

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

RULES AS PROPOSED FOR ADOPTION IN FINAL FORM

CHAPTER 22

FAMILY FARM SECURITY PROGRAM

Agr 543 Family Farm Security Loans, Application, Eligibility, Review.

A. Pursuant to the provisions of Minn. Laws 1976, ch. 210 [Minn. Stat. §§ 41.51 - 41.61 (1976)] and these rules, the commissioner may aid farmers in obtaining credit for the acquisition of farm real estate by guaranteeing and making payment adjustments on family farm security loans to eligible applicants.

B. Applications. Any natural person wishing to participate in the family farm security program may make application to the commissioner jointly with a participating lender on forms provided by the lender, or in the case of seller-sponsored loans, if requested, on forms provided by the commissioner.

1. Responsibility of lenders. The lender shall process applications for family farm security loans using its existing real estate loan forms, supplementing these forms with additional information requested by the commissioner. It shall be the duty of the lender to review the application to make certain that all information required by the commissioner is included with the application, to attest that to the lender's best knowledge, all information contained in the loan application is true and correct, and to submit the application in duplicate to the commissioner. In the case of seller-sponsored loans, the commissioner,

upon request, will provide forms and assist the applicant and the lender in preparing the loan application.

2. Land appraisal.

a. The lender shall include with the application an appraisal of the land for which a family farm security loan is requested. The appraisal shall include the market value and income potential of the land, and all other relevant information requested by the commissioner, and it shall be signed by the person who performed the appraisal or by an officer or officers of the lending institution, indicating there has been an actual appraisal of the land.

b. In the case of loans wholly financed by the seller, either the buyer or the seller shall pay to have the land appraised.

c. To protect the interests of the applicant, the lender, or the state, the commissioner may require an additional independent appraisal of any land for which a family farm security loan is requested. The costs of appraisals performed under this section shall be assessed to the loan applicant.

d. The commissioner shall not guarantee any loan if the sale price of the land exceeds the attested appraisal value.

C. Eligibility. To be eligible for a family farm security loan, an applicant shall meet the following criteria:

1. The applicant must reside in the state of Minnesota or submit a declaration that upon receipt of a family farm security loan the applicant will become a full-time resident of Minnesota.

2. The applicant must have sufficient education, training or experience in agriculture to indicate to the commissioner that there is a likelihood the applicant will be successful in the farming operation proposed in the application.

3. The applicant must agree to participate in a program of farm management acceptable to the commissioner, including but not limited to, programs in farm record keeping or farm management offered by State Universities, the Agricultural Extension Service or Vocational-Agriculture Programs.

4. The total net worth of the applicant and the applicant's spouse and dependents as determined by generally accepted accounting principles, must be less than $50,000. The commissioner, upon request, will provide the applicant or the lender with forms and assistance in preparing the net worth statement.

5. The applicant must demonstrate a need for the loan. In determining the applicant's need for the loan, the commissioner may consider all relevant considerations, including but not limited to the applicant's financial statement and the possible availability and terms of a non-guaranteed loan from any lender. The commissioner may also consider the financial situation of the applicant's immediate family so far as said financial situation indicates the ability of the applicant to obtain financial assistance from the applicant's immediate family for the purchase of farmland.

6. The applicant must specifically detail the agricultural purposes for which the applicant intends to use the farmland.

7. The applicant must be credit worthy. A determination as to the credit worthiness of the applicant shall be based on all relevant considerations, including but not limited to the applicant's credit rating, spending habits and reputation for honesty.

D. Determination of ineligibility, reapplication. If the commissioner determines that an applicant does not meet one or more of the eligibility criteria in subsection C. above, the commissioner shall return a copy of the application to the lender with a notice

to the applicant and the lender stating specifically why the applicant is not eligible for the loan. If the circumstances of the applicant change such that in the future the applicant becomes eligible for a family farm security loan, the applicant may reapply without prejudice.

E. Review of determination of ineligibility. An applicant who believes the commissioner erred in determining the applicant ineligible for a family farm security loan may, within 90 days of the applicant's receipt of notice of ineligibility, request that the application be reconsidered. The applicant may also present in writing any additional facts relevant to the reasons given by the commissioner for the determination of ineligibility. Upon receipt of this request for reconsideration, the commissioner shall, at the next regularly scheduled family farm advisory council meeting, present the application and accompanying materials to the council. The council shall review the application and the commissioner shall follow the recommendations of the council in determining the applicant's eligibility for a family farm security loan.

F. Criteria for granting family farm security loans. Upon a determination that an applicant meets the eligibility criteria of subsection C. above, the commissioner may approve the loan application. In deciding whether a specific family farm security loan shall be approved, the commissioner shall attempt to further the policy of Minn. Laws 1976, ch. 210 [Minn. Stat. §§ 41.51 - 41.61 (1976)] by considering all factors relevant, including but not limited to:

1. The recommendation of the family farm advisory council which shall be based on the criteria contained herein.

2. The degree to which the applicant intends to make farming the applicant's principal occupation;

3. The proportion of the proposed loan that will be used for the acquisition of real property directly relating to the farming enterprise;

4. The extent to which the applicant demonstrates financial need for state assistance to acquire farmland;

5. The likelihood of success of the applicant's proposed farming operation;

6. The economic feasibility of the loan as evidenced by the applicant's present and past financial situation, the projected cash flow of the proposed farming operation, and an analysis of the loan ratios; and

7. The existence of, or provision for, financing for necessary equipment and operating costs.

G. Period for granting family farm security loans. The commissioner upon recommendation of the family farm advisory council, shall on a monthly basis, consider and act upon family farm security loan applications. An application meeting the eligibility requirements of subsection C. above, shall remain eligible for approval and may be acted upon by the commissioner for four months from the date of receipt, unless either the applicant or the lender requests in writing that the application be withdrawn. In addition, the lender or the applicant may request that a final decision concerning an application be made in less than four months, and the commissioner and the council shall, if possible, review and act upon the application within the requested time frame. Each time an eligible application is reviewed by the commissioner and not approved, the commissioner shall notify the applicant and the

lender of this fact. Upon the expiration of the four month period, the commissioner shall return the application and notify the applicant and the lender that the application has not been approved. An eligible applicant not receiving a family farm security loan under these circumstances may reapply at any time in the future.
Agr 544 Family Farm Security Loan, Guarantee, Payment Adjustment, Closing.

A. Approval by the commissioner of a family farm security loan application shall result in the following:

1. Family farm loan guarantee. Upon approval of an application for a family farm security loan, the commissioner shall enter into an agreement with the lender providing that in the event of default by the applicant, the State of Minnesota shall pay the lender 90 percent of the sums due and payable under the first real estate mortgage. This loan guarantee shall be void only if the guaranteed loan was obtained by fraud or material misrepresentation of which the original lender or subsequent holder had actual knowledge.

2. Payment adjustment. If the approved family farm security loan has a term of 20 years or less and provides for payments at least annually so the loan is amortized over its term with equal annual payments, and if the applicant requests a payment adjustment, the commissioner shall annually pay to the lender, an amount of money equal to four percent of the principal balance of the family farm security loan, provided that:

a. The lender bills the commissioner when each payment adjustment is due;

b. Prior to December 15 of each year, the lender or the applicant submits to the commissioner a statement of current net worth for the applicant and the applicant's dependents and spouse.

If the total net worth as determined by generally accepted accounting principles, exceeds $100,000, the applicant shall not be eligible for a payment adjustment for the next year of the loan, and the commissioner shall notify the applicant and the lender that the applicant is responsible for all interest payments for that year of the loan. The commissioner upon request, will provide the applicant or the lender with forms and assistance in preparing the net worth statement;

c. The applicant shall reimburse the commissioner within 90 days after the tenth anniversary of the date of the family farm security loan agreement for all sums paid as payment adjustments by the commissioner on the applicant's behalf, and this obligation shall be a lien against the property which shall be subordinate to the first real estate mortgage, provided that:

(1) The applicant may, at least 30 days before the payment adjustment is due, petition the commissioner for a ten year renewal of the payment adjustment. If the applicant has complied with all terms of the loan agreement the commissioner shall grant the renewal; and

(2) If the payment adjustment is renewed for an additional ten years, the applicant shall reimburse the commissioner within 90 days after the 20th anniversary of the date of the family farm security loan agreement for all sums paid as payment adjustments by the commissioner on the applicant's behalf and this obligation shall be a lien against the property which shall be subordinate to the first real estate mortgage.

