

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1105

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 10-30-84
DATE FOR REVIEW _____
DATE DUE 11-13-84

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

Approved 11-13-84 mjc Disapproved _____ Returned to Agency _____

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

Date filed w/Secretary of State 11-13-84 Revisor approved 10/31/84 disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed see SR

✓ Order Adopting 10.29.84 Date combined with FF

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 does not contain any language re duration of effectiveness of Rules - contrary to §14.35

✓ Affidavit of Mailing Notice or rulemaking
9.22.84 At least ~~30~~ 25 days prior to ~~hearing~~/adoption

? Mailing list Certificate 5 weeks prior to mailing date

✓ Publication in State Register
8.27.84 At least ~~30/20~~ 25 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 w/ Order Adopting

N/A 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

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

✓ Notice of Submission to the Attorney General

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL - Bremer Tower **Office Memorandum**

TO: JUDITH WEHRWEIN
Attorney General's Office

DATE: 10-30-84

FROM: CHRISTIE B. ELLER CBE
Special Assistant Attorney General

PHONE: 6-9200

SUBJECT: Emergency Rules Relating to Minimum Mandatory Energy Efficiency Standards for Residential Rental Units; Definition of Good Cause; Establishment of Fine Schedule.

Enclosed please find documents relating to the above-entitled proposed emergency rules of the Department of Energy and Economic Development.

The Department received two comments, copies of which are enclosed. The rules were not adopted in response to a petition and no requests have been made to be notified of submission of the rules to the Attorney General.

CBE:bl

Enclosures

RECEIVED
OCT 30 1984
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO Mark B. Dayton
Commissioner, Department of Energy & Economic Development

DATE: November 13, 1984

ATTN Christie Eller
Special Assistant Attorney General

PHONE:

FROM: Martha J. Casserly MJC
Special Assistant Attorney General

296-4692

RE: In the Matter of the Proposed Adoption of Emergency Rules Relating to Minimum Mandatory Energy Efficiency Standards for Residential Rental Units: Definition of Good Cause; Establishment of Fine Schedule

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.

MJC:slz
Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

AG copy

Department of Energy and Economic Development
Energy Division

Adopted Emergency Rules Relating to Minimum Mandatory Energy Efficiency Standards for Residential Rental Units: Definition of Good Cause; Establishment of Fine Schedule

Emergency Rules as Adopted

4170.4105 [Emergency] GOOD CAUSE.

As required by Laws of Minnesota 1984, chapter 595, section 4, "good cause" means any one of the following:

A. That the installation of a program measure to comply with a standard in part 4170.4100 is economically infeasible as defined in part 4170.0100, subpart 8.

B. That the installation of a program measure to comply with a standard in part 4170.4100 is technologically infeasible. Technological infeasibility means that the installation of the measure would threaten the structural integrity of the building.

C. That the installation of a program measure to comply with a standard in part 4170.4100 would necessarily violate the building's esthetic or historic value.

4170.4110 [Emergency] FINE SCHEDULE.

If an administrative law judge finds that an owner or an owner's agent has not demonstrated good cause for failure to comply with the minimum mandatory energy efficiency standards, the judge shall assess the following penalties:

A. For a one-to-four unit building, an immediate fine of $100 plus $200 each month beginning 120 days after the finding of failure to show good cause, until the owner demonstrates to the administrative law judge that she or he has complied with the standards. If a person certified under chapter 4170 to conduct evaluations certifies that an owner complies with the applicable standards, the judge shall consider the certification as proof of compliance by the owner.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:
MVH

B. For a building with five or more units, an immediate fine of the greater of $10 per unit or $100, up to a maximum of $500. The maximum fine of $500 is also the maximum fine for a residential complex situated on one or more contiguous parcels of land under common ownership. In addition, a fine each month of two times the amount assessed beginning 180 days after the finding of failure to show good cause, until the owner demonstrates to the administrative law judge that she or he has complied with the standards. If a person certified under chapter 4170 to conduct evaluations certifies that an owner complies with the applicable standards, the judge shall consider the certification as proof of compliance by the owner.

