



85 7TH PLACE EAST, SUITE 500
SAINT PAUL, MINNESOTA 55101-2198
MN.GOV/COMMERCE
651.539.1500 FAX: 651.539.1547
AN EQUAL OPPORTUNITY EMPLOYER

May 28, 2014

Legislative Reference Library
645 State Office Building
100 Constitution Avenue
St. Paul, Minnesota 55155

Re: In The Matter of the Proposed Rules of the State Department of Commerce Governing
Thermal Insulation Standards, Minnesota Rules, chapter 7640; Revisor's ID Number RD3945

Dear Librarian:

The Minnesota Department of Commerce intends to adopt rules governing Thermal Insulation Standards. We plan to publish a Notice of Intent to Adopt Rules without a Public Hearing in the June 2, 2014, State Register.

The Department has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Department is sending the Library an electronic copy of the Statement of Need and Reasonableness at the same time we are mailing our Notice of Intent to Adopt Rules.

If you have questions, please contact me at 651-539-1456.

Yours very truly,

A handwritten signature in black ink, appearing to read "Susan Bergh", with a long horizontal flourish extending to the right.

Susan Bergh
Rules Coordinator
Minnesota Department of Commerce

Enclosure: Statement of Need and Reasonableness

Minnesota Department of Commerce

STATEMENT OF NEED AND REASONABLENESS

Proposed Amendment to Rules Governing Thermal Insulation Standards, *Minnesota Rules*, chapter 7640; Revisor's ID Number 3945.

I. INTRODUCTION

The Minnesota Department of Commerce (Department) proposes amendments to existing Minnesota Rules, chapter 7640, governing thermal insulation standards.

The Minnesota Thermal Insulation Standards program has been administered since its 1989 beginning by the Department of Commerce Energy Division. The thermal insulation standards rule has been used in several instances to ensure that only safe and effective insulation products are sold and used in Minnesota residential buildings.

A primary reason for this rulemaking is to update Chapter 7640's many citations to national standards for safety and effectiveness. Chapter 7640 originally referred to standards in effect in 1987. As national standards are updated, it is periodically necessary to amend the rules to update references to current national standards. The proposed rules include several updated references.

When the rules were originally promulgated, industry was required to submit initial reports to the Department prior to offering new products for sale. Over the past 25 years, industry compliance with thermal insulation national standards has made such reporting unnecessary. Amending the rules to remove the redundant reporting requirements will save time and effort.

The proposed rules also include clarification regarding representations as to potential energy savings from thermal insulation products. The proposed rules will require that whenever such sales representations are made to consumers, the energy savings must be specifically based on Minnesota climate; the rules are amended to clarify the standard criteria on which such representations must be based.

II. ALTERNATIVE FORMAT

Upon request, this Statement of Need and Reasonableness (SONAR) can be made available in an alternative format, such as large print, Braille, or cassette tape. To make a request, contact Susan Bergh at the Department of Commerce, 85 7th Place East, St. Paul, MN 55101, phone: (651) 539-1456, email Susan.Bergh@state.mn.us

III. STATUTORY AUTHORITY

This rulemaking is an amendment of rules for which the Legislature has not revised the statutory authority since and so Minnesota Statutes, section 14.125, does not apply.

The Department's statutory authority to adopt the rules is stated in Minnesota Statutes section 325F.20, subdivision 1, 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 is 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 principles, approved tests, and professional judgment."

Further, Minnesota Statutes, section 45.023, authorizes the Commissioner of Commerce to adopt rules as follows:

The commissioner of commerce may adopt, amend, suspend, or repeal rules in accordance with chapter 14, and as otherwise provided by law, whenever necessary or proper in discharging the commissioner's official responsibilities.

Under these statutes, the Department has the necessary statutory authority to amend these rules.

IV. REGULATORY ANALYSIS

Minnesota Statutes, section 14.131, sets out eight factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (8) below quote these factors and then give the Department's response.

(1) A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule:

- The classes of persons who will be most directly affected include manufacturers, wholesalers, retailers and installers of thermal insulation for new and existing residential buildings.
- There will be no additional costs to be borne by industry members due to the proposed rule amendments.
- Those who will benefit from the proposed rules include Minnesota homeowners, who will be provided with a more accurate statement of effectiveness of thermal insulation.

(2) The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues:

- There is little chance there will be additional costs to the Department with regard to implementation and enforcement of the proposed amendments.
- There should be no costs to any other agency with regard to implementation and enforcement.
- There should be no effect on state revenues.

