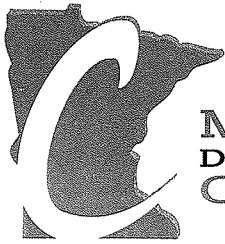


1-22-2007



**MINNESOTA
DEPARTMENT OF
COMMERCE**

85 7th Place East, Suite 500
St. Paul, Minnesota 55101-2198
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January 18, 2007

Legislative Reference Library
645 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, Minnesota 55155-1050

**Re: In The Matter Of The Proposed Amendment to *Minnesota Rules*, Chapter 7606,
known as the Rules Governing Institutional Energy Conservation Financing;
Governor's Tracking #AR 277**

Dear Librarian:

The Minnesota Department of Commerce intends to adopt rules governing the institutional energy conservation financing program. We plan to publish a Notice of Intent to Adopt Rules Without a Public Hearing in the January 22, 2007 State Register.

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

If you have any questions, please contact me at 651-297-2313.

Yours very truly,

A handwritten signature in black ink that reads "Bruce Nelson". The signature is fluid and cursive.

Bruce Nelson
Senior Engineer

Enclosure: Statement of Need and Reasonableness

**STATE OF MINNESOTA
DEPARTMENT OF COMMERCE**

**In the Matter of the Proposed Amendments
to Rules of the Minnesota Department of
Commerce amending Minnesota Rules,
Chapter 7606, known as the Rules Governing
Institutional Energy Conservation Financing**

**STATEMENT OF NEED
AND REASONABLENESS**

INTRODUCTION

The Commissioner of the Minnesota Department of Commerce (Department) proposes to amend Minn. Rules Chapter 7606, governing Institutional Energy Loans. The title of Ch. 7606 is changed from the current title "Rules Governing Institutional *Energy Loans*" to "Rules Governing Institutional *Energy Conservation Financing*" to reflect a proposed change in terminology used throughout the chapter. In addition to substantive changes, the Department is recommending reorganization and grammatical changes to the rules to improve clarity and to conform to the Revisor's style requirements.

The Department began the present rulemaking notification process on December 12, 2005 by publishing a notice in the State Register (30 S.R. 615) soliciting opinions and information from the public on the rules regarding Institutional Energy Loans.

This SONAR contains a summary of the evidence and argument that the Department is relying on to justify why the proposed amendments to Minnesota Rules Chapter 7606 are needed and reasonable. Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, Braille, or cassette tape. To make the request, contact Bruce Nelson at the Minnesota Department of Commerce (85 7th Place E, Suite 500, St. Paul, MN 55101-2198; 651-297-2313; bruce.nelson@state.mn.us). TTY users may call the Department at 651-297-3067.

DEPARTMENT'S STATUTORY AUTHORITY

The Commissioner's authority to adopt the rule amendments is set forth in *Minnesota Statutes*, section 216C.09, subdivision a, clause 13 which provides:

"The commissioner shall: dispense loans, grants, or other financial aid from money received from litigation or settlement of alleged violations of federal petroleum-pricing regulations made available to the Department for that purpose. The commissioner shall adopt rules under chapter 14 for this purpose."

The appropriation for the financing governed by Minn. Rules Ch. 7606 was made in Laws of Minnesota for 1988, Ch. 686, Art. 1, Sec. 38 which provides:

"Sec 38. EXXON OIL OVERCHARGE APPROPRIATION

Money received by the state as a result of the settlement of the parties and order of the United States District Court for the District of Columbia in the case of *United States v. Exxon Corp.* 561 F. Supp. 816 (D.D.C. 1983), including any interest earned, is appropriated to the commissioner of [commerce]

to be spent in accordance with the order of the legislative advisory committee dated August 20, 1986 to remain until expended.”

A Legislative Advisory Committee order dated August 20, 1986 provides funds to the Department for Oil Overcharge Settlement for “State energy loan programs for schools, hospitals and public buildings.”

BACKGROUND

The Energy Loan Program has been administered since its beginning by the Energy Division, currently within the Department of Commerce. From the program’s beginning until 1999 the Energy Division was within the Department of Public Service.

Beginning in 1989, the program has assisted cities, counties, towns and public and private schools and hospitals by helping to finance energy-saving capital improvements. The program has successfully reduced energy costs in hundreds of institutional buildings. Financial assistance is available to make energy-saving capital improvements with a simple payback of ten years or less in applicant-owned buildings or energy-using systems (e.g. outdoor lighting). Eligible improvements include roof insulation; window retrofits; lighting modifications; energy management systems; heating, ventilation and air conditioning (HVAC) modifications; and conversions to alternative fuels. An application must include a technical analysis for each proposed energy-saving capital improvement.

The total amount of money in the program fund received from litigation or settlement of alleged violations of federal petroleum-pricing regulations is about \$8 million dollars. Funds are used for up to a 50% match to a loan or tax-exempt lease from a private lender. No interest is charged on dollars from the program fund. An applicant may use a local financing institution or other energy conservation financing options such as utilities or vendors for the remaining cost of the improvements.

The Department operates the program as a “revolving” financial aid fund; as the financial aid is repaid that money is returned to the fund for future issuance. More than 225 applicants have been granted financial aid, and due to the revolving nature of the fund, the total aid has reached more than \$53 million.

