

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

Air. Files
#804

Call Dinerstein -
6-7994

Permanent Rule_____

Temporary Rule X

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 6/6 DUE DATE 6/13

Resubmitted and Received_____

a. Returned to Agency w/o Filing w/Secretary of State_____
b. Approved 6/13 Date Sent Back to Agency 6/13

- -

1. Rules as Adopted_____

2. Rules as Proposed_____

3. Certificate of Board's
Authorizing Resolution, where applicable_____

4. Order for Hearing_____

5. Notice of Hearing_____
Sufficiency_____

6. Secretary of State's List_____(one copy only)

7. Certificate of Acquisition of
Secretary of State's List_____

8. Secretary of State's Certification of Delivery
of Secretary of State's List to Agency_____

9. Affidavit of Mailing_____
At least 30 days prior to hearing_____

10. Publication in State Register_____
At least 30 days prior to hearing_____

11. Statement of Need and Evidence_____

12. Hearing Examiner's Report_____

13. Agency's Findings of Fact_____

14. Certificate of Board's Resolution
Adopting Rules, where applicable_____

15. Order Adopting_____

16. Report of Chief Hearing Examiner_____

17. Order Approving Incorporation by Reference,
where applicable_____

18. Certificate of Compliance with Rulemaking Procedures_____

19. Copy of Notice of Intent to Solicit Outside Opinion,
where applicable_____

20. Petition by Public, where applicable_____

ADMIN 1000 (Rev. 1/78)
SF-00006-01

Our File 604

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : JAMES J. SOLEM
Executive Director
Minnesota Housing Finance Agency

DATE: June 13, 1980

Attn: JIM DINERSTEIN

FROM : JERRY S. ANDERSON
Special Assistant
Attorney General

PHONE: 296-3212

SUBJECT: In the Matter of the Proposed Adoption of Temporary Rules Governing the Emergency Energy Conservation Grant Program

The rules in the above-referenced matter have not been approved by this office for the following reason.

The use of the word "may" in the first complete sentence in section 3.082 A. 2. permits the Agency to consider unstated criteria in arriving at a decision of whether to waive or modify the ownership requirement and therefore is improper. Minn. Stat. sec. 15.0412, subd. 3 requires the agency to establish by rule "every agency statement of general applicability and future effect." The use of the word "may" in the present instance would permit the agency to establish criteria for the waiver or modification of the ownership requirement in an ad hoc fashion. The bases on which a waiver or modification will be granted, however, are agency statements of general applicability and future effect and must be established by rule. While this office understands the need for agency flexibility and discretion, such flexibility and discretion are achieved by careful, complete selection of criteria that are not impermissibly vague but that are sufficiently broad to permit agency flexibility. The agency cannot hedge against its own fallibility in listing qualifications or criteria by the use of the word "may." To permit this would violate the requirements of Minn. Stat. sec. 15.0412, subd. 3. It would also permit the agency to discriminate between applicants who are similarly situated by relying on the word "may" in rejecting an application. Predictability and nondiscriminatory application of the rules must be achieved and made available to all applicants under this program. Thus, section 3.082 A. 2. must be rewritten.

Upon consideration of the issue raised in this memorandum and any action taken by the agency, these rules may be resubmitted to this office for approval. Please include the original and two copies of the rules as amended and the Order Adopting said rules. We would also appreciate your indicating in a transmittal memorandum that the rules are a resubmission.

If you have any questions regarding this matter, please do not hesitate to call me at 6-3212.

JSA/bw

cc: Duane Harves
Susan Robertson

Our File # 604

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT ATTORNEY GENERAL

TO : JAMES J. SOLEM
Executive Director
Minnesota Housing Finance Agency

DATE: June 13, 1980

Attn: JIM DINERSTEIN

FROM : JERRY S. ANDERSON
Special Assistant
Attorney General

PHONE: 296-3212

SUBJECT: In the Matter of the Proposed Adoption of Temporary Rules Governing the Emergency Energy Conservation Grant Program

The above-captioned temporary rules have been approved by this office.

