

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1115

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 12-5-84
DATE FOR REVIEW 12-14-84
DATE DUE 12-19-84

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

Approved 12.19.84 mjc Disapproved _____ Returned to Agency _____

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

Date filed w/Secretary of State 12-26-84 Revisor approved 12/6/84 disapproved _____

✓ Rule as Adopted

_____ Rule as Proposed

✓ Order Adopting 11.28.84 Date combined with FF

_____ Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
N/A date of Hearing

✓ Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

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

✓ Mailing list Certificate

✓ Publication in State Register
10.22.84 At least 30/~~20~~ days prior to ~~hearing~~/adoption
10.29.84 ERRata Notice

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 with Order Adopting

N/A LCRAR Report or agency Affidavit

✓ Certificate of Board's Resolution Adopting Rules

N/A Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

N/A 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-00006-02

STATE OF MINNESOTA

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

TO : MS. JUDITH WEHRWEIN
Office of the Attorney General
204 Administration Building

DATE: 12-5-84

FROM : CHRISTIE B. ELLER CBE
Special Assistant Attorney General

PHONE: 6-9200

SUBJECT: Proposed Rules of the Energy and Economic Development Authority Governing School Energy Conservation Investment Loans.

Enclosed please find a set of documents for the above-entitled rules of the Energy and Economic Development Authority. As noted in the Findings of Fact, Conclusions and Order Adopting Permanent Rules, the Authority received no requests for a public hearing or for notification of submission of the final rules to the Attorney General.

CBE:bl

Enclosures

RECEIVED
DEC 05 1984
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO: Mark B. Dayton, Chairman
Energy & Economic Development Authority

DATE: 12/19/84

ATTN: Christie B. Eller
Special Assistant Attorney General

FROM: Martha J. Casserly MJC
Special Assistant Attorney General

PHONE: 296-4692

SUBJECT: In the Matter of the Adoption of Permanent Rules of the Minnesota Energy & Economic Development Authority Governing Administration of the Public School Energy Conservation Investment Loan Program.

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:sz
Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

AG copy

Energy and Economic Development Authority

Adopted Rules Governing School Energy Conservation Investment Loans

Rules as Adopted

8300.2500 PURPOSE.

The purpose of parts 8300.2501 to 8300.2509 is to establish procedures for application by public school districts for energy conservation investment loans, criteria for state agency review of loan applications, and procedures and guidelines for monitoring, evaluation, and closure of loan accounts under the school energy loan program.

8300.2501 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 8300.2500 to 8300.2509, the following terms have the meaning given them.

Subp. 2. **Applicant.** "Applicant" means a public school district in Minnesota.

Subp. 3. **Authority.** "Authority" means the Minnesota Energy and Economic Development Authority.

Subp. 4. **Building.** "Building" means an existing building owned and operated by a public school district.

Subp. 5. **Conservation measure.** "Conservation measure" means an energy conservation measure that is an installation or modification of an installation to a building and that is primarily intended to reduce energy consumption or allow the use of an alternative energy source including solar, wind, peat, wood, and agricultural residue.

Subp. 6. **Maxi-audit.** "Maxi-audit" means a detailed engineering analysis of energy-saving building improvements, including modifications to building structure; heating, ventilating, and air conditioning systems; operation practices; lighting; and other factors that relate to energy use. The purpose of a maxi-audit is to quantify the economic and engineering feasibility of energy-saving improvements or major

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operational modifications.

Subp. 7. **Payback.** "Payback" means the simple payback that is equal to the design, acquisition, and installation costs of a conservation measure divided by the estimated first year energy cost savings attributable to that measure.

Subp. 8. **Project.** "Project" means all proposed work in an application for a loan to a school district.

8300.2502 SCHOOL ENERGY LOAN ELIGIBILITY CRITERIA.

Subpart 1. **In general.** The authority shall approve school energy loans to applicants to cover the costs of capital expenditures that are conservation measures that have paybacks of ten years or less as specified in a maxi-audit in compliance with Minnesota Statutes, section 116J.37 and parts 8300.2502 to 8300.2505.

Loans are available to applicants that have not previously received or been offered loan funds under this program, for new projects in school districts that previously received or were offered loan funds under this program, and as amendments to loans for projects in progress that are experiencing cost overruns or for previously unidentified but related work necessary to successful implementation of a previously approved project if the payback remains at ten years or less. With the exception of amendments as described above, the authority shall not approve more than one loan for the same conservation measure in the same building.

Subp. 2. **Prior approval required.** Except for a loan amendment to cover cost overruns or costs associated with previously unidentified but related work necessary to the successful implementation of a previously approved and funded project, projects that have been contracted for or begun before the authority notifies the school district that the loan application is approved are not eligible. This prior approval requirement applies to the design, acquisition, and installation costs as identified in the maxi-audit.

Subp. 3. **Existing buildings; new construction.** Only projects for existing buildings are eligible. New construction

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is not eligible except if it is a necessary part of successful implementation of a conservation measure for an existing building.

8300.2503 MAXIMUM LOAN AMOUNT.

To assure equitable statewide distribution of loan funds, given that loans will be issued on a first-come-first-served basis, the authority shall establish three equal allocations of the $30 million appropriated to this program to be divided among small, medium, and large school districts. Small districts are defined as having less than 900 students and four classroom buildings or less. Small districts are eligible for up to $250,000 per district. Large districts are defined as having greater than 5,000 students or more than ten classroom buildings. Large districts are eligible for up to $1,000,000 per district. All other districts are defined as medium school districts and are eligible for up to $500,000 per district. Cooperative vocational centers and any other eligible educational facilities that are not included in school districts are limited to $250,000. If less than 33 percent of any of the three allocations is used within six months from the effective date of parts 8300.2500 to 8300.2509, the authority may redistribute ~~funds~~ that fund equally among the three allocations.

8300.2504 SCHOOL ENERGY LOAN APPLICATION CONTENTS AND PROCEDURES.

Subpart 1. **In general.** An applicant shall submit an application to the authority on a form provided by the authority. An application must be completed, dated, and signed in ink by a duly authorized official of the applicant and must include the authorized official's title.

Subp. 2. **Contents.** The application must contain: the school district or vocational center number; complete mailing address of the school district including the county; contact person's name, title, and telephone number; federal employer identification number; list of buildings included in the request and the dollar amount requested per building; name and address of each building, including the county; the total floor area in

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square feet for each building; original construction date for each building and building additions; the state legislative district; and a summary description of each conservation measure, its maxi-audit item number, its estimated cost, the loan amount requested, its estimated annual energy cost savings, its estimated annual fuel and electric savings, its estimated payback, and the estimated dates the conservation measure will be started and completed; and a certification to assure proper and efficient operation of the building once the project is completed. An application for an amendment for cost overruns must also contain a copy of the bid selected.

An application must also contain an irrevocable resolution of the school board to annually levy or otherwise collect sufficient funds to guarantee loan repayment and a maxi-audit for each building involved in the project. One copy of the application is required.

8300.2505 SCHOOL ENERGY LOAN APPLICATION REVIEW.

Subpart 1. **Administrative review.** The authority shall examine the loan application to verify that the applicant is eligible, that the required forms and reports are included and are correctly completed, that an irrevocable resolution of the school board on school district or school board letterhead is included, and that the estimated start and end dates of the conservation measures included in the project are reasonable.

Subp. 2. **Technical review.** A technical review must be based on the maxi-audit submitted for each building included in a loan application. The applicant shall submit the maxi-audit with the loan application on forms provided by the authority. The minimum requirements for a maxi-audit are given at Code of Federal Regulations, title 10, section 455.42 (May 21, 1981). A maxi-audit must be performed by or under the direction of and signed by a professional mechanical or electrical engineer or by an architect registered in Minnesota.

Conservation measures with paybacks of ten years or less that are identified and described in maxi-audits are eligible. Loans may not be awarded to buildings with a remaining useful

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life less than or equal to the payback of the conservation measures proposed. Loans may not be awarded for a conservation measure if the payback of the conservation measure proposed is greater than or equal to the useful life of the measure.

The authority shall examine a maxi-audit that accompanies a loan application to verify that conservation measures requested are analyzed with adequate details of the existing conditions and proposed changes using appropriate calculation procedures, and that the proposed measures are eligible.

Subp. 3. **Review results.** The authority shall accept, reject, or modify a loan application request as necessary based on this review. The authority shall give to an applicant whose application is rejected a written notice of problems encountered in the review process and options available to correct them for resubmission of the application. If only certain of the conservation measures included in the project are rejected or modified, the applicant may decide to accept a loan for the approved portions or resubmit the project proposal at a later date after making the necessary changes.

8300.2506 LOAN APPROVAL.

Subpart 1. **Authority approval.** The authority shall approve loans that comply with parts 8300.2502 to 8300.2505, on a first-come-first-served basis based as on the order in which FF4 eligible and complete loan applications are received by the authority. If eligible and complete loan applications received at the same time cannot all be funded due to lack of available funds, the authority shall approved (approve) loans so that each affected application receives an equal percentage of the eligible loan amount request. ?

