

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

CBE

RULE REVIEW CHECKLIST

File No. 1584 Docket No. 05.0009.0730

DATE RECEIVED 4-5-89 ADOPTED W/O HEARING X

REVIEW DATE 4-14-89 EMERGENCY RULE _____

DUE DATE 4-19-89 REVISOR APPROVED Y

APPROVED 4/19/89 REVISOR DISAPPROVED _____

DISAPPROVED _____ FILED W/SEC. OF STATE _____

WITHDRAWN _____ RETURNED TO AGENCY _____

✓ Rule as adopted (4 copies)

_____ ~~Notice to Solicit Outside Information/Opinion (if applicable)~~
_____ ~~Date published in State Register~~
_____ ~~Comments~~

_____ ~~Petition for Adoption of a Rule (if applicable)~~

_____ ~~Board's Authorizing Resolution~~
_____ ~~Date adopted~~

✓ Proposed Rule
yes Revisor's Certificate

✓ Notice of Intent to Adopt Rule
216C.09 Statutory Authority
no Small Business Statement
no Expenditure of public money statement
yes Signature

✓ Statement of Need and Reasonableness (if applicable)
yes Small Business Statement
n/a Fees - § 16A.128

_____ Affidavit of Mailing Notice of Intent to Adopt Rule
1/27/89 Date 30/25 days before adoption
yes Notice attached
yes Copy of rule or summary attached

✓ Publication in State Register
1/30/89 Date 30/25 days before adoption

_____ 180-day deadline from:
8/1/88 Effective date of law requiring rule (14.12) (both rules) Minn Laws for 1988, ch 617 § 1
3/1/89 end of comment period (§ 14.26) (rules without hearing)
_____ ~~effective date of statutory authority (§ 14.29) (emergency rules)~~

_____ ~~Resolution Adopting~~
_____ ~~Date adopted~~

✓ Findings of Fact, Conclusions & Order Adopting
3/15/89 Date new order 4/18/89

_____ ~~Written requests, submissions or comments~~

✓ Declaration of attorney
Mary Jo Murray Name of SAAG representing agency

_____ ~~Notice of Submission to Atty. Gen. (if applicable)~~

_____ ~~Aff. of Mailing Notice to Atty. Gen. (if applicable)~~

SF-00006-05 (4/86)

DEPARTMENT : ATTORNEY GENERAL

STATE OF MINNESOTA

Office Memorandum

DATE : April 12, 1989

TO : MARY JO MURRAY
Special Assistant Attorney General

FROM : CHRISTIE B. ELLER
Assistant Attorney General

PHONE : 6-9421

SUBJECT : In the Matter of the Adopted Permanent Rules Relating to Institutional Energy Loans

The above-referenced rule has been approved as to its legality by the Attorney General on April 19, 1989.

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 accoradance 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.

CBE:klk
Enclosures

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

William Brown
Chief Administrative Law Judge
Office of Administrative Hearings

Department of Public Service

Adopted Permanent Rules Relating to Institutional Energy Loans

Rules as Adopted

7605.0010 PURPOSE.

The purpose of parts 7605.0020 to 7605.0080 is to establish application procedures for loan participation, to set criteria for review and approval of loan participation applications, and to set criteria for loan participation agreements.

7605.0020 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 7605.0010 to 7605.0080, the following terms have the meanings given them.

Subp. 2. **Applicant.** "Applicant" means a statutory or home rule charter city, county, or town, or a school or hospital as defined in this part, located in Minnesota, or joint power entity consisting of these units, that is making application for loan participation under this program.

Subp. 3. **Building.** "Building" means any separate structure owned and operated by an applicant.

Subp. 4. **Commissioner.** "Commissioner" means the commissioner of the Department of Public Service.

Subp. 5. **Conservation measure.** "Conservation measure" means an installation or modification of an installation to a building 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. **Hospital.** "Hospital" means a facility licensed under Minnesota Statutes, sections 144.50 to 144.55.

Subp. 7. **Lender.** "Lender" means a bank, trust company, mortgage company, credit union, mortgage banker, national banking association, savings bank, savings association, savings and loan association, building and loan association, insurance company, securities broker-dealer, financial organizations relating to commercial credit or venture capital, or a lender

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certified by the secretary of Housing and Urban Development or by the administrator of the United States Department of Veterans Affairs, or approved or certified by the administrator of the Farmers Home Administration or any other financial or lending institution, whether organized under federal law or the laws of any state of the United States, and whether located in or out of Minnesota, which issues a loan to an applicant to implement energy conservation measures. For participation in loans to applicants eligible for funds under Minnesota Statutes, section 216C.37, lender also means the Minnesota Department of Finance.

Subp. 8. **Payback.** "Payback" means the simple payback that is equal to the sum of the design, acquisition, and installation costs of a conservation measure divided by the estimated first year energy cost savings attributable to that measure.

Subp. 9. **Project.** "Project" means all proposed work in a loan participation application.

Subp. 10. **School.** "School" means a public school district or a private institution:

A. that provides, and is legally authorized to provide, elementary education or secondary education or both on a day or residential basis;

B. that:

(1) provides, and is legally authorized to provide, a program of education beyond secondary education on a day or residential basis;

(2) admits as students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate;

(3) is accredited by a nationally recognized accrediting agency or association; and

(4) provides an educational program for which it awards a bachelor's degree or higher degree or provides not less than a two-year program which is acceptable for full credit toward such a degree at any institution which meets the preceding requirements and which provides such a program; or

C. that provides not less than a one-year program of

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training to prepare students for gainful employment in a recognized occupation and which meets the provisions in item B, subitems (1) to (3).

7605.0030 LOAN ELIGIBILITY CRITERIA.

Subpart 1. **In general.** The commissioner shall approve applications from applicants and participate in loans from lenders to applicants in compliance with parts 7605.0010 to 7605.0080 for conservation measures that have a payback of ten years or less. The commissioner shall not approve any application for which funds are not available to purchase a loan participation.

Subp. 2. **Eligibility.** Funds are available to participate in loans from lenders to applicants for:

A. conservation measures which have not previously been approved under this program;

B. cost overruns for a previously approved conservation measure in progress, or previously unidentified but related work which is necessary for successful implementation of a previously approved conservation measure, provided the conservation measure as amended continues to meet the requirements of parts 7605.0010 to 7605.0080.

Subp. 3. **Prior approval required.** Except for the measures in subpart 2, item B, conservation measures for which acquisition or installation have been contracted for or begun before approval by the commissioner are ineligible. This prior approval requirement does not apply to design activities.

Subp. 4. **Useful life.** Loan participation ~~may~~ shall not be approved for buildings with a remaining useful life less than or equal to the payback of the conservation measure proposed. Loan participation ~~may~~ shall not be approved for a conservation measure if the payback of the conservation measure proposed is greater than or equal to the useful life of the measure.

Subp. 5. **New construction.** Only conservation measures for existing buildings are eligible. New construction is eligible only if it is necessary for successful implementation of a

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conservation measure for an existing building.

7605.0040 LOAN PARTICIPATION LIMITS.

The commissioner will participate in a loan from a lender to an applicant up to a maximum of 50 percent of the loan principal or $200,000, whichever is less. While the commissioner may participate in more than one loan to an applicant, the total participation under this program for any one applicant may not exceed $200,000.

7605.0050 APPLICATION CONTENTS.

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

Subp. 2. **Contents.** An application must contain, at a minimum:

A. the name and complete mailing address, including county, of the applicant;

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

C. a list of buildings included in the application and the dollar amount requested per building;

D. the name, address, and total floor area in square footage of each building;

E. the original construction date and addition construction dates of each building;

F. the state legislative district affected by the application;

G. a summary description of each proposed conservation measure, including its estimated cost, loan amount proposed, estimated annual energy cost savings, estimated annual fuel and electric savings, estimated payback, and the estimated dates the conservation measure will be started and completed; and

H. a resolution of the governing body of the

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applicant that:

(1) designates and authorizes a representative to enter into and sign contracts associated with the loan;

(2) guarantees that the applicant will use all loan funds solely for the approved conservation measures; and

(3) assures that it will comply with parts 7605.0010 to 7605.0080.

Subp. 3. **Technical support materials.** All applications for loan participation funds must also contain:

A. fuel and electric consumption data for the most recent completed annual period July 1 to June 30, for each building in the application;

B. a description of the current condition of the building and the building component, equipment, or system to be improved, and a description of each proposed conservation measure;

C. an engineering analysis sufficient to determine the technical feasibility and payback of each proposed conservation measure, on a form prescribed by the commissioner. An engineering analysis for a conservation measure estimated to cost more than $25,000 must be performed by a mechanical engineer, electrical engineer, or architect registered in Minnesota.

Subp. 4. **Assurances.** An applicant must also submit assurances that:

A. it has provided for the proper and efficient operation and maintenance of the proposed conservation measures;

B. the work performed with loan funds will meet all Minnesota building code requirements;

C. it has provided funds to pay any portion of the project cost not eligible for program funds, specifically identifying the source of those funds;

D. it has met requirements for voter approval, if applicable; and

E. it is able to accept and repay the proposed loan without exceeding applicable debt and levy limits.

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Subp. 5. **Incomplete applications.** If an incomplete application is received, the commissioner shall notify the applicant of specific deficiencies in the application. The applicant has 30 days from the date of the commissioner's notification to complete the application. If the application is not completed and received by the commissioner within 30 days, the application is considered withdrawn. To be further considered, the applicant must reapply.

7605.0060 APPLICATION REVIEW.

Subpart 1. **Administrative review.** The commissioner shall examine a loan participation application to verify that the applicant is eligible, that the required forms are included and correctly completed, that the estimated start and completion dates are reasonable, that the required assurances and resolution are included, and that the application is properly signed and dated.

Subp. 2. **Technical review.** The commissioner shall examine the technical support materials included in an application to verify that the proposed conservation measures are analyzed with adequate details of existing conditions and proposed modifications or additions, that the appropriate calculation procedures are used, that the proposed conservation measures are eligible, and that the proposed conservation measures are technically feasible and meet the requirements of parts 7605.0010 to 7605.0080.

Subp. 3. **Rejection and resubmission.** The commissioner may accept, reject, or modify an application as necessary based on the application review. The commissioner shall notify an applicant of the cause for modification or rejection of an application and the options available to correct the application for resubmission. If some of the conservation measures in an application are accepted as submitted, the applicant may choose to withdraw the rejected measures and accept a loan for the remaining measures.

7605.0070 LENDER.

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To be eligible to sell a loan participation to the commissioner, an officer of a lender must sign a participation agreement provided by the commissioner. The commissioner shall not participate in any loan made by a lender before the execution of a participation agreement. The agreement shall set terms and conditions under which a loan can be made, establish duties of the parties, and specify procedures to be followed in the event of default by the applicant. The agreement must require the lender and the commissioner to conform to the following conditions:

A. The lender will enter into a loan agreement with the applicant. The loan agreement will include the following:

(1) an agreement that the commissioner may review upon request all relevant financial data of the applicant and may inspect any and all buildings, equipment, and systems associated with a loan; and

(2) a resolution of the applicant's governing body guaranteeing that it will use all loan funds solely for the eligible costs of the proposed project, and assuring that it has and will comply with parts 7605.0010 to 7605.0080.

B. The lender shall make no provision to subordinate any loan collateral to other liens against such property without prior written approval from the commissioner.

C. The lender shall not acquire any preferential collateral, surety, or insurance to protect its interest in the loan.

D. All collateral must be prorated between the lender and the commissioner.

E. The lender shall require the applicant to adequately insure, maintain, and repair all collateral.

F. The lender shall review and approve the loan application in accordance with generally accepted commercial lending practices.

G. The lender is responsible for servicing the loan either directly or by contracting with a servicing agent.

H. The lender shall not sell or transfer the loan or

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any portion of it without prior written approval of the commissioner.

I. The lender, for the term of the entire loan, shall promptly notify the commissioner of any loan payments that are one month overdue. The lender shall provide the commissioner with any and all past due notices at the same time they are sent to the applicant. In addition, the lender must submit an annual loan performance report to the commissioner on a form provided by the commissioner.

J. The portion of the loan not participated in by the commissioner shall not carry an interest rate in excess of three points above the lender's prime rate or base rate for variable or fixed rate loans.

K. The portion of the loan participated in by the commissioner shall have an amortization term not exceeding five years.

L. The lender agrees not to make any amendments to the loan agreement after loan closing without prior written approval of the commissioner.

M. The lender agrees to make no waivers of default without prior written approval of the commissioner.

N. The commissioner may review ~~upon request~~ all financial data associated with the execution and servicing of the loan made by the lender.

O. Before a declaration of default, any and all payments received by the lender shall first be credited to interest due on a pro rata basis and then be credited to the principal balance due on a pro rata basis.

P. During an event of default for which a declaration of default has been declared, any and all payments received by the lender shall first be used to pay the reasonable expenses related to the collection of, or attempts to collect, money owed under the loan. After payment of these amounts, any and all payments received by the lender shall first be credited to the principal balance due on a pro rata basis, and then be credited to interest due on a pro rata basis.

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Q. If the commissioner determines that an applicant has failed to comply with the start or completion dates given in the loan participation application as approved, and the applicant cannot reasonably justify its failure to comply, the lender shall, upon written request of the commissioner, declare the loan to be in default.

