

STATE OF MINNESOTA
DEPARTMENT OF ADMINISTRATION
BUILDING CODES AND STANDARDS DIVISION

In the Matter of the Proposed
Adoption of Amendments to
Chapters 1360 and 1361 of the
Minnesota State Building Code

STATEMENT OF NEED AND
REASONABLENESS

I. Introduction

The Commissioner of the Minnesota Department of Administration proposed to adopt amendments to chapters of the Minnesota State Building Code entitled 1360, Prefabricated Buildings and 1361, Industrialized/Modular Buildings. In addition to entirely new material, substantive changes, reorganization and grammatical changes are proposed to improve clarity and to conform with current style requirements.

The Department began the present rule notification process on July 8, 1991 by publishing a note in the State Register (16 S.R. 68) soliciting opinions and information from the public on the rules regarding the Minnesota State Building Code. Additional notification appeared on October 11, 1993 publishing a note in the State Register (18 S.R. 1067) soliciting opinions and information from the public on the rules regarding adoption of the Interstate Compact for Industrialized/Modular Buildings into the Minnesota State Building Code.

II. Statement of Agency's Statutory Authority

The commissioner's authority to adopt the rule amendments is set forth in Minnesota Statute 16B.61 subdivision 1.

16B.61 Subdivision 1. Adoption of code. Subject to sections 16B.59 to 16B.73, the commissioner shall by rule establish a code of standards for the construction, reconstruction, alteration, and repair of state-owned buildings, governing matters of structural materials, design and construction, fire protection, health, sanitation, and safety. The code must conform insofar as practicable to model building codes generally accepted and in use throughout the United States. In the preparation of the code, consideration must be given to the existing statewide specialty codes presently in use in the state. Model codes with necessary modifications and statewide specialty codes may be adopted by reference. The code must be based

on the application of scientific principles, approved tests, and professional judgement. To the extent possible, the code must be adopted in terms of desired results instead of the means of achieving those results, avoiding wherever possible the incorporation of specifications of particular methods or materials. To that end the code must encourage the use of new methods and new materials. Except as otherwise provided in sections 16B.59 to 16B.73, the commissioner shall administer and enforce the provisions of those sections.

III. Statement of Need

Industrialized/Modular Buildings, Chapter 1361. In 1990, the legislature ratified and approved an interstate compact on industrialized/modular buildings, codified in Minnesota Statute 16B.75. The purpose of the compact is to provide a means of obtaining uniform rules and regulations governing design and construction of industrialized/modular buildings. Minnesota Statute 16B.75 provided for creation of the Industrialized Building Commission (IBC) which was to adopt and amend model rules and regulations for industrialized/modular buildings. The IBC adopted Model Rules and Regulations for Industrialized/Modular Buildings on July 9, 1993 with amendments adopted December 3, 1993. This proposed new rule, chapter 1361, is needed to implement Minnesota Statute 16B.75 which made Minnesota a party to the Interstate Compact on Industrialized/Modular Buildings. This rule needs to be adopted into the Minnesota State Building Code in order to incorporate the model rules and regulations adopted by the IBC into the Minnesota State Building Code. The need for entering into the compact is stated in Minnesota Statute 16B.75, Article I, Subdivision (1).

Prefabricated Buildings, Chapter 1360. Currently Chapter 1360 regulates all prefabricated buildings to be located in Minnesota or in other states which have written reciprocal agreements with Minnesota. As Minnesota has ratified and approved the Interstate Compact and is proposing formal adoption of their Model Rules and Regulations for Industrialized/Modular Buildings, it is necessary that much of Chapter 1360 now be repealed, deleted or revised. The only portions of the rule that must remain are those needed to regulate one segment of the prefabricated building industry that Minnesota is exempting from the IBC requirements. Currently there are various lumber yards or vocational schools which build from one to three single family homes or garages per year for the purpose of sales or education or both. Because the buildings these "manufacturers" produce are not typically transported out of state to other IBC member states, and due to the small and unique niche this segment represents, the division has determined it necessary to regulate them separately from the Interstate Compact. See also the small business considerations in Part V.