Eligible participants learn about the Energy Loan Program through program marketing done by the Department or from contractors hired by the institution to perform energy conservation work. When the Department receives an inquiry about the program, staff provides instructions detailing how to complete an application for financial assistance. Department staff are accessible by either phone or e-mail to respond to all applicant questions. Upon completion of the present rulemaking, the Department will revise the packet of instructions to account for the revisions to Ch. 7606. Included will be specific information concerning the proposed requirement (at Part 7606.0050, Subp. 3, Application Contents) for applicants to provide an energy benchmarking score.

Hereafter, the SONAR will use the new title including the words “Institutional *Energy Conservation Financing*.”

CIRCUMSTANCES THAT CREATED THE NEED FOR THIS RULEMAKING

Minn. Rules Ch. 7606 were adopted in 1989 (13 SR 2223) and have not been changed since the original date of adoption. In the intervening eighteen years the nature of public sector financing has changed dramatically resulting in low program participation. The need for this rulemaking is to adjust Ch. 7606 to increase the number of entities that can take advantage of low interest financing for energy improvements and to enable all eligible entities to use make more effective use of the financing program regulated by Minn. Rules Ch. 7606.

REQUIREMENTS OF MINN. STAT. SECTIONS 14.131 AND 14.23

Under sections 14.131 and 14.23, the SONAR must contain a regulatory analysis that includes the following information to the extent the agency can get this information through reasonable effort:

1. *The classes of persons who will probably be affected by the proposed rules, including those who will bear the costs of the rules and those who will benefit from the rules.*

The primary classes of persons affected by Ch. 7606 are those who voluntarily choose to participate in energy conservation financing regulated by the chapter. There is no legal requirement for any person or entity to participate in energy conservation financing regulated by Ch. 7606.

The classes of persons that could be affected by the proposed revisions to Ch. 7606, should they choose to participate in energy conservation financing, are currently eligible participants:

- Minnesota cities, counties and townships,
- Minnesota public and private schools, and
- Minnesota public and private hospitals.

The classes proposed to be added to those eligible to participate:

- State of Minnesota facilities,
- Minnesota State Colleges & Universities, and
- University of Minnesota facilities.

Another class of persons that could be affected by the proposed revisions to Ch. 7606 are contractors who may be hired by an institution to conduct an energy conservation program that is financed by the Department's Institutional Energy Conservation Financing program, and thereby would be affected by Ch. 7606. Members of this class would include consulting engineers in Minnesota as well as companies that provide energy performance contracting services.

Another class of persons who might be affected by the proposed revisions to Ch. 7606 are the financial entities who have worked with the institutions in the past to provide financing.

2. *The estimate of the probable costs to the agency and other agencies of implementing and enforcing the rules and any anticipated effect of the rules on state revenues.*

The proposed amendment is expected to increase the number of applications for financing. The Department expects that the resulting addition to the workload for staff who process these applications can be handled within the current budget for the program and will not result in any additional costs.

The only other agencies affected by Ch. 7606 would be those agencies that voluntarily choose to participate in energy conservation financing regulated by the chapter. There is no legal requirement for any agency to participate in energy conservation financing regulated by Ch. 7606. Agencies who do decide to participate in the program will likely have the benefits of participating outweigh any added costs.

There will be no effect on state revenues as a result of adopting the proposed rule amendments.

3. *A discussion of whether there are less costly or less intrusive methods of achieving the purpose of the rules.*

The costs and intrusiveness of the proposed rule amendments are minimal. The Department's experience—nearly two decades—in administering the energy conservation financing program regulated by Ch. 7606 has demonstrated that this program is very low cost for the energy conservation benefits derived. The proposed amendments will not adversely affect those who voluntarily choose to participate in the program. Thus, the Department concludes that there are no less costly or less intrusive methods of achieving the purpose of the proposed rule amendments.

4. *A description of any alternative ways to achieve the purpose of the rules that the agency seriously considered and the reasons why they were rejected in favor of the proposed rules.*

The proposed rules include relatively minor amendments to regulations affecting a mature program to reflect current industry standards and needs. The alternative of proposing major changes to the rules was considered and rejected by the Department as unnecessary at this time.

For several of the proposed amendments the Department did consider alternative ways to achieve the purpose of the amendment. Those alternatives are discussed in this SONAR along with the proposed amendments.

5. *The probable costs of complying with the rules, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.*

The only categories of persons affected by Ch. 7606 are those who voluntarily choose to participate in energy conservation financing regulated by the chapter. There is no legal requirement for any person or entity to participate in this program.

Where applicable, costs for complying with specific proposed amendments are included in this SONAR when discussing the reasonableness of the specific proposed amendment.

The Department expects that the proposed rule changes will increase the use of the program which, in turn, will significantly reduce the energy use and therefore the operating cost of buildings in the state. Significant savings will also come from improved long-term durability of buildings. Other savings, though difficult to measure, will come from improved health of building occupants.

6. *An estimate of the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.*

The cost of not adopting the proposed rule would be a continuation of the current low number of applications for energy conservation financing and the subsequent missed opportunities for creating significant energy savings for public buildings.

