

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 712

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 7/24
DATE FOR REVIEW 8/3
DATE DUE 8/7

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

Approved _____ Disapproved 8/7 Returned to Agency _____

Resubmitted 8/14 Due 8/24
Approved 8/18 Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State 8/19 REVISOR: Approved: ✓ Disapproved

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___✓ Rule as Adopted

___✓ Rule as Proposed see SR.

___✓ Order Adopting 7.15.81

___✓ Notice of Intent to Solicit Outside Opinion SR. 9/22/80 + Responses

___✓ Order for rulemaking
_____ Date of Hearing

___✓ Certificate of Board's Authorizing Resolution

___✓ Notice of rulemaking
_____✓ Sufficiency

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

___✓ Mailing list Certificate

___✓ Publication in State Register
6.15.81 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

___N/A LCRAR Report or agency Affidavit

___✓ Certificate of Board's Resolution Adopting Rules

___ Order Approving Incorporation by Reference

___✓ Statement of Need and Reasonableness

___N/A Petition for Adoption of a Rule

___N/A 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
see transmittal memo

SF-00006-02

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT ATTORNEY GENERAL

TO : M. JEAN LANBACH
Executive Director
Minnesota Small Business
Finance Agency

DATE: August 18, 1981

ATTN : James Dinerstein
Special Assistant Attorney General

FROM : Ted A. Martinez
Special Assistant Attorney General

PHONE: 296-0315

SUBJECT: In the Matter of the Adoption of Rules Relating to Amendment of the General Provisions Section of Existing Rules of the Agency and to the Making of Business 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.

TAM:rjg

Enc.

cc: Susan Robertson
Duane Harves

Small Business Finance Agency

Adopted Rules Relating to Amendment of the General Provisions Section of Existing Rules of the Agency and the Making of Business Loans

Rules as Adopted

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

4 MCAR S 14.005 Misrepresentation by applicant. The agency may forthwith reject any application, whether or not previously approved, may revoke any preliminary or final resolution prior to sale of the bonds approved thereby or may refuse to close any loan in the event that any information provided to the agency by the owner contains a material misrepresentation or omission. Each applicant shall have an affirmative duty and obligation to update and correct all information provided to the agency.

4 MCAR S 14.006 Severability. If any provision of these rules or the application thereof to any business or person or circumstance is held to be invalid, such invalidity shall not

affect any other provision or application of any other part of this rule or any other rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule and the various applications thereof are declared to be severable.

Chapter Three: Business Loans (4 MCAR SS 14.020-14.029)

4 MCAR S 14.020 Overview of procedure for approval of business loans.

A. Submission of application. To be eligible for a business loan, an owner shall make an application for a business loan pursuant to 4 MCAR S 14.021 of this rule on approved application forms of the agency.

B. Approval of application by executive director. The executive director shall process the application in accordance with the procedures and limitations set out in 4 MCAR S 14.021. The criteria the executive director shall use in approving an application for processing are set out in 4 MCAR S 14.021.

C. Acceptance for processing. Upon the determination by the executive director that the business loan requested meets the eligibility requirements of 4 MCAR S 14.021, the agency shall determine pursuant to 4 MCAR S 14.023 if the agency intends to fund the requested business loan subject to final authorization by the agency.

D. Final authorization of business loan. Upon the determination by the agency that the loan requested pursuant to an application which has been accepted for processing can and should be funded, the agency shall adopt a resolution approving such loan, which resolution shall include a provision that the obligation of the agency to make the loan is contingent on the ability of the agency to sell its bonds on terms which the agency, in its sole discretion, deems acceptable. In addition, any such resolution may contain such other provisions and conditions as the agency, in its sole discretion, deems advisable.

4 MCAR S 14.021 Application procedures.

A. The owner shall submit to the agency copies of the completed application upon the forms provided by the agency.

B. Application shall be deemed to have been made upon receipt by the agency of a completed application with all required documentation and exhibits, together with the required fee specified in the application forms. In the event that an incomplete application is received, the executive director shall notify the applicant specifying the deficiencies. The applicant shall have 60 days from the date of the executive director's notification to complete such application. If the application is not completed within 60 days, the application shall be deemed to be rejected and the applicant must reapply to be further considered. In the event the executive director is able to determine from the information submitted on an incomplete application that the applicant is not an owner or the proceeds of the requested business loan are intended to finance expenditures not permitted under the Act, the executive director shall so notify the applicant.

