

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 682

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 3/9
DATE FOR REVIEW N/A
DATE DUE 3/16

Adopted w/a hearing _____
Adopted w/o a hearing _____
Temporary rule X

Approved _____ Disapproved _____ Returned to Agency _____

Resubmitted 4/14 Due _____
Approved ✓ Disapproved _____ Returned to Agency 4/15

Date filed w/Secretary of State _____

✓ Rule as Adopted

✓ Rule as Proposed

____ Order Adopting

____ Notice of Intent to Solicit Outside Opinion

____ Order for rulemaking
_____ Date of Hearing

✓ ~~Certificate of Board's~~ Authorizing Resolution - 2.26.81

____ Notice of rulemaking
_____ Sufficiency

____ Affidavit of Mailing Notice of rulemaking
_____ At least 30 days prior to hearing/adoption

____ Mailing list Certificate

✓ Publication in State Register
2.2.81 At least ~~30~~/20 days prior to ~~hearing~~/adoption

____ Hearing Examiner's Report

____ Chief Hearing Examiner's Report(s)
_____ Approving H.E.'s Report
_____ Approving agency action

____ Agency's Findings of Fact

____ LCRAR Report or agency Affidavit

____ Certificate of Board's Resolution Adopting Rules

____ Order Approving Incorporation by Reference

____ Statement of Need and Reasonableness

____ Petition for Adoption of a Rule

____ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

____ Certificate of Compliance w/Rulemaking Procedures

____ Affidavit of Mailing Notice of Submission to Attorney General

____ Notice of Submission to the Attorney General

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

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : James J. Solem
Executive Director
Minnesota Housing Finance Agency

DATE: 4/15/81

ATTN : Jim Dinerstein
Special Assistant Attorney General

FROM : Jerry S. Anderson
Special Assistant Attorney General

PHONE: 6-4692

SUBJECT: In the Matter of Temporary Rules Governing the Rental Rehabilitation Loan 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/gy

cc: Duane Harves
Susan Robertson

MINNESOTA HOUSING FINANCE AGENCY
Suite 200-333 Sibley Street
St. Paul, Minnesota

RESOLUTION NO. MHFA 81-8

SUPPLEMENTARY RESOLUTION
ADOPTING TEMPORARY RULES GOVERNING
THE RENTAL REHABILITATION LOAN PROGRAM

WHEREAS, on February 26, 1981 the Agency adopted Resolution Number 81-3 Adopting the Temporary Rules Governing the Rental Rehabilitation Loan Program; and

WHEREAS, the rules were submitted to the Attorney General for review on March 9, 1981; and

WHEREAS, the Attorney General has suggested certain changes in the Rules which do not make any substantive changes in the rules; and

WHEREAS, the Agency wishes to adopt the Temporary Rules with the changes to comply with the request of the Attorney General.

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

THAT the temporary rules governing the Rental Rehabilitation Loan Program attached hereto as Exhibit A be and are hereby adopted as temporary rules pursuant to Minnesota Statutes, Sections 15.0412, Subdivision 5, 462A.06, Subdivision 11, and 462A.21, Subdivision 11, 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, the submission of said rules to the Attorney General of the State of Minnesota.

Adopted this 26th day of March, 1981.

Chairman

Secretary

EXHIBIT A

MINNESOTA HOUSING FINANCE AGENCY

Temporary Rules Governing the Rental Rehabilitation Loan Program as adopted.

Chapter Six A: Rental Rehabilitation Loans.

12 MCAR §3.053 Eligible applications.

A. Each applicant must individually or in the aggregate possess at least a one-third interest in a fee, or a contract for deed, or a life estate in the property to be improved. However, occupancy of the property by the applicant shall not be required.

B. Each applicant must be a reasonable credit risk with the ability to pay the loan obligation, as determined pursuant to 12 MCAR §3.013.

C. To be eligible the structure must be in need of repairs pursuant to Section 116H.129, Subdivision 3, of Minnesota Statutes (state energy conservation standards). For structures less than 15 years old only improvements necessary to bring the structure into compliance with the state energy conservation standards are eligible.

D. The structure to be improved must not be in violation of applicable zoning ordinances or other applicable land use guides.

E. The property must be used primarily for residential purposes and must consist primarily of comprehensive living units including kitchen and bathroom facilities. Mobile homes and trailers shall not be eligible for Rental Rehabilitation Loans.

F. Rental Rehabilitation Loan proceeds must be used to finance only improvements upon or in connection with existing structures.

