

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File 635

Permanent Rule_____

Temporary Rule___X___

RULES REVIEW CHECKLIST

DATE RULES RECEIVED ~~9/25~~ 10/31 DUE DATE 11/6

Resubmitted and Received 1/28/81 Due 2/4/81 Disapproved

a. Returned to Agency w/o Filing w/Secretary of State_____
b. Approved 1/29/81 Date Sent Back to Agency_____

- -

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

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : Charles Wrobel
Assistant Commissioner
Training and Community Services

DATE: January 30, 1981

FROM : H. Theodore Grindal HTG
Special Assistant
Attorney General

PHONE: 6-1288

SUBJECT: In the Matter of Temporary Rule Governing Weatherization For Low-Income People

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.

SF-00006-01

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT DES/Weatherization

TO : Chuck Wrobel

DATE: 1-26-81

FROM : Alan Chpaman

PHONE: 6-5752

SUBJECT: Resubmission of Temporary Rules to Attorney Genneral.

Attached are three copies of corrected Temporary Rules and an Order Adopting which need to be signed and forwarded to Ted Grindal, Attorney General's Office.

This was originally done in November and was supposed to be hand delivered to the Attorney General for approval. Somewhere along the line, the Attorney General's office has no record of receiving the corrected copies which necessitates the need for an amended Order Adopting.

c
Attach.

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE Rolf Middleton

COMMISSIONER OF Dept. of Economic Sec.

In the matter of the Proposed Adoption of Temporary Rules of the State Training & Community Services Division Governing Weatherization - Assistance for Low-Income People

ORDER ADOPTING TEMPORARY RULES

The above-entitled matter was published in the State Register Volume 4, Number 52, P.P. 2002-2007, June 30, 1980. (4 SR 2003)

After affording interested persons an opportunity to present written data, statements, and arguments. Having considered all of the evidence adduced and upon the records and files herein, and applicable statutory standards or criteria, and having confirmed the need for the above captioned rules.

NOW, THEREFORE, IT IS ORDERED that these temporary rules identified as Weatherization Assistance for Low-Income People (8 MCAR § 4.4010) are adopted this 14 day of Nov., 19 80, pursuant to authority vested in me by the Laws, 1980, Chapter 579, Section 19.

STATE OF MINNESOTA
Training & Community Services Division

Rolf Middleton

STATE ECONOMIC SECURITY COMMISSIONER

SF-00006-01

STATE OF MINNESOTA

DEPARTMENT Economic Security

Office Memorandum

TO : Ted Grindal, Special Assistant Attorney General

DATE: 1-26-81

FROM : Charles Wrobel, Assistant Commissioner Training and Community Services

PHONE: 296-3885

SUBJECT: Temporary Rules Regarding Weatherization Assistance for Low-Income Persons.

Please find enclosed corrected copies of the Temporary Rules originally submitted to your office on October 24, 1980, along with amended order adopting the rules.

Kindly advise of your approval to allow for timely publication of Adopted Rule in the State Register.

c
Enc.

Our File #635

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

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : CHARLES WROBEL
Assistant Commissioner
Training & Community Services

DATE: 11/5/80

FROM : H. THEODORE GRINDAL HTG
Special Assistant
Attorney General

PHONE: 297-3471

SUBJECT: In the Matter of Temporary Rules Governing Weatherization For Low Income People

The rules in the above entitled matter have not been approved by this office for the following reasons:

1. In 8 MCAR § 4.4010C 16, there is a typographical error. It should read Minnesota Laws of "1980" instead of "1098."

2. In 8 MCAR § 4.4010C 19, it seems a semicolon should be added, and "or" after "a" to join "a" and "b" together properly.

3. In 8 MCAR § 4.4010E 2. b(1), it seemingly should be "supplant" instead of "supplan".

4. In 8 MCAR § 4.4010E 2. b(3), in line 4, "documented" should be spelled "documented".

5. In 8 MCAR § 4.4010E 3, line 5, the apostrophe after "its" should be deleted.

6. In 8 MCAR § 4.4010F 1c (3), in the second line, the language "no dwelling unit can be exclusively weatherized with only state funds" is improper. It should read either, "shall" or "may". From the context it would appear that the appropriate meaning would be "shall".

7. In 8 MCAR § 4.4010I 3, line 3, "theprogress" needs a space between the two words.

After consideration of the above comments and agency action, if any, these rules may be resubmitted for our review. At the time of resubmission, please be sure to include the original and two copies of the Rule as Adopted and the Order Adopting Rules, as well as one copy of any necessary supporting material. Also, please include a transmittal memorandum specifying that the rule is being resubmitted so that we may obtain our initial file in this matter.

If you have any other questions in this matter please contact me.

HTG/b
Encl.
cc: Duane Harves
Susan Robertson

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

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT DES/Weatherization

TO : Ted Grindal
Special Assistant
Attorney General

DATE: 10/24/80

FROM : Charles Wrobel C.J.W. by Beverly Jacobson
Assistant Commissioner
Training and Community Services

PHONE: 296-3885

SUBJECT: DES/Weatherization - Assistance for Low-Income People Rule

Enclosed please find correct format of order adopting temporary rule, as you requested. This should complete the Rules package that is presently at your office for your approval.

If there are any further questions regarding this matter, please do not hesitate to contact me.

dl
Enclosure

RECEIVED
OCT 30 1980
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

PRINTED ON RECYCLED PAPER

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE Rolf Middleton

COMMISSIONER OF Dept. of Economic Sec.

In the matter of the Proposed Adoption of Temporary Rules of the State Training & Community Services Division Governing Weatherization - Assistance for Low-Income People

ORDER ADOPTING TEMPORARY RULES

The above-entitled matter was published in the State Register Volume 4, Number 52, P.P. 2002-2007, June 30, 1980. (4 SR 2003)

After affording interested persons an opportunity to present written data, statements, and arguments. Having considered all of the evidence adduced and upon the records and files herein, and applicable statutory standards or criteria, and having confirmed the need for the above captioned rules.