C. Upon receiving a completed application, the executive director shall review the application and shall make a determination as to whether the applicant is an owner as defined in the Act or the proceeds of the requested business loan are intended to finance expenditures permitted under the Act.

D. Costs eligible for funding are the capital expenditures set forth in the Act, including the following:

1. Land and/or building acquisition costs,
2. Site preparation,
3. Construction costs,
4. Engineering costs,
5. Equipment and/or machinery,
6. Bond issuance costs,
7. Underwriting or placement fees,
8. Initial trustee's fee,
9. Initial fee of guarantor or insuror, if applicable,
10. Small Business Administration processing and administration fee, if applicable,

11. Minnesota Small Business Finance Agency fee,

12. Certain contingency costs,

13. Interest costs during construction, and

14. Legal fees, including those of agency's bond counsel.

The agency shall determine that an expenditure is not eligible for funding if in the opinion of the agency financing of such expenditure may adversely affect the exemption of the interest on the agency's evidences of indebtedness from federal income taxes.

E. After approving or disapproving an application, the executive director shall notify the applicant of the determination and the treatment of the application as follows:

1. If the executive director determines that the applicant is an owner as defined in the Act and that the costs specified in the application are eligible for funding, the application shall then be deemed accepted for processing and treated in accordance with the agency review provisions established in 4 MCAR S 14.023.

2. If the executive director determines that the applicant is not an owner as defined in the Act, the application shall be rejected and not further considered.

3. If the executive director determines that any of the costs described in the application are not eligible for funding, the executive director shall note the deficiencies in the application and shall so notify the owner. The owner shall have 30 days from the date of the executive director's notification to amend the application. In the event the application is amended in a timely fashion to include only eligible costs, it shall be treated in accordance with the agency review provisions established in 4 MCAR S 14.021 F. If the application is not properly amended within 30 days, the application shall be deemed rejected and not further considered.

F. In the event that an application is rejected for processing pursuant to 4 MCAR S 14.021 E.2. or 3., the applicant may, within 30 days after date of the notification by the executive director, request the executive director to submit the

determination to the agency for review at the next regularly scheduled meeting of the agency for which the agenda has not been established. If the agency approves the application, the application shall be treated in accordance with 4 MCAR S 14.023.

4 MCAR S 14.022 Application content. ~~Applications shall be on forms of the agency and shall include such information as the agency reasonably deems necessary~~ The executive director shall prepare uniform loan application forms for use by the public setting forth the information necessary for the determination of eligibility for a business loan pursuant to the Act and these rules.

4 MCAR S 14.023 Evaluation procedure. Applications approved for processing by the executive director shall be presented to the agency for approval or disapproval. If the agency disapproves the application, the executive director shall so notify the applicant. If the agency approves the business loan for funding it shall forthwith pass a preliminary resolution giving preliminary approval to the project to be financed from the loan proceeds and stating the name of the owner, a brief description of the project, and the amount of the loan. Such a resolution shall not obligate the agency to issue bonds or to fund any loan, but shall only constitute an expression of current intention of the agency to issue such bonds or to fund such a loan. The preliminary resolution may contain a time limit with respect to the issuance of the bonds, may be revoked or amended by the agency at any time prior to the final resolution of the agency without liability to the agency and may impose any conditions or requirements which the agency deems desirable. The executive director shall forthwith notify the applicant of the agency's approval and furnish the applicant a copy of the preliminary resolution.

The agency shall review and consider approval of an application for a business loan, on the basis of effectuating the purposes of the Act, including determinations regarding the following:

A. That the applicant is an owner as defined in the Act,

B. That the small business reasonably can be expected to maintain a sound financial condition and to retire the principal and pay the interest on the loan made or guaranteed in accordance with the terms of the loan agreement,

C. That the project is economically feasible with a reasonable expectation that the life of its economic feasibility will exceed the maturity of the loan,

D. That the project will create or maintain a sufficient number and type of jobs to justify agency participation in its financing,

E. That the project feasibility is sufficient to allow the agency to sell the bonds required for its financing,

F. That the project and its development is economically advantageous to the state, that the provision to meet increased demand upon public facilities as a result of the project is reasonably assured, and that energy sources to support the successful operation of the project are adequate,

G. That if the project shall have the effect of a transfer of employment from one area of this state to another the agency determines that the project is economically advantageous to the state or that the project is necessary to the continued operation of the business enterprise within the state,

H. That ~~other criteria have been met which~~ the ~~agency has determined~~ project will ~~effectuate~~ assist in fulfilling the purposes of the Act.

