E. Install Rim Joist Insulation. The following equation shall be used to calculate ΔH for energy efficiency standards B-5 & C-8 (2 MCAR § 1.6205A-).

Equation #5:

$$\Delta H = \left(\frac{1}{R_0} - \frac{1}{R_1} \right) \times A$$

Where:

R_0 = The total R-value of the rim joist assembly including existing insulation before improvement;

R_1 = The total R-value of the rim joist assembly including existing and additional insulation after improvement;

A = The area of the rim joist assembly in square feet separating conditioned space from unconditioned space.

F. Install wall and/or floor insulation. The following equation shall be used to calculate ΔH for energy efficiency standards B-6, C-6, C-7 & C-9 (2 MCAR § 1.16205A-).

Equation #6:

$$\Delta H = \left(\frac{1}{R_0} - \frac{1}{R_1} \right) \times A$$

Where:

R_0 = The total R-value of the existing wall or floor assembly including existing insulation before improvement;

R_1 = The total R-value of the proposed wall or floor assembly including existing and additional insulation after improvement;

A = The area of the wall or floor assembly in square feet separating conditioned space from unconditioned space.

G. Install storm windows and or thermal windows. The following equation shall be used to calculate ΔH for energy efficiency standards B-7 & C-13 (2 MCAR § 1.16205A-).

Equation #7:

$$\Delta H = (U_0 - U_1) \times A$$

Where:

U_0 = The U-value for the existing window assembly before improvement;

U_1 = The U-value for the proposed window assembly after improvement;

A = The area of the window assembly in square feet separating conditioned space from exterior.

H. Install storm doors and or thermal doors. The following equation shall be used to calculate ΔH for energy efficiency standards B-8 or C-14 (2 MCAR § 1.16205A-).

Equation #8:

$$\Delta H = (U_0 - U_1) \times A$$

Where:

U_0 = The U-value for the existing door assembly before improvement;

U_1 = The U-value for the proposed door assembly after improvement;

A = The area of the door assembly in square feet separating conditioned space from exterior.

I. Install clock thermostats. The following equation shall be used to calculate ΔE for efficiency standards B-9 & C-16 (2 MCAR § 1.16205).

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PROPOSED RULES

Equation #9:

The equation is based upon a single eight (8) hour nighttime setback.

9-a: $\Delta E = .07E_h$ for 5F setback

9-b: $\Delta E = .10E_h$ for 10F setback

9-c: $\Delta E = .11E_h$ for 15F setback

Where:

E_h = Total annual energy used for space heating, in units of fuel.

J. Install flow restrictors. The following equation shall be used to calculate ΔH for efficiency standard B10 (2 MCAR § 1.16205).

Equation #10:

$$\Delta E = \frac{6100 (F_1 - F_0) (100 F - T)}{N_r V}$$

Where:

F_0 = The shower flow rate in gallons per minute before installing restrictor.

F_1 = The flow rate after installing restrictor.

T = Average cold water supply temperature.

N_r = Recovery efficiency of water heater.

V = Heating value of the fuel type in Btu's per unit of fuel.

K. Furnace efficiency modifications. The following equations shall be used to calculate ΔE for efficiency standard C-3 (2 MCAR § 1.16205).

Equation #11:

a. $\Delta E = E_h \left(1 - \frac{N_0}{N_1}\right)$

Where:

E_h = Total annual energy used for spaced heating, in units of fuel.

N_0 = The seasonal operating efficiency of the existing heating system.

N_1 = The seasonal operating efficiency of the proposed heating system.

b. If the heating system already has a retention head burner, rotary cup burner, or if it is a wet base boiler, the energy savings shall be estimated as 0.

Low estimate of $\Delta E = .10E_h$

High estimate of $\Delta E = .18E_h$

Where:

E_h = Total annual energy used for space heating, in units of fuel.

c. Low estimate of $\Delta E = .07E_h$

High estimate of $\Delta E = .10 E_h$

d. If pilot is turned off each summer—

$$\Delta E = \frac{3600 F_p}{V}$$

If pilot is left on in the summer—

$$\Delta E = \frac{7300 F_p}{V}$$

Where:

F_p = Rate at which pilot uses energy, in Btu per hour. (typically 800-1000 Btu per hour.)

V = Heating value of the fuel type in Btu per unit of fuel.

L. Replace central air conditioner. The following equation shall be used to calculate ΔE for efficiency standard C-4 (2 MCAR § 1.16205).

Equation #12.

$$\Delta E = E_c [1 - (PSE/NSE)]$$

Where:

E_c = Annual energy used by existing central air conditioner in units of fuel.

PSE = Present Seasonal Efficiency.

NSE = New unit Seasonal Efficiency.

M. Install thermal duct insulation. The following equation shall be used to calculate ΔE for efficiency standard C-10. (2 MCAR § 1.16205.)

Equation #13.

$$\Delta E = \frac{\left(\frac{1}{R_0} - \frac{1}{R_1}\right) \times A \times (T_2 - T_1) \times \text{HRS}}{N \times V}$$

Where:

R_0 = The total R-value of ducts before improvement.

R_1 = The total R-value of ducts after addition of duct insulation.

A = Area of ducts to be insulated in square feet.

T_2 = Temperature inside ducts during on cycle of heating system.

T_1 = Average temperature on outside of ducts.

HRS = Number of hours per year furnace is operating.

N = Seasonal operating efficiency of heating system.

V = Heating value of fuel.

N. Install thermal pipe insulation. The following equation shall be used to calculate ΔE for efficiency standard C-11 (2 MCAR § 1.16205).

Equation #14.

$$\Delta E = \frac{(Q_1 - Q_0) \times L \times \text{HRS}}{N \times V}$$

Where:

Q_0 = Heat loss in Btu/hr. ft. before improvement, (from charts).

Q₁ = Heat loss in Btu/hr. ft. after addition of pipe insulation. (from charts)

L = Length of un-insulated pipes in unconditioned space.

HRS = Number of hours per year furnace is operating.

N = Seasonal operating efficiency of heating system.

V = Heating value of fuel.

O. Install water heater insulation. The following equation shall be used to calculate ΔE for efficiency standard C-12 (2 MCAR § 1.16205).

Equation #15.

a. If water heater is in an unconditioned space.

$$\Delta E = \frac{\left(\frac{1}{R_0} - \frac{1}{R_1}\right) \times A \times (T_w - T_a) \times 8760}{N_r \times V}$$

If water heater is in an conditioned space.

$$\Delta E = \frac{\left(\frac{1}{R_0} - \frac{1}{R_1}\right) \times A \times (T_w - T_a) \times H_{65}}{N_r \times V}$$

Where:

R₀ = Total R-value of water heater assembly before improvement.

R₁ = Total R-value of water heater assembly after insulation added.

A = Area of water heater that could be insulated in square feet.

T_w = Temperature of hot water.

T_a = Average air temperature in area surrounding water heater.

N_r = Recovery efficiency of water heater.

V = Heating value of fuel type in Btu per unit of fuel.

H₆₅ = Number of hours per year that the outside temperature is above 65 degrees F. (19° C).

P. Install load management devices. Standard C-15 (2 MCAR § 1.16205).

Equation #16.

Calculation procedures to determine installation costs and savings in energy costs must be obtained from the local electric utility, if the utility offers a residential rate which reflects any differences in the utility's cost of service between peak and off-peak periods.

Q. Install solar domestic water heater. The following shall be used to calculate ΔE for energy efficiency Standard C-18 (2 MCAR § 1.16205).

Equation #17.

The residence will be examined to determine if a collector site exists that would supply 60% of the annual domestic hot water heating energy.

$$\Delta E = .6E_{dhw}$$

Where:

E_{dhw} is the annual energy used for heating domestic hot water.

