

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC SERVICE

In the Matter of the Proposed Amendments
to Rules of the Minnesota Department of
Public Service amending the State Building
Code regarding Thermal Insulation Standards
(Minn. Rules ch. 7640).

STATEMENT OF NEED
AND REASONABLENESS

November, 1991

I. INTRODUCTION

The Commissioner of the Minnesota Department of Public Service (department) proposes to adopt amendments to *Minnesota Rules* Chapter 7640, known as the Minnesota Thermal Insulation Standards.

The principal rule changes proposed include incorporation by reference of a new ASTM standard for spray applied cellulose and practice for installation of radiant barrier systems. Also proposed are changes to reference recently revised ASTM standards. In addition, the department proposes changes to add an accreditation agency for approving laboratories and modifying the required timing for testing.

The department began the present rule notification process on 12 August 1991, by publishing a note in the State Register (16 S.R. 272) soliciting opinions and information from the public on the rules regarding the Minnesota Thermal Insulation Standards.

II. STATEMENT OF DEPARTMENT'S STATUTORY AUTHORITY

The Commissioner's authority to adopt the rule amendments is set forth in *Minn. Stat.* § 325F.20 (1988), which provides:

The commissioner shall adopt rules pursuant to chapter 14 regarding quality, information, and product safety specifications for the manufacture, labeling, installation and thermographing of insulation. The Specifications and any amendments to them shall conform as far as practical to federal standards or other standards generally accepted and in use throughout the United States. The standards, with modifications as may be deemed necessary, may be adopted by reference. The specifications adopted and any amendments shall be based on the application of scientific principals, approved tests, and professional judgment. For purpose of this subdivision, the commissioner may adopt emergency rule, which may remain in effect for 360 days.

III. STATEMENT OF NEED

Minn. Stat. 14 (1988) requires the department to make an affirmative presentation of facts establishing the need for and reasonableness of the rules as proposed. Discussion of the need for the rule amendments follows. Although the implementation of the Minnesota Thermal Insulation Standards is going smoothly, the department believes that certain improvements are needed and is thus proposing these amendments.

Chapter 7640 needs to be changed because ASTM has both revised standards already referenced by Ch. 7640 and has adopted additional new standards that pertain to products already regulated by Ch. 7640. The Commissioner's authority to adopt these rule amendments cited above requires that specifications and any amendments to them shall conform as far as practical to federal standards or other standards generally accepted and in use throughout the United States. Thus, the department needs to adopt the current versions of ASTM standards for products regulated by Ch. 7640 that are revised or new.

Another change needed is to recognize the validity of an equivalent accreditation agency for approving laboratories. Yet another change needed is to modify the language specifying dates required for testing to assure that the intent of this chapter (e.g., for recent test results) is met. Finally, a change is needed to avoid conflict with Federal law preempting regulation of manufactured homes.

IV. STATEMENT OF REASONABLENESS

Minnesota Statutes Ch. 14 requires the department to make an affirmative presentation of facts establishing the reasonableness of the proposed rules. This means that the department must set forth the reasons for its proposal, and the reasons must not be arbitrary or capricious. However, to the extent that need and reasonableness are separate, need has come to mean that a problem exists which requires administrative attention, and reasonableness means that the solution proposed by the department is appropriate. Discussion of the need and reasonableness for the proposed rule amendments follows.

A. Part 7640.0110, APPLICABILITY

Subpart 1, Types of residential products covered

The department proposes to delete the phrase "insulation used in new mobile homes assembled outside Minnesota" from the list of insulation products not covered by chapter 7640.

This deletion was recommended by Randy E. Vogt (Department of Administration, Building Codes and Standards Division) in a November 7, 1991 letter to the department (Attachment 1). Mr. Vogt indicates that inclusion of this phrase may be contrary to the National Manufactured Housing Construction and Safety Standards Act of 1974 and *Minn. Stat.* 327.32 sec. 604(d). The deletion is needed to avoid possible conflict of this chapter with both Federal and State statutes. The deletion is reasonable because thermal insulation in new manufactured homes is already regulated by the previously cited Federal statute.