Subp. 2. **Execution of loan contract and disbursement of funds.** Upon approval of a school energy loan, the authority shall send a loan contract to the applicant. The authority shall attach to a loan contract a loan repayment schedule based on the approved loan application according to Minnesota Statutes, section 116J.37, subdivision 4, paragraph (b). The applicant shall have a duly authorized official execute and

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return the loan contract to the authority for execution of the loan contract by state officials and for disbursement of the loan funds. Loan funds must be issued upon execution of and according to the terms of the loan contract.

8300.2507 REPORTS AND MONITORING FOR SCHOOL ENERGY LOAN PROGRAM.

Subpart 1. **In general.** A school district that receives a loan from the authority shall submit the reports listed in subparts 2 to 5.

Subp. 2. **Annual project status report.** The school district shall submit to the authority on forms provided by the authority an annual project status report covering the period July 1 through June 30. This report is due each July 31 until the project is completed. The project status report must indicate the progress of the implementation of the measures funded, problems encountered, the effect of the problems on the project, and the corrective action taken. If at any time the school district fails to substantially comply with the start and end dates given in the loan application as approved, and if the school district cannot reasonably justify to the authority its lack of progress, the entire loan amount may become due and payable at the discretion of the authority.

Subp. 3. **Quarterly financial report.** The school district shall submit to the authority, on forms provided by the authority, a quarterly financial status report that indicates expenditures of loan funds through the last date of each quarter. This report is due within 30 days of the end of each calendar quarter until the project is completed.

Subp. 4. **Final report.** Within 60 days of the completion of the project, the school district shall submit to the authority, on forms provided by the authority, a final project status report and a financial status report that gives actual expenditures of the measures implemented.

Subp. 5. **Annual energy report.** The school district shall submit to the authority, on forms provided by the authority, an annual energy use and energy expenditure report by fuel type due each October 31 for the duration of the loan contract period, or

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

for a minimum of three years after project completion if the loan is paid in less than three years, unless the authority cancels this requirement prior to the end of the loan contract period.

8300.2508 SCHOOL ENERGY LOAN PROGRAM EVALUATION.

The authority shall evaluate the program's effectiveness in reducing the energy costs of participating school districts 18 months after the effective date of these permanent rules and annually thereafter until all loan funds are issued. The school district shall provide the authority with information that is reasonably needed to conduct an evaluation of the loan program, which shall include but not be limited to the reports required in part 8300.2507.

8300.2509 CLOSURE OF SCHOOL ENERGY LOAN ACCOUNT.

If the authority determines that the project that was approved for loan funds has been implemented, it shall authorize closure of the loan account upon full repayment.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

APPROVED AS TO FORM AND LEGALITY

December 19 1984

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY M J Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
DEC 26 1984

Joan Anderson Growe
Secretary of State

10:55
A.M.

Rules as Proposed (all new material)

8300.2500 PURPOSE.

The purpose of parts 8300.2501 to 8300.2509 is to establish procedures for application by public school districts for energy conservation investment loans, criteria for state agency review of loan applications, and procedures and guidelines for monitoring, evaluation, and closure of loan accounts under the school energy loan program.

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Subp. 7. **Payback.** "Payback" means the simple payback that is equal to the design, acquisition, and installation costs of a conservation measure divided by the estimated first year energy cost savings attributable to that measure.

ATTACHED IN THE
OFFICE OF THE STATUTES
OFFICE BY:
MVH

Subp. 8. **Project.** "Project" means all proposed work in an application for a loan to a school district.

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8300.2503 MAXIMUM LOAN AMOUNT.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY

To assure equitable statewide distribution of loan funds, given that loans will be issued on a first-come-first-served basis, the authority shall establish three equal allocations of the $30 million appropriated to this program to be divided among small, medium, and large school districts. Small districts are defined as having less than 900 students and four classroom buildings or less. Small districts are eligible for up to $250,000 per district. Large districts are defined as having greater than 5,000 students or more than ten classroom buildings. Large districts are eligible for up to $1,000,000 per district. All other districts are defined as medium school districts and are eligible for up to $500,000 per district. Cooperative vocational centers and any other eligible educational facilities that are not included in school districts are limited to $250,000. If less than 33 percent of any of the three allocations is used within six months from the effective date of parts 8300.2500 to 8300.2509, the authority may redistribute funds among the three allocations.

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its estimated annual fuel and electric savings, its estimated payback, and the estimated dates the conservation measure will be started and completed; and a certification to assure proper and efficient operation of the building once the project is completed. An application for an amendment for cost overruns must also contain a copy of the bid selected.

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The authority shall examine a maxi-audit that accompanies a

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

loan application to verify that conservation measures requested are analyzed with adequate details of the existing conditions and proposed changes using appropriate calculation procedures, and that the proposed measures are eligible.

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8300.2507 REPORTS AND MONITORING FOR SCHOOL ENERGY LOAN PROGRAM.

APPROVED BY THE
REVISOR OF STATUTES
OFFICE BY:

Subpart 1. **In general.** A school district that receives a loan from the authority shall submit the reports listed in subparts 2 to 5.

Subp. 2. **Annual project status report.** The school district shall submit to the authority on forms provided by the authority an annual project status report covering the period July 1 through June 30. This report is due each July 31 until the project is completed. The project status report must indicate the progress of the implementation of the measures funded, problems encountered, the effect of the problems on the project, and the corrective action taken. If at any time the school district fails to substantially comply with the start and end dates given in the loan application as approved, and if the school district cannot reasonably justify to the authority its lack of progress, the entire loan amount may become due and payable at the discretion of the authority.

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Subp. 5. **Annual energy report.** The school district shall submit to the authority, on forms provided by the authority, an annual energy use and energy expenditure report by fuel type due each October 31 for the duration of the loan contract period, or for a minimum of three years after project completion if the loan is paid in less than three years, unless the authority cancels this requirement prior to the end of the loan contract period.

8300.2508 SCHOOL ENERGY LOAN PROGRAM EVALUATION.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

The authority shall evaluate the program's effectiveness in reducing the energy costs of participating school districts 18 months after the effective date of these permanent rules and annually thereafter until all loan funds are issued. The school district shall provide the authority with information that is reasonably needed to conduct an evaluation of the loan program, which shall include but not be limited to the reports required in part 8300.2507.

8300.2509 CLOSURE OF SCHOOL ENERGY LOAN ACCOUNT.

If the authority determines that the project that was approved for loan funds has been implemented, it shall authorize closure of the loan account upon full repayment.

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY

MINNESOTA
Department of Energy
and Economic Development

Financial Management Division
Energy Finance 297-1332
Business Finance 297-3547

900 American Center
150 East Kellogg Boulevard
St. Paul, Minnesota 55101

October 19, 1984

TO: : Individuals, Firms & Organizations on the Minnesota Energy & Economic Development Authority & Department of Energy & Economic Development Rulemaking Notification List

SUBJECT: : Proposed Adoption of Rules of the Energy & Economic Development Authority Governing the Administration of the Public School Energy Conservation Investment Loan Program.

Notice is hereby given that the Energy & Economic Development Authority (hereinafter "the Authority") proposes to adopt the above entitled rules without a public hearing. The Authority has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, 14.21 to 14.28.

Authority for the adoption of these rules governing the administration of the Public School Energy Conservation Investment Loan Program is contained in MN Statute 116J.37, Section 1, subdivision 7.

Additionally, a Statement of Need & Reasonableness that describes the need for and the reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from Mr. de Fiebre upon request at the address below. The Statement of Need & Resonableness also may be reviewed by the public during regular business hours by contacting Mr. de Fiebre.

Persons interested in these rules shall have thirty (30) days to submit comments in support of or in opposition to the proposed rules. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the Authority and do not result in a substantial change in the proposed language.

Unless twenty-five (25) or more persons submit written requests for a public hearing on the proposed rules within the thirty (30) day comment period, a public hearing will not be held. Any person submitting a written request for a hearing should state his or her name and address and the Authority encourages that person to identify the portion of the proposed rule which they wish addressed at the hearing, the reason for the request, and any change proposed.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need & Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised in writing of the Submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption should submit a written statement of such request to Mr. de Fiebre.

A copy of the proposed rules follows this Notice.

Persons who wish to obtain copies of this notice, the proposed rules or the Statement of Need & Reasonableness or to submit comments, a written request for a public hearing or a written request to be informed when the rules are submitted to the Attorney General should submit such comments or requests to:

Jeremy de Fiebre
Energy Finance Division
Department of Energy & Economic Development
900 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
(612) 297-1221

STATE OF MINNESOTA
ENERGY & ECONOMIC DEVELOPMENT AUTHORITY

In the Matter of the Proposed
Adoption of Rules of the Energy
& Economic Development Authority
Governing the Public School Energy
Conservation Investment Loan Program

ORDER FOR NOTICE
OF INTENT TO ADOPT
RULES WITHOUT PUBLIC HEARING

IT IS ORDERED this 26th day of September, 1984 that a Notice of Intent to Adopt Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the State Department of Energy & Economic Development for that purpose and be published in the State Register.