IV. Statement of Reasonableness

Minnesota Statutes Chapter 14 requires the agency to make an affirmative

presentation of facts establishing the reasonableness of the proposed rules. This means that the agency must set forth the reasons for its proposal, and the reasons must not be arbitrary or capricious. However, to the extent that the 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. The reasonableness of the proposed rules is discussed below.

A. Reasonableness of the Rules as a Whole

Industrialized/Modular Buildings, Chapter 1361. This proposed rule is reasonable because it adopts by reference the specific parts and editions of the Model Rules and Regulations referenced in subdivision (6) of Minnesota Statute 16B.75 Article II. Included in this chapter are definitions, adoptions by reference, and other general provisions which alert the user to Minnesota's system of regulating industrialized/modular buildings.

Prefabricated Buildings, Chapter 1360. It is reasonable that material in this chapter be repealed or deleted because the Interstate Compact now governs this subject matter through proposed Chapter 1361. It is also reasonable that portions of the rules be revised as proposed in order to reorganize the chapter to reflect its limited scope. Individual rule parts that are proposed to be repealed, deleted, or have words struck from the text are items that govern the manufacturers of industrialized/modular buildings or building components that are now covered by the Interstate Compact proposed for adoption in Chapter 1361. Therefore, these items will not be individually addressed in the reasonableness of individual rules.

B. Reasonableness of Individual Rules

1. Industrialized/Modular Buildings, Chapter 1361

Part 1361.0100 Purpose

It is necessary that the purpose be identified in order to inform the reader which aspects of industrialized/modular buildings this new chapter governs. This is reasonable because the specific provisions are contained within the adopted documents referenced in this chapter.

Part 1361.0200 Definitions

Subpart 1. Scope. Those definitions are included which are necessary to clarify what is being regulated, what the regulatory documents are, and to identify some of the responsible regulators. The use of these definitions is reasonable because they are adapted from Minnesota Statute 16B.59

through 16B.63, Minnesota Rule part 1300.2400, and those contained within the Model Rules and Regulations.

Subpart 2. Building Component. This definition is needed to define an element of regulated construction referenced in parts 1361.0100 and 1361.0400. It is reasonable as it is identical to the definition found in the Model Rules and Regulations and the Uniform Administrative Procedures.

Subpart 3. Industrialized Buildings Commission. This definition is necessary to identify the agency that produced the Model Rules and Regulations as stated in part 1361.0300 as well as to identify the responsible operating arm of the Interstate Compact. This is reasonable as part 1361.0400 refers to the commission

Subpart 4. Industrialized/Modular Building. This definition is needed to define the major element of regulated construction as referenced in parts 1361.0100 and 1361.0400. This definition is similar to that in the Model Rule and Regulations except for the reference to "prefabricated buildings" in the last sentence. By not including "prefabricated buildings" in this definition, they are exempted from regulation by this chapter. Instead, prefabricated buildings, as defined in part 1360.0200 subpart 15 are regulated in Chapter 1360.

Subpart 5. Minnesota State Building Code. This definition is needed to identify the source and scope of Minnesota's building code that is referenced in part 1305.0500.

Subpart 6. Model Rules and Regulations. As referenced in part 1361.0500, this definition is necessary to name the standard to which industrialized/modular buildings and building components must be constructed.

Part 1361.0300 Incorporation of Model Rules and Regulations

It is necessary that an incorporation by reference be made of the specific title and edition of the document being adopted for regulating industrialized/modular buildings and building components so that those affected by Minnesota's participation in the Interstate Compact have access to the applicable regulations. This is reasonable because the document is authorized to be developed by Minnesota Statute 16B.75 Article II subdivision (6) and is available from the Minnesota Bookstore and the Minnesota State Law Library.

Part 1361.0400 Certification

This provision is necessary to incorporate into rule in order to alert the reader that all Industrialized/Modular buildings and building components sold or installed in Minnesota must bear the appropriate evidence of code compliance. This is reasonable because it is a specific requirement of the Model Rules and Regulations.