7605.0080 REPORTS AND MONITORING.

Subpart 1. **In general.** An applicant that receives a loan in which the commissioner participates shall submit the reports listed in subparts 2 to 5.

Subp. 2. **Annual project status report.** The applicant shall submit to the commissioner, on a form provided by the commissioner, 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 project, problems encountered, the effect of the problems on the project, and the corrective action taken. If at any time the applicant fails to ~~substantially~~ comply with the start or completion dates given in the loan participation application as approved, and if the applicant cannot ~~reasonably~~ justify to the commissioner its lack of progress, the loan may be declared in default.

Subp. 3. **Semiannual financial report.** The applicant shall submit to the commissioner, on a form provided by the commissioner, a semiannual financial status report that indicates expenditures of loan funds through the last date of each report period. This report is due on July 31 for the period January 1 to June 30, and on January 31 for the period July 1 to December 31 until the project is completed.

Subp. 4. **Final report.** Within 60 days of the completion of the project, the applicant shall submit to the commissioner, on a form provided by the commissioner, a final project status report and a financial status report that gives actual expenditures of the conservation measures implemented.

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Subp. 5. **Annual energy report.** The applicant shall submit to the commissioner, on a form provided by the commissioner, an annual fuel and electric consumption report 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 commissioner cancels this requirement before the end of the loan contract period.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
APR 13 1989
Secretary of State

Approved
by Revisor _____

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

APR 19 1989

Joan Anderson Growe
Secretary of State

2:45 pm JH

APPROVED AS TO FORM AND LEGALITY

April 19 1989

ROBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY Christie B Elba
ASSISTANT ATTORNEY GENERAL

Withdrawn

Department of Public Service

Adopted Permanent Rules Relating to Institutional Energy Loans

Rules as Adopted

7605.0010 PURPOSE.

The purpose of parts 7605.0020 to 7605.0080 is to establish application procedures for loan participation, to set criteria for review and approval of loan participation applications, and to set criteria for loan participation agreements.

7605.0020 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 7605.0010 to 7605.0080, the following terms have the meanings given them.

Subp. 2. **Applicant.** "Applicant" means a statutory or home rule charter city, county, or town, or a school or hospital as defined in this part, located in Minnesota, or joint power entity consisting of these units, that is making application for loan participation under this program.

Subp. 3. **Building.** "Building" means any separate structure owned and operated by an applicant.

Subp. 4. **Commissioner.** "Commissioner" means the commissioner of the Department of Public Service.

Subp. 5. **Conservation measure.** "Conservation measure" means an installation or modification of an installation to a building 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. **Hospital.** "Hospital" means a facility licensed under Minnesota Statutes, sections 144.50 to 144.55.

Subp. 7. **Lender.** "Lender" means a bank, trust company, mortgage company, credit union, mortgage banker, national banking association, savings bank, savings association, savings and loan association, building and loan association, insurance company, securities broker-dealer, financial organizations relating to commercial credit or venture capital, or a lender

certified by the secretary of Housing and Urban Development or by the administrator of the United States Department of Veterans Affairs, or approved or certified by the administrator of the Farmers Home Administration or any other financial or lending institution, whether organized under federal law or the laws of any state of the United States, and whether located in or out of Minnesota, which issues a loan to an applicant to implement energy conservation measures. For participation in loans to applicants eligible for funds under Minnesota Statutes, section 216C.37, lender also means the Minnesota Department of Finance.

Subp. 8. **Payback.** "Payback" means the simple payback that is equal to the sum of the design, acquisition, and installation costs of a conservation measure divided by the estimated first year energy cost savings attributable to that measure.

Subp. 9. **Project.** "Project" means all proposed work in a loan participation application.

Subp. 10. **School.** "School" means a public school district or a private institution:

A. that provides, and is legally authorized to provide, elementary education or secondary education or both on a day or residential basis;

B. that:

(1) provides, and is legally authorized to provide, a program of education beyond secondary education on a day or residential basis;

(2) admits as students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate;

(3) is accredited by a nationally recognized accrediting agency or association; and

(4) provides an educational program for which it awards a bachelor's degree or higher degree or provides not less than a two-year program which is acceptable for full credit toward such a degree at any institution which meets the preceding requirements and which provides such a program; or

C. that provides not less than a one-year program of

training to prepare students for gainful employment in a recognized occupation and which meets the provisions in item B, subitems (1) to (3).

7605.0030 LOAN ELIGIBILITY CRITERIA.

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Subp. 2. **Eligibility.** Funds are available to participate in loans from lenders to applicants for:

A. conservation measures which have not previously been approved under this program;

B. cost overruns for a previously approved conservation measure in progress, or previously unidentified but related work which is necessary for successful implementation of a previously approved conservation measure, provided the conservation measure as amended continues to meet the requirements of parts 7605.0010 to 7605.0080.

Subp. 3. **Prior approval required.** Except for the measures in subpart 2, item B, conservation measures for which acquisition or installation have been contracted for or begun before approval by the commissioner are ineligible. This prior approval requirement does not apply to design activities.

Subp. 4. **Useful life.** Loan participation may not be approved for buildings with a remaining useful life less than or equal to the payback of the conservation measure proposed. Loan participation may not be approved for a conservation measure if the payback of the conservation measure proposed is greater than or equal to the useful life of the measure.

Subp. 5. **New construction.** Only conservation measures for existing buildings are eligible. New construction is eligible only if it is necessary for successful implementation of a conservation measure for an existing building.

7605.0040 LOAN PARTICIPATION LIMITS.

The commissioner will participate in a loan from a lender to an applicant up to a maximum of 50 percent of the loan principal or $200,000, whichever is less. While the commissioner may participate in more than one loan to an applicant, the total participation under this program for any one applicant may not exceed $200,000.

7605.0050 APPLICATION CONTENTS.

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

Subp. 2. **Contents.** An application must contain, at a minimum:

A. the name and complete mailing address, including county, of the applicant;

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

C. a list of buildings included in the application and the dollar amount requested per building;

D. the name, address, and total floor area in square footage of each building;

E. the original construction date and addition construction dates of each building;

F. the state legislative district affected by the application;

G. a summary description of each proposed conservation measure, including its estimated cost, loan amount proposed, estimated annual energy cost savings, estimated annual fuel and electric savings, estimated payback, and the estimated dates the conservation measure will be started and completed; and

H. a resolution of the governing body of the applicant that:

(1) designates and authorizes a representative to

enter into and sign contracts associated with the loan;

(2) guarantees that the applicant will use all loan funds solely for the approved conservation measures; and

(3) assures that it will comply with parts 7605.0010 to 7605.0080.

Subp. 3. **Technical support materials.** All applications for loan participation funds must also contain:

A. fuel and electric consumption data for the most recent completed annual period July 1 to June 30, for each building in the application;

B. a description of the current condition of the building and the building component, equipment, or system to be improved, and a description of each proposed conservation measure;

C. an engineering analysis sufficient to determine the technical feasibility and payback of each proposed conservation measure, on a form prescribed by the commissioner. An engineering analysis for a conservation measure estimated to cost more than $25,000 must be performed by a mechanical engineer, electrical engineer, or architect registered in Minnesota.

Subp. 4. **Assurances.** An applicant must also submit assurances that:

A. it has provided for the proper and efficient operation and maintenance of the proposed conservation measures;

B. the work performed with loan funds will meet all Minnesota building code requirements;

C. it has provided funds to pay any portion of the project cost not eligible for program funds, specifically identifying the source of those funds;

D. it has met requirements for voter approval, if applicable; and

E. it is able to accept and repay the proposed loan without exceeding applicable debt and levy limits.

Subp. 5. **Incomplete applications.** If an incomplete application is received, the commissioner shall notify the

applicant of specific deficiencies in the application. The applicant has 30 days from the date of the commissioner's notification to complete the application. If the application is not completed and received by the commissioner within 30 days, the application is considered withdrawn. To be further considered, the applicant must reapply.

7605.0060 APPLICATION REVIEW.

Subpart 1. **Administrative review.** The commissioner shall examine a loan participation application to verify that the applicant is eligible, that the required forms are included and correctly completed, that the estimated start and completion dates are reasonable, that the required assurances and resolution are included, and that the application is properly signed and dated.

Subp. 2. **Technical review.** The commissioner shall examine the technical support materials included in an application to verify that the proposed conservation measures are analyzed with adequate details of existing conditions and proposed modifications or additions, that the appropriate calculation procedures are used, that the proposed conservation measures are eligible, and that the proposed conservation measures are technically feasible and meet the requirements of parts 7605.0010 to 7605.0080.

Subp. 3. **Rejection and resubmission.** The commissioner may accept, reject, or modify an application as necessary based on the application review. The commissioner shall notify an applicant of the cause for modification or rejection of an application and the options available to correct the application for resubmission. If some of the conservation measures in an application are accepted as submitted, the applicant may choose to withdraw the rejected measures and accept a loan for the remaining measures.

7605.0070 LENDER.

To be eligible to sell a loan participation to the commissioner, an officer of a lender must sign a participation

agreement provided by the commissioner. The commissioner shall not participate in any loan made by a lender before the execution of a participation agreement. The agreement shall set terms and conditions under which a loan can be made, establish duties of the parties, and specify procedures to be followed in the event of default by the applicant. The agreement must require the lender and the commissioner to conform to the following conditions:

A. The lender will enter into a loan agreement with the applicant. The loan agreement will include the following:

(1) an agreement that the commissioner may review upon request all relevant financial data of the applicant and may inspect any and all buildings, equipment, and systems associated with a loan; and

(2) a resolution of the applicant's governing body guaranteeing that it will use all loan funds solely for the eligible costs of the proposed project, and assuring that it has and will comply with parts 7605.0010 to 7605.0080.

B. The lender shall make no provision to subordinate any loan collateral to other liens against such property without prior written approval from the commissioner.

C. The lender shall not acquire any preferential collateral, surety, or insurance to protect its interest in the loan.

D. All collateral must be prorated between the lender and the commissioner.

E. The lender shall require the applicant to adequately insure, maintain, and repair all collateral.

F. The lender shall review and approve the loan application in accordance with generally accepted commercial lending practices.

G. The lender is responsible for servicing the loan either directly or by contracting with a servicing agent.

H. The lender shall not sell or transfer the loan or any portion of it without prior written approval of the commissioner.

I. The lender, for the term of the entire loan, shall promptly notify the commissioner of any loan payments that are one month overdue. The lender shall provide the commissioner with any and all past due notices at the same time they are sent to the applicant. In addition, the lender must submit an annual loan performance report to the commissioner on a form provided by the commissioner.

J. The portion of the loan not participated in by the commissioner shall not carry an interest rate in excess of three points above the lender's prime rate or base rate for variable or fixed rate loans.

K. The portion of the loan participated in by the commissioner shall have an amortization term not exceeding five years.

L. The lender agrees not to make any amendments to the loan agreement after loan closing without prior written approval of the commissioner.

M. The lender agrees to make no waivers of default without prior written approval of the commissioner.

N. The commissioner may review upon request all financial data associated with the execution and servicing of the loan made by the lender.

O. Before a declaration of default, any and all payments received by the lender shall first be credited to interest due on a pro rata basis and then be credited to the principal balance due on a pro rata basis.

P. During an event of default for which a declaration of default has been declared, any and all payments received by the lender shall first be used to pay the reasonable expenses related to the collection of, or attempts to collect, money owed under the loan. After payment of these amounts, any and all payments received by the lender shall first be credited to the principal balance due on a pro rata basis, and then be credited to interest due on a pro rata basis.

Q. If the commissioner determines that an applicant has failed to comply with the start or completion dates given in

the loan participation application as approved, and the applicant cannot reasonably justify its failure to comply, the lender shall, upon written request of the commissioner, declare the loan to be in default.

7605.0080 REPORTS AND MONITORING.

Subpart 1. **In general.** An applicant that receives a loan in which the commissioner participates shall submit the reports listed in subparts 2 to 5.

Subp. 2. **Annual project status report.** The applicant shall submit to the commissioner, on a form provided by the commissioner, 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 project, problems encountered, the effect of the problems on the project, and the corrective action taken. If at any time the applicant fails to substantially comply with the start or completion dates given in the loan participation application as approved, and if the applicant cannot reasonably justify to the commissioner its lack of progress, the loan may be declared in default.

Subp. 3. **Semiannual financial report.** The applicant shall submit to the commissioner, on a form provided by the commissioner, a semiannual financial status report that indicates expenditures of loan funds through the last date of each report period. This report is due on July 31 for the period January 1 to June 30, and on January 31 for the period July 1 to December 31 until the project is completed.

Subp. 4. **Final report.** Within 60 days of the completion of the project, the applicant shall submit to the commissioner, on a form provided by the commissioner, a final project status report and a financial status report that gives actual expenditures of the conservation measures implemented.

Subp. 5. **Annual energy report.** The applicant shall submit to the commissioner, on a form provided by the commissioner, an

annual fuel and electric consumption report 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 commissioner cancels this requirement before the end of the loan contract period.

Office of the Revisor of Statutes

Administrative Rules

TITLE: Adopted Permanent Rules Relating to Institutional Energy Loans

AGENCY: Department of Public Service

MINNESOTA RULES: Chapter 7605

The attached rules are approved for filing with the Secretary of State

Carla M. Riehle
Assistant Revisor

Department of Public Service

Proposed Permanent Rules Relating to Institutional Energy Loans

Rules as Proposed (all new material)

7605.0010 PURPOSE.

The purpose of parts 7605.0020 to 7605.0080 is to establish application procedures for loan participation, to set criteria for review and approval of loan participation applications, and to set criteria for loan participation agreements.