FF 5

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
NOV 13 1984
Joan Anderson Growe
Secretary of State
3:10 PM

APPROVED AS TO FORM AND LEGALITY
November 13 1984
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY MJ Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

State of Minnesota
Department of Energy and Economic Development

In the Matter of the Proposed Adoption of Emergency Rules Relating to Minimum Mandatory Energy Efficiency Standards for Residential Rental Units: Definition of Good Cause; Establishment of Fine Schedule

Findings of Fact, Conclusions, and Order Adopting Emergency Rules

Notice of Intent to adopt Emergency rules regarding the above-entitled matter was published in the State Register on August 27, 1984 at 9 SR 411-412, and was mailed to all persons who had registered their names with the Department. The Notice afforded interested parties 25 days in which to submit comments to the Department on the proposed rules.

The Department received two comments during that period.

After affording interested parties an opportunity to submit comments in the proposed emergency rules, and having received the sets of comments, the Commissioner makes the following:

Findings

1. The Department received a letter with comments by Mr. Walter Lieberman.

2. The comments by Mr. Lieberman related to various energy conservation measures that should and should not be required for apartment buildings.

3. That the comments provided by Mr. Walter Lieberman do not pertain to the proposed emergency rule, but rather to an earlier rulemaking which was completed on July 30, 1984 (at 9 SR 252-260).

4. Mr. John G. Horner of the Minnesota Multi Housing Association proposed to amend the definition of "good cause" to include installations that would be "unreasonable or impossible under the circumstances at hand."

   The Department of Energy and Economic Development is required under 1984 Session Laws, Chapter 595 Section 3, to define "good cause" for use by administrative law judges in a contested case proceeding. The proposed emergency rule language establishes clear guidelines for use in those proceedings. However, the language proposed by Mr. Horner is extremely vague, to the point that an Administrative Law Judge receives little, if any, guidance on how to evaluate an owner's claim of good cause. Adoption of such discretionary language would not be consistent with the statutory directive to clearly define the term "good cause."

   The examples provided by Mr. Horner to defend his proposed language are not sufficient to warrant amending the proposed rule. It is apparent in each of those examples that Mr. Horner believes that the Department will bring each and every allegation of non-compliance to a contested case proceeding. With the very limited resources available to the Department, this belief is unreasonable.

A condominium owner actively seeking a variance from the Association to permit the necessary work to be done is obviously not going to be pursued by the Department as long as there is evidence of a good faith effort by the owner. The Department is committed to seeking compliance with the state standards, and is not interested in simply seeking hearings and assessing penalties. The Department's resources will be concentrated on those buildings where the owner is unwilling to take the necessary steps towards compliance.

The examples of considering buildings scheduled for destruction, or only temporarily on the rental market, are similarly inappropriate. A building only in the rental market for a short time will not be worth the compliance effort by the Department. In any case, the time frame for the compliance process is so long (at least 90 days before the hearing) that the unit would probably be off the market before the contested case proceeding would even begin. For buildings about to be destroyed there is even less value in using the state's resources, as the building would probably be demolished before the process was completed. Obviously, the Commissioner will use good judgment and discretion in determining whether to initiate an action, and will not do so if imminent destruction or removal from the rental market is apparent.

Finally, Mr. Horner raises specific building types such as farm buildings and resorts for consideration as good cause for exemption. Minnesota Statutes 116J.27 subd. 1 defines covered rental housing units to be only those which are normally occupied throughout the winter (November to April) and specifically exempts hotels and motels. Resorts would clearly fall within this exemption. Farm buildings which are rented are covered by these standards, so that the Commissioner does not have the authority to exempt them through a rulemaking.

5. Mr. Horner recommends amending the rule to assess the maximum fine of $500 against a "complex situated on one or more contiguous parcels of land under common ownership."

   The suggestion by Mr. Horner clarifies an ambiguity in the proposed emergency rule regarding the applicability of the maximum fine against a building, or a number of buildings in a complex. It is the Department's contention that the initial maximum penalty of $500 and $1000 per month after 6 months will motivate the owners of even the largest complex to make the required improvements to comply with the standards. Setting the maximum fine against a complex eliminates an inequity that would otherwise exist between a large buildig and a series of smaller ones, all under common ownership.

Conclusions

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

2. The Department has fulfilled the procedural requirements of Chapter 14, and all other procedural requirements of law or rule.

3. The Department has statutory authority to adopt the proposed emergency rule, and has fulfilled all other substantive requirements of the law or rule within the meaning o the Administrative Procedures Act.