Mark B. Dayton, Chairman
Energy & Economic Development
Authority

Authority # 84-199
State of Minnesota
Energy & Economic Development Authority

In the Matter of the Adoption of Permanent Rules of the Minnesota Energy & Economic Development Authority Governing Administration of the Public School Energy Conservation Investment Loan Program

Certificate of the Authority's Authorizing Resolution for Publication of Notice of Intent to Adopt Permanent Rules

I, Mark B. Dayton, do hereby certify that I am Chairman of the Minnesota Energy & Economic Development Authority, an authority authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Authority duly and properly called and held on the 26th day of September, 1984, that a quorum was present at said meeting, that a majority of those present voted for the resolution, that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

"RESOLVED, that Mark B. Dayton, Chairman of the Minnesota Energy & Economic Development Authority, Lyn Burton, Vice Chair and David Printy, Secretary, are hereby granted the authority and directed to sign an Order directing that Notice be given of the Authority's intent to adopt without public hearing rules governing the Public School Energy Conversation Investment Loan Program pursuant to Minnesota Statutes section 116J.37, to sign the Notice thereof, and to perform any and all acts incidental thereto. In the event a public hearing becomes necessary, they hereby are granted the authority and directed to call a hearing for the purpose of promulgating said rules as well as perform any and all acts incidental thereto, including but without being limited to signing an Order for Hearing and Notice of Hearing as well as acting as the Authority's representative at all hearings."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 26th day of September, 1984.

Mark B. Dayton, Chairman of the
Energy & Economic Development
Authority

Member

Authority # 84-241
State of Minnesota
Energy & Economic Development Authority

In the Matter of the Adoption of Permanent Rules of the Minnesota Energy & Economic Development Authority Governing Administration of the Public School Energy Conservation Investment Loan Program

Certificate of the Authority's Authorizing Resolution to Adopt Permanent Rules

I, Mark B. Dayton, do hereby certify that I am a member and the Chairman of the Minnesota Energy & Economic Development Authority, an authority duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Authority duly and properly called and held on the 28th day of November, 1984, that a quorum was present at said meeting, that a majority of those present voted for the resolution, that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "Resolved, that the rules relating to the administration of the Public School Energy Conservation Investment Loan Program be and they hereby are approved and adopted, pursuant to authority vested in us by Minnesota Statutes section 116J.37 Subd. 7, and that Mark B. Dayton, Chairman of the Minnesota Energy & Economic Development Authority, Lyn Burton, Vice Chair and David L. Printy, Secretary, be and hereby are authorized to sign an order adopting these rules and further are authorized to perform the necessary acts to provide that these rules shall have the force and effect of law."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 28th day of November, 1984.

Mark B. Dayton, Chairman of the
Energy & Economic Development
Authority

Member

The correct title and page number are:

Commerce Department
Proposed Rules Governing Credit Unions ..... [pg]816

The page number cited for the rules (Rule numbers 2675.6100. . . . . .6301) as listed on page 793, Minnesota Rules Amendments and Additions, was correctly cited as page 816.

Energy and Economic Development Department
Energy and Economic Development Authority

Proposed Rules Governing School Energy Conservation Investment Loans

Notice of Intent to Adopt Rules without a Public Hearing

An incomplete address was inadvertently printed in the October 22, 1984 issue of the *State Register*, page 823. Persons who wish to obtain copies of the notice of intent to adopt the above rules or the Statement of Need and Reasonableness concerning the rules, or who wish to submit comments, should submit comments and requests to:

Jeremy de Fiebre
Energy Finance Division
Department of Energy and Economic Development
900 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
(612) 297-1221

In the Matter of the Proposed
Adoption of Rules of the Minnesota
Energy & Economic Development Authority
Governing the Public School Energy Conservation
Investment Loan Program

MAILING AFFIDAVIT

STATE OF MINNESOTA)
) SS.
COUNTY OF RAMSEY)

Cassandra Brown, being first duly sworn deposes and says:

That on the 19th day of October, 1984, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Intent to Adopt Rules without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing 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 of Minnesota for the purpose of receiving notice of the proposed adoption of rules by the Authority.

Cassandra Brown

Subscribed and sworn to before me this
19th day of OCTOBER, 1984.

Dennis M. Devereaux

DENNIS M. DEVEREAUX
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires April 1, 1988

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

CERTIFICATE

In the Matter of the Proposed Adoption
of the Permanent Rules of the Energy
& Economic Development Authority
Governing the Administration of
the Public School Energy Conservation
Investment Loan Program

I hereby certify that the list of persons, associations and other interested groups who have requested, pursuant to Minnesota Statute 14.14, that their names be placed on file with and maintained by the State Department of Energy & Economic Development for the purpose of receiving notice of the proposed adoption of rules by both the Energy & Economic Development Authority and the Department of Energy & Economic Development is accurate and complete as of 9 AM this 12th day of October, 1984.

Mary Anderson

~~(2)~~ B. provide for the regular amortization of the premium paid so that the premium shall be entirely extinguished at or before the maturity of the security and the security (including premium) shall at no intervening date be carried at an amount in excess of that at which the obligor may legally redeem such security; or

~~(3)~~ C. set up a reserve account to amortize the premium, said account to be credited periodically with an amount not less than the amount required for amortization under ~~subitem (2)~~ item B.

Subp. 3. Charges. Accrued interest paid on securities must be charged to interest received under the cash basis of accounting. Bond commissions and all costs of sales or purchase must be charged to expense.

Subp. 4. Security at price less than par. Upon the purchase of a security at a price less than par, the credit union shall place ~~such~~ the security on its books at cost and may provide for the regular accretion of the discount, ratably over the period from purchase to maturity of the security.

2675.6290 INSURANCE.

Subpart 1. Insurance agency. A credit union may establish, operate, or maintain an insurance agency as a separate corporation or agency within its physical premises.

Subp. 2. Policyholder. A credit union may be the policyholder of either a group insurance plan or a subgroup under a master policy plan.

Subp. 3. Remission of premiums. Premiums may be remitted by the credit union to an insurer or the holder of a master policy on behalf of a credit union member provided that ~~said~~ the credit union has obtained written authorization from ~~such~~ the member.

~~The credit union may accept reimbursement from the insurer for the actual cost of ministerial tasks performed pertaining to insurance. This reimbursement shall not exceed ten percent of gross premiums. The credit union may not accept a commission on the insurance sale.~~

Subp. 4. Election by member. Where a credit union is engaged in the facilitation of its members' voluntary purchase ~~of types~~ of insurance incidental to the borrowing of money ~~for provident and productive purposes~~, including but not limited to fire, theft, automobile, life, and temporary disability insurance, a member shall be given the elective of purchasing any required insurance from the vendor of his choice, and the members' file shall contain his signed written elective.

Subp. 5. Canceled insurance. If the insurance is canceled, the unearned premium shall be paid to the member or credited to the member's share or deposit or loan account ~~as the case may be~~.

2675.6301 CERTIFIED PUBLIC ACCOUNTANT REPORT IN LIEU OF EXAMINATION.

Subpart 1. Request for approval. A credit union may request prior approval by the Department of Commerce to submit a certified public accountant report in lieu of examination. If approval is given, the department retains the authority to reject the report if it is inadequate by the standards of the department.

Subp. 2. Contents of report. A report submitted in lieu of examinations must include a balance sheet examination and the classifying of assets in a manner consistent with Department of Commerce credit union examinations. The report must be submitted on the same forms and in the same manner that Department of Commerce credit union examiners employ.

REPEALER Parts 2675.6100, subparts 1 and 5; 2675.6130; 2675.6140; 2675.6150; 2675.6160; 2675.6170; 2675.6180, subpart 3; 2675.6190; 2675.6240; 2675.6250, subpart 2; 2675.6280; 2675.6300; and 2675.9910 of the Department of Commerce are repealed.

Energy & Economic Development Authority

Proposed Rules Governing School Energy Conservation Investment Loans

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Energy & Economic Development Authority (hereinafter "the Authority") proposes to adopt the above entitled rules without a public hearing. The Authority has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, § 14.21 to § 14.28.

Authority for the adoption of these rules governing the administration of the Public School Energy Conservation Investment Loan Program is contained in MN Statute § 116J.37, Section 1, subdivision 7.

Additionally, a Statement of Need & Reasonableness that describes the need for and the reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from Mr. de Fiebre upon request at the address below. The Statement of Need & Reasonableness also may be reviewed by the public during regular business hours by contacting Mr. de Fiebre.

Persons interested in these rules shall have thirty (30) days to submit comments in support of or in opposition to the proposed rules. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the Authority and do not result in a substantial change in the proposed language.

Unless twenty-five (25) or more persons submit written requests for a public hearing on the proposed rules within the thirty (30) day comment period, a public hearing will not be held. Any person submitting a written request for a hearing should state his or her name and address and the Authority encourages that person to identify the portion of the proposed rule which they wish addressed at the hearing, the reason for the request, and any change proposed.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need & Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised in writing of the Submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption should submit a written statement of such request to Mr. de Fiebre.

A copy of the proposed rules follows this Notice.

