


# Minnesota Attorney General: Administrative Rules Proceedings

## Copyright Notice:

This material may be protected by copyright law (U.S. Code, Title 17). Researchers are liable for any infringement. For more information, visit www.mnhs.org/copyright.

Version 3
August 20, 2018

447

Sheila S. Fishman
Special Assistant
Attorney General

August 4, 1978

- Building Code Division rules for Energy Conservation in Residential Buildings and Amendments to ASHRAE Standard 90-75

#447 Admin - Bldg Code

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 7/17 Temporary Rule _____

Resubmitted and Received _____

DUE DATE 8/4

a. Returned to Agency w/o filing w/Secy of State _____
b. Approved _____ Date Sent Back to Agency _____

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

1. Rules as Adopted ✓
2. Rules as Proposed ✓
3. Certificate of Board's Authorizing Resolution, where applicable N.A.
4. Order for Hearing ✓
5. Notice of Hearing ✓
   (i) Sufficiency ✓
6. Secretary of State's List ✓
7. Certificate of Acquisition of Secretary of State's List ✓
8. Affidavit of Mailing ✓
   (i) At least 30 days prior to hearing ✓
9. Statement of Need and Evidence ✓
10. Hearing Examiner's Report ✓
11. Agency's Findings of Fact ✓
12. Certificate of Board's Resolution Adopting Rules, where applicable N.A.
13. Order Adopting ✓
14. Report of Chief Hearing Examiner ✓
    (i) Finding of No Substantial Change ✓
    (ii) Permission to Incorporate by Reference, where applicable [redacted]
15. Certificate of Compliance with Rulemaking Procedures ✓
16. Copy of Notice of Intent to Solicit Outside Opinion, where applicable N.A
17. Petition by Public, where applicable N.A.

RECEIVED
JAN 10 1978
OFFICE OF HEARING
EXAMINERS

State of Minnesota

Department of Administration

In the Matter of the Proposed Adoption of Rules for Energy Conservation in Residential Buildings and Amendments to ASHRAE Standard 90-75 Adopted by Reference in Rules Relating to Design and Evaluation Criteria for Energy Conservation in New Buildings, Additions, Remodeled Elements of Buildings and Standards for Certain Existing Public Buildings.

STATEMENT OF EVIDENCE AND NAMES OF WITNESSES

Robert Rogers, Assistant Director of the Building Code Division will appear on behalf of the Building Code Division at the hearing to be held on January 5, 1978. He will testify regarding the need for and reasonableness of the proposed rules and amendments. The substance of his testimony is set forth in the Statement of Need submitted herewith.

In support of the proposed rules and amendments, the following will be submitted at the hearing: ASHRAE Standard 90-75.

Date: 12/12/77

Don Pates

Don Pates, Director
Building Code Division

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

RECEIVED
JAN 10 1978
OFFICE OF HEARING EXAMINERS

In the Matter of the Proposed Adoption of Rules for Energy Conservation in Residential Buildings and Amendments to ASHRAE Standard 90-75 Adopted by Reference in Rules Relating to Design and Evaluation Criteria for Energy Conservation in New Buildings, Additions, Remodeled Elements of Buildings and Standards for Certain Existing Public Buildings.

STATEMENT OF NEED

Pursuant to Minn. Stat. 1977 Supplement, 116H.129, Subd. 1, the Commissioner of Administration in consultation with the director of the Minnesota Energy Agency have been directed by the Minnesota Legislature to promulgate rules relating to energy efficiency that may be applied to existing residential buildings.

SBC 6201 Authorization. Cited above.

SBC 6202 Enforcement. In accordance with 116H.129, Subd. 1, the director of the Minnesota Energy Agency will make recommendations to the Legislature as to the method of obtaining compliance.

SBC 6203 Purpose and Scope. The purpose of these proposed rules are to improve the energy efficiency of existing residential buildings. By reduction of the infiltration of outside air and the improvement of the thermal performance (heat loss/heat gain) of the exterior building envelope.

SBC 6204 Definitions. The proposed rules deal in part, with technical matters. Definitions which help with a common understanding of the meanings of words and phrases will assist all persons affected by, or dealing with, these rules.

SBC 6204 Minimum Energy Efficiency Modifications. In the consideration of modifications it was generally agreed that any portions assemblies, or equipment required to be modified for energy efficiency must be easily inspectable, so that a non-technical person who may be involved in compliance inspections or certification can visually make a determination as to compliance.

In regard to the proposed amendments to ASHRAE Standard 90-75, the 1977 Legislature determined that three changes would be made. They are as follows: the raising of EER(COP) from 6.1(1.8) to 7.0(2.1) for air conditioning units by January 1, 1978, the limiting of the heating of parking garages, and requirements for electric meters.

Date: 12/12/77

Richard L. Brubacher
Commissioner of Administration

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

RECEIVED
JAN 10 1978
OFFICE OF HEARING EXAMINERS

In the Matter of the Proposed Adoption of Rules for Energy Conservation in Residential Buildings and Amendments to ASHRAE Standard 90-75 Adopted by Reference in Rules Relating to Design and Evaluation Criteria for Energy Conservation in New Buildings, Additions, Remodeled Elements of Buildings and Standards for Certain Existing Public Buildings.

AFFIDAVIT OF MAILING

DarlaMae R. Hormann, being first duly sworn, deposes and says:

That on the 5th day of December, 1977, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing and proposed rules by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State.

DarlaMae R. Hormann

DarlaMae R. Hormann
Building Code Division




Subscribed and sworn to before me
this 9th day of December, 1977.

Cynthia L. Claasson

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

RECEIVED
JAN 10 1978
OFFICE OF HEARING EXAMINERS

In the Matter of the Proposed Adoption of Rules for Energy Conservation in Residential Buildings and Amendments to ASHRAE Standard 90-75 adopted by Reference in Rules Relating to Design and Evaluation Criteria for Energy Conservation in New Buildings, Additions, Remodeled Elements of Buildings and Standards for Certain Existing Public Buildings.