4 MCAR SS 14.024-14.029 [Reserved for future use.]

APPROVED AS TO FORM AND LEGALITY

August 18 19 81

WARREN SPANNAUS, ATTORNEY GENERAL

BY Ted A. Waterhouse

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
AUG 19 1981
Joan Anderson Growe
Secretary of State
9:06 AM

Minnesota Department of Economic Development

July 24, 1981

Mr. Jerry Anderson
Special Attorney General
G25 Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55155

Dear Jerry:

Enclosed please find the following documents in the matter of the Adoption of Rules for the Minnesota Small Business Finance Agency:

1) Rules as adopted
2) Order adopting rules
3) Certificate of Board's resolution adopting rule
4) Notice of intent to solicit outside opinion concerning proposed rules relating to the Minnesota Small Business Finance Agency and response
5) Order for notice of intent to adopt rules without public hearing
6) Certificate of Board's authorizing resolution
7) Notice of intent to adopt rules without a public hearing
8) Affidavit of mailing
9) Certificate
10) Proposed rules relating to the general operating procedures of the Agency and the making of pollution control loans.
11) Statement of need and reasonableness
12) Statement of compliance with rulemaking procedures

We have not had a request for hearing made during the thirty day period and did not receive any comments during this period. The Agency made no changes to the proposed rules. These rules are not adopted in response to a petition and no requests have been made to be notified of submission of the rules to the Attorney General.

Your earliest response to these documents is appreciated. Should you have any questions, please contact Barry Greller or me at 6-6616.

Sincerely,

M. Jean Laubach

M. Jean Laubach, Executive Director
Minnesota Small Business Finance Agency

MJL:dc

RECEIVED
JUL 24 1981
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT MN SMALL BUSINESS FINANCE AGENCY

Office Memorandum

TO : Ted A. Martinez
Special Assistant Attorney General

DATE: August 14, 1981

FROM : James E. Dinerstein
Special Assistant Attorney General

PHONE: 6-7994

SUBJECT: In the Matter of the Adoption of Rules Relating to Amendment of the General Provisions Section of Existing Rules of the Agency and to the Making of Business Loans

Enclosed please find two copies of the order adopting rules in the above-referenced matter together with an original and two copies of the rule as adopted. They are being submitted to you for your review pursuant to your memorandum of August 7, 1981.

STATE OF MINNESOTA

SMALL BUSINESS FINANCE AGENCY

In the Matter of the Proposed Rules of the Minnesota Small Business Finance Agency Relating to Amendment of the General Provisions Section of Existing Rules of the Agency and the Making of Business Loans

CERTIFICATE OF BOARD'S RESOLUTION ADOPTING RULES

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 11th day of August, 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 in accordance with the comments of the Attorney General, the rules relating to Amendment of Existing Rules of the Agency and the Making of Business Loans attached hereto as Exhibit A be and they hereby are approved and adopted, pursuant to authority vested in us by Minnesota Statutes section 362.53, subdivision 4 (1980) superceding the rules adopted by the Agency on the 15th day of July, 1981, and that Kent E. Eklund, the Vice Chairman of the 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 11th day of August, 1981.

M. Jean Laubach

M. Jean Laubach, Executive Director

ATTEST

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : M. JEAN LAUBACH
Executive Director
Minnesota Small Business Finance Agency

DATE: August 7, 1981

ATTN : Jim Dinerstein
Special Assistant Attorney General

FROM : Ted A. Martinez
Special Assistant Attorney General

PHONE: 296-0315

SUBJECT: In the Matter of the Adoption of Rules Relating to Amendment of the General Provisions Section of Existing Rules of the Agency and to the Making of Business Loans

The rules in the above-entitled matter have not been approved by this office for the following reasons:

1. 4 MCAR §§ 14.022 and 14.023(h) respectively grants the Agency unfettered discretion in determining the informational content of the application for a loan and determinations of approval based on unstated criteria. Pursuant to Minn. Stat. § 15.0411 - .0412, every agency statement of general applicability and future effect, made to implement or make specific the law enforced, is subject to rule making procedures. Section 14.022, however, provides for a decision based on information that the agency deems necessary with out specifying what "necessary for" encompasses. Similarly, section 14.023(h) provides for an agency decision based on unstated criteria, which criteria are agency statements fitting within the definition of a rule, and thereby permits agency "rulemaking" on an ad hoc basis. Agency flexibility and discretion can be achieved by careful, complete selection of language that is not impermissibly vague but is sufficiently broad to provide agency flexibility. Predictability and non-discriminatory application of the rules must be achieved and made available to all applicants who understand the necessity of the required application information and who meet the stated criteria for ultimate approval. Thus, as we discussed during our telephone conversation, these problems may be resolved by replacing the existing language with other language reflecting the contents of this memorandum.