While the statute does not require it, this office recommends that an Order of Adoption and a copy of the Rules as Adopted be filed with the Secretary of State. It is the department's responsibility to comply with the Notice provisions of Minn. Stat. § 15.0412, Subd. 5.

If you have any questions, do not hesitate to contact me.

JSA/bw
Encl.
cc: Duane Harves
Susan Robertson

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT MN HOUSING FINANCE AGENCY

TO : JOANNE HINDERAKER

DATE: June 13, 1980

FROM : JAMES E. DINERSTEIN
Special Assistant Attorney General

PHONE: 296-7994

SUBJECT: RESOLUTION NO. MHFA 80-20

Enclosed please find the Resolution adopting the temporary rules governing the Emergency Energy Conservation Grant Program.

Sorry for the delay.

RECEIVED
JUN 13 1980
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

MINNESOTA HOUSING FINANCE AGENCY
333 Sibley Street
St. Paul, Minnesota 55101

RESOLUTION NO. MHFA 80-20

RESOLUTION ADOPTING TEMPORARY RULES
GOVERNING THE EMERGENCY ENERGY CONSERVATION GRANT PROGRAM

WHEREAS, on March 27, 1980 the Board authorized the publication of proposed temporary rules for the Emergency Energy Conservation Grant Program; and

WHEREAS, said temporary rules were published in the State Register on April 21, 1980 at 4 S.R. 1688; and

WHEREAS, more than 20 days have elapsed from said publication date; and

WHEREAS, the Board has considered all data and views submitted on the proposed temporary rules and has modified the rules to read as in the attached "Temporary Rules for the Emergency Energy Conservation Grant Program"; and

WHEREAS, the modifications in the temporary rules as proposed are supported by the data and views submitted to the agency;

THEREFORE, BE IT RESOLVED BY THE MINNESOTA HOUSING FINANCE AGENCY:

That the temporary rules governing the Emergency Energy Conservation Grant Program be and they hereby are adopted as temporary rules pursuant to Minn. Stat. §15.0412, Subd. 5, and Laws 1980 Chapter 579, Section 20, to remain in effect until July 1, 1981 or until such earlier date on which permanent rules are adopted, and that James J. Solem, the Executive Director of the Minnesota Housing Finance Agency be and he hereby is authorized and directed to perform all acts required for the promulgation of said temporary rules, including without limitation submission of said rules to the Attorney General of the State of Minnesota.

Adopted by the Minnesota Housing Finance Agency this 22nd day of May, 1980.

By _____
Chairman

By _____
Secretary

Temporary rules governing Emergency Energy Conservation Grant Program as adopted.

12 MCAR § 3.081. The Agency shall administer the Emergency Energy Conservation Grant Program funds through administering entities selected by the Agency which have demonstrated that they have the capacity to carry out the program.

12 MCAR § 3.082 Eligible Recipients of Emergency Energy Conservation grants. In addition to all conditions imposed by the act, an application for an Emergency Energy Conservation grant shall satisfy the following requirements:

A. The recipient(s) must occupy the structure to be improved as the recipients(s') principal place of residence and individually or in the aggregate have at least:

   1. a life estate or
   2. a one-third interest in the fee title or in the contract for deed with respect to such structure. The Agency may waive or modify the ownership requirement when necessary to permit Emergency Energy Conservation grants for structures located on Indian Reservations. For mobile homes taxed as personal property or not permanently affixed to real property recipient(s) must: (1) have resided in the structure at the present location for a period of one year immediately preceding the date of application as the recipient(s') principal place of residence, (2) be current in any loan payments on the structure, and (3) individually or in the aggregate have a 100% interest in the title to the mobile home.

B. For the purpose of complying with the ownership requirements, the recipient may aggregate his interest in such property with the ownership interests of other individuals also occupying the structure to be improved as their principal place of residence. Al individuals occupying the structure to be improved as their principal place of resider and having an ownership interest in such structure must join in the application.

