

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 693

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 4/20
DATE FOR REVIEW 4/28 29
DATE DUE 5/4

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

Approved _____ Disapproved _____ Returned to Agency _____

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

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

NA Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

✓ Affidavit of Mailing Notice or rulemaking
✓ At least 30 days prior to hearing/adoption

✓ Mailing list Certificate

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

N/A Hearing Examiner's Report

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

N/A Agency's Findings of Fact

NA LCRAR Report or agency Affidavit

NA Certificate of Board's Resolution Adopting Rules

NA Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

NA Petition for Adoption of a Rule

NA 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

OK

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Amendment of a Rule of the Minnesota Energy Agency Governing the Permissible Quantity of Outdoor Display Lighting, 6 MCAR § 2.2120	))))	ORDER ADOPTING RULE AMENDMENT

Notice of the Agency's intent to adopt the above-entitled rule amendment without a public hearing was published in the State Register on January 12, 1981 and was sent by United States mail to all persons on the list maintained by the Agency pursuant to Minnesota Statutes section 15.0412, subdivision 4, on January 6, 1981. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving no comments or written requests for a public hearing within the 30-day comment period, and determining the need for and reasonableness of the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED that amended rule 6 MCAR § 2.2120 is adopted this 27th day of March, 1981 pursuant to authority vested in me by Minnesota Statutes sections 116H.08 (a) and 116H.12, subd. 1b.

MARK MASON
DIRECTOR

Adopted March 27, 1981

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

AMENDED RULE GOVERNING THE PERMISSIBLE QUANTITY OF OUTDOOR DISPLAY LIGHTING, 6 MCAR § 2.2120

§ 2.2120 Permissible quantity.

A. Beginning July 1, 1980, the provisions of 6 MCAR § 2.2102 B. and C. notwithstanding, no person shall operate security lighting that exceeds .05 watts per square foot for the area lighted for security purposes, except that security lighting installed and placed in operation prior to July 1, 1981, may continue to operate at levels not exceeding .10 watts per square foot.

B. (No change)

C. (No change)

APPROVED AS TO FORM AND LEGALITY

4-28 1981

WARREN SPANNAUS, ATTORNEY GENERAL

BY

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
APR 28 1981

Secretary of State

10:29 AM

ADMIN 1000 - Rev. 1 78
SF-C0005-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : MARK MASON
Director, Minnesota Energy Agency

DATE: 4/28/81

: DWIGHT S. WAGENIUS
Special Assistant Attorney General

FROM : JERRY S. ANDERSON
Special Assistant
Attorney General

PHONE: 6-4692

SUBJECT: In the Matter of the Proposed Amendment of a Rule of the Minnesota Energy Agency Governing the Permissible Quantity of Outdoor Display Lighting, 6 MCAR § 2.2120

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

If you have any questions in this regard, please contact me.

JSA/gy

Enc.

cc: Duane Harves
Susan Robertson

STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL
ST. PAUL 55155

WARREN SPANNAUS
ATTORNEY GENERAL

ADDRESS REPLY TO:
720 AMERICAN CENTER BLDG.
150 EAST KELLOGG BOULEVARD
ST. PAUL, MN 55101
TELEPHONE: (612) 296-6030

April 16, 1981

Mr. Jerry Anderson
Special Assistant Attorney General
G-25 Administration Building
50 Sherburne Avenue
Saint Paul, Minnesota 55155

Re: The Amendment of a Rule of the Minnesota Energy Agency Governing the Permissible Quantity of Outdoor Display Lighting, 6 MCAR § 2.2120

Dear Jerry:

Enclosed and submitted for your review pursuant to Minn. Stat. § 15.0412, subd. 4h and 1 MCAR § 1.203 are the documents related to the Energy Agency's amendment of a rule without a public hearing.

Note that there were no comments and no requests for public hearing submitted in response to the Notice of Intent to Amend Rule without a Public Hearing. Note further that there was no Notice of Intent to Solicit Outside Opinion issued by the Agency concerning subject amendment.

Sincerely,

Dwight

DWIGHT S. WAGENIUS
Special Assistant
Attorney General

DSW:cl
Enclosures

ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES
APR 17 1981
RECEIVED

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Amendment of a Rule of the Minnesota Energy Agency Governing The Permissible Quantity of Outdoor Display Lighting, 6 MCAR § 2.2120	))))))	STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Special Assistant Attorney General Dwight S. Wagenius, do hereby declare that I have examined the rule amendment and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

Dated: April 16, 1981.

D S Wagenius

Special Assistant
Attorney General

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Amendment of a Rule of the Minnesota Energy Agency Governing the Permissible Quantity of Outdoor Display Lighting, 6 MCAR § 2.2120	))))))	ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT PUBLIC HEARING

IT IS ORDERED this 29th day of December, 1980, that a Notice of Intent to Amend Rule Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the Minnesota Energy Agency for that purpose and that the Notice be published in the State Register together with the proposed amended rule.