Persons who wish to obtain copies of this notice, the proposed rules or the Statement of Need & Reasonableness or to submit comments, a written request for a public hearing or a written request to be informed when the rules are submitted to the Attorney General should submit such comments or requests to:

Jeremy de Fiebre
Energy Finance Division
Department of Energy & Economic Development
900 American Center Building
150 East Kellogg Boulevard
(612) 297-1221

Mark B. Dayton
Chairman, Energy & Economic
Development Authority

Rules as Proposed (all new material)

8300.2500 PURPOSE.

The purpose of parts 8300.2501 to 8300.2509 is to establish procedures for application by public school districts for energy conservation investment loans, criteria for state agency review of loan applications, and procedures and guidelines for monitoring, evaluation, and closure of loan accounts under the school energy loan program.

8300.2501 DEFINITIONS.

Subpart 1. Scope. For the purposes of parts 8300.2500 to 8300.2509, the following terms have the meaning given them.

Subp. 2. Applicant. "Applicant" means a public school district in Minnesota.

Subp. 3. Authority. "Authority" means the Minnesota Energy and Economic Development Authority.

Subp. 4. Building. "Building" means an existing building owned and operated by a public school district.

Subp. 5. Conservation measure. "Conservation measure" means an energy conservation measure that is an installation or modification of an installation to a building and that is primarily intended to reduce energy consumption or allow the use of an alternative energy source including solar, wind, peat, wood, and agricultural residue.

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.

Subp. 6. Maxi-audit. "Maxi-audit" means a detailed engineering analysis of energy-saving building improvements, including modifications to building structure; heating, ventilating and air conditioning systems; operation practices; lighting; and other factors that relate to energy use. The purpose of a maxi-audit is to quantify the economic and engineering feasibility of energy-saving improvements or major operational modifications.

Subp. 7. Payback. "Payback" means the simple payback that is equal to the design, acquisition, and installation costs of a conservation measure divided by the estimated first year energy cost savings attributable to that measure.

Subp. 8. Project. "Project" means all proposed work in an application for a loan to a school district.

8300.2502 SCHOOL ENERGY LOAN ELIGIBILITY CRITERIA.

Subpart 1. In general. The authority shall approve school energy loans to applicants to cover the costs of capital expenditures that are conservation measures that have paybacks of ten years or less as specified in a maxi-audit in compliance with Minnesota Statutes, section 116J.37 and parts 8300.2502 to 8300.2505.

Loans are available to applicants that have not previously received or been offered loan funds under this program, for new projects in school districts that previously received or were offered loan funds under this program, and as amendments to loans for projects in progress that are experiencing cost overruns or for previously unidentified but related work necessary to successful implementation of a previously approved project if the payback remains at ten years or less. With the exception of amendments as described above, the authority shall not approve more than one loan for the same conservation measure in the same building.

Subp. 2. Prior approval required. Except for a loan amendment to cover cost overruns or costs associated with previously unidentified but related work necessary to the successful implementation of a previously approved and funded project, projects that have been contracted for or begun before the authority notifies the school district that the loan application is approved are not eligible. This prior approval requirement applies to the design, acquisition, and installation costs as identified in the maxi-audit.

Subp. 3. Existing buildings; new construction. Only projects for existing buildings are eligible. New construction is not eligible except if it is a necessary part of successful implementation of a conservation measure for an existing building.

8300.2503 MAXIMUM LOAN AMOUNT.

To assure equitable statewide distribution of loan funds, given that loans will be issued on a first-come-first-served basis, the authority shall establish three equal allocations of the $30 million appropriated to this program to be divided among small, medium, and large school districts. Small districts are defined as having less than 900 students and four classroom buildings or less. Small districts are eligible for up to $250,000 per district. Large districts are defined as having greater than 5,000 students or more than ten classroom buildings. Large districts are eligible for up to $1,000,000 per district. All other districts are defined as medium school districts and are eligible for up to $500,000 per district. Cooperative vocational centers and any other eligible educational facilities that are not included in school districts are limited to $250,000. If less than 33 percent of any of the three allocations is used within six months from the effective date of parts 8300.2500 to 8300.2509, the authority may redistribute funds among the three allocations.

8300.2504 SCHOOL ENERGY LOAN APPLICATION CONTENTS AND PROCEDURES.

Subpart 1. In general. An applicant shall submit an application to the authority on a form provided by the authority. An application must be completed, dated, and signed in ink by a duly authorized official of the applicant and must include the authorized official's title.

Subp. 2. Contents. The application must contain: the school district or vocational center number; complete mailing address of the school district including the county; contact person's name, title, and telephone number; federal employer identification number; list of buildings included in the request and the dollar amount requested per building; name and address of each building, including the county; the total floor area in square feet for each building; original construction date for each building and building additions; the state legislative district; and a summary description of each conservation measure, its maxi-audit item number, its estimated cost, the loan amount requested, its estimated annual energy cost savings, its estimated annual fuel and electric savings, its estimated payback, and the estimated dates the conservation measure will be started and completed; and a certification to assure proper and efficient operation of the building once the project is completed. An application for an amendment for cost overruns must also contain a copy of the bid selected.

An application must also contain an irrevocable resolution of the school board to annually levy or otherwise collect sufficient funds to guarantee loan repayment and a maxi-audit for each building involved in the project. One copy of the application is required.

8300.2505 SCHOOL ENERGY LOAN APPLICATION REVIEW.

Subpart 1. Administrative review. The authority shall examine the loan application to verify that the applicant is eligible, that the required forms and reports are included and are correctly completed, that an irrevocable resolution of the school board on school district or school board letterhead is included, and that the estimated start and end dates of the conservation measures included in the project are reasonable.

Subp. 2. Technical review. A technical review must be based on the maxi-audit submitted for each building included in a loan application. The applicant shall submit the maxi-audit with the loan application on forms provided by the authority. The minimum requirements for a maxi-audit are given at Code of Federal Regulations, title 10, section 455.42 (May 21, 1981). A maxi-audit must be performed by or under the direction of and signed by a professional mechanical or electrical engineer or by an architect registered in Minnesota.

Conservation measures with paybacks of ten years or less that are identified and described in maxi-audits are eligible. Loans may not be awarded to buildings with a remaining useful life less than or equal to the payback of the conservation measures proposed. Loans may not be awarded for a conservation measure if the payback of the conservation measure proposed is greater than or equal to the useful life of the measure.

The authority shall examine a maxi-audit that accompanies a loan application to verify that conservation measures requested are analyzed with adequate details of the existing conditions and proposed changes using appropriate calculation procedures, and that the proposed measures are eligible.

Subp. 3. Review results. The authority shall accept, reject, or modify a loan application request as necessary based on this review. The authority shall give to an applicant whose application is rejected a written notice of problems encountered in the review process and options available to correct them for resubmission of the application. If only certain of the conservation measures included in the project are rejected or modified, the applicant may decide to accept a loan for the approved portions or resubmit the project proposal at a later date after making the necessary changes.

8300.2506 LOAN APPROVAL.

Subpart 1. Authority approval. The authority shall approve loans that comply with parts 8300.2502 to 8300.2505, on a first-come-first-served basis based as eligible and complete loan applications are received by the authority. If eligible and complete loan applications received at the same time cannot all be funded due to lack of available funds, the authority shall approve loans so that each affected application receives an equal percentage of the eligible loan amount request.

Subp. 2. Execution of loan contract and disbursement of funds. Upon approval of a school energy loan, the authority shall send a loan contract to the applicant. The authority shall attach to a loan contract a loan repayment schedule based on the approved loan application according to Minnesota Statutes, section 116J.37, subdivision 4, paragraph (b). The applicant shall have a duly authorized official execute and return the loan contract to the authority for execution of the loan contract by state officials and for disbursement of the loan funds. Loan funds must be issued upon execution of and according to the terms of the loan contract.

8300.2507 REPORTS AND MONITORING FOR SCHOOL ENERGY LOAN PROGRAM.

Subpart 1. In general. A school district that receives a loan from the authority shall submit the reports listed in subparts 2 to 5.

Subp. 2. Annual project status report. The school district shall submit to the authority on forms provided by the authority an annual project status report covering the period July 1 through June 30. This report is due each July 31 until the project is completed. The project status report must indicate the progress of the implementation of the measures funded, problems encountered, the effect of the problems on the project, and the corrective action taken. If at any time the school district fails to substantially comply with the start and end dates given in the loan application as approved, and if the school district cannot reasonably justify to the authority its lack of progress, the entire loan amount may become due and payable at the discretion of the authority.

Subp. 3. Quarterly financial report. The school district shall submit to the authority, on forms provided by the authority, a quarterly financial status report that indicates expenditures of loan funds through the last date of each quarter. This report is due within 30 days of the end of each calendar quarter until the project is completed.

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.

Subp. 4. Final report. Within 60 days of the completion of the project, the school district shall submit to the authority, on forms provided by the authority, a final project status report and a financial status report that gives actual expenditures of the measures implemented.

Subp. 5. Annual energy report. The school district shall submit to the authority, on forms provided by the authority, an annual energy use and energy expenditure report by fuel type due each October 31 for the duration of the loan contract period, or for a minimum of three years after project completion if the loan is paid in less than three years, unless the authority cancels this requirement prior to the end of the loan contract period.

8300.2508 SCHOOL ENERGY LOAN PROGRAM EVALUATION.

The authority shall evaluate the program's effectiveness in reducing the energy cost of participating school districts 18 months after the effective date of these permanent rules and annually thereafter until all loan funds are issued. The school district shall provide the authority with information that is reasonably needed to conduct an evaluation of the loan program, which shall include but not be limited to the reports required in part 8300.2507.

