

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

RULE REVIEW CHECKLIST

0020

File No. 141D

Docket No. 05.1009.~~6734~~

DATE RECEIVED 10/19/87

ADOPTED W/O HEARING X

REVIEW DATE 10/28/87

EMERGENCY RULE

DUE DATE 11/2/87

REVISOR APPROVED X

APPROVED Nov 2-mjc

REVISOR DISAPPROVED

DISAPPROVED

FILED W/SEC.STATE

WITHDRAWN

RETURNED TO AGENCY

✓ Rule as adopted (4 copies)

~~Notice to Solicit Outside Information/Opinion~~

~~Date published in State Register~~

~~Comments~~

~~Petition for Adoption of a Rule~~

✓ Board's Authorizing Resolution

✓ Proposed rule

yes Revisor's Certificate

✓ Notice of Intent to Adopt Rule

169.45 Statutory Authority

~~yes~~ Small Business Statement

~~no~~ Expenditure of public money statement

yes Signature

✓ Statement of Need and Reasonableness

yes Small Business Statement

N/A Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule

8/30/87 Date (30)/25 days before adoption

✓ Publication in State Register

8/31/87 Date ~~30~~/25 days before adoption

✓ Resolution Adopting

✓ Findings of Fact, Conclusions & Order Adopting

10/13/87 Date

~~Written requests, submissions or comments~~

✓ Declaration of attorney

Cindy Lavarato Name of SAAG representing agency

~~Notice of Submission to Attorney General~~

~~Affidavit of Mailing Notice to Attorney General~~

SF-00006-05 (4/86)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT : ATTORNEY GENERAL

DATE : November 2, 1987

TO : Department of Public Service

FROM : MARTHA CASSERLY
Special Assistant
Attorney General

PHONE : 6-6204

SUBJECT : In the Matter of the Adopted Rule Relating to Building Energy Audits

The above-referenced rule has been approved as to its legality by the Attorney General on October 28, 1987.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submission or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must publish a notice of adoption in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

If you have any questions in this regard, please contact me.

MJC:nah
Enclosures

cc: Maryanne Hruby
Executive Director
Legislative Commission to Review
Adminsitrative Rules

Duane Harves
Chief Administrative Law Judge
Office of Administrative Hearings

AG Copy

Department of Public Service

Adopted Permanent Rules Relating to Building Energy Audits

Rules as Adopted

ENERGY AUDITS OF PUBLIC SCHOOL DISTRICTS, CITIES, COUNTIES, AND TOWNS

7680.0100 PURPOSE.

Parts 7680.0100 to 7680.0200 are adopted under the authority of Minnesota Statutes, section ~~116J.035~~ 216C.02, subdivision ~~2~~ 3, to establish criteria and procedures for granting financial assistance to Minnesota public school districts, cities, counties, and towns for conducting building energy audits under the state's cost-share maxi-audit program.

7680.0110 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 7680.0100 to 7680.0200, the following terms have the meanings given them.

Subp. 2. **Authorized cost-share maxi-auditor.** "Authorized cost-share maxi-auditor" is a person who has met the requirements of part 7680.0140.

Subp. 3. **Building.** "Building" means any existing, separate, enclosed, heated structure owned and operated by a municipality.

Subp. 4. **Cost-share maxi-audit.** "Cost-share maxi-audit" means a detailed engineering analysis of a building and its energy using systems, including the plumbing, lighting, heating, ventilating, and air conditioning systems. The primary objective of a cost-share maxi-audit is to identify and quantify the economic and engineering feasibility of energy conservation measures for a building and its energy using systems.

Subp. 5. **Cost-share maxi-audit manual or manual.** "Cost-share maxi-audit manual" or "manual" means the manual incorporated by reference in part 7680.0200.

Subp. 6. **Cost-share maxi-audit report.** "Cost-share maxi-audit report" means a written document prepared according

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to the cost-share maxi-audit manual as the result of a cost-share maxi-audit of a building.

Subp. 7. **Department.** "Department" means the Minnesota Department of Public Service.

Subp. 8. ~~**Designated-official.** "Designated-official" means a person designated by a municipality or joint power of municipalities to sign a grant for cost-share maxi-audit services.~~

~~Subp. 9.~~ **Municipality.** "Municipality" means a public school district, statutory or home rule charter city, county, or town in Minnesota, or joint power of these.

7680.0120 ELIGIBILITY.

All municipalities are eligible for cost-share maxi-audit grants for buildings which they own and operate. A building for which a municipality has received cost-share maxi-audit funds is not eligible for another cost-share maxi-audit grant until five years after the date of the previous cost-share maxi-audit grant payment.

7680.0130 COST-SHARE MAXI-AUDIT REQUIREMENTS.

Cost-share maxi-audit reports shall be prepared in accordance with the manual incorporated by reference in part 7680.0200.

7680.0140 COST-SHARE MAXI-AUDITOR AUTHORIZATION.

An authorized cost-share maxi-auditor is a person who is a professional electrical or mechanical engineer or architect registered in Minnesota and who has:

A. agreed to abide by the requirements of this part when conducting cost-share maxi-audits;

B. agreed to attend mandatory cost-share maxi-audit information and training sessions conducted by the department;

C. signed and submitted to the department, upon completion of the mandatory cost-share maxi-audit training, the Authorization Agreement for Cost-Share Maxi-Auditors which is provided in the manual and is available upon request from the

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department; and

D. agreed to make appropriate changes and additions to a cost-share maxi-audit report within 30 days after being sent written notification from the department of the required changes and additions.

These requirements must be adhered to in order for a person to maintain authorized cost-share maxi-auditor status.

7680.0150 APPLICATION.

Subpart 1. **Process.** The municipality must submit to the department an application for cost-share maxi-audit funds on a form provided by the department. This application must include the following:

A. the municipality's name and address;

B. the name and address of the building;

C. the area of the building in square feet;

D. the building audit status: previously maxi-audited or unaudited;

E. the date of the application; and

F. a contact person's name, title, and telephone number.

Subp. 2. **Application period.** The department will process applications in accordance with part 7680.0190, subpart 1, until all funds have been encumbered.

7680.0160 CONTRACT PROCESS.

Subpart 1. **Application review.** Upon receipt of an eligible application from a municipality, the department will determine the funding limits for each building according to part 7680.0190, subpart 2, and will prepare a cost-share maxi-audit grant contract for each building.

Subp. 2. **General.** The department will send the prepared contract to the applicant for signatures by two of the applicant's officials authorized to sign contracts. Grant contracts must be signed and returned to the department within 45 days of the department's mailing date to the applicant. If the grant contract has not been returned within 45 days, the

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funds may be redistributed to other applicants. After complete execution of the grant contract by the state of Minnesota, the department will send the municipality a copy of the fully executed contract, required scope of work, and a list of authorized cost-share maxi-auditors.