2. Although this is not a basis for disapproval, it should be noted that the rules submitted to this office were titled "proposed rules" as opposed to "adopted rules."

After consideration of the above comments and agency action, if any, these rules may be resubmitted for review. Upon resubmission, please include two copies of a new or supplemental Order Adopting, and the original and two copies of the new Rule as Adopted. Also, please include a memorandum specifying that the rules are being resubmitted so that we may obtain our initial file in this matter.

Please be advised that pursuant to Minn. Stat. § 15.0412 subd. 4g effective July 1, 1981, "(n)o rule shall be filed with the secretary of state or published in the state register unless the revisor of statutes has endorsed on the rule that it is approved as to form." Therefore, at the time when you resubmit the new rule to this office, you must submit two copies of the same to the revisor of statutes.

If you have any questions concerning the issues raised in this memorandum, please do not hesitate to call me.

TAM:rjg

Enc.

cc: Duane Harves
Susan Robertson

AG copy

underlining shows new material

MINNESOTA SMALL BUSINESS FINANCE AGENCY

PROPOSED RULES RELATING TO AMENDMENT OF THE GENERAL PROVISIONS SECTION OF EXISTING RULES OF THE AGENCY AND TO THE MAKING OF BUSINESS LOANS

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 and Business Loans.

4 MCAR §14.005 Misrepresentation by Applicant.

The Agency may forthwith reject any application, whether or not previously approved, may revoke any preliminary or final resolution prior to sale of the bonds approved thereby or may refuse to close any loan in the event that any information provided to the Agency by the owner contains a material misrepresentation or omission. Each applicant shall have an affirmative duty and obligation to update and correct all information provided to the Agency.

4 MCAR §14.006 Severability.

If any provision of these rules or the application thereof to any business or person or circumstance is held to be invalid, such invalidity shall not affect any other provision or application of any other part of this rule or any other rule which can be given effect without the invalid provision or application,

and to this end the provisions of this rule are the various applications thereof are declared to be severable.

Chapter Three: Business Loans (4 MCAR §§14.020-14.029)

4 MCAR §14.020 Overview of Procedure for Approval of Business Loans.

A. Submission of Application. To be eligible for a business loan, an owner shall make an application for a business loan pursuant to 4 MCAR §14.021 of this Rule on approved application forms of the Agency.

B. Approval of Application by Executive Director. The executive director shall process the application in accordance with the procedures and limitations set out in 4 MCAR §14.021. The criteria the executive director shall use in approving an application for processing are set out in 4 MCAR §14.021.

C. Acceptance for Processing. Upon the determination by the executive director that the business loan requested meets the eligibility requirements of 4 MCAR §14.021, the Agency shall determine pursuant to 4 MCAR §14.023 if the Agency intends to fund the requested business loan subject to final authorization by the Agency.

D. Final Authorization of Business Loan. Upon the determination by the Agency that the loan requested

pursuant to an application which has been accepted for processing can and should be funded, the Agency shall adopt a resolution approving such loan, which resolution shall include a provision that the obligation of the Agency to make the loan is contingent on the ability of the Agency to sell its bonds on terms which the Agency, in its sole discretion, deems acceptable. In addition, any such resolution may contain such other provisions and conditions as the Agency, in its sole discretion, deems advisable.

4 MCAR §14.021 Application Procedures.

A. The owner shall submit to the Agency copies of the completed application upon the forms provided by the Agency.

B. Application shall be deemed to have been made upon receipt by the Agency of a completed application with all required documentation and exhibits, together with the required fee specified in the application forms. In the event that an incomplete application is received, the executive director shall notify the applicant specifying the deficiencies. The applicant shall have 60 days from the date of the executive director's notification to complete such application. If the application is not completed within 60 days, the application shall be deemed to be rejected and the applicant must reapply to be

further considered. In the event the executive director is able to determine from the information submitted on an incomplete application that the applicant is not an owner or the proceeds of the requested business loan are intended to finance expenditures not permitted under the Act, the executive director shall so notify the applicant.

