

**STATE OF MINNESOTA  
DEPARTMENT OF COMMERCE**

**In the Matter of the Proposed Amendments  
to Rules of the Minnesota Department of  
Commerce Governing *Minnesota Rules*  
Chapter 7640, known as the Rules Governing  
Minnesota Thermal Insulation Standards**

**STATEMENT OF NEED  
AND REASONABLENESS**

**January 15, 2008**

**INTRODUCTION**

The Commissioner of the Minnesota Department of Commerce (Department) proposes to amend Minn. Rules Chapter 7640, governing Minnesota Thermal Insulation Standards. 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 September 4, 2007 by publishing a notice in the State Register (32 S.R. 433) to solicit opinions and information from the public about the Minnesota Thermal Insulation Standards rules. .

This Statement of Need and Reasonableness (SONAR) contains a summary of the evidence and arguments that the Department is relying on to justify why the proposed amendments to Minnesota Rules Chapter 7640 are needed and reasonable. Upon request, the SONAR 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](mailto: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 325F.20, subdivision 1 which provides:

“The commissioner shall adopt rules pursuant to chapter 14 regarding quality, information, and product safety specifications for the manufacture, labeling, installation, and thermographing of insulation. The specifications and any amendments to them shall conform as far as is practical to federal standards or other standards generally accepted and in use throughout the United States. The standards, with modifications as may be deemed necessary, may be adopted by reference. The specifications adopted and any amendments shall be based on the application of scientific principles, approved tests, and professional judgment.”

**BACKGROUND**

The Minnesota Thermal Insulation Standards program has been administered since its 1989 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. Ch. 7640 requires manufacturers of residential thermal insulation to submit information to the Department that proves their products meet national standards for safety and effectiveness. Information must be submitted not less than 30 days before products are offered for sale in the state. After the initial filing has been made, a simple annual filing is required to maintain the accuracy of manufacturer contact information and product names in the Department's data base. A list of products that have complete filings is available on the Department's Web site.

The thermal insulation standards rule has been used in several instances (including one court injunction) to ensure that only safe and effective insulation products are sold and used in Minnesota residential buildings.

### **CIRCUMSTANCES THAT CREATED THE NEED FOR THIS RULEMAKING**

Minn. Rules Ch. 7640 was last amended in 1991 (16 SR 2026). A primary reason for this rulemaking is to update Ch. 7640's many citations to national standards for safety and effectiveness.

A second primary reason for this rulemaking is that the Department of Labor and Industry (DOLI), Building Codes Division plans to soon propose a new residential energy code rule chapter. A large portion of the new residential energy code will deal with specifying and installing foundation wall insulation. The foundation wall insulation requirements that will be included in DOLI proposed rules have been developed with over \$100,000 in research expenditures since the year 2000, as well as extensive deliberations in many meetings of a DOLI Energy Code Advisory Committee.

A large portion of existing Chapter 7640 also deals with specifying and installing foundation wall insulation. However, Chapter 7640's requirements were developed in the late 1980, with a basis of limited research. Department staff served as the project manager for a large fraction of the aforementioned foundation wall insulation research and are quite familiar with the foundation wall insulation provisions that will be included in DOLI's proposed energy code. It is Department staff's assessment that the foundation wall insulation provisions of Chapter 7640 are very much out of date, compared to the provisions soon to be proposed by DOLI. Thus, another primary reason for this rulemaking is to delete the out-of-date foundation wall insulation requirements of Ch. 7640 so they will not conflict with the new DOLI requirements, which are expected to be in place sometime in 2008. Starting work on the change to Ch. 7640 at this time ensures that there will be no conflicts once the DOLI rules are adopted and begin to be enforced.

### **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 provide the information through a 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 classes of persons affected by Ch. 7640 are manufacturers, wholesalers, retailers and installers of thermal insulation for new and existing residential buildings. The Department's assessment of the proposed rule amendments is that there will be no additional costs to be borne by industry members for the rule amendments.

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 NOT increase any costs for the Department in administering the thermal insulation standards program. The only other agency possibly affected by amendments to Ch. 7640 would be the Department of Labor and Industry, Building Codes Division. This agency may be affected because the rule chapters making up the state building code are administered by DOLI. The proposed amendment is expected to NOT increase any costs for DOLI.

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 thermal insulation standards program indicates the cost to the thermal insulation industry are minimal. Even if Ch. 7640 did not exist, manufacturers of thermal insulation would be testing their products to show compliance with the applicable ASTM standard. The requirements of Ch. 7640 are based on performance-based standards that are maintained by ASTM committees consisting of the very industry members regulated by the chapter.

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.

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 Department's assessment of the proposed rule amendments is that there will be no additional costs to be borne by industry members for the rule amendments.

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.*

One cost of not adopting the proposed rule would be confusion by users of the chapter because of the referral in Ch. 7640 to a number of out of date standards, and some standards that no longer exist. Another cost of not adopting the proposed rule would be possible conflict of Chapter 7640 with the energy code rule expected to be proposed soon by the Department of Labor and Industry regarding products for use as foundation wall insulation.

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

Chapter 7640 is fully consistent with the one federal regulation governing residential thermal insulation: the Code of Federal Regulations, Title 16, Part 460, known as the "FTC R-Value rule." There are no differences between Chapter 7640 (either currently or as proposed to be amended) and existing federal regulations.

## **COST THRESHOLDS AND FISCAL IMPACT**

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. 7640 will neither meet nor exceed either of these cost thresholds.

Furthermore, Minn. Stat. Sec. 14.131 requires that an agency engaged in rulemaking consult with the Commissioner of Finance "to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government." On January 4, 2008 the Department sent copies of the following documents to the Department of Finance to help make this determination:

1. The Governor's Office Proposed Rule and SONAR Form - signed by Commissioner Wilson.
2. The 12/18/07 Revisor's draft of the proposed rule.
3. The 1/4/08 draft of the SONAR.

In a letter dated January 10, 2008, Keith Bougut, Executive Budget Officer with the Department of Finance stated of the documents provided "... I see nothing in them that would increase any cost to any local government."

### **REASONABLENESS OF THE PROPOSED RULE AMENDMENTS**

This section addresses the reasonableness of specific parts of the proposed rule amendments. For the several parts and subparts of Chapter 7640 that are proposed to be repealed, the need and reasonableness of those repeals are discussed in this SONAR in the numerical order of the current chapter, rather than at the end.

#### **7640.0100 AUTHORITY; PURPOSE; INCORPORATIONS BY REFERENCE.**

**At subpart 1** the Department proposes to add the title "Authority" and "Incorporations by Reference" to accommodate the proposed addition of two additional subparts. This amendment is needed and reasonable to be consistent with Revisor's style requirements.

