

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 102

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 5/13/81
DATE FOR REVIEW ~~5/20~~ 5/22
DATE DUE 5/27

Adopted w/a hearing _____
Adopted w/o a hearing X
Temporary rule _____

Approved 5/21 Disapproved _____ Returned to Agency 5/21

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State 5/21

✓ Rule as Adopted

✓ Rule as Proposed see SR.

✓ Order Adopting 4.22.81

✓ Notice of Intent to Solicit Outside Opinion 9.22.80

✓ Order for rulemaking
— Date of Hearing

✓ Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

✓ Affidavit of Mailing Notice of rulemaking
2.12.81 At least 30 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
2.16.81 At least 30/~~20~~ days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

N/A Chief Hearing Examiner's Report(s)
— Approving H.E.'s Report
— Approving agency action

___ Agency's Findings of Fact not submitted.

N/A LCRAR Report or agency Affidavit

✓ Certificate of Board's Resolution Adopting Rules

N/A Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

✓ Record (includes ~~transcript or tape~~, ~~exhibits~~, comments received by agency, ~~requests for a hearing~~, and ~~other relevant materials~~)

✓ Certificate of Compliance w/Rulemaking Procedures

N/A Affidavit of Mailing Notice of Submission to Attorney General

N/A Notice of Submission to the Attorney General

no rqsts - see transmittal memo

ADV. 1000 Rev. 1 79
SF-00005-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : M. Jean Laubach
Executive Director
Small Business Finance Agency

DATE: 5/21/81

FROM : Jerry S. Anderson
Special Assistant
Attorney General

PHONE: 6-4692

SUBJECT: In the Matter of the Proposed Rules of the Minnesota Small Business Finance Agency Relating to the General Operating Procedures of the Agency and the Making of Pollution Control Loans.

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

If you have any questions in this regard, please contact me.

JSA/gy

Enc.

cc: Duane Harves
Susan Robertson

STATE OF MINNESOTA

SMALL BUSINESS FINANCE AGENCY

The Matter of the Proposed Rules of the Minnesota Small Business Finance Agency Relating to the General Operating Procedures of the Agency and the Making of Pollution Control Loans.

ORDER ADOPTING RULES

Notice of the Board's intent to adopt the above-entitled rules without a public hearing was published in the State Register on February 16, 1981, and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes section 15.0412, subdivision 4 on February 12, 1981. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than seven written requests for a public hearing within the 30-day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED that these rules identified as General Operating Procedures of the Agency and the Making of Pollution Control Loans are adopted this 22nd day of April, 1981 pursuant to authority vested in the Board by Minnesota Statutes section 362.53, subd. 4.

STATE OF MINNESOTA

M. Jean Laubach

M. Jean Laubach, Executive Director
Small Business Finance Agency

AG copy.

Rules as Adopted

Chapter One: General Provisions. 4 MCAR §§ 14.001-14.009.

4 MCAR § 14.001 Scope.

These rules are made pursuant to Minn. Stat. § 362.53, subd. 4 (1980) to implement and make specific the provisions of the Act and relate to the providing of Pollution Control Loans.

4 MCAR § 14.002 Definitions.

A. The terms defined in Minn. Stat. § 362.50 (1980) have the same meaning when used in these rules as ascribed to them in the Act.

B. "Act" means Laws 1980, ch. 547, as now in effect and as amended from time to time.

C. "Commissioner" means the Commissioner of Economic Development.

D. "Executive Director" means the executive director of the Agency designated by the Commissioner.

E. "Members" means the Commissioner and those persons appointed to the Agency pursuant to Minn. Stat. § 362.51, subd. 8 (1980).

4 MCAR § 14.003 Agency Meetings.

A. Regular meetings of the Agency shall be held on the third Wednesday of each month at 3:00 PM at the offices of the Agency in St. Paul, Minnesota, unless another place of meeting is designated by resolution. In the event such date shall fall on a legal holiday, the regular meeting shall be held the next succeeding business day.

B. Special meetings of the Agency may be called upon reasonable notice to all Members by the Chairperson or by a majority of the existing Members of the Agency, for the purpose of transacting any business designated in the notice, and shall be held at the business offices of the Agency in St. Paul, Minnesota, unless another place of meeting is designated by resolution. At any such special meeting, no business shall be considered other than as designated in the notice, provided, however, that if all of the Members of the Agency are present at such special meeting, this limitation shall not apply.

4 MCAR 14.004 Public appearances at meetings of the members.

The following procedures shall govern public appearances at meetings of the Members:

A. With respect to regular meetings, the Executive Director shall complete the agenda for meetings of the Members, not less than five nor more than seven days prior to the date of any such meeting.

B. With respect to regular meetings, any person who desires to appear and address the Members shall make a written request to the Executive Director, with a copy to the Chairperson, at least ten days prior to the date of the meeting, setting forth the nature of the matter about which such person wishes to appear.

C. With respect to regular or special meetings, any person who desires to appear and address the Members with respect to any matter enumerated on the agenda shall make a written request to the Executive Director, with a copy to the Chairperson, at least twenty-four hours before the meeting.

D. Any Member may at any time request that a person be permitted to appear and address the Members at any regular or special meeting.

E. All such requests shall be placed on the agenda for review by the Members at the meeting. A majority vote of the Members present shall be required in order to grant any such request to address the Members.

4 MCAR §§ 14.005 - 14.009 Reserved for future use.

Chapter Two: Pollution Control Loans. 4 MCAR §§ 14.010 - 14.019.

4 MCAR § 14.010 Applications for Pollution Control Loans.

The Executive Director shall prepare uniform loan application forms for use by the public setting forth the information necessary for the determination of probable eligibility for a Pollution Control Loan guaranteed or to be guaranteed as a full faith and credit obligation of the United States, by the United States Small Business Administration or by another agency or instrumentality of the United States to which the same or similar power may be granted. All forms shall be submitted to the Members for their review at a regular or special meeting and shall become effective only upon the approving vote of the Members.

4 MCAR § 14.011 Acceptance of Pollution Control Loan applications.

In determining whether to accept applications for Pollution Control Loans, the Members shall examine the following facts:

A. The probable eligibility of the Pollution Control loan for a federal guarantee.

B. The nature of the pollution control facilities to be financed with the loan.

C. The location of the proposed facilities.

D. The availability of bonding authority under the Act.

E. The extent to which the loan will assist and encourage the establishment, maintenance and growth of small business in Minnesota and reduce to a manageable level the cost of the control of pollution and disposal of waste resulting from the operations of small business.