(3) A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule:

- The costs and intrusiveness of the proposed rule amendments are minimal. The Department's more than two decades of experience in administering the thermal insulation standards program indicates the costs to the thermal insulation industry are minimal. Even if Chapter 7640 did not exist, manufacturers of thermal insulation would be testing their products to show compliance with the applicable ASTM standard. The requirements of Chapter 7640 are based on performance-based standards that are maintained by ASTM committees consisting of the very industry members regulated by the chapter. Thus, the Department concludes that there are no less costly or less intrusive methods of achieving the purpose of the proposed rule amendments.

(4) A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule:

- The proposed rules include relatively minor amendments to regulations affecting a mature program to reflect current industry standards and needs. The Department has determined that there are no viable alternative methods for achieving the purpose of the proposed rules.

(5) The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals:

- The Department's assessment of the proposed rule amendments is that there will be no additional costs to be borne by industry members for the rule amendments.

(6) The probable costs of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals:

- The probable cost of not adopting the proposed rule would be confusion by users of the chapter because of the referral in Chapter 7640 to a number of out of date standards. An additional cost of not adopting the proposed rule would be reduced efficiency because the proposed rule will slightly reduce the reporting requirements for industry members.

(7) An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference:

- Chapter 7640 is fully consistent with the federal regulation governing residential thermal insulation: the Code of Federal Regulations, Title 16, Part 460, known as the "FTC R-Value rule." There are no differences between Chapter 7640 (either currently or as proposed to be amended) and existing federal regulations.

(8) An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.... ‘[C]umulative effect’ means the impact that results from incremental impact of the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time”:

The cumulative effect of the proposed amendments will be to slightly reduce the burden of compliance for industry members because of reduced reporting requirements.

V. PERFORMANCE-BASED RULES

Minnesota Statutes, sections 14.002 and 14.131, require that the SONAR describe how the agency, in developing the rules, considered and implemented performance-based standards that emphasize superior achievement in meeting the agency’s regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals.

Since the inception of Chapter 7640, numerous performance-based standards have been integral to all of the requirements for each types of thermal insulation product regulated by the chapter. All of the ASTM thermal insulation material standards incorporated by reference in the chapter are performance-based, in that performance qualities are measured under standardized conditions. These qualities include the thermal resistance “R-value,” as well as resistance to formation of mold, resistance to burning in the presence of a fire, dimensional stability, and others. Chapter 7640 is based on performance standards that are maintained by ASTM committees, whose members primarily consist of the very thermal insulation industry members regulated by the chapter.

VI. ADDITIONAL NOTICE

This Additional Notice Plan was reviewed by the Office of Administrative Hearings and approved in an April 3, 2014, order by Administrative Law Judge Barbara J. Case.

In addition to the statutory requirements to publish notice in the *State Register* and to mail notice to the persons on the Department of Commerce rulemaking list, the Department will provide the following additional notice:

1. Mailing the notice of the proposed rule amendments to the following persons:

The Department’s comprehensive list of the manufacturers, distributors, and installers of residential thermal insulation who would be affected by the proposed rule amendments.

2. Placing a summary of the notice of rulemaking on the Department of Commerce web page at www.commerce.state.mn.us.

Our Notice Plan also includes giving notice required by statute. We will mail the rules and Notice of Intent to Adopt to everyone who has registered to be on the Department's rulemaking mailing list under Minnesota Statutes, section 14.14, subdivision 1a. We will also give notice to the Legislature per Minnesota Statutes, section 14.116.

Our Notice Plan did not include notifying the Commissioner of Agriculture because the rules do not affect farming operations per Minnesota Statutes, section 14.111. Our Notice Plan did not include submitting the rules to the state Council on Affairs of Chicano/Latino People at least 15 days before their initial publication in the State Register per Minnesota Statutes, section 3.922 because the rules will not have their primary effect on Chicano/Latino people.

VII. CONSULTATION WITH MMB ON LOCAL GOVERNMENT IMPACT

As required by Minnesota Statutes, section 14.131, the Department will consult with Minnesota Management and Budget to help evaluate the fiscal impact and fiscal benefits of the proposed rules on units of local governments.

The Department will do this by sending to Minnesota Management and Budget copies of the documents required to be sent to the Governor's Office for review and approval by the Governor's Office on the same day we send them to the Governor's office. We will do this before the Department publishes the Notice of Intent to Adopt. The documents include the Governor's Office Proposed Rule and SONAR Form; the proposed rules; and the SONAR. The Department will submit a copy of the cover correspondence and the response received from Minnesota Management and Budget to OAH at the hearing or with the documents it submits for ALJ review.