NOW, THEREFORE, IT IS ORDERED that these temporary rules identified as Weatherization Assistance for Low-Income People (8 MCAR § 4.4010) are adopted this 14 day of Nov., 1980, pursuant to authority vested in me by the Laws, 1980, Chapter 579, Section 19.

STATE OF MINNESOTA
Training & Community Services Division

Rolf Middleton

STATE ECONOMIC SECURITY COMMISSIONER

ATTORNEY GENERAL

NED HOFFMAN
Department of Economic Security

October 1, 1980

TED GRINDAL
Special Assistant
Attorney General

297-3471

DES/Weatherization - Assistance for Low-Income People Rule

This office is unable to complete review of the above-referenced rule since an incomplete file was submitted. To complete the file, please submit an Order Adopting the Rule.

The period allowed for the Attorney General's review will commence upon the submission of a complete file.

If you have any questions, please do not hesitate to call me. I am temporarily available at 296-2652.

TG:mb

Enclosure

Signed by JUW.

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

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT of Economic Security

Jerry Anderson

TO : Jerry Anderson
G-25 Administration Building
St. Paul, MN

DATE:

Rolf Middleton

FROM : Rolf Middleton, Commissioner, DES

PHONE: 296-3711

SUBJECT: Approval of Temporary Rules

RECEIVED
SEP 9 1980
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

At this time we submit for your approval the enclosed DES Temporary Rule § MCAR 4.4010 Minnesota Weatherization Assistance for Low-Income People, promulgated pursuant to the Authority granted by Laws of 1980, CH. 579 § 19 which states:

a) Procedures for the administration of grants,

b) Data to be reported by grant recipients, and

c) Other matters the Commissioner finds necessary for the proper administration of the Grant Program, including compliance with relevant Federal regulations.

The Proposed Temporary Rule and "Request for Public Comment" were published in the State Register on June 30, 1980 pursuant to Minn. State § 15. 0412 sub. 5 (1978). The agency received comments during th 20-day comment period from the following:

1. Representative Lee Greenfield, District 57 B (Hennepin County).

2. Richard R. Harris, Executive Director, Goodhue-Rice-Wabasha Citizens Action Council, Inc., Zumbrota, MN.

3. Bernard Brommer, Executive Vice-President Minnesota AFL-CIO, St. Paul, Minnesota.

4. Steven R. Watson, Executive Director, Minn. Cap Association, Inc., St. Paul, MN.

PRINTED ON RECYCLED PAPER

Included with this letter are copies of each comment letter received, a memorandum containing the suggested changes and this agency's rationale for rejecting the proposed changes.

There are no changes proposed by this agency, of the rules as published.

Enclosures

RM:nmh:dmr

~~TEMPORARY RULE AS PROPOSED~~ ADOPTED TEMPORARY RULE GOVERNING WEATHERIZATION FOR LOW-INCOME PEOPLE

8 MCAR § 4.4010 Minnesota Weatherization Assistance for Low-Income People.

A. Purpose. The purpose of this rule is to develop and implement a supplementary state weatherization assistance program under authority granted by Laws 1980, Chapter 579, Section 19, to supplement the United States Department of Energy Weatherization Assistance for Low-Income Persons program 42-USC § 6861 to 6872 at the prescribed levels in the dwellings of low-income persons in order both to aid those persons least able to afford higher utility costs and to conserve needed energy.

B. Administration of costs. Grants awarded under this part shall be administered in accordance with the following:

1. Federal Management Circular 73-2, 34 CFR 251, entitled "Audit on Federal Operations and Programs by Executive Branch Agencies".

2. Federal Management Circular 74-4, 34 CFR 255, entitled "Cost Principles Applicable to Grants and Contracts with State and Local Governments".

3. Federal Management Circular 74-7, 34 CFR 256, entitled "Uniform Administrative Requirements for Grants-In-Aid to State and Local Governments".

4. Office of Management and Budget Circular A-89 entitled "Catalog of Federal Domestic Assistance".

5. Office of Management and Budget Circular A-95, entitled "Evaluation, Review and Coordination of Federal and Federally Assisted Programs and Projects".

6. Office of Management and Budget Circular A-97, entitled "Rules and Regulations Permitting Federal Agencies to Provide Specialized or Technical Services to State and Local Units of Government under Ttile II of the Intergovernmental Coordination Act of 1968".

7. Treasury Circular 1082, entitled "Notification to States of Grant-in-Aid Information".

8. U.S. Treasury Circular 1075.

C. Definitions as used in this rule:

1. "Act" means the Federal Energy Conservation and Production Act. Pub. L. 94-335.90 Stat. 1125 et seq. as amended.

2. "Administrator" means the Administrator of the U.S. Department of Energy.

3. "Assistant Commissioner" means Assistant Commissioner of Division of Training and Community Services of the Department of Economic Security.

~~3.~~ 4. "CAA" means a Community Action Agency.

~~4.~~ 5. "CETA" means the Comprehensive Employment and Training Act of 1973, 42, U.S.C./ 2731 et seq. as amended.

~~5.~~ 6. "Community Action Agency" means a private corporation or public agency established pursuant to the Economic Opportunity Act of 1964, Pub. L. 88-452 as amended, which is authorized to administer funds received from federal, state, local, or private funding entities to assess, design, operate, finance and oversee anti-poverty programs.

~~6.~~ 7. "Commissioner" means Commissioner of the Department of Economic Security.

~~7.~~ 8. "Cosmetic Items" means items which when installed will not reduce energy costs in a cost-effective manner, including, but not limited to, finishes, decorative fenestration materials and elevation materials such as: aluminum siding, board and batten clapboard, brick, shakes or asphalt siding.

~~8.--"Director means the Director of Intergovernmental Relations of the Department of Economic Security.~~

9. "DOE" means the United States Department of Energy.

10. "Dwelling unit" means a house including a stationary mobile home,

home, an apartment, a group of rooms, or a single room occupied as separate living quarters.

11. "Elderly person" means a person who is 60 years of age or older.

12. "Family Unit" means all persons living together in a dwelling unit.