4. The proposed amendment by Mr. Horner to redefine "good cause" is inappropriate and unnecessary since the Commissioner will be reasonable in bringing cases before Administrative Law Judges. The proposed amendment is therefore rejected.

5. The proposed amendment by Mr. Horner to clarify buildings complexes is reasonable and adequately support in his submission. The Department therefore adopts the amendment and modifies the proposed rule as follows:

4170.4110

B. For a building with five or more units, an immediate fine of the greater of $10 per unit or $100, up to a maximum of $500. The maximum fine of $500 is also the maximum fine for a residential complex situated on one or more contiguous parcels of land under common ownership. In addition, a fine each month of two times the amount assessed beginning 180 days after the finding of failure to show good cause, until the owner demonstrates to the administrative law judge that she or he has complied with the standards. If a person certified under chapter 4170 to conduct evaluations certifies that an owner complies with the applicable standards, the judge shall consider the certification as proof of compliance by the owner.

6. The Department has determined the need for and reasonableness of these adopted emergency rules.

Order

Notice of the Commissioner's intent to adopt the above-entitled emergency rule was published on August 27, 1984. After affording interested parties an opportunity to submit comments for 25 days after Notice, and receiving two sets of comments within the 25 day period.

NOW THEREFORE IT IS ORDERED that these emergency rules identified as Emergency Rules of the Department of Energy and Economic Development Relating to Minimum Mandatory Energy Efficiency Standards For Residential Rental Units: Definition of Good Cause; Establishment of Fine Schedule as modified herein are adopted this 29th day of October, 1984, pursuant to Authority vested in me by Minnesota Statutes 116J.10 (a), (1983 Supp), 116J.08 (a) and Session Laws 1984, Chapter 595, Section 4.

Mark B. Dayton
Commissioner
Department of Energy and Economic Development

State of Minnesota
Department of Energy and Economic Development

In the Matter of the Proposed Adoption of an Emergency Rule of the Department of Energy and Economic Development Governing Minimum Mandatory Energy Efficiency for Residential Rental Units: Good Cause Defined, Fines

Order for Publication of Emergency Rules

It is ordered this 13th day of August, 1984, that the proposed emergency rules be published in the State Register.

State of Minnesota

Connie J. Lewis

Commissioner

/

Senior Administrative Officer

Energy and Economic Development
Department

Connie Lewis
Name of Employee

July 25, 1984
Date

I, Mark B. Dayton, the duly appointed Commissioner of Energy and Economic Development, pursuant to Minn. Stat. 15.06, subd. 6 (1982), effective July 20, 1984, do hereby delegate to Connie Lewis, Senior Administrative Officer of the Department of Energy and Economic Development:

A. The authority and responsibility for exercising all the specified statutory powers and duties of the Commissioner of Energy and Economic Development except those powers and duties specified herein:

1. The approval of projects on the basis of preliminary information as is required by the Commissioner pursuant to Minn. Stat. § 474.01 (1982), as amended by Minn. Laws 1983, ch. 289, § 115, subd. 1(d) and Minn. Laws 1984, ch. 583, § 34;

2. The implementation and reporting requirements of the Municipal Industrial Development Act, pursuant to Minn. Stat. ch. 474 (1982 and 1983 Supp.) and as amended by Minn. Laws 1984, ch. 582, 583 and 584; and

3. The implementation of the allocation of federal authority to issue certain state and local obligations pursuant to Minn. Laws 1984, ch. 582, Minn. Laws, ch. 584, § 12; and Executive Order 84-9.

B. The authority and responsibility for signing all necessary documents including but not limited to:

All documents pertaining to contracts for grant agreements and non-state employee services and all documents pertaining to accounting and personnel matters that

pertain to the Department of Energy and Economic Development.

This authorization rescinds all prior delegations of authority heretofore filed.