AFFIDAVIT OF RECEIPT

Margaret Opalinski, being duly sworn on oath, deposes and says:

1. That she is an employee of the Building Code Division, Department of Administration, State of Minnesota;

2. That on the 30th day of November, 1977, she went to the Secretary of State's Office of the State of Minnesota and requested a current list of all representatives and associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to Minn. Stat. 15.0412;

3. That on the 30th day of November, 1977, in response to the above request, the Secretary of State provided her with such a list.

Further affiant sayeth not.

CYNTHIA L. CLAASON
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Commission Expires Feb. 23, 1982

Margaret Opalinski
Margaret Opalinski
Building Code Division

Subscribed and sworn to before me
this 9th day of December, 1977.

Cynthia L. Claason

STATE OF MINNESOTA

RECEIVED
JAN 10 1978
OFFICE OF HEARING EXAMINERS

DEPARTMENT OF ADMINISTRATION

In the Matter of the Proposed Adoption of Rules for Energy Conservation in Residential Buildings and Amendments to ASHRAE Standard 90-75 adopted by Reference in Rules Relating to Design and Evaluation Criteria for Energy Conservation in New Buildings, Additions, Remodeled Elements of Buildings and Standards for Certain Existing Public Buildings.

CERTIFICATE OF DELIVERY OF THE SECRETARY OF STATE LIST

I hereby certify that the attached 186 labels and 10 sheets constitute the complete list of persons, associations, and other interested groups who as of 10:15 o'clock a.m., this 30th day of November, 1977, have requested pursuant to M. S. 1974, Section 15.0412 that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

SECRETARY OF STATE

Joan Anderson Growe

BY: Cheri L. Mattson

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

RECEIVED
JAN 10 1978
OFFICE OF HEARING EXAMINERS

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES FOR ENERGY CONSERVATION IN RESIDENTIAL BUILDINGS AND AMENDMENTS TO ASHRAE STANDARD 90-75 ADOPTED BY REFERENCE IN RULES RELATING TO DESIGN AND EVALUATION CRITERIA FOR ENERGY CONSERVATION IN NEW BUILDINGS, ADDITIONS, REMODELED ELEMENTS OF BUILDINGS AND STANDARDS FOR CERTAIN EXISTING PUBLIC BUILDINGS.

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a public hearing in the above-entitled matter will be held in Room CCI, Howard Johnsons Motor Lodge, 8401 Cedar Avenue, Bloomington, Minnesota, on January 5, 1978, commencing at 9:30 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 materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Peter Erickson, State Hearing Examiners Office, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, 612/296-8118, either before the hearing or within 5 days or up to 20 days after the close of the hearing upon order of the hearing examiner.

A copy of proposed rules are attached. Additional copies will be available at the door on the date of the hearing or can now 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 and amendments are contained in Minn. Stat. § 16.85 (1976) and Minn. Stat., 1977 Supplement, § 116H.129, Subds. 1 and 2. A "statement of need" explaining why the agency feels the proposed rules and amendments are necessary and a "statement of evidence" outlining the testimony they will be introducing will be filed with the Hearing Examiners Office at least 25 days prior to the hearing and will be available there for public inspection.

Please be advised that pursuant to Minn. Stat. 10A.01, Subd. 11 (1974) any individual engaged for pay or other consideration for the purpose of representing persons or associations attempting to influence administrative action, such as the promulgation of these rules and amendments, must register with the State Ethics Commission as a lobbyist within five days of the commencement of such activity by the individual.

Date: 11/21/77

Richard L. Brubacher
Commissioner of Administration

STATE OF MINNESOTA

RECEIVED
JAN 10 1978
OFFICE OF HEARING
EXAMINERS

DEPARTMENT OF ADMINISTRATION

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES FOR ENERGY CONSERVATION IN RESIDENTIAL BUILDINGS AND AMENDMENTS TO ASHRAE STANDARD 90-75 ADOPTED BY REFERENCE IN RULES RELATING TO DESIGN AND EVALUATION CRITERIA FOR ENERGY CONSERVATION IN NEW BUILDINGS, ADDITIONS, REMODELED ELEMENTS OF BUILDINGS AND STANDARDS FOR CERTAIN EXISTING PUBLIC BUILDINGS.

ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above-captioned rules be held in Room CCI, Howard Johnsons Motor Lodge, 8401 Cedar Avenue, Bloomington, Minnesota on January 5, 1978 commencing at 9:30 a.m. and continuing until all persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Secretary of State for that purpose.

IT IS FURTHER ORDERED that the Notice of Hearing and applicable proposed rules be published in the State Register.

Date: 11/21/77

Richard L. Brubacher
Commissioner of Administration

Amendments to ASHRAE Standard 90-75 adopted by reference in rules relating to Design and Evaluation Criteria for Energy Conservation in New Buildings, Additions, Remodeled Elements of Buildings and Standards for Certain Existing Public Buildings.

Page 9, Definitions.

Commercial Parking Facility. Shall not include a parking facility which is appurtenant to or a part of a residential building whether the individual dwelling units are rented or owned by the occupants, and which is used primarily by the occupants and their guests.

Page 22, 5.2 Scope - add a second paragraph.

No enclosed structure or portion of an enclosed structure constructed after January 1, 1978 and used primarily as a commercial parking facility for three or more motor vehicles shall be heated. Incidental heating resulting from building exhaust air passing through a parking facility shall not be prohibited, provided that substantially all useful heat has previously been removed from the air.

Page 34, 8.6 Electric Energy Determination.