13. "Grantee" means an entity named in the Notification of Grant Award as the recipient.

14. "Handicapped person" means any individual a) who is a handicapped individual as defined in § 7(6) of the Rehabilitation Act of 1973, (b) who is under a disability as defined in § 1614 (a) or 223 (d) of the Social Security Act or in § 102 (7) of the Developmental Disabilities Services and Facilities Construction Act or (c) who is receiving benefits under Chapter 11 or 15 of Title 38, United States Code.

15. "Household" means the same as dwelling units.

16. "Law" means Minnesota Laws of 1098, ch. 579, Section 19.

17. "Local applicant" means a CAA or unit of general purpose local government.

18. "Low Income" means that total household income in relation to family size which:

19. a. Is at or below 125 percent of the poverty level determined in accordance with criteria established by the Director of the Federal Office of Management and Budget.

b. Is the basis on which cash assistance payments have been paid during the preceding 12 month period under Title IV and XVI of the Social Security Act or applicable State or local rules.

20. "Multi-family dwelling unit" means a dwelling unit which is located in a structure containing more than one dwelling unit.

21. "Rental Dwelling Unit" means a dwelling unit occupied by a person who pays rent for the use of the dwelling unit.

22. "Separate Living Quarters" are those in which the occupants do not live and eat with any other persons in the structure and which have either (a) direct access from the outside of the building or through a common hall, or (b) complete kitchen facilities for the exclusive use of the occupants. The occupants may be a single family, one person living alone, two or more families living together, or any other group of related or unrelated persons who share living arrangements.

23. "Single Family Dwelling Unit" means a structure containing no more than one dwelling unit.

24. "State" means the State of Minnesota.

25. "Sub-Grantee" means a weatherization project which receives a grant of funds awarded under this rule from a grantee.

26. "Unit of General Purpose Local Government" means any city, county, town, parish, village or other general purpose political subdivision of a state.

27. "Weatherization Crew" means a group of weatherization crew laborers with a weatherization supervisor.

28. "Weatherization Laborer" means a person that performs weatherization and repair activities necessary to complete work on eligible households. This work may include audits, inspections, and other related activities.

29. "Weatherization Project" means a project conducted in a single geographical area which undertakes to weatherize dwelling units that are thermally inefficient.

30. "Weatherization Supervisor" means a person who inspects, analyzes, evaluates, and performs complicated weatherization and repair activities and is responsible for crew laborers' conduct, performance and weatherization crew laborers' evaluations.

31. "Regional Clearinghouse" means the local Regional Development Commission which has the authority, under Title IV of the Intergovernment Cooperation Act of 1968, to review and comment with respect to federal and state funded projects.

D. Eligible Applicants

1. The Commissioner shall insure that funds received under this law shall be provided to local applicants delivering the DOE Weatherization Program.

2. Paragraph one (1) of this section shall not apply if the Commissioner or the ~~Director of Intergovernmental Relations~~ Assistant Commissioner determines, on the basis of a public hearing, that the plan carried out by the local applicant has been ineffective in meeting the purpose of the law. Notice of the public hearing shall be made 10 days prior to the hearing in two (2) local newspapers in the deliverer's service area.

3. In making a determination pursuant to paragraph E.2., of this rule, the Commissioner or the ~~Director of Intergovernmentsl Relations~~ Assistant Commissioner acting on hehalf of the Commissioner shall evaluate the performance of the CAA and shall consider:

a. The extent to which the weatherization project achieves the goals of the law in a timely fashion.

b. The adherence to the plan developed by the CAA and accepted by the State.

c. The quality of the work performed.

d. The number, qualifications, and experience of project staff members.

e. The ability to secure volunteers, training participants and public service employment workers, pursuant to CETA.

E. Local Applications

1. To be eligible for financial assistance under this rule, a local applicant shall submit an application or plan, combining federal DOE funds, state funds, and any other funds, used to support the plan to the Commissioner not later than 60 days after the announcement of availability of funds for each year. The commissioner shall review each timely application and if the submission otherwise complies with the applicable provisions of this rule, approve a final budget and issue a notice of grant award.

2. Each application shall include:

a. The name and address of the local agency or office responsible for administering the program.

b. A statement by grantee's responsible authority insuring the following:

(1) Financial assistance provided under this rule shall be used to supplement and not supplan federal DOE funds.

(2) No dwelling unit may be weatherized without documentation that the dwelling is an eligible dwelling unit as provided in this rule.

(3) Priority through a documented needs assessment is given to identifying and providing weatherization assistance with first priority given to eligible fuel oil users, elderly and handicapped low-income persons. The docemented needs assessment shall include the identifiable potential number of households which should be provided such assistance by county broken down into segmented categories; eligible elderly, handicapped, minorities, single family dwelling units, rental units, and types of fuel used.

c. The total number of dwelling units proposed to be weatherized with grant funds in total and by county served, from all sources during the budget period for which assistance is to be provided. First priority shall be to homes heated with fuel oil.

The total number of dwelling units completed shall include no less than 25% elderly, 10% handicapped and 10% rental units.

d. The description of the outreach process used to obtain applications.

e. A production schedule which shall indicate the number of dwelling units which are expected to be weatherized on a monthly basis.

f. A financial schedule which shall indicate the monthly funding requirements based on projected production.

g. An estimate, by number and dollar amount of manpower from all sources, to be used in implementing the weatherization plan. The plan shall include staffing patterns for all weatherization personnel, documentation shall be provided as to why CETA resources are not available, in part or whole, to allow local program deliverers to attain production quotas.

h. The plan shall be submitted for Regional Clearinghouse review.

i. A grantee currently receiving State weatherization funds need not supply items a, b, or d unless specifically requested by the State.

3. If the grantee determines that it cannot fulfill its obligations under the plan in whole or part, the grantee may request an amendment or revisions of the existing approved plan and resubmit a new plan or amendments within 30 days after the written notice of request for consideration. The request from the grantee must be in writing detailing its' specific views with supporting data and arguments.