Connie J Lewis
Authorized Signature of designee

Appointing Authority

cc: Secretary of State
Commissioner, Department of Administration
State Auditor
Commissioner, Department of Finance
State Treasurer
Attorney General
Commissioner, Department of Employee Relations
Executive Director, State Retirement System

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

CERTIFICATE

In the Matter of the Proposed Adoption
of Temporary Rules of the Department
of Energy and Economic Development Governing
the Rental Energy Efficiency Standards

I hereby certify that the list of persons, associations and other interested groups who have requested, pursuant to Minnesota Statute 14.14 subd.1, that their names be placed on file with and maintained by the State Department of Energy and Economic Development for both the Department and the Energy Economic Development Authority for the purpose of receiving notice of the proposed adoption of rules by both the Energy and Economic Development Authority and the Department of Energy and Economic Development is accurate and complete as of Tuesday, this 14 day of August, 1984.

Mary Anderson

Energy Division
Department of Energy and Economic Development

Proposed Emergency Rules Relating to Minimum Mandatory Energy Efficiency Standards For Residential Rental Units: Good Cause Defined, Fines.

Notice of Intent to Adopt Emergency Rule

Notice is hereby given that pursuant to Session Laws 1984, Chapter 595, Section 4, the Department of Energy and Economic Development proposes to adopt an emergency rule defining good cause and establishing a schedule of fines. A copy of the proposed emergency rule is attached to this Notice.

Persons interested in this rule have 25 days from this publication to submit data and views on the proposed emergency rule in writing. Comments shall be submitted to:

Greg Hubinger
Manager of Residential Programs
Department of Energy and Economic Development
Energy Division
900 American Center
150 East Kellogg Boulevard
St. Paul, Minnesota 55101

The proposed emergency rule may be modified if the modifications are supported by the data and views submitted to the Department.

This proposed emergency rule with modifications, if any, shall be submitted to the Attorney General for final approval as to form and legality. Persons who are interested may request in writing to be notified when the emergency rule is submitted to the Attorney General, and if the rule has been modified, a copy will be available upon request from the Department.

The Emergency Rule will become effective five working days after approval by the Attorney General.

State of Minnesota

Connie J. Lewis

Commissioner

In the Matter of the Proposed
Adoption of Emergency Rules of
the State Department of Energy
and Economic Development Governing
Minimum Mandatory Energy Efficiency
Standards for Residential Rental
Units

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

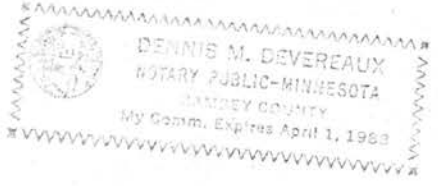
Melanie Neitzel, being first duly sworn deposes and says:

That on the 22nd day of September, 1984, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Intent to Adopt Emergency Rules by depositing in the State of Minnesota Central Mail System for first class mailing (or) in the United States mail at said 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 State Department of Energy and Economic Development for the purpose of receiving notice of the proposed adoption of rules by the Department.

Melanie Neitzel

Subscribed and sworn to
before me this 12th day
of OCTOBER, 19 84.

Dennis M. Devereaux



Pursuant to Minnesota Laws 1983, Ch. 188, codified as Minnesota Statutes section 14.115, subd. 1, the impact on small business has been considered in the promulgation of the rules. Anyone wishing to present evidence or argument as to the rules' effect on small business may do so. The Department's position regarding the impact of the rules on small business is set forth in the Statement of Need and Reasonableness.

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the Department of Commerce may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing records have been submitted (or resubmitted) to the Attorney General by the Department of Commerce. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Hearing Examiner (in the case of the Hearing Examiner's Report), or to the Department of Commerce (in the case of the agency's submission or resubmission to the Attorney General).

One free copy of this notice and the proposed rules may be obtained by contacting Rose Ortiz, Department of Commerce, 500 Metro Square Building, St. Paul, Minnesota 55101. Additional copies will be available at the door on the date of the hearing.

Michael A. Hatch
Commissioner of Commerce

Department of Energy and Economic Development Energy Division

Proposed Emergency Rules Relating to Minimum Mandatory Energy Efficiency Standards for Residential Rental Units: Definition of Good Cause; Establishment of Fine Schedule

Notice of Intent to Adopt Emergency Rule

Notice is hereby given that pursuant to Session Laws 1984, Chapter 595, Section 4, the Department of Energy and Economic Development proposes to adopt an emergency rule defining good cause and establishing a schedule of fines. A copy of the proposed emergency rule is attached to this notice.