R. Install wind energy systems. The following shall be used to determine if energy savings may be accomplished. Standard C-19 (2 MCAR § 1.16205).

Procedure #18.

Wind energy devices.

An evaluation of the site shall be made, including an approximation of the average annual wind speed and accessibility to an undisturbed wind stream at a 30 foot height. An energy savings estimate will be made for 2 types of systems:

1. Wind systems that deliver utility quality power for residential appliance loads and discretionary loads (including domestic hot water and space heating). Cost and savings estimates shall be made for typical systems sized to provide 40% to 80% of the residential electric load.

2. Wind systems dedicated to delivering thermal energy for space heating and domestic hot water heating. Cost and savings estimates shall be made for typical systems sized to provide 40% to 80% of the annual energy used for space and water heating.

S. Install Solar Swimming Pool Heater. The following shall be used to calculate ΔE for efficiency standard C-20 (2 MCAR § 1.16205).

Procedure #19.

The residence will be examined to determine if a collector site exists that would supply 30% to 75% of the energy used to heat the swimming pool for the months of May thru September.

$$\Delta E = .3E_{sp} \text{ to } .75E_{sp}$$

Where:

E_{sp} = The energy used to heat the swimming pool for the months of May thru September.

T. Install Passive Solar Systems. The following shall be used to determine if energy savings may be accomplished. Standard C-21 (2 MCAR § 1.16205).

Procedure #20.

The residence shall be examined to determine if an acceptable site exists for the addition of:

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PROPOSED RULES

1. Direct gain glazing.
2. Indirect gain glazing,
3. Passive solar sunspace, and
4. Window heat gain retardants.

U. Install thermal shades, shutters or draperies. The following shall be used to calculate ΔH for efficiency Standard C-22 (2 MCAR § 1.16205).

Equation #21.

$$\Delta H = (U_a - U_e) \times A$$

Where:

U_a = Total "U" value of window assembly after addition of Thermal Shades, Shutters or Draperies.

U_e = Total "U" value of window assembly as it exists.

A = Total area of windows.

Rules as Proposed (Certification of Evaluators for Energy Disclosure Program)

2 MCAR § 1.16220 Authorization. These rules are promulgated pursuant to Minn. Stat. § 116H.129, subs. 5, 6 and 7. (1978)

2 MCAR § 1.16221 Purpose and scope. The purpose of these rules is to establish procedures for a residential energy disclosure program and for certification of evaluators.

2 MCAR § 1.16222 Disclosure program. Effective October 1, 1980. Prior to time of sale, as required by § 116H.129, subs. 5, 6 and 7 an evaluation and report disclosing the extent of compliance with Energy Conservation Standards for Existing Residences (2 MCAR § 1.16205 C.1. through 22.) shall be made for all residences constructed prior to January 1, 1976, unless the buyer waives the disclosure report.

Evaluators shall use the appended disclosure report form approved by the Building Code Division in consultation with the Minnesota Energy Agency or a form which is substantially similar to that appended to these rules. Evaluators calculations shall be made on forms prepared by the Building Code Division and/or the Minnesota Energy Agency. Evaluators shall maintain copies of completed disclosure reports which shall be available for review by the Building Code Division or the Minnesota Energy Agency. Evaluators shall submit an annual summary of evaluations to the Building Code Division. Copies of completed disclosure reports shall be retained by evaluators for a period of not less than 5 years.

Prior to time of sale the potential buyer of any residence constructed prior to January 1, 1976, shall be furnished with a disclosure report signed by a certified evaluator, which shall indicate the extent of compliance with the Energy Conservation Standards for Existing Residences (2 MCAR § 1.16205 C.1. through C.22.). If the buyer chooses to waive the disclosure report he may do so by signing a waiver provision on the disclosure report form. Completed disclosure reports and evalu-

ators calculations shall be submitted to the owners by evaluators within 30 days of request for evaluation.

2 MCAR § 1.16223 Certification. A certification shall be issued to qualified applicants successful upon completion of an examination evidencing knowledge of structural and energy use characteristics of residences and proficiency in evaluation of buildings, submittal of a copy of a bond required under 2 MCAR § 1.16226, and payment of fee required under 2 MCAR § 1.16227.

2 MCAR § 1.16224 Standards for certification, prerequisites. Persons possessing the following qualifications shall be eligible to be admitted for examination:

A. Building officials, certified by examination by the Building Code Division.

B. Architects and mechanical engineers registered in the State of Minnesota.

C. Truth in Housing Evaluators and Truth in Sale of Housing Evaluators certified by examination by the cities of Minneapolis and St. Paul.

D. Individuals experienced in weatherization procedures who have completed a minimum of twenty-five (25) audits and six (6) months satisfactory work with a non-profit weatherization program.

E. Employees of participating utility companies trained to perform audits under the Federal Residential Conservation Program.

F. Persons who have successfully completed a prescribed course or courses of training for residential evaluators, sponsored by the Minnesota Energy Agency.

G. Persons who have successfully completed a course or courses of training for residential evaluators sponsored by the University of Wisconsin Extension Division, or similar courses, with prior approval of the Building Code Division.

Said persons shall be required to attend an orientation program prior to examination.

2 MCAR § 1.16225 Examinations. Examinations shall be conducted at least once a year, or based upon receipt of request for examination more often, at locations determined by the Building Code Division. Notice of time and place of examination shall be provided by the Building Code Division by publication in the *State Register* and *Building Code Newsletter* published at regular intervals or to persons upon request. Applications for examination with required fee must be received by the Building Code Division two (2) weeks prior to established examination dates.

2 MCAR § 1.16226 Bond required. Evaluators must provide a bond to the State in the sum of \$5,000.00 conditioned upon the faithful and lawful performance of all work done pursuant to these rules and Minn. Stat. § 116H.129, and such bond shall be for the benefit of persons injured or suffering financial loss by reason of failure of such performance. The bond shall be filed with the Building Code Division and must be continuously

applicable for the period of the certificate. Such bond shall be written by a corporate surety licensed to do business in the State of Minnesota. Bonds shall not be required for evaluators in the employ of Municipal Governments.

2 MCAR § 1.16227 Certification fees. Application for evaluator certification must be accompanied by a fee of \$50.00 remitted to the Building Code Division; payable to the State of Minnesota.

2 MCAR § 1.16228 Conflict of interest. Evaluators shall not be engaged in nor have an interest in the sale of products referenced in the standards.

Evaluators shall not own nor have an interest in properties that they evaluate. Holding of a listing for sale by a person or persons employing firm constitutes an interest in property.

Public Utilities evaluation programs such as Residential Conservation Services (RCS) are not to be considered a conflict of interest.

2 MCAR § 1.16229 Non-endorsement. The evaluator shall not endorse the use of specific materials, brand names of material or product, or methods which may be used to meet any specific standard, nor shall any statement relating to the standards be interpreted as an endorsement of any specific material or product.

2 MCAR § 1.16230 Revocation. Certification shall be revoked upon cancellation or expiration of bond. When reasonable evidence discloses a conflict of interest, unethical practices or negligent performance of duties by the evaluator, the Building Code Division shall notify the evaluator of its intent to revoke the certificate and provide for a contested case proceeding in accordance with the provisions of Minn. Stat. §§ 15.041 *et seq.*

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**Department of Public
Service
Public Service Commission**

**Notice of Public Participation
Meeting Concerning Standards
for Information to Consumers as
Set Forth in Section 115(f) of the
Federal Public Utility Regulatory
Policies Act (PURPA)**

Notice is hereby given that the Public Service Commission will conduct a public participation meeting in the Commission Meeting Room, 7th Floor, American Center Building, 160 East Kellogg Boulevard, St. Paul, Minnesota, on Monday, June 23, 1980 commencing at 11:00 a.m. and continuing until all persons have had an opportunity to be heard.