F. Allowable Expenditures

1. To the maximum extent, practical, the grant funds provided under this part shall be used to supplement the DOE Weatherization Program's purchase of weatherization labor, supervision, and administration. Allowable expenditures shall be limited to:

a. The cost established by local deliverers in their plan of:

(1) The cost of employment of supervisory personnel.

(2) The cost of employment of weatherization laborers.

(3) Other weatherization expenses authorized under the act as approved by the Commissioner in accordance with the law.

b. Allowable administrative expenses limited to those set forth in the grantee's approved plan not exceeding 7-½% of the local deliverer's approved grant.

c. Grant funds awarded under this part shall not be used for any of these purposes:

(1) To weatherize a dwelling unit which has been weatherized previously with grant funds from DOE or state assistance under the program of this rule unless such dwelling unit has been damaged by fire, flood or an act of God and repair of the damage to weatherization materials is not paid for by insurance.

(2) To weatherize a dwelling unit which is vacant or designated for acquisition or clearance by a federal, state or local government program within twelve months from the date weatherization of the dwelling unit would be scheduled to be completed: or

(3) To purchase cosmetic items or a heating or cooling source. No dwelling unit can be exclusively weatherized with only state funds. State funds must be spent in coordination with DOE funds.

2. Grantee's wishing to use funds for other expenses related to delivery of the Weatherization program in accordance with the Act must make application to the ~~Director of Intergovernmental Relations~~, Asssistant Commissioner, acting on behalf of the Commissioner; documentation must be included to substantiate any request.

G. Oversight Responsibility

1. The Commissioner, or the ~~Director of Intergovernmental Relations~~ Assistant Commissioner on behalf of the Commissioner shall monitor and evaluate the operation of projects carried out by the grantees receiving financial assistance under this part through on-site inspections, or through other means.

2. The DES shall also carry out periodic evaluations of weatherization programs carried out by the grantee.

3. The Commissioner, the ~~Director of Intergovernmental Relations~~ Assistant Commissioner or appropriate duly authorized representatives shall have access for the purpose of audit and examination to any books, documents, papers, information and records of any weatherization project receiving financial assistance under the law.

4. The Commissioner shall conduct, on an annual basis, an audit of the pertinent records of any grantee receiving financial assistance under this part.

H. Record Keeping

Each grantee receiving state financial assistance under this part shall keep such records as the Commissioner shall require, including records which fully disclose the amount and disposition by each grantee of funds received under this rule, the total cost of the weatherization project to implement the grantee plan for which such assistance was given or used, including all sources and amounts of funds for such project or program, and such other records as the Commissioner deems necessary for an effective audit and performance evaluation. Such record keeping shall be in accordance with Federal Management Circular 74-4 and any further requirements of this rule or such requirements as the Commissioner may otherwise establish consistent with this rule.

I. Monthly Reports

Each grantee receiving financial assistance under this part shall submit a monthly program, performance report and a monthly financial report (monthly invoice) to the Commissioner. The program performance report shall describe by state priority:

1. The number of dwelling units weatherized and a file reference for each.

2. Out reach efforts.

3. Any other information the Commissioner feels relevant, including information routinely submitted to the federal government in order to effectively monitor theprogress of the grantee.

J. Eligible Dwellings

No dwelling unit shall be eligible for weatherization assistance under this part unless it is occupied by a family unit.

1. Whose income is at or below 125% of the poverty level determined in accordance with criteria established by the Director of the Federal Office of Management and Budget: or

2. Which contains a member who has received assistance payments under Title IV and XVI of the Social Security Act or applicable state or local rules during the 12 month period preceding the determination of eligibility for weatherization assistance.

K. Granting Process

Once the application for grant has been approved, the Commissioner shall notify the grantee of such approval and any conditions shall be attached thereto. A grant contract shall be signed by the Commissioner or the ~~Director of Intergovernmental Relations,~~ Assistant Commissioner, and the authorized local agency representative.

The grant contract shall indicate report requirements and other grant requitements shall be met prior to any obligation of funds. Payments on grant contracts shall be made on the basis of grantee activity in the program. Cash on hand in excess of 30 day program requirements shall not be delivered. Payments to grantees shall be reviewed in comparison to expenditures to determine cash needs. Expenditures shall be reported monthly on forms to be supplied by DES. Grantees shall be required to project next month's cash needs on the previous month's expenditure report.

L. Fiscal Responsibility

No funds shall be released to a grantee receiving financial assistance under this rule until it has submitted to the ~~Director of Intergovernmental Relations~~ Assistant Commissioner a statement certifying the assisted grantee has: an established accounting system with internal controls adequate to safeguard their assets which has an operating efficiency and reliable accounting data; does promote operating efficiency and encourage compliance with prescribed management policies and has such additional fiscal responsibility and accounting requirements as the ~~Intergovernmental Relations Director~~ Assistant Commissioner may require consistent with these rules. The statement may be furnished by a Certified Public Accountant, a duly licensed public accountant or, in the case of a public agency the appropriate public financial officer who accepts responsibility for providing required financial services to that agency.

M. Severability

The provisions of this rule shall be severable and if any phrase, clause, sentence or provision is declared illegal or of no effect, the validity of the remainder of this rule and the applicability thereof to any person or circumstances shall not be affected thereby.

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT DES/Weatherization

Office Memorandum

TO : Jerry Anderson, Asst. Atty. General
Administration & Finance

DATE: September 22, 1980

FROM : Rolf Middleton
Commissioner

PHONE: 296-3711

SUBJECT: Amended Rules

As requested by you last week, please find enclosed:

a. One (1) original of Adopted rules for weatherization.

b. Two (2) copies of Adopted rules for weatherization.

c. An order adopting temporary rules.

Please note that originally there were no amendments; however, due to department reorganization it is necessary to delete "Director of Intergovernmental Relations" and add "Assistant Commissioner".

If there are further questions regarding this matter, please do not hesitate to call.

RM:NH:dl

Encs.