4 MCAR § 14.012 Authorization of Pollution Control Loans.

No Pollution Control Loan shall be made until the Members of the Agency have received and reviewed the recommendation of the Executive Director relating to the loan, and until the Members have adopted a resolution approving the loan, which resolution shall include, at a minimum, (1) a determination that the loan has been approved for a federal guarantee, as a full faith and credit obligation of the United States, by the United States Small Business Administration or by another agency or instrumentality of the United States to which the same or similar power may be granted, and (2) a

statement that the obligation of the Agency to make such loans is contingent on the ability of the Agency to sell its bonds or bond anticipation notes, on terms which the Members of the Agency, in their sole discretion, deem acceptable.

4 MCAR §§ 14.013 - 14.019 Reserved for future use.

APPROVED AS TO FORM AND LEGALITY

5-21 19 81

WARREN SPANNAUS, ATTORNEY GENERAL

BY Jerry Anderson

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAY 21 1981
Joan Anderson Growe
Secretary of State
11:15AM

using others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 per year or five hours per month lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

January 29, 1981

Joseph N. Alexander, Commissioner
Department of Natural Resources

Amendment as Proposed

6 MCAR § 1.2220 Lower St. Croix water surface use.

D. Restricted speed zones.

2. No motorboat shall be operated in excess of a slow-no-wake speed in the following areas:

f. In that area known as Anderson Bay, located approximately at mile 20.0.

Small Business Finance Agency

Proposed Rules Relating to the General Operating Procedures of the Agency and the Making of Pollution Control Loans

Notice of Intent to Adopt Rules without A Public Hearing

Notice is hereby given that the Small Business Finance Agency proposes to adopt the above-entitled rules without a public hearing. The agency has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. § 15.0412, subd. 4h (1980).

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. § 15.0412, subds. 4-4f. If a public hearing is requested, identification of the particular objection, the suggested modifications to the proposed language, and the reasons or data relied on to support the suggested modifications is desired.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to:

M. Jean Laubach
Executive Director
Small Business Finance Agency
480 Cedar Street
St. Paul, Minnesota 55101
(612) 296-6616

Authority for the adoption of these rules is contained in Minn. Stat. § 362.53, subd. 4 (1980). Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules, and that identifies the data and information relied upon to support the proposed rules, has been prepared and is available from Ms. Laubach upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to a designee of the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of these rules for approval, or who wish to receive a copy of the final rules as adopted, should submit a written statement of such request to Ms. Laubach.

A copy of the proposed rules is attached to this Notice. Additional copies may be obtained by contacting Ms. Laubach.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1980) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250.00, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250.00, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 40 State Office Building, Saint Paul, Minnesota 55155, telephone (612) 296-5615.

Kent E. Ecklund
Vice Chairman
Small Business Finance Agency

Rules as Proposed

Chapter One: General Provisions (4 MCAR §§ 14.001-14.009)

4 MCAR § 14.001 Scope. These rules are made pursuant to Minn. Stat. § 362.53, subd. 4 (1980) to implement and make specific the provisions of the Act and relate to the providing of Pollution Control Loans.

4 MCAR § 14.002 Definitions.

A. The terms defined in Minn. Stat. § 362.50 (1980) have the same meaning when used in these rules as ascribed to them in the Act.

B. "Act" means Laws of 1980, ch. 547, as now in effect and as amended from time to time.

C. "Commissioner" means the Commissioner of Economic Development.

D. "Executive director" means the executive director of the agency designated by the commissioner.

E. "Members" means the commissioner and those persons appointed to the agency pursuant to Minn. Stat. § 362.51, subd. 8 (1980).

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A. Regular meetings of the agency shall be held on the third Wednesday of each month at 3:00 p.m. at the offices of the agency in St. Paul, Minnesota, unless another place of meeting is designated by resolution. In the event such date shall fall on a legal holiday, the regular meeting shall be held the next succeeding business day.

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C. With respect to regular or special meetings, any person who desires to appear and address the members with respect to any matter enumerated on the agenda shall make a written request to the executive director, with a copy to the chairperson, at least twenty-four hours before the meeting.

D. Any member may at any time request that a person be permitted to appear and address the members at any regular or special meeting.

E. All such requests shall be placed on the agenda for review by the members at the meeting. A majority vote of the members present shall be required in order to grant any such request to address the members.

4 MCAR §§ 14.005-14.009 [Reserved for future use.]

Chapter Two: Pollution Control Loans (4 MCAR §§ 14.010-14.019)

4 MCAR § 14.010 Applications for Pollution Control Loans.

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A. The probable eligibility of the Pollution Control Loan for a federal guarantee.

B. The nature of the pollution control facilities to be financed with the loan.

C. The location of the proposed facilities.

D. The availability of bonding authority under the Act.

E. The extent to which the loan will assist and encourage the establishment, maintenance and growth of small business in Minnesota and reduce to a manageable level the cost of the control of pollution and disposal of waste resulting from the operations of small business.

4 MCAR § 14.012 Authorization of Pollution Control Loans.

No Pollution Control Loan shall be made until the members of the agency have received and reviewed the recommendation of the executive director relating to the loan, and until the members have adopted a resolution approving the loan, which resolution shall include, at a minimum, (1) a determination that the loan has been approved for a federal guarantee, as a full faith and credit obligation of the United States, by the United States Small Business Administration or by another agency or instrumentality of the United States to which the same or similar power may be granted, and (2) a statement that the obligation of the agency to make such loans is contingent on the ability of the Agency to sell its bonds or bond anticipation notes, on terms which the members of the agency, in their sole discretion, deem acceptable.

4 MCAR §§ 14.013-14.019 [Reserved for future use.]

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

MINNESOTA SMALL BUSINESS FINANCE AGENCY

DEPARTMENT OF ECONOMIC DEVELOPMENT

Notice of Intent to Solicit Outside Opinion Concerning Proposed Rules Relating to the Minnesota Small Business Finance Agency.