The purpose of this meeting is to consider the standards for information to consumers as set forth in Section 115(f) of the Federal Public Utility Regulatory Policies Act (PURPA) and more specifically, the adequacy of the present PSC rules 281 and 313.

PURPA Section 113(b) (3) requires the commission to consider Section 115(f) whereby utilities must transmit to its electric consumers information regarding rate schedules.

PURPA Section 115(f) states the following:

115(f) Information to Consumers.—

(1) For purposes of the standard for information to consumers established by section 113(b) (3), each electric utility shall transmit to each of its electric consumers a clear and concise explanation of the existing rate schedule and any rate schedule applied for (or proposed by a nonregulated electric utility) applicable to such consumer. Such statement shall be transmitted to each such consumer—

(A) not later than 60 days after the date of commencement of service to such consumer or 90 days after the standard established by section 113(b) (3) is adopted with respect to such electric utility, whichever last occurs, and

(B) not later than 30 days (60 days in the case of an electric utility which uses a bimonthly billing system) after such utility's application for any change in a rate schedule applicable to such consumer (or proposal of such a change in the case of a nonregulated utility).

(2) For purposes of the standard for information to consumers established by section 113(b) (3), each electric utility shall transmit to each of its electric consumers not less frequently than once each year—

(A) a clear and concise summary of the existing rate schedules applicable to each of the major classes of its electric consumers for which there is a separate rate, and

(B) an identification of any classes whose rates are not summarized. Such summary may be transmitted together with such consumer's billing or in such other manner as the State regulatory authority or nonregulated electric utility deems appropriate.

(3) For purposes of the standard for information to consumers established by section 113(b) (3), each electric utility, on request of an electric consumer of such utility, shall transmit to such consumer a clear and concise statement of the actual consumption (or degree-day adjusted consumption) of electric energy by such consumer for each billing period during the prior year (unless such consumption data is not reasonably ascertainable by the utility).

The current PSC rules which regulate information to consumers are as follows:

PSC 281 Customer information. The utility is responsible for informing its customers of the following information as prescribed by following provisions:

A. A sign or notice, which shall be approved by the commission, posted prominently and conspicuously at all utility office locations open to the general public. The sign or notice shall state where, when, and to whom a complaint is to be directed, and the address of the Public Service Commission and its availability for mediation upon written request.

B. The utility shall, at its expense, publish "customer information," that will be offered to each new customer, and upon request, to any existing customer. This "customer information" must be submitted to the Commission for approval. This "customer information" must, at a minimum, include the following:

1. The utility's own customer policies governing the following areas.

- a. bill collections,
- b. notice of disconnection,
- c. disconnection of service,
- d. reconnection of service,
- e. deposit and guarantee requirements, and
- f. meter reading procedures.

2. The rate schedule pertaining to the customers of that area. The current rate schedule as required by PSC 310 C. may be attached to the "information" to meet this requirement.

3. The title, addresses and phone numbers of the department(s) of the utility to which complaints should be directed, including a telephone number for customers to call in emergency situations or a concise statement as to where such information can be obtained.

4. The information contained in PSC 282 B. and PSC 303.

5. This statement: "The Minnesota Public Service Commission regulates this utility and is available for mediation

upon written request," and the address of the Minnesota Public Service Commission.

C. The utility's billing statements to its customers must contain this information:

1. This statement: "Register any inquiry or complaint at . . ." (and list the address and telephone number of the utility, designating where the customer may initiate an inquiry or a complaint, or a concise statement as to where such information can be obtained).

2. A notice to customers of the availability upon request of the "customer information."

PSC 313 Billing content.

A. Bills rendered periodically to customers for electric and gas service shall include, but are not limited to, the following information:

1. The present and last preceding meter readings;
2. The date of the present reading;
3. Identification of the applicable rate schedule;
4. The number and kinds of units metered;
5. A complete itemization of all charges incurred at each level of customer usage;
6. The amount of the bill;
7. The date on which the bill will become delinquent;
8. If an estimated bill, clear and conspicuous language identifying the bill as an estimated bill;
10. The amount of state and local taxes separately itemized;
11. Fuel or power adjustment clause separately itemized, if applicable;
12. The information required by PSC 281 C.

B. If a utility is unable to comply with any provisions of PSC 313 A. within twelve (12) months of the effective date of the rule, the utility shall petition the commission for either a temporary exception or a permanent exemption. The petition shall include the justification for noncompliance, the duration of the desired exception, and the plan for compliance.

Please be advised that pursuant to Minn. Stat. § 10A.01, subd. 11 (1978) any individual: (a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than \$250, not including *his own* travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or (b) Who spends more than \$250, not including *his own* traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by

communicating or urging others to communicate with public officials must register with the State Ethical Practices Board as a lobbyist within five days of the commencement of such activity by the individual. The statute provides certain exceptions. Questions should be directed to the State Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, phone (612) 296-5615.

Mary L. Harty
Executive Secretary

Department of Public Welfare Support Services Bureau

Proposed Temporary Rule Governing Limitation of Nursing Hours in the Nursing Home Reimbursement Rule (12 MCAR § 2.049)

Request for Public Comment

Notice is hereby given that the following amendment to 12 MCAR § 2.049 (DPW 49) governing the maximum reimbursable nursing hours allowed to selected skilled nursing facilities and intermediate care facilities as required by Minn. Stat. § 184, ch. 614 (1980), is proposed for adoption as a temporary rule as authorized by Minn. Stat. § 15.0412, subd. 5 (1978), pending completion of a full hearing and adoption of a permanent rule. Comments from interested and affected persons are requested. Comments must be received at the address given below within 20 days of the date of this publication to be considered. The temporary rule may be revised on the basis of comments received.

Comments on the proposed rule should be sent to:

Robert Rau
1st Floor
Centennial Office Building
St. Paul, Minnesota 55155

Temporary Rule as Proposed

12 MCAR § 2.049 D.2. Nursing care and attendant limitations.

a. Nursing care. Nursing-care costs will be limited by a maximum number of nursing hours per patient day as follows:

Skilled—2.9 hours
ICF I—2.3 hours

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."

PROPOSED RULES

If the actual average nursing hours per patient day exceed the above limit, the reasonable cost limitation will be calculated by multiplying the ratio of the above stated limit to the average actual nursing hours per patient day for the year times the actual cost per patient day. This limitation will not apply to facilities that qualify for exception under D.8.d.(3) or facilities mandated by a correction order from the Department of Health to provide additional nursing care.

b. Attendants (ICF II facilities only). Reasonable costs for attendants in ICF II facilities will be limited to one hour per patient day. If the actual average attendant hours per patient day exceeds this limit, the reasonable cost limitation will be calculated by multiplying the ratio of the stated limit to the average actual attendant hours per patient day for the year times the actual cost per patient day.

c. Nursing care exceptions. Facilities in which the nursing hours exceeded 2.8 hours per day for skilled nursing care and 2.2 hours per day for intermediate care during calendar year 1979 shall be limited to maximum of 3.2 hours per day for skilled nursing care and 2.45 hours per day for intermediate care. The cost of additional nursing hours in excess of 2.8 hours for skilled care and 2.2 hours for intermediate care shall be exempted from the rate provision of B.4.b. This provision is effective for facilities with fiscal years ending after May 31, 1980 and before June 30, 1981.