G. All improvements must be reasonably capable of being completed (except for causes beyond the applicant's reasonable control, such as fire, strike, and shortage of materials) within nine months of the date of the first disbursement of funds pursuant to the Rental Rehabilitation Loan.

H. At the time of application, conventional financing must not be available from private lenders upon equivalent terms and conditions.

I. The structure to be improved must be occupied at the time of loan closing primarily by Persons and Families of Low and Moderate Income. Structures containing six rental units or less shall be occupied by Persons and Families of Low and Moderate Income in at least one of the units in the case of a one or two-unit rental structure, two of the units in the case of a three-unit rental structure, three of the units in the case of four-unit rental structure, four of the units in the case of a five or six-unit rental structures, and at least 75% of the rental units in the case of rental structures containing more than six units.

12 MCAR §3.054 Eligible Improvements.

A. Improvements made with Rental Rehabilitation Loan proceeds shall satisfy the following conditions:

1. the structure must be brought into compliance with the standards established in Section 116H.129, Subdivision 3, of Minnesota Statutes, (state energy conservation standards).
2. for structures less than 15 years old only improvements necessary to bring the structure into compliance with the state energy conservation standards are eligible.
3. for structures more than 15 years old permanent general improvements are eligible if the structure has been or will be brought into compliance with the state energy conservation standards.

B. Each improvement must be a permanent general improvement. Permanent general improvements shall include additions, alterations, renovations, or repairs upon or in connection with existing structures, which materially preserve or improve the basic livability, safety, or utility of the property. However, conversions of structures, or portions thereof, from non-residential use to residential use are not eligible. Permanent general improvements shall not include materials, fixtures, or landscaping of a type or quality exceeding that customarily used in the locality for properties of the same general type as the property to be improved.

C. With the exception that the structure must be brought into compliance with the state energy conservation standards, each improvement must be made in compliance with all applicable health, fire prevention, building, and housing codes and standards; provided however, that no application for a Rental Rehabilitation Loan shall be denied solely because the improvements will not bring such property into full compliance with all such codes and standards.

D. Rental Rehabilitation Loan proceeds shall not be used for the payment, wholly or in part, of assessments for public improvements; provided, however, that such proceeds may be used for improvements which will bring an individual sewage disposal system (including septic systems) located on the property into compliance with local, state, or federal environmental and sanitary standards.

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

APPROVED AS TO FORM AND LEGALITY

4-15 19 81

WARREN SPANNAUS, ATTORNEY GENERAL

BY Jerry Anderson

SPECIAL ASSISTANT ATTORNEY GENERAL

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : James J. Solem
Executive Director
Minnesota Housing Finance Agency

DATE: 3/13/81

Attn: Jim Dinerstein
Special Assistant Attorney General

FROM : Jerry S. Anderson
Special Assistant Attorney General

PHONE: 6-4692

SUBJECT: Temporary Rules Governing the Rental Rehabilitation Loan Program

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

1. 12 MCAR § 3.053 B. grants to the agency or lending institution unfettered discretion in determining whether an applicant is a reasonable credit risk. Pursuant to Minn. Stat. § 15.0411-.0412, every agency statement of general applicability and future effect, made to implement or make specific the law enforced, is subject to rulemaking procedures. This section of the rule, however, provides for an agency decision based on unstated criteria, which criteria are agency statements fitting within the definition of a rule, and permits thereby agency "rulemaking" on an ad hoc basis. Agency flexibility and discretion can be achieved by careful, complete selection of criteria that are not impermissibly vague but are sufficiently broad to provide agency flexibility. Predictability and nondiscriminatory application of the rules must be achieved and made available to all applicants who meet the stated criteria. Thus, the criteria for the agency's decision must be set forth in the rules. As we discussed during our telephone conversation, this problem might be solved by replacing the material in this subdivision with a determination of creditworthiness pursuant to 12 MCAR § 3.013.

2. 12 MCAR § 3.054 B., in the rules as adopted, is incomplete. Apparently, the end of the last sentence has been deleted. (See attached copy of the rules.)

After consideration of the above comments and agency action, if any, these rules may be resubmitted for review. Upon resubmission, please include two copies of a new or supplemental Order Adopting, with supporting resolution, and the original and two copies of the new Rule as Adopted. Also, please include a memorandum specifying that the rules are being resubmitted so that we may obtain our initial file in this matter.

If you have any questions concerning the issues raised in this memorandum, please do not hesitate to call me.