B. Closing and disbursement of loans. Upon receiving notice from the commissioner that a family farm security loan application has been approved, the lender shall close and disburse the loan in accordance with the terms and conditions upon which the loan and guaranty were approved. The lender shall cause to be executed a note and all necessary additional instruments, and the lender shall take other actions, consistent with prudent lending practices, required to protect or preserve the interests of the applicant, the lender, and the commissioner. Immediately after a loan is closed, the lender shall furnish the commissioner with a copy of the executed note and loan agreement. The commissioner shall also be entitled to examine on request copies of other security instruments or loan documents, or other records held by the lender or its agents, which relate to the applicant. The lender shall also execute all relevant statements or declarations required for loan transactions by federal or state law or regulations.

Agr 545 Family Farm Security Loans, Defaults.

A. The borrower in a family farm security loan shall be considered to be in default if:

1. The borrower does not pay the principal or interest payment on the date due;

2. The borrower breaches a material obligation in the note, loan agreement, or any instrument securing the loan, and the lender determines that this breach constitutes an adverse change in the borrower's ability to repay the guaranteed loan provided that under this section and subsection 1 above, the lender and the applicant may agree to take any steps reasonable to assure fulfillment of the loan obligation.

3. The borrower fails to maintain the farmland in active agricultural production for more than one year, provided that:

a. The borrower who fails to maintain the land in active agricultural production for more than one year, may, within 30 days of the expiration of the one year's time, petition the commissioner for a waiver of default; and

b. The commissioner shall waive the default if the borrower demonstrates to the satisfaction of the commissioner that the land was not utilized because of physical disability or other extenuating circumstances beyond the immediate control of the borrower, and that the land will be back in production within a reasonable time.

c. If the commissioner determines that a default should not be waived, the borrower is entitled to a contested case hearing pursuant to the provisions of Minnesota Statutes Chapter 15 to review this determination.

Agr 546 Transfer Of Family Farm Security Loan Note.

The lender shall notify the commissioner in writing within 30 days after a family farm security loan note is sold or exchanged. The family farm security loan guarantee shall remain in effect if the commissioner is notified pursuant to this section, provided that the purchaser of the family farm security loan note assumes all duties and obligations of the original lender, and agrees to comply with all applicable requirements of Minn. Laws 1976, ch. 210 [Minn. Stat. §§ 41.51 - 41.61 (1976)] and these rules.

Agr 547 Commissioner's Right To Information.

The commissioner may at any time during the term of a family farm security loan, request information and documents from

the lender or the applicant, to enable the commissioner to determine that all terms and conditions of the law, rules and any agreements made pursuant to the law or rules are being complied with.

Agr 548-562 Reserved for future use.

December 22, 1976

APPROVED AS TO FORM AND LEGALITY
JAN 3 1977 19
WARREN SPANNAUS, ATTORNEY GENERAL
BY /s/ Michael B. Miller
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JAN 3 1977 2:15 P.M.
Joan Anderson Growe
Secretary of State

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Paul Strandberg
Special Assistant
Attorney General
Department of Agriculture

January 3, 1977

= Agr 543 - 562

ADMIN 1000

STATE OF MINNESOTA

DEPARTMENT Attorney General

Office Memorandum

TO : Michael B. Miller
Special Assistant
Attorney General

DATE: December 23, 1976

FROM : Paul A. Strandberg
Special Assistant
Attorney General

PHONE: 2856

SUBJECT: Rules of the Department of Agriculture Governing the Family Farm Security Program.

Attached please find the above regulations submitted for your approval pursuant to Chapter 15 of Minnesota Statutes.

PAS:jyp
Attachment

STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION)
OF RULES OF THE DEPARTMENT OF AGRICULTURE) ORDER FOR HEARING
GOVERNING THE FAMILY FARM SECURITY PROGRAM)

IT IS HEREBY ORDERED that a public hearing on the above-captioned rules be held in the Agricultural Research Center Auditorium, University of Minnesota Technical College, Crookston, Minnesota on October 14, 1976, commencing at 7:30 p.m., or as soon thereafter as possible, and in the Lecture Center Building, Room LC 217, Southwest State University in Marshall, Minnesota on October 18, 1976 commencing at 7:30 p.m., or as soon thereafter as possible, and in the Cafeteria of the Faribault Area Vocational Technical Institute on October 19, 1976 at 7:30 p.m., or as soon thereafter as possible and continuing until all persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Secretary of State for that purpose.

IT IS FURTHER ORDERED that the Notice of Hearing be published in the State Register.

STATE OF MINNESOTA

Jon Wefald

Jon Wefald
Commissioner of Agriculture

Date: August 25, 1976

STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION)
OF RULES OF THE DEPARTMENT OF AGRICULTURE) NOTICE OF HEARING
GOVERNING THE FAMILY FARM SECURITY PROGRAM)

NOTICE IS HEREBY GIVEN that a public hearing in the above-entitled matter will be held in the Agricultural Research Center Auditorium, University of Minnesota Technical College, Crookston, Minnesota on October 14, 1976, commencing at 7:30 p.m., or as soon thereafter as possible, and in the Lecture Center Building, Room LC 217, Southwest State University in Marshall, Minnesota on October 18, 1976 commencing at 7:30 p.m., or as soon thereafter as possible, and in the Cafeteria of the Faribault Area Vocational Technical Institute on October 19, 1976 at 7:30 p.m., or as soon thereafter as possible and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Mr. Howard Kaibel, Jr., Esq., Office of Hearing Examiner, 1745 University Avenue Room 300, Saint Paul, Minnesota 55104, phone (612) 296-6910 either before the hearing or within 20 days after the close of the hearing.

The proposed rules, if adopted, would establish rules setting both criteria and procedures for administering a 90% guarantee loan program and payment adjustment program to assist Minnesota farmers in acquiring farmland for their own farming purposes. Copies of the proposed rules are now available and one free copy may be obtained by writing to the Minnesota Department of Agriculture, 420 State Office Building, Saint Paul, Minnesota 55155. Additional copies will be available at the door on the date of the hearing. The department's authority to promulagte the proposed rules is contained in Minn. Laws 1976, ch. 210. A "statement of need" explaining why the department feels the proposed rules are necessary and a "statement of evidence" outlining the testimony they will be introducing will be filed with the Hearing Examiners Office at least 25 days prior to the hearing and will be available there for public inspection.

Please be advised that pursuant to Minn. Stat. Sec. 10A.01, Subd. 11 (1974) any individual engaged for pay or other consideration for the purpose of representing persons or associations attempting to influence administrative action, such as the promulgation of these rules, must register with the Minnesota State Ethical Practices Board as a lobbyist within five days of the commencement of such activity by the individual.

STATE OF MINNESOTA

Jon Wefald
Commissioner of Agriculture

Date: August 25, 1976

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION)
OF RULES OF THE DEPARTMENT OF AGRICULTURE) STATEMENT OF EVIDENCE
GOVERNING FAMILY FARM SECURITY PROGRAM)

In addition to the "Statement of Need" which is available for inspection or purchase at the Office of Hearing Examiners, 1745 University Avenue, Room 300, Saint Paul, Minnesota 55104, and in support thereof the Department of Agriculture will introduce the following evidence:

The attached Summary of Evidence and explanation of the rules as proposed.

The department may call one or more of the following expert witnesses to testify:

NONE

The department intends to introduce the following manuals, books, scientific treatises, and other documentary evidence:

NONE

The department will be citing the following statutes and case law:

Minn. Laws 1976, ch. 210.