Electrical service to individual dwelling units in buildings containing two or more units shall be separately metered, with individual metering readily accessible to the individual occupants.

EXCEPTION: Buildings intended for occupancy primarily by persons who are 62 years of age or older or handicapped, or which contain a majority of units not equipped with complete kitchen facilities, shall be exempt from the provisions of this section.

APPROVED AS TO FORM AND LEGALITY
JUL. 3 1 1978
_____ 19____
WARREN SPANNAUS, ATTORNEY GENERAL
BY _____
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JUL 3 1 1978
Joan Anderson Growe
Secretary of State
3:50 PM

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE BUILDING CODE DIVISION

| | | |
|---|---|---|
| In the Matter of the Proposed Adoption of Rules for Energy Conservation in Residential Buildings and Amendments to ASHRAE Standard 90-75 Adopted by Reference in Rules Relating to Design and Evaluation Criteria for Energy Conservation in New Buildings, Additions, Remodeled Elements of Buildings and Standards for Certain Existing Public Buildings. | ) | REPORT OF HEARING EXAMINER |

The above-entitled matter came on for hearing before Hearing Examiner Peter C. Erickson of the State Office of Hearing Examiners at 9:30 a.m. on Thursday, January 5, 1978, in the Howard Johnson Motel, 8401 Cedar Avenue, Bloomington, Minnesota.

Sheila S. Fishman, Special Assistant Attorney General, appeared as counsel for the Building Code Division (BCD). Robert Rogers, Assistant Director, BCD, and Richard Depta, representing the Minnesota Energy Agency, testified in support of the proposed rules. The hearing continued until all interested groups or persons had an opportunity to be heard concerning the adoption of the proposed rules.

Pursuant to Minn. Stat. § 15.0412, subd. 4, this Report shall be available for review to all affected individuals upon request for at least five days.

The BCD shall, if it proposes to adopt the rules as originally proposed or amended, submit the complete hearing record, including its Findings and Order, to the Chief Hearing Examiner no earlier than five days subsequent to the receipt of this Report. This submission shall clearly indicate any changes made to the rules as originally proposed, preferably in the format that will be submitted to the State Register for publication. The Chief Hearing Examiner shall complete

his review and submit his report to the BCD on the issues of substantial changes in the rules and compliance with Minn. Stat. § 15.0412 within ten calendar days. Thereafter, the BCD shall be responsible for filing the rules with the Attorney General and for notifying persons who have indicated that they wish to be notified of such filing.

Based upon all the records and proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

1. On December 12, 1977, the BCD filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules;
(b) A proposed Order for Hearing;
(c) A proposed Notice of Hearing; and
(d) A Statement of the estimated length and number of people attending the hearing.

2. On December 5, 1977, a Notice of Hearing and a copy of the proposed rules were published at 2 State Register 1095.

3. On December 5, 1977, the BCD mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

4. On December 12, 1977, the BCD filed the following documents:

(a) The Order for Hearing;
(b) The Notice of Hearing as mailed;
(c) The Affidavit of Receipt of the Secretary of State's list;
(d) The Affidavit of Mailing;
(e) The Secretary of State's Certificate and list;
(f) The Statement of Need;
(g) The Statement of Evidence, including the names of witnesses to be called;
(h) The names of Division personnel who will represent the agency.

The documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing.

5. The record remained open through January 26, 1978, for the receipt of written comments and statements.

6. Statutory authority to promulgate the proposed rules is contained in Minn. Stat. § 16.85 (1976) and Minn. Stat.

§ 116H.129, subds. 1 and 2 (1977 Supp.).

7. The Statement of Need, submitted on December 12, 1977, reads as follows:

> Pursuant to Minn. Stat. 1977 Supplement, 116H.129, Subd. 1, the Commissioner of Administration in consultation with the director of the Minnesota Energy Agency has been directed by the Minnesota Legislature to promulgate rules relating to energy efficiency that may be applied to existing residential buildings.
>
> SBC 6201 Authorization. Cited above.
>
> SBC 6202 Enforcement. In accordance with 116H.129, Subd. 1, the director of the Minnesota Energy Agency will make recommendations to the Legislature as to the method of obtaining compliance.
>
> SBC 6203 Purpose and Scope. The purpose of these proposed rules is to improve the energy efficiency of existing residential buildings. By reduction of the infiltration of outside air and the improvement of the thermal performance (heat loss/heat gain) of the exterior building envelope.
>
> SBC 6204 Definitions. The proposed rules deal in part with technical matters. Definitions which help with a common understanding of the meanings of words and phrases will assist all persons affected by, or dealing with, these rules.
>
> SBC 6205 Minimum Energy Efficiency Modifications. In the consideration of modifications, it was generally agreed that any portions, assemblies, or equipment required to be modified for energy efficiency must be easily inspectable, so that a non-technical person who may be involved in compliance inspections or certification can visually make a determination as to compliance.
>
> In regard to the proposed amendments to ASHRAE Standard 90-75, the 1977 Legislature determined that three changes would be made. They are as follows: the raising of EER(COP) from 6.1(1.8) to 7.0(2.1) for air conditioning units by January 1, 1978, the limiting of the heating of parking garages, and requirements for electric meters.

The Statement of Evidence, also submitted on December 12, 1977, reads as follows:

> Robert Rogers, Assistant Director of the Building Code Division, will appear on behalf of the Building Code Division at the hearing to be held on January 5, 1978. He will testify regarding the need for and reasonableness of the proposed rules and amendments. The substance of his testimony is set forth in the Statement of Need, submitted herewith.
>
> In support of the proposed rules and amendments, the following will be submitted at the hearing: ASHRAE Standard 90-75.