7605.0020 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 7605.0010 to 7605.0080, the following terms have the meanings given them.

Subp. 2. **Applicant.** "Applicant" means a statutory or home rule charter city, county, or town, or a school or hospital as defined in this part, located in Minnesota, or joint power entity consisting of these units, that is making application for loan participation under this program.

Subp. 3. **Building.** "Building" means any separate structure owned and operated by an applicant.

Subp. 4. **Commissioner.** "Commissioner" means the commissioner of the Department of Public Service.

Subp. 5. **Conservation measure.** "Conservation measure" means an installation or modification of an installation to a building 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. **Hospital.** "Hospital" means a facility licensed under Minnesota Statutes, sections 144.50 to 144.55.

Subp. 7. **Lender.** "Lender" means a bank, trust company, mortgage company, credit union, mortgage banker, national banking association, savings bank, savings association, savings and loan association, building and loan association, insurance company, securities broker-dealer, financial organizations relating to commercial credit or venture capital, or a lender

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certified by the secretary of Housing and Urban Development or by the administrator of the United States Department of Veterans Affairs, or approved or certified by the administrator of the Farmers Home Administration or any other financial or lending institution, whether organized under federal law or the laws of any state of the United States, and whether located in or out of Minnesota, which issues a loan to an applicant to implement energy conservation measures. For participation in loans to applicants eligible for funds under Minnesota Statutes, section 216C.37, lender also means the Minnesota Department of Finance.

Subp. 8. **Payback.** "Payback" means the simple payback that is equal to the sum of the design, acquisition, and installation costs of a conservation measure divided by the estimated first year energy cost savings attributable to that measure.

Subp. 9. **Project.** "Project" means all proposed work in a loan participation application.

Subp. 10. **School.** "School" means a public school district or a private institution:

A. that provides, and is legally authorized to provide, elementary education or secondary education or both on a day or residential basis;

B. that:

(1) provides, and is legally authorized to provide, a program of education beyond secondary education on a day or residential basis;

(2) admits as students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate;

(3) is accredited by a nationally recognized accrediting agency or association; and

(4) provides an educational program for which it awards a bachelor's degree or higher degree or provides not less than a two-year program which is acceptable for full credit toward such a degree at any institution which meets the preceding requirements and which provides such a program; or

C. that provides not less than a one-year program of

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training to prepare students for gainful employment in a recognized occupation and which meets the provisions in item B, subitems (1) to (3).

7605.0030 LOAN ELIGIBILITY CRITERIA.

Subpart 1. **In general.** The commissioner shall approve applications from applicants and participate in loans from lenders to applicants in compliance with parts 7605.0010 to 7605.0080 for conservation measures that have a payback of ten years or less.

Subp. 2. **Eligibility.** Funds are available to participate in loans from lenders to applicants for:

A. conservation measures which have not previously been approved under this program;

B. cost overruns for a previously approved conservation measure in progress, or previously unidentified but related work which is necessary for successful implementation of a previously approved conservation measure, provided the conservation measure as amended continues to meet the requirements of parts 7605.0010 to 7605.0080.

Subp. 3. **Prior approval required.** Except for the measures in subpart 2, item B, conservation measures for which acquisition or installation have been contracted for or begun before approval by the commissioner are ineligible. This prior approval requirement does not apply to design activities.

Subp. 4. **Useful life.** Loan participation may not be approved for buildings with a remaining useful life less than or equal to the payback of the conservation measure proposed. Loan participation may not be approved for a conservation measure if the payback of the conservation measure proposed is greater than or equal to the useful life of the measure.

Subp. 5. **New construction.** Only conservation measures for existing buildings are eligible. New construction is eligible only if it is necessary for successful implementation of a conservation measure for an existing building.

7605.0040 LOAN PARTICIPATION LIMITS.

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The commissioner will participate in a loan from a lender to an applicant up to a maximum of 50 percent of the loan principal or $200,000, whichever is less. While the commissioner may participate in more than one loan to an applicant, the total participation under this program for any one applicant may not exceed $200,000.

7605.0050 APPLICATION CONTENTS.

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

Subp. 2. **Contents.** An application must contain, at a minimum:

A. the name and complete mailing address, including county, of the applicant;

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

C. a list of buildings included in the application and the dollar amount requested per building;

D. the name, address, and total floor area in square footage of each building;

E. the original construction date and addition construction dates of each building;

F. the state legislative district affected by the application;

G. a summary description of each proposed conservation measure, including its estimated cost, loan amount proposed, estimated annual energy cost savings, estimated annual fuel and electric savings, estimated payback, and the estimated dates the conservation measure will be started and completed; and

H. a resolution of the governing body of the applicant that:

(1) designates and authorizes a representative to

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enter into and sign contracts associated with the loan;

(2) guarantees that the applicant will use all loan funds solely for the approved conservation measures; and

(3) assures that it will comply with parts 7605.0010 to 7605.0080.

Subp. 3. **Technical support materials.** All applications for loan participation funds must also contain:

A. fuel and electric consumption data for the most recent completed annual period July 1 to June 30, for each building in the application;

B. a description of the current condition of the building and the building component, equipment, or system to be improved, and a description of each proposed conservation measure;

C. an engineering analysis sufficient to determine the technical feasibility and payback of each proposed conservation measure, on a form prescribed by the commissioner. An engineering analysis for a conservation measure estimated to cost more than $25,000 must be performed by a mechanical engineer, electrical engineer, or architect registered in Minnesota.

Subp. 4. **Assurances.** An applicant must also submit assurances that:

A. it has provided for the proper and efficient operation and maintenance of the proposed conservation measures;

B. the work performed with loan funds will meet all Minnesota building code requirements;

C. it has provided funds to pay any portion of the project cost not eligible for program funds, specifically identifying the source of those funds;

D. it has met requirements for voter approval, if applicable; and

E. it is able to accept and repay the proposed loan without exceeding applicable debt and levy limits.

Subp. 5. **Incomplete applications.** If an incomplete application is received, the commissioner shall notify the

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applicant of specific deficiencies in the application. The applicant has 30 days from the date of the commissioner's notification to complete the application. If the application is not completed and received by the commissioner within 30 days, the application is considered withdrawn. To be further considered, the applicant must reapply.

7605.0060 APPLICATION REVIEW.

Subpart 1. **Administrative review.** The commissioner shall examine a loan participation application to verify that the applicant is eligible, that the required forms are included and correctly completed, that the estimated start and completion dates are reasonable, that the required assurances and resolution are included, and that the application is properly signed and dated.

Subp. 2. **Technical review.** The commissioner shall examine the technical support materials included in an application to verify that the proposed conservation measures are analyzed with adequate details of existing conditions and proposed modifications or additions, that the appropriate calculation procedures are used, that the proposed conservation measures are eligible, and that the proposed conservation measures are technically feasible and meet the requirements of parts 7605.0010 to 7605.0080.

Subp. 3. **Rejection and resubmission.** The commissioner may accept, reject, or modify an application as necessary based on the application review. The commissioner shall notify an applicant of the cause for modification or rejection of an application and the options available to correct the application for resubmission. If some of the conservation measures in an application are accepted as submitted, the applicant may choose to withdraw the rejected measures and accept a loan for the remaining measures.

7605.0070 LENDER.

To be eligible to sell a loan participation to the commissioner, an officer of a lender must sign a participation

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agreement provided by the commissioner. The commissioner shall not participate in any loan made by a lender before the execution of a participation agreement. The agreement shall set terms and conditions under which a loan can be made, establish duties of the parties, and specify procedures to be followed in the event of default by the applicant. The agreement must require the lender and the commissioner to conform to the following conditions:

A. The lender will enter into a loan agreement with the applicant. The loan agreement will include the following:

(1) an agreement that the commissioner may review upon request all relevant financial data of the applicant and may inspect any and all buildings, equipment, and systems associated with a loan; and

(2) a resolution of the applicant's governing body guaranteeing that it will use all loan funds solely for the eligible costs of the proposed project, and assuring that it has and will comply with parts 7605.0010 to 7605.0080.

B. The lender shall make no provision to subordinate any loan collateral to other liens against such property without prior written approval from the commissioner.

C. The lender shall not acquire any preferential collateral, surety, or insurance to protect its interest in the loan.

D. All collateral must be prorated between the lender and the commissioner.

E. The lender shall require the applicant to adequately insure, maintain, and repair all collateral.

F. The lender shall review and approve the loan application in accordance with generally accepted commercial lending practices.

G. The lender is responsible for servicing the loan either directly or by contracting with a servicing agent.

H. The lender shall not sell or transfer the loan or any portion of it without prior written approval of the commissioner.

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I. The lender, for the term of the entire loan, shall promptly notify the commissioner of any loan payments that are one month overdue. The lender shall provide the commissioner with any and all past due notices at the same time they are sent to the applicant. In addition, the lender must submit an annual loan performance report to the commissioner on a form provided by the commissioner.

J. The portion of the loan not participated in by the commissioner shall not carry an interest rate in excess of three points above the lender's prime rate or base rate for variable or fixed rate loans.

K. The portion of the loan participated in by the commissioner shall have an amortization term not exceeding five years.

L. The lender agrees not to make any amendments to the loan agreement after loan closing without prior written approval of the commissioner.

M. The lender agrees to make no waivers of default without prior written approval of the commissioner.

N. The commissioner may review upon request all financial data associated with the execution and servicing of the loan made by the lender.

O. Before a declaration of default, any and all payments received by the lender shall first be credited to interest due on a pro rata basis and then be credited to the principal balance due on a pro rata basis.

P. During an event of default for which a declaration of default has been declared, any and all payments received by the lender shall first be used to pay the reasonable expenses related to the collection of, or attempts to collect, money owed under the loan. After payment of these amounts, any and all payments received by the lender shall first be credited to the principal balance due on a pro rata basis, and then be credited to interest due on a pro rata basis.

Q. If the commissioner determines that an applicant has failed to comply with the start or completion dates given in

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the loan participation application as approved, and the applicant cannot reasonably justify its failure to comply, the lender shall, upon written request of the commissioner, declare the loan to be in default.

7605.0080 REPORTS AND MONITORING.

Subpart 1. **In general.** An applicant that receives a loan in which the commissioner participates shall submit the reports listed in subparts 2 to 5.

Subp. 2. **Annual project status report.** The applicant shall submit to the commissioner, on a form provided by the commissioner, 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 project, problems encountered, the effect of the problems on the project, and the corrective action taken. If at any time the applicant fails to substantially comply with the start or completion dates given in the loan participation application as approved, and if the applicant cannot reasonably justify to the commissioner its lack of progress, the loan may be declared in default.

Subp. 3. **Semiannual financial report.** The applicant shall submit to the commissioner, on a form provided by the commissioner, a semiannual financial status report that indicates expenditures of loan funds through the last date of each report period. This report is due on July 31 for the period January 1 to June 30, and on January 31 for the period July 1 to December 31 until the project is completed.

Subp. 4. **Final report.** Within 60 days of the completion of the project, the applicant shall submit to the commissioner, on a form provided by the commissioner, a final project status report and a financial status report that gives actual expenditures of the conservation measures implemented.

Subp. 5. **Annual energy report.** The applicant shall submit to the commissioner, on a form provided by the commissioner, an

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annual fuel and electric consumption report 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 commissioner cancels this requirement before the end of the loan contract period.

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Institutional Energy Loans

AGENCY: Department of Public Service

MINNESOTA RULES: Chapter 7605

The attached rules are approved for publication in the State Register

Carla M. Riehle
Assistant Revisor

Department of Public Service

In the Matter of the Proposed Adoption of the Rule of the State Department of Public Service Governing Institutional Energy Loans

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 216C.09.

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:

Jeremy de Fiebre
Department of Public Service
Energy Division
900 American Center
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
Telephone: (612) 297-1221

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 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 Mr. de Fiebre at the address given above.

Dated: January 27, 1989

Tony Perpich, Commissioner

12/29/88

Statement of Need and Reasonableness

Institutional Energy Loan Program (IELP)

I. The Commissioner of the Minnesota Department of Public Service presents herein facts and justifications establishing the need and reasonableness of the proposed rules governing the Institutional Energy Loan Program. Minnesota Statutes, section 216C.09 empowers the commissioner to adopt rules necessary to implement this program. Funds were allocated for this program in Laws of Minn. 1988, Chapter 686, Sec. 38 from monies received by the state under United States vs Exxon Corp., 561 F. Supp 816 (D.D.C. 1983). Distribution of these funds was contingent upon approval of this program by the U. S. Department of Energy. A state plan amendment to the State Energy Conservation Plan program outlining the intent for use of these funds was submitted to the U.S. Department of Energy and approved in June of 1987.

II. Impact on small business

The proposed rules create a voluntary program of financial assistance to Minnesota public and private schools and hospitals and units of local government to implement energy conservation improvements and, as such, have no direct effect on small business. Rules covering programs such as this are exempted from Minnesota Statutes Section 14.115 (1988) by subd. 7(b) which exempts rules which do not directly affect small businesses.