State Planning Agency Human Resources Division

Proposed Rules Regarding Provision of State Grants for Human Services Management and Planning Improvement

Notice of Hearing

Notice is hereby given that a public hearing in the above-titled matter will be held in Conference Room 101, Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota 55101 on July 10, 1980, commencing at 8:30 a.m. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written material may be submitted at the hearing. In addition, written materials may be submitted by mail to: Richard Luis, Office of Hearing Examiners, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, (612) 296-8114. Unless a longer period not to exceed twenty calendar days is ordered by the hearing examiner at the hearing, the hearing record will remain open for the inclusion of written material for five working days after the hearing ends. The hearing shall be conducted in accordance with the rules of the Office of Hearing Examiners, 9 MCAR § 2.101 *et seq.*, Minn. Stat. §§ 15.0411-15.0417 and 15.052.

The proposed rules, if adopted, would guide the State Planning Agency, Human Resources Division, in administering grants for Human Services Management and Planning Improvement. As part of grants administration, the rule would define the procedures for applying for funding, the criteria for evaluating projects for funding and requirements for grant disbursement and for reporting on the project.

Copies of the proposed rules are now available and one free copy may be obtained by writing to Linda Sutherland, State Planning Agency, Room 101 Capitol Square Building, St. Paul, Minnesota 55101.

The statutory authority to promulgate the proposed rules is contained in Minn. Stat. §§ 4.17, 402.046 and Laws of 1979, ch. 533, § 16, subd. 3.

Notice: The proposed rules are subject to change as a result of the rules hearing process. The agency therefore strongly urges those who are potentially affected in any manner by the substance of the proposed rules to participate in the hearing process.

Please be advised that pursuant to Minn. Stat. § 10A.02, subd. 1 (1978) as amended by Laws of 1979, § 3, lobbyists must register with the State Ethical Practices Board within five (5) days after becoming lobbyists.

“Lobbyist” means any individual:

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

or

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

“Lobbyist” does not include any:

(a) Public official or employee of the state or any of its political subdivisions or public bodies acting in his official capacity;

(b) Party or his representative appearing in a proceeding before a state board, commission or agency of the executive branch unless the board, commission or agency is taking administrative action;

(c) Individual while engaged in selling goods or services to be paid for by public funds;

(d) News media or their employees or agents while engaged in the publishing or broadcasting of news items, editorial comments or paid advertisements which directly or indirectly urge official action;

(e) Paid expert witness whose testimony is requested by the

body before which he is appearing, but only to the extent of preparing or delivering testimony;

(f) Stockholder of a family farm corporation as defined in § 500.24, subd. 1, who does not spend over \$250, excluding *his own* travel expenses, in any year in communicating with public officials; or

(g) Party or his representative appearing to present a claim to the legislature and communicating to legislators only by the filing of a claim form and supporting documents and by appearing at public hearings on the claim.

Questions concerning lobbyists or their required registration should be directed to the State Ethical Practices Board, Room 41, State Office Building, Wabasha Street, St. Paul, Minnesota 55155, at telephone number (612) 296-5615.

Notice is hereby given that 25 days prior to a hearing, a Statement of Need and Reasonableness will be available for review at the Human Resources Division of the State Planning Agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the State Planning Agency at the hearing justifying the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

NOTICE: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the State Planning Agency may not take any final action on the rules for a period of five (5) working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the State Planning Agency. If you desire to be 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 State Planning Agency, (in the case of the agency's submission or resubmission to the Attorney General).

May 20, 1980

Arthur Sidner, Director
State Planning Agency

Rules as Proposed (all new material)

10 MCAR § 1.320 Authority and purpose.

A. Authority. The rules contained herein are prescribed pursuant to authority granted in Minn. Stat. §§ 4.17 and 402.046 and Laws of 1979, ch. 333, § 16, subd. 3 and subsequent applicable laws.

B. Purpose of the rules. These rules are set forth to provide the procedures for awarding human services management and planning improvement grants.

10 MCAR § 1.321 Definitions. The following terms as used in these rules have the following meanings:

A. Human services—shall have the meaning established in Minn. Stat. § 402.02, subd. 2(d).

B. Division—means the Human Resources Planning Division of the State Planning Agency.

C. "SPA"—means the State Planning Agency.

D. Management and planning improvement—means those activities focused at providing procedures, methods of actions and guidance for the administration of human services programs.

E. Grant agreement—means a signed written agreement between the state, acting by and through the SPA, and the county which specifies the terms of the funding to the county.

10 MCAR § 1.322 Application process.

A. Submission of application.

1. Eligibility. Any Minnesota county is eligible to apply for the grants described herein.

2. Notice. Annually the division shall provide notice of the time period during which applications will be accepted. The duration of the application period shall not be less than 30 days. Notices will be sent to:

a. Chairman of county boards;

b. Directors of human services boards established pursuant to Minn. Stat. § 402;

c. Directors of community health services programs established pursuant to Minn. Stat. §§ 145.911 to 145.922;

d. Directors of community social services programs established pursuant to Minn. Stat. §§ 256E.01 to 256E.12;

e. Directors of community corrections programs established pursuant to Minn. Stat. § 401;

f. Others who request notification.

3. Eligible projects. A project whose goals are to improve the management or planning capacity of a county to deliver human services programs is eligible for funding.

B. Application procedures. Applications, on forms supplied by the SPA, must be received by the division before 5 p.m. on the last day of the application period or be postmarked not later than the last day of the application period.

10 MCAR § 1.323 Distribution of grants.

A. Criteria—priority counties. Consistent with priorities established in applicable appropriations law, priority status shall be given counties who have not previously received funding for the improvement of their management or planning capacity.

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."

PROPOSED RULES

The following criteria shall be used by the division to evaluate projects for funding:

1. The extent to which the project is likely to be transferable to other counties.
2. The extent to which the project is likely to result in a significant improvement in management systems, organizations or services integration.
3. A project which is undertaken by a group of counties or by multiple disciplines or programs within a single county.
4. The extent to which the project can demonstrate a high cost-effectiveness result.

B. Ranking of applications. The division will rank applications from highest to lowest based on the stated criteria and will award funds in order of ranking.

C. Applications from other counties. If funds remain after awards are made to counties who have priority status as specified in 10 MCAR § 1.323 A., the remaining money shall be available to other counties and will be evaluated and distributed on the basis of criteria stated in 10 MCAR § 1.323 A.1.-4. and 10 MCAR § 1.323 B.

D. Limit on grants. Total grants to any county during the biennium shall not exceed the limit set in applicable appropriations laws.

E. Grant disbursement. The SPA shall disburse the grants according to the following procedures:

1. A grant agreement shall be entered into by the SPA and the county once the grants are awarded.
2. The grant agreement shall specify:
 - a. the amount of the funding to be awarded the county for the management and planning improvement;
 - b. the manner and process for making payments to the county; and
 - c. the requirements for accounting, auditing and reporting required of the county by the SPA.

10 MCAR § 1.324 Final report. Within 60 days of completion of the project, each grantee shall submit to the division a final report. The report shall address the following:

1. description of the project;
2. participants in the project;
3. staffing of the project, including consultants;
4. results of the project;
5. an assessment of the effect of the project on future events or issues in the county;
6. plans for continuation of the project, if any;
7. source and amount of funds, if any, used in addition to state grant.

10 MCAR § 1.325 Availability of funding. Grants under the rule are subject to continuing availability of funds appropriated for such purposes.

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

Robert R. and Helen Truex,

v.

**The Commissioner of Revenue,
Docket No. 2505**

Tax Court

Appellants,

Appellee.