The Department also proposes to add the words "of the Minnesota Department of Commerce (Department)" to identify the state Department headed by the commissioner. This addition enables simplification of the chapter by deleting the separate definitions of "Commissioner" at Part 7640.0120, Subp. 7 and "Department" at Part 7640.0120, Subp. 8, both of which are proposed to be repealed. The amendment is needed and reasonable to simplify language in Chapter 7640 without changing the meaning.

**At subpart 2** the Department proposes to insert language pertaining to the purpose of Chapter 7640. The language is paraphrased from Part 7640.0130, Subpart 1, and that subpart is proposed to be repealed. The paraphrasing clarifies the language without changing the meaning. Moving the "purpose" language to Part 7640.0100 is needed because the provision describes the purpose of the entire Chapter 7640, rather than just Part 7640.0130. The amendment is reasonable because the purpose statement is a concise statement that more accurately reflects the statutory intent in authorizing this chapter.

Also at **subpart 2** the Department proposes to move language from the first sentence of Part 7640.0110, subpart 2 regarding purpose. The sentence is editorially rephrased to clarify without changing its meaning. The move and rephrasing is needed because Part 7640.0110 deals with the subject of purpose. The move and rephrasing is reasonable because it improves clarity without changing meaning.

**At subpart 3** the Department proposes to add an Incorporations by Reference statement to comply with requirements of Minn. Stat. § 14.07.

## **Part 7640.0110 APPLICABILITY AND CONDUCT.**

The Department first proposes to expand the title of this part to include “AND CONDUCT” to more accurately reflect the part’s content. Several amendments are also proposed for this part to improve organization and clarity, and to add to the types of insulation products regulated.

**At subpart 1** the Department proposes to amend the subpart title. The first change is to delete the words “Types of” from the subpart title. This deletion is needed because the subpart identifies both the types of insulation and the buildings in which the insulation may be installed. The second proposed amendment is to change the word “covered” to “regulated.” This amendment is needed to more affirmatively state its purpose. Both these are reasonable because they do not change the meaning of the subpart.

**Furthermore at subpart 1** the Department proposes to organize the subpart by creating two items:

- item “A” to address the types of buildings in which insulation regulated by Chapter 7640 applies, and
- item “B” to address generally the insulation products regulated by the chapter.

The organization is needed to clarify the subpart.

**At subpart 1 item A** the Department proposes to clarify the scope of residential building to which Chapter 7640 applies. The term “residential buildings” is not defined in the current Chapter 7640. The first proposed amendment is to insert to word “thermal” before the word “insulation.” There are products are sold for residential buildings which provide “acoustical” insulation (for control of sound transmission). This change is needed to make the title clearer that Chapter 7640 applies only to thermal insulation and not to acoustical insulation, and reasonable because it does not change the meaning of the item.

**Furthermore in subpart 1 item A** the Department proposes to add a second sentence to item A that clarifies to the meaning of residential buildings to which Chapter 7640 applies. This definition of residential buildings is identical to a definition developed by the Department of Labor and Industry (DOLI) for the scope of a soon to be proposed revision to the Minnesota residential energy code. Commerce Department staff have been quite involved with DOLI’s preparation of the new residential energy code, so even though DOLI’s draft rules have yet to be proposed, Department staff’s observation is that that there is no controversy over this draft definition of residential building. The amendment is needed to better define which insulation products are regulated by Chapter 7640, and reasonable because it is consistent with a definition that will soon be part of the state energy code for residential buildings.

**Furthermore in subpart 1 item A** an exception is proposed to be added addressing insulation installed in prefabricated buildings. This provision is moved, using different words, from Part 7640.0110, subpart 2. The words used in subpart 2 were “For the purpose of this chapter the sale of a building ....” The substitution of the phrase “prefabricated building” for “sale of a building” is reasonable because the substituted phrase more accurately describes the intended subject. The move is needed because subpart 1 item A is being formulated to address the types of buildings covered by Chapter 7640.

**Subpart 1, item B** is titled to identify the portion of subpart 3 concerning insulation products.

**At subitem (1) item B** the Department proposes a title consistent with the proposal to break the subpart into two subitems. Item B is itself proposed to be broken into two subitems:

- subitem (1) to indicate where within residential buildings insulation products are usually found, and
- subitem (2) to indicate the typical characteristics of regulated insulation materials.

These changes are simply to provide further clarification to the applicability of Chapter 7640.

**At item B, subitem (2)** the language has been moved from Part 7640.0120, subpart 13. The move is from a definition to the subpart describing the residential insulation products regulated by Chapter 7640. This amendment is need and reasonable to improve the organization of Chapter 7640 without changing the meaning of the term.

**The Exception to item B** is excerpted from Part 7640.0110 subpart 2 and combined with exempted products from Part 7640.0120, subpart 13. The replacement of the term “the sale of a building ... that contains installed insulating material” with the term “prefabricated buildings” is needed and reasonable because the proposed term is a more succinct identification of the existing term without changing its meaning.

**At subpart 2, “Conduct,”** the Department proposes several editorial modifications by moving language within the paragraph to other parts of Chapter 7640 for the purpose of clarification. The first editorial modification is to move the first sentence regarding purpose to Part 7640.0100, Subp. 2 where it is better suited. The second editorial modification is to move the second sentence regarding insulation in preassembled buildings and appliances to the Exception statement of Part 7674.0110, Subp. 1, item B, subitem (2), as discussed in the paragraph immediately above.

**At subpart 2 item A** is moved from 7640.0130 Subpart 1 (second sentence) with editorial modifications. The move is needed because to provision regarding insulation materials sold, distributed, or installed in Minnesota is more appropriate under this subpart regarding “conduct” than it is in the subpart regarding material testing. The proposed move and editorial change is needed and reasonable to improve clarity without changing meaning.

**At subpart 2 item B** requiring installations to conform to manufacturer's written application instructions is moved verbatim from Part 7640.0160, Subp. 2, item A. This move is needed and reasonable because the provision specifically relates to “conduct,” and the meaning is not changed.

**At subpart 2 item C** the Department proposes to require insulation products used in exterior below grade application to be approved for that use by the manufacturer. This requirement replaces the lengthy provisions relating to exterior below grade application of insulation in Part 7640.0140, subparts 1, 2 and 3, which are proposed to be repealed. The provision that this application “must be recommended or approved for that use by the manufacturer” is implied by the combined requirements of Part 640.0140, subparts 1 and 2. Those subparts require the manufacturer to perform extensive testing (subp. 1) and provide detailed installation instructions (subp. 2) if the product is to be used in exterior below grade applications.

In addressing changes to Part 640.0140 this SONAR discusses the impending actions of the Department of Labor and Industry (DOLI) to adopt, as part of the new Minnesota energy code, much more up-to-date and precise requirements for insulation products used in exterior below grade applications. This requirement is needed because the rule expected to be proposed by DOLI does not address the manufacturer’s approval of product for use below grade. This requirement is reasonable because it is already contained in Part 640.0140, subparts 1 and 2.