7680.0170 COST-SHARE MAXI-AUDIT REPORT REVIEW.

The department will review cost-share maxi-audit reports to verify that all requirements of the manual have been fulfilled. If the department review identifies any requirements that have not been fulfilled, the department will notify both the grantee and the authorized cost-share maxi-auditor of the necessary changes and additions. The department may conduct an on-site verification of the data contained in the cost-share maxi-audit report. When the cost-share maxi-audit report has been determined to fulfill all requirements, notice of acceptance will be sent to the grantee.

7680.0180 REIMBURSEMENT.

To be reimbursed for the funds approved in part 7680.0190, subpart 2, the following conditions must be met:

A. The municipality must not have contracted for or begun work before the fully executed grant contract was received by the municipality.

B. The cost-share maxi-audit must have been conducted by an authorized cost-share maxi-auditor.

C. The municipality must have submitted to the department no later than 90 days before the expiration date of the contract, the following:

(1) one copy of the cost-share maxi-audit report signed by an authorized cost-share maxi-auditor for each building that was awarded a cost-share maxi-audit grant; and

(2) one copy of the invoice for the cost-share maxi-audit work, itemized by building.

D. The cost-share maxi-audit report must have met the requirements of the manual.

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7680.0190 FUNDING.

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Subp. 2. **Limits.** Grants will be issued by the department for eligible applications up to the funding limits, based on building size, as shown in the following table. The department will reimburse grantees for 50 percent of the actual cost of a cost-share maxi-audit or the approved grant amount, whichever is less, when the requirements of part 7680.0180 have been met.

Funding Limits for Cost-Share Maxi-Audits

Building Size in Square Feet	Formula	Funding Limits
0-5,000	--	$500
5,001-25,000	--	$1,000
25,001-50,000	(Area)($.04/sq.ft.)	$1,000-$2,000
50,001-100,000	(Area)($.024/sq.ft.) + $800	$2,000-$3,200
100,001-150,000	(Area)($.016/sq.ft.) + $1,600	$3,200-$4,000
150,001-200,000	(Area)($.012/sq.ft.) + $2,200	$4,000-$4,600

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200,001-250,000	(Area)($.008/sq.ft.) + $3,000	$4,600-$5,000
250,001 and up	--	$5,000

Subp. 3. **Restrictions.** Municipalities awarded cost-share maxi-audit grants with money from alleged violations of federal petroleum pricing regulations cannot use funding from this program for the applicant's share of the cost of their cost-share maxi-audit.

7680.0200 INCORPORATION BY REFERENCE.

The Cost-Share Maxi-Audit Manual (1987), written and published by the Energy Division of the Department of Public Service, is incorporated by reference. The manual is not subject to frequent change and is available from the Department of Public Service, 900 American Center Building, 150 East Kellogg Boulevard, Saint Paul, MN 55101, and on the Minitex interlibrary loan system from the Minnesota State Law Library, Ford Building, 117 University Avenue, Saint Paul, MN 55155.

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STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
OCT 30 1987
Joan Anderson Growe
Secretary of State
10:00 AM

APPROVED AS TO FORM AND LEGALITY
October 28 19 87
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY Julie A. Segerstrom
SPECIAL ASSISTANT ATTORNEY GENERAL

Department of Public Service

Proposed Permanent Rules Relating to Building Energy Audits

Rules as Proposed (all new material)

ENERGY AUDITS OF PUBLIC SCHOOL DISTRICTS, CITIES, COUNTIES, AND TOWNS

7680.0100 PURPOSE.

Parts 7680.0100 to 7680.0200 are adopted under the authority of Minnesota Statutes, section 116J.035, subdivision 2, to establish criteria and procedures for granting financial assistance to Minnesota public school districts, cities, counties, and towns for conducting building energy audits under the state's cost-share maxi-audit program.

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C. signed and submitted to the department, upon completion of the mandatory cost-share maxi-audit training, the Authorization Agreement for Cost-Share Maxi-Auditors which is provided in the manual and is available upon request from the

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department; and

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Building Energy Audits

AGENCY: Department of Public Service

MINNESOTA RULES: Chapter 7680

The attached rules are approved for publication in the State Register

David S. Niss
Assistant Revisor

DEPARTMENT OF PUBLIC SERVICE
ENERGY DIVISION

In the matter of the Proposed Adoption of the Rule of the State Department of Public Service Governing the Cost-Share Maxi-Audit Programs

Notice is hereby given that the State Department of Public Service intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is contained in Minnesota Statutes section 116J.035, Subdivision 2, as amended by Laws of Minnesota, 1987,Chapter 312, Art. 1, Section 8, Subd. 3 and Reorganization Order Number 140 dated December 29, 1986.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Mary Pat Haney or Jeremy de Fiebre
Department of Public Service
Energy Division
900 American Center
150 E. Kellogg Boulevard
St. Paul, MN 55101
Telephone: (612) 297-2103

The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this notice.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Ms. Haney or Mr. de Fiebre upon request.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Ms. Haney or Mr. de Fiebre at the address given above.

Dated: July 24, 1987

Tony Perpich, Director
Department of Public Service

Department of Public Service

Proposed Permanent Rules Relating to Building Energy Audits

Rules as Proposed (all new material)

ENERGY AUDITS OF PUBLIC SCHOOL DISTRICTS, CITIES, COUNTIES, AND TOWNS

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To be reimbursed for the funds approved in part 7680.0190, subpart 2, the following conditions must be met:

A. The municipality must not have contracted for or begun work before the fully executed grant contract was received by the municipality.

B. The cost-share maxi-audit must have been conducted by an authorized cost-share maxi-auditor.

C. The municipality must have submitted to the department no later than 90 days before the expiration date of the contract, the following:

(1) one copy of the cost-share maxi-audit report signed by an authorized cost-share maxi-auditor for each building that was awarded a cost-share maxi-audit grant; and

(2) one copy of the invoice for the cost-share maxi-audit work, itemized by building.

D. The cost-share maxi-audit report must have met the requirements of the manual.

Approved by Revisor _____

7680.0190 FUNDING.

Subpart 1. **Priorities.** The department will process grant applications that comply with parts 7680.0100 to 7680.0190 on a first come, first served basis, based on the day an eligible and complete application is received by the department. If eligible and complete applications received on the same day cannot all be funded due to lack of available funds, the department will first process applications for previously unaudited buildings. If funds are not available for all eligible applications for previously unaudited buildings, the department will process grants so that each affected application receives an equal percentage of the eligible grant amount. If funds are available after processing all eligible applications for previously unaudited buildings, the department will process eligible grant applications for previously audited buildings. If funds are not available for all eligible applications for previously audited buildings, the department will process grants so that each affected application receives an equal percentage of the eligible grant amount. When all available funds have been encumbered, the department will not process any further applications, and affected applicants will be notified.

Subp. 2. **Limits.** Grants will be issued by the department for eligible applications up to the funding limits, based on building size, as shown in the following table. The department will reimburse grantees for 50 percent of the actual cost of a cost-share maxi-audit or the approved grant amount, whichever is less, when the requirements of part 7680.0180 have been met.

