

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 805

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 4-19-82
DATE FOR REVIEW
DATE DUE 4-26-82

Adopted w/a hearing
Adopted w/o hearing
Temporary rule ✓

Approved 4-26-82 Disapproved Returned to Agency 4-27-82

Resubmitted Due
Approved Disapproved Returned to Agency

Date filed w/Secretary of State 4-27-82 Revisor approved / disapproved

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✓ Rule as Adopted

✓ Rule as Proposed See SR.

✓ Order Adopting 4.13.82 Date combined with F of F

N/A Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
N/A date of Hearing

N/A 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
3.15.82 At least ~~30~~/20 days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

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

✓ Agency's Findings of Fact combined with Order Adopting

N/A LCRAR Report or agency Affidavit

N/A 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

N/A Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : KENT EKLUND DATE: 4/26/82
Commissioner of Energy, Planning & Develop.

ATTN: DWIGHT WAGENIUS, Spec. Ass't. Atty. Gen.

FROM : LARRY D. STARNS PHONE: 297-3493
Special Assistant
Attorney General

SUBJECT: In the Matter of the Proposed Adoption of Temporary Rules of the Department of Energy, Planning and Development Amending the Minnesota Energy Conservation Service Program

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;

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.

LDS:drw
Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

ADMIN 1000 (Rev. 1/78)

DEPARTMENT ATTY GENL

STATE OF MINNESOTA

Office Memorandum

TO : A.G. Rules Review Squad

DATE: 4/16/82

FROM : Dwight WAGENIUS, SAAG

PHONE: 6-8278

SUBJECT: DEPD Proposed/Adopted MECS Amended Rule

Enclosed for your review e.o.w. 1 MCAR § 1.304 are the documents required to be submitted by that rule

AG copy

Department of Energy, Planning and Development
Energy Division

Adopted Temporary Rules Amending the Minnesota Energy Conservation Service Program

Temporary Rules as Adopted

6 MCAR S 2.2301 [Temporary] Definitions.

A.-V. [Unchanged.]

W. Temporary program. "Temporary program" means a plan which exempts one or more utilities from one or more provisions of the Minnesota Energy Conservation Program, in whole or in part, for a specified period, determined by the agency, which may not exceed four years.

6 MCAR S 2.2314 [Temporary] Temporary programs.

A. Allowable exemptions. The agency may exempt a utility from one or more of the following provisions:

1. The requirement for taking actual measurements of the building shell as described in 6 MCAR S 2.2303 C.2.a.;

2. The requirement in 6 MCAR S 2.2303 C.2. to provide cost and savings estimates for those renewable resource measures;

3. The requirement to provide cost and savings estimates for caulking and weatherstripping as described in 6 MCAR S 2.2303 C.2.;

4. The requirement to calculate the energy index for the residence as described in 6 MCAR S 2.2303 C.3.;

5. The requirement to measure and provide costs and savings estimates for duct and pipe insulation as described in 6 MCAR S 2.2303 C.2.;

6. The requirement to provide the results of the audit on site to the customer as described in 6 MCAR S 2.2303 E.1.; and

7. The requirement to provide estimates of energy savings and costs of installation by a contractor or by the customer with a 20 percent maximum range, as described in 6 MCAR S 2.2303 E.1.a.-c.

B. Eligible applicants. Proposed temporary programs may be submitted to the agency by any covered utility, nonregulated utility, or heating oil supplier.

C. Time for submission of program. A proposed temporary program may be submitted to the agency any time during the life of the program.

Does this mean even at end of 4yr life of program?

D. Approval. The agency shall approve or disapprove a proposed temporary program within 90 days of receiving the temporary program~~, or later if the person who submitted the proposed temporary program is notified before the end of the original 90-day period~~. Failure by the agency to approve, disapprove, or notify an applicant within the 90 days constitutes disapproval.