7. *A discussion of any differences between the rules and existing federal regulations and specifically analyze the need for and reasonableness of each difference.*

The administration of the Energy Conservation Financing Program is conducted in conformance with the Federal regulation governing state energy offices in the Code of Federal Regulations, Title 10, Part 420. Neither this nor any other Federal regulation specifically address how a state energy

office is to administer an energy conservation financing program. Thus, since there are no Federal regulations governing administration of an energy conservation financing program, there are no differences between the rules and existing federal regulations pertaining to the matter of Minn. Rules Ch. 7606.

COST THRESHOLDS

Minn. Stat. Sec. 14.127 Subdivision 1. requires that: An agency must determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed \$25,000 for: (1) any one business that has less than 50 full-time employees; or (2) any one statutory or home rule charter city that has less than ten full-time employees. For purposes of this section, "business" means a business entity organized for profit or as a nonprofit, and includes an individual, partnership, corporation, joint venture, association, or cooperative.

The Department has determined that the proposed amendments to Minn. Rules Ch. 7606 will neither meet nor exceed either of these cost thresholds.

REASONABLENESS OF THE PROPOSED RULE AMENDMENTS

This section addresses the reasonableness of specific parts of the proposed rule amendments.

CHAPTER 7606 TITLE

The Department proposes to amend the title of this chapter by replacing the word "Loan" with the phrase "Conservation Financing." This change is needed and reasonable to assure the title is consistent with identical replacements proposed throughout the chapter, as explained in the discussion of amendments to Part 7606.0010, Authority and Purpose, in the paragraph immediately following in this SONAR.

7606.0010 AUTHORITY AND PURPOSE.

The Department proposes to create a new Subpart 1 with a statement of authority. This is needed for the convenience of users of this chapter. The proposal is reasonable because the cited statutory authority addresses this matter.

Part 7606.0010 is also being modified to add the title "Purpose" to the existing paragraph, now Subp. 2, discussing the purpose of Ch. 7606 to be consistent with Revisor's style requirements.

In Subp. 2, **Purpose**, the Department proposes to replace the word "loan" with the word "financing" in several instances in this part, a total of 57 instances throughout Chapter 7606, and in the chapter title. This replacement is needed for several reasons. First, the authorizing statute (quoted earlier in this SONAR under Department's Statutory Authority) includes financial aid other than loans.

Secondly, financing for public institutions has changed over the past 18 years. Financing for public institutions is no longer a simple "loan" process. In 1989, when Ch. 7606 was first adopted, loans were routinely obtained by public entities to finance capital improvements. Today public entities nearly always finance capital improvements with tax exempt leases.

The Department believes the word "financing" is a reasonable choice because it is broad enough to include traditional loans as well as other methods of financing outlined in the Department's statutory authority. It should be noted that a traditional loan may still be pursued by all entities, including a private school or hospital, which are also eligible to participate in financing regulated by Chapter 7606.

In choosing the word "financing" the Department did consider the fact that the authorizing resolution by the Legislative Advisory Committee dated August 20, 1986, quoted above in this SONAR uses the phrase "energy loan programs." However, for the reasons listed immediately above, the Department is persuaded that the word "financing" is an ideal description of the financial support intended by the legislature.

7606.0020 DEFINITIONS

At Subp. 2 the Department proposes to amend the definition of Applicant by adding the phrase "the state of Minnesota." The reason for this change is to allow state building projects access to energy conservation financing regulated by this chapter.

This amendment is both needed and reasonable because there is enough money in the energy conservation financing program to fund many more projects, and buildings owned by the State of Minnesota need an extra source of funds for cost effective energy conservation projects. The proposed amendment is expected to somewhat increase the number of applications for financing, and thus will be a small addition to the workload of Department staff who process these financing applications. The Department expects that the resulting modest addition can be handled and will not result in any additional costs for the Department beyond that which is already budgeted for the program.

At Subp. 5 the Department proposes to add to the definition "Conservation measure" the phrase "or stationary energy using system." The amendment is needed because qualified financing applicants have facilities other than buildings for which the energy efficiency can and should be improved. Examples include parking lot lighting, street lighting, traffic and pedestrian signal crossing lights as well as pumps at water supply and sewage treatment facilities (which may not be inside of a building). The amendment is needed because the current definition is too limiting, and a broader definition will allow financing applicants to include additional energy conservation improvements in their applications. The amendment is reasonable because potential financing applicants under Ch. 7606 have many cost effective opportunities for making energy conserving investments in stationary energy using systems.

At Subp. 5a the Department proposes to add a definition for the term "Energy benchmark." This definition is needed because the term is used in proposed revisions to part 7606.0050 Subp. 3 item A. and part 7606.0080. Subp. 5. The energy benchmark score is an indication of the relative energy performance of that building. The benchmark might be other buildings of the same type or benchmarking the building against itself built to the state energy code. As indicated in the Background section on page 2 of this SONAR, the Department plans to provide specific information on how to get an energy benchmarking score when an entity expresses interest in participating in the financing program.

Item A addresses the energy efficiency benchmark required by Minnesota Session Laws 2001, chapter 212, Article 1, section 3, (as amended by Minnesota Session Laws 2002, chapter 398) for public buildings. This law requires that:

"The department of administration shall maintain information on energy usage in all public buildings for the purpose of establishing energy efficiency benchmarks and energy conservation goals."