STATE OF MINNESOTA

Jon Wefald

Jon Wefald
Commissioner of Agriculture

Dated: September 17, 1976

STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE
STATE OFFICE BUILDING
SAINT PAUL, MINN. 55155
TELEPHONE: (612) 296-_____

LAND OF QUALITY FOODS

Read at crookston

STATEMENT OF THE MINNESOTA DEPARTMENT OF AGRICULTURE
IN THE MATTER OF THE PROPOSED ADOPTION OF RULES
GOVERNING THE FAMILY FARM SECURITY PROGRAM

The purpose of these proposed rules is to establish procedures for administering Minn. Laws 1976, ch. 210, the Minnesota Family Farm Security Act. This law gives the Commissioner of Agriculture the authority to aid farmers in obtaining credit for the acquisition of farm real estate by enabling the Commissioner to guarantee 90 percent of loans for farm real estate to approved eligible applicants and by enabling the Commissioner to pay four percent of the annual interest on these loans.

The following is a very abbreviated summary of the proposed rules with explanatory comments and justification for the rules as proposed where necessary or appropriate:

Agr 543 A.:

This merely states the general purpose of the Family Farm Security Act.

Agr 543 B.:

This deals with the procedure for making application for family farm security loans. This rule includes the restriction in the law that applications may be made only by "natural persons" (not corporations).

Also, in accordance with the law, the proposed rules require that applications for the program be submitted jointly by the applicant and a participating lender. The proposed rule provides that applications are to be made on forms provided by the lender. The rule was written to allow lenders to use their own real estate loan forms and procedures because several lenders have informed the department that this feature makes the program more attractive and therefore, allowing lenders to use existing forms may increase the number of lenders that choose to participate in the program.

Agr 543 B. 1.:

This makes it clear that the lender at the request of the Commissioner, will supplement the application with any additional information requested by the Commissioner. It also explicitly makes the lender responsible for performing the preliminary loan screening process as provided for in section 6 of the law.

Agr 543 B. 2.:

This establishes procedures for the appraisal of farm real estate to be purchased with a family farm security loan. This is necessary since the law requires that all land for which a family farm security loan is made be appraised.

Agr 543 B. 2. c.:

This gives the Commissioner the authority to require additional independent appraisals for land for which a family farm security loan is requested. This authority is necessary to protect the interests of all the parties where the accuracy of the original appraisal is questioned.

Agr 543 B. 2. d.:

In accordance with the law, this states that the Commissioner may not guarantee a loan if the sale price of the farm real estate exceeds the attested appraisal value.

Agr 543 C. 1. - 7.:

This outlines and in some instances, clarifies by making more specific, the eligibility criteria for a family farm security loan found in section 5 of the law.

Agr 543 C. 1. - 4.:

These basically repeat and clarify the requirements of section 5 (a), (b), and (c) of the law.

Agr 543 C. 5.:

This further explains the requirement in the law that a family farm security loan applicant demonstrate a need for the loan. The proposed rule specifies possible considerations of the Commissioner in determining whether an applicant has demonstrated a need for the loan.

Agr 543 C. 7.:

This further explains the requirement in the law that an applicant be "credit worthy", by specifying possible factors to be considered by the Commissioner in determining whether a particular applicant is credit worthy.

Agr 543 D.:

This provides the procedure for returning to the applicant and lender applications for family farm security loans which the Commissioner has determined do not meet the eligibility requirements of the law and rules.

In addition the proposed rule includes, pursuant to the law, provision for reapplication where circumstances change such that the applicant becomes eligible in the future.

Agr 543 E.:

This establishes procedures for a review of the Commissioner's determination that an applicant is ineligible for a family farm security act loan. Under the proposed procedure, the Family Farm Advisory Council will make the final determination of eligibility in situations where an applicant has requested that his application be reconsidered. This procedure provides a safeguard by giving this decision to a seven-person Council rather than leaving it up solely to the Commissioner.

Agr 543 F.:

This sets up the criteria for granting family farm security loans. It is necessary to develop this type of criteria because of the strong likelihood that there will be more eligible applicants than funds available to provide loan guarantees and interest adjustments. Therefore, the purpose of the criteria is to provide the Advisory Council and the Commissioner with a basis for determining which eligible applicants shall receive family farm security loans.

Agr 543 F. 1.:

This reflects the requirement in the law that the Family Farm Security Council review all applications for family farm security loans and make recommendations to the Commissioner as to their disposition.

Agr 543 F.2.:

This makes the fact that an applicant intends to have farming as a principal occupation a criteria for granting a farm security loan. This criteria reflects the purpose clause of the law which states that the law is intended to aid farmers in obtaining credit. It should be noted, however, that this criteria does not necessarily exclude persons who have income from sources other than farming.

Agr 543 F. 3.:

Under this criteria, the proportion of the loan actually used for the farming enterprise, as opposed to the non-farming portion of the real property, (such as the dwelling and non-agricultural land), is a possible consideration in determining whether a family farm security loan application should be approved.

Agr 543 F. 4.:

This indicates that in determining whether a family farm security loan should be granted, the extent to which the applicant demonstrates a need for the loan is a relevant consideration.

Agr 543 F. 5. and 6.:

These deal with the issue of the likelihood of success of the proposed farming venture. It is extremely important that the proposed venture be both operationally and economically feasible because the purpose of the law would not be furthered by guaranteeing loans to persons who are unable to become successful in farming.

Agr 543 F. 7.:

This makes the existence of financing for equipment and operating costs a criteria for approving loan applications. It is a necessary criteria because the law only provides guaranteed loans for farm real estate. Therefore, it is essential that applicants make provision on their own for capital for equipment and operating expenses.

Agr 543 G.:

This establishes procedures for the review and approval of the family farm security loan applications by the Family Farm Advisory Council and the Commissioner. It is proposed that applications be reviewed and acted upon monthly, and that applications meeting the eligibility criteria be eligible for approval by the Commissioner for four months from the date of receipt. This procedure is necessary again because of the likelihood that there will be more eligible applicants than available funds for family farm security loans. Although applications will be approved on a monthly basis, it is possible that an application not considered to be among the most deserving for approval in a given month may be one of the most deserving for approval in a subsequent month. To attempt to minimize this inherent possible inequity, under the proposed rule, every eligible application will be eligible for approval for four months. It was felt that it was necessary that a time limit for acting on an application be set for reasons of administrative convenience and because of

the need for the seller, lender, and applicant to know definitely at some point whether the loan application is approved. The department is aware that in certain situations the wants and needs of the seller, applicant, or lender may require that a decision on the loan application be reached in less than four months. It is assumed that this fact would be made known to the council and the Commissioner and that accordingly, the application would be reviewed and acted upon if possible within the required time frame. Although the choice of any time period for a cut off is somewhat arbitrary, the four month period was chosen because it is not an unreasonably long period and it guarantees that if an eligible application is to be denied, it will be considered at least three times in three different months before the final decision not to approve the application is made.

Agr 544 A. 1.:

This deals with the family farm loan guarantee. The proposed rule basically restates the provisions in the law concerning this guarantee.

Agr 544 A. 2.:

This establishes criteria for the Commissioner's determination as to whether a payment adjustment should be made. This section is necessary because under the law, the Commissioner may make payment adjustments. Under the proposed rule, the Commissioner shall grant a payment adjustment if:

1. The loan meets the requirements of the law (it must have a term of 20 years or less and provide for payments at least annually so the loan is amortized over its term with

equal annual payments).

2. The applicant requests a payment adjustment.

3. Sufficient state monies have been appropriated to enable the Commissioner to make the payment adjustment.

It should be emphasized that the requirement of sufficient state monies is not a factor in determining whether payment adjustments are to be continued once the Commissioner has entered into an agreement to make payment adjustments. Such an agreement would be a legally binding committment by the state to continue payment adjustments for the duration of the loan. The requirement that sufficient state monies be available is necessary in determining whether the Commissioner can enter into new payment adjustment agreements.

Agr 544 A. 2. a.:

This requires that the lender bill the Commissioner when every payment adjustment is due. The reason for this requirement is the department's need to establish an adequate "audit trail" with regard to state monies paid out as interest adjustments.

Agr 544 A. 2. b.:

This refers to the provision in the law that requires all loan participants to submit an annual statement of net worth. The proposed rule also clarifies the requirement in the law that if an applicant's net worth exceeds $100,000, the applicant is not eligible for a payment adjustment in the next year of the loan.