12 MCAR § 3.083 Amount of Grant. The amount of the Emergency Energy Conservation grant shall not exceed the lesser of:

A. $2,000; or

B. the actual cost of the work performed.

12 MCAR § 3.084 Responsibilities of Administering Entity. The Administering Entity shall have the following responsibilities:

A. The Administering Entity shall have full responsibility for program implementation including public information, reviewing and screening applicants, choosing recipients, and certifying that the energy conservation work is satisfactorily completed. The Administering Entity may adopt a targeting plan whereby the Administering Entity will establish priorities for awarding grant funds based on an assessment of need within its jurisdiction, in the event that the number of applications exceeds the number of grants which can be awarded. The targeting plan, if any, shall be subject to approval by the Agency and may not have the effect of excluding any otherwise eligible applicant from making an application and being considered eligible for a grant.

B. The Administering Entity shall make on-site inspections of the properties to be improv

1. before such application is approved and

2. after work has been completed and before the contractors have been paid in full.

C. The Administering Entity shall not charge an applicant or recipient any application, processing, or other fee.

D. The Administering Entity may, with the prior written consent of the Agency, allocate part of its total funding, in accordance with a formula based upon data assembled by the Agency and reflecting administrative costs, geographic area, level of funding, and other related factors, to defray a protion of the administrative costs of the program, to the extent that other sources are not available. It shall be the responsibility of the Administering Entity to bear all administrative costs, including salaries and offi rental, automobile and telephone expenses, and costs of counseling or technical assistance. The administrative allowance, if any, shall be distributed by the Agency according to a budget submitted by the Administering Entity and approved by the Agency. Disbursements of the administrative allowance shall be contingent upon the Agency's r view and approval of the satisfactory progress of the program.

12 MCAR § 3.085 Eligible properties. Grant funds shall be used only to improve properties which meet the following criteria:

A. The property shall be located within the State of Minnesota, be used primarily for residential purposes, and contain no more than two dwelling units, one of them owner-occupied.

B. The property to be improved shall conform to applicable zoning ordinances and possess all appropriate use permits.

C. The improvements shall be made upon or in connection with existing structures, including mobile homes. Trailers shall not be eligible.

D. Emergency Energy Conservation grant funds shall not be used for the payment, wholly or in part, of assessments for public improvements.

E. All contracts covering all or any portion of an improvement shall contain an Agency approved warranty of workmanship and materials.

F. No grant funds shall be used for the purpose of refinancing or paying off existing indebtedness. All such funds shall be used to finance improvements begun after application for such funds has been approved.

G. No property shall be eligible for an Emergency Energy Conservation grant if it has been improved by such a grant within the five-year period next preceding the date on which application for such grant is made.

minnesota housing finance agency

June 13, 1980

Mr. Jerry Anderson
Special Assistant Attorney General
G-25 Administration
St. Paul, Minnesota

Subject: Temporary Rules Governing the Emergency Energy Conservation Grant Program

Dear Mr. Anderson:

Pursuant to the authority granted by Resolution 80-20 of the Minnesota Housing Finance Agency adopted May 22, 1980, I am submitting the attached corrected Rules Governing the Emergency Energy Conservation Grant Program As Adopted for your approval pursuant to Minnesota Statutes Section 15.0412, Subdivision 5.

Thank you for your assistance in this matter.

Sincerely,

James J. Solem
Executive Director

JJS/kjj

Enc.

333 sibley - suite 200 - saint paul, minnesota 55101 - (612) 296-7608

AN EQUAL OPPORTUNITY EMPLOYER

minnesota housing finance agency

June 5, 1980

RECEIVED
JUN 6 1980
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

The Honorable Warren Spannaus
Attorney General of Minnesota
Room 102 - Capitol Building
Aurora Avenue
St. Paul, Minnesota 55155

Subject: Temporary Rules Governing the Emergency Energy Conservation Grant Program

Dear Mr. Spannaus:

Enclosed please find for your review pursuant to Minnesota Statutes Section 15.0412, Subdivision 5 the following items regarding the Emergency Energy Conservation Grant Program:

1. The proposed temporary rule as published in the State Register.

2. The temporary rule as adopted by the Agency.

The rules as adopted have two changes from the rules as proposed. The first is the deletion of two words from 12 MCAR Section 3.082(a)(2) which are underlined in red in the copy of the rules as published. The deleted words were included by accident and do not apply to the Emergency Energy Conservation Grant Progarm. The second change is the addition of two sentences in 12 MCAR Section 3.084, which are underlined in red in the rules as adopted. They were added in response to a public comment.