This law further requires that:

"The owner or operator of a public building subject to this section shall provide information to the department of administration necessary to accomplish the purposes of this section."

Minnesota Session Laws 2001, chapter 212, Article 1, section 3, (as amended by Minnesota Session Laws 2002, chapter 398) also required the Department of Administration department to develop, in coordination with the Department of Commerce:

“a comprehensive plan to maximize electrical and thermal energy efficiency in existing public buildings through conservation measures.”

For purposes of efficiency and coordination of programs in both the departments of Administration and Commerce, the Commerce Department believes it is both needed and reasonable to propose in Ch. 7606 the adoption of the same standard as the one used in the Department of Administration’s comprehensive plan. The proposed part A of the definition of Energy Benchmark accomplishes this task.

Item B addresses the energy efficiency benchmark for buildings outside of the scope of item A. These buildings would include those eligible to participate in energy financing under the scope of this chapter but are not public buildings, such as private schools and hospitals. Two alternatives for an energy efficiency benchmark are provided for applicants in this category. The first option in Subitem (1) allows the procedures identical to Item A. This option is needed because facility managers of private schools and hospitals may wish to use the same benchmarking tool that public schools and hospitals use. The second option in Subitem (2) allows the calculations in the ENERGY STAR Portfolio Manager tool. This option is needed to give a readily available alternative to private schools and hospitals that may not wish to use the same benchmarking tool that public schools and hospitals use.

The ENERGY STAR Portfolio Manager tool was created and is maintained by the United States Environmental Protection Agency and United States Department of Energy. It is accessible on the ENERGY STAR website (<http://www.energystar.gov/>) on the Buildings and Plants page. The Portfolio Manager tool is an easy to use benchmark calculator to track the energy performance of one or more buildings.

The option of using the ENERGY STAR Portfolio Manager tool is reasonable because this tool is widely used and recognized as accurate. It is further reasonable because it can be used at no charge, and the user’s data is password protected. The Department did consider the alternative of proposing one or more of the other benchmark calculating tools currently in use in the United States, but rejected this alternative because the ENERGY STAR Portfolio Manager tool is by far the most commonly used by building managers throughout the United States. Furthermore, if other tools were used Department staff would have difficulty in offering assistance to persons preparing applications, and the results would be difficult to interpret by Department staff reviewing applications.

Department staff are familiar with this tool and will be able to provide assistance to applicants who choose to use this option. As indicated earlier in the Background of the Energy Loan program (page 2 of this SONAR), Department program staff provide instructions detailing how to complete an application for financial assistance and are available to provide personal assistance.

At Subp. 6 the Department proposes to amend the definition of "Hospital" to extend the relevant Minnesota Statutes to include section 144.56. The new section 144.56 authorizes the commissioner of the Department of Health to establish minimum standards as to the construction, equipment, maintenance, and operation of the institutions insofar as they relate to sanitation and safety of the buildings and to the health, treatment, comfort, safety, and well-being of the persons accommodated for care.

This amendment is needed and reasonable because the definition of hospital has been extended to include section 144.56. The current Minn. Stat. §144.50 titled “Hospitals, licenses; definitions” Subd. 2 cites sections 144.50 to 144.56.

At Subp. 7 the Department proposes to repeal the definition of "Lender." Throughout the chapter the Department proposes to replace the term "lender" with the term "financing provider" in 24 instances. This change is needed and reasonable to be consistent with the change of the term "loan" to "financing." The Department seriously considered proposing the alternative term "financing entity," but this term was rejected as not being as descriptive as the one selected.

The Department proposes to delete the definition of "Lender" without replacing it with a definition for "financing provider" because by defining the term, the Department may unintentionally prevent some financing provider from participating in the program. The Department expects that financing providers such as energy utilities, equipment vendors, even churches (for private schools) may wish to participate in the financing opportunities available under this chapter. The Department seriously considered adding terms to the existing list to maximize the inclusiveness of "financing provider," but concluded that the term itself is sufficiently broad that any attempt to define it may be unintentionally excluding. The Department also considered the risk that financing providers with little security might be eligible to participate in financing regulated by this chapter, but concluded that the protection offered by Part 7606.0060, Subp. 3 would be sufficient guard against this occurrence.

At Subp. 10. the Department proposes to amend the definition of "School" to delete the words "school district." The effect of this change will be to allow the University of Minnesota and Minnesota State University System to participate in the financing program under Chapter 7606.

This change is needed because the University of Minnesota and Minnesota State University System have funding needs for energy conservation projects and this change will allow them to participate in the financing program under this chapter.

The change is reasonable because nothing in the Department's Statutory Authority for Ch. 7060 (quoted on page 1 of this SONAR) prohibits either the University of Minnesota or the Minnesota State University System from participating in the financing program.

7606.0030 FINANCING ELIGIBILITY CRITERIA.

At Subp. 2 item A the Department proposes to add the words "unless it is a conservation measure that has exceeded its normal useful life" in the requirement pertaining to conservation measures previously approved. The proposed language would allow for additional funding to be granted to an applicant to replace and upgrade energy conservation measures previously completed.

This amendment is needed because, since the financing program began under Ch. 7606 in 1989, many conservation measures funded in the early years of the program are nearing or have exceeded their useful life, and may need to be replaced. The amendment is reasonable because a conservation measure that has exceeded its useful life may no longer be effective at saving energy and should, in fact, be replaced.