Agr 544 A. 2. c.:

This merely establishes procedures for the repayment of payment adjustments as required by the law.

In addition, the proposed rule explicitly provides that a payment adjustment may be extended for an additional 10 years at the request of the applicant if the applicant has complied with all terms of the loan agreement.

Agr 544 B.:

This makes explicit the duties of the lender so far as closing the loan, executing the loan documents, and providing the Commissioner with copies of all necessary papers.

Agr 545 A.:

This details the circumstances under which a family farm security loan shall be considered to be in default.

Agr 545 B.:

This requires that after a loan has been in default for 100 days, the lender must notify the Commissioner of this fact in writing. This provision is desirable and necessary because it will enable the Commissioner to take possible actions to assist the loan participant in meeting all obligations under the family farm security loan.

Agr 546

This rule restates the section in the law that allows the transfer of a family farm security loan note. In addition, the proposed rule includes a requirement that the purchaser of a family farm security loan note assume all duties and obligations of the original lender. This provision is necessary to protect the interests of the applicant and the state.

Agr 547 A.:

This gives the Commissioner the authority to request all necessary information and documents from the lender or applicant. This authority is necessary to enable the Commissioner to make certain that all relevant laws, rules, and conditions of the loan are being complied with.

Agr 547 B.:

This gives the Commissioner the right to initiate proceedings under the administrative procedures act to terminate participation in the family farm security program where a person fails to comply with reasonable requests for information pursuant to Agr 547 A.

In conclusion, I wish to state that the Department of Agriculture has intentionally followed the example set by the Legislature in enacting Minn. Laws 1976, ch. 210 by not creating rigid standards an guidelines for reviewing and approving family farm security loan applications. The review and approval of loan applications is by its very nature, an inexacting science. Therefore, we strongly believe that the Family Farm Advisory Council and the Commissioner must have the flexibility provided for in these rules to make this program a success.

STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION)
OF RULES OF THE DEPARTMENT OF AGRICULTURE) STATEMENT OF NEED
GOVERNING FAMILY FARM SECURITY PROGRAM)

The above captioned rules are not amendments to existing rules of the Department of Agriculture.

The need to adopt these rules arises from the passage of the Family Farm Security Act, Minn. Laws 1976, ch. 210, which provides for the state's guarantee of loans to farmers for the purchase of farmland. Rules are needed to establish procedures for administering the program and setting criteria by which guarantees will be granted.

STATE OF MINNESOTA

Jon Wefald
Commissioner of Agriculture

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING FAMILY FARM SECURITY PROGRAM.	CERTIFICATE OF DELIVERY SECRETARY OF STATE'S LIST

I hereby certify that the attached 502 labels + 2 sheets constitute the complete list of persons, associations, and other interested groups who as of 9:10 o'clock A M., this 7th day of Sept., 1976, have requested pursuant to M.S. 1974, Sec. 15.0412, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

SECRETARY OF STATE

Joan Anderson Growe

By Virginia Daniels

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING FAMILY FARM SECURITY PROGRAM.	AFFIDAVIT OF RECEIPT OF THE SECRETARY OF STATE'S LIST

Victoria A. Fowler, being duly sworn on oath deposes and says:

1) That she is an employee of the Department of Agriculture of the State of Minnesota.

2) That on the 7th day of September, 1976, she went to the Secretary of State's office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to M.S. 15.0412.

3) That on the 7th day of September, 1976, in response to the above request, the Secretary of State provided her with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Victoria A. Fowler

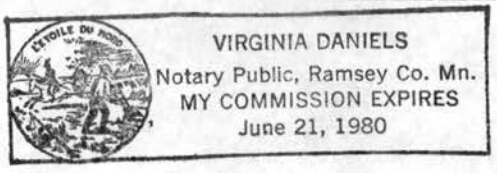
Subscribed and sworn to before me this

7th day of Sept., 1976.

Notary Public, Virginia Daniels

_____ County, Minnesota

My Commission expires _____.



STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION)
OF RULES OF THE DEPARTMENT OF AGRICULTURE)
GOVERNING THE FAMILY FARM SECURITY PROGRAM)

DEPARTMENT REPRESENTATIVES

The following individuals will be representing the Minnesota Department of Agriculture at the hearing on the above captioned matter:

Thomas Kalitowski, Assistant Commissioner

D. Daniel Garry, Administrator
Family Farm Security Program

Paul Strandberg, Special Assistant Attorney General

Randall Young, Senior Administrative Analyst
Planning and Development Division

The department estimates that each hearing will last approximately four hours.

The department estimates an attendance of approximately 100 persons.

STATE OF MINNESOTA

Jon Wefald
Commissioner of Agriculture

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION)
OF RULES OF THE DEPARTMENT OF AGRICULTURE) AFFIDAVIT OF MAILING
GOVERNING FAMILY FARM SECURITY PROGRAM)

Janet Peterson, being first duly sworn, deposes and says:

That on the 10th day of September, 1976, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing by depositing in the United States mail at said City of Saint Paul a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State.

Janet Peterson

Subscribed and sworn to before me this
17th day of Sept, 1976.

Notary Public,
Ramsey County, Minnesota
My Commission expires 3-17-77

E Copeland

EMMA COPELAND
Notary Public, Ramsey Co., Mn.
MY COMMISSION EXPIRES
March 17, 1977

RULES HEARING AGENDA AND GUIDELINES

This hearing is being conducted by an objective Hearing Examiner appointed and employed by the State Office of Hearing Examiners. He is not an employee of the agency proposing to promulgate these rules and has not discussed the merits of any questions involved with either the agency or with any other interested parties. He will strive to conduct an impartial, even-handed hearing in a fair and expeditious fashion. After the hearing he will weigh the evidence and arguments without any predisposition to either accept or reject the proposed rules in preparing Findings of Fact, Conclusions and Recommendations to the agency. The agency will then make its decision as to whether to adopt, modify or reject the proposed rules after waiting at least ten days, during which time the Findings of Fact and Recommendations will be available to affected persons. If you desire to be notified when these Findings are available, please so indicate on the register and be sure to include your phone number.

I. AGENDA

1. Hearing Convened by Hearing Examiner

2. Introduction of Agency Panel

3. Explanation of Procedure by Hearing Examiner

4. Introduction of Jurisdictional Documents

5. Presentation by Agency

6. Questions and Statements from Attorneys

7. Questions and Statements from Other Interested Persons

8. Hearing Closed by Hearing Examiner

If any person is peculiarly inconvenienced by the above agenda, such as having to get back to his employment or whatever, he should indicate this to the Hearing Examiner who will consider suspending the agenda to accommodate such special circumstances.

II. GUIDELINES

1. Everyone attending the hearing is required to sign the register as you enter indicating your name, address, and the interest or group you represent. If you wish to be notified when the Hearing Examiner's Findings and Recommendations are submitted to the agency, please so indicate.

2. The purpose of this hearing is to consider whether the proposed rules should be adopted and given the force of law, as if adopted by the Legislature itself. The agency must: (a) document its specific statutory authority to take the proposed action, (b) show that it has fulfilled all relevant substantive and procedural requirements of law or rule, and (c) demonstrate the need for and reasonableness of its proposed action with an affirmative presentation of facts. All persons wishing to express their views will have an opportunity to do so.

3. When the Hearing Officer affords you an opportunity to testify, please step to the area designated for statements, spell your name for the benefit of the court reporter, identify your interest or firm, and speak clearly.

4. All witnesses testifying subject themselves to questioning by a representative of the agency, the Hearing Officer and others present. Non-agency interested persons may refuse to consent to questioning by other non-agency persons.

5. If a written statement or other matter reduced to writing is desired to be introduced in evidence, it should be presented to the court reporter to be marked as an exhibit and offered at the appropriate time. Written statements may be introduced at the time an individual offers an oral statement. The right of the agency or others to examine the individual presenting this written statement extends to the content of the statement offered in the written form.

6. This hearing will be recorded by a court reporter. Subsequently, a transcript of the proceedings will be available. If you wish to have a copy of the transcript, for which there is a charge, kindly notify the reporter.