DEPARTMENT OF ECONOMIC SECURITY
TRAINING & COMMUNITY SERVICES/

ADOPTED TEMPORARY RULE GOVERNING WEATHERIZATION ASSISTANCE
for LOW-INCOME PEOPLE

The proposed Temporary rule (8 MCAR §§ 4.4010)Published in the State Register, Volume 4, Number 52, P.P. 2002 - 2007, June 30, 1980 (4 S.R. 2003) was adopted on September , 1980, approved by the Office of the Attorney General on September , 1980 and filed with the secretary of State on September , 1980 with the following amendments.

TEMPORARY RULE AS PROPOSED

8 MCAR § 4.4010 Minnesota Weatherization Assistance for Low-Income People.

A. Purpose. The purpose of this rule is to develop and implement a supplementary state weatherization assistance program under authority granted by Laws 1980, Ch.579, Section 19. to supplement the United States Department of Energy Weatherization Assistance for Low-Income Persons" program 42-USC § 6861 to 6872 at the prescribed levels in the dwellings of low-income persons in order both to aid those persons least able to afford higher utility costs and to conserve needed energy.

B. Administration of costs. Grants awarded under this part shall be administered in accordance with the following:

1. Federal Management Circular 73-2, 34 CFR 251, entitled "Audit on Federal Operations and Programs by Executive Branch Agencies".

2. Federal Management Circular 74-4, 34 CFR 255, entitled "Cost Principles Applicable to Grants and Contracts with State and Local Governments".

3. Federal Management Circular 74-7, 34 CFR 256, entitled "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments".

4. Office of Management and Budget Circular A-89 entitled "Catalog of Federal Domestic Assistance".

JUN 17

5. Office of Management and Budget Circular A-95, entitled "Evaluation, Review and Coordination of Federal and Federally Assisted Programs and Projects".

6. Office of Management and Budget Circular A-97, entitled "Rules and Regulations Permitting Federal Agencies to Provide Specialized or Technical Services to State and Local Units of Government under Title II of the Intergovernmental Coordination Act of 1968".

7. Treasury Circular 1082, entitled "Notification to States of Grant-In-Aid Information".

8. U.S. Treasury Circular 1075.

C. Definitions as used in this rule:

1. "Act" means the Federal Energy Conservation and Production Act. Pub. L. 94-335.90 Stat. 1125 et seq. as amended.

2. "Administrator" means the Administrator of the U.S. Department of Energy.

3. "CAA" means a Community Action Agency.

4. "CETA" means the Comprehensive Employment and Training Act of 1973, 42, U.S.C./ 2731 et seq. as amended.

5. "Community Action Agency" means a private corporation or public agency established pursuant to the Economic Opportunity Act of 1964, Pub. L. 88-452 as amended, which is authorized to administer funds received from federal, state local or private funding entities to assess, design, operate, finance and oversee anti-poverty programs.

6. "Commissioner" means Commissioner of the Department of Economic Security.

7. "Cosmetic items" means items which, when installed will not reduce energy costs in a cost-effective manner, including, but not limited to, finishes, decorative fenestration materials and elevation materials

such as aluminum siding, board and batten clapboard, brick, shakes or asphault siding.

8. "Director means the Director of Intergovernmental Relations of the Department of Economic Security.

9. "DOE" means the United States Department of Energy.

10. "Dwelling unit" means a house including a stationary mobile home, home, and apartment, a group of rooms, or a single room occupied as separate living quarters.

11. "Elderly person" means a person who is 60 years of age or older.

12. "Family Unit" means all persons living together in a dwelling unit.

13. "Grantee" means an entity named in the Notification of Grant Award as the recipient.

14. "Handicapped person" means any individual a) who is a handicapped individual as defined in § 7(6) of the Rehabilitation Act of 1973, (b) who is under a disability as defined in § 1614 (a) or 223(d) of the Social Security Act or in § 102(7) of the Developmental Disabilities Services and Facilities Construction Act or (c) who is receiving benefits under Chapter 11 or 15 of Title 38, United States Code.

15. "Household" means the same as dwelling units.

16. "Law" means Minnesota Laws of 1980, ch. 579, Sec. 19.

17. "Local applicant" means a CAA or unit of general purpose local government.

18. "Low income" means that total household income in relation to family size which:

19. a. Is at or below 125 percent of the poverty level determined in accordance with criteria established by the Director of the Federal Office of Management and Budget.

b. Is the basis on which cash assistance payments have been paid during the preceding 12-month period under Title IV and XVI of the Social Security Act or applicable State or local rules.

20. ."Multi-family dwelling unit" means a dwelling unit which is located in a structure containing more than one dwelling unit.

21. ""Rental dwelling unit" means a dwelling unit occupied by a person who pays rent for the use of the dwelling unit.

22. "Separate living quarters" are those in which the occupants do not live and eat with any other persons in the structure and which have either (a) direct access from the outside of the building or through a common hall, or (b) complete kitchen facilities for the exclusive use of the occupants. The occupants may be a single family, one person living alone, two or more families living together, or any other group of related or unrelated persons who share living arrangements.

23. "Single family dwelling unit" means a structure containing no more than one dwelling unit.

24. State means the State of Minnesota.

25. "Sub-grantee" means a weatherization project which receives a grant of funds awarded under this Rule from a grantee.

26. "Unit of general purpose local government" means any city, county, town, parish, village or other general purpose political subdivision of a state.

27. "Weatherization crew" means a group of weatherization crew laborers with a weatherization supervisor.

28. "Weatherization laborer" means a person that performs weatherization and repair activities necessary to complete work on eligible households. This work may include audits, inspections, and other related activities.

29. "Weatherization project" means a project conducted in a single geographical area which undertakes to weatherize dwelling units that are thermally inefficient.

30. "Weatherization supervisor" means a person who inspects, analyzes, evaluates, and performs complicated weatherization and repair activities and is responsible for crew laborers' conduct, performance and weatherization crew laborer's evaluations.

31. "Regional Clearinghouse" means the local Regional Development Commission which has the authority, under Title IV of the Intergovernment Cooperation Act of 1968, to review and comment with respect to federal and state funded projects.