C. Upon receiving a completed application, the executive director shall review the application and shall make a determination as to whether the applicant is an owner as defined in the Act or the proceeds of the requested business loan are intended to finance expenditures permitted under the Act.

D. Costs eligible for funding are the capital expenditures set forth in the Act, including the following:

(1) Land and/or building acquisition costs,

(2) Site preparation,

(3) Construction costs,

(4) Engineering costs,

(5) Equipment and/or machinery,

(6) Bond issuance costs,

(7) Underwriting or placement fees,

(8) Initial trustee's fee,

(9) Initial fee of guarantor or insuror, if applicable,

(10) Small Business Administration processing and administration fee, if applicable,

(11) Minnesota Small Business Finance Agency fee,

(12) Certain contingency costs,

(13) Interest costs during construction, and

(14) Legal fees, including those of Agency's bond counsel.

The Agency shall determine that an expenditure is not eligible for funding if in the opinion of the Agency financing of such expenditure may adversely affect the exemption of the interest on the Agency's evidences of indebtedness from federal income taxes.

E. After approving or disapproving an application, the executive director shall notify the applicant of the determination and the treatment of the application as follows:

(1) If the executive director determines that the applicant is an owner as defined in the Act and that the costs specified in the application are eligible for funding, the application shall then be deemed accepted for processing and treated in accordance with the Agency review provisions established in 4 MCAR §14.023.

(2) If the executive director determines that the applicant is not an owner as defined in the Act, the application shall be rejected and not further considered.

(3) If the executive director determines that any of the costs described in the application are not eligible for funding, the executive director shall note the deficiencies in the application and shall so notify the owner. The owner shall have 30 days from the date of the executive director's notification to amend the application. In the event the application is amended in a timely fashion to include only eligible costs, it shall be treated in accordance with the Agency review provisions established in 4 MCAR §14.021F. If the application is not properly amended within 30 days, the application shall be deemed rejected and not further considered.

F. In the event that an application is rejected for processing pursuant to 4 MCAR §14.021 (E) (2) or (3), the applicant may, within 30 days after date of the notification by the executive director, request the executive director to submit the determination to the Agency for review at the next regularly scheduled meeting of the Agency for which the agenda has not been established. If the Agency approves the application, the application shall be treated in accordance with 4 MCAR §14.023.

4 MCAR §14.022 Application Content.

Applications shall be on forms of the Agency and shall include such information as the Agency reasonably deems necessary.

4 MCAR §14.023 Evaluation Procedure.

Applications approved for processing by the executive director shall be presented to the Agency for approval or disapproval. If the Agency disapproves the application, the executive director shall so notify the applicant. If the Agency approves the business loan for funding it shall forthwith pass a preliminary resolution giving preliminary approval to the project to be financed from the loan proceeds and stating the name of the owner, a brief description of the project, and the amount of the loan. Such a resolution shall not obligate the Agency to issue bonds or to fund any loan, but shall only constitute an expression of current intention of the Agency to issue such bonds or to fund such a loan. The preliminary resolution may contain a time limit with respect to the issuance of the bonds, may be revoked or amended by the Agency at any time prior to the final resolution of the Agency without liability to the Agency and may impose any conditions or requirements which the Agency deems desirable. The executive director shall forthwith notify the applicant of the Agency's approval and furnish the applicant a copy of the preliminary resolution.

The Agency shall review and consider approval of an application for a business loan, on the basis of effectuating the purposes of the Act, including determinations regarding the following:

(a) that the applicant is an owner as defined in the Act,

(b) that the small business reasonably can be expected to maintain a sound financial condition and to retire the principal and pay the interest on the loan made or

guaranteed in accordance with the terms of the loan agreement,

(c) that the project is economically feasible with a reasonable expectation that the life of its economic feasibility will exceed the maturity of the loan,

(d) that the project will create or maintain a sufficient number and type of jobs to justify Agency participation in its financing,

(e) that the project feasibility is sufficient to allow the Agency to sell the bonds required for its financing,

(f) that the project and its development is economically advantageous to the state, that the provision to meet increased demand upon public facilities as a result of the project is reasonably assured, and that energy sources to support the successful operation of the project are adequate,

(g) that if the project shall have the effect of a transfer of employment from one area of this state to another the Agency determines that the project is economically advantageous to the state or that the project is necessary to the continued operation of the business enterprise within the state,

(h) that other criteria have been met which the Agency has determined will effectuate the purposes of the Act.