Notice is hereby given pursuant to Minn. Stat. § 15.0412, subd. 6 (1978) that the Minnesota Small Business Finance Agency is commencing the process of drafting rules governing the Minnesota Small Business Finance Agency created by Minn. Laws 1980, Chapter 547.

The proposed rules are authorized by the language of Minn. Laws 1980, Chapter 547, Section 4, subdivision 4. Information and opinions regarding the following matter are solicited from sources outside the agency:

1. Criteria, conditions and guidelines for the acceptance or rejection of applications to the Agency.

2. Application review and priorities.

Comments should be addressed to Minnesota Small Business Finance Agency, Department of Economic Development, 480 Cedar Street, St. Paul, Minn. 55101. (Attention: M. Jean Laubach, Executive Director). Any comments received by the Small Business Finance Agency shall become a part of the record of proceeding leading to the adoption of permanent rules.

The agency invites interested persons or groups to provide information, comments, opinions and advice on the subject as an information meeting to be held at the State Capitol Building in St. Paul, MN, Room 112, commencing at 7:00 p.m., on October 9, 1980. All written comments must be received by October 22, 1980.

Please be advised that a lobbyist must register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbist is defined by Minn. Stat. § 10A.01, as any individual who is:

A. Engaged for pay or other consideration, or authorized by another individual or association to spend money, and who spends more than five hours in any month, or more than $250, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials, or who

B. Spends more than $250, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by commmuicating or urging others to communicate with public officials.

A lobbyist does not include any:

A. Public official or employee of the state or any of its political subdivisions or public bodies acting in his official capacity;

B. Party or his representative appearing in a proceeding before a state board, commission or agency of the executive branch unless the board, commission or agency is taking administrative action;

C. Individual while engaged in selling goods or services to be paid for by the public funds;

D. News media or their employees or agents while engaged in the publishing or broadcasting of news items, editorial comments or paid advertisements which directly or indirectly urge official action;

E. Paid expert witness whose testimony is requested by the body before which he is appearing but only to the extent of preparing or delivering testimony; or

F. Stockholder of a family farm corporation as defined in Minn. Stat. 50024, subd. 1, who does not spend over $250, excluding his own travel expenses in any year in communication with public officials. Questions should be addressed to the State Ethical Practices Board, Room 41, State Office Building, Wabasha Street, Saint Paul, Minnesota 55155, telephone: (612) 296-5615.

9-9-1980
Date

Kent E. Eklund
Vice Chairman
Small Business Finance Agency

the minnesota project

A CENTER FOR PUBLIC POLICY STUDY
AND COMMUNITY DEVELOPMENT
618 EAST 22ND STREET • MINNEAPOLIS, MN 55404
(612) 870-4700

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October 21, 1980

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Ms. Jean Laubach
Assistant Commissioner
Bureau of Capital Investment
Minnesota Department of Economic Development
480 Cedar Street
St. Paul, Minnesota 55101

Re: Proposed Rules for the Administration of the Small Business Finance Agency

Dear Jean:

This letter is submitted in response to your Notice of Intent to Solicit Outside Opinion published in the State Register on September 22. We appreciate very much your providing this opportunity to comment on the proposed rules. By giving us a copy of your October 2 draft, you have made our process that much easier.

We at the Minnesota Project advocated the creation of a small business finance agency before the Legislature in 1980. I testified on behalf of the Project in support of H.F. 2045 before both the Senate and House committees.

In our work with small communities around the state, we have become convinced that small businesses constitute the prime building block for our state's economy. They provide the bulk of the new jobs created in Minnesota, and they contribute substantially to our state's tax base. Despite these contributions to Minnesota's economy, however, small businesses often encounter severe difficulties in meeting their capital needs. Because they are often new, these businesses do not have the profitability track record required by traditional private lenders.

In a period of "tight money," private lenders understandably concentrate their resources in helping their most established and secure credit customers. However, in order for Minnesota's cadre of small businesses to survive, we are convinced that government must participate with the private sector in insuring the availability of affordable investment capital.

All of this is not to suggest that small businesses are "sure bets" for lenders. As we both know, the failure rate for small businesses is high. Nonetheless, we have become convinced that many small businesses fail not because of poor management or bad ideas, but simply because of a shortage of investment capital. To the extent that the public and private sectors can work cooperatively to remedy this problem, so much the better.

The preceding paragraphs represent our view of the role the Minnesota Small Business Finance Agency should play in providing investment capital. These were the views we expressed to the legislative committees, and we believe they constitute the Legislature's rationale for the passage of Chapter 547. In light of the premises stated in these paragraphs, we make the following specific comments in regard to your proposed rules.

Lending priorities. In your published Notice of Intent to Solicit Outside Opinion, you indicated that you were seeking comments regarding "application review and priorities." In analyzing the draft rules, we are unable to find any reference to loan priorities. We agree with your Notice that priorities should be included. The public has a right to know what types of loans the agency will consider most important.

We believe that Chapter 547 suggests some basic priorities. Clearly, the Legislature intended that pollution control equipment loans be a priority. In addition, by virtue of Section 3, Subdivision 5, the Legislature indicated its intention that "eligible small businesses" (i.e. those with 20 or fewer employees or less than $1 million on net revenues) receive priority. We urge that these priorities be clearly stated in your rules.

Implicit within the whole concept of the legislation is the idea that loans from your funds should be made to companies that do not have access to traditional sources of affordable capital. In this category would be companies that are creditworthy but simply can't afford the cost of the credit, have been denied credit simply because they are minority-owned, are located in "credit short" or "undesirable" areas, or otherwise fail to meet a private lender's standards. We believe that it would be very useful to both the agency and prospective applicants to have these priorities stated explicitly in the rules.

Eligibility standards. The draft rules distinguish three separate eligibility factors: eligible applicants, eligible costs, and eligible projects. It seems to us that these are the three essential elements for determining eligibility. For purposes of our discussion, we will treat each of these three individually.

Your definition of "eligible applicants" tracks very closely with the statutory definition. We only wish to make two minor points. First of all, Rule D(1) references the federal code "as may be amended." The statute, on the other hand, references those sections as they are "in effect March 1, 1980." Under rules of statutory construction in Minnesota, and in reference to the constitutional doctrine of delegation of powers, I do not believe that you can constitutionally give automatic effect to prospective federal law amendments. This same issue emerges in your definition of "pollution control loan" under C(6).