7. In order to aid the construction of a proper record, it is requested that witnesses observe the following rules:

a. Only one person shall be allowed to address the hearing at one time.

b. All answers must be verbalized. The court reporter cannot record gestures or the nodding of a head.

c. All technical terms and proper names should be spelled out for the benefit of the court reporter.

8. Attorneys unfamiliar with administrative practice should be aware that the emphasis will be on informality. Exclusionary rules of evidence will be interpreted liberally in the case of all presentations. Exceptions to any rulings are unnecessary and superfluous. The Hearing Examiner will determine what weight should be assigned to evidence and the Findings and Recommendations will be based only on substantial evidence.

9. It should be noted that anyone who desires to submit a written brief or other written comments bearing upon the proposed rules may do so within 20 days of the close of this hearing. Such materials should be submitted to:

Office of Hearing Examiners
Room 300
1745 University Avenue
St. Paul, Minnesota 55104

The materials must be <u>received</u> within the 20-day period to be considered.

10. You are advised that under Minnesota Statutes, Section 10A.01, Subdivision 11 (1974) any individual representing persons or associations attempting to influence administrative action, such as the promulgation of these rules, must register with the State Ethics Commission as a lobbyist within five days of the commencement of such activity by the individual.

RULES AS PROPOSED

CHAPTER 22

FAMILY FARM SECURITY PROGRAM

Agr 543 Family Farm Security Loans, Application, Eligibility, Review.

A. Pursuant to the provisions of Minn. Laws 1976, ch. 210 [Minn. Stat. §§41.51 - 41.61 (1976)] and these rules, the commissioner may aid farmers in obtaining credit for the acquisition of farm real estate by guaranteeing and making payment adjustments on family farm security loans to eligible applicants.

B. Applications. Any natural person wishing to participate in the family farm security program may make application to the commissioner jointly with a participating lender on forms provided by the lender.

1. Responsibility of lenders. The lender shall process applications for family farm security loans using its existing real estate loan forms, supplementing these forms with additional information requested by the commissioner. It shall be the duty of the lender to review the application to make certain that all information required by the commissioner is included with the application, to attest that to the lender's best knowledge, all information contained in the loan application is true and correct, and to submit the application in duplicate to the commissioner.

2. Land appraisal.

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2. Land appraisal.

a. The lender shall include with the application an appraisal of the land for which a family farm security loan is

requested. The appraisal shall include the market value of the land per acre, and all other relevant information requested by the commissioner, and it shall be signed by the person who performed the appraisal or by an officer or officers of the lending institution, indicating there has been an actual appraisal of the land.

b. In the case of loans wholly financed by the seller, the commissioner shall pay to have the land appraised and the costs of said appraisal shall be added to the sale price of the land if a family farm security loan is approved.

c. To protect the interests of the applicant, the lender, or the state, the commissioner may require an additional independent appraisal of any land for which a family farm security loan is requested.

d. The commissioner shall not guarantee any loan if the sale price of the land exceeds the attested appraisal value.

C. Eligibility. To be eligible for a family farm security loan, an applicant shall meet the following criteria:

1. The applicant must reside in the state of Minnesota or submit a declaration that upon receipt of a family farm security loan the applicant will become a full-time resident of Minnesota.

2. The applicant must have sufficient education, training or experience in agriculture to indicate to the commissioner that there is a likelihood the applicant will be successful in the farming operation proposed in the application.

3. The applicant must agree to participate in a program of farm management acceptable to the commissioner, including but

not limited to, programs in farm record keeping or farm management offered by state Universities, the Agricultural Extension Service or Vocational-Agriculture Programs.

4. The total net worth of the applicant and the applicant's spouse and dependents as determined by generally accepted accounting principles, must be less than $50,000.

5. The applicant must demonstrate a need for the loan. In determining the applicant's need for the loan,the commissioner may consider all relevant considerations,including but not limited to the applicant's financial statement and the possible availability and terms of a non-guaranteed loan from any lender. The commissioner may also consider the financial situation of the applicant's immediate family so far as said financial situation indicates the ability of the applicant's family to provide financial assistance to the applicant for the purchase of farmland.

6. The applicant must specifically detail the agricultural purposes for which the applicant intends to use the farmland.

7. The applicant must be credit worthy. A determination as to the credit worthiness of the applicant shall be based on all relevant considerations,including but not limited to the applicant's credit rating, spending habits and reputation for honesty.

D. Determination of ineligibility, reapplication. If the commissioner determines that an applicant does not meet one or more of the eligibility criteria in subsection C. above, the commissioner shall return a copy of the application to the lender with a notice to the applicant and the lender stating specifically why the applicant is not eligible for the loan. If the circumstances of the applicant change such that in the future the applicant becomes

eligible for a family farm security loan, the applicant may reapply without prejudice.

E. Review of determination of ineligibility. An applicant who believes the commissioner erred in determining the applicant ineligible for a family farm security loan may, within 90 days of the applicant's receipt of notice of ineligibility, request that the application be reconsidered. The applicant may also present in writing any additional facts relevant to the reasons given by the commissioner for the determination of ineligibility. Upon receipt of this request for reconsideration, the commissioner shall, at the next regularly scheduled family farm advisory council meeting, present the application and accompanying materials to the council. The council shall review the application and the commissioner shall follow the recommendations of the council in determining the applicant's eligibility for a family farm security loan.

F. Criteria for granting family farm security loans. Upon a determination that an applicant meets the eligibility criteria of subsection C. above, the commissioner may approve the loan application. In deciding whether a specific family farm security loan shall be approved, the commissioner shall attempt to further the policy of Minn. Laws 1976, ch. 210 [Minn. Stat. §§ 41.51 - 41.61 (1976)] by considering all factors relevant, including but not limited to:

1. The recommendation of the family farm advisory council which shall be based on the criteria contained herein.

2. A determination that the applicant intends to make farming the applicant's principal occupation;

3. The proportion of the proposed loan that will be used for

the acquisition of real property directly relating to the farming enterprise;

4. The extent to which the applicant demonstrates financial need for state assistance to acquire farmland;

5. The likelihood of success of the applicant's proposed farming operation;

6. The economic feasibility of the loan as evidenced by the applicant's present and past financial situation, the projected cash flow of the proposed farming operation, and an analysis of the loan ratios; and

7. The existence of, or provision for, financing for necessary equipment and operating costs.

G. Period for granting family farm security loans. The commissioner upon recommendation of the family farm advisory council, shall on a monthly basis, consider and act upon family farm security loan applications. An application meeting the eligibility requirements of subsection C. above, shall remain eligible for approval and may be acted upon by the commissioner for four months from the date of receipt, unless either the applicant or the lender requests in writing that the application be withdrawn. Each time an eligible application is reviewed by the commissioner and not approved, the commissioner shall notify the applicant and the lender of this fact. Upon the expiration of the four month period, the commissioner shall return the application and notify the applicant and the lender that the application has not been approved. An eligible applicant not receiving a family farm security loan under these circumstances may reapply at any time in the future.

Agr 544 Family Farm Security Loan, Guarantee, Payment Adjustment, Closing.

A. Approval by the commissioner of a family farm security loan application shall result in the following:

1. Family farm loan guarantee. Upon approval of an application for a family farm security loan, the commissioner shall enter into an agreement with the lender providing that in the event of default by the applicant, the State of Minnesota shall pay the lender 90 percent of the sums due and payable under the first real estate mortgage. This loan guarantee shall be void only if the guaranteed loan was obtained by fraud or material misrepresentation of which the original lender or subsequent holder had actual knowledge.