D. ELIGIBLE APPLICANTS

1. The Commissioner shall insure that funds received under this law shall be provided to local applicants delivering the DOE Weatherization Program.

2. Paragraph one (1) of this section shall not apply if the Commissioner or the Director of Intergovernmental Relations determines, on the basis of a public hearing, that the plan carried out by the local applicant has been ineffective in meeting the purpose of the law. Notice of the public hearing shall be made 10 days prior to the hearing in two (2) local newspapers in the deliverer's service area.

3. In making a determination pursuant to paragraph E. 2., of this rule, the Commissioner or the Director of Intergovernmental Relations acting on behalf of the Commissioner shall evaluate the performance of the CAA and shall consider:

a. The extent to which the weatherization project achieves the goals of the law in a timely fashion.

b. The adherence to the plan developed by the CAA and accepted by the State

c. The quality of the work performed.

d. The number, qualifications, and experience of project staff members.

e. The ability to secure volunteers, training participants and public service employment workers, pursuant to CETA.

E. LOCAL APPLICATIONS

1. To be eligible for financial assistance under this rule, a local applicant shall submit an application or plan, combining federal DOE funds, state funds, and any other funds, used to support the plan to the Commissioner not later than 60 days after the announcement of availability of funds for each year. The Commissioner shall review each timely application and if the submission otherwise complies with the applicable provisions of this rule, approve a final budget and issue a notice of grant award.

2. Each application shall include:

a. The name and address of the local agency or office responsible for administering the program.

b. A statement by grantee's responsible authority insuring the following:

(1) Financial assistance provided under this rule shall be used to supplement and not supplant federal DOE funds.

(2) No dwelling unit may be weatherized without documentation that the dwelling is an eligible dwelling unit as provided in this rule.

(3) Priority through a documented needs assessment is given to identifying and providing weatherization assistance with first priority given to eligible fuel oil users, elderly and handicapped low-income persons. The documented needs assessment shall include the identifiable potential number of households which should be provided such assistance by county broken down into segmented categories; eligible elderly, handicapped, minorities, single family dwelling units, rental units, and types of fuel used.

c. The total number of dwelling units proposed to be weatherized with grant funds in total and by county served, from all sources during the budget period for which assistance is to be provided. First priority shall be to homes heated with fuel oil. The total number of dwelling units completed shall include no less than 25% elderly, 10% handicapped and 10% rental units.

d. The description of the outreach process used to obtain applications.

e. A production schedule which shall indicate the number of dwelling units which are expected to be weatherized on a monthly basis.

f. A financial schedule which shall indicate the monthly funding requirements based on projected production.

g. An estimate, by number and dollar amount of manpower from all sources, to be used in implementing the weatherization plan. The plan shall include staffing patterns for all weatherization personnel, documentation shall be provided as to why CETA resources are not available, in part or whole, to allow local program deliverers to attain production quotas.

h. The plan shall be submitted for Regional Clearinghouse review.

i. A grantee currently receiving State weatherization funds need not supply items a, b, or d unless specifically requested by the State.

3. If the grantee determines that it cannot fulfill its obligations under the plan in whole or part, the grantee may request an amendment or revision of the existing approved plan and resubmit a new plan or amendments within 30 days after the written notice of request for consideration. The request from the grantee must be in writing detailing its specific views with supporting data and arguments.

F. ALLOWABLE EXPENDITURES

1. To the maximum extent, practical, the grant funds provided under this part shall be used to supplement the DOE Weatherization Program's purchase of weatherization labor, supervision, and administration. Allowable expenditures shall be limited to:

a. The cost established by local deliverers in their plan of:

(1) The cost of employment of supervisory personnel.

(2) The cost of employment of weatherization laborers

(3) Other weatherization expenses authorized under the act as approved by the Commissioner in accordance with the law.

b. Allowable administrative expenses limited to those set forth in the grantee's approved plan not exceeding 7-1/2% of the local deliverer's approved grant.

c. Grant funds awarded under this part shall not be used for any of these purposes:

(1) To weatherize a dwelling unit which has been weatherized previously with grant funds from DOE or state assistance under the program of this rule unless such dwelling unit has been damaged by fire, flood or an act of God and repair of the damage to weatherization materials is not paid for by insurance.

(2) To weatherize a dwelling unit which is vacant or designated for acquisition or clearance by a federal, state or local government program within twelve months from the date weatherization of the dwelling unit would be scheduled to be completed: or

(3) To purchase cosmetic items or a heating or cooling source. No dwelling unit can be exclusively weatherized with only state funds. State funds must be spent in coordination with DOE funds.

2. Grantee's wishing to use funds for other expenses related to delivery of the weatherization program in accordance with the Act must make application to the Director of Intergovernmental Relations, acting on behalf of the Commissioner; documentation must be included to substantiate any request.

G. Oversight responsibility

1. The Commissioner, or the Director of Intergovernmental Relations on behalf of the Commissioner shall monitor and evaluate the operation of projects carried out by the grantees receiving financial assistance under this part through on-site inspections, or through other means.

2. The DES shall also carry out periodic evaluations of weatherization programs carried out by the grantee.

3. The Commissioner, the Director of Intergovernmental Relations or appropriate duly authorized representatives shall have access for the purpose of audit and examination to any books, documents, papers, information and records of any weatherization project receiving financial assistance under the law.

4. The Commissioner shall conduct, on an annual basis, an audit of the pertinent records of any grantee receiving financial assistance under this part.

H. Record Keeping

Each grantee receiving state financial assistance under this part shall keep such records as the Commissioner shall require, including records which fully disclose the amount and disposition by each grantee of funds received under this rule, the total cost of the weatherization project to implement the grantee plan for which such assistance was given or used, including all sources and amounts of funds for such project or program, and such other records as the Commissioner deems necessary for an effective audit and performance evaluation. Such record keeping shall be in accordance with Federal Management Circular 74-4 and any further requirements of this rule or such requirements as the Commissioner may otherwise establish consistent with this rule.

