

Minnesota Department of Labor and Industry

Construction Codes and Licensing Division

DUAL NOTICE: Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID Number R-04696

Proposed Amendment of Rules Governing the Adoption of *ANSI/ASHRAE/IES Standard 90.1-2019 Energy Standard for Buildings Except Low-Rise Residential Buildings, Minnesota Rules, Chapter 1323, and Repeal of Minnesota Rules, parts 1323.0010, subpart 3; 1323.0020, subparts 2 through 11; 1323.0100 subparts 1 through 8 and 10; 1323.0201; 1323.0202, 1323.0303; 1323.0401; 1323.0402, subpart 1; 1323.0403, subparts 1, 2, 2a, 3 through 10, 11a, 12a, and 13 through 15; 1323.0404; and 1323.0408, subpart 1.*

Introduction. The Department of Labor and Industry intends to adopt rules without a public hearing following the procedures in the rules of the Office of Administrative Hearings (“OAH”), *Minnesota Rules*, parts 1400.2300 to 1400.2310, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. If, however, 25 or more persons submit a written request for a hearing on the rules by 4:30 p.m. on Wednesday, October 19, 2022, the Department will hold a public hearing via WebEx. An Administrative Law Judge will conduct the hearing starting at 9:30 a.m. on Tuesday, December 6, 2022. You may participate in the hearing, if one is held, via an internet connection with a computer or a tablet. You may also participate via phone with an audio connection only.

Register to join the December 6 hearing at 9:30 a.m. through an internet connection at: tinyurl.com/1323hearing.

For audio connection only, join the hearing by phone:

Call: 1-855-282-6330 or 1-415-655-0003

Access code: 2497 334 4968

To find out whether the Department will adopt the rules without a hearing or if it will hold the hearing, you should contact the agency contact person after October 19, 2022, and before December 6, 2022.

Agency Contact Person. Submit any comments or questions on the rules or written requests for a public hearing to the agency contact person. The agency contact person is: Amanda Spuckler at the Department of Labor and Industry, 443 Lafayette Road N., St. Paul, Minnesota, 55155, phone (651) 284-5006, and email to dli.rules@state.mn.us.

Subject of Rules and Statutory Authority. The proposed rules are about the Minnesota Commercial Energy Code, *Minnesota Rules*, chapter 1323. The proposed rules also repeal parts 1323.0010, subpart 3; 1323.0020, subparts 2 through 11; 1323.0100 subparts 1 through 10; 1323.0201; 1323.0202, 1323.0303; 1323.0401; 1323.0402, subpart 1; 1323.0403, subparts 1, 2, 2a, 3 through 10, 11a, 12a, and 13 through 15; 1323.0404; and 1323.0408, subpart 1, that modify

commercial provisions of the 2018 edition of the International Energy Efficiency Code (“IECC”). The proposed rules incorporate by reference ANSI/ASHRAE/IES Standard 90.1-2019 Energy Standard for Buildings Except Low-Rise Residential Buildings (“ASHRAE 90.1”), with necessary amendments, and Addendums a, c, d, g, h, k, l, q, r, w, af, cd, cr, da, and db. The proposed rules govern energy conservation for all new buildings and existing buildings undergoing renovation except for residential buildings that are three stories or fewer above grade, one- and two-family dwellings, and townhouses that are not historical buildings. The proposed rules amend ASHRAE 90.1 provisions regarding the following topics: applicable scope of the standard; definitions; applicability of standard provisions to mixed occupancy buildings; alterations to existing buildings; applicability of standard provisions to changes of occupancy or use; information required on construction documents; requirements for semiheated or unconditioned spaces; alterations to roof, wall, and floor cavities; roof deck insulation; assigning Minnesota counties to climate zones; continuous air barrier; whole-building air leakage testing; insulation of roof curbs; below grade wall insulation; rooftop HVACR; heating of enclosed commercial parking facilities; once-through water use permits; climatic data design conditions; ventilation system control; minimum required duct and plenum insulation; minimum piping insulation thickness heating and hot-water systems; alterations to existing building service water-heating; buildings with high-capacity service water heating systems; automatic receptacle control; mandatory lighting provisions; and compliance.

The statutory authority to adopt the rules is *Minnesota Statutes*, section 326B.02, subdivision 5; 326B.101, and 326B.106 subdivision 1(a). A copy of the proposed rules is published on the Department’s web site at: <http://www.dli.mn.gov/about-department/rulemaking/rulemaking-docket-minnesota-rules-chapter-1323-0>. A free copy of the rules is available upon request from the agency contact person listed above.

Comments. You have until 4:30 p.m. on Wednesday, October 19, 2022, to submit written comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comments should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed. You are encouraged to propose any change that you desire. Any comments that you have about the legality of the proposed rules must also be made during this comment period.

Request for a Hearing. In addition to submitting comments, you may also request that the Department hold a hearing on the rules. You must make your request for a public hearing in writing, which the agency contact person must receive by 4:30 p.m. on Wednesday, October 19, 2022. You must include your name and address in your written request. In addition, you must identify the portion of the proposed rules that you object to or state that you oppose the entire set of rules. Any request that does not comply with these requirements is not valid and the agency cannot count it when determining whether it must hold a public hearing. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules.

Withdrawal of Requests. If 25 or more persons submit a valid written request for a hearing, the Department will hold a public hearing unless a sufficient number of persons withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 25, the agency must give written notice of this to all persons who requested a

hearing, explain the actions the agency took to effect the withdrawal, and ask for written comments on this action. If a public hearing is required, the agency will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

Alternative Format/Accommodation. Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request or if you need an accommodation to make this hearing accessible, please contact the agency contact person at the address or telephone number listed above.

Modifications. The Department might modify the proposed rules, either as a result of public comment or as a result of the rule hearing process. It must support modifications by data and views submitted to the agency or presented at the hearing. The adopted rules may not be substantially different than these proposed rules unless the Department follows the procedure under *Minnesota Rules*, part 1400.2110. If the proposed rules affect you in any way, the Department encourages you to participate in the rulemaking process.

Cancellation of Hearing. The Department will cancel the hearing scheduled for December 6, 2022, if the agency does not receive valid requests for a hearing from 25 or more persons. If you requested a public hearing, the agency will notify you before the scheduled hearing whether the hearing will be held. You may also call the agency contact person at (651) 284-5006 after October 19, 2022, to find out whether the hearing will be held. You may also check for whether the hearing will be held by going on-line at: or going on-line at <http://www.dli.mn.gov/about-department/rulemaking/rulemaking-docket-minnesota-rules-chapter-1323-0>.

Notice of Hearing. If 25 or more persons submit valid written requests for a public hearing on the rules, the Department will hold a hearing following the procedures in *Minnesota Statutes*, sections 14.131 to 14.20. The Department will hold the hearing on the date and at the time and place listed above. The hearing will continue until all interested persons have been heard. Administrative Law Judge Kimberly Middendorf is assigned to conduct the hearing. Judge Middendorf's legal assistant, Nichole Helmueller, can be reached at the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, Saint Paul, Minnesota 55164-0620, telephone (651) 361-7875, fax (651) 539-0310, and email: nichole.helmueller@state.mn.us.

Hearing Procedure. If the Department holds a hearing, you and all interested or affected persons, including representatives of associations or other interested groups, will have an opportunity to participate. You may present your views either orally at the hearing or in writing at any time before the hearing record closes. All evidence presented should relate to the proposed rules. You may also submit written material to the Administrative Law Judge to be recorded in the hearing record for five working days after the public hearing ends. At the hearing the Administrative Law Judge may order that this five-day comment period is extended for a longer period but not more than 20 calendar days. Following the comment period, there is a five-working-day rebuttal period when the agency and any interested person may respond in writing to any new information submitted. No one may submit new evidence during the five-day rebuttal period.

All post-hearing comments and responses must be submitted to the Administrative Law Judge no later than 4:30 p.m. on the due date. The Office of Administrative Hearings strongly encourages all persons submitting comments and responses to do so using the [Administrative Hearings' Rulemaking eComments website](https://minnesotaoah.granicusideas.com/discussions) <https://minnesotaoah.granicusideas.com/discussions>. If using the eComments website is not possible, you may submit post-hearing comments in person, via United States mail, or by facsimile addressed to Judge Middendorf at the address or facsimile number listed in the Notice of Hearing section above.

All comments or responses received will be available for review at the Department of Labor and Industry or on the agency's website at <http://www.dli.mn.gov/about-department/rulemaking/rulemaking-docket-minnesota-rules-chapter-1323-0>. This rule hearing procedure is governed by *Minnesota Rules*, parts 1400.2000 to 1400.2240, and *Minnesota Statutes*, sections 14.131 to 14.20. You may direct questions about the procedure to the Administrative Law Judge.

Statement of Need and Reasonableness. The statement of need and reasonableness summarizes the justification for the proposed rules, including a description of who will be affected by the proposed rules and an estimate of the probable cost of the proposed rules. It is now available from the agency contact person. You may review or obtain copies for the cost of reproduction by contacting the agency contact person. Or, you may access a free copy on the agency's website at: <http://www.dli.mn.gov/about-department/rulemaking/rulemaking-docket-minnesota-rules-chapter-1323-0>.

Lobbyist Registration. *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. Ask any questions about this requirement of the Campaign Finance and Public Disclosure Board at: Suite #190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone (651) 539-1180 or 1-800-657-3889.

Adoption Procedure if No Hearing. If no hearing is required, the agency may adopt the rules after the end of the comment period. The Department will submit the rules and supporting documents to the Office of Administrative Hearings for a legal review. You may ask to be notified of the date the rules are submitted to the office. If you want to receive notice of this, to receive a copy of the adopted rules, or to register with the agency to receive notice of future rule proceedings, submit your request to the agency contact person listed above.

Adoption Procedure after a Hearing. If a hearing is held, after the close of the hearing record, the Administrative Law Judge will issue a report on the proposed rules. You may ask to be notified of the date that the Administrative Law Judge's report will become available, and can make this request at the hearing or in writing to the Administrative Law Judge. You may also ask to be notified of the date that the agency adopts the rules and the rules are filed with the Secretary of State by requesting this at the hearing or by writing to the agency contact person stated above.

Order. I order that the rulemaking hearing be held at the date, time, and location listed above.

9/9/2022

Date

Nicole Blissenbach

Nicole Blissenbach, Temporary Commissioner
Department of Labor and Industry