Part 1361.0500 Installation

This provision is necessary to incorporate into rule in order to alert the reader of the standards and procedure under which all industrialized/modular buildings or building components must be installed in Minnesota. It is reasonable because they are referenced in Minnesota Statute 16B.75 Article II subdivision (6) and 16B.61 Subdivision 1.

2. Prefabricated Buildings, Chapter 1360.

Part 1360.0100 Title and Scope

Subpart 2, Purpose

Because the scope of this chapter is changing, the purpose must be revised accordingly. The need for this revision is described in part III while the reasonableness is described in Part IV A.

Part 1360.0200 Definitions

Subpart 2, Approved.

The word "factory" is being deleted because this chapter no longer applies primarily to prefabricated buildings constructed in "factories" or "manufacturing facilities". See also subpart 14a.

Subpart 14a, Manufacturer

This is a new definition that is needed to identify those manufacturers that are affected by this chapter. As stated in part III, this definition is primarily intended to govern the lumber yards and vocational schools in the state that construct from one to three prefabricated buildings a year. Because these manufacturers do not mass produce buildings in an assembly line process as conventional manufacturers, there is adequate time during the construction process for division staff to see that work on three buildings per year per manufacturer is properly inspected.

Subpart 15, Prefabricated building

The manufacturers to be regulated by this chapter exclusively construct one or two family dwellings and their accessory structures such as garages or sheds. Therefore, it is reasonable that this definition encompass only these types of buildings designated by the code as R-3 and U-1 occupancies. The phrase, "assembled in manufacturing facilities" is being deleted for the reason stated under 1360.0200 subpart 2.

1360.0300 Approval

Subpart 1. Responsibility; plan review. As evaluation agencies will no longer have a role in the review or approval of prefabricated buildings, it is necessary that other parties, such as local enforcement agencies, be available to assist the state building inspector in the review of plans for prefabricated buildings. This is reasonable because the state building inspector has the authority under Minnesota Statute 16B.63 to administer the code and because the state building inspector currently delegates the inspection of prefabricated buildings to local enforcement agencies. Because the manufacturers regulated by this chapter are only permitted to construct up to three buildings per year, there is no longer a reason for them to submit plans biannually as they previously did for repetitive building types.

1360.0400 Inspection

This change is necessary to correct the terminology used in this existing rule part. A "manufactured home" is defined in part 1350.0100 subpart 38 and is not to be confused with a prefabricated building as defined in this chapter. The phrase "approved inspection agencies" is being deleted because their purpose is no longer applicable to the "manufacturer" now defined in this chapter.

1360.0800 Testing

The reference to "evaluation agency" is also being deleted because their purpose is no longer applicable to the "manufacturer" now defined in this chapter.

1360.0900 Inspection

Subpart 4. Damaged prefabricated buildings. Because experience has shown that prefabricated buildings can be damaged in transport or during installation, it is necessary and reasonable that the parties responsible during these phases be held responsible to notify the state building inspection when damage

occurs. The material being deleted from this subpart is no longer applicable to the prefabricated buildings now regulated in this chapter.

1360.1300 Building Permits

See 1360.0800 for the purpose in deleting "evaluation agency".

1360.1500 Changes to Approved Plans

The reference to "inspection procedures manual" is being deleted because it is no longer applicable to the prefabricated buildings now regulated by this chapter.

1360.1600 Change of Ownership, Name, or Address

See 1360.0200 Subpart 2 and 1360.0800 for the purpose of the deletions.

1360.1800 Noncompliance

The reference to obtaining seals is being deleted because they are no longer issued until the work has been inspected and approved. See also 1360.2000.

1360.1900 Seals

Subpart 1. R-3 and U-1 occupancies. Because the building code designation of R-4 no longer exists and the proposed inclusion of garages or sheds, it is necessary that the building code designation of U-1 be included and the R-4 be deleted.

1360.2000 Issuance

Because experience has shown that changes to prefabricated buildings can occur after plan approval, for example as during construction or installation, it is necessary that the seal, which provides evidence that the building complies with code, be issued upon final inspection approval. This is reasonable because the process is similar to that in the code for site-built structures where the certificate of occupancy, which also provides evidence that the building complies with code, is not issued until final inspection approval is granted.