Dated May 16, 1980

Taxpayer appeals from the commissioner's Order of September 27, 1977. The commissioner found that the taxpayers were domiciliaries of the State of Minnesota and therefore residents of Minnesota for income tax purposes for the period from July 1, 1974, through December 31, 1975. Accordingly, the commissioner found that all of Appellants' income, for such period, was assignable to the state for income tax purposes under Minn. Stat. (1974) 290.17(1). Appellant claims that they were domiciliaries of the State of Florida for the period in question. Therefore,

according to Appellants, it was improper for the commissioner to assign Appellants' income for such period to Minnesota.

Harold Farnes appeared for the Appellants

Richard Davis, Special Assistant Attorney General, appeared for the Appellee.

Decision

The commissioner's Order is hereby affirmed.

Findings of Fact

John Knapp

1. The Appellants, Robert R. and Helen Truex, were legal residents and domiciliaries of the State of Minnesota from May, 1943, until at least June 30, 1974.

2. Appellants have four children. Two of the children, Richard and Joan, were dependent upon Appellants for support during the period in question, July 1, 1974, through December 31, 1975. There is no question that Richard and Joan were residents of the State of Minnesota throughout the period in question. While Joan attended college at the University of Miami at Coral Gables, Florida, during the 1974-1975 school year, she returned to Minnesota during her summer vacation and lived at her parents' home and worked in a supermarket. After completion of the 1975-1976 school year, Joan once again returned to Minnesota, lived in her parents' home, attended business school and thereafter worked in Minnesota. From that time on, she did not return to school in Florida.

3. Appellant, Robert R. Truex, has been employed as an airline pilot for Northwestern Orient Airlines, Inc. since March, 1943. All flight schedules flown by Robert Truex during the period in question began in Minnesota and ended in Minnesota. During the period in question, Northwestern Airlines sent all its mailings directed to Robert Truex, including his W-2 statement.

4. During the period in question, and for 24 years prior thereto, Appellants owned the home at 2835 Inner Road, Wayzata, Minnesota. Robert Truex built the house himself in 1950. On an application for homeowner's insurance submitted on October 16, 1975, Appellant Robert Truex claimed that the market value of the structure alone was \$45,000, and the contents were valued at \$22,500. The home is situated on land leased from the Methodist Lakeside Assembly.

5. In order to buy or build a home on land owned by the Lakeside Methodist Assembly, Appellants were required to be members in good standing of a church. During the period in question, Appellants were members of the Excelsior Methodist Church of Excelsior, Minnesota. During the period in question, Appellants' ground lease had three years to run before it expired. Appellants, on January 1978, signed a new 25-year lease and as of July 1979, still owned the home at 2835 Inner Road, Wayzata, Minnesota.

6. Appellants applied for, and were granted, a homestead classification for the home located at 2835 Inner Road, Wayzata, Minnesota, in 1974. They did not apply for homestead classification in 1975, and therefore did not receive the \$325.00 property tax credit.

7. The income tax savings to Appellants which would result from a determination that they were Florida residents during the period in question is over \$10,000.

8. In May, 1972, Appellants purchased Apartment No. 22 in the 3900 Condominium Apartments, 3930 North Ocean Drive, Riviera Beach, Florida. Appellants paid \$32,000 for the apartment. They made a \$16,000 down payment and assumed the prior owners' mortgage.

9. During the period in question, Appellant Robert R. Truex owned and actively operated a business named Hangar Services. Appellant Helen Truex was a co-owner of Hangar Services and also its bookkeeper. Hangar Services was in the business of renting aircraft hangars at Flying Cloud Airport in Eden Prairie, Minnesota. The Truexes had operated the business since 1964, and during the period in question had 47 separate hangar stalls. Robert Truex was active in the business, including the repair and maintenance of the hangars. He had a machine shop located in the basement of his home at 2835 Inner Road, Wayzata, Minnesota, for the use in connection with the hangar business. The lessees of the hangars sent their monthly rent payments to 2835 Inner Road in Wayzata. All billing statements for utilities, taxes and supplies, etc. associated with the hangar business were sent to 2835 Inner Road, Wayzata. Appellants have thought of the business as something to pass on to their children. Hangar Services' checking account was located at the Wayzata Bank and Trust Company in Wayzata, Minnesota, during the period in question. The address printed on the check blanks of Hangar Services was 2835 Inner Road, Wayzata, and the statements of account for Hangar Services' checking account were sent to Appellants at 2835 Inner Road, Wayzata, during the period in question.

10. Appellants did not own or operate a business in the State of Florida during the period in question.

11. Appellants' joint personal checking account was located at the Wayzata Bank and Trust Company, Wayzata, Minnesota, during the period in question. The address printed on Appellants' check blanks was 2835 Inner Road, Wayzata. All checking account statements and cancelled checks for the account were sent to the Appellants at their Wayzata, Minnesota, home.

12. Appellants did not have a checking account in Florida during the time in question.

13. Appellants had a joint personal savings account at the Wayzata Bank and Trust Company during the entire period in question. Statements of account for the personal savings account were sent to the Appellants' Wayzata address by the bank.

14. Appellant Robert Truex 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 2835 Inner Road, Wayzata. The vast majority of Appellants' savings during the period in question were deposited in three Minnesota savings institutions.

15. In November, 1974, Appellants opened a joint savings account at the First National Bank and Trust Company of Riviera Beach, Florida. The balance in said account was minimal during the period in question. Appellants opened the savings account in Florida only because it afforded them the privilege of cashing checks at the Florida bank written on their Minnesota checking account. The First National Bank and Trust Company of Riviera Beach sent all account statements for the Truex's Florida savings account to their Minnesota address.

16. The Appellants purchased and sold common stock during the period in question through the Minneapolis office of Piper, Jaffray & Hopwood. All monthly statements mailed to the Truexes during the period in question by Piper, Jaffray & Hopwood were mailed to their Wayzata, Minnesota, address.

17. On or about June 30, 1974, Appellants invested \$5,000 in the Centuria Petroleum Fund 1974, a limited partnership involved in oil and gas leases. The records of Centuria Petroleum Fund 1974 indicate that the Truex's address was 2835 Inner Road, Wayzata, Minnesota. In 1975 the Appellants invested another \$5,000 in Centuria Petroleum Fund 1975. Once again the address was indicated for Appellants on the records of the Petroleum Fund was their Minnesota address.

18. Appellants maintained charge accounts and/or credit privileges with numerous businesses located in the State of Minnesota during the period in question. Appellants during the period in question regularly purchased goods and services from these local businesses. In all cases, the billing statements were sent to the Wayzata, Minnesota, address.

19. During the period in question, the Appellants had numerous charge accounts with national businesses. In each case, the billing statements for goods purchased from these businesses were sent to Appellants' Minnesota address.

20. During the period in question, Appellants licensed and registered a 1971 Lincoln automobile and 1973 Ford Pickup in the State of Minnesota. Appellants purchased two used cars in the State of Florida.

21. Appellants were members of the Minneapolis, Minnesota, branch of the American Automobile Association and the Bel Aire Yacht Club in Minnesota during the entire period in question. They were not members of any social or athletic clubs in the State of Florida.

22. Appellants were treated by numerous doctors, dentists and clinics and a chiropractor in the State of Minnesota during the period in question. Appellant Robert Truex testified that during the period in question he was treated by a chiropractor in Florida but could not recall his name.

23. Appellant Robert Truex owned an interest in Family Flyers, Inc., a Minnesota non-profit corporation, which owned an airplane during the period in question. The airplane was hangared in a hangar owned by the Truexes at Flying Cloud Airport in Eden Prairie, Minnesota. The Appellants' son maintained the airplane during the period in question.