MINNESOTA ENERGY AGENCY

By _____
MARK MASON
Director

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Amendment of a Rule of the Minnesota Energy Agency Governing the Permissible Quantity of Outdoor Display Lighting, 6 MCAR § 2.2120	))))))	NOTICE OF INTENT TO AMEND RULE WITHOUT PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Minnesota Energy Agency ("Agency") intends to adopt an amendment to the above-referenced Agency rule without public hearing because of the noncontroversial nature of the amendment.

The proposed amendment raises the maximum permissible quantity of security lighting from .05 to .10 watts per square foot. This amendment is intended to be effective as soon as the law allows.

Please be advised that you have an opportunity for the 30-day period following publication of this notice and the proposed amendment to submit comments in writing on the proposed amendment and to object to the lack of public hearing on the proposed amendment. Your written comments or request for hearings should be submitted to the Minnesota Energy Agency c/o Richard A. Wallen, 980 American Center Building, 160 East Kellogg Boulevard, Saint Paul, Minnesota 55101. If seven or more persons request hearings on the rule amendment, the Agency will order public hearings in accordance with Minn. Stat. § 15.0412, subds. 4-4f. The Agency may modify the proposed amendment if modification is supported by data and views submitted in written comments and if no substantial change results from the modification.

If no hearing is required, and the Agency decides to adopt the amendment as proposed, or as modified if written comments justify modification, the Agency will submit to the Attorney General for review of form, legality and substantial change the following documents: this notice with the amendment as proposed, the amended rule as adopted, the order adopting the amendment, any written comments received by the Agency, and the Agency's Statement of Need and Reasonableness supporting adoption of the amendment. Any person may request notification of the date the Agency makes the submission to the Attorney General. If you desire to be so notified, you must inform the Agency in writing during the 30-day comment period.

The proposed rule amendment follows:

6 MCAR § 2.2120 Permissible quantity.

A. Beginning July 1, 1980, the provisions of 6 MCAR § 2.2102 B. and C. notwithstanding, no person shall operate security lighting that exceeds .05 watts per square foot for the area lighted for security purposes, except that security lighting installed and placed in operation prior to July 1, 1981, may continue to operate at levels not exceeding .10 watts per square foot.

B. [Not changed.]

C. [Not changed.]

The Agency has prepared a Statement of Need and Reasonableness in support of the proposed amendment which is also available from the Agency by writing to the address indicated above or calling (612) 296-7457.

The Agency's authority to promulgate the proposed amended rule can be found in Minn. Stat. §§ 116H.08(a), 116H.12, Subd. 1b (1978).

Please be advised that Minnesota Statutes Chapter 10A requires each lobbyist to register with the Ethical Practices Board within five days after he/she becomes a lobbyist. Lobbying includes attempting to influence rulemaking by communicating or using others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

DATED: Dec 29, 1980

MARK MASON
Director

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Amendment of a Rule of the Minnesota Energy Agency Governing the Permissible Quantity of Outdoor Display Lighting, 6 MCAR § 2.2120	)	AFFIDAVIT OF MAILING

Tracee Rich being first duly sworn, deposes and says:

That on the 6th day of ~~December~~ January, ~~1980~~ 1981, at the City of Saint Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Intent to Adopt Rules Without Public Hearing by depositing in the State of Minnesota Central Mail System for first class mailing or delivery by Inter-Office mail, or in the United States mail at the City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the Minnesota Energy Agency for the purpose of receiving notice of the proposed adoption of rules by this agency.

Tracee Rich

Subscribed and sworn to before me
this 6th day of January, ~~1980~~ 1981.

Karla V. Sand

KARLA V. SAND
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Commission Expires Jan. 26, 1986.

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Amendment of a Rule of the Minnesota Energy Agency Governing the Permissible Quantity of Outdoor Display Lighting, 6 MCAR § 2.2120	))))))	MAILING LIST CERTIFICATE

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. § 15.0412, subd. 4, that their names be placed on file with and maintained by the Minnesota Energy Agency for the purpose of receiving notice of the proposed adoption of rules by this agency is accurate and complete as of 3:00 P.M., this 29TH day of December, 1980.

Mary Lou Anderson

Pursuant to Minn. Laws of 1980, § 15.0412, subd. 4h, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules;

and

4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of § 15.0412, subds. 4 through 4g, which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 30 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Energy Agency

Proposed Amendment of Rule Governing Permissible Quantity of Outdoor Display Lighting

Notice of Intent to Amend Rule without a Public Hearing

Notice is hereby given that the Minnesota Energy Agency ("agency") intends to adopt an amendment to the above-referenced agency rule without public hearing because of the noncontroversial nature of the amendment.

The proposed amendment raises the maximum permissible quantity of security lighting from .05 to .10 watts per square foot. This amendment is intended to be effective as soon as the law allows.

Please be advised that you have an opportunity for the 30-day period following publication of this notice and the proposed amendment to submit comments in writing on the proposed amendment and to object to the lack of public hearing on the proposed amendment. Your written comments or request for hearings should be submitted to:

Minnesota Energy Agency
c/o Richard A. Wallen
980 American Center Building
160 East Kellogg Boulevard
Saint Paul, Minnesota 55101.