Secondly, your definition of "eligible small business" in D(2) is different from the definition contained in Section 1, Subdivision 5 of Chapter 547. I do not know whether this change was intended, but the effect of the change is substantial, and I do not believe it will be legal for you to alter the statutory definition in your rules.

Your proposed Rule D(3) defines eligible costs. This list appears adequate, although you may want to further define exactly what you mean by some of these terms. We are especially interested in more precise definitions for the following: "(10) Minnesota Small Business Finance Agency fee, (11) printing costs, and (12) contingency costs."

Your Rule D(4) dealing with "eligible projects" is perhaps the single most important provision in your rules. Under clause (a) of that rule, you say that the agency "shall consider" funding projects which are reasonably designed to result in the control of pollution and "expansion of business." The concept of business expansion is not dealt with in the statute nor elsewhere in your rules. In our opinion, business expansion should not be the only eligible activity. It may well be that small businesses need capital investment for the remodeling of an existing building or the replacement of existing machinery. These items may technically not result in "expansion" but are nonetheless critical to the business and fall within statutory eligibility.

Under clause (b), you note that for a project to be eligible the agency shall determine "that the project is reasonably designed to result in an acceptable funding plan." We believe that more definition is needed on the concept of "an acceptable funding plan." Does this mean that the funding plan is totally risk-free? That the loan is totally secured by real and/or personal property? That the loan is one that a "reasonably prudent person" would make? We believe that more definition is clearly needed.

Funding application content. We have several concerns about the application itself. As I mentioned to you at our recent meeting, one of our hopes was that the application process not be so complicated as to discourage potential applicants. Your listing of the content for the application is straightforward, and we therefore do not anticipate a problem of over-complexity. However, we do have a few suggestions.

You might want to be more specific as to what you mean by "ownership of company." In proposed Rule C(4), you define the concept of "owner." I did not find the term "owner" used in the rules, however, and perhaps what you were getting at in Rule C was a definition of "ownership."

We believe that several other terms in proposed Rule F may need further clarification. These terms, preceded by their rule numbers, include the following:

F(1)(d)(3) - "Sources and uses of funds"

F(1)(e) - "Proforma cash flow"

F(1)(g)(4) - "Other miscellaneous item"

Business longevity. We are very troubled by your requirement in F(1)(1) that an applicant have been in business for five years and have a history of

"profitable operations" for any three of the last five years. Our concerns with this provision are several. First of all, we do not understand what you mean by "profitable operation." It seems to us that it would be useful to define this more carefully.

Secondly, the five-year requirement may unintentially exclude otherwise qualified applicants. As you undoubtedly know, businesses change names and structures often. A business owner, who may have been in the field for many years and have developed substantial skills and expertise, may have begun his present "business concern" within the last five years. His personal work record may be exemplary, his associates may be highly skilled with demonstrable creditworthiness in their own right, but their current "business concern" may not meet your five-year requirement. In other words, we do not believe that having an arbitrary longevity requirement accomplishes any useful purpose.

Recent studies by the Business Administration Colleges at the University of Minnesota and St. Cloud State University highlight the "newness" of most Minnesota small businesses. Over one-third of the businesses studied in the St. Cloud study, for example, were created within the preceding six years. And as the authors of this report point out, the report only studied established businesses; if newly formed businesses - including those whose principals had tracks records - were included, the percentage would be much higher.

By urging you to drop the five-year requirement, we are not urging that uncreditworthy businesses be given aid under your program. We are simply arguing that you are needlessly excluding a broad range of businesses by establishing this arbitrary prerequisite.

Miscellaneous comments. Let me make several closing remarks. The following points are by and large not substantive, but they may prove helpful as you prepare your final draft of proposed rules.

You no doubt will be making style and format changes in the proposed rules. You mention that you have been working with the Revisor of Statutes in this regard, and I am sure that this office will be helpful.

Minnesota Statutes, Section 15.0412, Subdivision 1, limits the ability to duplicate in rule what is contained in statute. The philosophy behind this provision was to reduce needless duplication between rules and statutes. You might want to review this statutory provision in light of proposed Rules C(5), C(6), and D(2). Also, I do not see that proposed Rules A and B contribute substantive new material (generally, they seem only to cross-reference to other sections of the rules).

Finally, it seems to me that there are other sections of Chapter 547 that may need clarification of interpretation by your rules. You and I talked about the ambiguous provision in Section 3, Subdivision 3, relating to involvement of private financial institutions. There may be other provisions in the 1980 legislation which are also in need of attention in your rules.

* * * * *

Thank you again for the opportunity to comment on your rough draft of proposed rules. In this letter I have tried to suggest areas where additional rules are needed, where some of the proposed rules may not be needed, and where additional clarification might be helpful. If there is any way that we can be of additional assistance - perhaps by providing draft language - please let me know.

Sincerely,

Tom Triplett

Thomas J. Triplett

TJT/jmt

The use of consecutive sentences in any other case constitutes a departure from the guidelines and requires written reasons pursuant to Minn. Stat. § 244.10, subd. 2 and section E of these guidelines.

For persons given consecutive sentences, the sentence durations for each separate offense sentenced consecutively shall be aggregated into a single presumptive sentence. The presumptive duration for offenses sentenced consecutively is determined by locating the Sentencing Guidelines Grid cell defined by the most severe offense and the offender's criminal history score and by adding to the duration shown therein the duration indicated for every other offense sentenced consecutively at their respective levels of severity but at the zero criminal history column on the Grid. The purpose of this procedure is to count an individual's criminal history score only one time in the computation of consecutive sentence durations.

For persons who, while on probation~~,~~ parole~~,~~ or incarcerated ~~or supervised release,~~ pursuant to an offense committed on or before April 30, 1980, commit a new offense for which a consecutive sentence is imposed, service of the consecutive sentence for the current conviction shall commence upon the completion of any incarceration arising ~~out~~ from ~~of~~ the prior sentence.