2. Payment adjustment. If the approved family farm security loan has a term of 20 years or less and provides for payments at least annually so the loan is amortized over its term with equal annual payments, and if the applicant requests a payment adjustment, and if sufficient state monies are available, the commissioner shall annually pay to the lender, an amount of money equal to four percent on the principal balance of the family farm security loan, provided that:

a. The lender must bill the commissioner when each payment adjustment is due;

b. Prior to December 15 of each year, the lender must submit to the commissioner a statement of net worth for the applicant and the applicant's dependents and spouse. If the total net worth as determined by generally accepted accounting principles, exceeds $100,000, the applicant shall not be eligible for a payment

adjustment for the next year of the loan, and the commissioner shall notify the applicant and the lender that the applicant is responsible for all interest payments for that year of the loan;

c. The applicant shall reimburse the commissioner within 90 days after the tenth anniversary of the date of the family farm security loan agreement for all sums paid as payment adjustments by the commissioner on the applicant's behalf, and this obligation shall be a lien against the property which shall be subordinate to the first real estate mortgage, provided that:

(1) The applicant may, at least 30 days before the payment adjustment is due, petition the commissioner for a ten year renewal of the payment adjustment. If the applicant has complied with all terms of the loan agreement the commissioner shall grant the renewal; and

(2) If the payment adjustment is renewed for an additional ten years, the applicant shall reimburse the commissioner within 90 days after the 20th anniversary of the date of the family farm security loan agreement for all sums paid as payment adjustments by the commissioner on the applicant's behalf and this obligation shall be a lien against the property which shall be subordinate to the first real estate mortgage.

B. Closing and disbursement of loans. Upon receiving notice from the commissioner that a family farm security loan application has been approved, the lender shall close and disburse the loan in accordance with the terms and conditions upon which the loan and guaranty were approved.

The lender shall cause to be executed a note and all necessary additional instruments,and the lender shall take other actions, consistent with prudent lending practices, required to protect or preserve the interests of the applicant, the lender, and the commissioner. Immediately after a loan is closed, the lender shall furnish the commissioner with a copy of the executed note and loan agreement. The commissioner shall also be entitled to examine on request copies of other security instruments or loan documents, or other records held by the lender or its agents, which relate to the applicant. The lender shall also execute all relevant statements or declarations required for loan transactions by federal or state law or regulations.

Agr 545 Family Farm Security Loans, Defaults.

A. The borrower in a family farm security loan shall be considered to be in default if:

1. The borrower does not pay the principal or interest payment on the date due;

2. The borrower breaches a material obligation in the note, loan agreement, or any instrument securing the loan, and the lender determines that this breach constitutes an adverse change in the borrower's ability to repay the guaranteed loan; or

3. The borrower fails to maintain the farmland in active agricultural production for more than one year, provided that:

a. The borrower who fails to maintain the land in active agricultural production for more than one year, may, within 30 days of the expiration of the one year's time, petition the commissioner for a waiver of default; and

b. The commissioner shall waive the default if the borrower demonstrates to the satisfaction of the commissioner that the land was not utilized because of physical disability or other extenuating circumstances beyond the immediate control of the borrower, and that the land will be back in production within a reasonable time.

B. After a family farm security loan has been in default for 100 days, the lender shall, within 30 days, notify the commissioner of this fact in writing. Such notification by the lender shall be a condition precedent to the lender's right to payment according to the terms of the family farm security loan guarantee.

Agr 546 Transfer Of Family Farm Security Loan Note.

The lender shall notify the commissioner in writing within 30 days after a family farm security loan note is sold or exchanged. The family farm security loan guarantee shall remain in effect if the commissioner is notified pursuant to this section, provided that the purchaser of the family farm security loan note assumes all duties and obligations of the original lender, and agrees to comply with all applicable requirements of Minn. Laws 1976, ch. 210 [Minn. Stat. §§41.51 - 41.61 (1976)] and these rules.

Agr 547 Commissioner's Right To Information.

A. The commissioner may at any time during the term of a family farm security loan, request information and documents from the lender or the applicant, to enable the commissioner to determine that all terms and conditions of the law, rules, and any agreements made pursuant to the law or rules are being complied with.

B. Failure to comply with all reasonable requests for information

by the commissioner pursuant to this rule shall be grounds for terminating participation in the family farm security program, after notice and a hearing pursuant to Minn. Stat. §§ 15.0418 - 15.0426 as amended.

Agr 548-562 Reserved for future use

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE MINNESOTA DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED)
ADOPTION OF RULES OF THE DEPART-)
MENT OF AGRICULTURE GOVERNING) REPORT OF HEARING EXAMINER
THE FAMILY FARM SECURITY PROGRAM)

The above-entitled matter came on for hearing before Hearing Examiner Howard L. Kaibel, Jr. of the Minnesota Office of Hearing Examiners in the Agricultural Research Center Auditorium, University of Minnesota Technical College, Crookston, Minnesota on October 14, 1976 at 7:30 p.m.; in the Lecture Center Building, Room LC 217, Southwest State University in Marshall, Minnesota on October 18, 1976 at 7:30 p.m.; and at the Faribault Area Vocational Technical Institute, Faribault, Minnesota on October 19, 1976 at 7:30 p.m.

Paul Strandberg, Special Assistant Attorney General, appeared as counsel for the Minnesota Department of Agriculture (hereinafter "Department"). Assistant Commissioner, Thomas Kalitowski, and Family Farm Security Administrator Daniel Garry, testified on behalf of the Department. The hearings continued until all persons or representatives of interested persons or organizations desiring to be heard were heard. The record was closed after allowing 20 days for submission of written comments at the end of the day on November 8, 1976.

Pursuant to Minnesota Statutes Section 15.052, subdivision 3 (1975 Supplement), this Report will include Findings of Fact, Conclusions and Recommendations. The Minnesota Department of Agriculture and the Office of Hearing Examiners will make a copy of this Report available for review to any interested person upon request. Copies of this Report will be furnished at a nominal cost.

The Department shall, if it proposes to adopt the rules as originally proposed or amended, submit the complete hearing record to the Chief Hearing Examiner, pursuant to HE 108, no earlier than ten days subsequent to the receipt of this Report.

It shall include the rules as originally proposed, and the rules as proposed for adoption in final form. The submission to the Chief Hearing Examiner shall precede review by the Attorney General. The Chief Hearing Examiner shall complete his review and submit his Report to the Department on the issue of substantial changes in the rules within ten calendar days. The Department will be responsible for filing the rules with the Attorney General.

After due and careful consideration of all evidence, together with all records, files and proceedings, the Hearing Examiner hereby issues and files the following Findings of Fact, Conclusions and Recommendations.

FINDINGS OF FACT

1. That on August 27, 1976, the Department filed the following documents with the Chief Hearing Examiner:

(a) A proposed Order for Hearing;

(b) A proposed Notice of Hearing with the proposed rules attached.

2. That on September 10, 1976, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

3. That on September 17, 1976, the Department filed with the Office of Hearing Examiners the following documents:

(a) The Order for Hearing;

(b) The Notice of Hearing as mailed;

(c) A statement of the number of persons expected to attend and estimated length of hearing;

(d) The Affidavit of Receipt of the Secretary of State's list;

(e) The Affidavit of Mailing;

(f) The Statement of Need for Rules;

(g) The names of personnel representing the Department;

(h) A Statement of Evidence.

The documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing.

4. That the legislature directed the adoption of rules such as those proposed, in Laws of Minnesota, 1976, chapter 210, section 3, subdivision 2, which provides as follows:

> The commissioner shall promulgate rules necessary for the efficient administration of sections 1 to 7; section 8, subdivisions 1 and 2; section 9, subdivisions 1 and 4; and section 13.

5. That in general the provisions of proposed rule 543, with the exceptions hereinafter noted, were not subject to significant criticism and are found to be reasonable and necessary.

6. That proposed rule 543 B 1, which allows lenders to process applications for family farm security loans using their existing loan forms, is desirable because it cuts down on the amount of new paperwork required of lenders, and as testified to by the Department makes participation in the program more attractive to lenders. Testimony was presented requesting that the rules specify that the Department will provide optional forms and other necessary assistance to persons wishing to participate in this program and that this is a reasonable request, particularly in the case of seller-sponsored loans which do not involve lenders. The Department has joined in this suggestion in final written comments (N) and it is specifically found to be a needed and insubstantial clarification.

7. That in general, the procedures for land appraisals set out in proposed rule 543 B 2 are reasonable. The more detailed recommendations for land appraisal procedures proposed by professional appraisers (Comment H) the Agricultural and Rural Development Committee of the Minnesota Bankers Association (Comment Q), would unnecessarily burden the rules with too much detail. Under the proposed rules, every lender has the flexibility to conduct the appraisal in the manner the lender deems appropriate and the commissioner has the right to request any further information he deems necessary, or an additional independent appraisal.