III. Need and Reasonableness of each Rule Provision

A. Proposed part 7605.0010 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 7605.0020 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 "applicant". Providing a shorthand term to refer to those institutions eligible to participate in this program is needed and reasonable to make the rule more readable. The entities included in this definition are those specified in the legislative advisory commission order dated August 20, 1986, on which the allocation of funds in Laws of Minnesota 1988, Ch. 686, Art. 1, Sec. 38 is based.

Subpart 3 defines "building". This definition is needed to identify those buildings which are eligible under this program.

It is necessary to specify separate to make clear that, when a building is referred to in the rule, all parts of the building, including wings and additions, are implied. This is reasonable because, by doing so, the department will be able to integrate the data base for this program with its existing data bases, which are organized by building.

It is reasonable to require that a building be owned and operated by an applicant because the purpose of this program is to provide a benefit to the applicant by enabling it to invest in energy saving capital improvements. Such an investment should provide a significant net benefit over the useful life of an improvement through lowered energy costs. To do so, however, an applicant must remain the beneficiary of those reduced energy costs to recoup its investment. While present ownership and operation do not guarantee that an applicant will remain the beneficiary over the useful life of an improvement, an applicant, as owner, does control any decision affecting its status as beneficiary.

Subpart 4. Defines "commissioner". It is needed and reasonable to provide a shorthand term to make the rule more readable.

Subpart 5. defines "conservation measure". This definition is necessary to specify the types of projects that are eligible. It is reasonable because, by broadly including any measure that is primarily intended to reduce energy consumption or allow the use

of an alternative energy source, it allows applicants to choose the technologies most suited to their individual needs. It is reasonable to require that a measure have the primary intent specified because, as a program implemented under the SECP plan, it must conform to the purpose of that program, which is to promote the conservation of energy (cite SS 420.1 a).

Subpart 6. defines "hospital". This definition is necessary to give specific meaning to a general term. It is reasonable because it limits eligibility to facilities legally authorized by the state to operate as a hospital.

Subpart 7. defines "lender". This definition is necessary to specify the entities which may sell a loan participation to the commissioner under this program. It is reasonable because it provides for a broad range of lending institutions from which an applicant may borrow funds, thereby facilitating access to the program. At the same time, as the commissioner does place funds at risk, it limits eligibility to entities which lend funds as a normal business activity and, therefore, will presumably act prudently and in accordance with generally accepted commercial lending practices.

Subpart 8. defines "Payback". This definition is needed to give specific meaning to a general term and 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 9. defines "Project". It is needed and reasonable to provide a shorthand term to make the rule more readable.

Subpart 10. defines "School". It is needed to give specific meaning to a general term. It is reasonable because, given limited program funds and the variety and number of institutions called "schools", it encompasses institutions that are legally authorized to provide a program of education and that can be considered to be primarily devoted to that purpose, while excluding institutions such as day care centers and sunday schools that do not clearly have that primary intent.

C. Loan Eligibility Criteria

Subpart 1 establishes that the Commissioner will approve applications and participate in loans that comply with these rules for conservation measures that have a payback of ten years or less. It is necessary, in part, to identify with whom this authority and responsibility rests. It is reasonable because the commissioner is given this duty under Minnesota Statutes, section 216C.09 (m). It is necessary to set a payback limit to provide a test of a measure's economic feasibility. Given limited program funds, it is reasonable to do so to maximize the effect of those funds.

A ten year payback is reasonable because it is consistent with limits in related funding programs for the same applicant group, thereby facilitating interaction between programs.

Subpart 2 identifies eligibility limitations for projects. It is necessary to prevent an applicant from receiving double funding for a project, while allowing funds to be used for cost over-runs or additional project related work, provided the project continues to meet program requirements. It is reasonable because it will prevent misuse of funds while allowing the least restricted access to funds,consistent with other eligibility requirements.

Subpart 3 describes the prior approval condition of the program. A loan may not be awarded for a project already contracted for or begun. It is necessary to prevent an applicant from obligating itself to pay for a project in anticipation of funds from this program before having that project reviewed and approved. It is reasonable to protect the applicant from possible financial hardship if the project is rejected in review.

Subpart 4 sets eligibility limitations based on useful life. It is needed to prevent funding of a measures with a payback that exceeds the useful life of the measure or the building in which it is installed. This limitation is reasonable because, in such cases, the measure could not be expected to repay the original

investment and is, therefore, not a prudent use of program funds.

Subpart 5 addresses the ineligibility of new construction except as a necessary part of a conservation measure for an existing building. It is needed and reasonable to comply with SECP program rules (420.12).

D. Loan Limits

This part limits the use of program funds issued for an applicant under this program to a maximum of 50% of the loan principal or $200,000, whichever is less. The Department of Public Service staff and the program advisory committee concluded that the lesser of a 50% participation cap or a $200,000 limit was necessary and reasonable to achieve the goal of spreading program funds to a large number of projects while still providing sufficient inducement to invest. With the 50% cap, an applicant can halve the interest rate offered by a lender. Additionally, as the commissioner will rely on the lender to assess the credit risk of a loan, the 50% cap, in leaving the lender at risk for a substantial portion of the loan, assures reasonable diligence in the performance of its duties.

E. Application Contents

Proposed part 7605.0050 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 commissioner on a form provided by the commissioner. This subpart is necessary and reasonable to indentify the recipient of applications and to provide a consistent format for all applications to simplify review and data entry. This subpart also states that each application must have an original ink signature by an authorized official of the applicant, must have the authorized official's title and must be dated. It is necessary and reasonable to have this requirement to ensure that a responsible official is aware of the application and proposed projects, and he/she has, in a capacity as an authorized official, approved of the application.

Subpart 2 prescribes the contents of an application. A through G are needed to identify the applicant and to identify basic information about the proposed project. It is reasonable to require this information because it is needed to determine eligibility and to maintain public records. Subpart 2 (H) is needed to assure that the governing body of the applicant has specifically affirmed its intent to enter into a loan contract and is mindful of and accepts its responsibilities in doing so. It is reasonable to assure that the governing body of the applicant has given its informed consent to this obligation.

Subpart 3 prescribes the technical support materials that must be submitted with an application. This information is necessary and reasonable to allow DPS staff engineers to determine if measures proposed satisfy program requirements. This subpart requires that all analyses be submitted on a form provided by the commissioner. This is necessary to assure that technical support materials are presented in a standard format containing all relevant data and using appropriate calculation procedures. It is reasonable to do so to assist the applicant in preparing the application and to simplify technical review. This subpart further requires that, for a measure expected to cost more than $25,000, the analysis be performed by a registered engineer or architect. This is needed to assure that measures requiring substantial investment have been analyzed and deemed feasible by a person who, it can reasonably be asssumed, is competent to do so. While it would be desirable if all projects funded under this program were analyzed by an engineer or architect, the expense of this level of expertise (at minimum $300 to $500) may be prohibitive for lower cost projects. It is reasonable set a threshold for this requirement to balance the desire for expert analysis with that for broad program participation. A $25,000 threshold is reasonable because the cost of an analysis above that level, 1% to 2% of project cost, should not be a significant barrier to participation.

Subpart 4 requires that an application contain five assurances. The first and second are needed to assure that the proposed measures will be properly installed and maintained. It is resonable to do so because the lack of proper installation or maintenance could significantly shorten the useful life of a measure and, thereby, reduce or negate the potential benefit of the investment. The third is necessary to ensure that a potential impediment to timely implementation of a measure has been addressed. It is reasonable, given limited funds, to direct those funds to measures that are most likely to be implemented in a timely manner. The fourth and fifth assurances are necessary and reasonable to ensure that public entities have met applicable legal requirement in entering into debt.

Subpart 5 describes the procedure to be followed if incomplete applications are submitted. The Commissioner will notify an applicant of specific deficiencies in an application so that the applicant has the opportunity to correct them and participate in the program. The 30 day limit on submitting corrections to an application is needed to prevent the administrative problem created by an unlimited number of pending applications, which remain unprocessable for an indefinite period of time. It is reasonable because 30 days is adequate time to correct deficiencies and because applicants retain the option of reapplying if they so choose.

D. Application Review

Subpart 1 outlines the administrative review of an application. It is needed to explicitly state that the items required by the rules will be checked by the Commissioner and, implicitly, that deficiencies found are subject to the actions outlined in subpart 3. It is reasonable because the Commissioner is responsible to see that the requirements of these rules are met.

Subpart 2 outlines the items that the Commissioner will review regarding technical analysis of the projects for which funds are requested. It is reasonable because it is the Commissioner's responsibility to check that the technical analysis upon which project feasibility is based is sound to assure that only projects that meet program guidelines receive funds.

Subpart 3 outlines the procedures for rejections and resubmissions. It is necessary that an applicant be notified of any modifications made to the application and all options available to correct problems with the application. The subpart explains that if only some of the measures are deemed acceptable by the Commissioner, the applicant may withdraw the rejected measures. This is reasonable because, if the rejected measures are not able to be modified for resubmission for technical or administrative reasons, it allows the appliant to receive a loan for the accepted measures without having to resubmit a new application.

E. Lender

This part requires that a participation agreement be executed between the lender and the commissioner and specifies contents of the agreement. This agreement is necessary and reasonable to protect the commissioner's interest in the loan. This part also limits participation to loans made after execution of the participation agreement. This limitation is reasonable because the purpose of the program is to enable investment in conservation projects. Projects for which a loan has already been made do not require that stimulus.

Specific requirements of the agreement are enumerated in clauses A through Q. Clause A covers two requirements of the loan agreement between the lender and the applicant. These requirements are needed to monitor compliance with and enforce the provisions of these rules. It is necessary to include these requirements in the loan contract because the commissioner will not have any direct contractual relationship with the applicant. These requirements are reasonable to allow the commissioner to assure that funds are being used for the purposes of the program.

Clauses B through E pertain to collateral, surety and insurance and are necessary and reasonable to protect the commissioner's financial interest in a loan.

Clauses F and G pertain to the lender's duties. These requirements are necessary to assign specific duties with respect to a loan, and are reasonable to protect the commissioner's

financial interest in the loan.

Clauses H, L and M are need to require the commissioner's prior approval of certain actions with respect to a loan, and are reasonable to protect the commissioner's financial interest.

Clauses I and N are needed to provide the commissioner access to information pertaining to a loan, and are reasonable to allow the commissioner to determine that requirements of the agreement are being met and to allow the commissioner to assess the impact of a potential default on the program fund.

Clauses J and K are needed to set maximum limits on interest and amortization. Clause J is reasonable because it prevents a lender's from charging exorbitant interest on its portion of a loan, thereby reducing the benefit to the applicant gained by the commissioner's participation. Clause K is reasonable because it balances the cash flow needs of both the applicant and the revolving loan fund.

Clauses O and P are needed to stipulate the method of division of payments collected. They are reasonable because they balance the financial interests of the lending parties.

Clause Q is needed and reasonable to allow the commissioner to enforce the requirements of these rules. The need for and reasonableness of this provision is further discussed under Part 7605.0080, subpart 2.

Reports and Monitoring

Proposed part 7605.0080 prescribes the various reports required of loan recipients by the commissioner. Subpart 1 is introduces the proposed part. The need and reasonableness of this introductory subpart is self-evident.

Subpart 2 requires that an annual project status report be submitted. This report is needed to assure the commissioner that the loan funds are being used for the purpose set forth in the application and that implementation is proceeding in a timely manner. The time period July 1 through June 30 is reasonable because it conforms with the fiscal year of cities, counties and public school districts, which are expected to be the majority of applicants. The July 31 due date provides a reasonable period of time in which to expect completion and submission of a simple report form.

The specific information required by this subpart is needed by the commissioner to determine that the project is actually in progress and the loan funds are being properly used, and to have early notification of any loan recipients having difficulties with project implementation. This provision is reasonable because the Commissioner must have some method of verifying that funds are correctly used and because, if informed, the

commissioner may be able to offer assistance not only to the loan recipient 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 loan recipient fails to substantially comply with the start and end dates given in the approved loan participation application, and if the loan recipient cannot reasonably justify its lack of progress, the loan may be declared in default. This part is needed as a remedy if a loan recipient is not using the loan as intended. It is reasonable to have such a remedy to effectively dissuade loan recipients from using loan funds for unintended purposes (e.g. arbitrage). This remedy is reasonable because it provides for recovery of loan funds when appropriate, while allowing for justifiable deviations from the estimated timelines.

Subpart 3 requires that a semi-annual financial report be submitted. These reports are needed to assure the commissioner that funds are, in fact, being disbursed as work proceeds on the project. This is reasonable because it keeps the Commissioner informed of expenditures on a timely basis, but, as a simple report of total funds expended, does not burden the loan recipient with complex paperwork.

Subpart 4 requires that a final report be submitted to the commissioner within 60 days of project completion.

This report is necessary and reasonable for the same reasons given for the two preceding report. In addition, final reports are needed and reasonable to provide data to evaluate the program's effectiveness.

Subpart 5 requires that an annual energy report be submitted. This report is needed to provide to the commissioner actual energy data on which to evaluate the effectiveness of the program. It is a reasonable requirement because the goal of the program is to conserve energy and reduce energy costs for loan recipients. Annual energy reports provide data to assess whether that goal has been met and continues to be met. A minimum of three years of these reports is needed and reasonable to give a minimum amount of information with which to assess the impact of the project.

For the reasons stated above; the commissioner believes that each of the proposed parts is reasonable to effectively administer the financial assistance program to distribute loans for the purpose of energy conservation retrofit in schools, hospitals and public buildings. It is further believed that the proposed rules are reasonable and necessary to effect the purpose and intent of the statutory authorization.