G. Convictions for Attempts or Conspiracies: For persons convicted of attempted offenses or conspiracies to commit an offense, the presumptive sentence is determined by locating the Sentencing Guidelines Grid cell defined by the offender's criminal history score and the severity level of the completed offense, and dividing the duration contained therein by two, but such sentence shall not be less than one year and one day except that the presumptive disposition for Conspiracy to Commit or Attempted First Degree Murder, Minn. Stat. § 609.185, with § 609.17 or § 609.175 cited, shall be imprisonment for all cases. The presumptive durations shall be as follows:

SEVERITY LEVELS OF CONVICTION OFFENSE	CRIMINAL HISTORY SCORE						
	0	1	2	3	4	5	6 or more
Conspiracy/Attempted Murder, 1st Degree	70 67-73	84 80-88	97 92-103	122 115-128	146 139-153	170 162-179	194 185-203

V. OFFENSE SEVERITY REFERENCE TABLE

VIII	Assault 1-609.221 ~~Attempted Murder 1-609.185 with 609.17 or 609.175 cited~~ Criminal Sexual Conduct 1-609.342 Kidnapping (w/great bodily harm)-609.25, subd. 2(2) Manslaughter 1-609.20(1) & (2)
III	Sale of Cocaine-152.15, subd. 1~~(2)~~ (1) (No other changes to this severity level.)
I	Possession of Cocaine-152.15, subd. 2~~(2)~~ (1) (No other changes to this severity level.)

Minnesota Small Business Finance Agency Department of Economic Development

Notice of Intent to Solicit Outside Opinion Concerning Proposed Rules Relating to the Minnesota Small Business Finance Agency

Notice is hereby given pursuant to Minn. Stat. § 15.0412, subd. 6 (1978) that the Minnesota Small Business Finance Agency is commencing the process of drafting rules governing the Minnesota Small Business Finance Agency created by Laws of 1980, ch. 547.

The proposed rules are authorized by the language of Laws of 1980, ch. 547, § 4, subd. 4. Information and opinions regarding the following matter are solicited from sources outside the agency:

1. Criteria, conditions and guidelines for the acceptance or rejection of applications to the agency.

2. Application review and priorities.

Comments should be addressed to Minnesota Small Business Finance Agency, Department of Economic Development, 480 Cedar Street, St. Paul, Minn. 55101. (Attention: M. Jean Laubach, Executive Director). Any comments received by the Small Business Finance Agency shall become a part of the record of proceeding leading to the adoption of permanent rules.

The agency invites interested persons or groups to provide information, comments, opinions and advice on the subject as an information meeting to be held at the State Capitol Building in St. Paul, MN, Room 112, commencing at 7:00 p.m., on October 9, 1980. All written comments must be received by October 22, 1980.

Please be advised that a lobbyist must register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined by Minn. Stat. § 10A.01, subd. 11, as any individual who is:

A. Engaged for pay or other consideration, or authorized by another individual or association to spend money, and who spends more than five hours in any month, or more than $250, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials, or who

B. Spends more than $250, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

A lobbyist does not include any:

A. Public official or employee of the state or any of its political subdivisions or public bodies acting in his official capacity;

B. Party or his representative appearing in a proceeding before a state board, commission or agency of the executive branch unless the board, commission or agency is taking administrative action;

C. Individual while engaged in selling goods or services to be paid for by the public funds;

D. News media or their employees or agents while engaged in the publishing or broadcasting of news items, editorial comments or paid advertisements which directly or indirectly urge official action;

E. Paid expert witness whose testimony is requested by the body before which he is appearing but only to the extent of preparing or delivering testimony; or

F. Stockholder of a family farm corporation as defined in Minn. Stat. § 50024, subd. 1, who does not spend over $250, excluding *his own* travel expenses in any year in communication with public officials. Questions should be addressed to the State Ethical Practices Board, Room 41, State Office Building, Wabasha Street, Saint Paul, Minnesota 55155, telephone: (612) 296-5615.

September 9, 1980

Kent E. Eklund
Vice Chairman
Small Business Finance Agency

Minnesota State Retirement System

Special Meeting, Board of Directors

A special meeting of the Board of Directors, Minnesota State Retirement System, will be held on Friday, October 17, 1980 at 9:00 a.m. in the office of the system, 529 Jackson Street, St. Paul, Minnesota.

The purpose of the meeting is to receive a report regarding the data base system, revision of board rules and any other matters to come before the board.

Office of the Secretary of State

Notice of Vacancies in Multi-member State Agency

Notice is hereby given to the public that vacancies have occurred in a multi-member state agency, pursuant to Minn. Stat. § 15.0597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul 55155; (612) 296-2805. **Application deadline is Tuesday, October 14, 1980.**

Apprenticeship Advisory Council has 3 vacancies open October 1, for one employee representative, one employer representative, and one public member. The council proposes occupational classifications and minimum standards for apprenticeship programs and agreements and advises the Commissioner of Labor and Industry. Members are appointed by the Commissioner of Labor and Industry and receive $35 per diem plus expenses. For specific information, contact Department of Labor and Industry, 5th Floor, Space Center Building, 444 Lafayette Rd., St. Paul 55101; (612) 296-2342.

STATE OF MINNESOTA

SMALL BUSINESS FINANCE AGENCY

The Matter of the Proposed Rules of the Minnesota Small Business Finance Agency Relating to the General Operating Procedures of the Agency and the Making of Pollution Control Loans.

ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT PUBLIC HEARING

IT IS ORDERED this 6th day of February, 1981, that a Notice of Intent to Adopt Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the Department of Economic Development for that purpose and be published in the State Register.

STATE OF MINNESOTA

Kent E. Eklund

Kent E. Eklund, Vice Chair
Board of Directors
Small Business Finance Agency

STATE OF MINNESOTA

SMALL BUSINESS FINANCE AGENCY

The Matter of the Proposed Rules of the Minnesota Small Business Finance Agency Relating to the General Operating Procedures of the Agency and the Making of Pollution Control Loans.

CERTIFICATE OF BOARD'S AUTHORIZING RESOLUTION

I, M. Jean Laubach, do hereby certify that I am Executive Director of the Minnesota Small Business Finance Agency, an agency duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Agency duly and properly called and held on the 27th day of January, 1981, that a quorum was present at said meeting, that a majority of those present voted for the resolution, that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "Resolved that Kent Ecklund, vice chairman and one of the members of the Minnesota Small Business Finance Agency, be and he hereby is authorized and directed to give public notice for the purpose of promulgating rules of the Minnesota Small Business Finance Agency without a public hearing, said rules relating to the general operating procedures of the agency and the making of pollution control loans, as well as to perform any and all acts incidental thereto, including the signing of a notice of intent to adopt rules without a public hearing."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 6th day of February, 1981.