VIII. DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION

As required by Minnesota Statutes, section 14.128, subdivision 1, the Department has considered whether these proposed rules will require a local government to adopt or amend any ordinance or other regulation in order to comply with these rules. The Department has determined that they do not, because the proposed revisions are minimal and will not require a local government to make changes to its existing ordinances or other regulation in order to comply with these rules.

Chapter 7640, in combination with M.S. §325F.19 through 325F.24, contain all of the requirements necessary to assure residential thermal insulation products sold and installed in Minnesota are safe and effective.

VIII. COST OF COMPLYING FOR SMALL BUSINESS OR CITY

As required by Minnesota Statutes, section 14.127, the Department has considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business or small city. The Department has determined that the cost of complying will be minimal and will solely be borne by manufacturers of residential thermal insulation, which do not qualify as small businesses.

IX. RULE-BY-RULE ANALYSIS

The modifications to the individual rules discussed below are highlighted to explain the precise changes being proposed for adoption. The language is taken from the Statement of Need and Reasonableness prepared when the rules were originally adopted.

PART 7640.0100 AUTHORITY; PURPOSE; INCORPORATIONS BY REFERENCE.

Subpart 3. Incorporations by reference. The rules incorporates by reference numerous standards which are no longer available at the Minnesota State Law Library. The Department of Commerce maintains copies of all standards that are incorporated by reference, available to the public at no charge electronically by request from the Department.

PART 7640.0110 APPLICABILITY AND CONDUCT.

Subpart 2. Conduct. The Department proposed to add item F requiring any representation that a product will affect heat flow or energy savings in Minnesota must be based criteria identified in ASHRAE Standard 90.1-2010. The added requirement is needed to ensure that Chapter 7640 adequately addresses the requirements of M.S. §325F.22, Subd. 2 regarding claims of fuel savings.

This provision is needed because the insulating value of several types of thermal insulation products – notably fiberglass, foam plastics, and reflective insulation – varies with their temperature. Some applications of these products work very well in climates as those in Florida and Texas, but are not nearly as effective in Minnesota. The new requirement will require increased accuracy for statements of predicted performance made to Minnesota prospective purchasers.

The proposed amendment is reasonable because it does not require that any representations regarding insulating value be made; only that if a representation is made for Minnesota residential buildings, it must be accurately based on Minnesota climate conditions. The amendment is further reasonable because the ASHRAE Standard 90.1-2010 is expected to be adopted by the Department of Labor and Industry in 2014 as the basis for a portion of the Minnesota residential energy code, Minnesota Rules, Chapter 1323.

PART 7640.0120 DEFINITIONS.

Subpart 1. Applicability. The reference to ASTM standard C168 is amended by replacing the older ASTM standard with the most recent version of that standard. The year 2013 version of the standard is indicated by the year following a dash after the standard number, i.e., “ASTM standard C168-13.” This amendment is reasonable because ASTM consensus standards are developed and approved by ASTM members that represent manufactures of all types of thermal insulation products.

Proposed amendments throughout Chapter 7640 to update various national standards are justified as needed and reasonable for precisely the same reasons as stated in the previous paragraph. references are made to more than 30 ASTM standards which have been updated since the last amendment of Chapter 7640. Similar updates for ASTM standards are made at:

- Part 7640.1030, Subpart 3, items B, C, and D
- Part 7640.1030, Subpart 4, items A, B, C, and D
- Part 7640.1030, Subpart 5, items A, B, D, and E

- Part 7640.1030, Subpart 6, item B
- Part 7640.1030, Subpart 7, items A and B
- Part 7640.1030, Subpart 8, items A, B, C, E, and F

PART 7640.0130 STANDARDS FOR INSULATION MATERIALS AND INSTALLATION.

Subpart 3.

Item C. In addition to replacing the older version of ASTM C1149, it is proposed to delete the alternative compliance method described in subitem (2). This deletion is needed and reasonable because standard C1149 has become the exclusive industry-accepted test method for cellulose fiber spray applied insulation.

Item D. In addition to replacing the older version of ASTM C1497, it is proposed to delete the split of testing standard requirements between two ASTM standards. This change allows deletion of the separate subitems (1) and (2). This change is needed and reasonable because standard C1497 has become the exclusive industry-accepted test method for cellulose fiber stabilized insulation.