B. Part 7640.0120, DEFINITIONS

Subp. 3, Approved Laboratory

The department proposes to add item C to the list of accreditation agencies that are acceptable for accrediting laboratory testing facilities of approved laboratories. The accreditation agency added is the Standards Council of Canada.

This change is needed because Canadian manufacturers of thermal insulation products may use laboratories accredited by this agency. The addition is reasonable because the technical requirements under the Standards Council of Canada and the NVLAP programs are essentially the same (see attachment 2).

Subp. 26, UBC

The department proposes to repeal the definition of "UBC" because it is only used once in chapter 7640, and the department is proposing to delete that single use (see item B, below). This change is both needed and reasonable to simplify the rules for the convenience of users of this chapter.

C. Part 7640.0130, INSULATION MATERIAL STANDARDS, subp. 2, General testing requirements, Item B, Testing

Subitem 1

The department proposes to delete the existing subitem 1 and the date identified in the existing subitem 2, thereby removing the dates identified. The department further proposes to replace these fixed dates for testing with the words "within two years of the filing of the initial report required by part 7640.0150."

The specific date requirements included when this chapter was first adopted in 1986 intended to assure that only recent testing results were provided. As time has progressed, however, the intent is no longer met because the dates were fixed. The proposed change is to maintain the original intent of this part to require recent testing results.

The proposed change is reasonable because a manufacturer with a new thermal insulation product would have current (less than 2 years old) test results for the product.

Subitems 3, 4 and 5 are renumbered for numbering consistency.

Subitem 4

Subitem 4 is proposed to be modified by simply spelling out "Uniform Building Code." This change is both needed and reasonable for the convenience of the users of this chapter.

**D. Part 7640.0130, INSULATION MATERIALS STANDARDS, subp. 3, Cellulose insulation
Item B, spray-applied**

The department proposes to delete much of the specific requirements of this item and in their place adopt the new ASTM C 1194, Standard Specification for Self-Supported Spray Applied Cellulosic Thermal/Acoustical Insulation. It is proposed to retain three elements of the existing item relating to the acceptability of tests performed on loose-fill product.

In part, the need to adopt this national consensus standard appears in the Commissioner's authority to adopt these rule amendments that specifications and any amendments to them shall conform as far as practical to federal standards or other standards generally accepted and in use throughout the United States. Correspondence received from International Cellulose Corporation (see Attachment 3) states another need for this change. Spray type cellulosic materials need to be self supporting to assure that the product will maintain integrity and stay in place without settling or falling, leaving uninsulated areas. The proposed change is reasonable because the cellulose spray products that currently have completed filings as required by part 7670.0150 meet this new standard.

The replacement of the references for the testing of corrosion, odor emission and fungi resistance is needed because the standards referenced for spray cellulose is proposed to be replaced. These changes are reasonable because the tests in the proposed references are essentially identical to those in the references deleted.

E. Part 7640.0130, INSULATION MATERIALS STANDARDS, subd. 8, Other Insulation

Item E, odor emission

The department proposes to add ASTM C 553 section 15 as an acceptable test for odor emission for "other" insulation products. Standard C 553 is the standard specification for mineral fiber thermal insulation.

The addition of this standard is needed to be able to test the odor of mineral fiber-like products that fall into the "other" insulation category. This change is reasonable because ASTM C 553 is already incorporated by this rule for use with mineral fiber insulation products.

F. Part 7640.0160, APPLICATION AND INSTALLATION STANDARDS, Subd. 2, Application and inspection

Item E, Installation of radiant barrier systems

The department proposes to add a requirement that installation of radiant barrier

systems be in accordance with the new ASTM C 1158, Practice for Use and Installation of Radiant Barrier Systems (RBS) in Building Construction.

In part, the need to adopt this national consensus standard appears in the Commissioner's authority to adopt these rule amendments that specifications and any amendments to them shall conform as far as practical to federal standards or other standards generally accepted and in use throughout the United States. This new requirement is needed to assure that radiant barrier systems are installed correctly.

The change is reasonable because the standard only requires the installer to install the product for safe and effective operation. It is also reasonable because this part also requires installers of cellulose and mineral fiber in loose-fill form and installers of reflective insulation to follow similar ASTM installation practices.

Items F and G are renumbered for numbering consistency.