**At subpart 2 item D** the Department proposes to move with editorial changes the requirement from 7640.0170, subpart 1 relating to compliance with a relevant mandate of the United States Federal Trade Commission. The editorial change to insert the phrase “industry members must comply with” is to apply the requirement to industry members, not just the insulation products. The proposed modification is reasonable because the cited Federal Trade Commission regulation is in fact applicable to industry members: Section 460.3 of the FTC R-value rule states: “You are covered by this regulation if you are a member of the home insulation industry.” The move to this part and subpart is needed to because, as modified, the provision relates to the conduct of industry members. The proposed amendment is reasonable because there is no change to the meaning.

**At subpart 2 item E** the Department proposes to move verbatim the requirement of Part 7640.0170, “Product Information,” relating to false and misleading statements. The proposed move is needed and reasonable to improve clarity without changing meaning.

**At subpart 3** the Department proposes to delete the provision indicating that Chapter 7640 applies to industry members. This provision is proposed to be moved to the global purpose statement in Part 7640.0100 Subp. 2. The deletion is needed to prevent duplication and avoid inconsistency within Chapter 7640. In its place the Department proposes to move part 7640.0160, subpart 3, items A and B with both editorial and substantial changes and insert a new title “Retail sales.” One substantive change is to remove the requirement implied in item B that installation instructions be provided to all ultimate consumers (i.e., homeowners). The removal is needed and reasonable because neither the purchaser of a new home nor the owner of an existing home in which a contractor has installed thermal insulation would have any use for these installation instructions.

The other substantive change is to make the existing requirement of 7640.0160, subpart 3 item B more specific - to apply to retail sales of thermal insulation products - when the purchasers are often do-it-yourselfers who definitely need installation and safety instructions. The modification is needed and reasonable because it is these specific homeowners (not all homeowners) who may not otherwise receive this information.

Furthermore, this substantive change incorporates the requirement from 7640.0160, subparts 3 item A that “the manufacturer's written instructions describing areas of recommended use, the proper methods of application, and required or recommended safety measures must be provided” to each installer. The modification is needed and reasonable because it makes an existing requirement specifically apply to purchases of thermal insulation at retail stores. These purchases are often made by do-it-yourselfers who can benefit the most from this information.

Furthermore, this substantive change proposes a specific requirement for retailers to “make (the required information) available to each purchaser....” This specific requirement is needed and reasonable as it gives retailers two alternatives of providing do-it-yourselfers with vital information. This multifaceted substantial change, as discussed above, is reasonable because it reduces the breadth of the existing requirement and focuses it to provide meaningful assistance to those who need the information the most – homeowners who will install thermal insulation themselves.

**At subpart 4** the Department proposes to repeal the entire subpart regarding prohibitions. The need and reasonableness of repealing each item in Subp. 4 is presented below:

**Subpart 4 item A** (proposed to be repealed) requires industry members to comply with the product quality standards and installation standards in Parts 7640.0130 (material standards) and 7640.0160 (application and installation standards). It should be noted that the proposed Part 7640.0100, Subp. 2 requires industry members to comply with the entire Chapter 7640. The deletion of item 4 is needed

because its requirement is superseded by the proposed Part 7640.0100, Subp. 2. The deletion is reasonable to avoid conflicting requirements in Chapter 7640.

**Subpart 4 item B** (proposed to be repealed) regarding the prohibition of mobile manufacture of cellulose insulation is simply moved to Part 7640.0130, Subp. 3, item E (regarding cellulose). The repeal is reasonable because there is no change to the requirement.

**Subpart 4 item C** (proposed to be repealed) regards prohibiting the use of urea formaldehyde foam or precured forms in attics or ceilings. The State building code addresses installation requirements for foam plastic insulation (including urea formaldehyde foam or precured forms) at Section R314 of the International Residential Code, adopted by *Minn. Rules* Part 1309.0010. The repeal is reasonable because this matter is fully addressed in the State building code. The repeal is needed to eliminate superfluous language in Chapter 7640.

**Subpart 4 item D** (proposed to be repealed) prohibits polystyrene loose fill from being installed in attics unless it complies with the state building code. The State building code addresses installation requirements for foam plastic insulation (including polystyrene loose fill) at Section R314 of the International Residential Code, adopted by *Minn. Rules* Part 1309.0010. The repeal is reasonable because this matter is fully addressed in the State building code. The repeal is needed to eliminate superfluous language in Chapter 7640.

#### **Part 7640.0120 DEFINITIONS**

**At subpart 1**, and at several additional locations in the remainder of Chapter 7640, the Department proposes to add the identity of the specific current version of the ASTM standards being adopted by reference. The addition is needed to conform to Revisor's style requirements.

**At subpart 2** the Department proposes to repeal the definition of "Application or installation." The deletion is reasonable because this term has an unambiguous meaning in the English language. The deletion is needed to eliminate superfluous language in Chapter 7640.

**At subpart 3** the Department proposes two amendments to the definition of "Approved laboratory." The first is to delete the acronym for National Voluntary Laboratory Accreditation Program. This acronym is not used elsewhere in Chapter 7640.

The second amendment proposed for **subpart 3** is to delete item B, the American Association for Laboratory Accreditation. This amendment is needed and reasonable because this association does not accredit laboratories for thermal insulation testing.

**At subpart 4** the Department proposes to repeal the definition of "ASHRAE." This deletion is needed and reasonable because the only use of this term in Chapter 7640 is in Part 7640.0130, Subp. 7, item C, and that item is proposed to be repealed by this rulemaking.

**At subpart 5** the Department proposes to repeal the definition of "ASTM." The organization now known as ASTM International was originally known as the American Society for Testing and Materials, but that name is no longer used. This deletion is needed and reasonable because persons in the industries regulated by Chapter 7640 are extremely familiar with ASTM and no definition is required.

**At subpart 6** the Department proposes to repeal the definition of "CABO." This deletion is needed and reasonable because the only uses of this term in Chapter 7640 are in Parts 7640.0120, Subp. 9 and

640.0140, Subp. 2 , and both of those subparts are proposed to be repealed by this rulemaking. The proposed change is needed to reduce superfluous language in Chapter 7640.

**At subpart 7** the Department proposes to repeal the definition of "Commissioner." A modification is proposed at Part 7640.100, Subp. 1 to clarify the meaning of this term. The deletion is reasonable because the proposed amendment to Part 7640.0100, Subpart 1 clearly identifies this term. The deletion is needed to reduce superfluous language in Chapter 7640.

**At subpart 8** the Department proposes to repeal the definition of "Department." A modification is proposed at Part 7640.100, Subp. 1 to clarify the meaning of this term. The deletion is reasonable because the proposed amendment to Part 7640.0100, Subpart 1 clearly identifies this term. The deletion is needed to reduce superfluous language in Chapter 7640.