24. While Appellants maintained Florida drivers' licenses in 1974, the Minnesota Department of Public Safety records indicate that they had valid Minnesota drivers' licenses in effect throughout the period in question. In fact, the Truexes listed their Minnesota driver's license numbers on an application for car insurance in November, 1974.

25. In June, 1974, Appellants purchased a new 140 horsepower inboard-outboard speed boat for their own use and that of their family. The boat was, and still is, kept at the Minnesota home.

26. In December, 1974, Appellant Robert Truex made application for homeowners' insurance for his Minnesota home. Appellants' mailing address was indicated as 2835 Inner Road in Wayzata, Minnesota. The application indicated that the owner of the home lived in the house. The agent who took the application was Appellants' son, Thomas. Appellant Robert Truex admitted that Thomas knew more about Appellant's personal life and whereabouts than would an agent who was not related to Appellants.

27. In November, 1974, Appellant Robert Truex made application for automobile insurance. On the application he indicated his address was 2835 Inner Road, Wayzata. The application was signed by Robert Truex. Once again, the application was taken by his son, Thomas, as agent. On the application, the Minnesota driver's license numbers of Robert and Helen Truex were listed, not their Florida driver's license numbers. While the application indicated that the Appellants would be spending part of the year in Florida, Appellants estimated that they would drive each of their vehicles that were registered in the State of Minnesota, a 1971 and 1973 Ford Pickup, 7,000 miles annually. Appellant Robert Truex, on the application, indicated that his current home address was 2835 Inner Road and that he had been at that address since 1951.

28. Appellant Robert Truex made application in May, 1975, for insurance for his 1974 140-horsepower inboard-outboard speed boat. Robert Truex signed the application which indicated his home address to be 2835 Inner Road in Wayzata, Minnesota. In response to a question of how long he had been at his current address, Truex indicated 25 years. Once again, the agent who took the application was Appellants' son, Thomas Truex.

29. Insurance premium notices in connection with all of the foregoing insurance policies were mailed to the Appellants at 2835 Inner Road, Wayzata, Minnesota.

30. Appellant Robert Truex signed his daughter's 1975 Minnesota income tax return as the "preparer" on April 6, 1976. Robert Truex on the blanks provided for the preparer of the return, indicated that his address at that time was 2835 Inner Road, Wayzata.

31. During the period from July 1, through December 31, 1974, Appellant Robert Truex spent sixty-one days in the performance of his duties as a pilot for Northwest Airlines. Appellant Robert Truex, upon cross-examination and presentation of documentary evidence by Appellee's counsel, admitted that during the same period of time, July 1, through December 31, 1974, he spent at least forty-one days in the State of Minnesota. On the other hand, Appellant Robert Truex is unable to establish with certainty, either through documentation or testimony, more than a few specific days upon which he was physically present in the State of Florida during the period from July 1, through December 1, 1974.

32. During the period from January 1, 1975, through December 31, 1975, Appellant Robert Truex spent 119 days in the performance of his duties as a pilot for Northwest Airlines. Appellant, upon cross-examination and presentation of documentary evidence by Appellee's counsel, admitted that he spent at least 99 days during the 1975 calendar year in the State of Minnesota. He was unable to establish with certainty, either through documentation or testimony, more than a few specific days upon which he was physically present in the State of Florida during the 1975 calendar year.

33. Appellant Helen Truex had no idea when she was in Minnesota or Florida during the period from July 1, 1974, through December 31, 1974, or during the period from January 1, 1975, through December 31, 1975.

34. In addition, Appellant spent from three weeks to seven weeks in the State of Ohio visiting relatives during the period from July 1, through December 31, 1974. Appellant spent three weeks or more in the State of Ohio visiting relatives during the calendar year of 1975.

35. By their own admission, Appellants did not make much effort to establish their physical presence in Florida during the period in question.

Conclusion of Law

During the taxable periods of 1974 and 1975, Appellants remained domiciled in Minnesota within the meaning of Minn. Stat. § 290.01, subd. 7. Therefore, Appellant's entire income for the 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:

"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 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 nature 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, *McCutchin v Commissioner of Taxation*, Docket No. 563 (January 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 case at bar, it is undisputed that Appellants were bodily present in the State of Florida at various times during the period from July 1, 1974, through December 31, 1975. Therefore, the precise issue to be resolved on this appeal is whether the facts established the required intention to make Florida the Appellants' permanent home after July 1, 1974.

The issue of intent in establishing one's domicile is one of fact. In *re Estate of Smith*, 242 Minn. 85, 64 N.W. 2d, 129, 1954. In analyzing the intent of the parties, the Court must consider all of the facts of the case at hand. The intent of the party may be gathered from both acts and declarations. *Seecomb v Bovey* 135 Minn. 353 160 N.W. 10 18 1917. Acts are considered more persuasive than declarations, and written declarations are considered more persuasive than oral ones. *Seecomb v Bovey, Supra.*

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 stated in *Coulter v Commissioner of Taxation*, Docket 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 July 1, 1974, there is no question that Appellants were domiciled in Minnesota and had been since 1943. During this period of time Appellants established many social, financial and employment contacts in this state. The facts clearly indicate that the vast majority of these contacts remained fully intact throughout the period in question.

Throughout the period in question, Appellants owned a home at 2835 Inner Road, Wayzata, Minnesota. The structure, which is situated on land leased from the Methodist Lakeside Assembly, is valued at \$45,000.00. Appellants received the benefit of a homestead classification for that home for the year 1974. However, they did not apply for such classification in 1975.

Appellant Robert Truex maintained his long-standing employment with a Minnesota employer, Northwestern Orient Airlines, Inc. throughout the entire period in question. All flight schedules flown by Truex during the period in question began and ended in Minnesota. During the period in question Northwest Airlines sent all of its mailings directed to Truex, including his W-2 statements, to his Wayzata, Minnesota, home. In fact, Northwest Airlines typed Truex's Wayzata address on his W-2 statement.

Appellants also maintained business contacts with the State of Minnesota for the period in question. They owned and actively operated a business named Hangar Services. The lessees of the hangars at such business sent their monthly rent payments to the Wayzata home. Additionally, billing statements for utilities, taxes and supplies, etc. associated with the hangar business were sent to the Wayzata home. The Wayzata Bank and Trust Company handled the checking account for the hangar business. The address printed on the checks was that of the Wayzata home, and the checking account statements were sent to the Wayzata home. Appellants did not own or operate a business in the State of Florida during the period in question.

The majority of personal savings accounts and checking accounts during the time in question were located in Minnesota. Additionally, all accounts statements for Truex's *only* Florida savings account were mailed to their Wayzata home.

Other than a blanket declaration of intention to make Florida their domicile, Appellants have given the Court meager evidence to substantiate that claim. The only evidence of note are the purchase of two used cars in the State of Florida and the purchase of a condominium in the State of Florida during 1974.

Once a domicile is established in Minnesota, it is presumed to continue until another domicile is proven to have been established elsewhere. *Sarek v Commissioner of Revenue*, Docket No. 2524 (April 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*. Therefore, the burden of proof is upon Appellants in this case. In balancing the evidence in this case, it is clear to the Court that Appellant has fallen short of meeting that burden. The Court therefore must find Appellant for the periods in question was a domicile of the State of Minnesota. And therefore, the Court affirms the decision of the Commissioner.

John Knapp, Chief Judge

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.

Minnesota Community College System North Hennepin Community College

Notice of Availability of Contract for Consultant to Develop Contract Learning Agreements

North Hennepin Community College requires the services of a qualified consultant to develop contract learning agreements between the college and individual profit-making organizations.