I. Monthly Reports.

Each grantee receiving financial assistance under this part shall submit a monthly program, performance report and a monthly financial report (monthly invoice) to the Commissioner. The program performance report shall describe by state priority:

1. The number of dwelling units weatherized and a file reference for each.

2. Out reach efforts.

3. Any other information the Commissioner feels relevant, including information routinely submitted to the federal government in order to effectively monitor the progress of the grantee.

J. Eligible Dwellings

No dwelling unit shall be eligible for weatherization assistance under this part unless it is occupied by a family unit.

1. Whose income is at or below 125 percent of the poverty level determined in accordance with criteria established by the Director of the Federal Office of Management and Budget: or

2. Which contains a member who has received assistance payments under Title IV and XVI of the Social Security Act or applicable state or local rules during the 12 month period preceding the determination of eligibility for weatherization assistance.

K. Granting Process.

Once the application for grant has been approved, the Commissioner shall notify the grantee of such approval and any conditions shall be attached thereto. A grant contract shall be signed by the Commissioner or the Director of Intergovernmental Relations, and the authorized local agency representative. The grant contract shall indicate report requirements and other grant requirements shall be met prior to any obligation of funds. Payments on grant contracts shall be made on the basis of grantee activity in the program. Cash on hand in excess of 30 day program requirements shall not be delivered. Payments to grantees shall be reviewed in comparison to expenditures to determine cash needs. Expenditures shall be reported monthly on forms to be supplied by DES. Grantees shall be required to project next month's cash needs on the previous month's expenditure report.

L. Fiscal Responsibility.

No funds shall be released to a grantee receiving financial assistance under this rule until it has submitted to the Director of Intergovernmental Relations a statement certifying the assisted grantee has: an established accounting system with internal controls adequate to safeguard their assets which has an operating efficiency and reliable accounting data; does promote operating efficiency and encourage compliance with prescribed management policies and has such additional fiscal responsibility and accounting requirements as the Intergovernmental Relations Director may require consistent with these rules. The statement may be furnished by a Certified Public Accountant, a duly licensed public accountant or, in the case of a public agency the appropriate public financial officer who accepts responsibility for providing required financial services to that agency.

M. Severability.

The provisions of this rule shall be severable and if any phrase, clause, sentence or provision is declared illegal or of no effect, the validity of the remainder of this rule and the applicability thereof to any person or circumstances shall not be affected thereby.

Comments on Proposed Temporary Rules as well as Department response are as follows:

1. Representative Lee Greenfield (6-26-80) expressed concern about not returning to previously weatherized homes that either are not up to present standards or were done in early program years when workmanship and methodology was poor enough that structural damage to the home has or could occur.

The department's response to this comment is that Rule C (1) under Section F makes no reference to homes done under CSA weatherization grants. The homes referred to in Representative Greenfield's comments would have been done under the CSA Program and can be revisited to upgrade th work already done. Additionally, while it would be appealling to be able to revisit those homes which were weatherized previously under DOE and State assistance programs that are not up to present standards, it is not possible fiscally, under this grant, but rather would require a program of continual weatherization maintenance which would have to be mandated in future legislation.

2. Richard Harris(7-17-80) expressed the following concerns: (a) He stated concern that the Federal and State funds had been linked and that Federal would not be released without State match.

Our response was that the two (2) grants are not linked together as one but rather it is the policy of this department to process both grants, as it relates to the grantee, side by side so that we are clearly able to see how the State funds will be used as a supplement to DOE funds. (b) His second concern was on the issue of returning to homes previously weatherized.

Our response was the same as that to Representative Greenfield.

(c) His third concern was in regard to the possibility that if there was no Federal funding after after January 1, 1981, weatherization activity would completely stop with State funds still remaining. His contention was that there could be no way to use remaining State funds in the event that the above mentioned problem occurs.

Our response to this was that Section E # 3 as well as Section F # 2 allows for changes in unforseen circumstances.

(d) His fourth concern was that the rules provided no specific definition of what constituted available/adequate CETA labor sources.

Our response to this was that CETA labor resource problems varied from grantee to grantee in such a way that the decision as to what constitutes available/ adequate resources had to be done on an individual grantee basis.

(e) His fifth concern eluded to the fact that there appeared to be no specific distribution formula for State funds as well as a contention on his part, that the State funds would be distributed using the Federal distribution formula.

Our response to this was that the State allocation was established for each grantee through the negotiations process this past Spring and was based on what each individual grantee claimed was needed by them in order to acheive their weatherization goals.

3. Bernard L. Brommer (7-21-80) expressed a concern that the language of the Proposed Rules implied that a grantee could be penalized for not using CETA labor and additionally erects a barrier to those grantees that chose to use journeyman carpenters and apprentices.

Our response was that because the State and Federal programs are utilized together on the same dwelling unit, that the reference to the use of CETA personnel had to be in the rule in order to prevent any possible conflicts with State or Federal rules.

4. Steven R. Watson (7-21-80) sent a letter acknowledging receipt of a copy of Richard Harris' letter and stating that he is in agreement with this letter.

Our response was to send him a copy of our reply to Richard Harris.

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Our response was to send him a copy of our reply to Richard Harris.

Goodhue-Rice-Wabasha
Citizens Action Council, Inc.

July 17, 1980

Alan Chapman
Weatherization Project Director
MN Dept. of Economic Security
690 American Center Building
150 East Kellogg Boulevard
St. Paul, MN 55101

Dear Mr. Chapman:

In response to the "Proposed Temporary Rule Governing Weatherization Assistance for Low Income People" consider this the comment of the Goodhue-Rice-Wabasha Citizens Action Council, Inc.

It is obvious that this program as designed by the State Legislature was intended to benefit low-income persons by weatherizing their homes and thereby reducing fuel bills. Statewide the conservation of fuels would be enhanced, contributing to the national effort to reduce this nation's dependence on foreign energy resources.

The national weatherization program was considered an emergency effort, justifying the expenditure of larger sums of public monies to meet this challenge. Because of the emergency nature of the situation, the Minnesota Legislature in 1979 moved to meet the need in this state and appropriated an unprecedented three million dollars to extend and encourage the federal program. This was done to mitigate the unrealistic and self-defeating aspects of the federal program, namely the reliance on "sometimes available" CETA labor.