**At subpart 9** the Department proposes to repeal the definition of "Drainage." This deletion is needed and reasonable because the only uses of this term Chapter 7640 are in Part 7640.0140, Subp. 1, and this subpart is proposed to be repealed in this rulemaking.

**At subpart 11** the Department proposes to delete the definition of "FTC." This deletion is reasonable because term is used only once, at Part 7640.0150, Subp. 2, item E. The deletion is needed to reduce superfluous language in Chapter 7640. The Department proposes to add a definition of "ICC-Evaluation Services Report" because this term is used in several proposed amendments to the chapter.)

**At subpart 12, item A** the Department proposes to amend the definition of "Industry members" by repealing the item relating to "producers and suppliers of materials from which insulation is made...." This deletion is needed and reasonable because, the scope of the authorizing statute include manufacturers of thermal insulation, that scope clearly does not extend to the producers and suppliers of materials from which insulation is made.

Furthermore **at subpart 12, item A** the Department proposes to delete the term "jobber." The amendment is reasonable because, while it is used today to describe a middle-man in the fuel supply industry, the term "jobber" is not used to describe any part of the thermal insulation supply and installation chain. This amendment is needed to simplify the rule and avoid confusion.

**At subpart 12, item D** the Department proposes to move the second paragraph from Part 7640.0160, subpart 1. The proposed move are needed and reasonable to improve clarity without changing meaning.

**At subpart 13** the Department proposes to repeal the definition of "insulation." The language of this definition is proposed to be moved verbatim to Part 760110, subpart 1, item B, subitem (2). The moving of this definition to the part of this rule pertaining to "Application and types of residential insulation products regulated" is need and reasonable to improve the organization of Chapter 7640 without changing the meaning of the term.

**At subpart 14** the Department proposes to repeal the definition of "Intermediate consumer of insulation materials." The deletion is needed and reasonable because the term is not used in Chapter 7640.

**At subpart. 15** the Department proposes to repeal the definition of "Label." The deletion is reasonable because the term has an unambiguous meaning in the English language. The deletion is needed to reduce superfluous language in Chapter 7640.

**At subpart 16** the Department proposes to repeal the definition of "Label notice." The deletion is needed and reasonable because the term is not used in Chapter 7640.

**At subpart 18** the Department proposes to repeal the definition of "Materials standard." The deletion is needed and reasonable because the term is not used in Chapter 7640.

**At subpart 19** the Department proposes to repeal the definition of "Polyurethane." The deletion is reasonable because polyurethane is completely defined in the ASTM standard referenced by the proposed amended part 7640.0130, Subp. 5 item A. This deletion is needed to avoid inconsistency of the definition within Chapter 7640.

**At subpart 19a** the Department proposes to amend the definition of "Quality assurance program" by changing the referenced standard. This amendment is needed because the standard "ANSI/ASQC Z-1.15-1979" has been withdrawn. The Department proposes NSI/ISO/ASQ Q9001-2000 as a replacement standard. The replacement is reasonable because the proposed standard is the currently accepted quality assurance yardstick throughout the nation for product manufacturing and distribution.

**Furthermore at subpart 19a** the Department proposes that either the cited standard be followed "or an equivalent standard." This is meant to refer to a standard that is developed by manufacturers of thermal insulation - based on the principals, procedures and outcomes of the NSI/ISO/ASQ Q9001-2000 standard - to serve the particular requirements of that industry. It is the Department's intent that if an equivalent standard is proposed to be used, it will be the duty of the proposer to conclusively prove the equivalency. The addition of an equivalent standard is needed because industry associations often develop alternative quality standards. It is reasonable because the equivalency is required to be proven.

**At subpart 20a** the Department proposes to repeal the definition of "Radiant barrier." The deletion is reasonable because radiant barrier is completely defined in the material standard referenced by the proposed amended part 7640.0130, Subp. 7 item D. This deletion is needed to avoid inconsistency of the definition within Chapter 7640.

**At subpart 20b** the Department proposes to repeal the definition of "Reflective insulation." The deletion is reasonable because reflective insulation is completely defined in the material standard referenced by the proposed amended part 7640.0130, Subp. 7 item A. This deletion is needed to avoid inconsistency of the definition within Chapter 7640.

**At subpart 21** the Department proposes to repeal the definition of "Representative thickness." This deletion is needed and reasonable because the only use of this term is in Chapter 7640 is in Part 7640.0130, Subp. 2, item C, subitem (2), which is proposed to be repealed by this rulemaking.

**At subpart 22** the Department proposes to repeal the definition of "Residential building." This deletion is reasonable because term is used only at Part 7640.0110, Subp. 1. The deletion is needed to reduce superfluous language in Chapter 7640.

**At subpart 23** the Department proposes to repeal the definition of "Thermal performance." This deletion is needed and reasonable because it is already well defined in the two locations where the term is used: in Part 7640.0120, subpart 20 and Part 7640.0130, subpart 8, item A. All other locations in Chapter 7640 where the term is used are proposed to be deleted or repealed.

**At subpart 24** the Department proposes to repeal the definition of "Ultimate consumer of insulation." The deletion is needed and reasonable because the term is not used in Chapter 7640 as it is proposed to be amended.

**At subpart 25** the Department proposes to repeal the definition of "Urea formaldehyde foam." The deletion is reasonable because urea formaldehyde foam is completely defined in the references in the proposed amended part 7640.0130, Subp. 5 item E. This deletion is needed to avoid inconsistency of the definition within Chapter 7640.

### **7640.0130 STANDARDS FOR INSULATION MATERIALS AND INSTALLATION.**

The Department proposes to revise the title of Part 7640.0130 by rephrasing and adding "INSTALLATION" to the standards included in the part. The amendment is needed and reasonable so that the title accurately reflects the moving of several installation provisions from Part 7640.0160 to this part.

**At subpart 1** the Department proposes to move the existing "scope" statement of subpart 1 to Part 7640.0100, Subp. 2. This move is needed because the statement applies to the whole of Chapter 7640 and not just this part. Secondly, it is proposed to delete the second and third sentences, as these provisions would be redundant with the requirements that are more specially addressed in proposed Subp. 2, items B and E.

**At subpart 2** the Department proposes to revise the title by deleting the word "testing" as well as the descriptive sentence. The amendment is needed and reasonable so that the title accurately reflects the modifications proposed within the subpart.

**At subpart 2 current item A** the Department proposes to delete this item describing a petition process to take place when ASTM amends, reorganizes, or modifies a standard test method. The repeal is needed because the Department does not have authority to accept a petition process, as it would be outside of the legal authority granted the Department by the statutes authorizing adoption of Chapter 7640 as well as *Minn. Stat.* Chapter 14.