Because manufacturers of prefabricated buildings have in the past received seals bearing the same number for those buildings which are constructed

identically to the same plan, the division is unable to track the installation of each prefabricated building. Therefore it is necessary that all seals be numbered individually. See 1360.0200 subpart 2, 1360.0300, and 1360.0800 for the purpose of the deletions.

1360.2500 Plan Approval Procedures

The reference to a quality control manual is being deleted because it is no longer applicable to the prefabricated buildings now regulated by this chapter.

1360.2600 Products Manufactured in More Than One Location

See 1360.0200 subpart 2 for the purpose in deleting "manufacturing".

1360.2700 Nonconforming Application and Plans

See 1360.0800 for the purpose in deleting evaluation agency.

1360.2800 Evidence of Plan Approval

Because the option to delegate prefabricated building plan review is being proposed in part 1360.0300 subpart 1, it is necessary that this reference be made. This is reasonable as the plan approval process is similar to that in the code for site built structures. See 1360.0800 for the purpose of deleting "evaluation agency".

1360.3600 Fees

The material being deleted is because it is no longer applicable to the prefabricated buildings now regulated by this chapter.

V. Small Business Considerations

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

- (a) the establishment of less stringent compliance or reporting requirements for small businesses;
- (b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

- (c) the consolidation or simplification of compliance or reporting requirements for small businesses;
- (d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and
- (e) the exemption of small businesses from any or all requirements of the rule.

The division 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.

Industrialized/Modular Buildings, Chapter 1361.

The uniform regulation of the production of industrialized buildings by manufacturers in the compacting states will result in a reduction in the costs of manufacture since the members states have agreed to allow the siting of units in their states without the imposition of any regulatory requirements other than those outlined in the Model Rules and Regulations. Thus, a manufacturer can take advantage of economies of scale, with fewer special requirements to meet, and should realize savings in both design and manufacturing costs.

By making the code requirements for industrialized construction the same in Minnesota and in other states participating in the compact, the compact and these implementing rules will make it easier for "small businesses", to produce industrialized buildings for a multi-state market. Also deriving benefit from the compact and implementing rules will be those "small businesses" that are engaged in erection and installation of industrialized buildings and may now be able to obtain units at a lower costs because of savings that the manufacturers will be able to pass along.

The proposed new rules would not impose any additional compliance requirements upon these "small businesses". Minnesota manufacturers of industrialized buildings would be able to ship their products into other participating states without having to comply with additional requirements in those states. The amount of money saved by elimination of this paperwork will depend on the volume of shipments of units between participating states, but it is likely to be substantial, and to become more substantial as more states join the compact. No additional professional services will be required as a result of these amendments and new rules. There is no basis for any differential requirements for small businesses because all producers participating states are entitled to benefit from improved procedures and no lesser degree of code compliance can be accepted from "small businesses" because public health, safety and welfare requirements are the same regardless of who constructs or markets the building.

Prefabricated Buildings, Chapter 1360

By regulating manufacturers of prefabricated buildings apart from the interstate compact, the manufacturers benefit in that none of the reporting requirements, schedules, or deadlines identified in items (a), (b), or (c) are applicable. However, the lessening or exempting of code requirements for small businesses is not appropriate as Minnesota Statute 16B.59 requires the commissioner of administration to administer a state code of building construction which will provide basic and uniform performance standards for all residents of the state.

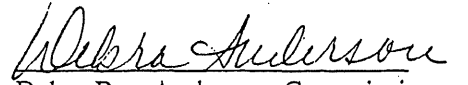
VI. Fiscal Impact

Minnesota Statutes, section 14.11, subdivision 1, does not apply because adoption of these rules will not result in additional spending by local public bodies in excess of \$100,000 per year for the first two years following adoption of the rules.

VII. Conclusion

Based on the foregoing the proposed amendments to Minnesota Rules Chapters 1360 and 1361 are both needed and reasonable.

Date: 4-12-94


Debra Rae Anderson, Commissioner
Department of Administration