Funding Limits for Cost-Share Maxi-Audits

Building Size in Square Feet	Formula	Funding Limits
0-5,000	--	$500
5,001-25,000	--	$1,000
25,001-50,000	(Area)($.04/sq.ft.)	$1,000-$2,000
50,001-100,000	(Area)($.024/sq.ft.) + $800	$2,000-$3,200
100,001-150,000	(Area)($.016/sq.ft.) + $1,600	$3,200-$4,000
150,001-200,000	(Area)($.012/sq.ft.) + $2,200	$4,000-$4,600

Approved by Revisor _____

200,001-250,000	(Area)($.008/sq.ft.) + $3,000	$4,600-$5,000
250,001 and up	--	$5,000

Subp. 3. **Restrictions.** Municipalities awarded cost-share maxi-audit grants with money from alleged violations of federal petroleum pricing regulations cannot use funding from this program for the applicant's share of the cost of their cost-share maxi-audit.

7680.0200 INCORPORATION BY REFERENCE.

The Cost-Share Maxi-Audit Manual (1987), written and published by the Energy Division of the Department of Public Service, is incorporated by reference. The manual is not subject to frequent change and is available from the Department of Public Service, 900 American Center Building, 150 East Kellogg Boulevard, Saint Paul, MN 55101, and on the Minitex interlibrary loan system from the Minnesota State Law Library, Ford Building, 117 University Avenue, Saint Paul, MN 55155.

Approved
by Revisor _____

Statement of Need and Reasonableness

Cost-Share Maxi-Audit Program

I. The 1983 legislature established a program for public school districts to receive funds to perform building energy audits for eligible institutions applying for an energy investment loan in Laws of Minnesota 1983 Chapter 323, Sec. 5, Subd. 4. The procedures for this program were published at State Register, January 30, 1984, p 1784-1786 (8 S.R. 1784). The program was continued in Laws of Minn. 1985, First Special Session, Chap. 13, Sec. 28, Subd. 8, and in Laws of Minn. 1987, Chapter 358, Sec. 13, Subd. 5, to provide matching grants to conduct building energy audits.

Minn. Statute 116J.035 Subd. 2 as amended by Laws of Minn., 1987, Chap. 312, Article 1, Sec. 8, Subd. 3 and Reorganization Order Number 140, dated December 29, 1986 empowers the commissioner to adopt rules necessary to implement the program to provide matching grants to conduct building energy audits.

This Statement of Need and Reasonableness describes the permanent rules proposed for the Cost-Share Maxi-Audit Grant Program. The proposed rules are modeled on the rules of the Department and other state agencies which operate similar programs and also on the procedures published at State Register January 30, 1984 (8S.R. 1614).

II. Impact on Small Business

The proposed rules create a program of financial assistance to Minnesota public school districts and units of local government to conduct building energy audits and, as such, have no direct effect on small businesses. Rules covering programs such as this are exempted from Minn. Stat., sec. 14.115 by subd. 7(b) which exempts rules which do not directly affect small businesses.

III. Need and Reasonableness of Each Rule Provision.

Proposed part 7680.0100 states the purpose of the proposed rule. This part is needed to introduce the proposed rules and its reasonableness is self evident. To clarify the rulemaking authority citation, this part will be amended in the rule as adopted to incorporate a reference to Laws of Minnesota 1987, Chapter 312, Article 1, Section 8, Subdivision 3 and Reorganization Number 140 dated December 29, 1986, which transfer the powers and duties of the Commissioner of Energy and Economic Development under 116J.035 to the Commissioner of Public Service. This does not constitute a substantive change under Minnesota Rules 2010.1000, Item D.

Proposed part 7680.0110 defines terms which have distinct meanings 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 an authorized cost-share maxi-auditor as a person who has met the requirements of part 7680.0140 of the proposed rules. It is needed to give the reader a specific definition for a term used often within the rule. As such, its reasonableness is self-evident.

Subpart 3 defines building as any existing, separate, enclosed, heated structure owned and operated by a municipality. This definition is needed to identify those buildings which are eligible for the grant program. It is necessary and reasonable to specify existing because an audit cannot be conducted on a building not yet constructed. It is necessary to specify separate to make clear that building wings or additions are not individually eligible for grants. It is reasonable to require that buildings be audited as a whole because the energy use in part of a building is inextricably intertwined with use in other parts. It is necessary to specify enclosed to eliminate buildings such as band shells and picnic shelters from grant consideration. It is reasonable to exclude such buildings because their energy saving potential is small, and, given the limited funds available for audits, those funds should be directed toward buildings with greater savings potential. It is necessary to specify owned and operated by a municipality (as defined in 7680.0110, Subpart 9) to clearly state the types of organizations that are eligible for a grant, and the buildings for which they are eligible. It is reasonable to limit eligibility to municipalities because the budget documents submitted to the legislature, on which

the biennial appropriation was based, specify grants for public buildings. It is reasonable to require that a building be owned and operated by a municipality because, ultimately, the purpose of the grant program is to induce municipalities to make capital improvements in their facilities that may have a near term negative effect on cash flow, but which over the useful life of the improvement provide a significant net benefit. While present ownership and operation does not guarantee that the municipality will remain the beneficiary over the useful life of an improvement, the municipality, as owner, does control the decision to change that status. Futhermore, if the building is sold, such capital improvements should be reflected in the sale price.

Subp. 4 defines Cost-Share Maxi-Audit. This definition is needed to establish a specific meaning for a term that is not in common usage. It is reasonable because is consistent with other definitions of maxi-audit in statute (116J.06,Subd. 12; 116J.37,Subd. 1, paragraph b as amended by Laws of Minnesota 1987, Chapter 289, Section 1, paragraph b).

Subp. 5 defines Cost-Share Maxi-Audit manual or manual as the manual incorporated by reference in part 7680.0200 of these rules. It is needed to provide a shorthand term for a reference used often in the rule, and is reasonable because it makes the rule easier to read.

Subp. 6 Cost-Share Maxi-Audit report is defined as a written document prepared according to the cost-share maxi-audit manual as the result of a cost-share maxi-audit of a building. It is needed to provide a shorthand term for a document referred to often in the rule, and is reasonable because it makes the rule easier to read.

Subp. 7 defines department to mean the Minnesota Department of Public Service. It is needed and reasonable to provide a shorthand term to make the rule more readable.

The definition in Subp. 8 was mistakenly included in the rule as proposed. This term is not used in the final version of the proposed rule and, therefore, should be deleted in the rule as adopted.

Subp. 9 (to be renumbered as Subp. 8 in the rule as adopted) defines municipality to mean a public school district, statutory or home rule charter city, county or town in Minnesota or joint power of these. It is needed to give specific meaning to a term used in the rule. It is reasonable because it is consistent with a definition in the statute for a related program (116J.37, Subd. 1 as amended by Laws of Minnesota 1987, Chapter 289, section 1).

Proposed part 7680.0120 establishes the criteria for eligibility for grants. The need and reasonableness of the provisions in the first sentence of this part are explained in the portion of this statement related to part 7680.0110, subp. 3. These provisions are repeated here for clarity's sake.