**At subpart 2 proposed item A** the Department proposes to editorially change the wording to accommodate other proposed modifications in this subpart. The words "subitems (1) to (4)" are deleted. Subitems (1) through (4) are repealed. The phrase "Subparts 3, 4, 5, 6, 7, or 8" is inserted to refer to the required test (and in some cases installation) standards. The proposed changes are needed for consistency within Chapter 7640. Also at item B a sentence relating to products that have been tested for compliance with another version of an ASTM standard is moved with only editorial changes from Reporting Requirements (Part 7640.0159, Subp. 1, item D). The move is needed to improve the organization of the chapter.

**At subpart 2 proposed item A, subitem (1)** the Department proposes to delete the provision relating to testing within two years of the initial report. This repeal is reasonable because the ICC-Acceptance Criteria, cited in Part 7640.0130, subparts 5 and 7 have no such requirement. Rather, the ICC-Acceptance Criteria requires product testing only when the product is modified, just as Part 7640.0150, subpart 3, item B (3) requires manufacturers in their annual report to certify that the product has not been changed. The repeal is needed because to meet the requirement would impose excessive cost on manufacturers to perform unnecessary testing on unchanged products.

**At subpart 2 proposed item A, subitem (2)** the Department proposes to delete the provision relating to choosing insulation material for testing. Because choosing insulation material for testing is described within each respective ASTM standard, this repeal is needed to avoid conflicts with those ASTM standards. The one insulation type regulated by Chapter 7640 that is not required to follow an ASTM standard is “other,” in part 7640.0130, subpart 8, and an amendment is proposed to move this provision to that subpart.

**At subpart 2 proposed item A, subitem (3)** the Department proposes to delete the provision requiring testing for each type of insulation with the methods specified in subparts 3 to 8. This provision is needed and reasonable because it is redundant with the each of those subparts’ requirements.

**At subpart 2 proposed item A, subitem (4)** the Department proposes to delete the provision requiring insulation products to have flammability characteristics in accordance with the building code for its intended uses. The State building code addresses flammability requirements for thermal insulation products in the International Residential Code, adopted by *Minn. Rules* Part 1309.0010. The repeal is reasonable because this matter is fully addressed in the State building code. The repeal is needed to eliminate superfluous language in Chapter 7640.

**At subpart 2 existing item C** the Department proposes to delete the provision relating thermal testing of insulation materials. Thermal testing for each product regulated by Chapter 7640 is fully described within each ASTM standard referenced in subparts 3, 4, 5, 6, 7 or 8. This repeal is needed and reasonable to avoid conflicts between Chapter 7640 and the ASTM standards adopted by reference for each individual type of thermal insulation product.

**At proposed item C** the Department proposes to move the provision requiring installers to follow manufacturer’s installation instructions from Part 7640.0160, subpart 2, item A.

### **7640.0130, Subpart 3, CELLULOSE INSULATION**

**At subpart 3** the Department proposes a reorganization to facilitate the inclusion of one additional product within the cellulose classification. The reorganization is needed to indicate that all three products within the cellulose classification are bound by the cited Federal regulation. Item A is revised to apply to all three of the types of cellulose products. The specific requirement for loose fill cellulose is moved from item A to item B. The amendment is reasonable because all three of the products within the cellulose classification identified in items B, C and D are in fact regulated by the cited Consumer Product Safety Commission standard.

**At subpart 3 item A** the Department proposes editorial language changes to facilitate the aforementioned reorganization.

**At subpart 3 item A subitem (1)** the Department proposes to delete the reference to ASTM C 739. The deletion is needed because item A is being proposed to be changed to apply to all three types of cellulose products, while ASTM C 739 applies only to cellulose fiber in loose-fill form.

**At subpart 3 item A subitem (3)** the Department proposes to delete the requirement for immediate notification in the event of any failure. This deletion is needed and reasonable because the regulation imposed by the Consumer Product Safety Commission standard are adequate to assure that the laboratory contracted for the follow-up program as required in subitem (2) are sufficient for keeping

quality in place in the event of any failure. The inserted sentence regarding containers of cellulose insulation products carrying a label is simply moved from Part 7640.0170, subpart 3.

**At subpart 3 item B** regarding cellulose fiber in loose-fill form is part of the reorganization discussed at the beginning of subpart 3. The second sentence in item B regarding installation of loose-fill cellulose is simply moved from Part 7640.0160, Subp. 2 item C.

**At subpart 3 item C** the Department proposes to amend the requirement for cellulose fiber spray applied to allow two alternatives for compliance. The first alternative (**subitem (1)**) is the standard currently required, amended by allowing only Type II of that standard, and by adding the title of the cited ASTM standard, consistent with other ASTM citations in Chapter 7640. The limitation to allow only Type II is needed and reasonable because it is only Type II is used for residential construction. Type I of this standard is applicable only in commercial buildings to protect steel structural beams from direct exposure to fire, and is inconsistent with the purpose and scope of Chapter 7640.

The second alternative (**subitem (2)**) cites the ASTM standard for Cellulosic Fiber Loose-Fill Thermal Insulation, and establishes the conditions that design density and thermal resistance must be determined for specimens prepared as spray-applied according to manufacturer's installation instructions. This alternative is needed and reasonable because cellulose fiber meeting ASTM C739 with a bit of water added and spray applied is a perfectly acceptable product for residential wall cavity application, as long as the design density and thermal resistance have been determined using specimens applied in this manner.

**Furthermore at subpart 3 item C** the Department proposes to delete the current language both subitems (1) and (2). The repeal is needed and reasonable because the subject matter of the provisions cited are completely dealt with within both of the cellulose fiber spray-applied standards cited in the two alternatives as proposed the be amended.

**At subpart 3 proposed item D** the Department proposes to add a requirement for a third product within the cellulose classification: "cellulose fiber stabilized." This is type of cellulose, and the associated ASTM standard, were created after 1991 when Chapter 7640 was last updated. The addition of this product is needed because the product is likely to be sold and installed in Minnesota residential buildings. The amendment is reasonable because the ASTM standard cited is a consensus standard of the industry. The proposed amendment in **subitem (2)** to allow either one of two ASTM standards to be used to determine certain material properties is reasonable because the requirements of the two standards are identical for the properties listed.

**At subpart 3 item E** the Department proposes to move the prohibition of the mobile manufacture of cellulose insulation from Part 7640.0110, Subp. 4 item B. The proposed move is needed and reasonable to improve clarity without changing meaning.

#### **7640.0130, Subpart 4. MINERAL FIBER INSULATION.**

**At subpart. 4, item A**, regarding loose-fill mineral fiber insulation, the Department proposes to add two new subitems. **Subitem (1)** requires mineral fiber loose-fill to achieve no less than the stated performance at winter design conditions, as shown by the specified performance test. A similar requirement pertaining to all types of thermal insulation currently exists in the Minnesota energy code (at *Minn. Rules* Part 7672.0300, Subp. 4). The proposal to apply this provision to only loose-fill mineral fiber insulation is needed and reasonable because research has shown that loose-fill mineral fiber is the

only type of insulation which exhibits degradation of thermal performance at Minnesota winter design conditions. The citation of ASTM C1373 is needed because it is the only consensus standard in existence to measure this performance characteristic.