The temporary rules have been adopted pursuant to authority provided in Laws 1980 Chapter 579, Section 20. The Agency did not seek outside opinion in the preparation of these rules.

Thank you for your assistance in this matter.

Very truly yours,

James J. Solem
Executive Director

JJS/kjj

Encs.

333 sibley - suite 200 - saint paul, minnesota 55101 - (612) 296-7608

AN EQUAL OPPORTUNITY EMPLOYER

(5) Occasionally, checkers shall be required to perform "on-board" checks of an operator's service. On board checks are utilized to observe the loading patterns of an entire route, operating hazards along the route, transfers issued and received, and running time for the route. The operator shall be notified, in advance each time this is planned.

(6) Checking sheets shall be submitted to Mn/DOT and the data will be analyzed.

(7) A summary of the maximum load/on-time performance checks shall be prepared monthly and will detail the areas, if any, where the operator's system is performing below the minimum operating standards and recommendations for remedial measures will be made.

(8) Mn/DOT maximum load check sheets shall be compared with the operator's "drivers trip sheets" monthly to verify passengers carried.

3. Maintenance analysis.

a. Operators shall be required to report all disruption of service due to mechanical failure, to Mn/DOT monthly.

b. Mn/DOT shall apply the "total bus miles" operated monthly to the total number of "disruptions of service due to mechanical failure" to ensure that "bus miles for each disruption of service due to mechanical failure" are consistent with the maintenance standards.

14 MCAR § 1.4030 Public transit capital grant assistance program.

A. Application. Eligible recipients as defined in Minn. Stat., § 174.245 (1979 Supp.) shall apply for capital grant assistance by a letter to the Minnesota Department of Transportation citing the Minnesota Statute under which eligibility is claimed. The letter of application shall contain the following information:

1. A statement of eligibility under the Urban Mass Transportation Act of 1964, Public Law 88-365, as amended.

2. The amount of state financial assistance requested.

3. A statement that this capital improvement is included in the current approved management plan if the recipient is currently receiving state financial assistance.

B. Procedure for review and approval. A letter of application shall be reviewed by the Department of Transportation for the requirements contained in paragraph A and shall be considered for funding.

C. Capital grant assistance shall be based on:

1. The priority listing recommendation of the Transportation Advisory Committee established by the State Management Plan for Public Transportation Financial Assistance under Section 18, Urban Mass Transportation Act of 1964, Public Law 88-365, as amended. The Committee shall base their recommendations on the following criteria:

a. How well the project meets the program objectives.

(1) To actively promote the coordination of transportation services where no local agency has taken this reponsibility or where local disputes threaten accomplishment of the task.

(2) To help alleviate the transportation problems of Minnesota's elderly and handicapped residents.

(3) To participate in joint-agency efforts to construct and implement park-ride facilities when it can be demonstrated that these facilities will serve existing demand.

(4) To develop a specific position on performance funding for non-urban transit operators.

(5) To effectively provide public transportation in rural and small urban areas inefficiently or inadequately served by regular route transit.

(6) To divert single occupant auto drivers to public transportation modes.

(7) To fund effective and cost efficient methods of providing non-urban transportation services.

b. The accessibility of the handicapped and elderly to the transit system.

c. The amount of local government and community support.

d. The potential for continuation after the first year.

e. The applicability of the project results to other areas of the state.

f. The potential for meeting the life support needs (i.e., nutrition, health, shopping, recreation, etc.) of those the transit system is designed to serve.

2. The availability of state public transit capital grant assistance funds.

3. The availability of local matching funds.

D. Contract. The public transit capital grant assistance contract shall be based on the letter of application. It shall specify the amount of financial assistance to be awarded. It shall include the assurance of the eligible recipient that the local matching funds are available and shall be provided.

Housing Finance Agency

Proposed Temporary Rule Governing the Emergency Energy Conservation Grant Program

Request for Public Comment

Notice is hereby given that the Minnesota Housing Finance Agency has proposed the following proposed temporary rule for the purpose of implementing the Emergency Energy Conservation Grant Program.