F of F 1

E. Criteria for approval. The agency shall approve a proposed temporary program only if the organization submitting the proposed temporary program demonstrates to the agency's satisfaction that the temporary program:

1. Contains adequate procedures to assure that each covered utility under the program will charge fair and reasonable prices and rates of interest to its eligible customers in connection with the purchase and installation of residential energy conservation and renewable resource measures;

2. Contains adequate procedures for preventing unfair, deceptive, or anti-competitive acts or practices affecting commerce which relate to the implementation of such programs;

3. Is likely to result in as many conservation practices or the installation of program measures in at least as many residential buildings as would have been instituted or installed had such utility not been exempt from the requirements for which the exemption is sought; and

4. Contains the following:

a. The substitution of other data that provide measurements of eligible residences so that cost and savings estimates can be calculated;

b. The use of a detailed inspection which includes a written report showing specific areas of the residence needing

caulking, weatherstripping, and the blocking of attic bypasses;

c. The distribution of fact sheets that provide information on renewable resource measures, and include estimated costs and savings for a typical household;

d. A program to provide financing to eligible customers for the installation of conservation or renewable resource measures, or both;

e. The distribution of fact sheets that include specific information regarding the insulation of ducts and pipes for that residence;

f. The presentation of energy savings and the costs of installation of program measures by a contractor or by the customer as estimates; and

g. The calculation of the energy index, as described in 6 MCAR S 2.2303 C.3. However, if the non-space heating consumption data are not available, the energy index shall be based on the space heating consumption data only.

APPROVED AS TO LEGALITY

April 26, 1982

WARREN SPANNAUS, ATTORNEY GENERAL

BY Jerry D. Adams

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
APR 27 1982

Secretary of State

3:00 p.m.

STATE OF MINNESOTA

DEPT. OF ENERGY, PLANNING AND DEVELOPMENT
ENERGY DIVISION

In the Matter of the Proposed Adoption of Temporary Rules of the Department of Energy, Planning and Development Amending the Minnesota Energy Conservation Service Program

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING TEMPORARY RULES

Notice of intent to adopt temporary rules without a Public Hearing regarding the above-entitled matter was published in the State Register on March 15, 1982 (6 S.R. 1575-76). The Notice afforded interested parties 20 days in which to submit comments on the proposed rules.

The Energy Division received one set of comments during that period.

After affording interested parties an opportunity to submit comments on the proposed rules and having received one set of comments, the Commissioner makes the following:

FINDINGS

1. That the Minnesota Gas Company recommendation to modify proposed temporary rule 6 MCAR § 2.2814 D. to provide for automatic approval of a proposed Temporary Program until disapproval, and automatic approval unless the Division responds within 90 days is accepted in part and rejected in part.

The Energy Division is required by state law (Minn. Stat. § 116H.17) to develop and implement the federally mandated Residential Conservation Service Program. In order to ensure that this comprehensive and complex program is legally and properly executed in accordance with the National Energy Conservation Policy Act, it is incumbent on the Energy Division to review and approve any changes to the program before they are enacted. Therefore, the suggestions that inaction is equivalent to approval and that a proposed temporary program be automatically temporarily approved upon filing are rejected. It is further noted that Minnegasco's rationale does not support the latter suggestion. The Division's proposal clearly accepts a responsibility to act while Minnegasco's abdicates that responsibility to the utility.

However, the suggestion that the Division impose on itself a time certain within which to act is well taken. The Division implements that suggestion by striking out the phrase "...or later if the person who submitted the proposed temporary program is notified before the end of the original 90-day period." (6 MCAR § 2.2314 D) deleted p.2

2. That the Minnesota Gas Company recommendation to modify proposed temporary rule 6 MCAR § 2.2314 E.4.c.to provide fact sheets for solar domestic hot water systems only is rejected.

In the development of this proposed Temporary Rule, Division staff had several discussions with persons representing Minnegasco.

Those persons proposed eliminating renewable resource measures completely as not being "cost-effective" for Minneapolis residents. However, in those discussions, a compromise was agreed to whereby measurements, savings, costs, and paybacks, would not be required, but that a "fact sheet" would be provided.

Secondly, there is considerable debate over what "practical," the test envisioned by Minnegasco, means. While it is clear that some conservation measures may pay back more quickly than many renewable resource measures, the information is still useful to those residents who have already taken most of the conservation actions.

Third, the payback results used in this audit are based on very conservative estimates in order to not unduly raise consumer expectations of system performance. In most cases, rising fuel prices and tax credits are not considered so that paybacks for renewable measures appear quite long by consumption, when in fact, they could be presented in more attractive terms.

Because no clear evidence has been presented to date that indicates that most renewable measures are "impractical," no change to the rule is proposed at this time. However, the Division is in the midst of a general revision of the rules regulating the program. Any comments received by utilities or others will certainly be considered.