The second sentence of this part is necessary to exclude a building from grant consideration for five years after receiving a cost-share grant to allow limited grant funds to remain available for other buildings. It is reasonable because, were a limit not imposed, a municipality could repeatedly receive grants to do "new audits" that would essentially be minor updates of the previous audit. Institutions often do minor updates, at their own expense, to prepare applications for grant and loan programs operated by the department.

If these qualified for a cost-share audit grant, it is likely that as much as one-third of the available funds would be used for that purpose, thereby severely limiting the funds available to other institutions. It is reasonable to set the limit at five years because after that period it can be assumed, based on the department's experience, that sufficient changes in technology and costs have occured to make the existing audit obsolete, while within that period the audit should remain sufficiently current.

7680.0130 establishes the requirement that cost-share maxi-audits be prepared in accordance with the manual as defined in the 7680.0100, Subp. 5., and incorporated by reference in 7680.0200. It is necessary and reasonable to specify a standard for cost-share maxi-audit reports to provide objective criteria to determine if grant conditions have been fulfilled, and to insure that both the state and the grantee receive reasonable value for their investment. It is reasonable to require this standard because it meets minimum requirements for audits submitted in application for funds available to municipalities from the department and the U.S. Department of Energy to implement recommended energy conservation measures (ECM). In addition, the professional engineering community is familiar with this standard.

7680.0140 establishes criteria for cost-share maxi-auditor authorization. It is necessary to set standards for maxi-auditors to ensure that the auditor is technically qualified to perform an audit, familiar with the specific requirements of the audit, and qualified, under rule, to perform an audit eligible for submission in an ECM loan or grant application. It is necessary to provide for authorization of auditors to establish a means to resolve problems with audits not meeting the required standard, and to establish a means to remove a recalcitrant auditor from eligibility for future audit work.

It is necessary and reasonable to specify that an auditor be a professional electrical or mechanical engineer or architect to ensure that the auditor is knowledgable in the areas necessary to perform an audit, and to comply with requirements of ECM grant and loan programs. It is necessary and reasonable to require that an auditor be registered in Minnesota to ensure that the auditor is familiar with Minnesota's Building Code and Energy Code, and to comply with requirements of ECM grant and loan programs. It is necessary to require that an auditor agree to abide by the requirements of this part in conducting maxi-audits to provide a clear indication on the part of the auditor that he/she is aware of and consents to these requirements. It is reasonable to do so because loss of authorization is a consequence of noncompliance with these requirements, and if the department is to impose such a penalty, it should assure itself that the auditor was aware of that penalty.

It is necessary to require that an auditor agree to attend mandatory training sessions to ensure that the department is able to disseminate information it believes to be essential to the successful completion of an audit. It is reasonable to require that an auditor attend such sessions because, in the department's experience, auditor training is best accomplished through the use of both written materials and in-person presentations. It is necessary to require an auditor to sign and submit the authorization agreement to provide a written record of the auditor's awareness of and consent to the authorization requirements. It is reasonable to do so because, given the severity of the penalty for noncompliance, the department should provide itself with proof of an auditor's consent. It is necessary and reasonable to require that the agreement be signed after completion of training to ensure that the auditor's consent be informed. It is necessary to require an auditor to agree to make appropriate changes to an audit report to make clear that the auditor understands that it is his/her responsibility to rectify any shortcomings in an audit report. It is reasonable to do so because the auditor's role in the audit grant process is to properly perform an audit, and statisfactory completion of an audit occurs only upon submission of a report meeting the audit standard. It necessary and reasonable to require that changes be made within thirty days of written notice to provide a specific time limit for fulfillment of the requirement. It is reasonable to set that limit at thirty days because it allows ample time to make any needed changes. It is necessary to require an auditor to adhere to the requirements of this part to maintain authorization to provide the department with a means of enforcement of these requirements. It is reasonable because the

department requires a municipality to contract with an auditor on the authorized list (7680.0180). While the department makes no guarantee as to an authorized auditor's performance, it would be remiss in knowingly providing a list that includes auditors who have previously failed to comply with minimum requirements.

Part 7680.0150 describes the application process.

Subp. 1 states that an applicant must submit an application to the department on a form provided by the department. This subpart is needed to inform applicants of the proper recipient of an application, and to provide a consistent format for all applications. It is reasonable to require a standard application form to assist the applicant in identifying the information necessary for a complete application. The subpart then lists the required contents of an application. It is needed to clearly delineate the required contents. It is reasonable to do so because, for determining order of funding, an application will be considered to be received by the department only if it is complete (7680.0190). if the department is to decide that an application is incomplete, it must have a specific standard for doing so. The need and reasonableness of requiring the applicant's name and address and the name and address of the building for which application is being made are self-evident. It is necessary and reasonable to require the building square footage to determine the funding limit for that building. It is necessary and reasonable to require the building audit status to assist the department in determining whether the building is eligible under part 7680.0120. It is necessary and

reasonable to require the date of application to distinguish an application from any others submitted for that building on other dates. It is necessary and reasonable to require a contact person's name, title and telephone number to identify a representative of the applicant designated to receive the grant contract and to contact should the department require further information.

Subp. 2 states that the department will process applications in accordance with part 7680.019 subp. 1 until all funds are encumbered. It is necessary and reasonable to inform the reader of the department's actions upon receipt of an application. The need for and reasonableness of part 7680.0190 subp. 1 will be discussed at that part.

Part 7680.0160 describes the contract process.
Subp. 1 states that the department will determine funding limits according to part 7680.0190 subp. 2 and prepare a grant contract for each building in an eligible application. The need to assign these tasks to one of the involved parties is self-evident. It is reasonable that the department determine the funding limits and prepare the grant contracts to ensure that the funding limit is properly calculated and that the state's interests, as grantor, are properly protected in the contracts. It is necessary and reasonable to prepare a contract for each building because, in the department's experience, grantees often apply for funds for more buildings than are eventually audited. The department believes that it is simpler, for both parties, to void the contracts for those buildings not audited (or allow the contracts to expire) than to amend a single multi-building contract each time the grantee decides to eliminate a building from the scope of work to be performed.

Subp. 2 states that the department will send the prepared contract to the applicant for signature by two of the applicant's officials authorized to sign contracts. It is necessary and reasonable to require the signature of two officials to insure that an official does not act unilaterally in committing the applicant to the contract. Subp. 2 also states that a contract must be signed and returned within 45 days of mailing by the department, and that if this requirement is not met, the funds may be redistributed to other applicants. This provision is necessary to compel timely execution of contracts, and to allow the department to redirect funds if the applicant does not act in a timely manner. It is reasonable to do so because, barring such a provision, the department could not redirect those funds until the expiration date of the pending contract. If all available grant funds have been encumbered, and other applicants await funds, the department believes that it is appropriate to allow another applicant an opportunity to use those funds. It is reasonable to limit the time allowed to 45 days because, as the governing bodies of municipalities generally meet at least once within that timespan, it allows ample time to secure the governing body's approval, if needed. Subp. 2 also states that, after complete execution of the contract, the department will send the municipality a copy of the fully executed contract, required scope of work, and a list of authorized cost-share maxi-auditors. It is necessary and reasonable to send the grantee a copy of the contract and required scope of work so that the grantee has a record of the requirements of the agreement. It is necessary and reasonable to send the grantee a list of authorized auditors to inform the grantee of the group of persons who are eligible to perform the audits.