The BCD further supported the proposed rules at hearing as follows:

a. SBC 6205, item 1 - The reduction of air infiltration into the exterior envelope is the most economically justified measure for energy conservation.

b. SBC 6205, item 2 - Studies have shown that an inch and a half of wood separating a basement area from the outside could be improved very measurably at very little expense by insulation.

c. SBC 6205, item 3 - Computer studies indicate that the installation of insulating jackets over water heaters is an economically feasible measure.

d. SBC 6205, items 4 and 5 - Storm doors and storm windows may or may not be economically justified depending on the residence in question.

e. SBC 6205, item 6 - The heat loss through stacks and fireplace flues is very large unless they are sealed off.

f. SBC 6205, item 7 - It can be determined whether it is economically feasible to install attic insulation.

g. Table 6.2 - The table embodies a recent statutory mandate regarding the minimum allowable EER for window air conditioners.

h. 5.2 Scope - Statutory language is duplicated to put all affected persons on notice of the prohibition of heated garages.

i. 8.6 Electric Energy Determination - Statutory language is duplicated to put all affected persons on notice of the new electric metering requirements.

8. At hearing, Richard Depta submitted a document containing calculations supporting the economic feasibility of SBC 6205, items 1 - 7. Mr. Depta also proposed the following amendments to the rules for the purposes of clarity and simplicity:

<u>6203 Purpose and Scope</u> - Second Paragraph

> In general, the rules address two areas:
> 1) reduction of air infiltration ~~as it~~-

~~relates-to-air-leakage~~ through the exterior envelope, and 2) the improvement of thermal efficiency of the ~~structure-as-it-relates-to-the-transfer-of-heat-through-the~~ exterior envelope.

6204 Definitions - Economic Feasibility

Shall occur when the savings in energy procurement cost exceeds the cost of energy conserving items amortized over the subsequent 5 year period. The energy procurement cost for each Minnesota Development Region is the most recent certified by the Director of the Energy Agency and published in the State Register.

6204 Definitions - "R" Value

(add units) $ft^2 \cdot {}^oF \cdot hr/Btu$

6204 Definitions - "U" Value

(add units) $Btu/ft^2 \cdot {}^oF \cdot hr$

6205 ~~Minimum~~ Energy Efficiency Modifications

~~Modifications-in-the-following-minimum-energy efficient-items-when-economically-feasible shall-be-required.~~ Each of the following energy efficiency modifications shall be required unless it can be shown that a modification is not economically feasible.

7. Install attic insulation if the existing insulation ~~averages-are~~ is less than five inches thickness ~~those-shown-below-as-they-correspond to-type-of-heating-fuel~~.

| ~~Heating-Fuel~~ | ~~Minimum-Existing-Insulation~~ |
|---|---|
| ~~Natural-Gas~~ | ~~4-inches~~ |
| ~~Fuel-Oil~~ | ~~6-inches~~ |
| ~~Electric~~ | ~~6-inches~~ |
| ~~Propane~~ | ~~6-inches~~ |

9. Howard Noziska, Director of the Minnesota Masonry Institute, proposed that the definition of "Positive Shut-Off" be amended by adding the words, dampers or other approved means, after the words "glass doors". This amendment would recognize that other methods, besides glass doors, could be used to meet the requirement. The BCD concurred in this proposal.

10. Bill Wharton, professional engineer, testified that because the proposed rules are so general and ambiguous; because the definitions included are not even used in the rules; and because there is no method proposed to calculate economic feasibility, the rules are "meaningless in every sense of the word". [Tr. pp. 19-23]

11. Jan Gasterland, representative of the North Star Chapter of Building Officials, testified that the Chapter opposes the adoption of the proposed rules because the "enforcement procedure should logically be included as a part of the document". [Tr. pp. 33-34]

12. Regarding the specific implementation of items 1 - 7 in SBC 6205, the BCD stated that "every one of these items is subject to the test of economic feasibility". [Tr. p. 24] Rudy Brynolfson, Assistant Director of the Energy Agency, stated that if the homeowner does not feel that an item is economically feasible, he can "get some calculations done to show that and get exempted from that requirement". [Tr. p. 32]

13. Dr. G. W. Schossow, physician and energy conservationist, contends that air infiltration into the exterior envelope is essential to provide combustion air for the furnace and water heater. Sealing all of the cracks in the envelope may jeopardize the health and lives of the dwelling occupants. [Tr. pp. 53-58]

14. Raymond O'Connell, representative of the Minnesota Gas Company, stated that the amateur installation of insulating jackets over water heaters may cause problems with the supply of combustion air. Mr. O'Connell stated that he did not feel the jackets were economically feasible because all of the heat that the appliance gives off is contained within the envelope. [Tr. pp. 74-80]

15. France Anderson, consumer service engineer for NSP, proposed that the rules be amended to mandate six inches of insulation on rim joist areas and in the attic. Mr. Anderson stated that because there is great divergence on energy costs, economic feasibility calculations would be variable. [Tr. pp. 83-85]

16. Dawn Lundgren, chairperson of the energy retrofit subcommittee, stated that the rules are vague because the subcommittee did not know how they would be policed. [Tr. p. 68] The BCD testified that implementation of the rules "revolves

completely around economic feasibility". [Tr. p. 86]

17. James Erickson and John Horner, attorneys at law, testified on behalf of the Minnesota Multi-Housing Association in support of an amendment to "5.2 Scope" which would define the term "commercial" as used in Chapter 381, section 15 (1977 Laws) and the proposed rule. Each stated that it was the intent of the Legislature, by adding the word commercial to the statute, to exclude residential buildings from the prohibition against heated garages. That this intent should be made clear in the proposed rule. The suggested amendment reads as follows:

> As used in this paragraph, "commercial parking facility" shall not include a parking facility which is appurtenant to or a part of a residential building whether the individual dwelling units are rented or owned by the occupants, and which is used primarily by the occupants and their guests.