During the 1980 Legislative session, additional funds were appropriated. This was done in response to the defined and dramatic need for conservation of fuel. Indeed, the nine million dollars appropriated was to fund a companion and complementary program to the federal effort, and subgrantees were instructed by the federal grantee/MN Department of Economic Security to combine the programs. However, it should be noted that no federal regulation ever existed which required state match to release the federal funds, nor was there any provision in the federal law which directed how state/local funds had to be used.

The intent of the State law was to provide "an incentive" for the emergency effort, weatherizing as many homes as possible as soon as possible. Although the law states the funds should be used primarily for labor costs, it does not prohibit the use of the funds to weatherize a dwelling unit which has

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been weatherized previously with grant funds from DOE or any other funding source, or to weatherize homes completely with State funds.

If state money is used as an incentive, as the law suggests, sub-grantees would be able to revisit DOE I and II units to raise them to present standards. Also it would encourage program operators to revisit houses weatherized with CSA funds. We are aware that these units can be re-weatherized using federal funds. However, it would be questionable program management to leave completely unweatherized houses without attention and instead expend scarceresources on partially insulated units. Most especially this was the situation when program operators had large numbers of houses on waiting lists. and State funds were limited to three million dollars. For various reasons some operators do not now have such lists and could return to houses which were inadequately insulated under CSA, DOE I and II programs.

Further, it is our contention that the intent of the law is seriously restricted by the proposed rule in that the emergency nature of the program is ignored and that if federal funds should be unavailable after January 1, 1981, for whatever reason, the state funds could not be used thereby ending all weatherizing activity in the state.

The federal regulation which enforces the use of CETA labor in localities where it is available has caused severe problems for program operators. The successful effort to waive this rule has resulted in improved program delivery. However, a final interpretation of that rule and the subsequent waiver await the audit of the entire program in Minnesota. How much/little CETA labor constitutes a sufficient impediment in the delivery of the local program to warrant the waiver remains an unresolved issue.

For the State rules to not be specific as to what constitutes available/adequate CETA labor resources, places program operators in double jeopardy. It makes no sense to issue a program rule which needs to be waived immediately in order to deliver the program.

There appears to be no specific formula for the distribution of the State funds, the implication is that state money is distributed in accordance with the allocation formula used to distribute federal funds. This would restrict the incentive concept as stated in the law. State funds if awarded according to the federal formula could not be used to increase production, nor could they be competitive, being awarded to program operators with high production levels.

In summary, the State funds for weatherization should be used to facilitate program administration, to reward competent operators, and to increase production locally and statewide.

Yours truly,

Richard R. Harris

Richard R. Harris
Executive Director

RRH/js

cc: Senator Jerald Anderson
Senator Hubert H. Humphrey III
Representative Ken Nelson
Senator Steve Engler
Commissioner Rolf Middleton
Assistant Commissioner Charles Wrobel
Minnesota CAA Directors
Steve Watson

MINNESOTA AFL-CIO
175 AURORA AVENUE ST. PAUL, MINNESOTA 55103 • PHONE: AREA (612) 227-7647

July 21, 1980

Alan Chapman
Weatherization Project Director
Minnesota Department of Economic Security
690 American Center Building
150 East Kellogg Boulevard
St. Paul, Mn. 55101

Dear Mr. Chapman:

The Minnesota AFL-CIO has reservations about the Temporary Rules as Proposed regarding Minnesota weatherization assistance for low-income people, published in the State Register, Monday, June 30, 1980, pages 2002-2007.

The rules seem to indicate that a Community Action Agency can be penalized for not utilizing all CETA personnel. Rule D.3.e: lists "The ability to secure volunteers, training participants and public service employment workers, pursuant to CETA." This is a standard to be used for CAA performance evaluation. Further, Rule E.3.g: states: "An estimate, by number and dollar amount of manpower from all sources, to be used in implementing the weatherization plan. The plan shall include staffing patterns for all weatherization personnel, documentation shall be provided as to why CETA resources are not available, in part or whole, to allow local program deliverers to attain production quotas."

Thus, the Temporary Rules as Proposed seem to erect a barrier to CAAs deciding to use Journeyman carpenters and apprentices. The proposed rules should be clarified on this point, since we find no language in Chapter 579 to sustain the regulations which might block the use of skilled carpenters. The new state law emphasizes that "Supplementary state grants are provided for the payment of additional labor costs for the federal weatherization program, and as an incentive for the increased production of weatherized units."

It is the understanding of the Minnesota AFL-CIO that language in the state law was designed to encourage weatherization models such as the pilot weatherization program for Anoka/Washington Counties, with which you are familiar.

Your prompt response to our concerns is appreciated.

Sincerely,

Bernard L. Brommer

Bernard L. Brommer
Executive Vice President

CC: Chuck Wrobel
Russ Domino
Don Jackman
Bert Daily

BLB:jg

MINNESOTA CAP ASSOCIATION, INC.

GRIGGS-MIDWAY BUILDING, SUITE S-281
1821 UNIVERSITY AVENUE
ST. PAUL, MINNESOTA 55104
612/645-4159

July 21, 1980

Mr. Allan Chapman
Director of Weatherization Project
Office of Economic Opportunity
Department of Economic Security
690 American Center Building
150 E. Kellogg Blvd.
St. Paul, Minnesota 55101

Dear Mr. Chapman:

The Minnesota CAP Association, Inc. received a copy of the letter that Mr. Richard Harris, Executive Director, Goodhue-Rice-Wabasha Citizen's Action Council, Inc. sent to you with his agency's comments regarding the Minnesota Department of Economic Security's "Proposed Temporary Rule Governing Weatherization Assistance for Low-Income People" on July 18, 1980.

We agree.

Respectfully,

Steven R. Watson
Executive Director

SRW/sao

The future does not belong to those who are content with today. Rather it will belong to those who can blend vision, reason, and courage in a personal commitment.

Robert Kennedy