All interested persons are hereby afforded the opportunity to submit their comments on the proposed rule for 20 days immediately following publication of this material in the *State Register* by writing to Mary Tingerthal, Manager Home Improvement Programs, Minnesota Housing Finance Agency, 333 Sibley Street, Suite 200, St. Paul, Minnesota 55101. The proposed temporary rule may be revised on the basis of comments received. Any written material received shall become part of the record in the final adoption of the proposed temporary rule.

April 7, 1980

James J. Solem
Executive Director

Temporary Rules as Proposed (all new material)

12 MCAR § 3.081 The agency shall administer the Emergency Energy Conservation Grant Program funds through administering entities selected by the agency which have demonstrated that they have the capacity to carry out the program.

12 MCAR § 3.082 Eligible Recipients of Emergency Energy Conservation grants. In addition to all conditions imposed by the act, an application for an Emergency Energy Conservation grant shall satisfy the following requirements:

A. The recipient(s) must occupy the structure to be improved as the recipients(s') principal place of residence and individually or in the aggregate have at least

1. a life estate or

2. a one-third interest in the fee title or in the contract for deed with respect to such structure. The agency may waive or modify the ownership and security requirement when necessary to permit emergency energy conservation grants for structures located on Indian Reservations. For mobile homes taxed as personal property or not permanently affixed to real property recipient(s) must: (1) have resided in the structure at the present location for a period of one year immediately preceding the date of application as the recipient(s') principal place of residence, (2) be current in any loan payments on the structure, and (3) individually or in the aggregate have a 100% interest in the title to the mobile home.

B. For the purpose of complying with the ownership requirements, the recipient may aggregate his interest in such property with the ownership interests of other individuals also occupying the structure to be improved as their principal place of residence. All individuals occupying the structure to be improved as their principal place of residence and having an ownership interest in such structure must join in the application.

12 MCAR § 3.083 Amount of grant. The amount of the emergency energy conservation grant shall not exceed the lesser of:

A. $2,000; or

B. the actual cost of the work performed.

12 MCAR § 3.084 Responsibilities of administering entity. The administering entity shall have the following responsibilities:

A. The administering entity shall have full responsibility for program implementation including public information, reviewing and screening applicants, choosing recipients, and certifying that the energy conservation work is satisfactorily completed.

B. The administering entity shall make on-site inspections of the properties to be improved

1. before such application is approved and

2. after work has been completed and before the contractors have been paid in full

C. The administering entity shall not charge an applicant or recipient any application, processing, or other fee.

D. The administering entity may, with the prior written consent of the agency, allocate part of its total funding, in accordance with a formula based upon data assembled by the agency and reflecting administrative costs, geographic area, level of funding, and other related factors, to defray a portion of the administrative costs of the program, to the extent that other sources are not available. It shall be the responsibility of the administering entity to bear all administrative costs, including salaries and office rental, automobile and telephone expenses, and costs of counseling or technical assistance. The administrative allowance, if any, shall be distributed by the agency according to a budget submitted by the administering entity and approved by the agency. Disbursements of the administrative allowance shall be contingent upon the agency's review and approval of the satisfactory progress of the program.

12 MCAR § 3.085 Eligible properties. Grant funds shall be used only to improve properties which meet the following criteria:

A. The property shall be located within the State of Minnesota, be used primarily for residential purposes, and contain no more than two dwelling units, one of them owner-occupied.

B. The property to be improved shall conform to applicable zoning ordinances and possess all appropriate use permits.

C. The improvements shall be made upon or in connection with existing structures, including mobile homes. Trailers shall not be eligible.

D. Emergency Energy Conservation grant funds shall not be used for the payment, wholly or in part, of assessments for public improvements.

E. All contracts covering all or any portion of an improvement shall contain an Agency approved warranty of workmanship and materials.

F. No grant funds shall be used for the purpose of refinancing or paying off existing indebtedness. All such funds shall be used to finance improvements begun after application for such funds has been approved.

G. No property shall be eligible for an Emergency Energy Conservation grant if it has been improved by such a grant within the five-year period next preceding the date on which application for such grant is made.

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."