Persons interested in this rule have 25 days from this publication to submit data and views on the proposed emergency rule in writing. Comments shall be submitted to:

Greg Hubinger
Manager of Residential Programs
Department of Energy and Economic Development
Energy Division
900 American Center
150 East Kellogg Boulevard
St. Paul, Minnesota 55101

The proposed emergency rule may be modified if the modifications are supported by the data and views submitted to the Department.

This proposed emergency rule with modifications, if any, shall be submitted to the Attorney General for final approval as to form and legality. Persons who are interested may request in writing to be notified when the emergency rule is submitted to the Attorney General, and if the rule has been modified, a copy will be available upon request from the Department.

The emergency rule will become effective five working days after approval by the Attorney General.

Connie J. Lewis
Sr. Administrative Officer

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.

Emergency Rules as Proposed (all new material)

4170.4105 [Emergency] GOOD CAUSE.

As required by Laws of Minnesota 1984, chapter 595, section 4, "good cause" means any one of the following:

A. That the installation of a program measure to comply with a standard in part 4170.4100 is economically infeasible as defined in part 4170.0100, subpart 8.

B. That the installation of a program measure to comply with a standard in part 4170.4100 is technologically infeasible. Technological infeasibility means that the installation of the measure would threaten the structural integrity of the building.

C. That the installation of a program measure to comply with a standard in part 4170.4100 would necessarily violate the building's esthetic or historic value.

4170.4110 [Emergency] FINE SCHEDULE.

If an administrative law judge finds that an owner or an owner's agent has not demonstrated good cause for failure to comply with the minimum mandatory energy efficiency standards, the judge shall assess the following penalties:

A. For a one-to-four unit building, an immediate fine of $100 plus $200 each month beginning 120 days after the finding of failure to show good cause, until the owner demonstrates to the administrative law judge that she or he has complied with the standards. If a person certified under chapter 4170 to conduct evaluations certifies that an owner complies with the applicable standards, the judge shall consider the certification as proof of compliance by the owner.

B. For a building with five or more units, an immediate fine of the greater of $10 per unit or $100, up to a maximum of $500. In addition, a fine each month of two times the amount assessed beginning 180 days after the finding of failure to show good cause, until the owner demonstrates to the administrative law judge that she or he has complied with the standards. If a person certified under chapter 4170 to conduct evaluations certifies that an owner complies with the applicable standards, the judge shall consider the certification as proof of compliance by the owner.

Department of Human Services

Proposed Emergency Rules Governing Exemption from Work and Registration Requirements

Notice of Intent to Adopt Emergency Rules

The State Department of Human Services proposes to adopt the above-entitled emergency rules to implement Laws of Minnesota 1984, chapter 654, article 5, section 34.

Persons interested in these rules have until 4:30 p.m., September 21, 1984 to submit written comments. The proposed emergency rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language. Written comments should be sent to:

Debra Flanagan
Department of Human Services
Rulemaking Unit
Fourth Floor, Space Center Building
444 Lafayette Road
St. Paul, MN 55101
Telephone: 612/297-1469

Upon adoption of these emergency rules, this notice, all written comments received, and the adopted emergency rules will be delivered to the Attorney General and to the Revisor of Statutes for review as to form and legality.

Notice of the date of submission of the proposed emergency rule to the attorney general will be mailed to any person requesting to receive this notice. The Attorney General shall approve or disapprove the proposed emergency rule and any modifications on the tenth working day following the date of receipt of the proposed emergency rule from the agency.

The adopted emergency rule will not become effective without the Attorney General's approval and the Revisor of Statutes' certification of the rules' form. Emergency rules take effect five working days after approval by the Attorney General.

As required by the Administrative Procedures Act, Minnesota Statutes, Chapter 14, these emergency rules shall be in effect for up to 180 days following their adoption and may be continued in effect for an additional 180 days if the Commissioner gives notice of continuation by publishing notice in the *State Register* and mailing the same notice to all persons registered with the

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

In the Matter of the Proposed Adoption of Emergency Rules of the State Department of Energy and Economic Development Governing Minimum Mandatory Efficiency Standards for Residential Rental Units: Definition of Good Cause: Establishment of Fine Schedule

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Christie B. Eller Special Assistant Attorney General, do hereby declare that I have examined the 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.

Christie B Eller 10-30-84

CHRISTIE B. ELLER
Special Assistant
Attorney General