Department of Public Service

In the Matter of the Proposed Adoption of the Rule of the State Department of Public Service Governing Institutional Energy Loans

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

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

Will Owens, 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 mailing list is accurate, complete, and current as of this 27th day of January, 1989.

Will Owens

Will Owens
Senior Programmer

Subscribed and sworn to before me this 27th day of January, 1989

Dennis M. Devereaux

DENNIS M. DEVEREAUX
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Apr. 1, 1994

Marlene Odeen, being sworn says:

That on the 27th day of January, 1989, 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 aforementioned mailing list.

Marlene Odeen

Marlene Odeen, Secretary

Subscribed and sworn to before me this 27th day of January, 1989.

Dennis M. Devereaux

DENNIS M. DEVEREAUX
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Apr. 1, 1994

Department of Public Service

In the Matter of the Proposed Adoption of the Rule of the State Department of Public Service Governing Institutional Energy Loans	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 216C.09.

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:

Jeremy de Fiebre
Department of Public Service
Energy Division
900 American Center
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
Telephone: (612) 297-1221

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 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 Mr. de Fiebre at the address given above.

Dated: January 27, 1989

Tony Perpich, Commissioner

Department of Public Service

In the Matter of the Proposed Adoption of the Rule of the State Department of Public Service Governing Institutional Energy Loans	NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

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Dated: January 27, 1989

Tony Perpich

Tony Perpich, Commissioner

Department of Public Service

Proposed Permanent Rules Relating to Institutional Energy Loans

Rules as Proposed (all new material)

7605.0010 PURPOSE.

The purpose of parts 7605.0020 to 7605.0080 is to establish application procedures for loan participation, to set criteria for review and approval of loan participation applications, and to set criteria for loan participation agreements.

7605.0020 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 7605.0010 to 7605.0080, the following terms have the meanings given them.

Subp. 2. **Applicant.** "Applicant" means a statutory or home rule charter city, county, or town, or a school or hospital as defined in this part, located in Minnesota, or joint power entity consisting of these units, that is making application for loan participation under this program.

Subp. 3. **Building.** "Building" means any separate structure owned and operated by an applicant.

Subp. 4. **Commissioner.** "Commissioner" means the commissioner of the Department of Public Service.

Subp. 5. **Conservation measure.** "Conservation measure" means an installation or modification of an installation to a building 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. **Hospital.** "Hospital" means a facility licensed under Minnesota Statutes, sections 144.50 to 144.55.

Subp. 7. **Lender.** "Lender" means a bank, trust company, mortgage company, credit union, mortgage banker, national banking association, savings bank, savings association, savings and loan association, building and loan association, insurance company, securities broker-dealer, financial organizations relating to commercial credit or venture capital, or a lender

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certified by the secretary of Housing and Urban Development or by the administrator of the United States Department of Veterans Affairs, or approved or certified by the administrator of the Farmers Home Administration or any other financial or lending institution, whether organized under federal law or the laws of any state of the United States, and whether located in or out of Minnesota, which issues a loan to an applicant to implement energy conservation measures. For participation in loans to applicants eligible for funds under Minnesota Statutes, section 216C.37, lender also means the Minnesota Department of Finance.

Subp. 8. **Payback.** "Payback" means the simple payback that is equal to the sum of the design, acquisition, and installation costs of a conservation measure divided by the estimated first year energy cost savings attributable to that measure.

Subp. 9. **Project.** "Project" means all proposed work in a loan participation application.

Subp. 10. **School.** "School" means a public school district or a private institution:

A. that provides, and is legally authorized to provide, elementary education or secondary education or both on a day or residential basis;

B. that:

(1) provides, and is legally authorized to provide, a program of education beyond secondary education on a day or residential basis;

(2) admits as students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate;

(3) is accredited by a nationally recognized accrediting agency or association; and

(4) provides an educational program for which it awards a bachelor's degree or higher degree or provides not less than a two-year program which is acceptable for full credit toward such a degree at any institution which meets the preceding requirements and which provides such a program; or

C. that provides not less than a one-year program of

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training to prepare students for gainful employment in a recognized occupation and which meets the provisions in item B, subitems (1) to (3).

7605.0030 LOAN ELIGIBILITY CRITERIA.

Subpart 1. **In general.** The commissioner shall approve applications from applicants and participate in loans from lenders to applicants in compliance with parts 7605.0010 to 7605.0080 for conservation measures that have a payback of ten years or less.

Subp. 2. **Eligibility.** Funds are available to participate in loans from lenders to applicants for:

A. conservation measures which have not previously been approved under this program;

B. cost overruns for a previously approved conservation measure in progress, or previously unidentified but related work which is necessary for successful implementation of a previously approved conservation measure, provided the conservation measure as amended continues to meet the requirements of parts 7605.0010 to 7605.0080.

Subp. 3. **Prior approval required.** Except for the measures in subpart 2, item B, conservation measures for which acquisition or installation have been contracted for or begun before approval by the commissioner are ineligible. This prior approval requirement does not apply to design activities.

Subp. 4. **Useful life.** Loan participation may not be approved for buildings with a remaining useful life less than or equal to the payback of the conservation measure proposed. Loan participation may not be approved for a conservation measure if the payback of the conservation measure proposed is greater than or equal to the useful life of the measure.

Subp. 5. **New construction.** Only conservation measures for existing buildings are eligible. New construction is eligible only if it is necessary for successful implementation of a conservation measure for an existing building.

7605.0040 LOAN PARTICIPATION LIMITS.

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The commissioner will participate in a loan from a lender to an applicant up to a maximum of 50 percent of the loan principal or $200,000, whichever is less. While the commissioner may participate in more than one loan to an applicant, the total participation under this program for any one applicant may not exceed $200,000.

7605.0050 APPLICATION CONTENTS.

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

Subp. 2. **Contents.** An application must contain, at a minimum:

A. the name and complete mailing address, including county, of the applicant;

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

C. a list of buildings included in the application and the dollar amount requested per building;

D. the name, address, and total floor area in square footage of each building;

E. the original construction date and addition construction dates of each building;

F. the state legislative district affected by the application;

G. a summary description of each proposed conservation measure, including its estimated cost, loan amount proposed, estimated annual energy cost savings, estimated annual fuel and electric savings, estimated payback, and the estimated dates the conservation measure will be started and completed; and

H. a resolution of the governing body of the applicant that:

(1) designates and authorizes a representative to

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enter into and sign contracts associated with the loan;

(2) guarantees that the applicant will use all loan funds solely for the approved conservation measures; and

(3) assures that it will comply with parts 7605.0010 to 7605.0080.

Subp. 3. **Technical support materials.** All applications for loan participation funds must also contain:

A. fuel and electric consumption data for the most recent completed annual period July 1 to June 30, for each building in the application;

B. a description of the current condition of the building and the building component, equipment, or system to be improved, and a description of each proposed conservation measure;

C. an engineering analysis sufficient to determine the technical feasibility and payback of each proposed conservation measure, on a form prescribed by the commissioner. An engineering analysis for a conservation measure estimated to cost more than $25,000 must be performed by a mechanical engineer, electrical engineer, or architect registered in Minnesota.

Subp. 4. **Assurances.** An applicant must also submit assurances that:

A. it has provided for the proper and efficient operation and maintenance of the proposed conservation measures;

B. the work performed with loan funds will meet all Minnesota building code requirements;

C. it has provided funds to pay any portion of the project cost not eligible for program funds, specifically identifying the source of those funds;

D. it has met requirements for voter approval, if applicable; and

E. it is able to accept and repay the proposed loan without exceeding applicable debt and levy limits.

Subp. 5. **Incomplete applications.** If an incomplete application is received, the commissioner shall notify the

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applicant of specific deficiencies in the application. The applicant has 30 days from the date of the commissioner's notification to complete the application. If the application is not completed and received by the commissioner within 30 days, the application is considered withdrawn. To be further considered, the applicant must reapply.

7605.0060 APPLICATION REVIEW.

Subpart 1. **Administrative review.** The commissioner shall examine a loan participation application to verify that the applicant is eligible, that the required forms are included and correctly completed, that the estimated start and completion dates are reasonable, that the required assurances and resolution are included, and that the application is properly signed and dated.

Subp. 2. **Technical review.** The commissioner shall examine the technical support materials included in an application to verify that the proposed conservation measures are analyzed with adequate details of existing conditions and proposed modifications or additions, that the appropriate calculation procedures are used, that the proposed conservation measures are eligible, and that the proposed conservation measures are technically feasible and meet the requirements of parts 7605.0010 to 7605.0080.

Subp. 3. **Rejection and resubmission.** The commissioner may accept, reject, or modify an application as necessary based on the application review. The commissioner shall notify an applicant of the cause for modification or rejection of an application and the options available to correct the application for resubmission. If some of the conservation measures in an application are accepted as submitted, the applicant may choose to withdraw the rejected measures and accept a loan for the remaining measures.

7605.0070 LENDER.

To be eligible to sell a loan participation to the commissioner, an officer of a lender must sign a participation

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agreement provided by the commissioner. The commissioner shall not participate in any loan made by a lender before the execution of a participation agreement. The agreement shall set terms and conditions under which a loan can be made, establish duties of the parties, and specify procedures to be followed in the event of default by the applicant. The agreement must require the lender and the commissioner to conform to the following conditions:

A. The lender will enter into a loan agreement with the applicant. The loan agreement will include the following:

(1) an agreement that the commissioner may review upon request all relevant financial data of the applicant and may inspect any and all buildings, equipment, and systems associated with a loan; and

(2) a resolution of the applicant's governing body guaranteeing that it will use all loan funds solely for the eligible costs of the proposed project, and assuring that it has and will comply with parts 7605.0010 to 7605.0080.

B. The lender shall make no provision to subordinate any loan collateral to other liens against such property without prior written approval from the commissioner.

C. The lender shall not acquire any preferential collateral, surety, or insurance to protect its interest in the loan.

D. All collateral must be prorated between the lender and the commissioner.

E. The lender shall require the applicant to adequately insure, maintain, and repair all collateral.

F. The lender shall review and approve the loan application in accordance with generally accepted commercial lending practices.

G. The lender is responsible for servicing the loan either directly or by contracting with a servicing agent.

H. The lender shall not sell or transfer the loan or any portion of it without prior written approval of the commissioner.

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I. The lender, for the term of the entire loan, shall promptly notify the commissioner of any loan payments that are one month overdue. The lender shall provide the commissioner with any and all past due notices at the same time they are sent to the applicant. In addition, the lender must submit an annual loan performance report to the commissioner on a form provided by the commissioner.

J. The portion of the loan not participated in by the commissioner shall not carry an interest rate in excess of three points above the lender's prime rate or base rate for variable or fixed rate loans.

K. The portion of the loan participated in by the commissioner shall have an amortization term not exceeding five years.

L. The lender agrees not to make any amendments to the loan agreement after loan closing without prior written approval of the commissioner.

M. The lender agrees to make no waivers of default without prior written approval of the commissioner.

N. The commissioner may review upon request all financial data associated with the execution and servicing of the loan made by the lender.

O. Before a declaration of default, any and all payments received by the lender shall first be credited to interest due on a pro rata basis and then be credited to the principal balance due on a pro rata basis.

P. During an event of default for which a declaration of default has been declared, any and all payments received by the lender shall first be used to pay the reasonable expenses related to the collection of, or attempts to collect, money owed under the loan. After payment of these amounts, any and all payments received by the lender shall first be credited to the principal balance due on a pro rata basis, and then be credited to interest due on a pro rata basis.

Q. If the commissioner determines that an applicant has failed to comply with the start or completion dates given in

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the loan participation application as approved, and the applicant cannot reasonably justify its failure to comply, the lender shall, upon written request of the commissioner, declare the loan to be in default.

7605.0080 REPORTS AND MONITORING.

Subpart 1. **In general.** An applicant that receives a loan in which the commissioner participates shall submit the reports listed in subparts 2 to 5.

Subp. 2. **Annual project status report.** The applicant shall submit to the commissioner, on a form provided by the commissioner, 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 project, problems encountered, the effect of the problems on the project, and the corrective action taken. If at any time the applicant fails to substantially comply with the start or completion dates given in the loan participation application as approved, and if the applicant cannot reasonably justify to the commissioner its lack of progress, the loan may be declared in default.

Subp. 3. **Semiannual financial report.** The applicant shall submit to the commissioner, on a form provided by the commissioner, a semiannual financial status report that indicates expenditures of loan funds through the last date of each report period. This report is due on July 31 for the period January 1 to June 30, and on January 31 for the period July 1 to December 31 until the project is completed.

Subp. 4. **Final report.** Within 60 days of the completion of the project, the applicant shall submit to the commissioner, on a form provided by the commissioner, a final project status report and a financial status report that gives actual expenditures of the conservation measures implemented.

Subp. 5. **Annual energy report.** The applicant shall submit to the commissioner, on a form provided by the commissioner, an

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annual fuel and electric consumption report 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 commissioner cancels this requirement before the end of the loan contract period.