3. That the Minnesota Gas Company recommendation to modify proposed temporary rule 6 MCAR § 2.2314 E.4.g. concerning the calculation of the Energy Index, a measure of a residence's energy efficiency, is rejected.

The Index as incorporated for the original rules permitted residents to have a single number which indicated relative energy efficiency. That number could be used to monitor the performance of one's own residence and to compare with others, especially when purchasing a new home. For reasons of comparison, then, a uniform calculation method is critical.

When the program was developed in 1980-81, several discussions on the Index were held, and numerous proposals for the proper calculation procedure were considered. From those discussions, one methodology was selected. In order to maintain consistency and comparability, its use must be continued. The Agricultural Extension Service of the University of Minnesota also uses this methodology and has trained extension agents in its use. Any index requires a conversion to British Thermal Units (BTUs) so comparisons of houses with different fuels can be made. Leaving fuel consumption data in its volumetric unit rather than converting to common energy units is contrary to the basic intent of an index.

CONCLUSIONS:

1. The Department gave proper notice of its intent to adopt the proposed temporary rules.

2. The Department has fulfilled the procedural requirements of Minn. Stat. §§ 15.0412 and all other procedural requirements of the law or rule.

3. The Department has statutory authority to adopt the proposed temporary rules and has fulfilled all other substantive requirements of law or rule within the meaning of the Minnesota Administrative Procedure Act.

4. One of the proposed changes suggested by the Minnesota Gas Company has been adequately supported in the submission, and found acceptable by the Department.

5. The Department has determined the need for and reasonableness of these adopted temporary rules.

ORDER:

Notice of the Commissioner's intent to adopt the above-entitled temporary rules was published in the State Register on February 15, 1982. After affording interested and affected parties an opportunity to submit comments for 20 days after Notice, and receiving one set of comments, within the 20 day period,

NOW, THEREFORE IT IS ORDERED that these temporary rules identified as Temporary Rules of the Department of Energy, Planning and Development amending the Minnesota Energy Cosnervation Service are adopted this 13th day of April, 1982, pursuant to authority vested in me by Minn. Stat. 116H.129 and 116H.08(a).

Department of Energy, Planning and Development

Kent Eklund

Kent Eklund
Commissioner

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed
Adoption of Temporary Rules of
The State Energy Agency
Amending the Minnesota Energy
Conservation Service

ORDER FOR PUBLICATION
OF TEMPORARY RULES

IT IS ORDERED this 26th day of February, 1982 that the proposed temporary rules in the above-entitled matter be published in the State Register.

STATE OF MINNESOTA

Michael J. Murphy
Acting Director

Rule as Proposed

Repealer. Rule 2 MCAR § 1.6109 J. is repealed.

Relettering. Reletter 2 MCAR § 1.6109 K.-M. as 2 MCAR § 1.6109 J.-L.

Energy Agency
Conservation Division

Proposed Temporary Rules Amending the Minnesota Energy Conservation Service Program

Request for Public Comment

Notice is hereby given that pursuant to Minn. Stat. § 116H.17 as well as 116H.08(a) and 116H.07(i), the Energy Agency proposes to adopt a temporary program amending the Minnesota Energy Conservation Service Program.

Persons interested in these rules have 20 days from this publication to submit data and views on the proposed rules in writing. Comments should be submitted to:

Greg Hubinger
Minnesota Energy Agency
980 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
(612) 297-2117

The proposed temporary rules amendments may be modified if the modifications are supported by the data and views submitted to the agency.

These proposed temporary rules amendments, with modifications, if any, shall be submitted to the Attorney General for final approval as to form and legality. The temporary rules amendments shall take effect immediately upon the Attorney General's approval.

These temporary rules amendments shall be effective for 180 days or until they are replaced by permanent rules, whichever occurs first.

Michael J. Murphy
Acting Director

Temporary Rules as Proposed

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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.

4. The requirement to calculate the energy index for the residence as described in 6 MCAR § 2.2303 C.3.;

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STATEMENT OF COMPLIANCE WITH

RULEMAKING PROCEDURES

I, Special Assistant Attorney General Dwight Wagenius, do hereby declare that I have examined the proposed rules 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.

D H Wagenius

Special Assistant
Attorney General

Dated: 4/16/82