Part 7680.0170 describes the Cost-Share Maxi-Audit report review. It states that the department will review audit reports to verify that the requirements of the audit manual have been met. It is necessary and reasonable because compliance with the requirements of the audit manual is a condition of grant fulfillment (7680.0180, D). The part further states that, if shortcomings are identified, the department will notify both the grantee and the auditor. The need and reasonableness of notifying the grantee is self-evident. It is necessary and reasonable to notify the auditor because, under part 7680.0140(D), the auditor is required to make the needed corrections. The part also states that the department may conduct an on-site verification of audit data. It is necessary and reasonable to allow the department to resolve questions concerning audit data, if written and oral information do not provide adequate clarification. Finally, the part states that a notice of acceptance will be sent to the grantee upon determination that the audit requirements have been met. It is necessary and reasonable to inform the grantee of the department's determination.

Part 7680.0180 states the conditions to be met for payment of the grant funds. (A) It is necessary to require that work cannot be contracted for or begun before receipt of the fully executed grant contract to discourage applicants from entering into contractual obligations prior to securing a means of repayment. It is reasonable because, in requiring the applicant to wait until an executed contract is in hand, the impact of a potential misunderstanding of the department's intent to fund an application can be minimized. B) The need for and reasonableness of the requirement that an audit be conducted by an authorized auditor are discussed at the section of this statement pertaining to part 7680.0140. (C) It is necessary and

reasonable to require the grantee to submit the maxi-audit report so the department can determine that the audit requirements have been met. It is necessary and reasonable to require the grantee to submit the invoice for the audit work, itemized by building, to determine the allowable grant amount for each building. It is necessary to require that the audit and invoice be submitted 90 days prior to the expiration of the grant contract to allow sufficient time for department review, corrections and additions if needed, and processing of the payment request. It is reasonable to allow sufficient time because payment on the grant cannot be made after the expiration date of the grant. (D) The need for and reasonableness of the requirement that the audit meet the requirements of the manual are discussed at the section of this statement pertaining to part 7680.0130.

Part 7680.0190 describes the priorities and funding limits under which grants will be awarded. Subpart 1 states that applications will be funded on a first come, first served basis, except when sufficient funds are not available to fund all eligible applications received on the same day. The subpart then establishes a funding priority for applications for buildings not previously audited and provides for proportional funding of applications when sufficient funds are not available to fully fund those applications. The subpart also provides for proportional funding of applications for previously audited buildings after fully funding applications for buildings not previously audited. This subpart is needed to establish a method to determine the priority of an application. It is reasonable because, when sufficient funds are available, all eligible applicants are given an equal opportunity to receive loan funds. It is reasonable

to give unaudited buildings a higher priority when sufficient funds are not available because an applicant with a previous, albeit outdated, audit has some useful information available in the existing audit, and has a document that can be used for grant and loan applications. Having made this priority determination, the department believes that any other fair assessment of priority would require the submission of a burdensome amount of financial information by the applicant. It is, therefore, more reasonable to give an equal percentage of the eligible grant amount to each applicant with the same priority.

Subp. 2 sets grant funding limits at the lesser of 50% of the audit cost or a funding maximum based on the building's area. It is necessary and reasonable to set a maximum funding limit to allow widespread distribution of grant funds, and to discourage overcharging for audits. The limits used are reasonable because they are based on average historical costs for maxi-audits funded by the department and its predecessors. It is necessary to limit grants to a percentage of audit costs to provide a local investment in the audit. It is reasonable to do so because, with limited grant funds, the department wishes to leverage other funds to increase the impact of this program. Futhermore, experience has shown that, when no local contribution is required, applicants have given little consideration to cost effectiveness in choosing buildings to audit. Applicants required to make an investment in an audit tend to examine more carefully the potential benefit of the audit. It is reasonable to set the limit at 50% because it allows a significant leveraging of other funds while providing sufficient inducement for program participation.

Subp. 3 restricts the use of these grant funds as a match for other grant funds available from the department. It is necessary to provide a local investment in the audit. the reasonableness of requiring local investment is discussed in the previous paragraph.

In part 7680.0200, the Cost-Share Maxi-Audit Manual (1987) is incorporated by reference. The need for and reasonableness of this standard are discussed at the section of this statement pertaining to part 7680.0130. The need for and reasonableness of the incorporation by reference are self-evident.

In the Matter of the Proposed Adoption of the Rule of the State Department of Public Service Governing Cost-Share Maxi-Audit Grants

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

Nancy Finch, being sworn says:

That on the 11th day of August, 1987, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt A Rule Without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, with postage prepaid, to all persons and associations on the Department of Public Service rulemaking list kept by the Department pursuant to Minnesota Statutes, section 14.14, subdivision 1a and 14.22 or 14.30.

Nancy Finch
Secretary, Office of
Municipal Energy Finance

Subscribed and sworn to before me
this 2nd day of September, 1987

Dennis M. Devereaux

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

4900.0980 RATE OF INTEREST.

The rate of interest charged by the tribe, band, or communities on housing loans made pursuant to the act, the plan, and parts 4900.0900 to 4900.1080, shall be ~~not less than two percent and not more than the highest rate of interest authorized by applicable usury and lending laws~~ negotiated between the tribe, band, or communities, and the MHFA. The prime consideration in establishing rates of interest for eligible loans shall be to make the plan self-supporting by generating sufficient interest income to offset the expenses incurred in the development and operation of the plan, with the exception of the first year's expenses which shall be funded from the appropriation provided in the act upon MHFA's approval of a detailed budget for that first year.

Department of Public Service

Proposed Permanent Rules Relating to Building Energy Audits

Notice of Intent to Adopt a Rule without a Public Hearing

Notice is hereby given that the State Department of Public Service intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rule is contained in *Minnesota Statutes* section 116J.035, Subdivision 2, as amended by *Laws of Minnesota, 1987*, Chapter 312, Art. 1, Section 8, Subd. 3 and Reorganization Order Number 140 dated December 29, 1986.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Mary Pat Haney or Jeremy de Fiebre
Department of Public Service
Energy Division
900 American Center
150 E. Kellogg Boulevard
St. Paul, MN 55101
Telephone: (612) 297-2103

The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule follows this notice.

A free copy of the proposed rule is available upon request from Ms. Haney or Mr. de Fiebre at the address given above.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Ms. Haney or Mr. de Fiebre upon request.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Ms. Haney or Mr. de Fiebre at the address given above.

Dated: 24 July 1987

Tony Perpich, Director
Department of Public Service

Rules as Proposed (all new material)

ENERGY AUDITS OF PUBLIC SCHOOL DISTRICTS, CITIES, COUNTIES, AND TOWNS

7680.0100 PURPOSE.

Parts 7680.0100 to 7680.0200 are adopted under the authority of Minnesota Statutes, section 116J.035, subdivision 2, to establish criteria and procedures for granting financial assistance to Minnesota public school districts, cities, counties, and towns for conducting building energy audits under the state's cost-share maxi-audit program.