8300.2509 CLOSURE OF SCHOOL ENERGY LOAN ACCOUNT.

If the authority determines that the project that was approved for loan funds has been implemented, it shall authorize closure of the loan account upon full repayment.

Minnesota Energy & Economic Development Authority

Emergency Proposed Rules Relating to General Procedures, Small Business Development Loan Program, and Minnesota Fund Loans

Notice is hereby given that the Minnesota Energy and Economic Development Authority is proposing to adopt emergency rules for loan application procedures, Small Business Development Loans, Minnesota Funds, Special Assistance and amending the adopted rules governing authority procedures, pollution control financial assistance and business financial assistance. The agency is authorized by Minnesota Statutes, section 116J.91, subdivision 4, to adopt emergency rules for its financial assistance programs.

All interested parties have 25 days from the day of publication of this notice in the *State Register* to submit written comments to the agency in support of or in opposition to the proposed emergency rules, and comments are encouraged. With publication of this notice in the October 22, 1984, *State Register*, written comments must be received by the agency no later than 4:30 p.m. on November 16, 1984. Written comments should be sent to:

Mary A. Callahan
Financial Management Division
Department of Energy & Economic Development
900 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
Telephone: 612/297-1543

Please be advised that the proposed emergency rules may be modified as a result of the comments received. Any written material received by the agency will become part of the record in this matter.

The proposed emergency rules with any modifications adopted by the agncy, will be submitted to the Attorney General for review as to form and legality after close of the comment period. Persons wishing to be informed of the date of submission of the proposed emergency rules to the Attorney General should notify the agency of such desire at the address given above. The Attorney General has ten working days to approve or disapprove the rules.

The emergency rules will be effective five working days following approval of the rules by the Attorney General. It is the agency's intent to keep the rules in effect for a period of 180 days, although the proposed emergency rules may be continued in effect for an additional period of up to 180 days if the agency publishes a separate notice to such effect in the *State Register* and mails the same notice to all persons on the agency's list to receive notice of rulemaking proceedings.

STATE OF MINNESOTA
Energy & Economic Development Authority

In the Matter of the Proposed Adoption of Permanent Rules Governing the Administration of the Public School Energy Conservation Investment Loan Program

Findings of Fact, Conclusions, and Order Adopting Permanent Rules

Notice of Intent to Adopt Rules without a Public Hearing regarding the above entitled matter was published in the State Register on October 22, 1984 at 9 S.R.822-826, and was mailed to all persons who had registered their names with the Authority or the Department of Energy & Economic Development. The Notice offered interested parties 30 days in which to submit comments to the Authority, to request a public hearing on the proposed rules or to request notification of the submission of final rules to the Attorney General.

The Authority received three comments during that period. The Authority received no requests for a public hearing or for notification of the submission of the final rules to the Attorney General.

After affording interested parties an opportunity to submit comments and to request a public hearing on the proposed rules, and having received the sets of comments, the Authority makes the following:

Findings

1. The Authority received a letter with comments from Mr. Robert Wischmann of Lakewood Community College. Mr. Wischmann proposes to amend the definition of "applicant" to include community colleges and state universities.

   Minnesota Statutes, section 116J.37 Subd. 2 limits loan eligibility to public school districts. Therefore, the adoption of the suggested amendment would not be consistent with the statute.

2. The Authority received a letter with comments from Mr. Larry H. Thorson of Dairyland Power Cooperative. Mr. Thorson recommends that the definition of "conservation measure" be amended to include load management.

   Because schools are operated on daytime schedules, energy use cannot be readily shifted to a different time. Except for off-peak heat storage, most load management strategies in school buildings reduce peak load by reducing total energy consumption. Such measures are within the definition as proposed. Measures that achieve cost reductions solely through redistribution of load, such as off-peak heat storage, are not. The Authority contends that the definition as originally proposed is reasonable

and is generally accepted within the energy auditing and school building management communities, that most load management measures that are feasible within school buildings are within the definition, and that an expansion of the definition to encompass other measures that do not conserve energy cannot logically be reconciled with the meaning of conservation.

3. The Authority received a letter with comments and questions from Ms. A.J. Westberg of Northern States Power Company. (For the reader's convenience, the identifying numbers Ms. Westberg has used are noted parenthetically).

A. (#1) Ms. Westberg's first question concerns loan interest rates. Funds for this program are provided by sale of General Obligation Bonds. Interest rates for the loans are determined by the sale of these bonds and cannot be addressed within these rules.

B. (#2) Ms. Westberg raises concerns about documentation and assurances that a building will not be closed during the term of a loan. As the rules are proposed, no such assurance or documentation is required. The reason for Ms. Westberg's concern is not clear. If it is a fear that the state's financial interest might be jeopardized if a building were to close during the term of the loan, the Authority believes that the irrevocable resolution required by 8300.2504 Subp. 2 adequately protects the state's interest. If Ms. Westberg's concern is that an investment made in a building that will be closed during the term of the loan might be unwise, the Authority believes that it is reasonable to assume that an applicant will have adequately questioned the wisdom of such an investment, and that the applicant itself is best able to answer that question. The Authority contends that requiring a ten year population study would be burdensome. The Authority requires documentation in areas, such as technical analysis, where it is reasonable to assume that the applicant might not have expertise or where the information is necessary for the performance of its duties. However, it does not believe that this is one of those areas.

C. (#4) Ms. Westberg recommends that the maximum eligible payback be shortened. Minnesota Statutes, section 116J.37 Subd. 1c. sets the maximum payback at 10 years, and, therefore, it cannot be changed by rule.

D. (8300.2501 Subp. 7 & Question # 3) - Two of Ms. Westberg's comments address items related to the payback calculation. The rule as proposed defines payback as the simple payback that is equal to the cost of a conservation measure divided by the estimated first year energy cost savings attributable to that measure. Neither interest costs nor assumptions about future energy costs are included in the calculations. The question of the payback calculation formula is academic except when a payback approaches the ten year maximum. In those instances, if a more complex formula were to be used, a ten year projection of real fuels costs and inflation would have to be introduced into the calculation. The Authority contends that such long term projections are, at best, extremely uncertain, and would not produce a payback estimate that could be considered more accurate

than simple payback. Because simple payback is a no less reliable estimate and is already available in the applicant's maxi-audit, it is more reasonable to use that procedure.

E. (8300.2501. Subp. 1.) The Subpart cited explains the scope of the definitions. The Authority believes that Ms. Westberg wishes to address 8300.2505 Subp. 2., technical review. Ms. Westberg recommends, in essence, that the interaction between proposed conservation measures be taken into consideration in determining payback. The minimum requirements for a maxi-audit, cited in this Subpart, include a requirement that interaction be considered in calculating simple payback (Code of Federal Regulations, Title 10, Section 455.42 d (5) vii). The recommendation is, therefore, provided for in the rules as originally proposed.

F. (8300.2507 Subp. 5) Ms. Westberg asks if data collected under this program will be public information. The Authority believes that all data collected in this program is public information under Minnesota Statutes Chapter 13, and that this issue does not need to be addressed within the proposed rules.

4. As discussed in the statement of need & reasonableness for these proposed rules, an error was made by the Revisors office in 8300.2506 Subp 1. The first sentence should have read "The authority shall approve loans that comply with parts 8300.2502 to 8300.2505, on a first-come-first-served basis based <u>on the order in which</u> eligible and complete loan applications are received by the authority". The Authority contends that amending the rule to correct this error would not be substantive, but would clarify the meaning of the Subpart. V.p.5

<u>Conclusions</u>

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

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

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

4. The proposed amendment by Mr. Wischmann to redefine "applicant" is not consistent with Minnesota Statutes, section 116J.37, and is, therefore, rejected.

5. The proposed amendment by Mr. Thorson to redefine "conservation measure" is not appropriate because an expansion of the definition beyond its generally accepted limits to include measures that do not <u>conserve</u> energy is illogical. The amendment is, therefore rejected.

6. Ms. Westberg's question about interest rates has been addressed in the Authority's response to her, and the determination of interest rates is not within the Authority's rulemaking authority.

7. The proposed amendment by Ms. Westberg to require a ten year population study to assure that a building will not be closed during the term of a loan is burdensome and presupposes that an applicant will not reasonably assess its need nor exercise care in entering into a long term financial obligation. The Authority believes that such a presupposition is not supported by the commentor. Therefore, the amendment is rejected.

8. The proposed amendment by Ms. Westberg to shorten the maximum payback period is not consistent with Minnesota Statutes, section 116J.37 and is, therefore, rejected.

9. The proposed amendment by Ms. Westberg to redefine payback is not appropriate because it would afford no greater reliability to payback projections. Therefore, the amendment is rejected.

10. The proposed amendment by Ms. Westberg to require the consideration of interaction of measures in calculating payback is unnecessary because the rules, as originally proposed, require that consideration.

11. Ms. Westberg's question about public access to data is answered in the Authority's response to her, and the issue of public access does not need to be addressed within the rules.