Developing contract learning agreements shall include the following:

1. The consultant will organize, coordinate, and direct a program of courses offered to area business and industry.
2. The courses are to be taught at off-campus locations, probably on private sites.
3. The courses offered are to be both credit and non-credit. The consultant will teach a minimum of ten credit courses from the college curricula related to management and supervision.
4. The consultant may teach approximately 30% of the non-credit courses he/she arranges, but the schedule for these activities will be negotiated with the community service director of the college to whom the consultant will report.
5. The length of the contract with the consultant will be from July 1, 1980 through June 30, 1981.
6. Firms/individuals desiring consideration should submit a resume of their office and work before June 16, 1980 to:

Don McGuire
Director of Community Services
North Hennepin Community College
7411 85th Avenue North
Brooklyn Park, Minnesota 55445
Telephone (612) 425-4541

Department of Corrections Minnesota Correctional Facility/Lino Lakes Contract Available for Certified Clinical Psychologist

The Minnesota Correctional Facility—Lino Lakes announces

its intention to contract with a certified clinical psychologist to provide the following services:

1) Provide psychological evaluation on institution residents as requested by classification teams and the Minnesota Corrections Board. Advise program staff concerning treatment needs of residents and be available for consultation and/or ongoing treatment of designated residents when arranged.

2) Consulting sessions to consist of two 5-hour visits per week at \$175 per visit, however a limit of 90 visits per year is maintained.

Department of Health Family Planning Section

Notice of Availability of Funds for Family Planning Special Project Grants

Any eligible agency interested in administering a Family Planning Special Project in calendar year 1981 shall contact the Minnesota Department of Health by June 27, 1980.

Purpose and Eligibility

Family planning is voluntary planning and action by individuals to *attain* or *prevent pregnancy*. Family Planning Special Project Grants will be made available to local government agencies and non-profit corporations to develop or expand pre-pregnancy family planning services to Minnesota residents in accordance with the Family Planning Services Act (Minn. Stat. § 145.925) and the family planning rule (ch. 27, Part II: 7 MCAR § 1.457).

How To Apply For Funds

A potential applicant should submit a letter of intent to apply for funds to the Commissioner of Health. The letter of intent must be received by the department no later than 4:30 p.m. Friday, June 27, 1980 and must include the name of the applicant agency, name and telephone number of an agency contact person and an estimate of the amount of funds to be requested for calendar year 1981.

Because the amount of grant funds available for 1981 may be the same as for 1980, agencies awarded Family Planning Special Project funds for 1980 may not request a sum which exceeds their January, 1980 grant award.

An agency expressing an intent to apply will be provided with a copy of the Family Planning Act, the family planning rule,

STATE CONTRACTS

application materials, information on the review and award process, and the name and telephone number of a family planning consultant available to provide technical assistance concerning preparation of the grant application. The completed application must be submitted to the appropriate Regional Development Commission(s), Health Systems Agency(s), and local board(s) of health *prior* to submission to the commissioner. The completed application must be received by the department on or prior to 4:30 p.m., August 15, 1980.

Award of Funds

Applications will be reviewed and grants awarded in accordance with the Criteria for Award of Family Planning Special Project Grants found in the family planning rule (7 MCAR § 1.457E.). For 1981, award priority will be given to agencies whose applications meet the criteria for award and propose all family planning components in counties with no family planning services as of December 31, 1978 (7 MCAR § 1.457 E.1.). All other agency applications shall be funded in rank order based on the criteria for award (7 MCAR § 1.457E.) as funds are available. Applicant agencies will be notified in writing of the status of the application by December 31, 1980.

Further information regarding family planning and application for Family Planning Special Project Grants may be obtained by contacting Ms. Judi Kapuscinski, Supervisor, Family Planning Unit, 717 Delaware Street S.E., Minneapolis, Minnesota 55440, (612) 296-5285.

Duration of Funding

Funds for approved grants for these purposes will be awarded for the period of January 1, 1981 through December 31, 1981. The second half of the funding period is, however, dependent upon favorable action by the Minnesota Legislature relative to the Department's biennial budget request for family planning funds.

Department of Public Safety Office of Planning and Analysis

Notice of Request for Proposal for Traffic Records System Project Planning and Project Management Assistance

The Department of Public Safety is seeking a qualified consultant to assist the Traffic Records Integration Project (TRIP) team. The project is developing an integrated data base and information system for the areas of motor vehicle, driver license, and accident records.

The project employs Structured Systems Analysis using data flow diagrams and transform-centered structured design techniques. The consultant must be familiar with this methodology.

The contract will be for the duration of the project, currently scheduled to end August 31, 1982. Estimated cost of the project is up to \$35,000. The deadline for submission of proposals is June 23, 1980.

Details are contained in a Request for Proposal. Copies of the Request for Proposal may be obtained by contacting:

Mr. Fred Logman, Director
Office of Planning and Analysis
Department of Public Safety
314 Transportation Building
St. Paul, MN 55155
(612) 296-2017

Department of Public Welfare Systems and Data Flow Division

Notice of Request for Proposal for Data Entry Service

Notice is hereby given that the Systems and Data Flow Division, Department of Public Welfare is seeking proposals for data entry operator(s) and a system compatible with the Department's Nixdorff/Entrex 480A entry system. This service is to be available to the Systems Division during overload periods. All data will be entered at the contractor's site on his equipment using the data entry programs of the Department of Public Welfare. The agreement shall be for the period from July 1, 1980 through June 30, 1981. The estimated amount of the contract will not exceed \$24,000. Responses must be received by June 23, 1980.

To receive a copy of the Request For Proposal (RFP) or for further information contact:

G. Warren Peterson
Department of Public Welfare
Systems and Data Flow Division
P.O. Box 43170
1st Floor, Space Center Bldg.
444 Lafayette Road
St. Paul, MN 55164

Department of Public Welfare Willmar State Hospital

Notice of Request for Proposals for Psychiatric Services

Notice is hereby given that the Willmar State Hospital, Men-

tal Health Division, Department of Public Welfare, is seeking the following services for the period July 1, 1980 through June 30, 1981; these services to be performed as requested by the Administration of the Willmar State Hospital:

Services of Psychiatrist, trained in General Psychiatry, to provide consultation to newly admitted mentally ill and chemically dependent patients; also, related educational guidance to Staff Personnel.

The estimated amount of the contract will not exceed \$25,500.

Responses for the above services must be received by June 23, 1980. Direct inquiries to:

Mae Forstrom, Sr. Accounting Officer
Willmar State Hospital
Box 1128
Willmar, MN 56201
(612) 235-3322, Ext. 396

SUPREME COURT

Decisions Filed Friday, May 23, 1980

Compiled by John McCarthy, Clerk

50186/211 Gordon Eugene Mondt, et al., vs. Sexter Realty Company, et al., Appellants. Hennepin County.

Treble damages are recoverable under Minn. Stat. § 548.05 (1978) only when the personal property taken during trespass is property such as is "produced by and grown upon land." *Berg vs. Baldwin*, 31 Minn. 541, 542-43, 18 N.W. 821, 822 (1884). Home furnishings, toys, and clothing are not such personal property.

Affirmed in part, reversed in part. Otis, J.

50267/145 Robert J. Johnson, et al., Plaintiffs, vs. McGough Construction Co., Inc., defendant and third party plaintiff, vs. Hankee Heating Co., Inc., third party defendant, Appellant, Acme Sheet Metal Co. Ramsey County.

A subcontract provision requiring the subcontractor to "assume entire responsibility and liability for all damages" and to "indemnify and save harmless the Contractor *** from all such claims including *** claims for which the Contractor may be, or may be claimed to be, liable" is an express provision to indemnify the indemnitee for liability occasioned by its own negligence.

Affirmed. Rogosheske, J.

49993/459 In the Matter of the Welfare of Charles Sweats. Hennepin County.