7680.0110 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 7680.0100 to 7680.0200, the following terms have the meanings given them.

Subp. 2. **Authorized cost-share maxi-auditor.** "Authorized cost-share maxi-auditor" is a person who has met the requirements of part 7680.0140.

Subp. 3. **Building.** "Building" means any existing, separate, enclosed, heated structure owned and operated by a municipality.

Subp. 4. **Cost-share maxi-audit.** "Cost-share maxi-audit" means a detailed engineering analysis of a building and its energy using systems, including the plumbing, lighting, heating, ventilating, and air conditioning systems. The primary objective of a cost-share maxi-audit is to identify and quantify the economic and engineering feasibility of energy conservation measures for a building and its energy using systems.

Subp. 5. **Cost-share maxi-audit manual or manual.** "Cost-share maxi-audit manual" or "manual" means the manual incorporated by reference in part 7680.0200.

Subp. 6. **Cost-share maxi-audit report.** "Cost-share maxi-audit report" means a written document prepared according to the cost-share maxi-audit manual as the result of a cost-share maxi-audit of a building.

Subp. 7. **Department.** "Department" means the Minnesota Department of Public Service.

Subp. 8. **Designated official.** "Designated official" means a person designated by a municipality or joint power of municipalities to sign a grant for cost-share maxi-audit services.

Subp. 9. **Municipality.** "Municipality" means a public school district, statutory or home rule charter city, county, or town in Minnesota, or joint power of these.

7680.0120 ELIGIBILITY.

All municipalities are eligible for cost-share maxi-audit grants for buildings which they own and operate. A building for which a municipality has received cost-share maxi-audit funds is not eligible for another cost-share maxi-audit grant until five years after the date of the previous cost-share maxi-audit grant payment.

7680.0130 COST-SHARE MAXI-AUDIT REQUIREMENTS.

Cost-share maxi-audit reports shall be prepared in accordance with the manual incorporated by reference in part 7680.0200.

7680.0140 COST-SHARE MAXI-AUDITOR AUTHORIZATION.

An authorized cost-share maxi-auditor is a person who is a professional electrical or mechanical engineer or architect registered in Minnesota and who has:

A. agreed to abide by the requirements of this part when conducting cost-share maxi-audits;

B. agreed to attend mandatory cost-share maxi-audit information and training sessions conducted by the department;

C. signed and submitted to the department, upon completion of the mandatory cost-share maxi-audit training, the Authorization Agreement for Cost-Share Maxi-Auditors which is provided in the manual and is available upon request from the department; and

D. agreed to make appropriate changes and additions to a cost-share maxi-audit report within 30 days after being sent written notification from the department of the required changes and additions.

These requirements must be adhered to in order for a person to maintain authorized cost-share maxi-auditor status.

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.

7680.0150 APPLICATION.

Subpart 1. **Process.** The municipality must submit to the department an application for cost-share maxi-audit funds on a form provided by the department. This application must include the following:

A. the municipality's name and address;

B. the name and address of the building;

C. the area of the building in square feet;

D. the building audit status: previously maxi-audited or unaudited;

E. the date of the application; and

F. a contact person's name, title, and telephone number.

Subp. 2. **Application period.** The department will process applications in accordance with part 7680.0190, subpart 1, until all funds have been encumbered.

7680.0160 CONTRACT PROCESS.

Subpart 1. **Application review.** Upon receipt of an eligible application from a municipality, the department will determine the funding limits for each building according to part 7680.0190, subpart 2, and will prepare a cost-share maxi-audit grant contract for each building.

Subp. 2. **General.** The department will send the prepared contract to the applicant for signatures by two of the applicant's officials authorized to sign contracts. Grant contracts must be signed and returned to the department within 45 days of the department's mailing date to the applicant. If the grant contract has not been returned within 45 days, the funds may be redistributed to other applicants. After complete execution of the grant contract by the state of Minnesota, the department will send the municipality a copy of the fully executed contract, required scope of work, and a list of authorized cost-share maxi-auditors.

7680.0170 COST-SHARE MAXI-AUDIT REPORT REVIEW.

The department will review cost-share maxi-audit reports to verify that all requirements of the manual have been fulfilled. If the department review identifies any requirements that have not been fulfilled, the department will notify both the grantee and the authorized cost-share maxi-auditor of the necessary changes and additions. The department may conduct an on-site verification of the data contained in the cost-share maxi-audit report. When the cost-share maxi-audit report has been determined to fulfill all requirements, notice of acceptance will be sent to the grantee.

7680.0180 REIMBURSEMENT.

To be reimbursed for the funds approved in part 7680.0190, subpart 2, the following conditions must be met:

A. The municipality must not have contracted for or begun work before the fully executed grant contract was received by the municipality.

B. The cost-share maxi-audit must have been conducted by an authorized cost-share maxi-auditor.

C. The municipality must have submitted to the department no later than 90 days before the expiration date of the contract, the following:

(1) one copy of the cost-share maxi-audit report signed by an authorized cost-share maxi-auditor for each building that was awarded a cost-share maxi-audit grant; and

(2) one copy of the invoice for the cost-share maxi-audit work, itemized by building.

D. The cost-share maxi-audit report must have met the requirements of the manual.

7680.0190 FUNDING.

Subpart 1. **Priorities.** The department will process grant applications that comply with parts 7680.0100 to 7680.0190 on a first come, first served basis, based on the day an eligible and complete application is received by the department. If eligible and complete applications received on the same day cannot all be funded due to lack of available funds, the department will first process applications for previously unaudited buildings. If funds are not available for all eligible applications for previously unaudited buildings, the department will process grants so that each affected application receives an equal percentage of the eligible grant amount. If funds are available after processing all eligible applications for previously unaudited buildings, the department will process eligible grant applications for previously audited buildings. If funds are not available for all eligible applications for previously audited buildings, the department will process grants so that each affected application receives an equal percentage of the eligible grant amount. When all available funds have been encumbered, the department will not process any further applications, and affected applicants will be notified.

Subp. 2. **Limits.** Grants will be issued by the department for eligible applications up to the funding limits, based on building size, as shown in the following table. The department will reimburse grantees for 50 percent of the actual cost of a cost-share maxi-audit or the approved grant amount, whichever is less, when the requirements of part 7680.0180 have been met.

Funding Limits for Cost-Share Maxi-Audits

Building Size in Square Feet	Formula	Funding Limits
0-5,000	—	$500
5,001-25,000	—	$1,000
25,001-50,000	(Area) ($.04/sq.ft.)	$1,000-$2,000
50,001-100,000	(Area) ($.024/sq.ft.) + $800	$2,000-$3,200
100,001-150,000	(Area) ($.016/sq.ft.) + $1,600	$3,200-$4,000
150,001-200,000	(Area) ($.012/sq.ft.) + $2,200	$4,000-$4,600
200,001-250,000	(Area) ($.008/sq.ft.) + $3,000	$4,600-$5,000
250,001 and up	—	$5,000

Subp. 3. **Restrictions.** Municipalities awarded cost-share maxi-audit grants with money from alleged violations of federal petroleum pricing regulations cannot use funding from this program for the applicant's share of the cost of their cost-share maxi-audit.