**At subpart 4, item A subitem (2)** the requirement that mineral fiber loose-fill installation follow the identified ASTM standard is simply moved from 7640.0160, subpart 2, item C.

**At subpart 4, item C** the Department proposes to simply add the title of the cited ASTM standard. The Department also proposes to delete both subitem (1) and subitem (2). The proposed deletions are reasonable because the requirements of both of these subitems are fully contained within the referenced ASTM standard.

### **7640.0130, Subpart 5, FOAM PLASTIC INSULATION.**

**At subpart 5.** regarding foam plastic insulation the Department proposes to insert two requirements applicable to each of the types of foam plastic insulation in items A and D through G. The first sentence regarding stated performance at 75 degrees Fahrenheit mean temperature, is adopted from two sources. The first source is from the Minnesota energy code (at *Minn. Rules* Part 7672.0300, subpart 4) which requires, in part, that “All thermal insulation must achieve stated performance at 75 degrees Fahrenheit mean temperature ...” The other source is the specification in each of the ASTM standards cited in items A and D through G. The reason that a restatement of this requirement is needed at this point in Chapter 7640 is that reports have been received by the Department and the Department of Labor and Industry that performance of some foam plastic insulation products has been exaggerated by citing the non-aged R-value (which is always a higher value), and the requirement needs to be restated here to emphasize its importance. The statement is reasonable because it is a restatement of an existing requirement.

The second sentence requiring the product’s R-value to fully reflect the effect of aging is moved from Part 7640.0130, subpart 2, item C, subitem (3). The two final sentences of Part 7640.0130, subpart 2, item C, subitem (3) relating to testing procedures are not included in the proposed addition to Supb. 5 because they deal with details of test procedures that are fully addressed in each of the ASTM standards cited in items A and D through G.

**At subpart 5 item A** the Department proposes to amend the provision for polystyrene insulation to be consistent with the designated ASTM standard. In fact, molded expanded and extruded polystyrene insulation (currently addressed in item B) are both “rigid, cellular polystyrene,” and are identified within ASTM C578 with different “Type” designations. Thus, it is proposed in item A that identity of the product as “molded expanded” be replacing the correct identity “rigid, cellular,” and that item B be deleted. The amendment is reasonable because both types of insulation are included in the class of products that must meet the same standard, ASTM C578. The deletion is needed to reduce unnecessary language.

**Furthermore at subpart 5 item A** the Department proposes to add an option that the product either demonstrate compliance with the designated ASTM standard or meet the requirement of item H. Item H (as amended) requires an ICC- Evaluation Services Report. This amendment is reasonable because the test criteria and standards of an ICC- Evaluation Services Report is at least as stringent as Chapter 7640 in all aspects of product testing, test laboratory accreditation, installation requirements, and product information. The amendment is needed because some insulation products are available that have an ICC- Evaluation Services Report, but do not meet all of the criteria of the ASTM standard for that product type.

The Department proposes to delete **subpart 5 existing item B** because extruded polystyrene is being fully addressed as a “rigid, cellular polystyrene” product in item A.

**At subpart 5 existing item C** the Department proposes to delete requirements for unfaced polyurethane and polyisocyanurate in board form. The repeal is reasonable because these products are only used in commercial and industrial applications, such as to insulate walk-in freezers. The lack of facing makes these products relatively fragile which makes their use in residential applications highly unlikely. The deletion is needed to delete unnecessary language.

**At subpart 5 proposed item B** the Department proposes to delete the “faced polyurethane” product from this item. It is reasonable because according to the Department’s insulation industry contacts, there have been no manufacturers of this product for several years. The change is needed to delete unnecessary language in Chapter 7640. The Department also proposes to replace the Federal Specification with the ASTM Standard Specification for Faced Rigid Cellular Polyisocyanurate Thermal Insulation Board. This amendment is needed and reasonable because the Federal Specification was replaced by the cited ASTM standard specification several years ago.

**Furthermore at subpart 5 proposed item B** the Department proposes to add an option that the product either demonstrate compliance with the designated ASTM standard or the requirement of item H. The need and reasonableness of this addition is the same as presented in the discussion of subpart 5 item A (above).

**At subpart. 5 proposed item C, subitem (1)** the Department proposes deleting reference to the ASTM standard for field-applied urea formaldehyde foam. This deletion is needed and reasonable because ASTM has repealed its C 951 standard, and no other material standard is available to replace it.

In its place, the Department proposes to move a reference to Minnesota statutes and rules concerning urea formaldehyde foam from Part 7674.0160, Subp. 2, item F. The rules reference is only to Minnesota Rules, part 4620.1800 because the other rule parts identified in Part 7674.0160, Subp. 2, item F have all been deleted. This amendment is needed to clarify Chapter 7640 and is and reasonable because it does not change the meaning.

Because the ASTM standard for urea formaldehyde foam was withdrawn decades ago, and the ICC-Evaluation Service requires tests to demonstrate compliance with the ASTM standard before issuing an evaluation report, there is no possibility that an ICC-ES Report would be issued for this type of insulation. Thus, no reference to item H is proposed for this type of insulation. This is reasonable because for the reasons cited, the requirement is no longer needed for the regulation of insulation products and should be stricken from Chapter 7640.

**At subpart. 5 proposed item D and proposed item E** the Department proposes to amend each item by simply adding the phrase “or item F.” The need and reasonableness of this addition is identical to that demonstrated for the same addition in the discussion of subpart 5 item A (above).

**At subpart 5 proposed item F** the Department proposes to delete the reference to “ICBO Evaluation Service Acceptance Criteria for Foam Plastic” and insert in its place the ICC-Evaluation Services Report appropriate for foam plastic insulation products. Between the date of the last update of Chapter 7640 and now, the former duties on the ICBO (International Council of Building Officials) have been replaced by the ICC (International Codes Council). Specifically, the ICBO Acceptance Criteria for Foam Plastic has been replaced by the ICC-ES AC12, “Acceptance Criteria For Foam Plastic

Insulation.” The amendment is needed and reasonable because the deleted standard has been replaced by the inserted standard.

#### **7640.0130, Subpart 7, REFLECTIVE FOIL INSULATION.**

**At subpart 7 item A** the Department proposes to insert the current ASTM standard specification for reflective insulation for building applications which is currently in use throughout the United States to specify reflective insulation products.

**Furthermore at subpart 7 item A** the Department proposes an exception to meeting the requirements of the ASTM standard for products having an ICC-ES Report meeting the specified standard. The addition of this exception is needed and reasonable for the same reasons that justified the ICC-ES Report option in Part 7640.0130, Subp. 5, proposed item F, immediately above.