4 MCAR §§14.024-14.029 [Reserved for future use]

STATE OF MINNESOTA

SMALL BUSINESS FINANCE AGENCY

In the Matter of the Proposed Rules of the Minnesota Small Business Finance Agency Relating to Amendment of the General Provisions Section of Existing Rules of the Agency and the Making of Business Loans.

ORDER ADOPTING RULES

Notice of the Agency's intent to adopt the above-entitled rules without a public hearing was published in the State Register on June 15, 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 June 11, 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 Rules of the Minnesota Small Business Finance Agency Relating to Amendment of the General Provisions Section of Existing Rules of the Agency and the Making of Business Loans are adopted this 15th day of July, 1981 pursuant to authority vested in the Agency by Minnesota Statutes section 362.53, subdivision 4 (1980).

STATE OF MINNESOTA
SMALL BUSINESS FINANCE AGENCY

Kent E. Eklund

KENT E. EKLUND
Vice Chair
Board of Directors
Small Business Finance Agency

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.

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

Vice Chairman
Small Business Finance Agency

b. Standard. In identifying study areas for coal-fired LEPGPs, "reasonable access" shall mean no more than 12 miles distant from the existing transportation system.

4. Water.

a. Criterion. Study areas for LEPGPs using evaporative cooling systems shall have reasonable access to an adequate water source.

b. Standards.

(1) In identifying study areas for LEPGPs using evaporative cooling, rivers and lakes shall be considered potential water sources.

(2) In identifying study areas for LEPGPs using evaporative cooling, "reasonable access" shall mean no more than 25 miles distant from the water source.

(3) In identifying study areas for LEPGPs using evaporative cooling, a water source shall be considered adequate if it appears likely to allow LEPGP operation through periods of historic low flows or historic low elevations, either by direct withdrawal or by using supplemental stored water. This evaluation shall be based on historic stream flows, cooling water system technology and the environmental, economic and engineering constraints of reservoir design related to size.

B. Application of inventory criteria and standards. The board shall adopt an inventory of study areas for the LEPGP capacities, fuel types and designs reasonably anticipated to be subject to application for a certificate of site compatibility in the near future. The inventory shall consist of the maps of the study areas; discussion of specific inventory criteria and standards and technical assumptions used to develop the maps; and discussion of the LEPGP capacities, fuel types, and designs for which the maps are developed. The board shall consult with board member agencies, utilities and other agencies or persons with applicable information as it develops the technical assumptions necessary for application of inventory criteria and standards.

Small Business Finance Agency

Proposed Rules Relating to Amendment of the General Provisions Section of Existing Rules of the Agency and the Making of Business Loans

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Small Business Finance Agency proposed 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 Minnesota Statutes, section 15.0412, subdivisions 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.

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

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

Amendment as Proposed

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 and Business Loans.

Rules as Proposed (all new material)

4 MCAR § 14.005 Misrepresentation by applicant. The agency may forthwith reject any application, whether or not previously approved, may revoke any preliminary or final resolution prior to sale of the bonds approved thereby or may refuse to close any loan in the event that any information provided to the agency by the owner contains a material misrepresentation or omission. Each applicant shall have an affirmative duty and obligation to update and correct all information provided to the agency.

4 MCAR § 14.006 Severability. If any provision of these rules or the application thereof to any business or person or circumstance is held to be invalid, such invalidity shall not affect any other provision or application of any other part of this rule or any other rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule and the various applications thereof are declared to be severable.

Chapter Three: Business Loans (4 MCAR §§ 14.020-14.029)

4 MCAR § 14.020 Overview of procedure for approval of business loans.

A. Submission of application. To be eligible for a business loan, an owner shall make an application for a business loan pursuant to 4 MCAR § 14.021 of this rule on approved application forms of the agency.

B. Approval of application by executive director. The executive director shall process the application in accordance with the procedures and limitations set out in 4 MCAR § 14.021. The criteria the executive director shall use in approving an application for processing are set out in 4 MCAR § 14.021.

C. Acceptance for processing. Upon the determination by the executive director that business loan requested meets the eligibility requirements of 4 MCAR § 14.021, the agency shall determine pursuant to 4 MCAR § 14.023 if the agency intends to fund the requested business loan subject to final authorization by the agency.