The juvenile court is divested of jurisdiction in a juvenile delinquency proceeding upon the prosecutor's filing of notice of intent to prosecute pursuant to Minn. Stat. § 260.125, subd. 1 (1978).

Affirmed. Peterson, J.

49334, 49525/4 Lee Ann Gryc, by her mother and natural guardian, Jacquelyn Gryc, and Jacquelyn Gryc, individually, vs. Dayton-Hudson Corp., et al, Riegel Textile Corp., Appellant. Ramsey County.

Punitive damages may properly be awarded in an appropriate strict liability case.

Appellant's compliance with an applicable federal safety standard does not preclude a punitive damages award as a matter of law.

The preemption provision of the federal Flammable Fabrics Act and the Supremacy Clause of the United States Constitution do not prohibit the imposition of punitive damages on a defendant who has complied with that Act.

Since appellant failed to object below to the trial court's instruction to the jury on the issue of punitive damages, the instruction became the law of the case and is not subject to review on appeal.

There was sufficient evidence to support the award of punitive damages.

Policy considerations do not dictate against an award of punitive damages in this case.

The award of \$1,000,000 in punitive damages is not clearly excessive as a matter of law.

SUPREME COURT

There was sufficient evidence to support the finding that appellant manufactured a defective product and that respondents were not aware of the defect.

The jury verdict was not perverse when it found appellant to have caused respondents' injuries while at the same time finding that the other defendants in the stream of commerce did not cause those injuries.

Appellant was not prejudiced by the trial court's dismissal of appellant's counterclaim against Jacquelyn Gryc when the jury found that Jacquelyn Gryc was not at fault.

The trial court did not err in finding that 4-year-old child, Lee Ann Gryc, could not be comparatively at fault as a matter of law.

There is no merit to appellant's contention that the trial court committed cumulative errors and that respondents' counsel engaged in misconduct which denied appellant a fair trial.

The award of \$750,000 in compensatory damages is not clearly excessive as a matter of law.

Affirmed. Todd, J.

50173/153 Richard Walter Marben, petitioner, Appellant, vs. State of Minnesota, Department of Public Safety. Stearns County.

Consistent with the Fourth Amendment of the United States Constitution, a peace officer who has a specific and articulable suspicion of a violation is justified in stopping a motorist.

In this case the trooper saw the motorist driving his vehicle and, after a proper stop under the Fourth Amendment, immediately thereafter observed that the motorist was under the influence of alcohol. An arrest then was lawfully made.

Affirmed. Scott, J.

50210/188 State of Minnesota vs. Norman Junior Howard, Appellant. Hennepin County.

Identification procedures used by police did not create a "very substantial likelihood of irreparable misidentification" and evidence of defendant's guilt, which included positive eyewitness identification testimony, was not, as defendant contends, legally insufficient.

Trial court did not commit prejudicial error in refusing to grant a mistrial because the prosecutor elicited testimony that a knife not connected to the crime was seized from defendant when he was arrested, or in refusing to admit evidence deemed cumulative.

Defendant, by failing to object, is deemed to have forfeited his right to have his claim of prosecutorial misconduct in closing argument considered on appeal.

Affirmed. Scott, J.

50305/248 State of Minnesota vs. Michael Jerome Kaminski, Appellant. St. Louis County.

Trial court did not err in denying motion to suppress evidence seized pursuant to warranted search of defendant's automobile.

Affirmed. Scott, J.

51080/Sp. In the Matter of the Application between Finley W. Markley, Thomas Benham, Raymond M. Lukes and Medical Incorporated. Hennepin County.

Effective appellate review of the trial court's decision cannot be made until the trial court issues detailed findings relating to the scope of authority granted to the arbitration panel by the agreement of the parties and to the court's determination as to whether that authority was exceeded.

Remanded with instructions. Per Curiam.

Decision Filed Tuesday, May 20, 1980

50950, 51067/319 State of Minnesota, Appellant, 50950 vs. Nate Baxter Compton, and State of Minnesota, Plaintiff, 51067 vs. Eugene Elmer Compton. Cass County.

Held, law officer who observed property in open view in box of pickup truck properly concluded that surrounding circumstances that he had probable cause to believe the property was stolen, and, accordingly, he was justified in arresting defendants, in seizing the property, and in searching the truck.

State vs. Nate Baxter Compton, No. 50950, reversed and remanded; State vs. Eugene Elmer Compton, No. 51067, appeal dismissed and case remanded. Sheran, C. J.

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.

Energy Agency Certificate of Need Activity Notice of Change in Hearing Room for the Public Hearings on the Certificate of Need Application of Northern States Power Company to Increase the Storage Capacity of the Spent Fuel Pool at The Prairie Island Nuclear Generating Facility

Notice is hereby given that the June 24 evening session, originally scheduled to be held in Room 584, Federal Court-house, St. Paul, Minnesota 55101, will be held instead at the Large Hearing Room, Department of Public Service, Seventh Floor, American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101. The evening session will commence at 7:00 p.m. and will be devoted to public testimony only.

For further information, contact Arthur L. Adiarte at the Minnesota Energy Agency, 980 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101, telephone number (612) 296-8279.

Ethical Practices Board

Request for Advisory Opinion Re: Campaign Expenditure

The Minnesota State Ethical Practices Board solicits opinions and comments to the following request for an advisory opinion which will be discussed at its June board meeting. Written comments concerning the opinion request should be forwarded to arrive at the board's office prior to June 13, 1980.

May 22, 1980

Mr. B. Allen Clutter, III
Executive Director
Ethical Practices Board
Room 41
State Office Building

Dear Mr. Clutter and Members of the Board:

I am a member of the Board of Directors of Minnesota Christian Radio, Incorporated. Each year in August we have a three-day sharathon in which we raise the funds to operate the station for the following year. Last year, I participated in the sharathon and provided some commentary to the listening audience.

This year, I have been asked to participate in the sharathon all three days. I will provide some commentary, some encouragement, and some devotional material for the listening audience.

I will be referred to simply as Glen Sherwood, a member of the Board of Directors of Minnesota Christian Radio. I will in no way be referred to as Representative Glen Sherwood. Nor, will I be making any political comments of any kind. My comments will relate entirely to the needs of the radio station and to spiritual matters.

Will my participation in this sharathon be considered as a campaign expenditure?

I would appreciate an advisory opinion on this question. Thank you.

Sincerely yours,

Glen Sherwood
State Representative

Office of the Governor

Notice of Appointment of Department Head

In accordance with Minn. Stat. § 15.06, notice is hereby given of the appointment of Kent E. Eklund as Commissioner of the Minnesota Department of Economic Development on May 19, 1980.

Metropolitan Council

Public Hearing on a Revised Metropolitan Development Guide/Policy Plan for Recreation Open Space

The Metropolitan Council will hold a public hearing on Thursday, June 26, 1980, at 7 p.m. in the Metropolitan Council Chambers, 300 Metro Square Building, 7th and Robert Sts., St. Paul, MN (use Jackson St. entrance) for the purpose of receiving public comment on a revised Metropolitan Development Guide/Policy Plan for Recreation Open Space. This draft plan deals in detail with policies for the development of regional recreation facilities and funding for operations and maintenance. Copies of the proposed Development Guide/Policy Plan are available free of charge from the Metropolitan Council's Public Information Office at (612) 291-6464. Persons wishing to speak at the public hearing may register to do so in advance by contacting the Council's public hearing coordinator at 291-6482.

Charles Weaver
Chairman

STATE OF MINNESOTA
OFFICE OF THE STATE REGISTER

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

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FOR LEGISLATIVE NEWS

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

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

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

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