M. Jean Laubach

M. Jean Laubach
Executive Director

ATTEST:

R J Nelson

RECEIVED
FEB 10 1981
ATTORNEY GENERAL'S OFFICE
515 TRANSPORTATION BLDG.
ST PAUL, MN. 55155

STATE OF MINNESOTA

SMALL BUSINESS FINANCE AGENCY

The Matter of the Proposed Rules of the Minnesota Small Business Finance Agency Relating to the General Operating Procedures of the Agency and the Making of Pollution Control Loans.

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

Notice is hereby given that the Small Business Finance Agency proposes to adopt the above-entitled rules without a public hearing. The Agency has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. § 15.0412, subd. 4h (1980).

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. § 15.0412, subd. 4-4f. If a public hearing is requested, identification of the particular objection, the suggested modifications to the proposed language, and the reasons or data relied on to support the suggested modifications is desired.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to:

M. Jean Laubach
Executive Director
Small Business Finance Agency
480 Cedar Street
St. Paul, Minnesota 55101
(612) 297-3547

Authority for the adoption of these rules is contained in Minn. Stat. § 362.53, subd. 4 (1980). Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules, and that identifies the data and information relied upon to support the proposed rules, has been prepared and is available from Ms. Laubach upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to a designee of the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of these rules for approval, or who wish to receive a copy of the final rules as adopted, should submit a written statement of such request to Ms. Laubach. 8

A copy of the proposed rules is attached to this Notice. Additional copies may be obtained by contacting Ms. Laubach. 10

Please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1980) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250.00, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250.00, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 40 State Office Building, Saint Paul, Minnesota 55155, telephone (612) 296-5615.

Dated: February 12, 1981.

Kent E. Eklund

Kent E. Eklund
Vice Chairman
Small Business Finance Agency

using others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 per year or five hours per month lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

January 29, 1981

Joseph N. Alexander, Commissioner
Department of Natural Resources

Amendment as Proposed

6 MCAR § 1.2220 Lower St. Croix water surface use.

D. Restricted speed zones.

2. No motorboat shall be operated in excess of a slow-no-wake speed in the following areas:

f. In that area known as Anderson Bay, located approximately at mile 20.0.

Small Business Finance Agency

Proposed Rules Relating to the General Operating Procedures of the Agency and the Making of Pollution Control Loans

Notice of Intent to Adopt Rules without A Public Hearing

Notice is hereby given that the Small Business Finance Agency proposes to adopt the above-entitled rules without a public hearing. The agency has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. § 15.0412, subd. 4h (1980).

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. § 15.0412, subds. 4-4f. If a public hearing is requested, identification of the particular objection, the suggested modifications to the proposed language, and the reasons or data relied on to support the suggested modifications is desired.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to:

M. Jean Laubach
Executive Director
Small Business Finance Agency
480 Cedar Street
St. Paul, Minnesota 55101
(612) 296-6616

Authority for the adoption of these rules is contained in Minn. Stat. § 362.53, subd. 4 (1980). Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules, and that identifies the data and information relied upon to support the proposed rules, has been prepared and is available from Ms. Laubach upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to a designee of the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of these rules for approval, or who wish to receive a copy of the final rules as adopted, should submit a written statement of such request to Ms. Laubach.

A copy of the proposed rules is attached to this Notice. Additional copies may be obtained by contacting Ms. Laubach.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1980) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250.00, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250.00, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 40 State Office Building, Saint Paul, Minnesota 55155, telephone (612) 296-5615.

Kent E. Ecklund
Vice Chairman
Small Business Finance Agency

Rules as Proposed

Chapter One: General Provisions (4 MCAR §§ 14.001-14.009)

4 MCAR § 14.001 Scope. These rules are made pursuant to Minn. Stat. § 362.53, subd. 4 (1980) to implement and make specific the provisions of the Act and relate to the providing of Pollution Control Loans.

4 MCAR § 14.002 Definitions.

A. The terms defined in Minn. Stat. § 362.50 (1980) have the same meaning when used in these rules as ascribed to them in the Act.

B. "Act" means Laws of 1980, ch. 547, as now in effect and as amended from time to time.

C. "Commissioner" means the Commissioner of Economic Development.

D. "Executive director" means the executive director of the agency designated by the commissioner.

E. "Members" means the commissioner and those persons appointed to the agency pursuant to Minn. Stat. § 362.51, subd. 8 (1980).

4 MCAR § 14.003 Agency meetings.

A. Regular meetings of the agency shall be held on the third Wednesday of each month at 3:00 p.m. at the offices of the agency in St. Paul, Minnesota, unless another place of meeting is designated by resolution. In the event such date shall fall on a legal holiday, the regular meeting shall be held the next succeeding business day.

B. Special meetings of the agency may be called upon reasonable notice to all members by the chairperson or by a majority of the existing members of the agency, for the purpose of transacting any business designated in the notice, and shall be held at the business offices of the agency in St. Paul, Minnesota, unless another place of meeting is designated by resolution. At any such special meeting, no business shall be considered other than as designated in the notice, provided, however, that if all of the members of the agency are present at such special meeting, this limitation shall not apply.

4 MCAR § 14.004 Public appearances at meetings of the members.

The following procedures shall govern public appearances at meetings of the members:

A. With respect to regular meetings, the executive director shall complete the agenda for meetings of the members, not less than five nor more than seven days prior to the date of any such meeting.

B. With respect to regular meetings, any person who desires to appear and address the Members shall make a written request to the executive director, with a copy to the chairperson, at least ten days prior to the date of the meeting, setting forth the nature of the matter about which such person wishes to appear.

C. With respect to regular or special meetings, any person who desires to appear and address the members with respect to any matter enumerated on the agenda shall make a written request to the executive director, with a copy to the chairperson, at least twenty-four hours before the meeting.

D. Any member may at any time request that a person be permitted to appear and address the members at any regular or special meeting.

E. All such requests shall be placed on the agenda for review by the members at the meeting. A majority vote of the members present shall be required in order to grant any such request to address the members.