18. Several persons testified that the HVAC System heading for Table 6.2 is improper for the statutory mandate regarding room air conditioners. The BCD has subsequently withdrawn Table 6.2 from the proposed rules.

19. The Minnesota Multi-Housing Association proposed to amend the definition of "Economic Feasibility" contained in SBC 6204 by adding the language, <u>including interest and finance charges whether or not actually incurred</u>, after the word "amortized" to clarify the intent of the rule.

20. The Division of Property Management, Department of Finance and Management Services, City of Saint Paul, commented that it was "unfair" to adopt rules before the enforcement and funding procedure are established. The City commented further as follows:

> 6204 Definitions
>
> > Economic Feasibility. The director should promulgate a simple economic feasibility formula for residential homeowners to compute the cost effectiveness of energy conserving items.
>
> 6205 Minimum Energy Efficiency Modifications
>
> > 1. Residents should call a reputable heating contractor to obtain specific air ignition

requirements of their heating system. This should be done to insure safety before the above-mentioned takes place.

2. Recommend adding, "Provide a proper vapor barrier before adding insulation to insure structural damage will not occur."

3. Recommend complete deletion of this rule. Domestic water heaters are insulated. Most water heaters are within building envelope, thus any heat loss would be within that envelope. Insulating jacket poses a safety problem for homeowners.

4. Recommend deletion of the word "occupied" and adding in its place, the word "heated".

6. Add, "This positive shut-off could be classified as dampers, glass doors or variable devices."

7. Recommend deleting entire rule as written. Replace with, "Install attic insulation if existing insulation averages less than 6". Minimum requirements are 6" or an R value of 19".

21. The Hormel Company commented that insulation requirements should be stated in terms of "U" values as various types of insulation material have different degrees of effectiveness.

22. The Minnesota HFA suggested that a new item be added to SBC 6205 which would read, Install insulated covers on all through wall air conditioners.

23. Lee Hurry suggested that energy costs be determined from local utility and fuel company records. Also, that SBC 6205, item 4 be amended by deleting the words "directly into occupied living space" and substituting in place thereof the language, through the envelope.

24. Several persons commented that requiring storm doors on an insulated steel door system is unnecessary and economically unfeasible.

25. The BCD proposed the following additional amendments to the rules:

6204 Definitions - Add definition of Residential Building. Any building containing one or more "dwelling units".

RATIONALE: Clearly identifies in Building Code language, the type of building to which these proposed rules would apply.

6205 - The Division proposed that after item 7, a cautionary sentence be added as follows:

NOTE - Nothing contained herein shall interfere with an adequate supply of combustion air necessary for fuel burning appliances.

RATIONALE: Testimony at the hearing as well as the concerns of the Division staff indicate the possibility that some of the retrofit requirements particularly items 1, 4, 5 and 6 could result in an insufficient quantity of combustion air. While such condition may be unlikely, it would seem to be in the public interest to insert the suggested cautionary note.

26. The Energy Agency proposed the following additional amendments to the rules (written comment submitted by Director John Millhone):

6201 Authorization

The redundancy in the rule as proposed would be removed by adopting the following suggested language:

> These rules are promulgated pursuant to Minn. Stat., ~~1977 Supplement,~~ §116H.129, subd. 1 (Supp. 1977) and ~~provide for rules relating~~ relate to energy conservation in residential buildings.

6202 Enforcement

The Energy Agency has complied with Minn. Stat. § 116H.129, subd. 1 (Supp. 1977) and made its recommendations to the Legislature on methods to obtain compliance with the standards. They are contained in Section 4 of SF 1706, a copy of which is attached. Therefore, I suggest the following change in the wording of this section:

> ~~Recommendations to attain compliance shall be made by the director of the Minnesota Energy Agency.~~ These rules shall be enforced by such means as the Legislature may provide by law.

6203 Purpose and Scope

The Energy Agency has already offered an amendment to make the language less redundant and more clear. One additional change would be desirable, as indicated below:

> The purpose of these rules is to establish minimum energy efficiency standards for existing residential buildings and to provide guidelines for retrofitting existing residential structures.
>
> In general, the rules address two areas: 1) the reduction of air infiltration ~~as it relates to air leakage~~ through the exterior envelope, and 2) the improvement

of the thermal efficiency of the ~~structure as it relates to the transfer of heat through the~~ exterior envelope and the efficiency of major energy-using equipment.

Although the existing language is not exclusive in noting that "in general" the rules address the building envelope, specific mention of their applicability to energy using equipment which is part of the building will improve clarity. The added language emphasizes the fact that the Legislature did not restrict the rules to coverage of the building envelope only.

6204 Definitions

a.) In the definition of "economic feasibility", there was some confusion over the inclusion of interest charges in amortizing the cost of energy conserving items. As noted by Earl Bartels of Minnegasco in his hearing testimony, the added cost of such interest is counterbalanced by the added saving resulting from inflationary increases in energy procurement costs over the amortization period. Current average residential energy costs as certified by the Energy Agency in the State Register do not presently include inflation. Therefore, the following clarification is proposed.

> Economic Feasibility shall ~~occur~~ exist when the savings in energy procurement cost exceeds the cost of energy conserving items amortized over the subsequent 5 year period.
>
> The energy procurement cost for each Minnesota Development Region is the most recent certified by the Director of the Energy Agency and published in the State Register. Amortization may include interest and finance charges only to the extent they exceed the inflation rate applied to energy procurement cost.

* * *

c.) Testimony at the hearing indicated some concern that certain retrofit measures could result in excessive restriction of needed combusion and/or ventilation air if improperly applied. To call attention to this concern, the following statement should be added following item 7 of section 6205:

> Note - In implementing any of the above measures, appropriate means shall be used to provide an adequate supply of combustion air for fuel burning appliances and ventilation air for the health and safety of the building's occupants.