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by Revisor _____

<<<< R U L E S >>>>

People receiving information on rule changes

Company / Person	Street / City, State, Zip	Code
RUDY BOSCHWITZ	HART STATE OFFICE BLDG-RM SH506 WASHINGTON, DC 20510	MCD
DAVID DURENBERGER	RUSSELL BLDG-RM 154 WASHINGTON, DC 20510	MCD
WILLIAM FRENZEL	LONGWORTH OFFICE BLDG-RM 1026 WASHINGTON, DC 20515	MCD
MICHAEL JOHNSON	117 FIFTH ST W - BOX 95 BLUE EARTH, MN 56013	RULES
RALPH T KEYES	1631 BROOKS AVE W ST PAUL, MN 55113	RULES
JAMES L OBERSTAR	RAYBURN OFFICE BLDG-RM 2351 WASHINGTON, DC 20515	MCD
RONALD E OLSON	5416 70TH ST W EDINA, MN 55435	RULES
TIMOTHY PENNY	CANNON OFFICE BLDG-RM 436 WASHINGTON, DC 20515	MCD
ALFRED J ROSS	6356 WARE RD LINO LAKES, MN 55014	RULES
MARTIN O SABO	RAYBURN OFFICE BLDG. - RM 2201 WASHINGTON, DC 20515	MCD
ARLAN STANGELAND	RAYBURN OFFICE BLDG. - RM 2245 WASHINGTON, DC 20515	MCD
BRUCE F VENTO	RAYBURN OFFICE BLDG. - RM 2304 WASHINGTON, DC 20515	MCD
VIN WEBER	CANNON OFFICE BLDG. - RM 106 WASHINGTON, DC 20515	MCD
ADMIN HEARING OFFICE SAM RUHLE	310 FOURTH AVE - RM 400 MINNEAPOLIS, MN 55415	RULES
ALABAMA DEPT OF ENERGY	3465 NORMAN BRIDGE RD MONTGOMERY, AL 36105	SEO
ALASKA ENERGY OFFICE	949 E. 36TH AVE - RM 400 ANCHORAGE, AK 99508	SEO

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People receiving information on rule changes

Company / Person	Street / City, State, Zip	Code
ARIZONA ENERGY OFFICE MARK GINSBERG	1700 WASHINGTON ST W PHOENIX, AZ 85007	SEO
ARKANSAS ENERGY OFFICE-ECON PLAN	1 CAPITOL MALL-RM 2C 105 LITTLE ROCK, AR 72201	SEO
BEMIDJI CHAMBER OF COMMERCE	BOX 850 BEMIDJI, MN 56601	RULES
BRAINERD WATER & LIGHT DEPT WALTER C SJOLUND	501 LAUREL ST-BOX 373 BRAINERD, MN 56401	RULES
BROEKER, GEER, FLETCHER, LAFOND LTD. JOHN M BROEKER	2850 METRO DR-STE 800 BLOOMINGTON, MN 55420	RULES
CALIFORNIA ENERGY COMMISSION	1516 NINTH ST SACRAMENTO, CA 95814	SEO
CARLTON COUNTY HUMAN SERVICES WILLIAM K. PINSONNAULT	BOX 316, 1215 AVENUE C CLOQUET, MN 55720	RULES
CITY OF BELLE PLAINE DAVID J UNMACHT	420 MAIN ST E BELLE PLAINE, MN 56011	RULES
CITY OF CIRCLE PINES JAMES KEINATH	200 CIVIC HEIGHTS CIRCLE CIRCLE PINES, MN 55014	RULES
CLOQUET CITY OF WILLIAM SCHLENVOGT	508 CLOQUET AVE CLOQUET, MN 55720	RULES
COLORADA OFFICE OF ENERGY CONSERV	112 14TH AVE E DENVER, CO 80203	SEO
COLUMBIA DIST OF ENERGY UNIT	613 G ST. N.W. WASHINGTON, DC 20001	SEO
CONNECTICUT ENERGY DIVISION BRADFORD S. CHASE	80 WASHINGTON ST HARTFORD, CT 06106	SEO
COOPERATIVE POWER ASSN ROBERT P AMBROSE	14615 LONE OAK RD EDEN PRAIRIE, MN 55344	RULES
COOPERATIVE POWER ASSN ADE MUSSELL	14615 LONE OAK ROAD EDEN PRAIRE, MN 55344	RULES
COTTONWOOD CO OFFICES FARLEY GRUNIG	COURTHOUSE WINDOM, MN 56101	RULES

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People receiving information on rule changes

Company / Person	Street / City, State, Zip	Code
DAIRYLAND POWER COOPERATIVE ALBERT D DIAL	BOX 817 LACROSSE, WI 54602	RULES
DAYTON HERMAN GRAHAM & GETTS JOHN H HERMAN	10 FIFTH ST S-STE 930 MINNEAPOLIS, MN 55402	RULES
DELAWARE ENERGY OFFICE	FEDERAL ST-BOX 1401 DOVER, DE 19903	SEO
DORSEY AND WHITNEY BECKY A COMSTOCK	220 SIXTH ST S-RM 2300 MINNEAPOLIS, MN 55402	RULES
DORSEY AND WHITNEY WILLIAM J. KEPPEL	2200 FIRST BANK PL E MINNEAPOLIS, MN 55402	RULES
E W A INC	133 FIRST AVE NORTH MINNEAPOLIS, MN 55401	RULES
FARIBAULT AREA CHAMBER OF COMMERCE ELAINE KENOW	228 CENTRAL AVE -- P. O. BOX 434 FARIBAULT, MN 55021	RULES
FLORIDA ENERGY OFFICE	BRYANT BLDG-RM 301 TALLAHASEE, FL 32301	SEO
FRIDLEY CITY OF JIM ROBINSON	6431 UNIVERSITY AVE NE FRIDLEY, MN 55432	RULES
GEO. A. HORMEL & CO DOUGLAS D. HAHN, P.E.	BOX 800 AUSTIN, MN 55912	RULES
GEORGIA OFFICE OF ENERGY RESOURCES	270 WASHINGTON ST SW-STE 615 ATLANTA, GA 30334	SEO
GUAM ENERGY OFFICE	BOX 2950 AGANA, GM 96910	SEO
HASTINGS CITY OF THOMAS HARMENING	100 SIBLEY ST HASTINGS, MN 55033	RULES
HAWAII ENERGY OFFICE	335 MERCHANT ST. RM 110 HONOLULU, HI 96813	SEO
HENN CNTY ENVIRONMENT & ENERGY OFF BEN KERMMOADE	822 SOUTH 3RD ST. SUITE 300 MINNEAPOLIS, MN 55415	RULES
HENN CNTY ENVIRONMENT & ENERGY OFF LUTHER D. NELSON	822 SOUTH 3RD ST. SUITE 300 MINNEAPOLIS, MN 55415	RULES

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People receiving information on rule changes

Company / Person	Street / City, State, Zip	Code
HENNEPIN CO PROPERTY MANAGEMENT JOHN G MCMILLAN	HENN CNTY GOVT CNTR, BLDG OFC-A LEVL MINNEAPOLIS, MN 55487	RULES
Hessian, McKaby and Soderberg Jerome M. Soderberg	4700 IDS Center Minneapolis, MN 55402	RULES
HONEYWELL INC W C VIITALA	HONEYWELL PLAZA-BOX 524 MINNEAPOLIS, MN 55440	RULES
HOYT HEATING CO. ERIC M. LANNES	PO BOX 60129 RENO/STEAD, NV 89506	RULES
IDAHO OFFICE OF ENERGY	450 STATE ST. W BOISE, ID 83720	SEO
ILLINOIS INST OF NAT RESOURCES	325 ADAMS ST W-RM 300 SPRINGFIELD, IL 62704	SEO
INDIANA ENERGY OFFICE	1 CAPITOL ST N-STE 700 INDIANAPOLIS, IN 46204	SEO
IOWA DEPT OF NATURAL RESOURCES ENERGY BUREAU	WALLACE STATE OFFICE BLDG DES MOINES, IA 50319	SEO
KANSAS CORP COMM-RESEARCH & ENERGY	STATE OFFICE BLDG-FOURTH FLR TOPEKA, KS 66612	SEO
KENTUCKY ENERGY CABINET LANA ROGERS	BOX 11888 LEXINGTON, KY 40578	SEO
LAKE SUPERIOR INDUSTRIAL BUREAU ALFRED E FRANCE	306 SUPERIOR ST W-#1408 ALWORTH DULUTH, MN 55802	RULES
LEFEVERE AND LEFLER JOHN E DRAWZ	2000 FIRST BANK PLACE WEST MINNEAPOLIS, MN 55402	RULES
LEHMANN & ASSOC INC ERNEST K LEHMANN	430 FIRST AVE N. - RM 790 MINNEAPOLIS, MN 55401	RULES
LEVANDER GILLEN MILLER & MAGNUSON ROGER C MILLER	633 CONCORD ST-RM 402-BOX 298 S ST PAUL, MN 55075	RULES
LINDBERG ASSOCIATES CLARENCE P LINDBERG	750 PLAZA DR S MENDOTA HTS, MN 55120	RULES
LOUISIANA DEPT OF NAT RESOURCES	BOX 94396 BATON ROUGE, LA 70804	SEO

<<<< R U L E S >>>>

! People receiving information on rule changes !

Company / Person	Street / City, State, Zip	Code
LUVERNE CITY OF STEVEN L. PERKINS	203 MAIN ST E - BOX 348 LUVERNE, MN 56156	RULES
LYMAN LUMBER CO JUDITH A. JANICKE	300 MORSE AVE - BOX 40 EXCELSIOR, MN 55331	RULES
MAINE OFFICE OF ENERGY RESOURCES	STATE HOUSE-STN 53 AUGUSTA, ME 04333	SEO
MANKATO AREA CHAMBER OF COMMERCE	BOX 999 MANKATO, MN 56002	RULES
MARYLAND ENERGY OFFICE	301 PRESTON ST W-STE 903 BALTIMORE, MD 21201	SEO
MASSACHUSETTS ENERGY POLICY OFFICE	100 CAMBRIDGE ST-RM 1500 BOSTON, MA 02202	SEO
MICHIGAN ENERGY ADMINISTRATION	BOX 30228 LANSING, MI 48909	SEO
MINN ASSN OF TOWNSHIPS DAVID FRICKE	BOX 267 - 705 CENTRAL AVE. E. ST MICHAEL, MN 55376	RULES
MINN ATTORNEY GEN OFC-ANTITRUST DIV THOMAS F PURSELL	117 UNIV AVE - SECOND FLR ST PAUL, MN 55155	RULES
MINN AUTO DEALERS ASSN LOUIS W CLAESON JR	277 UNIVERSITY AVE ST PAUL, MN 55103	RULES
MINN COOPERATIVES ASSN OF ALLEN GERBER	480 CEDAR ST - RM 380 ST PAUL, MN 55101	RULES
MINN GOVERMENT REPORT JEAN DAWSON	STATE CAPITAL BLDG - PRESS RM B2 ST PAUL, MN 55155	RULES
MINN HOUSING FINANCE AGENCY HEIDE E. WHITNEY	400 SIBLEY ST - STE 300 ST PAUL, MN 55101	RULES
MINN LEGIS COMM TO REVIEW ADMIN RUL MARYANNE V HRUBY	STATE OFFICE BLDG - RM 55 ST PAUL, MN 55155	RULES
MINN MULTI HOUSING ASSN JOHN HORNER	4740 PARK GLEN RD MINNEAPOLIS, MN 55416	RULES
MINN PETROLEUM COUNCIL DARREL BUNGE	350 ST. PETER ST. - RM 1025 ST PAUL, MN 55102	RULES

<<<< R U L E S >>>>

People receiving information on rule changes

Company / Person	Street / City, State, Zip	Code
MINN POLLUTION CONTROL AGENCY Gerald Willet	520 LAFAYETTE RD. N. ST. PAUL, MN 55155	RULES
MINN POWER CO ELAINE DEBEIR	30 SUPERIOR ST W DULUTH, MN 55802	RULES
MINN POWER CO JAMES A ROBERTS	30 SUPERIOR ST W DULUTH, MN 55802	RULES
MINN RETAIL MERCHANTS ASSN RANDY MORRIS	121 SEVENTH ST E-STE 180 ST PAUL, MN 55101	RULES
MINN STATE UNIV SYSTEM MARY E STANTON	555 PARK ST-STE 230 ST PAUL, MN 55105	RULES
MINNEGASCO TRACY BRIDGE	201 SEVENTH ST S MINNEAPOLIS, MN 55402	RULES
MINNEGASCO INC. GEORGE H. LOFGREN	P.O. BOX 1165 MINNEAPOLIS, MN 55440	RULES
MINNESOTA SENATE DONALD J FRANK	STATE CAPITOL BLDG-RM G10 ST PAUL, MN 55155	RULES
MISSISSIPPI DEPT OF ENERGY	510 GEORGE ST-STE 300 JACKSON, MS 39202	SEO
MISSOURI DIV OF ENERGY	BOX 176 JEFFERSON CITY, MO 65102	SEO
MONTANA ENERGY DIV	1520 E. 6TH AVE HELENA, MT 59620	SEO
MONTEVIDEO CITY OF A.J. JOHNSON	BOX 676 MONTEVIDEO, MN 56265	RULES
MONTICELLO CITY OF	250 BROADWAY ST E MONTICELLO, MN 55362	RULES
MOSS AND BARNETT MICHAEL J AHERN	200 SIXTH ST S-1200 PILLSBURY CNTR MINNEAPOLIS, MN 55402	RULES
MPLS BLDG OWNERS & MGRS ASSN INC. ARTHUR W OLOFSON	927 SOO LINE BLDG-105 5TH ST S. MINNEAPOLIS, MN 55402	RULES
NEBRASKA ENERGY OFFICE	BOX 95085 LINCOLN, NB 68509	SEO