JSA/gy

Enc.

cc: Duane Harves
Susan Robertson

MINNESOTA
HOUSING
FINANCE
AGENCY

April 13, 1981

Mr. Jerry S. Anderson
Special Assistant Attorney General
Attorney General's Office
Room G25
Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55155

Subject: Temporary Rules Governing the Rental Rehabilitation Loan Program

Dear Mr. Anderson:

Enclosed please find for your review pursuant to Minnesota Statutes § 15.0412, Subdivision 5, the temporary rules governing the Rental Rehabilitation Loan Program as adopted by the Agency. The rules are being resubmitted pursuant to your memorandum of March 13, 1981. 12 MCAR § 3.053 B has been modified to make it refer specifically to 12 MCAR 3.013. In addition, the copy of the rules includes the entire 12 MCAR 3.054 B.

Thank you for your assistance in this matter.

Sincerely,

James J. Solem
Executive Director

JJS/kjj

Enc.

RECEIVED
APR 14
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

333 Sibley Street, St. Paul, Minnesota 55101 (612) 296-7608
Equal Opportunity Housing and Equal Opportunity Employment

MINNESOTA HOUSING FINANCE AGENCY
Suite 200-333 Sibley Street
St. Paul, Minnesota

RESOLUTION NO. MHFA 81-3

RESOLUTION ADOPTING TEMPORARY RULES GOVERNING
THE RENTAL REHABILITATION LOAN PROGRAM

WHEREAS, the temporary rules for the Rental Rehabilitation Loan Program were published in the State Register on February 2, 1981 at 5 S.R. 1189; 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 Rental Rehabilitation Loan Program"; and

WHEREAS, rules as proposed are supported by the data and views submitted to the Agency; and

WHEREAS, the temporary rules are necessary to implement a demonstration program for the financing of residential housing pursuant to Minnesota Statutes 1980, Sections 462A.06, Subdivision 11 and 462A.21, Subdivision 11.

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

THAT the temporary rules governing the Rental Rehabilitation Loan Program be and are hereby adopted as temporary rules pursuant to Minnesota Statutes, Sections 15.0412, Subdivision 5, 462A.06, Subdivision 11, and 462A.21, Subdivision 11, 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, the submission of said rules to the Attorney General of the State of Minnesota.

Adopted this 26th day of February, 1981.

Chairman

Secretary

MINNESOTA HOUSING FINANCE AGENCY

March 9, 1981

H. Theodore Grindal
Special Assistant Attorney
General
G25 Administration Bldg.
St. Paul, Minnesota 55155

SUBJECT: Temporary Rules Governing the Rental Rehabilitation Loan Program

Dear Mr. Grindal:

Enclosed please find for your review pursuant to Minnesota Statutes, Section 15.0412, Subd. 5, the following items regarding the temporary rules governing the Rental Rehabilitation Loan Program:

1. The proposed temporary rules as published in the State Register;

2. The temporary rules as adopted by the Agency.

The rules as adopted have one change from the rules as proposed. A comment was received from the Metropolitan Council that the language in 12 MCAR §3.054 (C) which refers to "property occupied by the owner" is inconsistant with the remainder of the rule which does not require owner occupancy. The Agency agreed with the comment and deleted the words "for property occupied by the owner". The inclusion of the words had been in error on the part of the Agency.

The temporary rules have been adopted pursuant to authority provided in Minnesota Statutes, Section 462A.06, Subd. 11, and 462A.21, Subd. 11. The Rental Rehabilitation Loan Program is a new program being conducted on a demonstration basis. The Agency is using its general authority to adopt temporary rules for demonstration programs to promulgate the temporary rules.

Thank you for your assistance in this matter.

Very truly yours,

James J. Solem
Executive Director

JJS/jag

Encl.

333 Sibley Street, St. Paul, Minnesota 55101 (612) 296-7608
Equal Opportunity Housing and Equal Opportunity Employment

RECEIVED
MAR 9 1981
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

R. The financial requirements of B. and C. of this section shall be waived if the group self-insurer has purchased aggregate excess insurance from an insurer licensed to do business in the State of Minnesota, and that excess insurance indemnifies all losses of the group self-insurer, other than those reimbursable by the Workers' Compensation Reinsurance Association, in excess of the annual premiums collected by the group less the sum of annual administrative costs, premiums payable to the Workers' Compensation Reinsurance Association and premiums payable to the excess insurer. If aggregate excess insurance is terminated, the service company shall inform the commissioner within two days after receipt of notice of cancellation.