Testimony was presented at the hearings indicating that the income potential of the land should be a part of the appraisal. The inclusion of the income potential as one of the relevant considerations in determining the appraisal value of the land is reasonable

and consistent with the law. It is also found however, that as indicated by the Federal Land Bank in written testimony (Comment D), the establishment of income potential as the sole consideration in determining the land's appraisal value could in some cases be an unreasonable limitation on participation in the program. The Department (Comment N) proposes a reasonable and necessary clarification by adding "and income potential" which is not a substantial change in that it is a direct quotation from the statute which would in any case supercede the rules.

No facts or arguments were introduced to support the need or reasonableness of requiring "per acre" appraisals and elimination of the restriction is accordingly appropriate on final adoption as suggested in final Department comments.

Comments submitted by Mr. Bernard Jahn (R) make a strong case for revising procedures for assessing costs of these appraisals and no evidence was introduced to support the need for or reasonableness of the rule as initially proposed. The revisions suggested by the Department in final comments are thus in accord with the evidence and are insubstantial.

The recommendation of the Minnesota Farm Bureau Federation that subsection (d) be amended to prohibit the commissioner from guaranteeing loans if the income potential of the land is insufficient, is neither necessary nor legal. The statute specifically and exhaustively defines eligibility criteria (Section 5). The proposed rules thus properly do not include the income potential as an eligibility criteria but include income potential as one of the factors to be considered in deciding whether a specific loan application should be approved.

8. That in general, provisions of proposed rule 543 C, 1 through 7 are necessary in that they explain and clarify the eligibility criteria established by the legislature. With regard to the specific criteria developed in these sections, the following is specifically found:

Sub (1) That the requirement that a non-resident loan applicant submit a declaration that he will

become a full-time resident reasonably furthers the intent of the law.

Sub (2) That the proposed rule dealing with the law's requirement that an applicant have sufficient education, training, or experience in agriculture accurately reflects legislative intent by making the likelihood of the applicant's success in farming the basis for judging whether the applicant has sufficient education, training or experience. Although there was considerable testimony recommending that these rules spell out in detail what is meant by "sufficient education, training or experience", no one has attempted to suggest alternative or additional specification although repeatedly requested to do so by the Hearing Examiner. Any attempt to make this rule more specific may have the effect of prejudicing or eliminating worthy applicants.

Sub (3) That no objection has been raised concerning the proposed rule dealing with the requirement that an applicant participate in a farm management program and that the rule as proposed is reasonable.

Sub (4) That the proposed rule dealing with limitations on the net worth of applicants must be modified to be found reasonable. Written testimony presented by the Department (N) and the Federal Land Bank (D), supports a finding that the use of the term "generally accepted accounting principles" is reasonable and adequate and that it would be unnecessary and unduly burdensome to detail the specific acceptable methods to be used in determining net worth, as was suggested in written testimony by the Minnesota Bankers Association (Q). The proposed rule gives lenders the necessary flexibility to utilize whichever acceptable method

of determining net worth they feel is appropriate. The public reaction, on the other hand, at the hearings and in written comments (H and P) shows that the term is not understood. Therefore, the impact of the proposed rule on the persons most affected, particularly in seller-sponsored loan situations where there is no lender, would be at best confusion and inconvenience and at worst misleading (as, for example, a potential applicant failing to file). On final adoption, the proposed rule needs to be modified in the same fashion as the Department proposed with applications, to give notice at this point to readers of available assistance and of optional, sample, non-legal forms for persons unfamiliar with such principles.

Sub (5) That the proposed rule concerning the requirement that applicants demonstrate a need for the loan reasonably reflects legislative intent. Oral testimony was presented at the hearings however, concerning the language in this rule that allows the commissioner to consider the financial situation of the applicant's immediate family in determining whether the applicant needs the loan. Although testimony by the Department adequately supports a finding that this consideration is relevant and reasonable, it is further found that the rule should specify that the important consideration is the applicant's ability to obtain assistance from the family and not merely the family's ability to provide such assistance. The Department concurred with this finding in its final written comments, suggesting clarifying language which is a necessary, reasonable and insubstantial change.

Sub (6) and (7) That no objections were raised to these proposed subsections of rule 543 C dealing with the requirement that an applicant detail the agricultural purposes for which the land will be used and the requirement that an applicant be credit worthy, and that these rules reasonably further the legislative intent.

9. That proposed subsection 543 D establishes a reasonable procedure for the commissioner's determination that an applicant is ineligible for a family farm security loan and that no objections were raised concerning this procedure.

10. That proposed subsection 543 E 1, which provides an applicant with an opportunity to have the commissioner's determination of ineligibility reviewed by the family farm advisory council, establishes an equitable and reasonable review procedure that is a necessary safeguard against possible mistakes or prejudice.

11. That the criteria for determining which family farm security loan applications should be approved, established in proposed subsection 543 F, are necessary because they provide the advisory council and the commissioner with sufficient direction and standards for approving loans, while at the same time, giving the flexibility required to equitably evaluate diverse applicants. Specifically, the record indicates that except for criterion Number 2 dealing with applicants' principal occupation as discussed below, these criteria provide the council and the commissioner with a reasonable framework for approving family farm security loan applications. Public objection to criterion Number 2 was due to confusion and not substance, upon further Department explanation. The "a determination that" language led persons to conclude that this is a pre-requisite to application and that an outside job would make an applicant ineligible, even when the "start up" income is supplementary, if the majority of income came from non-farm sources. Substituting "degree to which" language would emphasize that, as the Department explained, this is merely a variable factor to be weighed with the other circumstances.

12. That proposed subsection 543 G is a reasonable and

equitable approach to establishing procedures for reviewing and approving family farm security loan applications. The rule is necessary to provide applicants with a fair opportunity to be considered for a loan while giving the commissioner a specific, administratively manageable time frame within which to approve loan applications. This rule is further reasonable in that it guarantees that before an otherwise eligible applicant is denied a loan, the application will be considered at least three times. Testimony and written comments (O and H) objecting to the length of the four-month period indicate a need to supply on final adoption explicit notice in this subsection that applicants and lenders have the option of specifying a shorter period as explained at the hearings.

13. That, except as noted hereinafter, proposed rule 544 drew no significant objections and is found to be needed and reasonable. With regard to subsection A 2 relating to payment adjustments, written comments (D) and testimony at the hearings indicated that there is considerable confusion as a result of the language in the proposed rule that allows the commissioner to make payment adjustments "if sufficient state monies are available". Since the commissioner cannot enter into payment adjustment agreements if appropriated money is not available when the agreement is entered into, this language in the rule is an unnecessary source of confusion. Written testimony by the Department suggesting that it be deleted and proposing that subsection A 2 b specify that the annual net worth statement be a statement of current net worth is reasonable. Although there was testimony at the hearings questioning the requirement that a current net worth statement be submitted by December 15 of every year rather than at a later date, oral testimony presented by the Department indicated that it is logical to require a net worth statement at the end of the calendar year and that this requirement will not cause unnecessary problems for loan participants.

Subsection A 2 c which deals with the applicant's duty to reimburse the commissioner for payment adjustments is consistent with the law. Although there was oral testimony presented at the hearings indicating that this rule's requirement that interest adjustments be repaid in a lump sum could create a hardship, this

feature of the rule appears to accurately reflect the intent of the legislature. At the time the repayment of the payment adjustment is due, an applicant would be in a position to refinance this obligation through conventional lending sources.

14. That proposed rule 545 dealing with loan defaults was the subject of considerable concern and confusion, requiring modification as hereinafter discussed. With those changes, it is specifically found to be necessary and reasonable.

The Hearing Examiner concurs with written testimony of the Department which suggested that much of this confusion and many potential problems could be alleviated if this rule specified, as provided in the law, that the lender and the applicant can agree to take steps reasonable to assure the fulfillment of the loan obligation. Because this change merely adds statutory language, it is clearly insubstantial. Written testimony by the Federal Land Bank (D) further suggested that the rules spell out what is meant by these "reasonable steps" as this phrase appears in the law, but any attempt to define or restrict the actions of the lender and the applicant in this situation would involve a substantial change requiring a new hearing in that it would arguably limit the parties in a manner not noticed in the initially proposed rules. The Federal Land Bank similarly urged that the rule should clarify the respective rights and responsibilities of the seller and the lender in the event of a partial default where the loan is financed jointly by the seller and a lender. Any such specification would also clearly involve a substantial change in that the rules as proposed left these rights and responsibilities to be worked out by the seller and the lender at the inception of the loan.