<<<< R U L E S >>>>

People receiving information on rule changes

Company / Person	Street / City, State, Zip	Code
NEVADA COMM SERVICES-ENERGY OFFICE	1100 WILLIAM ST E RM 117 CARSON CITY, NV 89710	SEO
NEW HAMPSHIRE GOV COUNCIL ON ENERGY	2 1/2 BEACON ST CONCORD, NH 03301	SEO
NEW JERSEY DEPT OF COMM & ECON DEV ROBERT J. GOLDEN JR.	101 COMMERCE ST RM 204 NEWARK, NJ 07102	SEO
NEW MEXICO DEPT OF ENERGY &MINERALS	525 CAMINO DE LOS MARQUEZ SANTA FE, NM 87501	SEO
NEW YORK STATE ENERGY OFFICE	2 ROCKEFELLER PLAZA-10TH FLR ALBANY, NY 12223	SEO
NORTH CAROLINA ENERGY DIV	BOX 25249 RALEIGH, NC 27611	SEO
NORTH CENTRAL PUBLIC SERVICE CO. JAMES A SMITH	1080 MONTREAL AVE ST PAUL, MN 55116	RULES
NORTH DAKOTA OFFICE OF ENERGY	STATE CAPITOL BLDG-14TH FL BISMARCK, ND 58505	SEO
NORTH MARIANA ISLANDS ENERGY PLANNR	P.O. BOX 340 SAIPAN, MR 96950	SEO
NORTHERN PRODUCTS LOG HOMES, INC. Allison T. Beaulieu	P.O. BOX 616 BANGOR, ME 04401	RULES
NORTHERN STATES POWER C. GARY ANDERSON	414 NICOLLET MALL MINNEAPOLIS, MN 55401	RULES
NORTHERN STATES POWER - LAW DEPT. JOSEPH D. BIZZANO JR.	414 NICOLLET MALL MINNEAPOLIS, MN 55401	RULES
NORTHERN STATES POWER CO KEITH H WIETECKI	414 NICOLLET MALL MINNEAPOLIS, MN 55401	RULES
NORTHERN SUN ALLIANCE JOAN VANHALA	1519 FRANKLIN AVE E MINNEAPOLIS, MN 55404	RULES
OHIO DEPT OF ENERGY	30 BROAD ST E-24TH FLOOR COLUMBUS, OH 43266	SEO
OKLAHOMA DEPT OF ENERGY	2101 N. LINCOLN BLVD. OKLAHOMA CITY, OK 73105	SEO

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People receiving information on rule changes

Company / Person	Street / City, State, Zip	Code
OREGON DEPT OF ENERGY	625 MARION ST NE SALEM, OR 97310	SEO
OWATONNA PUBLIC UTILITIES DAVID M. MARTIN	P.O. BOX 800 OWATONNA, MN 55060	RULES
PENNSYLVANIA GOVERNORS ENERGY CNCL	BOX 8010 HARRISBURG, PA 17105	SEO
PHILLIPS LEGISLATIVE SERVICE INC WILLIAM L PHILLIPS	459 RICE ST - 3RD FLOOR ST PAUL, MN 55103	RULES
POPHAM HAIK LAW FIRM ROBERT S BURK	3300 PIPER JAFFERY TOWER MINNEAPOLIS, MN 55402	RULES
PUERTO RICO ENERGY OFFICE	MANILLAS STATION-BOX 41089 SANTRUCE, PR 00940	SEO
Q S S INC CHARLES KROEGER	BOX 838 FARIBAULT, MN 55021	RULES
REGION FIVE REG DEVEL COMM DAVE WEIRENS	611 IOWA AVE STAPLES, MN 56479	RULES
RHODE ISLAND ENERGY OFFICE	275 WESTMINISTER MALL PROVIDENCE, RI 02903	SEO
RICHFIELD CITY OF BRUCE NORDQUIST	6700 PORTLAND AVE S RICHFIELD, MN 55423	RULES
SAAG CHRISTOPHER K. SANDBERG	BREMER TOWER-RM 1100 ST PAUL, MN 55101	RULES
SAMOA ENERGY OFFICE DRURY SAMIA	OFFICE OF GOVERNOR PAGO PAGO, SM 96799	SEO
SIERRA CLUB	1313 - 5TH ST. S.E. RM 323 MINNEAPOLIS, MN 55414	RULES
SOUTH CAROLINA ENERGY OFFICE	P.O. BOX 11405 COLUMBIA, SC 29211	SEO
SOUTH DAKOTA OFFICE-ENERGY POLICY	217 1/2 W. MISSOURI PIERRE, SD 57501	SEO
ST CLOUD AREA CHAMBER OF COMMERCE THOMAS MOORE	26 N. SIXTH AVE ST CLOUD, MN 56302	RULES

<<<< R U L E S >>>>

People receiving information on rule changes

Company / Person	Street / City, State, Zip	Code
ST LOUIS CO PLANNING & ZONING OFF MARK JOHNSON	COURTHOUSE DULUTH, MN 55802	RULES
ST PAUL CITY OF JAN GAFTERLAND	445 CITY HALL ST PAUL, MN 55102	RULES
STATE GOVERNMENT AFFAIRS 3M CO WILLIAM J. LANGLOIS	BLDG 225-5N-04 3M CENTER ST PAUL, MN 55144	RULES
TENNESSEE ENERGY OFFICE	320 - 6TH AVE. N. NASHVILLE, TN 37219	SEO
TEXAS ENERGY OFFICE	7800 SHOAL CREEK BLVD AUSTIN, TX 78757	SEO
TRI COUNTY COMM ACTION PROG MARK G SEXTON	404 SECOND AVE NE LITTLE FALLS, MN 56345	RULES
U OF M ROBERT W SNYDER	1994 BUFORD AVE-RM 248COB ST PAUL, MN 55108	RULES
U S DEPT OF INTERIOR-FISH &WILDLIFE ROBERT F. WELFORD	400 SIBLEY ST-STE 50 ST PAUL, MN 55101	RULES
U.S. HOUSE OF REPRESENTATIVES GERRY SIKORSKI	CANNON OFFICE BLDG-RM 414 WASHINGTON, DC 20515	MCD
UNITED POWER ASSN BRUCE HAUSCHULZ	HIGHWAY 10 ELK RIVER, MN 55330	RULES
UNITED POWER ASSN REYNOLD S RAHKO	HWY 10 E ELK RIVER, MN 55330	RULES
UNOCAL CORP DAVE HENDERSON	1650 GOLF RD E SCHAUMBURG, IL 60196	RULES
UPPER MINN VALLEY REG DEVEL COMM OTTO SCHMID	323 SCHLIEMAN AVE W APPLETON, MN 56208	RULES
UTAH ENERGY OFFICE - 3 TRIAD CENTER	355 WEST NORTH TEMPLE - Room 450 SALT LAKE CITY, UT 84180	SEO
VERMONT STATE ENERGY OFFICE	STATE OFFICE BLDG MONTPELIER, VT 05602	SEO
VIRGIN ISLANDS ENERGY OFFICE	BOX 2996 ST THOMAS, VI 00801	SEO

<<<< R U L E S >>>>

People receiving information on rule changes

Company / Person	Street / City, State, Zip	Code
VIRGINIA ENERGY OFFICE	2201 W. BROAD ST. RICHMOND, VA 23220	SEO
WALDORF CORP GARY KAZUIKEWICA	2250 WABASHA ST ST PAUL, MN 55114	RULES
WASHINGTON CO HRA SAM GRIFFITH	455 BROADWAY AVE ST PAUL PK, MN 55071	RULES
WASHINGTON STATE ENERGY OFFICE	400 UNION ST E-FIRST FL OLYMPIA, WA 98504	SEO
WINTHROP AND WEINSTINE JOHN A KNAPP	444 CEDAR ST-STE 1800 ST PAUL, MN 55101	RULES
WISCONSIN STATE PLANNING&ENERGY DIV	BOX 7868 MADISON, WI 53707	SEO
WYOMING ENERGY CONSERVATION OFFICE	2301 CENTRAL AVE CHEYENNE, WY 82002	SEO
YAGGY,COLBY ASSOCIATES	717 THIRD AVE SE BOX 7038 ROCHESTER, MN 55903	RULES
ZENK,READ,TYPSTAD & ASSOC. LARRY A READ	BOX 689-OLD HIGHWAY 65 N. ALBERT LEA, MN 56007	RULES

7660.0090 FUNDING.

Subpart 1. **Priorities.** The department will process grant applications that comply with parts 7660.0010 to 7660.0070 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 80 percent of the actual cost of a cost-share maxi-audit or the approved grant amount, whichever is less, when the requirements of part 7660.0080 have been met.

Funding Limits for Cost-Share Maxi-Audits

Building Size in Square Feet	Formula	Funding Limits
0 - 5,000	—	$800
5,001 - 25,000	—	$1600
25,001 - 50,000	(Area)($.064/sq. ft.)	$1600 - $3200
50,001 - 100,000	(Area)($.0384/sq. ft.) + $1280	$3200 - $5120
100,001 - 150,000	(Area)($.0256/sq. ft.) + $2560	$5120 - $6400
150,001 - 200,000	(Area)($.0192/sq. ft.) + $3520	$6400 - $7360
200,001 - 250,000	(Area)($.0128/sq. ft.) + $4800	$7360 - $8000
250,001 - and up	—	$8000

Subp. 3. **Restrictions.** Institutions awarded cost-share maxi-audit grants with money from the state's cost-share maxi-audit program or TA funds cannot use funding from this program for the applicant's share of the cost of their cost-share maxi-audit.

Department of Public Service

Proposed Permanent Rules Relating to Institutional Energy Loans

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 216C.09.

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.

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.

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

Jeremy de Fiebre
Department of Public Service
Energy Division
900 American Center
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
Telephone: (612) 297-1221

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 Mr. de Fiebre at the address given above.

A Statement of Need and Reasonableness that desribes 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 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 Mr. de Fiebre at the address given above.

Dated: 17 January 1989

Tony Perpich, Commissioner
Department of Public Service

Rules as Proposed (all new material)

7605.0010 PURPOSE.

The purpose of parts 7605.0020 to 7605.0080 is to establish application procedures for loan participation, to set criteria for review and approval of loan participation applications, and to set criteria for loan participation agreements.

7605.0020 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 7605.0010 to 7605.0080, the following terms have the meanings given them.

Subp. 2. **Applicant.** "Applicant" means a statutory or home rule charter city, county, or town, or a school or hospital as defined in this part, located in Minnesota, or joint power entity consisting of these units, that is making application for loan participation under this program.

Subp. 3. **Building.** "Building" means any separate structure owned and operated by an applicant.

Subp. 4. **Commissioner.** "Commissioner" means the commissioner of the Department of Public Service.

Subp. 5. **Conservation measure.** "Conservation measure" means an installation or modification of an installation to a building 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. **Hospital.** "Hospital" means a facility licensed under *Minnesota Statutes,* sections 144.50 to 144.55.

Subp. 7. **Lender.** "Lender" means a bank, trust company, mortgage company, credit union, mortgage banker, national banking association, savings bank, savings association, savings and loan association, building and loan association, insurance company, securities broker-dealer, financial organizations relating to commercial credit or venture capital, or a lender certified by the secretary of Housing and Urban Development or by the administrator of the United States Department of Veterans Affairs, or approved or certified by the administrator of the Farmers Home Administration or any other financial or lending institution, whether organized under federal law or the laws of any state of the United States, and whether located in or out of Minnesota, which issues a loan to an applicant to implement energy conservation measures. For participation in loans to applicants eligible for funds under *Minnesota Statutes,* section 216C.37, lender also means the Minnesota Department of Finance.

Subp. 8. **Payback.** "Payback" means the simple payback that is equal to the sum of the design, acquisition, and installation costs of a conservation measure divided by the estimated first year energy cost savings attributable to that measure.

Subp. 9. **Project.** "Project" means all proposed work in a loan participation application.

Subp. 10. **School.** "School" means a public school district or a private institution:

A. that provides, and is legally authorized to provide, elementary education or secondary education or both on a day or residential basis;

B. that:

(1) provides, and is legally authorized to provide, a program of education beyond secondary education on a day or residential basis;

(2) admits as students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate;

(3) is accredited by a nationally recognized accrediting agency or association; and

(4) provides an educational program for which it awards a bachelor's degree or higher degree or provides not less than a two-year program which is acceptable for full credit toward such a degree at any institution which meets the preceding requirements and which provides such a program; or

C. that provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and which meets the provisions in item B, subitems (1) to (3).

7605.0030 LOAN ELIGIBILITY CRITERIA.

Subpart 1. **In general.** The commissioner shall approve applications from applicants and participate in loans from lenders to applicants in compliance with parts 7605.0010 to 7605.0080 for conservation measures that have a payback of ten years or less.

Subp. 2. **Eligibility.** Funds are available to participate in loans from lenders to applicants for:

A. conservation measures which have not previously been approved under this program;

B. cost overruns for a previously approved conservation measure in progress, or previously unidentified but related work which is necessary for successful implementation of a previously approved conservation measure, provided the conservation measure as amended continues to meet the requirements of parts 7605.0010 to 7605.0080.