At Subp. 2 item B editorial changes are proposed to be consistent with Revisor's style requirements and improve clarity.

7606.0040 FINANCING PARTICIPATION LIMITS.

At part 7606.0040 the Department proposes to add two words which will allow several entities to continue to participate in the financing program. The proposed amendment will change the limit on the amount of financing participation from a lifetime maximum of \$500,000 to an outstanding balance of that same amount. This amendment is needed for the following reasons:

- In 1989 when the financing program began under Ch. 7606, it was considered reasonable to limit the amount of energy conservation financing to \$500,000 per applicant so the fund would not be depleted.

Today, however, with the experience gained from administering the program, it is reasonable that the limit of \$500,000 can be redefined to "outstanding balance" without danger of depleting the fund. The Department has received several requests for additional energy conservation financing from entities that have already received and repaid, or partially repaid, \$500,000 in financing from the Department under Ch. 7606 so it is reasonable to allow those entities to again use the fund.

- In 1989 when the financing program began under Ch. 7606, it was not envisioned that a qualified applicant would have need for an amount greater than \$500,000; but today, due to inflation, substantially less energy conservation effort can be completed for this dollar amount.
- The proposed amendment to Part 7606.0030 Subp. 2 item A to add the words "unless it is a conservation measure that has exceeded its normal useful life" will mean applicants that at one time received \$500,000 in financing under Ch. 7606 may be able to apply for and receive additional financing for a conservation measure that has exceeded its useful life. The proposal is reasonable because adequate funds are available in the fund to finance additional conservation measures for applicants who have at one time received financing from the Department under Ch. 7606, where the sum of an "old" financing and a "new" financing to a particular entity may exceed \$500,000.

An editorial change is also proposed to replace the words "loan to an" with "financing agreement per." This is merely to accommodate the change of the term "loan" to "financing," described in other sections of this SONAR and is not a substantive change.

7606.0050 APPLICATION CONTENTS.

At Subp. 2 item B the Department proposes to add a requirement that the contact person's e-mail be provided. Much communication is done today by e-mail, which did not exist at the time Chapter 7606 was adopted. Communicating by e-mail increases efficiency and expedites the review process.

At Subp. 2 item F the Department proposes to change the state legislative "district" to plural when referring to the areas affected by the Application. This editorial change is both needed and reasonable simply because more than one district might be affected by an application.

In Subp. 3 the Department proposes four amendments to the requirements for technical support materials required to be submitted with a financing application.

At Subp. 3 item A regarding technical support materials, the Department proposes two changes.

The first is that the requirement for the fuel and electric consumption data be amended to also include the building energy benchmark (proposed to be defined in Part 7606.0020, Subp. 5a). The reason for this change is to provide additional specificity and clarification to the already required fuel and electric consumption data. It is a fact that the poorer a building's energy performance (relative to other buildings), the more cost effective it will be to improve the energy performance. But a building's relative energy performance cannot be ascertained by just knowing its fuel and electric consumption data. The benchmarking score does provide this information.

This change is needed to enable both the applicant and the Department to ascertain the need and value of implementing energy improvement measures for the proposed building relative to other buildings. This information will help the applicant decide on the value of applying for energy conservation financing for a particular project. It will also aid the Department in the technical review of the proposed conservation measures under part 7606.0060 Subp. 2 by providing a clear indication of the building's energy performance relative to other similar buildings.

The requirement to include the energy benchmark is reasonable for public buildings because owners or operators of all public buildings are already required to identify and report their individual energy efficiency benchmark (as discussed relating to Part 7060.0020, Subp. 5a, Item A on page 6 of this SONAR), and no additional work should be required to obtain that information. The requirement for private schools and hospitals is reasonable because there is no charge to use the ENERGY STAR Portfolio Manager tool, and it is simple to use by entering one year of fuel and electric data (which is information already required in the financing application) and a few additional details about the building.

The second amendment proposed for item A is to replace the phrase “annual period July 1 to June 30” with “calendar or fiscal year.” This change is needed because the energy tracking period of July 1 to June 30 may be inconvenient to some financing applicants, and the particular energy tracking period used is not critical to the Department in performing its review of applications under part 7606.0060 Subp. 2. The proposed change is reasonable because the Department’s experience with financing applicants in the past is that their energy tracking period is always either the calendar or fiscal year.

At Subp. 3 item C, relating to the engineering analysis to be submitted as part of the application for financial assistance, the Department proposes two amendments. The first is to make the required engineering analysis more specific by adding the phrase “and how energy savings will be measured.” This added language is needed to clarify that the technical support materials must include a description of the process to determine the effectiveness of the proposed project in accomplishing its goal of saving energy. This amendment is reasonable because an applicant will likely have this process prepared when the application is submitted, and the proposed amendment would merely require that the planned method(s) of measuring energy savings for the proposed energy conservation measurer(s) be included in the application. Another reason this amendment is reasonable is that all participants in this public financing program should be expected to be accountable by having a process in place to track results.

The second amendment proposed is to delete the requirement that the engineering analysis for projects exceeding \$25,000 be prepared by a registered professional engineer or architect. This deletion is needed because the current requirement would result in an excessive and unnecessary expenditure by a financing applicant. The change is reasonable because it is consistent with a statutory change at Minn. Stat. §216C.37 that authorizes a program very similar to the subject of Ch. 7606. (The statute just cited authorizes a program to provide energy conservation financing for public buildings from bond proceeds rather than from money received from litigation or settlement of alleged violations of federal petroleum-pricing regulations that provides funds for financing under Ch. 7606.) Minn. Stat. §216C.37 was amended more than 10 years ago to remove the requirement for engineering analysis.

At Part 7606.0070 regarding “FINANCING PROVIDER,” the Department proposes to delete item J and to make several changes to renumbered item N.

Item J, relating to prescription of a maximum allowable interest rate by the commissioner, needs to be deleted for several reasons:

- Despite the reason for initially including this provision in the original rule, Department staff now believes that it is not correct for Ch. 7606 to set a limit on the interest rate that may be charged. The rate charged for financing by any financing provider will depend on the financial security of the entity being financed. While the financial stability of public entities is generally quite good, this is not necessarily always the case.
- Under Part 7606.0060 Application Review, the commissioner has the authority to reject an application based on factors such as the reasonableness of the interest rate of the proposed financing.

- Only a few very large financial institutions have anything resembling a “lender’s prime rate,” and smaller institutions therefore could not take advantage of this option.
- The “base rate” does not have a uniform definition. The Department considered several alternative definitions. To financial institutions the term “base rate” usually means the rate charged on loans to the biggest and best commercial customers. The Wall Street Journal publishes a list of interest rates each day, including the “prime rate,” defined as “the base rate posted by 75% of the nation’s largest banks.” Given that there were several compelling reasons listed above that this item should be deleted altogether, the Department decided that it was of no value to define the term “base rate.”

The deletion is reasonable because in 18 years of conducting the financing program under Ch. 7606, the Department has never rejected an application for financing because of this item, or received any information that this item was a barrier for an applicant. Thus, the item is as an unnecessary layer of regulation.

In item N amendments are proposed that are needed for clarification. Two occurrences of the phrase “on a pro-rata basis” are stricken and a sentence is added to the end of the item to clearly explain the provision. The change is needed because over the years of administering Ch. 7606 the Department has received several requests to explain this poorly written sentence. The amendment is reasonable because it simply clarifies the item and makes no substantive change.

An editorial change is proposed to **items N and O** to replace the word “shall” with the word “must,” to be consistent with Revisor’s style requirements.

At part 7606.0080 REPORTS AND MONITORING, the Department proposes to amend Subparts 2, 4 and 5.

At Subp. 2 regarding the annual project status report, the Department is proposing no amendments (other than the replacement of “loan” with “financing,” discussed earlier in this SONAR), but did seriously consider changing the period of the annual status report from July 1 through June 30 to the most recent calendar or fiscal year. The Department rejected this change because no request has been received for such a change, and the change would have required substantial attention to track when status reports were due from the numerous entities with which the Department has outstanding financing agreements.

At Subp. 4 regarding final reports, the Department proposes to add a requirement for a report of the measured energy savings from the energy conservation measures installed within one year of the completion of the project. This requirement is needed so that soon after the end of the project both the applicant and Department can know what energy savings resulted from the investment in the project. This information is necessary to ascertain the value of investing in the specific project, as well as to provide information that may be helpful in evaluating future similar potential projects. The requirement is reasonable because such a report would be available as a result of the requirement, proposed to be required in the Application Contents, Part 7606.0050, Subp. 3, item C, to provide a measurement of energy savings.

The proposal to make the report due within one year of the completion of the project is needed and reasonable because for some projects a complete year of energy use data may be needed to determine energy savings.

At Subp. 5 the Department proposes to add a requirement that the annual fuel and electric consumption report include the energy benchmark for the 12 month period ending June 30. The need and

reasonableness of the benchmark report is under the proposed change in Part 7676.0050, Subp. 3, item A, Application Contents (discussed on page 9 of this SONAR). The benchmark is needed in the annual report to show both the building owner and the Department that the energy conservation measures installed as a result of the financing are actually benefiting by providing energy savings. This information is reasonable to be required in the annual report because once a benchmark process is set up it is not overly burdensome to maintain it on a monthly or annual basis.

The second proposed amendment is to add a definition of the time period that the annual financial report must cover. This change is needed to assure that the Department will receive uniform energy performance data that can be used for preparing aggregate reports. The amendment is reasonable because energy consumption and benchmarking is frequently done on a July 1 through June 30 time period.

Repealer

The Department proposes to repeal part 7606.0020, Subpart 7 the definition of "Lender." The need and reasonableness of this proposal is discussed on page 8 of this SONAR.

EXPLANATION OF WHAT EFFORT THE AGENCY MADE TO OBTAIN ANY INFORMATION THAT IT STATES COULD NOT BE ASCERTAINED THROUGH REASONABLE EFFORT

The Department was able to obtain all the information necessary to demonstrate the need and reasonableness of each rule amendment proposed for Ch. 7607, so this requirement is not applicable.

CONSIDERATION AND IMPLEMENTATION OF PERFORMANCE-BASED STANDARDS

In proposing amendments to Chapter 7606 the Department has included a significant performance-based standard, the energy benchmark that will document the overall building energy performance prior to an energy improvement as well as a performance-based standard that will track that same performance following the completion of the project.

The Energy benchmark (definition proposed in Part 7606.0020, Subp. 5a) score indicates the relative energy performance of a building and allows for an analysis of how the building's energy performance is changing year to year. The Benchmark score can be a comparison of its energy performance to that of other buildings of the same type (adjusting for differences in operating hours and climate) or a comparison of the building's energy performance to the same building if it were built to meet the present state energy code.

The two methods of expressing the energy benchmark score are: 1) energy performance relative to other buildings of similar use on a 0 to 100 scale, and 2) energy consumption per square foot of building area per year.

At Part 7606.0050 Subp. 3 item A of the proposed rule the energy benchmark is proposed be included with all financing applications. At part 7606.0080, Subp. 5 of the proposed rule the energy benchmark is proposed to be included with the annual energy report so that the performance of energy conservation measures installed as a result of the financing provided can continue to be monitored. At these same locations in Ch. 7606 the rule now requires, and will continue to require, reporting of fuel and electric consumption data, which are also an indication of building performance.

ADDITIONAL NOTICE

The Department has made an effort, and will continue make efforts through a variety of methods to inform persons who may be affected by this rule.

1. Information about the proposed rulemaking was sent by e-mail to a list of organizations whose members include persons that may be affected by this rulemaking. These organizations, the e-mail message and the dates sent are listed in Attachment A to this SONAR.
2. The Request for Comments was sent on January 11, 2006 via U.S. mail to a list of 40 (Exhibit A) individuals and organizations who may be affected by the proposed rulemaking including members of the Energy Service Organization, past program participants, and financial entities.

Following submission of the proposed rule to the State Register, additional notice will be made as follows:

1. The Department's website (www.commerce.state.mn.us) will include the Notice and announce that copies of the proposed rule and the Statement of Need and Reasonableness with all attachments are available for free via download from the Department's website or from the agency contact person.
2. The Notice and proposed rule amendments will be mailed to the same list of 40 persons to whom the Request for Comments was sent on January 11, 2006, as listed in Exhibit A.
3. The Notice and proposed rule amendments will be mailed to two additional persons who have requested to be notified of this rulemaking since publication of the Request for Comments in the State Register.

LIST OF WITNESSES

In the event that the required number of persons request a public hearing during the comment period and subsequently a public hearing is scheduled, the Department anticipates having the following witnesses testify in support of the need for and reasonableness of the proposed rule amendments:

1. Mr. Jeremy deFiebre, Minnesota Department of Commerce, State Energy Office
2. Mr. Bruce D. Nelson, Minnesota Department of Commerce, State Energy Office
3. Ms. Janet Streff, Minnesota Department of Commerce, State Energy Office
4. Ms. Amy Bicek, Minnesota Department of Commerce, State Energy Office


DATE SONAR WILL BE AVAILABLE FOR PUBLIC REVIEW

This Statement of Need and Reasonableness will be available for public review on January 22, 2007.

CONCLUSION

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

1-5-07
Date



Glenn Wilson
Commissioner

ATTACHMENT A

Additional Notice

Regarding rules governing Minnesota Rules Ch. 7606 governing institutional energy financing

The following e-mail was sent to persons representing organizations whose members are currently eligible to participate under Minn. Rule Ch. 7606 or have an interest in the program.

Subject: Changes Being Considered for Minnesota Institutional Energy Loan Program

The Minnesota Department of Commerce is requesting comments as it prepares to amend the state rules governing Minnesota's institutional energy loan program. The program currently offers below-market loans for qualifying energy improvements to public and private schools, hospitals, private institutions of higher learning, cities, counties and townships. Questions and comments should be directed to Bruce Nelson at the Department of Commerce, 651-297-2313, bruce.nelson@state.mn.us . TTY users may call 651-297-3067.

Organizations	E-mailed Contact	Email Date
League of Minnesota Cities	Jim Miller, Executive Director	Jan. 4 2006
Association of Minnesota Counties	James A. Mulder, Executive Director	Jan. 4 2006
Minnesota Association of Townships	David Fricke, Executive Director	Jan. 4 2006
American Council of Engineering Companies of Minnesota	David E. Oxley, Executive Director	Dec. 29 2005
Energy Services Coalition	esc@energyservicescoalition.org	Jan. 4 2006
Minnesota Association of School Maintenance Supervisors	Connie Nordquist, Executive Director	Dec. 29 2005
Minnesota Association of School Business Officials (MASBO)	Donna Walseth MASBO Newsletter Editor	Dec. 29 2005
Association of Metropolitan Municipalities	Louis Jambois, Executive Director	Jan. 4 2006

The following e-mail [customized for the recipient] was sent to persons representing organizations whose members are being proposed to be eligible to participate under Minn. Rule Ch. 7606.

Subject: Changes Being Considered for Minnesota Institutional Energy Loan Program

The Minnesota Department of Commerce is requesting comments as it prepares to amend the state rules governing Minnesota's institutional energy loan program. The program currently offers below-market loans for qualifying energy improvements to public and private schools, hospitals, private institutions of higher learning, cities, counties and townships. The department is considering expanding the program eligibility to include [state] [the University of Minnesota] [MnSCU] buildings. Questions and comments should be directed to Bruce Nelson at the Department of Commerce, 651-297-2313, bruce.nelson@state.mn.us . TTY users may call 651-297-3067.