12. The Authority's proposal to amend 8300.2506 Subpart 1 is non-substantive and reasonable. The Authority, therefore, adopts the amendment and modifies the proposed rule as follows:

> 8300.2506 LOAN APPROVAL
> Subpart 1. Authority approval. The authority shall approve loans that comply with parts 8300.2502 to 8300.2505, on a first-come-first-served basis based ~~as~~ on the order in which eligible and complete loan applications are received by the authority. If eligible and complete loan applications received at the same time cannot all be funded due to lack of available funds, the authority shall approve loans so that each affected application receives an equal percentage of the eligible loan amount requested.

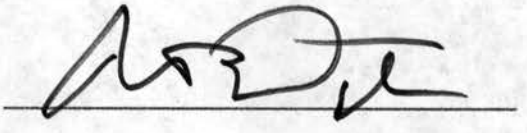
13. The Authority has determined the need for and reasonableness of these adopted rules.

ORDER

Notice of the Authority's intent to adopt the above-entitled rules without a public hearing was published in the State Register on October 22, 1984, and was sent by United States mail to all persons on the list maintained by the Department of Energy & Economic Development for both the Department and the Authority pursuant to Minnesota Statutes, section 14.14, on October 19, 1984. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than 25 written requests for a public hearing within the 30-day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED that these rules identified as Permanent Rules of the Energy & Economic Development Authority Governing the Administration of the Public School Energy Conservation Investment Loan Program are adopted this 28th day of November, 1984 pursuant to authority vested in the Authority by Minnesota Statutes, section 116J.37 sectopm 1, Subdivision 7.

STATE OF MINNESOTA



Energy & Economic Development
Authority

STATEMENT OF NEED & REASONABLENESS, SCHOOL LOAN PROGRAM

I. Introduction

The 1983 legislature established a school energy loan program for Minnesota public schools and authorized issuance of bonds by the commissioner of finance in Laws of Minnesota 1983, chapter 323, sections 1 through 7, codified as Minnesota Statutes 116J.37 (1983 Supplement). (Hereafter in this statement, the phrase "the statute" refers to Laws of Minnesota 1983, chapter 323, sections 1 through 7.) The Statute established a lending program in the Department of Energy & Economic Development empowering the Commissioner to approve loans to school districts for energy conservation investments identified in school building maxi-audits. The statute designated re-assignment of the power to approve these loans to the Minnesota Energy Authority upon passage of legislation creating the Authority. Legislation creating the Minnesota Energy & Economic Development Authority was passed in 1983. Laws of Minnesota 1983, chapter 289, sections 70 to 95 (to be re-codified as Minnesota Statutes Chapter 116M by Laws of Minnesota 1984, chapter 583, section 36).

Section 1, subdivision 7 of the statute empowers adoption of rules necessary to implement the school energy conservation investment loan program. As directed in chapter 323, section 1, subdivision 7, temporary rules were adopted by the authority pursuant to chapter 14, and were published in the State Register

December 26, 1983 and modified in the State Register published on March 19, 1984. This Statement of Need & Reasonableness describes the permanent rules proposed for operation of the school energy conservation investment loan program and the manner in which the authority will provide loans to public schools.

The proposed rules are modeled on the rules of the Department and other state agencies which operate similar types of financial assistance programs.

II. Impact on Small Business

The proposed rules create a program of state financial assistance to Minnesota public school districts in support of energy conservation projects and, as such, have no direct effect on small businesses. Rules covering programs such as this are exempted form Minnesota Statutes 14.115 (1983 Supplement) by subdivision 7(b) which exempts rules which do not directly affect small businesses.

III. Need & Reasonableness of Each Rule Provision

A. Purpose

Proposed part 8300.2500 states the purpose of the proposed rules. This part is needed to introduce the proposed rules and its reasonableness is self-evident.

B. Definitions

Proposed part 8300.2501 defines terms which have distinct meaning when used within the context of these rules. Subpart 1 is needed as an introductory and explanatory sentence regarding the use of the definitions. Its reasonableness is self-evident. Subpart 2 defines "Applicant" as a public school district in Minnesota. This is defined in order to designate a shorthand terminology for the participants in the program. It is needed to clarify that the program is limited by statute to public school districts in Minnesota who have the power to levy taxes to provide funds to repay the loan. It is reasonable because only public school districts have the ability to levy for this purpose. Subpart 3 defines "Authority" as the Minnesota Energy & Economic Development Authority, and is defined for the purpose of designating a short hand terminology to afford greater readability to the rules. The need and reasonableness of this shorthand definition is self-evident.

Proposed part 8300.2501, Subpart 4, defines "Building" as an existing building owned and operated by a public school district. This definition is needed to identify those buildings for which loan application may be made. It is reasonable because it is in accord with limitations imposed by the statute. The definition specifies existing buildings because a building not yet constructed, or a building under construction, could not have all auditing activity completed as required by statute (116J.37, Section 1, Subdivision 4).

The need and reasonableness of the public school provision is described above in the explanation of Subpart 2.

Subpart 5 defines "Conservation measure" as an energy conservation measure that is an installation or modification of an installation to a building, and that is primarily intended to reduce energy consumption or allow the use of an alternative energy source including solar, wind, peat, wood, and agricultural residue. The definition is needed to specify in detail the statutorily permissible use of these loan funds and to provide a shorthand terminology to afford greater readability to the rules. The definition is reasonable because it is used and understood in the energy auditing field and defines, within limitations imposed by statute, what kinds of projects are eligible.

Subpart 6 defines "Maxi-Audit" to mean a detailed engineering analysis of energy-saving building improvements, including modifications to building structure; heating, ventilating, and air conditioning systems; operation practices; lighting; and other factors that relate to energy use. This definition is needed to establish a specific meaning for a term that is not in common usage. This definition is reasonable because it is consistent with the definition in the statute which cross references to the definition in Minnesota Statutes section 116J.06. The definition is repeated here to make the rules stand alone. It is reasonable because it is more convenient for the applicants.

Subpart 7 defines "Payback" as the simple payback that is equal to the design, acquisition, and installation costs of an energy cost saving building improvement divided by the estimated first-year energy cost savings

attributable to that measure. This definition is necessary to establish a specific meaning for an indefinite term that is used in the statute. This definition is reasonable because it applies the most commonly used meaning, within the context of energy cost savings analysis, and is consistent with standard practice within the energy auditing field.

Subpart 8 defines "Project" as all proposed work in an application for a loan to a school district. This term is defined for purposes of designating a shorthand terminology to afford greater readability to the rules. The need and reasonableness of this shorthand definition is self-evident.

C. School Energy Loan Eligibility Criteria

Proposed part 8300.2502, Subpart 1, establishes the criteria for eligible uses of loan funds. This section first provides information on what types of projects are eligible. This is needed to set guidelines for projects so that they conform to the statute (116J.37, Section 1, Subd. 1(c) and Subd. 2) and to clarify that the end result of the project must be reduced energy costs for the school district. This section is reasonable because the purpose of the legislation is to assist schools in saving money through energy conservation investments. A payback period of ten years or less is also established and is necessary to conform with the statute. It is reasonable because it provides a test for an energy conservation measure's economic feasibility. The statute requires that the economic feasibility be demonstrated as a condition of loan approval.

Subpart 1 continues with identification of eligibility, that school districts

are eligible if they have not previously received or been offered loans in this program, for new projects if they have previously received loans through this program, or as amendments for cost overruns or for previously unidentified related work necessary to complete a previously approved project. This part is necessary to identify conditions with respect to previous loan activity under which an applicant is eligible to receive a loan. It is reasonable because it allows applicants the least restricted access to loan funds consistent with the statute.

Subpart 2 describes the prior approval condition of the program. A loan may not be awarded for a project already contracted for or begun. This condition is needed to discourage school districts from entering into contractual obligations prior to securing a means of repayment, and to avoid supplanting local resources. It is reasonable because school districts cannot enter into contract obligations prior to securing a means of payment.

Subpart 3 addresses the ineligibility of new construction except as a necessary part of a conservation measure for an existing building. This subpart is needed to clearly inform potential applicants of this prohibition and its exception. It is reasonable to include this subpart because this criteria might not be otherwise apparent. The prohibition is reasonable because, as discussed in the definition section of this statement (8300.2501 Subpart 4), the statute requires as a condition of loan approval that all auditing activity be completed, which can be done only on an existing building. The exception is reasonable because it is consistent with the above mentioned requirement and is based on the premise that new construction that is a necessary part of a conservation measure in an existing building is a component part of that

measure and is analyzed as such in the maxi- audit for the existing building.