S. Any group self-insurer that voluntarily terminates its self-insurance authority shall give notice to the commissioner not less than 30 days before any such termination is to take place.

Housing Finance Agency

Proposed Temporary Rules Governing the Rental Rehabilitation Loan Program

Request for Public Comment

Notice is hereby given that the Minnesota Housing Finance Agency has proposed the following proposed temporary rules for the purpose of implementing the Rental Rehabilitation Loan Program.

All interested persons are hereby afforded the opportunity to submit their comments on the proposed rules 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 rules 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 rules.

January 19, 1981

James J. Solem
Executive Director

Temporary Rules as Proposed

Chapter Six A: Rental Rehabilitation Loans

12 MCAR § 3.053 Eligible applications.

A. Each applicant must individually or in the aggregate possess at least a one-third interest in a fee, or a contract for deed, or a life estate in the property to be improved. However, occupancy of the property by the applicant shall not be required.

B. Each applicant must be a reasonable credit risk with the ability to pay the loan obligation, as determined by the agency or by the lending institution, if any, servicing the loan on behalf of the Agency.

C. To be eligible the structure must be in need of repairs pursuant to § 116H.129, subd. 3, of Minnesota Statutes (state energy conservation standards). For structures less than 15 years old only improvements necessary to bring the structure into compliance with the state energy conservation standards are eligible.

D. The structure to be improved must not be in violation of applicable zoning ordinances or other applicable land use guides.

E. The property must be used primarily for residential purposes and must consist primarily of comprehensive living units including kitchen and bathroom facilities. Mobile homes and trailers shall not be eligible for Rental Rehabilitation Loans.

F. Rental Rehabilitation Loan proceeds must be used to finance only improvements upon or in connection with existing structures.

G. All improvements must be reasonably capable of being completed (except for causes beyond the applicant's reasonable control, such as fire, strike, and shortage of materials) within nine months of the date of the first disbursement of funds pursuant to the Rental Rehabilitation Loan.

H. At the time of application, conventional financing must not be available from private lenders upon equivalent terms and conditions.

I. The structure to be improved must be occupied at the time of loan closing primarily by persons and families of low and moderate income. Structures containing six rental units or less shall be occupied by persons and families of low and moderate

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

income in at least one of the units in the case of a one or two-unit rental structure, two of the units in the case of a three-unit rental structure, three of the units in the case of four-unit rental structure, four of the units in the case of a five or six-unit rental structures, and at least 75% of the rental units in the case of rental structures containing more than six units.

12 MCAR § 3.054 Eligible improvements.

A. Improvements made with Rental Rehabilitation Loan proceeds shall satisfy the following conditions:

1. the structure must be brought into compliance with the standards established in § 116H.129, subd. 3, of Minnesota Statutes, (state energy conservation standards).

2. for structures less than 15 years old only improvements necessary to bring the structure into compliance with the state energy conservation standards are eligible.

3. for structures more than 15 years old permanent general improvements are eligible if the structure has been or will be brought into compliance with the state energy conservation standards.

B. Each improvement must be a permanent general improvement. Permanent general improvements shall include additions, alterations, renovations, or repairs upon or in connection with existing structures, which materially preserve or improve the basic livability, safety, or utility of the property. However, conversions of structures, or portions thereof, from non-residential use to residential use are not eligible. Permanent general improvements shall not include materials, fixtures, or landscaping of a type or quality exceeding that customarily used in the locality for properties of the same general type as the property to be improved.

C. With the exception that the structure must be brought into compliance with the state energy conservation standards, each improvement must be made in compliance with all applicable health, fire prevention, building, and housing codes and standards; provided however, that no application for a Rental Rehabilitation Loan for property occupied by the owner shall be denied solely because the improvements will not bring such property into full compliance with all such codes and standards.

D. Rental Rehabilitation Loan proceeds shall not be used for the payment, wholly or in part, of assessments for public improvements; provided, however, that such proceeds may be used for improvements which will bring an individual sewage disposal system (including septic systems) located on the property into compliance with local, state, or federal environmental and sanitary standards.

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

ADOPTED RULES

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

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

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

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

Department of Health
Vital Statistics Division

Adopted Amendment of Vital Statistics Rule 7 MCAR § 1.008

Order Amending Rule

Notice of the commissioner's intent to amend the above-entitled rule without a public hearing was published in the *State Register* on November 24, 1980 and was sent by United States mail to all persons on the list maintained by the agency pursuant