27. At the close of the hearing on January 5, 1978, the Hearing Examiner ruled that the record would remain open through January 16, 1978. On January 10, 1978, James Shields, Vice President of Environmental Affiars, Minnesota Association of

Commerce and Industry (MACI), appeared at the Office of Hearing Examiners to obtain copies of the Statement of Need and Statement of Evidence. On January 12, MACI requested that the Hearing Examiner order that the record remain open through January 26, 1978, because:

> The Statements of Need and Evidence are totally inadequate to determine how or why the Department of Administration believes the proposed rule is "reasonable". Therefore, we must rely upon a detailed study of the transcript in order to address this important and crucial element of the proposed rule.

MACI had not attended the hearing nor had it requested supporting documentation prior to January 10, 1978.

On January 17, 1978, the Hearing Examiner issued an Order pursuant to Minn. Stat. § 15.0412, subd.4, stating that the record in this matter would remain open through January 26, 1978.

28. MACI challenges the validity of the proceedings herein for the following reasons:

> MACI appreciates your order of January 17, 1978, extending the period during which the record is open until January 26, 1978. This extension has allowed us to review the transcript of the January 5, 1978, hearing wherein the Department of Administration and the Minnesota Energy Agency entered testimony in support of the "Need" for and "Reasonableness" of the proposed regulations. As noted in our letter of January 12, 1978, requesting an extension, these subjects were dealt with in only the most rudimentary way in the Statements of Need and Evidence filed in advance of the hearing. In fact, we seriously question whether those Statements meet the requirements of the Administrative Procedures Act and the Rules of the Office of Hearing Examiners, including the Clarification to the Rules issued by the Chief Hearing Examiner with regard to Statements of Need and Evidence. We hereby request that you address this subject clearly in the issuance of your Findings of Fact, Conclusions and Recommendations.
>
> We address your attention also to the fact that in violation of the provisions of Minn. Stat. 1977 Supplement, 116H.129, subd. 1, not only were the rules required therein not promulgated by January 1, 1978, but in fact the hearing was not even held until January 5, 1978. Nowhere in the record of the hearing have the agencies discussed the subject of why this violation occurred. Furthermore, although there are references in the transcript to a committee which worked on the preparation of the proposed rules, there is nothing

in the record as to whom served on the committee and what type of expertise and knowledge, particularly with regard to the subject of reasonableness, was brought to bear on the subject.

We note further that the statute referenced above requires the Commissioner of Administration to consult with the appropriate standing committees of the legislature in promulgating the regulations. In the absence of any reference to such consultation in the record, we must assume that the law was violated in this respect. This violation may, in fact, contribute to some of the problems we find in the proposed rules.

In addition to the inadequacy of the Statements of Need and Evidence in addressing the subjects of "Need" and "Reasonableness", the testimony of the agencies at the hearing leaves some serious voids. For example, throughout the testimony there are references to vagary and lack of definiby persons representing the public as well as the agencies. The primary document placed into the record in regard to "economic justification" as it relates to "cost effectiveness over a five-year period" is a somewhat confusing mathematical calculation of the "savings" in energy which would result from each of the prescribed requirements for insulation. We wish to note that this was not available for review by the public in advance of the hearing. Also, as noted on page 31 of the transcript, Mr. Rogers of the Department of Administration (the agency responsible for the promulgation of the regulations) noted that he had not examined the proposed amendments to the regulations submitted by the Energy Agency until the morning of the hearing (January 5, 1978). He stated at the hearing that he believed "in general" that the Department of Administration would support the proposed amendments.

Based on the foregoing Findings of Fact, the Examiner makes the following:

CONCLUSIONS

1. Due, timely and adequate legal notice of the hearing was properly served and filed by the Building Code Division, Department of Administration.

2. Pursuant to Minn. Stat. § 15.052, subd. 3 (1976), it is the duty of the Hearing Examiner to: ". . .(4) make a report on each proposed agency action. . .taking notice of the degree to which the agency has (i) documented its statutory authority to take the proposed action, (ii) fulfilled all relevant, substantive and procedural requirements of law or rule, and (iii) demonstrated the need for and reasonableness of its proposed action with an affirmative presentation of facts."

3. The Examiner concludes that the BCD has documented its statutory authority to promulgate the proposed rules.

4. MACI challenges the proceedings herein on the following grounds:

A. INSUFFICIENCY OF THE STATEMENT OF NEED AND STATEMENT OF EVIDENCE.

A petitioning agency must demonstrate at the time of hearing that the rules it proposes to adopt are both needed and reasonable pursuant to the mandate of Chapter 15. Minn. Rule HE 103 is a procedural rule which requires that an agency submit a Statement of Need and a Statement of Evidence to the Examiner at least 25 days prior to the date and time of the hearing. The purpose of this procedural requirement is to provide any interested person enough information concerning the agency's presentation prior to hearing so that a response can be adequately prepared. In this instance, MACI did not request the supporting documentation until five days after the hearing.

This Examiner has ruled several times that deficiencies in compliance with procedural rules are not fatal to a proceeding unless prejudice can be shown. In this proceeding, the agency's "case" regarding reasonableness was presented at the time of hearing. The Examiner ordered that the record remain open an additional ten days at the request of MACI.

The Examiner concludes that MACI was not prejudiced by allegedly insufficient Statements of Need and Evidence.

B. THE PROPOSED RULES WERE NOT PROMULGATED BY JANUARY 1, 1978, IN VIOLATION OF MINN. STAT. § 116H.129, SUBD. 1 (1977 SUPP.).

This Examiner had conducted several hearings wherein rules were being proposed after a statutory adoption date. This situation can result from either agency "lack of action" or from the Legislature miscalculating the length of time necessary to draft and adopt rules. The Examiner concludes that a

statutory adoption date is directive in nature, and does not serve to invalidate an otherwise valid rulemaking proceeding.