If seven or more persons request hearings on the rule amendment, the agency will order public hearings in accordance with Minn. Stat. § 15.0412, subds. 4-4f. The agency may modify the proposed amendment if modification is supported by data and views submitted in written comments and if no substantial change results from the modification.

If no hearing is required, and the agency decides to adopt the amendment as proposed, or as modified if written comments justify modification, the Agency will submit to the Attorney General for review of form, legality and substantial change the following documents: this notice with the amendment as proposed, the amended rule as adopted, the order adopting the amendment, any written comments received by the agency, and the agency's Statement of Need and Reasonableness supporting adoption of the amendment. Any person may request notification of the date the Agency makes the submission to the Attorney General. If you desire to be so notified, you must inform the agency in writing during the 30-day comment period.

The proposed rule amendment follows:

6 MCAR § 2.2120 Permissible quantity.

A. Beginning July 1, 1980, the provisions of 6 MCAR § 2.2102 B. and C. notwithstanding, no person shall operate security

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.

lighting that exceeds .05 watts per square foot for the area lighted for security purposes, except that security lighting installed and placed in operation prior to July 1, 1981, may continue to operate at levels not exceeding .10 watts per square foot.

B. [Not changed.]

C. [Not changed.]

The agency has prepared a Statement of Need and Reasonableness in support of the proposed amendment which is also available from the agency by writing to the address indicated above or calling (612) 296-7457.

The agency's authority to promulgate the proposed amended rule can be found in Minn. Stat. §§ 116H.08(a), 116H.12, Subd. 1b (1978).

Please be advised that Minnesota Statutes Chapter 10A requires each lobbyist to register with the Ethical Practices Board within five days after he/she becomes a lobbyist. Lobbying includes attempting to influence rulemaking by communicating or using others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

December 29, 1980.

Mark Mason
Director

Amendment as Proposed

6 MCAR § 2.2120 Permissible quantity.

A. Beginning July 1, 1980, the provisions of 6 MCAR § 2.2102 B. and C. notwithstanding, no person shall operate security lighting that exceeds .05 watts per square foot for the area lighted for security purposes, except that security lighting installed and placed in operation prior to July 1, 1981, may continue to operate at levels not exceeding .10 watts per square foot.

B. No person shall operate any other outdoor display lighting that exceeds the recommended minimum standards set forth in the "IES Lighting Handbook" (5th edition), published by the Illuminating Engineering Society, by more than 20 percent.

C. Rule 6 MCAR § 2.2120 A. shall not apply to an establishment whose total security lighting system has a demand of 1500 watts or less.

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 Agriculture
Board of Animal Health

Adopted Rules 3 MCAR § 2.001 Importation of Cattle and Bison, 3 MCAR § 2.011 Eradication of Bovine and Bison Brucellosis, 3 MCAR § 2.012 Control of Anaplasmosis

The rules proposed and published at *State Register*, Volume 5 pages 70 through 87 are adopted with the following amendments:

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Amendment of a Rule of the Minnesota Energy Agency Governing the Permissible Quantity of Outdoor Display Lighting, 6 MCAR § 2.2120	))))))	STATEMENT OF NEED AND REASONABLENESS

The Minnesota Energy Agency was charged by the Legislature with developing rules for limiting outdoor display lighting in Minn. Stat. § 116H.12, subdivision 1a. To implement the limitation on outdoor display lighting, the Agency promulgated rules setting standards covering permissible hours of operation, quantity and efficiency of outdoor display lighting and defining outdoor display lighting. 6 MCAR §§ 2.2101-2.2120.

Rule 2120 establishes the permissible quantity of lighting. Paragraph A specifies the maximum level of security lighting averaged over the area to be illuminated. The Agency determined that the specified level of .05 watts per square foot is adequate for security purposes. Paragraph C exempts most small and many medium sized businesses from complying with Paragraph A. Paragraph C causes significant economic hardships to be avoided by the application of Paragraph A.

It should be noted that outdoor display lighting may serve a dual purpose. For many small buildings, some of the security lighting also has advertising benefits. By allowing for exemptions and flexibility in the rules, the Agency intended to avoid adverse economic effects on small businesses.

One type of business which is affected by Rule 2120 is the car sales lot. The Minnesota Automobile Dealers Association recently conducted a survey of its members to determine current levels of security lighting in watts per square foot. Most security systems were found to fall on or below .10 watts per square foot. The Agency is convinced that forcing those operating systems at levels between .05 and .10 watts per square foot to modify those systems to operate at or below .05 watts per square foot would subject them to unnecessary expense without corresponding benefits. The cost justification of decreasing the security lighting levels to .05 is unclear.

The Agency believes adequate security lighting can be provided at the .05 watts per square foot level and continues to believe that new systems should be designed to operate at or below that level. The amendment applies only to existing systems.

Dated: 12/29/80

Respectfully submitted,

Richard A. Wallen

RICHARD A. WALLEN
Assistant Director
Data and Analysis Division
Minnesota Energy Agency