**Furthermore at subpart. 7 item A** the Department proposes to amend Chapter 7640 by specifying the ASTM standard for installing reflective insulation products. This amendment is needed and reasonable because the standard cited is currently in use throughout the United States for installing reflective insulation products.

**Furthermore at subpart. 7 item A** the Department proposes to delete subitems (1) through (6). This amendment is needed and reasonable because the ASTM standard for reflective insulation cited earlier in item A addresses all of the criteria within subitems (1) through (6).

**At subpart 7 items B and C** the Department proposes to delete provisions concerning reflective insulation systems with more than one sheet (item B), and single sheet reflective insulation systems (item C). The repeal of both these items is needed and reasonable because the ASTM standard cited in item A addresses all of the criteria within items B and C.

**At item proposed item B** the Department proposes to insert the current ASTM standard specification for radiant barriers insulation for building construction. This amendment is needed because the standard is currently in use throughout the United States to specify reflective insulation products. The amendment is reasonable because the cited ASTM standard addresses all of the criteria within the deleted language.

**Furthermore at subpart 7 proposed item B** the Department proposes an exception to meeting the requirements of the ASTM standard for products having an ICC-ES Report meeting the specified standard. The addition of this exception is needed and reasonable for the same reasons that justified the ICC-ES Report in Part 7640.0130, Subp. 5, item F.

**Furthermore at subpart 7 proposed item B** the Department proposes to require that radiant barriers be installed according to ASTM C1158. This amendment is needed and reasonable because it is currently in use throughout the United States as standard for installing radiant barrier products.

#### **7640.0130, Subpart 8 OTHER INSULATION**

**At subpart 8** regarding “Other insulation” the Department proposes editorially modify the first sentence consistent with Revisor’s style requirements. The second sentence requiring the insulation material chosen for testing to be representative of material produced by the manufacturer is moved verbatim from Part 7640.0130, subpart 2, item B, subitem (2).

**At subpart 8 item A** the Department proposes to split the thermal performance and surface burning characteristics into two items: item A (for thermal performance) and new item G (for surface burning characteristics).

**At subpart 8 item A, subitem (1)** regarding thermal performance test methods, the Department proposes to move the requirements of Part 7640.0130, subpart 2, item C, subitem (1).

**At subpart 8 item A, subitem (2)** regarding testing to fully reflect the effect of aging on the product's R-value, the Department proposes to move the requirements of Part 7640.0130, subpart 2, item C, subitem (3).

**At subpart 8 item A, subitem (3)** regarding testing at 75 degrees Fahrenheit, the Department proposes to move verbatim the requirements of Part 7640.0130, subpart 2, item C, subitem (1).

**At Subp. 8 item B** regarding water or moisture absorption tests the Department proposes editorial changes consistent with the Revisor's style requirements.

**At subpart 8 item C** the Department proposes to change the requirement for the shrinkage test to a response to thermal and humid aging test. The change is needed because the cited ASTM shrinkage test has been withdrawn by ASTM. The change is reasonable because the cited response to thermal and humid aging test will determine a product's shrinkage. The cited test will also determine a product's expansion and degradation. It is needed and reasonable for this item to also cover a product's expansion and degradation because these characteristics also impact an insulation product's effectiveness.

**At subpart 8 item D** regarding formaldehyde, the Department proposes to replace the requirement for "a formaldehyde content test" with a citation to Minnesota statutes and rules pertaining to thermal insulation with formaldehyde content. The amendment is needed because the existing rule neither makes reference to a test standard nor provides guidance to the minimum requirements of a test. The citation to Minnesota statutes and rules is reasonable because those laws do address requirements for thermal insulation with formaldehyde content.

**At subpart 8 item E** regarding odor emission the Department proposes to replace the two cited ASTM standards with a reference to the ASTM Test Method titled: "Standard Test Method for Assessing the Odor Emission of Thermal Insulation Materials." This amendment is needed and reasonable because the cited ASTM Test Method (newly created since the date Chapter 7640 was last modified) is the current test method referenced by other ASTM standards as the means to test for odors classified as objectionable and strong.

**At subpart 8 proposed item F** the Department proposes to move the language regarding surface burning characteristics from existing item A.

## **7640.0140 INSULATION REQUIREMENTS; SPECIAL APPLICATIONS**

**At part 7640.0140** the Department proposes to repeal the entire part regarding Insulation Requirements; Special Applications. The need and reasonableness of repealing each subpart of Part 7640.0140 is presented below:

**Subpart 1** (repealed) relates to physical requirements for insulation materials designed for exterior, underground use. The new Minnesota energy code (expected to be in place in 2008) will deal with

exterior foundation wall insulation much more comprehensively and with much more updated building science, so that entire subject is being deleted from Chapter 7640. The repeal of this part will further streamline Chapter 7640.

**Subpart 2** (repealed) relates to requirements for installation instructions for underground use. See subpart 1 above.

**Subpart 3** (repealed) relates to installation for exterior above-ground and underground use. See subpart 1 above.

**Subpart 4** (repealed) relates to pipe, duct wrap, and water heater blanket insulation. The state building code addresses flammability requirements for thermal insulation products in the International Residential Code, adopted by Minn. Rules Part 1309.0010. The repeal is reasonable because this matter is fully addressed in the State Building Code. The repeal is needed to eliminate superfluous language in Chapter 7640.

### **7640.0150 REPORTING REQUIREMENTS.**

**At subpart 1, item D** the Department proposed to delete the paragraph, which is proposed to be moved to Part 7640.0130, subpart 2, item A.

**At subpart 2, item D** the Department proposes two changes; the first is to add a requirement to include a copy of the product's material safety data sheet. This requirement is needed so that that if and when the Department receives requests from the public concerning specific thermal insulation products, an appropriate and thorough response can be made. The added requirement is reasonable because the Code of Federal Regulations at 29 CFR Part 1910.1200 requires manufacturers to provide a material safety data sheet for each product that may create a health hazard.

The second change proposed at **subpart 2, item D** is to add a requirement including if the product is recommended for used in exterior below grade application. This requirement is a compliment to the proposed requirement in Part 7640.0110, subpart 2, item C that insulation used for exterior below grade application must be recommended by the manufacturer for exterior below grade application. The Department intends to include this information on the list of products that have complete filings available on the Department's Web site. The requirement is needed so that purchasers and installers can readily those products that are suitable for exterior below grade application. The amendment is reasonable because a manufacturer preparing a product initial filing will clearly know the product's intended uses.

**At subpart 2, item F** the Department proposes to add an alternative to the requirement to submit test reports. This amendment to reporting requirements is consistent with amendments proposed in Part 7640.0130, subpart 5 (for foam plastic insulation) and subpart 7 (for reflective insulation) to allow a current ICC-ER Report as an alternative for the relevant ASTM standard specification. The proposal is needed and reasonable to be consistent with proposed amendments proposed to Part 7640.0130. The requirement for insulation products classified as "other" to include the product's material safety data sheet is deleted because this requirement in proposed in item D, immediately above, to apply to all products.