The Matter of the Proposed Rules of the Minnesota Small Business Finance Agency Relating to the General Operating Procedures of the Agency and the Making of Pollution Control Loans.

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

M. Jean Laubach, being first duly sworn, deposes and says:

That on the 12 day of February, 1981, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Intent to Adopt Rules Without Public Hearing by depositing in the United States mail at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the State Small Business Finance Agency for the purpose of receiving notice of the proposed adoption of rules by this Notice of Intent to Adopt Rules Without Public Hearing.

M. Jean Laubach

M. Jean Laubach, Executive Director

Subscribed and sworn to before me
this 12th day of February, 1981.

Alan A. Madsen

ALAN A. MADSEN
Notary Public, Hennepin County, Minn.
My commission expires July 6, 1984

LIST OF PERSONS TO RECEIVE NOTICE OF RULEMAKING PROCEEDINGS

Susan P. Robertson
Executive Director
Room 430, State Office Bldg.
St. Paul, MN 55155

Paul J. Huber LTD.
Certified Public Accountants
1821 University Avenue
St. Paul, MN 55104

Thomas M. Polt, Attorney
Polt Law Offices
McCarthy Bldg.
Eyota, MN 55934

Norbert McCrady, Ex. V.P.
Independent Bankers of Minnesota
327 Plymouth Building
12 South 6th Street
Minneapolis, MN 55402

Richard C. Lockwood, President
MacArthur Company Insulations
2400 Wycliff Street
St. Paul, Minnesota 55114

M. S. Schumacher
News Assistant
Minneapolis Tribune
425 Portland Avenue
Minneapolis, MN 55488

Wendy Borsheim, President
Minnesota Retail Merchants Association
180 Metro Square Bldg.
St. Paul, MN 55101

Bonnie Bannanno
Office of Hearing Examiners
Room 300 - 1745 University Avenue
St. Paul, MN 55104

Marylee Fithian, Director
Developmental Disabilities Planning Office
200 Capitol Square Building
550 Cedar Street
St. Paul, MN 55101

David Mocol,Community Development
Director
City of Winona
City Hall
4th & Lafayette St.
Winona, MN 55987

David R. Knodell, Esq.
Olson, Gunn and Seran, Ltd.
315 Peavey Building
730 Second Avenue South
Minneapolis, MN 55402

Abe Rosenthal
Executive Vice President
Minnesota Transport Services Association
1821 University Avenue (N310)
St. Paul, MN 55104

Government Center Library
C-2359 Government Center
300 South 6th Street
Minneapolis, MN 55487

Conrad M. Fredin
Attorney at Law
811 First National Bank Building
Duluth, MN 55802

Eric W. Ingvaldson
Harstad & Rainbow
Attorneys at Law
Midland Bank Building
Minneapolis, MN 55401

Phillips Legislative Service, Inc.
459 Rice Street
St. Paul, MN 55103

Jean Dawson, Editor
The Minnesota Government Report
B-12, Press Room, State Capitol Bldg.
Aurora Avenue (Between Cedar and Park)
St. Paul, MN 55155

Federal-State Reports, Inc.
5203 Lusburg Pike, @1201
Baileys Crossroads
Falls Church, Va 22041

Peter S. Popovich
Peterson, Popovich, Knutson & Flynn
Law Office
314 Minnesota Building
St. Paul, MN 55101

John A. Knapp
Hessian, McKasy & Soderberg Law Offices
1500 Midwest Plaza West Building
Minneapolis, MN 55402

Antitrust Division
Minnesota Attorney General's Office
2nd Floor, Ford Building
117 University Avenue
St. Paul, Minnesota 55155

The Minnesota Project
Attention: Loni Kemp
618 East 22 Street
Minneapolis, MN 55404

Brad Hoffman
City of Brooklyn Center
6301 Shingle Creek Parkway
Brooklyn Center, MN 55430

John M. Broeker
2850 Metro Drive, Suite 800
Minneapolis, Minnesota 55420

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

The Matter of the Proposed Rules of the Minnesota Small Business Finance Agency Relating to the General Operating Procedures of the Agency and the Making of Pollution Control Loans.

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. § 15.0412, subd. 4, that their names be placed on file with and maintained by the State Small Business Finance Agency for the purpose of receiving notice of the proposed adoption of rules by this Notice of Intent to Adopt Rules without Public Hearing is accurate and complete as of 4:30 P.M., this 12 day of February, 1981.

M. Jean Laubach

M. Jean Laubach, Executive Director

STATE OF MINNESOTA

SMALL BUSINESS FINANCE AGENCY

The Matter of the Proposed Rules of the Minnesota Small Business Finance Agency Relating to the General Operating Procedures of the Agency and the Making of Pollution Control Loans.

CERTIFICATE OF BOARD'S RESOLUTION ADOPTING RULE

I, Robert J. Anderson, do hereby certify that I am a member and the chairman of the Board of the Minnesota Small Business Finance Agency, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Board of the Minnesota Small Business Finance Agency, duly and properly called and held on the 22nd day of April, 1981, that a quorum was present at said meeting, that a majority of those present voted for the resolution, and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, that the rules relating to general operating procedures of the Agency and the making of pollution control loans be and they hereby are approved and adopted, pursuant to authority vested in us by Minnesota Statutes § 362.53, subd. 4, and that M. Jean Laubach, the Executive Director of the Minnesota Small Business Finance Agency, be and hereby is authorized to sign an order adopting these rules and further is authorized to perform the necessary acts to provide that these rules shall have the force and effect of law."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 22nd day of April, 1981.

Robert J. Anderson

ATTEST:

Member of the Board of the
Minnesota Small Business
Finance Agency

STATE OF MINNESOTA

SMALL BUSINESS FINANCE AGENCY

The Matter of the Proposed Rules of the Minnesota Small Business Finance Agency Relating to the General Operating Procedures of the Agency and the Making of Pollution Control Loans.

STATEMENT OF NEED AND REASONABLENESS

The Minnesota Small Business Finance Agency ("Agency") presents herein facts and justifications establishing the need for and reasonableness of its proposed rules relating to its general operating procedures and the making of pollution control loans. The above-captioned rules are not amendments to existing rules.

4 MCAR 14.001

This rule defining the scope of the proposed rules is reasonable and necessary to inform the public of the breadth, purpose, and source of authorization of these rules.