D. Maximum Loan Amount

Proposed part 8300.2503 sets forth the criteria for determining maximum loan amount per district. It describes the allocation of the $30 million total into three equal parts, one each for small, medium and large school districts. The three district sizes are defined as follows: large--greater than 5,000 enrollment or greater than 10 classroom buildings; small--fewer than 900 enrollment and 4 or less classroom buildings; medium--all others. This equal allocation of the $30 million is needed to allow all Minnesota school districts, of whatever size, to have the opportunity to apply for loans. The definitions are necessary to allow the most equal use of the funds. They are reasonable because the groups each have approximately the same number of buildings. Thirty-one percent of the public school buildings in Minnesota are in large districts (although large districts represent only 6% of districts). Thirty-three percent of the buildings are in medium districts (these districts are 32% of the total number of districts); and 36% of the buildings are located in small districts (62% of all districts). These size definitions are the most reasonable possible, since by any other measurement besides number of buildings, disproportionate weight is given to one or another group. The proposed part states that each size division has a maximum loan amount permitted. Large districts are eligible for up to $1,000,000 per district; medium districts are eligible for up to $500,000 per district; and small districts are eligible for up to $250,000 per district. These maximums are needed to have approximately equivalent sums available in loans per building around the state, effectively relegating to unimportance the size of the

district. This is reasonable because state funds ought to benefit as equally as possible all citizens, and not be weighted toward large or any other size districts. A system such as this allows projects to take place in the maximum number of school buildings around the state, without favoritism to any one area or population level.

An additional sentence in this part notes that cooperative vocational centers and any other eligible educational facilities not included in the three equal allocations are limited to $250,000. This limit is needed to include facilities not included in the initial three allocations. The limit is set at the amount allowed for a small district. This is reasonable because such facilities have relatively few buildings and therefore can be considered similar to small districts in size.

The proposed part ends by stating that, if less than 33 percent of any of the three allocations is used within six months from the effective date of these permanent rules, the authority may redistribute the funds between the three allocations. This is needed to allow redistribution of funds to allow maximum use of program funds. It is reasonable to allow possible redistribution because, in establishing the three equal allocations based on number of classroom buildings, there may have been facts unknown about those districts likely to be interested in the program. Those unknown facts may affect the number of districts in each size that wish to apply, and leave one allocation's money little used while another's is completely gone within a short time. The six month period (which is in addition to the one year in which emergency rules were effective) gives a reasonable length of time in which to assess how rapidly each allocation of money is being used; and at the end of that period

of time, this section of the rules allows for moving money to further assist districts in need, while not damaging districts uninterested in applying.

E. School Energy Loan Application Contents and Procedures

Proposed part 8300.2504. describes the contents of a loan application and procedures for applicants to use in order to apply for a loan. Subpart 1, states that applicants shall submit an application to the authority on a form provided by the authority. This subpart is needed to provide a consistent format for all applications. It is reasonable because, in providing application forms rather than describing a laundry list of required information, proposed subpart establishes a structure and format to assist the applicant in identifying, organizing and presenting the necessary information. It is also reasonable for the entity charged with review and approval of applications to develop the required forms. It is necessary and reasonable to indicate the recipient of the application, the authority, because applicants must be informed of the proper recipient of applications. The subpart also states that each application must have an original ink signature by an authorized official of the school district and must have the authorized official's title and be dated. It is necessary and reasonable to have this requirement to ensurethat the responsible official is aware of the loan application and proposed projects, and he/she has, in a capacity as authorized district official, approved of the loan application.

Subpart 2 describes the contents of each loan application. It includes a complete description of the required contents of an application. The majority of the information required is needed to identify the applicant and contact

individuals and to describe in detail the proposed project or projects and assure proper and efficient building operation. It is reasonable to require this information to determine eligibility and because the authority must have a method of identifying each applicant and contacting responsible individuals in the event a question must be asked to clarify any issue prior to approval. The assurance of proper and efficient use of the building is reasonable because this provision is required by the statute (116J.37, section 1, subdivision 2). The proposed project information required is used by the authority to assess the application for technical review (8300.2505) and is needed in order to complete that review. It is reasonable to require this because the authority must have a means of determining eligibility and cost-effectiveness of a proposed project in order to meet its statutory obligation to provide loans for energy investments as defined in the statute (116J.37, section 1, subd. 1 (c)).

The subpart continues with the additional requirement in the case of an application for an amendment, that cost overruns must be substantiated by the bid selected. This section is necessary to describe the needed documentation for a loan amendment and the basis of loan amendment review. It is reasonable because a school district would apply for an amendment as a result of bids being higher than anticipated.

The subpart continues with submissions required with the application. These are: (1) an irrevocable resolution of the school board to annually levy or otherwise collect sufficient funds to guarantee loan repayment, and (2) a maxi-audit for each building involved in the application. The irrevocable resolution is necessary in order to comply with the statute (116J.37, section 1, subd. 5) and because the authority, acting as a lender of state funds,

should assure itself that the bodies to whom it proposes lending money have an irrevocable commitment to repay that money using whatever legal and proper means chosen, so that those repaid funds may be placed into the state building fund as directed by the statute (116J.37, section 1, subd. 6). The irrevocable provision is needed to ensure that future elected members to the school board do not, if of different mind than the borrowing members, revoke the resolution and refuse to repay the remainder of the loan. This is a reasonable provision, since the resolution indicates that the school board, as the elected governing body of the school district, is aware of the commitment it has undertaken for itself and future boards, and that the decision to undertake this commitment has not been made by any one official without consultation with or approval by the rest of the school board. (A school district may make such a commitment without voter approval as provided by Laws of Minnesota 1984, chapter 583, section 32.)

The required maxi-audit is necessary in order to conform with the statute in two areas. The first area is 116J.37, section 1, subd. 4 (a), which states that a district must demonstrate that all audit activities for a given building or project have been completed, and inclusion of the maxi-audit is the clearest and simplest demonstration of completion. The second is 116J.37, section 1, subd. 1 (c) which states that loans shall be given for energy conservation investments, which are defined as capital investments associated with conservation measures identified in a maxi-audit that have a ten-year or less payback period. This is a reasonable provision because it permits the authority to ensure by actually examining the maxi-audit that those statutory requirements have been met.

The subpart also states that one copy of the application is required. This is needed to inform the applicants of the minimum necessary to review their applications. It is reasonable because, while other state and federal programs frequently require more than one copy of an application, the authority feels that one copy is sufficient for its review purposes and may be shared among reviewers, and does not wish applicants to be put to added expense and labor for no real purpose.

F. School Energy Loan Application Review

Proposed part 8300.2505, Subpart 1, describes the review by the authority for administrative criteria. The subpart simply states that the authority shall examine the application to verify that required items described in 8300.2504 are included and complete. This is needed to confirm that those items required will be checked to see if they are correct, and it is reasonable because the authority is responsible to see that these requirements are carried out. The subpart states that the irrevocable resolution of the school board is to be on school board or school district letterhead. This is necessary to furnish additional assurance that the resolution is an official school board document, for reasons described in this statement's description of 8300.2504, Subpart 2. It is reasonable to expect official school board documents to appear on proper stationery that signifies legal and official action by that board.

The subpart also states that the estimated start and end dates of the conservation measures included in the project will be verified by the authority as reasonable. This information, required as part of 8300.2504, subpart 2, is

needed to determine when the loan funds will be put to use for the proposed project. It is reasonable to require the start and end dates of the project in order to allow the authority to have a timeline of anticipated project progress.

Subpart 2 describes the technical review of each loan application. It sets forth the contents of technical support materials. These materials are needed for technical review because the authority can only make judgements of a project's eligibility upon examining the maxi-audit that includes a description and calculations on that project. As mentioned in the discussion of 8300.2504, subpart 2, the inclusion of a maxi-audit is also required by statute, and the need for the forms is discussed in 8300.2504, subpart 1, of this statement also. It is reasonable to base technical review upon the maxi-audit because that audit contains the engineering and mathematical calculations used to determine feasibility and savings and is the only source of that information that public schools can reasonably be expected to have available. The subpart states where minimum maxi-audit requirements can be found and who must perform and sign the maxi-audit. It is necessary to clearly state minimum standards for maxi-audits submitted as part of a loan application and certification requirements for those performing the audits. It is reasonable to set minimum standards to ensure that the information needed to determine technical and economic feasibility is provided and that the individual providing the information be knowledgeable. The provisions are also reasonable because they provide for the use of maxi-audit which meets minimum requirements which are consistent with minimum requirements for similar state and federal financial assistance programs (116J.24, 1982, and Code of Federal Regulations, title 10, section 455.42, May 21, 1981).

Subpart 2 continues with project eligibility limitations. The first limitation, energy conservation investments with paybacks of ten years or less that are identified in the maxi-audit, is needed to conform with 116J.37, section 1, subd. 1, (c). This is a reasonable limitation for reasons described in this statement's explanation of proposed part 8300.2502, subpart 1. The subpart continues by stating that loans may not be awarded for buildings with a remaining useful life less than or equal to the payback of the measure proposed or for measures with a payback which is greater than or equal to the useful life of the measure. This is needed to prevent funding of measures that are not economically feasible. This is a reasonable provision because it ensures that the measure is economically feasible as required by 116J.37 section 1, subd. 4 (a).

The subpart continues that the authority shall examine a maxi-audit that accompanies a loan application to verify that energy conservation investments requested are analyzed with adequate details of the existing conditions and proposed changes using appropriate calculation procedures, and that the proposed measures are eligible. This is needed to inform applicants that the maxi-audit included with the application forms will be examined to ensure that proposed projects conform to guidelines described earlier. This is reasonable because examination ensures that all applicants are operating under the same assumptions and are using the same or equivalent calculation procedures, which will lead to fair assessment of all applications.