Subp. 3. **Prior approval required.** Except for the measures in subpart 2, item B, conservation measures for which acquisition or installation have been contracted for or begun before approval by the commissioner are ineligible. This prior approval requirement does not apply to design activities.

Subp. 4. **Useful life.** Loan participation may not be approved for buildings with a remaining useful life less than or equal to the payback of the conservation measure proposed. Loan participation may not be approved for a conservation measure if the payback of the conservation measure proposed is greater than or equal to the useful life of the measure.

Subp. 5. **New construction.** Only conservation measures for existing buildings are eligible. New construction is eligible only if it is necessary for successful implementation of a conservation measure for an existing building.

7605.0040 LOAN PARTICIPATION LIMITS.

The commissioner will participate in a loan from a lender to an applicant up to a maximum of 50 percent of the loan principal or $200,000, whichever is less. While the commissioner may participate in more than one loan to an applicant, the total participation under this program for any one applicant may not exceed $200,000.

7605.0050 APPLICATION CONTENTS.

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

Subp. 2. **Contents.** An application must contain, at a minimum:

A. the name and complete mailing address, including county, of the applicant;

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

C. a list of buildings included in the application and the dollar amount requested per building;

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D. the name, address, and total floor area in square footage of each building;

E. the original construction date and addition construction dates of each building;

F. the state legislative district affected by the application;

G. a summary description of each proposed conservation measure, including its estimated cost, loan amount proposed, estimated annual energy cost savings, estimated annual fuel and electric savings, estimated payback, and the estimated dates the conservation measure will be started and completed; and

H. a resolution of the governing body of the applicant that:

(1) designates and authorizes a representative to enter into and sign contracts associated with the loan;

(2) guarantees that the applicant will use all loan funds solely for the approved conservation measures; and

(3) assures that it will comply with parts 7605.0010 to 7605.0080.

Subp. 3. **Technical support materials.** All applications for loan participation funds must also contain:

A. fuel and electric consumption data for the most recent completed annual period July 1 to June 30, for each building in the application;

B. a description of the current condition of the building and the building component, equipment, or system to be improved, and a description of each proposed conservation measure;

C. an engineering analysis sufficient to determine the technical feasibility and payback of each proposed conservation measure, on a form prescribed by the commissioner. An engineering analysis for a conservation measure estimated to cost more than $25,000 must be performed by a mechanical engineer, electrical engineer, or architect registered in Minnesota.

Subp. 4. **Assurances.** An applicant must also submit assurances that:

A. it has provided for the proper and efficient operation and maintenance of the proposed conservation measures;

B. the work performed with loan funds will meet all Minnesota building code requirements;

C. it has provided funds to pay any portion of the project cost not eligible for program funds, specifically identifying the source of those funds;

D. it has met requirements for voter approval, if applicable; and

E. it is able to accept and repay the proposed loan without exceeding applicable debt and levy limits.

Subp. 5. **Incomplete applications.** If an incomplete application is received, the commissioner shall notify the applicant of specific deficiencies in the application. The applicant has 30 days from the date of the commissioner's notification to complete the application. If the application is not completed and received by the commissioner within 30 days, the application is considered withdrawn. To be further considered, the applicant must reapply.

7605.0060 APPLICATION REVIEW.

Subpart 1. **Administrative review.** The commissioner shall examine a loan participation application to verify that the applicant is eligible, that the required forms are included and correctly completed, that the estimated start and completion dates are reasonable, that the required assurances and resolution are included, and that the application is properly signed and dated.

Subp. 2. **Technical review.** The commissioner shall examine the technical support materials included in an application to verify that the proposed conservation measures are analyzed with adequate details of existing conditions and proposed modifications or additions, that the appropriate calculation procedures are used, that the proposed conservation measures are eligible, and that the proposed conservation measures are technically feasible and meet the requirements of parts 7605.0010 to 7605.0080.

Subp. 3. **Rejection and resubmission.** The commissioner may accept, reject, or modify an application as necessary based on the application review. The commissioner shall notify an applicant of the cause for modification or rejection of an application and the options available to correct the application for resubmission. If some of the conservation measures in an application are accepted as submitted, the applicant may choose to withdraw the rejected measures and accept a loan for the remaining measures.

7605.0070 LENDER.

To be eligible to sell a loan participation to the commissioner, an officer of a lender must sign a participation agreement provided by the commissioner. The commissioner shall not participate in any loan made by a lender before the execution of a participation agreement. The agreement shall set terms and conditions under which a loan can be made, establish duties of the parties, and specify procedures to be followed in the event of default by the applicant. The agreement must require the lender and the commissioner to conform to the following conditions:

A. The lender will enter into a loan agreement with the applicant. The loan agreement will include the following:

(1) an agreement that the commissioner may review upon request all relevant financial data of the applicant and may inspect any and all buildings, equipment, and systems associated with a loan; and

(2) a resolution of the applicant's governing body guaranteeing that it will use all loan funds solely for the eligible costs of the proposed project, and assuring that it has and will comply with parts 7605.0010 to 7605.0080.

B. The lender shall make no provision to subordinate any loan collateral to other liens against such property without prior written approval from the commissioner.

C. The lender shall not acquire any preferential collateral, surety, or insurance to protect its interest in the loan.

D. All collateral must be prorated between the lender and the commissioner.

E. The lender shall require the applicant to adequately insure, maintain, and repair all collateral.

F. The lender shall review and approve the loan application in accordance with generally accepted commercial lending practices.

G. The lender is responsible for servicing the loan either directly or by contracting with a servicing agent.

H. The lender shall not sell or transfer the loan or any portion of it without prior written approval of the commissioner.

I. The lender, for the term of the entire loan, shall promptly notify the commissioner of any loan payments that are one month overdue. The lender shall provide the commissioner with any and all past due notices at the same time they are sent to the applicant. In addition, the lender must submit an annual loan performance report to the commissioner on a form provided by the commissioner.

J. The portion of the loan not participated in by the commissioner shall not carry an interest rate in excess of three points above the lender's prime rate or base rate for variable or fixed rate loans.

K. The portion of the loan participated in by the commissioner shall have an amortization term not exceeding five years.

L. The lender agrees not to make any amendments to the loan agreement after loan closing without prior written approval of the commissioner.

M. The lender agrees to make no waivers of default without prior written approval of the commissioner.

N. The commissioner may review upon request all financial data associated with the execution and servicing of the loan made by the lender.

O. Before a declaration of default, any and all payments received by the lender shall first be credited to interest due on a pro rata basis and then be credited to the principal balance due on a pro rata basis.

P. During an event of default for which a declaration of default has been declared, any and all payments received by the lender shall first be used to pay the reasonable expenses related to the collection of, or attempts to collect, money owed under the loan. After payment of these amounts, any and all payments received by the lender shall first be credited to the principal balance due on a pro rata basis, and then be credited to interest due on a pro rata basis.

Q. If the commissioner determines that an applicant has failed to comply with the start or completion dates given in the loan participation application as approved, and the applicant cannot reasonably justify its failure to comply, the lender shall, upon written request of the commissioner, declare the loan to be in default.

7605.0080 REPORTS AND MONITORING.

Subpart 1. **In general.** An applicant that receives a loan in which the commissioner participates shall submit the reports listed in subparts 2 to 5.

Subp. 2. **Annual project status report.** The applicant shall submit to the commissioner, on a form provided by the commissioner, 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 project, problems encountered, the effect of the problems on the project, and the corrective action taken. If at any time the applicant fails to substantially comply with the start or

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completion dates given in the loan participation application as approved, and if the applicant cannot reasonably justify to the commissioner its lack of progress, the loan may ~~be~~ declared in default.

Subp. 3. **Semiannual financial report.** The applicant shall submit to the commissioner, on a form provided by the commissioner, a semiannual financial status report that indicates expenditures of loan funds through the last date of each report period. This report is due on July 31 for the period January 1 to June 30, and on January 31 for the period July 1 to December 31 until the project is completed.

Subp. 4. **Final report.** Within 60 days of the completion of the project, the applicant shall submit to the commissioner, on a form provided by the commissioner, a final project status report and a financial status report that gives actual expenditures of the conservation measures implemented.

Subp. 5. **Annual energy report.** The applicant shall submit to the commissioner, on a form provided by the commissioner, an annual fuel and electric consumption report 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 commissioner cancels this requirement before the end of the loan contract period.

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.

State Board of Education

Reconsideration, Modification, and Adoption of Rule as Modified: Certain Pupil Teacher Ratios; Performing Music Groups

1. After reconsideration as directed by order of the Court of Appeals in Minnesota Education Association vs. Minnesota State Board of Education (File No. C2-88-1569) and without further new rulemaking, the State Board of Education has modified *Minnesota Rules*, part 3500.3700, subpart 4 (published as adopted at 11 *State Register*, page 1407) to read as follows:

3500.3700 SECONDARY SCHOOL STAFF.

Subpart 1. to 3. [Unchanged.]

Subp. 4. **Maximum number of pupils.** The maximum number of pupils per day for a secondary school teacher is 160 except for teachers of performing music groups and physical education classes. An acceptable class size for instruction in physical education shall not exceed 40 pupils. The recommended average number of pupils per day per week for a secondary teacher of performing music groups is 180. A school board must adopt a written policy specifying the circumstances when ~~a~~ the ratio ~~in this subpart~~ for performing music groups may be exceeded. The policy must be adopted and filed with the State Board of Education by August 1 each year. An amendment made by the school board must be filed with the State Board of Education within ten days of its adoption.

2. *Minnesota Rules*, part 3500.3700, subpart 4, is adopted as modified in paragraph 1.

Department of Education

Adopted Permanent Rules Relating to School Buses

The rules proposed and published at *State Register*, Volume 13, Number 1, pages 5-33, July 4, 1988 (13 S.R. 5) are adopted as proposed.

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 the Institutional Energy Loan Program

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 January 30, 1989 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, section 14.14, subdivision 1a and 14.22 on January 27, 1989. The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was sent 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 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.

The attorney general has recommended an addition to part 7605.0030, subpart 1 to clarify that the commissioner is not required to approve an application for which the commissioner does not have funds to purchase a participation. The attorney general has further recommended lexical changes to part 7605.0030. subpart 4 to clarify the non-discretionary nature of the subpart, and deletion of extraneous language in part 7605.0070, item N and part 7605.0080, subpart 2 to eliminate ambiguity in these subparts.

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

The above-captioned rule is needed and reasonable.

The recommendations of the attorney general are needed and reasonable, and do not constitute a substantial change under Minnesota Rules, part 2010.1000, item D. Therefore, the proposed rule is modified as follows:

7605.0030 LOAN ELIGIBILITY CRITERIA. Subpart 1. In general. The commissioner shall approve applications from applicants and participate in loans from lenders to applicants in compliance with parts 7605.0010 to 7605.0080 for conservation measures that have a payback of ten years or less. <u>The commissioner shall not approve any application for which funds are not available to purchase a loan participation.</u> ...

Subp. 4. Useful life. Loan participation ~~may~~ <u>shall</u> not be approved for buildings with a remaining useful life less than or equal to the payback of the conservation measure proposed. Loan participation ~~may~~ <u>shall</u> not be approved for a conservation measure if the payback of the

conservation measure proposed is greater than the useful life of the measure.

7605.0070 LENDER. ...N. The commissioner may review ~~upon request~~ all financial data associated with the execution and servicing of the loan made by the lender.

7605.0080 REPORTS AND MONITORING. ...Subp. 2. Annual project status report. ...If at any time the applicant fails to ~~substantially~~ comply with the start or completion dates given in the loan participation application as approved, and the applicant cannot ~~reasonably~~ justify to the commissioner its lack of progress, the loan may be declared in default.

NOW, THEREFORE, IT IS ORDERED that the rule identified as 7605.0010 to 7605.0080, as modified, is adopted this 18th day of April, 1989, pursuant to the authority vested in me by Minnesota Statutes, section 216C.09.

Tony Perpich, Commissioner
Department of Public Service

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 the Institutional Energy Loan Program

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

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

The above-captioned rule is needed and reasonable.

The recommendations of the attorney general are needed and reasonable, and do not constitute a substantial change under Minnesota Rules, part 2010.1000, item D. Therefore, the proposed rule is modified as follows:

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NOW, THEREFORE, IT IS ORDERED that the rule identified as 7605.0010 to 7605.0080, as modified, is adopted this 18th day of April, 1989, pursuant to the authority vested in me by Minnesota Statutes, section 216C.09.

Tony Perpich, Commissioner
Department of Public Service

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 the Institutional Energy Loan Program

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 January 30, 1989 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, section 14.14, subdivision 1a and 14.22 on January 27, 1989. The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was sent 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 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:

The above-captioned rule is needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rule identified as 7605.0010 to 7605.0080 is adopted this 15th day of March, 1989, pursuant to the authority vested in me by Minnesota Statutes, section 216C.09.

Tony Perpich

Tony Perpich, Commissioner
Department of Public Service

2010.9935 RECOMMENDED DECLARATION OF COUNSEL

In the Matter of the Adoption of the Rule of the State Department of Public Service Governing Institutional Energy Loans

DECLARATION OF COUNSEL

I, Mary Jo Murray, 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 0730.

MARY JO MURRAY
Special Assistant
Attorney General

Dated: April 4, 1989

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