4 MCAR 14.002

The definitions contained in this paragraph are necessary to allow the public to clearly understand the terms commonly used in these rules. The terms defined in the rules are frequently used in Minn. Stat. § 362.50 through § 362.53 and in the proposed rules, but are not defined in Minn. Stat. § 362.50 (1980). It is thus reasonable that the public be informed of the precise meaning of such terms.

4 MCAR 14.003

A. This provision of the rules providing for the regular meetings of the Agency is necessary and reasonable since the Agency, as a public body, must notify the public of its regular times for conducting business. See, Minn. Stat. § 471.705 (1980). The provision for regular meetings is further necessary and reasonable because it permits the Agency and the public to prepare to address agenda items on a regular and predictable basis.

B. This provision of the rules is necessary and reasonable as providing for the conduct of business of the Agency when that may become necessary at times other than those designated for the regular meetings. It is further

necessary and reasonable that the rule require that notice of the time of the special meeting be given to all members of the Board, so that they may attend and participate if they desire. It is necessary and reasonable that control over the calling of such meetings be vested in the Agency chairperson, or if not the chairperson, in a majority of the members of the Agency. Since the meetings are not regular meetings, it is possible that members may not attend if the noticed business of the meeting does not concern them. It is thus necessary and reasonable to restrict the business of the meeting to only those matters contained in the notice. It is further reasonable, however, that if all members of the Agency attend such a meeting, no such restriction need apply, as no member will be prejudiced by the limited nature of the notice.

4 MCAR 14.004

A. This rule is necessary and reasonable to advise the Agency members of agenda items to be considered at regular meetings in adequate time to allow the members to prepare for the meeting and the matters to be considered at the meeting.

B. This rule is necessary to provide for the orderly consideration by the Agency of matters presented by the public. Ten days is required to allow sufficient time to make a requested appearance part of the agenda of the regular meeting, pursuant to the time limitations for preparation of the agenda contained in proposed rule 4 MCAR 14.004A. It is necessary and reasonable to require that such requests be in writing so that the Executive Director may advise the Agency Board both that the appearance will occur and the substance of the matters to be presented to them.

C. This rule is necessary to reasonably control public appearances before the Agency on matters already listed on the meeting agenda. It is reasonable to allow the Agency at least a day's notice that there will be public input on matters that they will be considering, so that the chairman and the executive director can schedule adequate time for such appearances and make any other provisions as may be necessary.

D. and E. These proposed rules are necessary and reasonable to provide the opportunity for public input to the Agency at its meetings in instances where the time requirements of 14.004B and C cannot be met. However, it is

reasonable that such exceptions be made only if recommended and requested by one of the members of the Agency, and approved by the members present by their majority vote.

4 MCAR 14.005 - 4 MCAR 14.007 Reserved for future use.

4 MCAR 14.010

The Agency has the duty to receive and process applications for pollution control equipment loans that will be guaranteed by an agency of the federal government, where the funds for the loans will be obtained through the sale of Agency bonds. As the Agency has the authority to make such loans and to sell bonds to procure the loan funds, it must promulgate rules to govern the general procedure to be followed by applicants, and must state criteria upon which it will approve loan applications.

It is reasonable to specify that the Executive Director draft forms for loan applications that will assist the public to readily determine what information is necessary for Agency consideration, and to allow the Agency to likewise determine whether it is probable that the applicant will qualify for a federal loan guarantee. As the Executive Director is responsible for the daily operating procedures of the Agency and therefore has special expertise in the drafting of the forms, it is reasonable that the initial responsibility be delegated to the Executive Director. However, as the Executive Director is not a member of the Agency Board, it is reasonable that the Agency Board has final approval of the forms before they are used.

4 MCAR 14.011

Since it is reasonably anticipated that demand for pollution control loans financed by the Minnesota Small Business Finance Agency through the sale of tax-exempt bonds will exceed the supply of available funds, it is reasonable and necessary that the Agency establish criteria for the acceptance of applications for such loans. In processing the applications, a primary criterion the Agency shall examine is whether the applicant would be likely to qualify under federal requirements for a pollution control loan guarantee, since the Agency has no statutory authority to make the loans without guarantees. It is also necessary and reasonable that the Agency consider the nature of the proposed facilities to be financed to permit the Agency to fulfill the

legislative mandates in Minn. Stat. § 362.51, subd. 1 and 2, of assisting in the control of pollution in Minnesota, while at the same time minimizing the financial impact of the cost of such control on small business. The Agency also reasonably must consider the geographical distribution of applications, so that all portions of the state may receive equitable treatment in light of the limited funds available. The Agency must likewise consider applications in light of statutory bonding authority, which is an absolute prerequisite to the making of any loan or the sale of bonds. See Minn. Stat. § 362.50, subd. 10. The Agency further reasonably must consider its general statutory mandate to make pollution control loans in such a manner that it encourages, assists and helps maintain the growth of Minnesota small business, and assists to minimize the cost to small business of controlling pollution and disposing of waste.

4 MCAR 14.012

This rule is reasonable and necessary as setting forth the basis for the authorization by the Agency of pollution control loans after consideration pursuant to proposed rule 4 MCAR 14.011. It is necessary to require that a prerequisite of approval of a loan by Agency resolution shall be approval for a federal guarantee, as the Agency is not authorized by statute to make pollution control loans without such a guarantee. It is also necessary and reasonable to provide that the commitment of the Agency to make pollution control loans be contingent upon its determination of the optimal time and circumstances for the packaging and sale of bonds, since it is subject to a statutory requirement to minimize cost of such financing. This mandate cannot be fulfilled without allowing the Agency to determine the most advantageous time and manner to enter the financial markets.

Dated: February 12, 1981

Kent E. Eklund

KENT E. EKLUND
Vice Chairman
Small Business Finance Agency

The Matter of the Proposed Rules
of the Minnesota Small Business
Finance Agency Relating to the
General Operating Procedures of
the Agency and the Making of
Pollution Control Loans.

STATEMENT OF
COMPLIANCE WITH
RULEMAKING PROCEDURES

I, James E. Dinerstein, Special Assistant Attorney General, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

James E. Dinerstein
Special Assistant Attorney General

Dated: May 13, 1981