**At subpart 3, item C** the Department proposes to delete the entire item regarding additional testing information. The deletion is needed and reasonable because the Department has sufficient authority under its existing investigatory powers.

## **7640.0160 APPLICATION AND INSTALLATION STANDARDS.**

**At subpart 7640.0160** the Department proposed to repeal the entire part and move most of its contents to other locations within Chapter 7670. The proposed moves are needed and reasonable to improve clarity without changing meaning. For provisions that are proposed to be deleted, the need and reasonableness for deleting each subpart and item is explained below.

**In subpart 1** the first paragraph is proposed to be deleted. The deletion is needed and reasonable because it is redundant with requirements as proposed in Part 7640.0110 “Applicability, Conduct and Prohibitions.” The second paragraph is moved to Part 7640.0120, subpart 12, which is the definition of “industry member.”

**Subpart 2 item A**, regarding following manufacturer's written application instructions is moved to Part 7640.0110, Subpart 2 (Conduct), item A.

**At subpart 2 item B** the Department proposes to delete the requirements for installing insulation in attic areas from the National Electrical Code. This deletion is needed to assure that Chapter 7640 will not be in conflict with the National Electrical Code. It is reasonable because the National Electrical Code is already incorporated by reference into the Minnesota building code.

**Subpart 2 item C** the Department proposes to move the requirements for installation of cellulosic and mineral fiber in loose-fill form is moved to Part 7640.0130 subpart 3, subitem (3) (for cellulose) and subpart 4 (for mineral fiber).

**Subpart 2 item D**, regarding installation of reflective insulation, is proposed to be moved to Part 7640.0130, Subp. 7 item A regarding standards for materials and installation for reflective insulation. The proposed moves are needed and reasonable to improve clarity without changing meaning.

**Subpart 2 item E**, regarding installation of radiant barrier systems, is proposed to be moved to Part 7640.0130, Subp. 7 item B regarding standards for materials and installation for radiant barriers. The proposed moves are needed and reasonable to improve clarity without changing meaning.

**Subpart 2 item F**, regarding installation of urea formaldehyde foam insulation is proposed to be moved to Part 7640.0130, subpart 5 (foam plastic insulation), item E (urea formaldehyde), subitem (3).

**Subpart 2 item G**, citing the Code of Federal Regulations, title 40, part 248, is proposed to be deleted. The deletion is needed and reasonable because the cited Code of Federal Regulations provision no longer exists.

**At subpart 3** the Department proposes to repeal provisions relating to manufacturer's installation or application instructions that are either not needed or are moved to different locations within Chapter 7640.

**At Subpart 3 items A and B** the requirement that manufacturers must provide written instructions to intermediate consumers, installers and ultimate customers is proposed to be deleted because these requirements are already contained in the language of Minn. Stat. § 325F.20, Subd. 3. This amendment is needed to avoid duplication of statutory language in Chapter 7640. However, the Department proposes to retain and state more specifically the requirement to inform ultimate customers who are

purchasing residential insulation products at retail outlets. This provision is being proposed at Part 7640.0110, subpart 3, “Retail sales.”

**At Subp. 3 item C** the specific provision regarding products whose manufacture is completed at the jobsite is fully addressed by the amendment at Part 7640.0120, subpart 12, item E, which encompasses installers of products whose manufacture is completed at the jobsite into the definition of industry members who are regulated by Chapter 7640.

### **7640.0170 PRODUCT INFORMATION.**

**At part 7640.0170** the Department proposes to move all of its contents (subparts 1, 2, and 3) to other locations within Chapter 7670. These amendments are needed for clarity and do not change the meaning of Chapter 7640.

**Subpart 1**, regarding compliance with the FTC R-value rule is moved to Part 7640.0110, “Applicability and Conduct,” Subpart 2, item D.

**Subpart 2**, regarding false and misleading statements is moved to Part 7640.0110, “Applicability and Conduct,” Subpart 2, item E.

**Subpart 3**, regarding labeling of insulation products with follow-up programs, is proposed to be moved to Part 7640.0130, Subpart 3 (cellulose insulation), item C. This proposal is reasonable because cellulose is the only thermal insulation product regulated by Chapter 75640 that requires a follow-up program. The proposed move is needed to improve clarity without changing meaning.

### **7640.0180 INCORPORATIONS BY REFERENCE AND CITATIONS.**

**At part 7640.0170** the Department proposes that the entire part be repealed. The Incorporations by Reference statement required by of Minn. Stat. § 14.07 is moved to Part 7640.0100, subpart 3.

### **REPEALER.**

The need and reasonableness of Chapter 7640 rule parts proposed to be repealed is discussed in this SONAR in the numerical order of the current chapter.

### **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. 7640, so this requirement is not applicable.

### **CONSIDERATION AND IMPLEMENTATION OF PERFORMANCE-BASED STANDARDS**

Since the inception of Chapter 7640, numerous performance-based standards have been integral to all of the requirements for each types of thermal insulation product regulated by the chapter. All of the ASTM thermal insulation material standards incorporated by reference in the chapter are performance-based, in that performance qualities are measured under standardized conditions. These qualities include the thermal resistance “R-value,” as well as resistance to formation of mold, resistance to burning in the presence of a fire, dimensional stability, and others. Chapter 7640 is based on performance standards that are maintained by ASTM committees, whose members primarily consist of the very thermal insulation industry members regulated by the chapter.

## **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 including manufacturers, wholesalers, retailers and installers of thermal insulation for new and existing residential buildings.
2. On September 7, 2007 the Request for Comments was sent via U.S. mail to individuals and organizations that may be affected by the proposed rulemaking.
3. On September 19, 2007 an additional notice was sent to individuals and organizations that may be affected by the proposed rulemaking. The notice was sent via e-mail, or via U.S. mail to contacts without e-mail addresses.
4. On November 13, 2007 a second additional notice was sent to individuals and organizations that may be affected by the proposed rulemaking. This notice was sent via e-mail, or via U.S. mail to contacts without e-mail addresses.

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

1. The Department's Web site ([www.commerce.state.mn.us](http://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 Web site or the agency's contact person.
2. The Notice and proposed rule amendments will be mailed to individuals and organizations that may be affected by the proposed rulemaking.
3. The Notice and proposed rule amendments will be mailed to any 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. Bruce D. Nelson, Minnesota Department of Commerce, State Energy Office
2. Ms. Janet Streff, Minnesota Department of Commerce, State Energy Office

## **DATE THIS SONAR WILL BE AVAILABLE FOR PUBLIC REVIEW**

This Statement of Need and Reasonableness will be available for public review on January 15, 2008.