G. Part 7640.0180, INCORPERATIONS BY REFERENCE AND CITATIONS

Subpart 2, ASTM references

The department proposes to amend this subpart to update the references to ASTM standards (items A, C, E, F, G, L, M, N, P, R, and S) and to add references to two new ASTM standards (proposed items V and W). These revisions update the list of ASTM standards to conform with the most recent versions published by ASTM. In addition, the department proposes to delete references to two standards (existing items Y and Z).

The need to update existing references and to adopt new references appears in the Commissioner's authority to adopt these rule amendments that specifications and any amendments to them shall conform as far as practical to federal standards or other standards generally accepted and in use throughout the United States.

These changes are reasonable because they bring the requirements of *Minn. Rules* ch. 7640 up-to-date with current knowledge and practice in the thermal insulation field.

Existing items Y and Z are deleted because the only references to these standards

in this chapter are deleted by the current proposed amendment to part 7640.0130, subpart 2, item B (spray cellulose). This change is both needed and reasonable for clarification of this chapter for the convenience of users.

Subpart 4, Availability

The department proposes to delete the James J. Hill reference library from the list of locations where the standards incorporated by reference by this chapter are available.

This change is both needed and reasonable because we understand the James J. Hill reference library no longer carries ASTM standards. The change is to assure that the listing of availability of standards adopted by reference is correct.

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minnesota Statue § 14.115, subdivision 2 (1988) requires the department, when proposing rules that may affect small business, to consider the following methods for reducing the impact on small businesses:

- (a) the establishment of less stringent compliance or reporting requirements for small business;
- (b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small business;
- (c) the consolidation or simplification of compliance or reporting requirements for small business;
- (d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule;
- (e) the exemption of small businesses from any or all requirements of the rule.
The adoption of these rule amendments will not affect small businesses in Minnesota.

The department has evaluated the effect of the proposed rules on small businesses and has considered each of the methods listed above for reducing the impact of the rules on small businesses.

Concerning item (a) above, the department has adopted national consensus ASTM standards throughout chapter 7640. Less stringent standards could not be adopted for small businesses because the department's enabling legislation requires that standards

adopted shall conform as far as practical to federal standards or other standards generally accepted and in use throughout the United States.

Regarding Item (b) above, part 7640.0150 contains reporting requirements, but these are not different for small business. One deadline requirement in Chapter 7640 is the annual filing due June 1; the other is that the initial report be filed 30 days before the product is offered for sale in the State. In the administration of this chapter the department has simplified both initial and annual filing procedures for all manufacturers. For the annual filing procedure, the department provides each manufacturer a pre-printed form listing the product. If there are no changes to a product, the manufacturer simply signs, dates and returns the form. Thus, the reporting requirements have been made less stringent to the extent possible, and it may not be possible to make further reductions in stringency for small businesses without compromising the effectiveness of the statutory mandate. The annual filing deadline date is not at all stringent because all that is required by manufacturers is to sign and return forms provided (generally with 30 day lead time) by the department. Similarly, the 30 day deadline for the initial report is not stringent because the information required in this report is generally available at least 30 days before products are offered for sale. Thus, less stringent schedules for small businesses would not reduce the impact on these business.

Minn. Rules ch. 7640 requires performance standards for all insulation product types in conformance with *Minn. Stat.* § 14.115, subd. 2(d) (1988).

In regard to item (e) above, since *Minn. Stat.* § 325F.19 broadly defines "industry members" to whom this rule must apply, the department concludes that manufacturers who are small businesses cannot be exempted from any or all requirements of these statutes.

VI. ATTACHMENTS

The following attachments are incorporated by reference into this Statement of Need and Reasonableness:

- 1) November 7 1991 letter from Randy E. Vogt, Department of Administration, Building Codes and Standards Division to Bruce Nelson, Department of Public Service.
- 2) Memorandum of Understanding Between the Standards Council of Canada and National Institute of Standards and Technology, September 7, 1988.
- 3) October 8 1991 Letter from International Cellulose Corporation.

VII. CONCLUSION

Based on the foregoing, the proposed amendments to Minnesota Rules Chapter 7640 are both needed and reasonable.



Krista L. Sanda, Commissioner
Department of Public Service



Dated