The public repeatedly urged at the hearings that the rules should spell out in more detail what is meant by the phrase "physical disability or other extenuating circumstances" in proposed rule 545, which deals with waiver of default by the commissioner. While the Hearing Examiner concurs with the Department's final written comment that, "the language in this rule as proposed accurately reflects the intent of the legislature by giving the commissioner the authority to determine whether the specific facts of a case indicate that a default

should be waived"; nonetheless, to be found reasonable, the rule must be modified to clarify and give notice of the right of review of the exercise of that authority under the Administrative Procedures Act. The right to review may turn on whether the determination is a "contested case" which is "required by law" to be determined after an agency hearing. Explicit modification of these rules (which will have the force of law) to require a hearing upon proper application in the event of adverse evaluation would ensure such due process. Because proposed rule 547 specifies such right of review in the case of information requests, omission of specification here might be interpreted as an intentional denial. Such a modification would not constitute a substantial change in that it would merely clarify the legal right to review.

The Department did not sufficiently demonstrate a need for subsection B which imposes an additional notice requirement on lenders in the event of default. Furthermore, making this notice a condition precedent to the lender's right to payment under the loan guarantee is contrary to the specific language in the law that spells out the only occurrences that make the loan guarantee void.

15. That proposed rule 546 is necessary and reasonable in that it makes it clear that any purchaser of a family farm security loan note must assume all the duties and obligations of the original lender. There have been no objections raised concerning this provision.

16. That it is important that the commissioner have a right to obtain all necessary information from the lender or the applicant, and that therefore, proposed rule 547 A is reasonable and necessary. However, the effect of proposed subsection 547 B, which makes a failure to comply with requests for information grounds for terminating participation in the program, is unreasonable because it could have the effect of penalizing the lender (by eliminating the loan guarantee) for the borrower's failure to provide information. It is further specifically found that an affirmative presentation of facts was not made by the Department documenting the necessity for this provision.

17. That although there was testimony at the hearings suggesting that the rules include either an acreage or dollar limitation

for individual loan applications, oral testimony presented by the Department at the hearings persuasively indicated that given the diversity of Minnesota agriculture, it would not be possible to insure that such limitations would not create a hardship for some applicants. It is further found that under the proposed rules, the commissioner has adequate authority and flexibility to avoid the problems raised by persons advocating dollar or acreage limitations.

CONCLUSIONS

1. That the Minnesota Department of Agriculture duly acquired and now has jurisdiction over the within proceeding.

2. That all relevant legal and procedural requirements of statute and rule have been properly complied with.

3. That the rules hereinafter recommended for adoption will properly implement the legislative mandate of chapter 210, Minnesota laws of 1976.

4. That a clear and compelling need has been demonstrated for the adoption of the proposed rules hereinafter recommended for adoption.

5. That individually and taken together, the rules hereinafter recommended for adoption are a reasonable implementation of the legislature's delegated responsibility.

RECOMMENDATION

IT IS HEREBY RECOMMENDED: That the proposed rules of the Minnesota Department of Agriculture be promulgated, approved and adopted after attention to possible modifications suggested by the findings.

Dated: December 10, 1976.

HOWARD L. KAIBEL, JR.
Hearing Examiner

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION)
OF RULES OF THE DEPARTMENT OF AGRICULTURE) ORDER ADOPTING REPORT
GOVERNING THE FAMILY FARM SECURITY PROGRAM) OF HEARING EXAMINER

The above-entitled matter came on for hearing before Hearing Examiner Howard L. Kaibel, Jr. of the Minnesota Office of Hearing Examiners in the Agricultural Research Center Auditorium, University of Minnesota Technical College, Crookston, Minnesota on October 14, 1976 at 7:30 p.m.; in the Lecture Center Building, Room LC 217, Southwest State University in Marshall, Minnesota on October 18, 1976 at 7:30 p.m.; and at the Faribault Area Vocational Technical Institute, Faribault, Minnesota on October 19, 1976 at 7:30 p.m..

The Report of Hearing Examiner in the above-entitled matter was issued by Howard L. Kaibel, Jr. on December 10, 1976, recommending that the proposed rules be promulgated, approved, and adopted after attention to possible modifications suggested by the Findings of Fact. Having reviewed these Findings and having concurred with the need for and reasonableness of the insubstantial changes recommended by the Hearing Examiner;

NOW, THEREFORE, IT IS ORDERED: That the aforementioned Report of Hearing Examiner and the recommended changes contained therein, are adopted this 23rd Day of December, 1976.

MINNESOTA DEPARTMENT OF AGRICULTURE

Jon Wefald

Jon Wefald, Commissioner

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION)
OF RULES OF THE DEPARTMENT OF AGRICULTURE) ORDER ADOPTING RULES
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After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards or criteria, and having confirmed the need for the above captioned rules and the reasonableness thereof.

NOW, THEREFORE, IT IS ORDERED that these rules identified as Rules of the Department of Agriculture Governing the Family Farm Security Program are adopted this 23rd day of December, 1976, pursuant to authority vested in me by Minn. Stat. § 15.0412 (1975 Supplement) and Minn. Laws 1976, ch. 210, section 3, subdivision 2 [Minn. Stat. § 41.53 (1976)].

MINNESOTA DEPARTMENT OF AGRICULTURE

Jon Wefald

Jon Wefald, Commissioner

STATEMENT OF COMPLIANCE WITH

MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General Paul Strandberg do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed. Any exceptions are noted below.

Paul Strandberg

Special Assistant Attorney General

Dated: 12-22-76

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE MINNESOTA DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING THE FAMILY FARM SECURITY PROGRAM

REPORT OF THE CHIEF HEARING EXAMINER

WHEREAS, hearings were held on October 14, 1976, October 18, 1976, and October 19, 1976, before Howard L. Kaibel, Jr., a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. §15.0412, Subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. §15.052, Subd. 3, was issued to the Department of Agriculture on December 10, 1976; and

WHEREAS, the Department of Agriculture has now determined to adopt rules pursuant to Minn. Stat. §15.0412, Subd. 4; and

WHEREAS, the Department of Agriculture has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. §15.052, Subd. 4, and Rule HE 107; and

WHEREAS, the Chief Hearing Examiner finds that there are no substantial changes in said rules as originally proposed.

NOW, THEREFORE, upon receipt of this Report, the Department of Agriculture has the responsibility of submitting the complete hearing record and the rules as adopted by the Department to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. §15.0412, Subd. 4.

Dated this 23rd day
of December, 1976.

Duane R. Harves
DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION)
OF RULES OF THE DEPARTMENT OF AGRICULTURE) ORDER ADOPTING REPORT
GOVERNING THE FAMILY FARM SECURITY PROGRAM) OF HEARING EXAMINER

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The Report of Hearing Examiner in the above-entitled matter was issued by Howard L. Kaibel, Jr. on December 10, 1976, recommending that the proposed rules be promulgated, approved, and adopted after attention to possible modifications suggested by the Findings of Fact. Having reviewed these Findings and having concurred with the need for and reasonableness of the insubstantial changes recommended by the Hearing Examiner;

NOW, THEREFORE, IT IS ORDERED: That the aforementioned Report of Hearing Examiner and the recommended changes contained therein, are adopted this 23rd Day of December, 1976.

MINNESOTA DEPARTMENT OF AGRICULTURE

Jon Wefald

Jon Wefald, Commissioner

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

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MINNESOTA DEPARTMENT OF AGRICULTURE

Jon Wefald

Jon Wefald, Commissioner

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE MINNESOTA DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING THE FAMILY FARM SECURITY PROGRAM

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WHEREAS, the Chief Hearing Examiner finds that there are no substantial changes in said rules as originally proposed.

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Dated this 23rd day
of December, 1976.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner