

121 7th Place
St. Paul, MN 551010-2146
Tele: 612/296-4704
Fax: 612/296-5287

Subject of Rule and Statutory Authority. The proposed rule is about the Minnesota Public Facilities Authority's operation of the Once-Through Cooling Loan Program which will provide financial assistance to public and private entities for the capital cost incurred for the replacement of once-through cooling systems with environmentally acceptable cooling systems. The statutory authority to adopt this rule is Minnesota Statute 446A.021. A copy of the proposed rule is published in the State Register and attached to this notice as mailed.

Comments: You have until 4:00 p.m., August 19, 1994 to submit written comment in support of or in opposition to the proposed rule and any part or subpart of the rule. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Request for a Hearing. In addition to submitting comments, you may also request that a hearing be held on the rule. Your request for a public hearing must be in writing and must be

received by the agency contact person by 5:00 p.m. on August 19 , 1994. Your written request for a public hearing must include your name and address. You are encouraged to identify the portion of the proposed rule which causes your request, the reason for the request, and any changes you want made to the proposed rule. If 25 or more persons submit a written request for a hearing, a public hearing will be held unless a sufficient number withdraw their request in writing. If a public hearing is required, the agency will follow the procedures in Minnesota Statutes, sections 14.131 to 14.20.

Modifications. The proposed rule may be modified as result of public comment. The modifications must be supported by data and views submitted to the agency and may not result in a substantial change in the proposed rules as attached and printed in the State Register. If the proposed rule affects you in any way, you are encouraged to participate in the rulemaking process.

Statement of Needs and Reasonableness. A statement of need and reasonableness is now available from the agency contact person. This statement describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule.

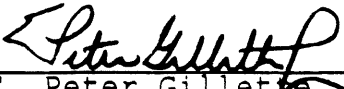
Small Business Considerations. In preparing the proposed permanent rule, the requirements of Minnesota Statutes, section

14.115, subdivision 7(2) were considered in regard to the impact on small businesses. It was concluded that the proposed rule will not impact small businesses.

Expenditure of Public Moneys by Local Public Bodies. Minnesota Statutes, section 14.11, subdivision 1, does not apply to the proposed rule as it will not require expenditures of public money as municipalities are not required to participate in the financial assistance program described by the proposed rule.

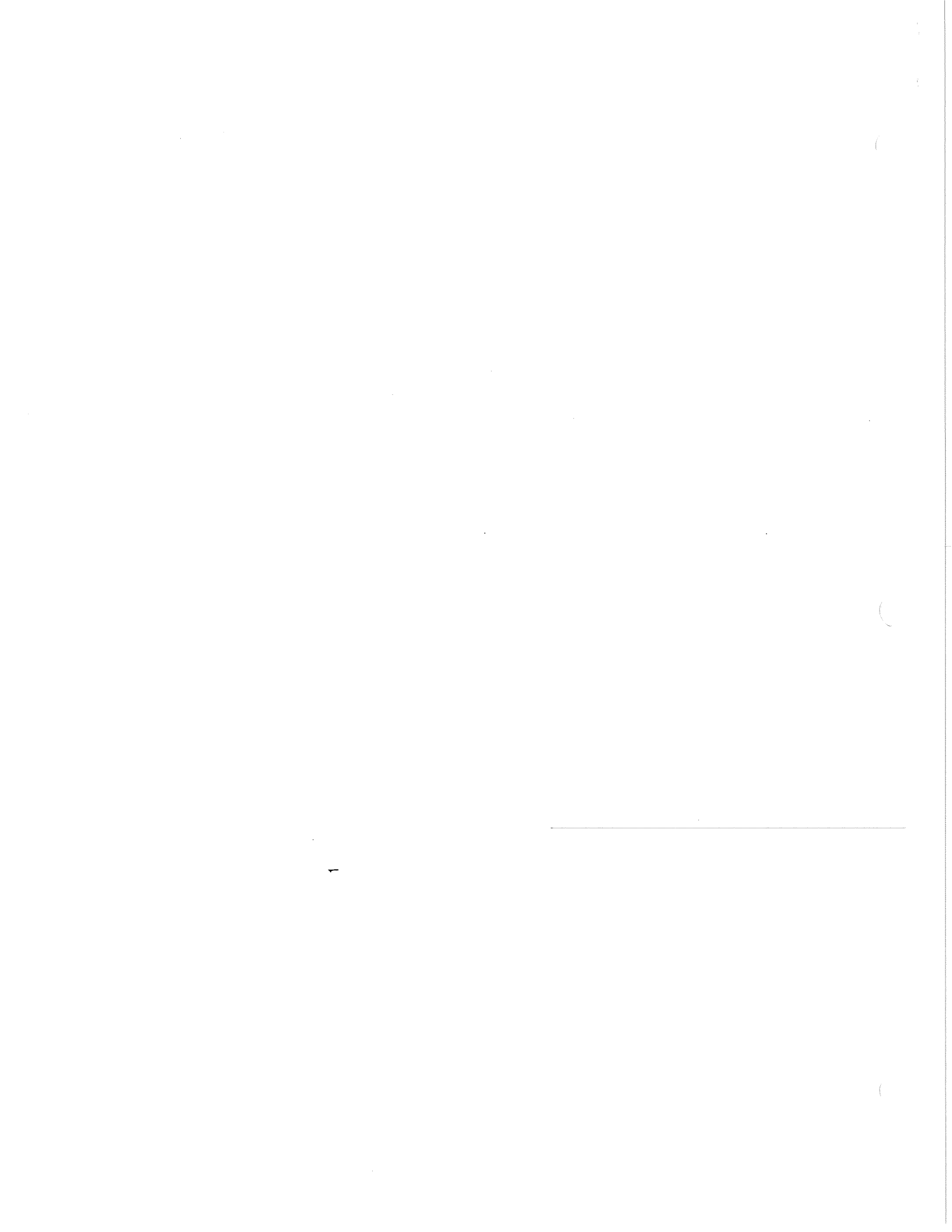
Impact on Agriculture Lands. The proposed rule will not have a direct or substantial adverse impact on agriculture land as represented in Minnesota Statutes, section 14.11, subdivision 2.

Adoption and Review of Rule. If no hearing is required, after the end of the comment period the agency may adopt the rule. The rule and supporting documents will then be submitted to the attorney general for review as to legality and form to the extent form relates to legality. You may request to be notified of the date the rule is submitted to the attorney general or be notified of the attorney general's decision on the rule. If you wish to be so notified, or wish to receive a copy of the adopted rule, submit your request to the agency contact person listed above.



E. Peter Gillette, Commissioner
Department of Trade and Economic
Development

Dated: June 24, 1994



Office of the Revisor of Statutes

Administrative Rules



TITLE: Proposed Permanent Rules Relating to Once-Through Cooling Conversion Loan Program

AGENCY: Department of Trade and Economic Development

MINNESOTA RULES: Chapter 7380

The attached rules are approved for
publication in the State Register

A handwritten signature in cursive script, reading "Carla M. Riehle".

Carla M. Riehle
Senior Assistant Revisor

1 Department of Trade and Economic Development

2

3 Proposed Permanent Rules Relating to Once-Through Cooling

4 Conversion Loan Program

5

6 Rules as Proposed (all new material)

7

ONCE-THROUGH COOLING CONVERSION LOAN PROGRAM

8

7380.0800 DEFINITIONS.

9

Subpart 1. Scope. The terms defined in this part apply to
10 parts 7380.0800 to 7380.0840.

11

Subp. 2. Applicant. "Applicant" means those applicants
12 which are eligible to apply as provided in Minnesota Statutes,
13 section 446A.21.

14

Subp. 3. Authority. "Authority" means the Minnesota
15 Public Facilities Authority.

16

Subp. 4. Capital cost. "Capital cost" means the costs to
17 be incurred for the replacement of once-through cooling systems
18 with environmentally acceptable cooling systems. Capital cost
19 includes construction and renovation costs, engineering costs,
20 machinery and equipment costs; and legal costs, professional
21 services costs, or loan fees, including those of the authority.

22

Subp. 5. Department. "Department" means the Department of
23 Public Service.

24

Subp. 6. Financial institution. "Financial institution"
25 means an investment or banking institution, a savings and loan,
26 an insurance company, an investment company, a public entity
27 authorized to make loans, or an entity operating a district
28 cooling system, making, purchasing, or participating in a loan
29 or part of a loan.

30

Subp. 7. Participation agreement. "Participation
31 agreement" means the agreement by and between the financial
32 institution and the authority which establishes the relationship
33 between the parties, and contains all the terms and conditions
34 regarding the participation in the borrower's loan which the
35 authority has purchased from the financial institution, and any

1 amendment, modification, or substitution thereof.

2 Subp. 8. Participation loan. "Participation loan" means a
3 loan made under a contract with a financial institution in which
4 the authority purchases a share of a financial institution's
5 loan to an eligible borrower for the purposes of the program.

6 7380.0810 PROCEDURES FOR FINANCIAL ASSISTANCE APPLICATION.

7 Subpart 1. In general. To apply for financial assistance
8 from the authority, an applicant shall obtain an application
9 form from the authority and submit a completed form to the
10 authority by July 1 of each calendar year. The application form
11 must be signed by a financial institution expressing interest in
12 providing a loan for the purpose of converting the applicant's
13 once-through cooling system to an environmentally sound cooling
14 system. Applications shall be sent to the authority which shall
15 forward the applications to the department for its review and
16 certification of eligible projects.

17 Those applications certified by the department, based on
18 the information provided by the applicants in the applications,
19 shall be assigned rankings by the authority for funding in a
20 given year as provided in subpart 2, item C, and Minnesota
21 Statutes, section 446A.21. The authority shall provide the
22 balance of the application forms by August 1 of a given year to
23 those applicants which have been certified. Applicants shall
24 submit the rest of the applications as provided in subpart 3 to
25 the executive director of the authority postmarked no later than
26 October 1 or the first business day of October of each year.
27 The full applications must include a letter from the
28 participating financial institution committing the financial
29 institution to provide project funding conditioned upon the
30 authority approval of the loan. The authority shall fund
31 certified projects in order of their rankings, as provided in
32 subpart 2, item C, and Minnesota Statutes, section 446A.21, and
33 award loans by December 31 of each year. The authority shall
34 change the application submission due dates and award dates only
35 by public notice in the State Register.

1 Subp. 2. Authority review.

2 A. When an applicant's project has been certified by
3 the commissioner of the department, the authority shall review
4 and evaluate the application to determine the applicant's
5 capacity to comply with the terms and conditions of this part,
6 Minnesota Statutes, section 446A.21, and the terms and
7 conditions of the participation agreement.

8 B. The authority shall only approve and provide
9 financial assistance for the capital cost for certified
10 applicants that demonstrate that:

11 (1) the total financing of the project is
12 assured;

13 (2) the applicant has the capacity to repay the
14 loan to the authority;

15 (3) the applicant has a written commitment from a
16 financial institution for the necessary amount of the project
17 loan; and

18 (4) the applicant is able to provide collateral
19 for the loan.

20 C. The authority shall give priority to, and shall
21 first fund in a given year, projects for nonprofit organizations
22 and school districts, listed on the Department of Natural
23 Resources once-through cooling water use permit list. Should
24 the authority not have sufficient program funds in a given year
25 to fund all certified and approved projects, the authority shall
26 first fund the most cost-effective projects. The cost
27 effectiveness of a project shall be determined by:

28 (1) calculating for each loan application, the
29 gallons per year of groundwater consumption eliminated based on
30 the average of the previous three years consumption as provided
31 by Department of Natural Resources records, per dollar of the
32 authority loan money for which the application has been made;

33 (2) ranking applications in descending order
34 according to gallons per year eliminated per dollar of the
35 authority loan; and

36 (3) providing funding to as many projects as

1 possible within the limits of available funding based on the
2 rank order.

3 Subp. 3. **Completed application.** A project application
4 certified by the commissioner of the department is considered
5 complete by the authority at such time as the applicant provides
6 all the information required in the application.

7 Subp. 4. **Incomplete application.** If an incomplete
8 application is received from an applicant before August 1 of a
9 given year, the executive director of the authority shall notify
10 the applicant of the specific deficiencies in the application.
11 If a revised and completed application is not received by the
12 executive director by the application deadline, October 1, or
13 the first business day of October, the application is deemed to
14 be rejected, and the applicant, subject to parts 7685.0100 to
15 7685.0140, must reapply in a later year to be considered.

16 Subp. 5. **Projects not receiving certification.** A project
17 application not receiving certification by the commissioner of
18 the department shall not receive consideration for financial
19 assistance by the authority. The executive director of the
20 authority shall notify the applicant of the rejection of the
21 application by the authority within ten days of the rejection
22 determination.

23 Subp. 6. **Rejection of certified applications by**
24 **authority.** The authority shall reject a certified application
25 from applicants unable to comply with subpart 2, item B.

26 **7380.0820 PARTICIPATION LOAN TERMS AND CONDITIONS.**

27 Subpart 1. **In general.** The authority shall provide
28 financial assistance as provided by this part.

29 Subp. 2. **Type of assistance and interest rates.** The
30 authority shall provide financial assistance and determine
31 interest rates as described in items A and B.

32 A. The authority shall utilize loan participation as
33 the means to provide financial assistance to borrowers. An
34 applicant may select a financial institution of its choice. The
35 authority, subject to the requirements of this part, shall

1 purchase a loan participation in a loan up to 50 percent of the
2 total eligible project cost of the project.

3 B. The authority shall set its interest rates to be
4 charged all borrowers on October 1 or the first business day of
5 October of each year. The interest rate on the authority's
6 portion of the loan shall be at the rate of a United States
7 government treasury security of a comparable maturity to the
8 term of a loan being made, minus 100 basis points. The interest
9 rate to the borrower on the total amount of a participation loan
10 to the borrower shall be a blended rate of the financial
11 institution's rate and the authority's rate in proportion to the
12 respective rates of participation.

13 Subp. 3. **Dedicated sources of repayment and collateral**
14 **requirements.**

15 A. A public entity shall establish, and identify in
16 its application, dedicated sources of revenue sufficient to
17 fully amortize the loan.

18 B. A public entity shall also, if empowered to do so,
19 provide the financial institution and the authority with a
20 general obligation note for the full amount of the principal and
21 interest payments to be received by the authority.

22 C. A public entity not empowered to issue general
23 obligation notes shall provide to the financial institution and
24 the authority collateral for the loan that the financial
25 institution and the authority have determined to be adequate to
26 collateralize the loan.

27 D. As required by Minnesota Statutes, section
28 446A.21, subdivision 2, paragraph (b), a public entity shall
29 provide to the financial institution and the authority, audits
30 and budgets which document that the entity has the revenue to
31 repay the loan.

32 E. As required in Minnesota Statutes, section
33 446A.21, subdivision 2, paragraph (b), private and nonprofit
34 organizations shall provide to the financial institution or the
35 authority, income and earnings forecasts, audits, credit
36 reports, and other related materials that documents that the

1 entity has revenues to repay the loan. The financial
2 institution and the authority shall take a security interest in
3 capital assets or real property.

4 Subp. 4. Term of Loan. The maximum term of a loan shall
5 not exceed the useful life of the real property being offered as
6 collateral, 30 percent of the useful life of the equipment or
7 machinery, or the following limits, whichever is less:

8 A. ten years for land, building, or other real
9 property;

10 B. five years for equipment or machinery; or

11 C. a weighted average of the limits provided in items
12 A and B for loans that are for a combination of real property
13 and equipment or machinery.

14 7380.0830 FEES.

15 Any loan origination fees charged a loan recipient by the
16 authority shall be as provided in Minnesota Statutes, section
17 446A.04, subdivision 5, paragraph (a).

18 7380.0840 AUDITS.

19 During the term of the loan, loan recipients shall provide
20 annual independent audits.



COMMISSIONER OF TRADE AND ECONOMIC DEVELOPMENT

06/20/94

STATEMENT OF NEED AND REASONABLENESS

IN THE MATTER OF THE PROPOSED PERMANENT RULES
OF THE MINNESOTA PUBLIC FACILITIES AUTHORITY
OPERATION OF THE ONCE-THROUGH COOLING CONVERSION
LOAN PROGRAM (OTC)

INTRODUCTION:

This Statement of Need and Reasonableness describes the proposed permanent rule of the Commissioner of Trade and Economic Development for the Minnesota Public Facilities Authority operation of the Once-Through Cooling Conversion Loan Program as provided in Minnesota Statute 446A.21, and the needs and reasonableness of the proposed rule. The format used in this statement is as follows: each rule is given, in bold print, followed by a discussion of the necessity of the proposed rule and its reasonableness.

7380.0800 DEFINITIONS.

Subpart 1. Scope. The terms defined in this part apply to parts 7380.0800 to 7380.0840.

This statement is necessary to provide the scope of the applicability of definitions given in subpart 7380.0800, and it is reasonable to provide such definition of terms wherein the specific or unique meaning of the term is given as it relates to the program.

Subp. 2. Applicant. "Applicant" means those applicants which are eligible to apply as provided in Minn. Stat. 446A.21.

The definition provided for the term "applicant" informs potential applicants that may consider applying to the program, that only those applicants which first meet the statutory requirements given in Minn. Stat. 446A.21, are eligible to apply to the program;

Subp. 3. Authority. "Authority " means the Minnesota Public Facilities Authority.

The shortening of the proper name, "Minnesota Public Facilities Authority" to "Authority", which is referred to extensively throughout the rule, is done to add to the readability of the rule.

Subp. 4. Capital Cost. "Capital Cost" means the costs to be incurred for the replacement of once-through cooling systems with environmentally acceptable cooling systems. Capital cost includes

construction and renovation costs, engineering costs, machinery and equipment costs; and legal costs, professional services costs, or loan fees, including those of the Authority.

This definition provides for the specific meaning of the term as used in the program, and informs the applicant of the types and nature of the costs that may be financed by the program. This definition is necessary because it inform applicants of the Authority's interpretation of the meaning of capital cost for this program. It is reasonable for the Authority to define this term because it may differ slightly from the definition of capital cost in other programs.

Subp. 5. Department. "Department" means the Department of Public Service.

As with the definition provided in subpart 2, the shortening of the proper name "Department of Public Service" to "Department" serves to add to the readability of the rule as the "Department" is referred to many times in the rule.

Subp. 6. Financial Institution. "Financial Institution" means an investment or banking institution, a savings and loan, an insurance company, an investment company, a public entity authorized to make loans, or an entity operating a district cooling system, making, purchasing, or participating in a loan or part of a loan.

The term "financial institution" is provided so as to fully inform the applicant of the types of entities which may be utilized by the applicant to secure financing. While the applicant can use the entities which commonly make-up the universe of financial institutions, the definition of the term is unique to the Program as it includes entities operating a district cooling system, and the applicant needs to be informed of that possible source of financing.

Subp. 7. Participation Agreement. "Participation Agreement" means the agreement by and between the financial institution and the Authority which establishes the relationship between the parties, and contains all the terms and conditions regarding the participation in the borrower's loan which the Authority has purchased from the financial institution, and any amendment, modification or substitution thereof.

The definition of "participation agreement" is reasonable and necessary as it informs an applicant of the legal document that shall be used to effect the financing of the project. Further, that all the terms and conditions governing the Authority loan, by way of a loan participation with a financial institution, will be contained in that document. The participation agreement used for this program is drawn from participation agreements either

previously or presently used by the Department, such as the "old" and current Tourism Loan Program, and the participation agreement currently used by the IRRRB for its business loan participation program, all of which were drafted and reviewed with the Attorney General's Office.

Subp. 8. Participation Loan. "Participation loan" means a loan made under a contract with a financial institution in which the Authority purchases a share of a financial institution's loan to an eligible borrower for the purposes of the program.

It is necessary to provide to applicants the specific meaning of the term participation loans as it is used for this program, as it is the means by which the Authority shall, at least at the inception of the program, provide the program financing. As to the reason and the reasonableness of the Authority choosing to provide financing via participation loans, while the legislation creating the program provides the program with bond issuance authority of up to \$40 million, based upon an investigation conducted by the Authority staff on the likely market acceptance of an Authority bond issue to provide funding for this type and anticipated quality of loans, the following was determined: (1) the amount of program funds provided for to capitalize the program, around \$2.5 million, and the likely low quality of the loans, it was not likely that the Authority could leverage the program funds to a significant degree, or sell its bonds at an low enough interest rate to be able to pass-on an attractive loan interest rate to borrowers. Also, given the relatively small amount of anticipated program funds, \$2.5 million, a direct loan program, which would achieve no leveraging, would be insufficient to finance the anticipated loan volume. A loan participation, with up to a fifty percent participation on each loan, would achieve a 2 to 1 leveraging of program funds, and involve none of the costs associated with issuing bonds. It is reasonable to use participation loans as it is an accredited methodology to leverage scarce program dollars and it has been utilized in the past and is currently used by Department of Trade & Economic Development, and by other state agencies. The DTED Tourism Loan Program and the IRRRB with its Business Loan Program both utilize this methodology.

The Authority does not preclude that at some time in the future it may sell bonds, which becomes more feasible once loan repayments increase the size of the program portfolio and cash holdings.

7380.0810 PROCEDURES FOR FINANCIAL ASSISTANCE APPLICATION

Subpart. 1. In general. To apply for financial assistance from the Authority, applicants shall obtain an application form from the Authority and submit a completed application form to the Authority by July 1st of each calendar year. The application form must be signed by a financial institution expressing interest in

providing a loan for the purpose of converting the applicant's once-through cooling system to an environmentally sound cooling system. Applications shall be sent to the Authority which shall forward the applications to the Department for its review and certification of eligible projects.

Those applications certified by the Department, based on the information provided by the applicant in the applications, shall be assigned a ranking by the Authority for funding in a given year as provided in subpart 2, item C, and Minnesota Statutes, section 446A.21. The Authority shall provide the balance of the application forms by August 1 of a given year to those applicants which have been certified. Applicants shall submit the rest of the application as provided in subpart 3, to the executive director of the Authority postmarked no later than October 1 of each year or the first business day of October. The full applications must include a letter from the participating financial institution committing the financial institution to provide project funding conditioned upon the Authority approval of the loan. The Authority shall fund certified projects in order of their ranking, as provided in subpart 2, item C, and Minnesota Statutes, section 446A.21, and award loans by December 31 of each year. The Authority shall only change the application submission due dates and award dates by public notice in the State Register.

It is necessary to inform applicants of the procedures and the process required to apply to the Once-Through Cooling Loan Program, and the date on which the Authority shall award the loans. As provided in subpart 1, the applicant is informed that the application is required on forms obtained from the Authority, that the forms must be signed by a financial institution expressing interest in providing a loan, and that the application has to be submitted by a certain date. The reason for the requirement for applications to be submitted by a certain date is that the Authority is required to fund applications based on a priority system. It is therefore necessary to have all applications to the program in a given year at one time in order to rank and prioritize the projects as required by statute. The requirement for the applicant to have the application signed by a financial institution indicating interest is necessary as it is the financial institution that is making the loan in which the Authority is buying a participation. It is reasonable to require that potential applicants obtain, up front, a written indication of interest on the part of a financial institution in making the loan because the Authority has no other way to provide the funds except through a loan participation with a financial institution. The setting of a specific award date allows applicants to know when the loan funds will be available for the funding of their projects.

It is necessary to inform applicants that their applications must receive the certification, attesting to the technical requirements

of the program, of the Commissioner of the Department of Public Service as required by statute, and that there are rules of the Department governing the certification by the Commissioner of Public Service, and that the Department's rules will provide the requirements and criteria for receiving the required certification.

This subpart goes on to inform applicants that those applications receiving certification from the Department are then provided with the balance of the application. The reason that the Authority has chosen to split the application process is done out of consideration for the applicant. If the application process were not split applicants would have to go through the entire application process, and then be informed that they were turned down because their proposed replacement of their once-through cooling system does not meet the Department of Public Service's technical program requirements, or that the Authority has insufficient program funds to fund the project that year. In such a case, the applicant would have incurred significant engineering cost for the planning and design of a proposed replacement system that is not environmentally acceptable and can not be certified by the Department. The energy coefficient of a proposed cooling system, and the type of refrigerants to be used in a proposed system is known up-front, and by providing that information in the first part of the application the Department is able to determine if the type of system being proposed is an environmentally acceptable system. If it is not, the applicant can either proceed on its own without using the program, or change the proposed cooling system to an environmentally acceptable system which will receive certification from the Department.

Subp. 2. Authority review.

A. When an applicant's project has been certified by the Commissioner of the Department, the Authority shall review and evaluate the application to determine the applicant's capacity to comply with the terms and conditions of this part, Minnesota Statutes, section 446A.21, and the terms and conditions of the Participation Agreement.

B. The Authority shall only approve and provide financial assistance for the capital cost for certified applicants that demonstrate that:

- (1) the total financing of the project is assured;**
- (2) the applicant has the capacity to repay the loan to the Authority;**
- (3) the applicant has a written commitment from a financial institution for the necessary amount of the project loan; and**

(4) the applicant is able to provide collateral for the loan.

C. The Authority shall give priority to, and shall first fund in a given year, projects for nonprofit organizations and school districts, listed on the Department of Natural Resources Once-Through Cooling Water Use Permit List. Should the Authority not have sufficient program funds in a given year to fund all certified and approved projects, the Authority shall first fund the most cost effective projects. The cost effectiveness of a project shall be determined by:

(1) calculating for each loan application, the gallons per year of groundwater consumption eliminated based on the average of the previous three years consumption as provided by the Department of Natural Resources records, per dollar of the Authority loan money for which the application has been made;

(2) ranking applications in descending order according to gallons per year eliminated per dollar of the Authority loan; and

(3) providing funding to as many projects as possible within the limits of available funding based on the rank order.

This part provides applicants with the requirements and procedures that the Authority will follow in its review of a loan application that has received the required certification. The applicant is informed that the Authority shall make a determination that the applicant can fulfill the statutory requirements and the rules of the program, as well as demonstrate the capacity to fulfill the requirements of the participation agreement which requires; (1) that all project financing is assured; (2) that the required financial institution participation has been secured; (3) that the applicant has a sufficient income stream to repay the loan; and (4) that the applicant has offered sufficient collateral to secure the loan in the judgement of the Authority.

Subpart (B) informs the applicant of the basis upon which the Authority shall rank, prioritized, and fund applications. As noted earlier, the Authority is required by statute to give preference to nonprofit organizations and school districts in making loans. Subpart (B) informs applicants that the Authority shall first fund, in a given year, nonprofit and school districts; and that those applications shall be funded from available program funds in accordance with the methodology given in subpart (B). The Authority shall likewise rank and prioritized the applications from private entities, which shall also be funded in order of their ranking, to the extent that there are program funds available, in a given year, after first funding nonprofit and school districts applications.

Subp. 3. Completed application. A project application certified by the Commissioner of the Department is considered

complete by the Authority at such time as the applicant provides all the information required in the application.

It is necessary to inform applicants that the Authority considers an application complete when all the required information is provided. It is reasonable to require applicants to provide the information and materials contained in an application as it will provide information and data which permits the Authority to make a prudent judgement as to the credit worthiness of the applicant and the applicant's capacity to comply with the statutory requirements of the program as well as the rules of the program.

Subp. 4. Incomplete application. If an incomplete application is received from an applicant before August 1 of a given year, the Executive Director shall notify the applicant of the specific deficiencies in the application. If a revised and completed application is not received by the Executive Director by the application deadline, October 1st, or the first business day of October, the application is deemed to be rejected, and the applicant, subject to parts 7685.0100 to 7685.0140, must reapply in a later year to be considered.

This subpart informs applicants of the procedure that will be followed if an application is determined to be incomplete, and the time frame which an applicant has to supply the information required by the Authority to complete the application. It is reasonable since this procedure allows for sufficient time for providing the additional information, and ensures that all applicants are afforded an equal opportunity to complete their applications.

Subp. 5. Projects not receiving certification. A project application not receiving certification by the Commissioner of the Department shall not receive consideration for financial assistance by the Authority. The Executive Director of the Authority shall notify the applicant of the rejection of the application by the Authority within ten days of the rejection determination.

It is necessary to inform applicants of the consequences of not receiving the statutorily required certification of their project application by the Commissioner of the Department of Public Service. It is reasonable as the statute dictates that the Authority can only consider for funding those project applications which are certified by the Department, and the Department can only certify those projects that are environmentally acceptable.

Subp. 6. Rejection of certified applications by the Authority. The Authority shall reject a certified application from applicants unable to comply with subpart 2, item B.

It is necessary to inform applicants that if they are unable to meet the basic program requirement as given in subpart 2, item B,

which deal with the financing of the project costs, capacity to repay the loan, a written commitment from a financial institution, and ability to collateralize the loan that the Authority shall reject their project application. It is reasonable as those requirements contained in subpart 2, item B provide for a very basic minimum level of assurance on the part of the applicant to demonstrate the capacity to comply with the terms and conditions of a loan from the Authority.

7380.0820 PARTICIPATION LOAN TERMS AND CONDITIONS

Subpart 1. In General. The Authority shall provide financial assistance as provided by this part.

It is necessary to inform applicants of the nature of the financing assistance, and the terms and conditions under which the Authority shall provide program financing assistance which is provided in part 7380.0820; and the collateral requirements to secure a loan from the Authority.

Subp. 2 Type of Assistance and Interest Rates. The Authority shall provide financial assistance and determine interest rates as described in items A and B.

A. Loan Participation. The Authority shall utilize loan participation as the means to provide financial assistance to borrowers. An applicant may select a financial institution of its choice. The Authority, subject to the requirements of this part, shall purchase a loan participation in a loan up to 50% of the total eligible project cost of the project.

B. Interest Rates. The Authority shall set its interest rates to be charged all borrowers on October 1 or the first business day of October of each year. The interest rate on the Authority's portion of the loan shall be at the rate of a United States Government Treasury Security of a comparable maturity to the term of the loan being made, minus 100 basis points. The interest rate to the borrower on the total amount of a participation loan to the borrower shall be a blended rate of the financial institution's rate and the Authority's rate in proportion to the respective rates of participation.

Part 7380.0820, subparts 2A and 2B are necessary to inform applicants of; in subpart 2A, of the specific type of financing assistance the Authority shall provide; the level of project cost the Authority will provide; and the option of the borrower to select any financial institution willing to make the loan. It is a reasonable means by which to provide the program financing, i.e. via loan participation, as it is the most financial viable means to leverage scarce program funds to meet the anticipated loan volume,

and has been utilized with previous Department lending programs, and by other state agencies.

Subpart 2B is necessary as it informs the applicant of the specific methodology to be used by the Authority to determine the interest rate it will charge borrowers on its portion of the loan; and also informs the borrower that the interest rate on the loan shall be a blended rate; i. e. the rate charged by the financial institution and the rate charged by the Authority.

The use of setting the interest rate on loans based on U.S. Government Treasury Securities of a comparable maturity to the loan term offered a borrower accomplishes two important objectives. The first, because U.S. Treasury Securities are traded in billions of dollars daily, and are highly responsive and reflective of the current and immediate future trends in interest rates. This allows the Authority to offer a competitive interest rate to borrowers which is truly reflective of open market conditions. Second, the listing of these U.S. Treasury Securities are published daily in major newspapers and is readily available to the Authority, financial institutions, and to prospective borrowers.

Subp. 3. Dedicated sources of repayment and collateral requirements.

A. A public entity shall establish, and identify in its application, dedicated sources of revenue sufficient to fully amortize the loan.

B. A public entity shall also, if empowered to do so, provide the financial institution and the Authority with a General Obligation Note for the full amount of the principal and interest payments to be received by the Authority.

C. A public entity not empowered to issue General Obligation Notes shall provide to the financial institution and the Authority collateral for the loan that the financial institution and the Authority have determined to be adequate to collateralize the loan.

D. As required by Minnesota Statutes, section 446A. 21, subdivision 2 (b), a public entity shall provide to the financial institution and the Authority, audits and budgets which document that the entity has the revenue to repay the loan.

E. As required in Minnesota Statutes, section 446A. 21, subdivision 2, paragraph (b), private and nonprofit organizations shall provide to the financial institution or the Authority, income and earnings forecasts, audits, credit reports and other related materials that documents that the entity has revenues to repay the loan. The financial institution and the Authority shall take a

security interest in capital assets or real property.

Part 7380.0820, subpart 3A through 3C, provides the requirements of the Authority for dedicated sources of repayment and collateral requirements for public entities. As public entities and private entities have differing capabilities in establishing income streams and collateralizing loans, these differing capabilities are taken into account in part 7380.0820. As most public entities have the ability to tax or assess property owners within their jurisdiction, subpart 7380.0820, subpart 3A requires that those public entities establish and identify the means by which they will establish an income stream to repay the loan. Public entities of this nature so would also have the ability to issue G.O. Notes, and convey indebtedness, and therefore the Authority requires a G.O. Note to collateralize the loan.

3C deals with means by which public entities, which do not have taxing power and G.O. issuance authority, are required to create and identify an income stream to repay the loan, and the means by which they are required to collateralize the loan. As we can not be certain of the exact legal structure and capability of every public or quasi-public applicant, it is necessary and reasonable for 3C to provide the means by which those entities may provide the required income stream to repay the loan and provide collateral for a loan.

3D requires that public entities provide substantive documentation, in the form of audits and budgets, to the Authority demonstrating that the public entity has the capability of collecting taxes and assessments to generate an income stream to repay the Authority loan. This is a reasonable requirement (providing audits and budgets) as it is the only way that a public entity is able to provide such information, and inform lenders of their financial capability.

Subpart 3E, provides the Authority's requirements in regards to sources of revenue and collateral requirements for private and non-profit organizations, which do not have taxing powers to create an income stream or the ability to issue a G.O. Note to collateralize the loan as public entities do. In the case of these entities, the Authority needs to have the customary information required by lenders. These requirements provide the basis on which credit worthiness is determined; i. e., income and earnings forecasts, credit reports, audits and related materials which shows that the business or non-profit entity is, and likely will continue, to generate a cash flow sufficient to repay the Authority loan. The Authority also needs to examine the nature and worth of real property which the borrower will offer to collateralize the loan. These are reasonable and necessary requirements as they are the established standard lending practices necessary to protect the

lender. As with other parts of these rules, these requirements are the same as in previous or current business loan programs of the Authority. As with other requirements of the program, while specific requirements for information and data are given, there has to be the caveat that additional information may be required. This is reasonable and necessary because of the wide range of types of business that are eligible to apply for loans from this program. The Authority can not have universal absolute credit standards or collateral requirements applying to every possible applicant. The financial ratios for companies operating in different industries are not comparable. The Authority will primarily rely on Robert Morris Associates Annual Statement Studies which reports various industry capita and operating ratios and data. The Value Line Investment Survey will be also utilized as that publication, in addition to reporting data, provides incisive industry outlooks. In regards to collateral, the applicant is informed that the Authority shall take a security interest in the capital assets or real property in order to collateralize the loan and protect the interest of the Authority. It is reasonable as it follows prudent lending practices.

Subp. 4. Term of Loan. The maximum term of a loan shall not exceed the useful life of the real property being offered as collateral, 80 percent of the useful life of the equipment or machinery or the following limits, whichever is less:

A. Ten years for land, building or other real property;

B. Five years for equipment or machinery; or

C. A weighted average of the limits provided in items A and B for loans that are for a combination of real property and equipment or machinery.

Subpart 4 deals with the term of a loan and how it is to be determined by the Authority. It is necessary to inform the applicant of the methodology to be used by the Authority to determine the term of the loan. It is reasonable as it establishes the term of the loan based on established lending practice which takes into account the useful life of the collateral, and therefore its residual worth over a period of time, i.e., the depreciation of the value of a capital item or fixed asset over time in accordance with established accounting standards. While the legislation does permit the Authority to make loans for up to a term of twenty years, the useful life of the capital equipment to be financed by this program is far less than twenty years. It is reasonable for the Authority to impose a shorter period based on the above as it follows prudent lending practices established by lending institutions.

7380.0830 FEES

Subpart 1. Any loan origination fees charged a loan recipient by the Authority shall be as provided in Minn. Stat. 446A.04, Subp. 5 (a)

This subpart is necessary to inform applicants that the Authority may charge a fee, and provides a reference to where the fee schedule is provided. When the Authority was created in 1987, the legislation authorized that the Authority may charge a fee on any of its programs. As the legislation creating this program makes no provision for funds to administer the program, there is a strong probability that, at some time in the near future, the Authority will institute fees on this program.

7380.0840 AUDITS

Subpart 1. Audits. During the term of the loan, loan recipients shall provide annual independent audits.

It is necessary to inform applicants that there are specific accountability requirements involved in utilizing the program. The requirement to provide annual audits is a reasonable requirement as it is established lending practice to require borrowers to provide the lender with an annual accounting of financial status of the borrower in order that the lender may have a means to judge the certainty of being repaid during the term of the loan.