7680.0200 INCORPORATION BY REFERENCE.

The Cost-Share Maxi-Audit Manual (1987), written and published by the Energy Division of the Department of Public Service, is incorporated by reference. The manual is not subject to frequent change and is available from the Department of Public Service, 900 American Center Building, 150 East Kellogg Boulevard, Saint Paul, MN 55101, and on the Minitex interlibrary loan system from the Minnesota State Law Library, Ford Building, 117 University Avenue, Saint Paul, MN 55155.

Adopted Rules

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.14-14.28 have been met and five working days after the rule is published in *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

An emergency rule becomes effective five working days after the approval of the Attorney General as specified in Minn. Stat. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted emergency rule will be published in the manner provided for adopted rules under § 14.18.

Department of Health

Adopted Permanent Rules Relating to Review of Care and Classification of Residents in Facilities Participating in the Medical Assistance Program

The rules proposed and published at *State Register*, Volume 11, Number 22, pages 970-975, December 1, 1986 (11 S.R. 970) are adopted with the following modifications:

Rules as Adopted

4656.0010 SCOPE.

Parts 4656.0010 to 4656.0090 establish procedures for the assessment of the appropriateness and quality of care and services furnished to medical assistance sponsored residents of facilities certified for participation in the medical assistance program under

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.

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC SERVICE

In the Matter of the Proposed Adoption of the Rule of the State Department of Public Service Governing Building Energy Audits

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

Notice of the Commissioner's intent to adopt the above-entitled rule was published in the State Register on August 10, 1987 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 on August 11, 1987. The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public.

All persons were given the opportunity to submit comment on the rule amendments for 30 days after notice of proposed rulemaking. No requests for a public hearing on the rule were received by the agency.

No submissions or comments on the rule were received by the agency. No requests for notice of submission to the attorney general were received by the agency.

Based on the evidence in the record before the agency, I find the following:

1. As discussed in the statement of need and reasonableness for this proposed rule, the citation in part 7680.0100 should be amended to clarify the commissioner's authority to adopt this rule. However, a statutory citation can now be incorporated instead of the reference to Laws 1987 and Reorganization Number 140. This does not constitute a substantive change under Minnesota Rules 2010.1000, Item D. Therefore, the deparment modifies the proposed rule as follows:

7680.0100 PURPOSE
Parts 7680.0100 to 7680.0200 are adopted under the authority of Minnesota Statutes, section ~~116J.035~~ 216C.02, subdivision ~~2~~ 3, to establish...

2. As discussed in the statement of need and reasonableness for this proposed rule, an error was made at 7680.0110, subdivision 8 in including a definition for a term not used in the rule as proposed. The deletion of this definition would avoid potential confusion and does not constitute a substantive change under Minnesota Rules 2010.1000, Item D. Therefore, the department modifies the proposed rule as follows:

7680.0110 DEFINITIONS
...Subp. 8.~~-Designated-official.--"Designated-official"-means-a-person designated-by-a-municipality-or-joint-power-of-municipalities-to-sign-a grant-for-cost-share-maxi-audit-services.~~
~~Subp.-9.~~ Municipality...

NOW, THEREFORE, IT IS ORDERED that the rule identified as Minnesota Rules 7680.0100 to 7680.0200 as modified is adopted this eighth day of October, 1987, pursuant to the authority vested in me by Minnesota Statutes, section 216C.02, subdivision 3.

Elizabeth L. Hoodhouse for
Tony Perpich

Tony Perpich, Commissioner
of Public Service

In the Matter of the Adoption
of the Rule of the Department of
Public Service Governing Building
Energy Audits Minn. Rule pt. 7680.0100-
7680.0200

DECLARATION OF COUNSEL

I, CHRISOPHER K. SANDBERG, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule and the supporting rulemaking record, and that based on my examination, the Administrative Procedure Act and Minnesota Rules Chapter 2010, have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is 0731.

Dated: October 16, 1987.

CHRISTOPHER K. SANDBERG
Special Assistant
Attorney General

DEPARTMENT OF PUBLIC SERVICE
ENERGY DIVISION

In the matter of the Proposed Adoption of the Rule of the State Department of Public Service Governing the Cost-Share Maxi-Audit Programs

Notice is hereby given that the State Department of Public Service intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is contained in Minnesota Statutes section 116J.035, Subdivision 2, as amended by Laws of Minnesota, 1987, Chapter 312, Art. 1, Section 8, Subd. 3 and Reorganization Order Number 140 dated December 29, 1986.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Mary Pat Haney or Jeremy de Fiebre
Department of Public Service
Energy Division
900 American Center
150 E. Kellogg Boulevard
St. Paul, MN 55101
Telephone: (612) 297-2103

The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this notice.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Ms. Haney or Mr. de Fiebre upon request.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Ms. Haney or Mr. de Fiebre at the address given above.

Dated: July 24, 1987

Tony Perpich, Director
Department of Public Service

Department of Public Service

Proposed Permanent Rules Relating to Building Energy Audits

Rules as Proposed (all new material)

ENERGY AUDITS OF PUBLIC SCHOOL DISTRICTS, CITIES, COUNTIES, AND TOWNS

7680.0100 PURPOSE.

Parts 7680.0100 to 7680.0200 are adopted under the authority of Minnesota Statutes, section 116J.035, subdivision 2, to establish criteria and procedures for granting financial assistance to Minnesota public school districts, cities, counties, and towns for conducting building energy audits under the state's cost-share maxi-audit program.

7680.0110 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 7680.0100 to 7680.0200, the following terms have the meanings given them.

Subp. 2. **Authorized cost-share maxi-auditor.** "Authorized cost-share maxi-auditor" is a person who has met the requirements of part 7680.0140.

Subp. 3. **Building.** "Building" means any existing, separate, enclosed, heated structure owned and operated by a municipality.

Subp. 4. **Cost-share maxi-audit.** "Cost-share maxi-audit" means a detailed engineering analysis of a building and its energy using systems, including the plumbing, lighting, heating, ventilating, and air conditioning systems. The primary objective of a cost-share maxi-audit is to identify and quantify the economic and engineering feasibility of energy conservation measures for a building and its energy using systems.

Subp. 5. **Cost-share maxi-audit manual or manual.** "Cost-share maxi-audit manual" or "manual" means the manual incorporated by reference in part 7680.0200.

Subp. 6. **Cost-share maxi-audit report.** "Cost-share maxi-audit report" means a written document prepared according

Approved by Revisor

to the cost-share maxi-audit manual as the result of a cost-share maxi-audit of a building.

Subp. 7. **Department.** "Department" means the Minnesota Department of Public Service.

Subp. 8. **Designated official.** "Designated official" means a person designated by a municipality or joint power of municipalities to sign a grant for cost-share maxi-audit services.

Subp. 9. **Municipality.** "Municipality" means a public school district, statutory or home rule charter city, county, or town in Minnesota, or joint power of these.