Organizations	E-mailed Contact	Email Date
Minnesota State Colleges and Universities (MSCU)	Sally Grans, Director Facilities Planning & Programming	Jan. 4 2006
University of Minnesota - Facility management	Mary Santori, Director of Facilities	Jan. 4 2006
Minnesota Engineers Guild (state building managers)	Jim Nieswaag, Programs Coordinator	Jan. 4 2006
Minn. Dept. of Administration, Plant Management Division, Energy Conservation Section	Rajan Thomas, Manager	Jan. 4 2006

EXHIBIT A

Proposed Rules Governing Institutional Energy Conservation Financing, Minnesota Rules Chapter 7606
List of persons and organizations that might be affected by the proposed rules

Name	Title	Organization	City State Zip
James A. Mulder	Executive Director	Association of Minnesota Counties	Saint Paul, MN 55103-2108
David Fricke	Executive Director	Minnesota Association of Townships	St. Michael, MN 55376
Rob Trembath	Director of Cost Savings Initiatives	Midwestern Higher Education Commission	Minneapolis, MN 55454-1079
Sally Grans	Administrator	Minnesota State Colleges and Universities	St Paul, MN 55101
Michael Wilhelmi	Director of Government and Community Relations	Minnesota Private College Council	St. Paul, MN 55101-2903
Mary Santori	Assistant Department Director	University of Minnesota	Minneapolis, MN 55455
David Oxley	Executive Director	American Council of Engineering Companies of MN	Minnetonka, MN 55305
Rajan Thomas		G-10 Administration Building	St Paul, MN 55155
Connie Nordquist	Executive Administrator	Minnesota Association of School Maintenance Supervisors	Lino Lakes, MN 55014
Sue Crockett	Executive Director	Minnesota Association of School Business Officials	Edina, MN 55410
Louis Jambois	Executive Director	Association of Metropolitan Municipalities	St. Paul, MN 55103-2044
Jim Miller	Executive Director	League of Minnesota Cities	St. Paul, MN 55103
Paul McDougall	Interim Executive Director	Associated Colleges of the Twin Cities	St. Paul MN 55104
Bhoopendra Tripathi	Vice President	Ameresco	Houston, TX 77082
Jim Kobbe	Sr. Account Executive	Ameresco	Englewood, CO 80112
Larry Harpster	Sr. Account Executive	Ameresco	Mentor, OH 44060
David E. Oxley		American Council of Engineering Companies of MN	Minnetonka, MN 55305
Martha Hewett		Center for Energy and Environment	Minneapolis, MN 55401
Daniel T. Brandolino	Midwest Area Sales Director	Chevron Energy Solutions	Oakbrook, IL 60523
Chris Lafountian	Marketing Specialist	Cogenex	Lowell, MA 01852
Dale L. Hahs	President	Custom Energy, LLC	Overland Park, KS 66214
Perry Schmidt	Principal	Energy Services Group, LLC	Wayzata, MN 55391
James Crossman	President	Financial Energy Management, Inc.	Englewood, CO 80113
Paul Frank	Account Executive	Honeywell	Edina, MN 55439
Tom Keljik	Account Executive	Honeywell	Edina, MN 55439
Bueno Prades	Account Executive	Honeywell International	Windermere, FL 34786
Steve Anderson	State Government/Performance	Johnson Controls	Madison, WI 53713
Abram Gordon	Account Manager	Johnson Controls, Inc.	Austin, TX 78704
Gerrit Reinders	Director Sustainable Solutions	Johnson Controls, Inc.	Milwaukee, WI 53201-0423
Jeff Schiltz	Educational Account Executive	Johnson Controls, Inc.	Duluth MN 55811

EXHIBIT A

Proposed Rules Governing Institutional Energy Conservation Financing, Minnesota Rules Chapter 7606

List of persons and organizations that might be affected by the proposed rules

Name	Title	Organization	City State Zip
Mike David	Account Executive	Johnson Controls, Inc.	Minneapolis MN 55430-1785
John Ryberg		Minn. Dept. of Education	Roseville, MN 55113
Ken Oas	Facilities Coordinator	MnSCU	St. Paul, MN 55101
Chuck Hanson	Manager, Technical Services	OTESCO	Fergus Falls, MN 56537
Michael O'Connor	President	Quantum Engineering & Development	Tukwila, WA 98168
Brian Lynch	VP Sales	Sempra Energy Solutions	Los Angeles, CA 90013
Don Kreye	Sr. Account Executive	Siemens Buildings Technologies Inc.	Roseville, MN 55113
Kurt Schoenecker	Account Executive	Siemens Buildings Technologies Inc.	Roseville, MN 55113
John Overmyer	President	Water & Energy Savings Corp.	St. Petersburg, FL 33715
Tony Hainault		Hennepin County Environmental Services	Minneapolis, MN 55401
Dale Haus	President.	Energy Services Coalition	Overland Park, KS 66214
Annalee Garletz	Policy Analyst	Association of Minnesota Counties	St. Paul MN 55102