Item E. It is proposed that a relatively new product, cellulosic fiber insulating board, be added to Chapter 7640 and be identified by its ASTM standard C208-12. It is reasonable and necessary to include this new product in Chapter 7640 because it could be marketed and installed in Minnesota residential buildings.

Subpart 4.

Item B. In addition to replacing the older version of ASTM C655, it is proposed to adopt a new ASTM standard for installation of mineral fiber batt and blanket insulation. It is reasonable to adopt this new standard because it is a consensus standard, like all other ASTM standards, and approved by a broad representation of members that include manufacturers of all types of thermal insulation products.

Item D. In addition to replacing the older version of ASTM C655, this item is amended to include to revised and current title of the standard. This amendment does not change the scope or meaning of the item.

Subpart 5.

Items D and E. In addition to replacing the older versions of ASTM standards, the word “either” is added to both of these items to make the sentences grammatically correct. The additions do not change the scope or meaning of either item.

Subpart 7. The Department proposes to broaden the title of Subpart 7 to “Reflective insulation” by removing the term “foil” which inaccurately narrows the scope. The amendment is needed because there may be products which are reflective insulation, but are not made of foil. This change is also needed in order to be consistent with industry standard terminology. This amendment is reasonable because it does not change the scope or meaning of the subpart.

Item A. Addition of the words “for building applications” is needed to differentiate reflective insulation for building applications (the subject of item A) from radiant barrier products (the subject of item B), which is also a reflective insulation. This amendment is reasonable because it does not change the scope or meaning of the subpart.

Items A and B. In addition to replacing the older version of ASTM standards, both of these items are editorially amended to replace the “exception” statement regarding the alternative material standard with a declarative statement. These amendments are reasonable because for either item they do not change the scope or meaning.

Subparts 7a and 7b. It is proposed to editorially create new subparts that address the requirements for cotton fiber and polyester loose-fill and blanket insulation, rather than address them in a Subpart 8 “Exceptions” provision. These amendments do not change the scope or meaning of either item. This amendment is needed to clarify that these are in fact thermal insulation products on the same caliber as other products regulated by this chapter, and not “exceptions” to a category of “other” insulations. The amendment is reasonable because the requirements are not changed for either product.

Subpart 7c. It is proposed to add a new product, “vacuum insulated panel,” along with its corresponding ASTM standard. This addition is needed because new products of this nature could be placed on the market for residential thermal insulation application. It is reasonable because the ASTM standard is an industry-developed consensus standard.

Subpart 8. It is proposed to delete the “Exceptions” from this subpart. This deletion is editorial in nature because it is made in concert with the proposed amendments to Subparts 7a and 7b, and as discussed above this results in a clarification of the requirements of the chapter.

PART 7640.0150 REPORTING REQUIREMENTS

Subpart 1. It is proposed to repeal this subpart on Applicability. The repeal is needed to eliminate a redundancy in Chapter 7640. Part 7670.0150 is already mandatory for all “industry members” as defined in Part 7640.0120, Subp. 12. It is reasonable because the language of the definition in Part 7640.0120 Subp. 12, while not identical, does not substantially differ from Part 7640.0150 Subpart 1.

Subpart 2. It is proposed to amend the “initial report” provision to require a report only when requested by the Commissioner of Commerce rather than requiring a report for all products before being sold or installed in Minnesota. This amendment is needed because the although requiring an initial report for all products prior to sale was originally valuable for effective enforcement of Chapter 7640, it no longer provides the Department with essential information, and therefore has become an unnecessary administrative burden for both manufacturers and the Department. The amended requirement is reasonable because the Department retains the ability to require an industry member to report extensive information about any product whenever necessary.

Subpart 2, item D is proposed to be amended to add “promotional materials” to the list of items that must be provided to commissioner upon request. The amendment is needed and reasonable

because it enables the Department to enforce compliance with Chapter 7640 and Minnesota Statutes, section 325F.22, with regard to statements made in any promotional materials provided to a prospective purchaser.

Subpart 3. It is proposed to repeal the requirement for an annual filing by industry members. This amendment is needed because although requiring annual filing was originally valuable for effective enforcement of Chapter 7640, annual filing longer provides the Department with essential information, and therefore it has become an unnecessary administrative burden for both industry members and the Department. The amended requirement is reasonable because the Department retains the ability to require an industry member to report extensive information about any product when necessary.

CONCLUSION

Based on the foregoing, the proposed rules are both needed and reasonable.

4-11/14
Date



Mike Rothman
Commissioner of Commerce