Subpart 3, states that the authority shall accept, reject, or modify a loan

application request as necessary based on review. This is necessary to clarify for applicants that the authority, and no other body or person, makes the decision on whether the applications meet guidelines and therefore may be funded. This is reasonable because the authority is responsible for reviewing applications which must be either accepted, rejected or modified. Modification is reasonable because it allows the authority to present a possible means of implementing the project, instead of simply rejecting it for not meeting guidelines.

Subpart 3 explains that, for applications found to be deficient, the authority will provide the applicant with written notice of the deficiencies. This is necessary to assure that the applicant understands the basis for rejection, and is given every opportunity to correct any deficiencies. This is reasonable because decisions made by a public body, and the basis for those decisions, should be clearly communicated to the affected parties. Also, it is reasonable to provide the applicant with help in correcting any deficiencies found. The subpart continues to explain that, if only some measures in an application are rejected, the applicant may chose to accept a loan on the remaining measures in the application. This is needed to provide the applicant with as wide a range of options as possible, and is reasonable because the intent of the statute is best met by allowing the broadest possible access to loan funds.

G. Loan Approval

8300.2506, subpart 1, states that the applicant must comply with the requirements of 8300.2502 to 8300.2505 in order to have an application

approved. This is needed to identify the conditions under which authority approval occurs so that all applicants are aware that loans will be approved based upon these criteria. This is reasonable because applicants should know before applying that applications will be examined and approved in the light of these criteria.

The subpart describes the issuing of loan funds on a first-come-first-served basis according to the order the authority receives an eligible and complete loan application and that in the event all applications received at a given time cannot be funded, each will receive an equal percentage. This subpart is necessary to establish a method for distribution of loan funds and is reasonable because it affords all school districts an equal opportunity to receive loan funds.

This revised set of proposed rules was published on October 22, 1984. After the proposed rules were sent to the State Register for publication but prior to actual publication, the Department learned that an error of omission had been made by the State Revisor's office with regard to the preceding first-come-first-served provision. The sentence in the proposed rule should read, "The authority shall approve loans that comply with parts 8300.2502 to 8300.2505, on a first-come-first-served basis based <u>on the order in which</u> eligible and complete loan applications are received by the authority." Since the error is not substantive, the Department is proposing to make the change when the rules are adopted.

Subpart 2 explains that the authority shall send a loan contract with repayment schedule to approved applicants, and the applicant shall sign and return the

contract for signature by state officials and issuance of the loan. This is needed to explain the process for execution of the loan agreement following loan approval. It is reasonable because it provides for the execution of the agreement following loan approval. It is also reasonable because it provides for the execution of the agreement prior to to the release of funds, and allows the authority to assure itself that the person empowered by the applicant has signed the agreement prior to the release of funds. The subpart states that a loan repayment schedule based on the approved loan application and the schedule established in the statute shall be attached to the loan contract that is sent to the school district for signature. This part is needed so that the school district is fully aware of repayment obligations before signing acceptance of the loan. This part is reasonable because a borrower should not be expected to approve and accept a financial obligation without knowing the details of the obligation. The subpart also states that funds must be issued upon execution of, and according to, the terms of the loan contract. This is needed to clarify the conditions in which these funds are disbursed and is reasonable because the appropriate occasion for disbursement is upon contract execution.

H. Reports & Monitoring for School Energy Loan Program

Proposed part 8300.2507 describes the various reports required of loan recipients by the state. Subpart 1 is simply an introduction to the proposed part, generally stating that loan recipients shall submit reports subsequently described. The need and reasonableness of this introductory subpart is self-evident. Each of the four following subparts describes a different

report. Subpart 2, describes the annual project status report. This report must be submitted by the school district to the authority on forms provided by the authority and must cover the period July 1 through June 30. The report is due each July 31 until the project is completed. This report is needed for the authority to assure itself that the loan funds are indeed being used for the purpose described in the application. It is easiest for the district to simply fill out a supplied form rather than create a document more complex and detailed than needed. A short form annual report is a reasonable requirement, to balance the authority's duty to inform itself of the project's progress, which is an element of monitoring required by 116J.37, section 1, subd. 7 (c), against the desirability of having a minimum number of reports for the school districts to complete. The time period July 1 through June 30 is needed to conform with the state fiscal year, and is reasonable because the reports come to a state office covering the use of state funds. The due date of July 31 is given to set a reasonable time limit on how long districts may take to complete the report and send it in; a month is a reasonable period of time in which to expect completion and submission of a relatively simple form report.

The subpart describes the contents of the status report, stating that it must indicate the progress of the implementation of the measures funded, problems encountered, the effect of the problems on the project, and the corrective action taken. This section is needed for two reasons: for the authority to determine that the project is actually in progress and the loan funds are being properly used; and also for the authority to have early notification of any districts having difficulties with project implementation. Those having difficulties may be offered assistance in resolving the problems if the problems are known about soon enough. This provision is reasonable because the

authority must have some method of carrying out its duty to see that funds are correctly used and because, if informed, the authority may be able to offer assistance not only to the district involved, but may be able to solve in advance potential problems for future loan recipients.

The subpart continues by stating that if at any time the district fails to substantially comply with the start and end dates given in the approved loan application, and if the district cannot reasonably justify its lack of progress, the entire loan amount may become due and payable at the discretion of the authority. This part is needed as a sanction to use in the event it becomes obvious that a loan recipient is not using the loan as agreed upon by both parties. It is reasonable because the part allows leeway for districts that fail to comply with start and end dates for good reason. It is also reasonable not to require the authority to call in all loans which cannot meet their estimated timelines, since there can exist justifiable reasons for deviation from timelines.

Subpart 3 describes the quarterly financial report. This report, which describes expenditures of loan funds through the last date of each quarter, must be submitted to the authority within 30 days of the end of each quarter. These reports must be submitted until the project is completed. These reports are needed to assure the authority that funds are, in fact, being disbursed as work proceeds on the project. This is reasonable because it keeps the authority informed of expenditures on a timely basis, and is an element of monitoring which is required by 116J.37, section 1, subd. 7 (c).

Subpart 4 describes the final report that must be submitted to the authority

within 60 days of project completion on forms supplied by the authority. This report is necessary and reasonable for the reasons described for the two preceding reports. In addition, final reports are needed stating that the work is completed and provide data necessary to evaluate the program's effectiveness. It is reasonable for the authority to have written information which assures project completion and which can provide a means with which to evaluate the program's effectiveness, which are provisions required by 116J.37, section 1, subd. 7 (c).

Subpart 5 covers the annual energy report. Each loan recipient must submit to the authority on forms provided by the authority an annual energy use and energy expenditure report by fuel type for the duration of the loan contract period or a minimum of three years after the completion if the loan is prepaid in less than three years. This report is needed to provide to the authority actual energy data on which the authority can evaluate the effectiveness of the program. It is a reasonable requirement because the goal of the program is to reduce energy costs in public schools and annual energy reports provide data to assess whether that goal has been met and continues to be met. It is also reasonable because it is essential in program evaluation which is required by 116J.37, section 1, subd. 7 (c). A minimum of three years of these reports is needed to give a minimum amount of information with which to assess the impact of the project.

I. <u>School Energy Loan Program Evaluation</u>

Proposed part 8300.2508 describes the evaluation the authority will establish to assess the effectiveness of the program. Evaluation will measure the effectiveness of the program in reducing energy costs. The evaluation is needed in order to judge the program's effectiveness. This evaluation is reasonable because it is required by 116J.37, section 1, subd. 7 (c). This part continues by stating that an evaluation will take place 18 months after permanent rules are in effect and annually thereafter. This is needed to establish a reasonable timeline by which the authority will initiate evaluation. The timeline is reasonable because energy-saving data will be available from schools only after projects have been implemented and are operating. The part continues by stating that the districts will provide the authority with the information that is needed for these evaluations. The proposed part is necessary to obtain such information from the school district in order to conduct the evaluation. The information required to conduct an evaluation will primarily include the information contained in the reports required in proposed part 8300.2507. On a case by case basis, technical information will be necessary to evaluate the particular project. The proposed part is reasonable because the districts are the best and most accurate source of the information and because such information is readily available to the school district and is not expensive for the school district to provide. The additional case by case information is not specified here because the great variety of projects funded would create an exhaustive listing.

J. Closure of Loan Account

Proposed part 8300.2509 describes the conditions under which a districts's loan account is closed. It states that if the authority has determined that the project was implemented and the loan fully repaid it shall authorize closure of the loan account. This part is necessary to set a clear end to active involvement in the program. It is reasonable to require that the project has been implemented and full repayment has been made, since that is what the school district agreed to in the loan application and contract.

For the reasons stated above, the Department of Energy & Economic Development believes that each of the proposed parts is reasonable to effectively administer the financial assistance program provided in Laws of Minnesota 1983, chapter 323, sections 1 through 7. It is further believed that the proposed rules are reasonable and necessary to effect the purpose and intent of the statutory authorization.

In the Matter of the Proposed
Adoption of Rules of the Minnesota
Energy & Economic Development Authority
Governing the Public School Energy
Conservation Investment Loan Program

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 Procedures 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 12-4-84
Christie B. Eller
Special Assistant Attorney General