C. FAILURE TO CONSULT WITH THE APPROPRIATE STANDING COMMITTEES OF THE LEGISLATURE.

Minn. Stat. § 116H.129, subd. 1 (1977 Supp.), reads as follows:

> 116H.129 Energy conservation in residential buildings.
>
> Subdivision 1. Before January 1, 1978, the commissioner of administration, in consultation with the director and the appropriate standing committees of the legislature, shall promulgate minimum energy efficiency standards for existing residential buildings. The standards shall be economically feasible in that the resultant savings in energy procurement costs, based on current average residential energy costs in Minnesota as certified by the director, will exceed the cost of the energy conserving requirements amortized over a period of five years.
>
> By February 15, 1978, the director shall make recommendations to the legislature on methods to obtain compliance with the standards set forth in this subdivision.

The statute clearly dictates that the commissioner consult with the appropriate legislative committees in the process of promulgation. The obvious intent of the requirement is to allow substantive legislative input on the rules prior to adoption. Because of the nature of rule promulgation, that substantive input should occur at the drafting, or prehearing stage. Nothing in the record herein evidences consultation with legislative committees prior to hearing. The Examiner concludes that this defect, because it affects the proposed content of the rules, is fatal to the proceeding respecting SBC 6201 through 6205.

5. Proposed SBC 6201 through 6205 are minimum energy conservation measures for existing residential building. The rules mandate certain specified conservation measures "when economically feasible". Economic feasibility occurs "when the savings in energy procurement cost exceeds the cost of energy conserving items over a five year period". The Energy Agency

suggests that procurement costs be specified by the Director and published in the State Register. The rules as a whole are generally and simply stated so that the public will know what is expected.

There is no procedure or formula stated in the rules whereby a person can determine which measures are economically feasible for his or her dwelling. The calculations of the Energy Agency show that several of the conservation measures will probably not be economically feasible for a typical residence. Contracting or installation cost has been considered on only one of the items, attic insulation. The rather complex calculations formulated by the Energy Agency to support economic feasibility employ the use of "R" and "U" values. These terms are defined in the proposed rules, however, are not used anywhere in the rules. The Energy Agency proposed to amend the rules to place the burden of proof on the owner to show that any of the seven conservation measures are not economically feasible for his or her dwelling. The cost to meet that burden could very easily be much more than the cost of the item itself.

The directive to the public in the proposed energy conservation rules is to install or implement the seven enumerated measures if it is economically feasible. Ecnomic feasibility is contingent upon the type or types of fuel used, the procurement cost of the fuels, the variable cost of the item itself, whether contractor or self installed, and the actual "breathing" quality of each individual dwelling. The rules provide no assistance to the homeowner as to the calculation of economic feasibility. Because the very crux of the proposed rules is that calculation, i.e. a five-year payback, the Examiner concludes that the BCD has failed to demonstrate that the proposed rules are reasonable. The vagueness or "simplicity" of the rules does not adequately inform the public as to what is expected to be in compliance.

6. Because the State Building Code is relied on by the

construction industry, the Examiner concludes that the duplication of statutory language as proposed in "5.2 Scope" and "8.6 Electric Energy Determination" is crucial to the ability of a person affected by the Code to comprehend its meaning and effect.

7. The Examiner concludes that proposed Table 6.2 should be withdrawn, as suggested by the BCD.

8. The Examiner concludes that the BCD has demonstrated the reasonableness of "5.2 Scope" and "8.6 Electric Energy Determination" by an affirmative presentation of facts.

9. The Examiner concludes that "5.2 Scope" should be amended as set out in Finding No. 17, for the reasons stated therein.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

RECOMMENDATION

That proposed SBC 6201 - 6205 and Table 6.2 not be adopted (see Conclusions, Nos. 4, 5 and 7); that proposed "5.2 Scope" be adopted as recommended to be amended in this Report (see Conclusion No. 9); and that proposed "8.6 Electric Energy Determination" be adopted.

Dated: February 9, 1978.

Peter C. Erickson

PETER C. ERICKSON
Hearing Examiner

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE BUILDING CODE DIVISION

| | |
|---|---|
| IN THE MATTER OF THE PROPOSED ADOPTION OF RULES FOR ENERGY CONSERVATION IN RESIDENTIAL BUILDINGS AND AMENDMENTS TO ASHRAE STANDARD 90-75 ADOPTED BY REFERENCE IN RULES RELATING TO DESIGN AND EVALUATION CRITERIA FOR ENERGY CONSERVATION IN NEW BUILDINGS, ADDITIONS, REMODELED ELEMENTS OF BUILDINGS AND STANDARDS FOR CERTAIN EXISTING PUBLIC BUILDINGS. | REPORT OF THE CHIEF HEARING EXAMINER |

WHEREAS, a hearing was held on January 5, 1978, before Peter C. Erickson, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, Subd. 3, was issued to the Building Code Division on February 9, 1978; and

WHEREAS, the Building Code Division has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Building Code Division has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, Subd. 4, and Rule HE 107; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Building Code Division has met all requirements of Minn. Stat. § 15.0412, Subd. 4.

NOW, THEREFORE, upon receipt of this Report, the Building Code Division has the responsibility of submitting the complete hearing record and the rules as adopted by the Division to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. § 15.0412, Subd. 4.

Dated this 30th day
of May, 1978.

DUANE R. HARVES
Chief Hearing Examiner

Proposed Amendments to ASHRAE Standard 90-75 adopted by reference in rules relating to Design and Evaluation Criteria for Energy Conservation in New Buildings, Additions, Remodeled Elements of Buildings and Standards for Certain Existing Public Buildings.

Page 28.