7680.0120 ELIGIBILITY.

All municipalities are eligible for cost-share maxi-audit grants for buildings which they own and operate. A building for which a municipality has received cost-share maxi-audit funds is not eligible for another cost-share maxi-audit grant until five years after the date of the previous cost-share maxi-audit grant payment.

7680.0130 COST-SHARE MAXI-AUDIT REQUIREMENTS.

Cost-share maxi-audit reports shall be prepared in accordance with the manual incorporated by reference in part 7680.0200.

7680.0140 COST-SHARE MAXI-AUDITOR AUTHORIZATION.

An authorized cost-share maxi-auditor is a person who is a professional electrical or mechanical engineer or architect registered in Minnesota and who has:

A. agreed to abide by the requirements of this part when conducting cost-share maxi-audits;

B. agreed to attend mandatory cost-share maxi-audit information and training sessions conducted by the department;

C. signed and submitted to the department, upon completion of the mandatory cost-share maxi-audit training, the Authorization Agreement for Cost-Share Maxi-Auditors which is provided in the manual and is available upon request from the

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department; and

D. agreed to make appropriate changes and additions to a cost-share maxi-audit report within 30 days after being sent written notification from the department of the required changes and additions.

These requirements must be adhered to in order for a person to maintain authorized cost-share maxi-auditor status.

7680.0150 APPLICATION.

Subpart 1. **Process.** The municipality must submit to the department an application for cost-share maxi-audit funds on a form provided by the department. This application must include the following:

A. the municipality's name and address;

B. the name and address of the building;

C. the area of the building in square feet;

D. the building audit status: previously maxi-audited or unaudited;

E. the date of the application; and

F. a contact person's name, title, and telephone number.

Subp. 2. **Application period.** The department will process applications in accordance with part 7680.0190, subpart 1, until all funds have been encumbered.

7680.0160 CONTRACT PROCESS.

Subpart 1. **Application review.** Upon receipt of an eligible application from a municipality, the department will determine the funding limits for each building according to part 7680.0190, subpart 2, and will prepare a cost-share maxi-audit grant contract for each building.

Subp. 2. **General.** The department will send the prepared contract to the applicant for signatures by two of the applicant's officials authorized to sign contracts. Grant contracts must be signed and returned to the department within 45 days of the department's mailing date to the applicant. If the grant contract has not been returned within 45 days, the

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funds may be redistributed to other applicants. After complete execution of the grant contract by the state of Minnesota, the department will send the municipality a copy of the fully executed contract, required scope of work, and a list of authorized cost-share maxi-auditors.

7680.0170 COST-SHARE MAXI-AUDIT REPORT REVIEW.

The department will review cost-share maxi-audit reports to verify that all requirements of the manual have been fulfilled. If the department review identifies any requirements that have not been fulfilled, the department will notify both the grantee and the authorized cost-share maxi-auditor of the necessary changes and additions. The department may conduct an on-site verification of the data contained in the cost-share maxi-audit report. When the cost-share maxi-audit report has been determined to fulfill all requirements, notice of acceptance will be sent to the grantee.

7680.0180 REIMBURSEMENT.

To be reimbursed for the funds approved in part 7680.0190, subpart 2, the following conditions must be met:

A. The municipality must not have contracted for or begun work before the fully executed grant contract was received by the municipality.

B. The cost-share maxi-audit must have been conducted by an authorized cost-share maxi-auditor.

C. The municipality must have submitted to the department no later than 90 days before the expiration date of the contract, the following:

(1) one copy of the cost-share maxi-audit report signed by an authorized cost-share maxi-auditor for each building that was awarded a cost-share maxi-audit grant; and

(2) one copy of the invoice for the cost-share maxi-audit work, itemized by building.

D. The cost-share maxi-audit report must have met the requirements of the manual.

Approved by Revisor _____

7680.0190 FUNDING.

Subpart 1. **Priorities.** The department will process grant applications that comply with parts 7680.0100 to 7680.0190 on a first come, first served basis, based on the day an eligible and complete application is received by the department. If eligible and complete applications received on the same day cannot all be funded due to lack of available funds, the department will first process applications for previously unaudited buildings. If funds are not available for all eligible applications for previously unaudited buildings, the department will process grants so that each affected application receives an equal percentage of the eligible grant amount. If funds are available after processing all eligible applications for previously unaudited buildings, the department will process eligible grant applications for previously audited buildings. If funds are not available for all eligible applications for previously audited buildings, the department will process grants so that each affected application receives an equal percentage of the eligible grant amount. When all available funds have been encumbered, the department will not process any further applications, and affected applicants will be notified.

Subp. 2. **Limits.** Grants will be issued by the department for eligible applications up to the funding limits, based on building size, as shown in the following table. The department will reimburse grantees for 50 percent of the actual cost of a cost-share maxi-audit or the approved grant amount, whichever is less, when the requirements of part 7680.0180 have been met.

Funding Limits for Cost-Share Maxi-Audits

Building Size in Square Feet	Formula	Funding Limits
0-5,000	--	$500
5,001-25,000	--	$1,000
25,001-50,000	(Area)($.04/sq.ft.)	$1,000-$2,000
50,001-100,000	(Area)($.024/sq.ft.) + $800	$2,000-$3,200
100,001-150,000	(Area)($.016/sq.ft.) + $1,600	$3,200-$4,000
150,001-200,000	(Area)($.012/sq.ft.) + $2,200	$4,000-$4,600

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200,001-250,000	(Area)($.008/sq.ft.)	+ $3,000	$4,600-$5,000
250,001 and up	--		$5,000

Subp. 3. **Restrictions.** Municipalities awarded cost-share maxi-audit grants with money from alleged violations of federal petroleum pricing regulations cannot use funding from this program for the applicant's share of the cost of their cost-share maxi-audit.

7680.0200 INCORPORATION BY REFERENCE.

The Cost-Share Maxi-Audit Manual (1987), written and published by the Energy Division of the Department of Public Service, is incorporated by reference. The manual is not subject to frequent change and is available from the Department of Public Service, 900 American Center Building, 150 East Kellogg Boulevard, Saint Paul, MN 55101, and on the Minitex interlibrary loan system from the Minnesota State Law Library, Ford Building, 117 University Avenue, Saint Paul, MN 55155.

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by Revisor _____

In the Matter of the Proposed Adoption of the Rule of the State Department of Public Service Governing Cost-Share Maxi-Audit Grants

CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

Dennis Devereaux, being sworn says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 or 14.30, that their names be placed on the state Department of Public Service rulemaking list is accurate, complete, and current as of the 11th day of August, 1987.

Dennis M. Devereaux
Special Assistant to
the Commissioner

Subscribed and sworn to before me
this 2nd day of September, 1987.

Mary Joan Kruger Berg

Mary Joan Kruger Berg
NOTARY PUBLIC — MINNESOTA
WASHINGTON COUNTY
My commission expires Sept. 26, 1990

Authority:

116 J.035 subd 2 OK.

214C.07 OK

Rule

Changes have been made from proposed to adopted.