Table 6.2

HVAC SYSTEM Equipment
Minimum EER (COP) - (Cooling)

| Effective Date | Standard Rating Capacities | |
|---|---|---|
| | Under 65,000 Btu/h(19kW) | 65,000 Btu/h(19kW)and Over |
| | EER(COP) | EER(COP) |
| Beginning January 1, 1977 | 6.1(1.8) | 6.8(2.0) |
| Beginning January 1, 1978 | 7.0(2.1) | |
| Beginning January 1, 1980 | 7.0(2.1) | 7.5(2.2) |

Page 22, 5.2 Scope - add a second paragraph.

No enclosed structure or portion of an enclosed structure constructed after January 1, 1978 and used primarily as a commercial parking facility for three or more motor vehicles shall be heated. Incidental heating resulting from building exhaust air passing through a parking facility shall not be prohibited, provided that substantially all useful heat has previously been removed from the air.

Page 34. 8.6 Electric Energy Determination

Electrical service to individual dwelling units in buildings containing two or more units shall be separately metered, with individual metering readily accessible to the individual occupants.

EXCEPTION: Buildings intended for occupancy primarily by persons who are 62 years of age or older or handicapped, or which contain a majority of units not equipped with complete kitchen facilities, shall be except from the provisions of this section.

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT Attorney General

# Office Memorandum

TO : Lee Sheehy
Special Assistant
Attorney General

DATE: July 14, 1978

FROM : Sheila Fishman
Special Assistant
Attorney General

PHONE: 296-6204

SUBJECT: Rule Review for Form and Legality

* * * * * * * * * * * *

Attached please find the proposed rules and complete hearing record for rules relating to design and evaluation criteria for energy conservation. The following documents are included in duplicate unless otherwise noted:

(1) Rules as adopted (3 copies)
(2) Proposed rules
(3) Order adopting rules (which includes findings of fact, although not entitled as such) (3 copies)
(4) Order for Hearing
(5) Notice of Hearing
(6) Certificate of delivery of Secretary of State's list
(7) Secretary of State's list (1 copy)
(8) Affidavit of Receipt (of Secretary of State's list)
(9) Affidavit of Mailing
(10) Statement of Need
(11) Statement of Evidence and Names of Witnesses
(12) Report of Hearing Examiner (with findings)
(13) Report of Chief Hearing Examiner
(14) Certificate of Compliance

In addition, I am enclosing a copy of ASHRAE Standard. I would appreciate your returning that book to me after your review of the rules.

SSF/smh

Attachment
Enclosure

RECEIVED RECEIVED

Jul 17, 78 mB

ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

RECEIVED

ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

RECEIVED
MAY 26 1978
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES FOR ENERGY CONSERVATION IN RESIDENTIAL BUILDINGS AND AMENDMENTS TO ASHRAE STANDARD 90-75 ADOPTED BY REFERENCE IN RULES RELATING TO DESIGN AND EVALUATION CRITERIA FOR ENERGY CONSERVATION IN NEW BUILDINGS, ADDITIONS, REMODELED ELEMENTS OF BUILDINGS AND STANDARDS FOR CERTAIN EXISTING PUBLIC BUILDINGS

ORDER ADOPTING RULES

The above entitled matter came on for hearing before Peter Erickson, Hearing Examiner, sitting on behalf of the Commissioner of Administration of the State of Minnesota on the 5th day of January, 1978, at 9:30 a.m. in Room CCI, Howard Johnson's Motor Lodge, 8401 Cedar Avenue South, Bloomington, Minnesota after proper notice required by Minn. Stat., Section 15.0412 (1977 Supplement) was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements, and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files, and proceedings herein, and applicable statutory standards or criteria, and having confirmed the need for and the reasonableness of the rules attached hereto.

NOW, THEREFORE, IT IS ORDERED that the Report of the Hearing Examiner including recommended amendments is adopted in its entirety concerning the portion of the above rules identified as Amendments to ASHRAE Standard 90-75 adopted by reference in rules relating to Design and Evaluation Criteria for Energy Conservation in New Buildings, Additions, Remodeled Elements of Buildings and Standards for Certain Existing Public Buildings on this 26th day of May, 1978, pursuant to authority vested in me by Minn. Stat. 16.85 (1976), Minn. Stats., 1977 Supplement, Sections 116H.121 and 116H.129, Subd. 2.

Richard L. Brubacher
Commissioner of Administration

Amendments to ASHRAE Standard 90-75 adopted by reference in rules relating to Design and Evaluation Criteria for Energy Conservation in New Buildings, Additions, Remodeled Elements of Buildings and Standards for Certain Existing Public Buildings.

Page 9, Definitions.

Commercial Parking Facility. Shall not include a parking facility which is appurtenant to or a part of a residential building whether the individual dwelling units are rented or owned by the occupants, and which is used primarily by the occupants and their guests.

Page 22, 5.2 Scope - add a second paragraph.

No enclosed structure or portion of an enclosed structure constructed after January 1, 1978 and used primarily as a commercial parking facility for three or more motor vehicles shall be heated. Incidental heating resulting from building exhaust air passing through a parking facility shall not be prohibited, provided that substantially all useful heat has previously been removed from the air.

Page 34, 8.6 Electric Energy Determination.

Electrical service to individual dwelling units in buildings containing two or more units shall be separately metered, with individual metering readily accessible to the individual occupants.

EXCEPTION: Buildings intended for occupancy primarily by persons who are 62 years of age or older or handicapped, or which contain a majority of units not equipped with complete kitchen facilities, shall be exempt from the provisions of this section.

STATEMENT OF COMPLIANCE

WITH MANUAL OF RULE

MAKING PROCEDURES

I, Special Assistant Attorney General Sheila S. Fishman, do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity, all applicable procedures, have been followed.

SHEILA S. FISHMAN
Special Assistant
Attorney General

Dated JUL 14 1978