D. Final authorization of business loan. Upon the determination by the agency that the loan requested pursuant to an application which has been accepted for processing can and should be funded, the agency shall adopt a resolution approving such loan, which resolution shall include a provision that the obligation of the agency to make the loan is contingent on the ability of the agency to sell its bonds on terms which the agency, in its sole discretion, deems acceptable. In addition, any such resolution may contain such other provisions and conditions as the agency, in its sole discretion, deems advisable.

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.

4 MCAR § 14.021 Application procedures.

A. The owner shall submit to the agency copies of the completed application upon the forms provided by the agency.

B. Application shall be deemed to have been made upon receipt by the agency of a completed application with all required documentation and exhibits, together with the required fee specified in the application forms. In the event that an incomplete application is received, the executive director shall notify the applicant specifying the deficiencies. The applicant shall have 60 days from the date of the executive director's notification to complete such application. If the application is not completed within 60 days, the application shall be deemed to be rejected and the applicant must reapply to be further considered. In the event the executive director is able to determine from the information submitted on an incomplete application that the applicant is not an owner or the proceeds of the requested business loan are intended to finance expenditures not permitted under the Act, the executive director shall so notify the applicant.

C. Upon receiving a completed application, the executive director shall review the application and shall make a determination as to whether the applicant is an owner as defined in the Act or the proceeds of the requested business loan are intended to finance expenditures permitted under the Act.

D. Costs eligible for funding are the capital expenditures set forth in the Act, including the following:

1. Land and/or building acquisition costs,
2. Site preparation,
3. Construction costs,
4. Engineering costs,
5. Equipment and/or machinery,
6. Bond issuance costs,
7. Underwriting or placement fees,
8. Initial trustee's fee,
9. Initial fee of guarantor or insuror, if applicable,
10. Small Business Administration processing and administration fee, if applicable,
11. Minnesota Small Business Finance Agency fee,
12. Certain contingency costs,
13. Interest costs during construction, and
14. Legal fees, including those of agency's bond counsel.

The agency shall determine that an expenditure is not eligible for funding if in the opinion of the agency financing of such expenditure may adversely affect the exemption of the interest on the agency's evidences of indebtedness from federal income taxes.

E. After approving or disapproving an application, the executive director shall notify the applicant of the determination and the treatment of the application as follows:

1. If the executive director determines that the applicant is an owner as defined in the Act and that the costs specified in the application are eligible for funding, the application shall then be deemed accepted for processing and treated in accordance with the agency review provisions established in 4 MCAR § 14.023.

2. If the executive director determines that the applicant is not an owner as defined in the Act, the application shall be rejected and not further considered.

3. If the executive director determines that any of the costs described in the application are not eligible for funding, the executive director shall note the deficiencies in the application and shall so notify the owner. The owner shall have 30 days from the date of the executive director's notification to amend the application. In the event the application is amended in a timely fashion to include only eligible costs, it shall be treated in accordance with the agency review provisions established in 4 MCAR § 14.021 F. If the application is not properly amended within 30 days, the application shall be deemed rejected and not further considered.

F. In the event that an application is rejected for processing pursuant to 4 MCAR § 14.021 E.2. or 3., the applicant may, within 30 days after date of the notification by the executive director, request the executive director to submit the determination to the agency for review at the next regularly scheduled meeting of the agency for which the agenda has not been established. If the agency approves the application, the application shall be treated in accordance with 4 MCAR § 14.023.

4 MCAR § 14.022 Application content. Applications shall be on forms of the agency and shall include such information as the agency reasonably deems necessary.

4 MCAR § 14.023 Evaluation procedure. Applications approved for processing by the executive director shall be presented to the agency for approval or disapproval. If the agency disapproves the application, the executive director shall so notify the applicant. If the agency approves the business loan for funding it shall forthwith pass a preliminary resolution giving preliminary approval to the project to be financed from the loan proceeds and stating the name of the owner, a brief description of the project, and the amount of the loan. Such a resolution shall not obligate the agency to issue bonds or to fund any loan, but shall only constitute an expression of current intention of the agency to issue such bonds or to fund such a loan. The preliminary resolution may contain a time limit with respect to the issuance of the bonds, may be revoked or amended by the agency at any time prior to the final resolution of the agency without liability to the agency and may impose any conditions or requirements which the agency deems desirable. The executive director shall forthwith notify the applicant of the agency's approval and furnish the applicant a copy of the preliminary resolution.

The agency shall review and consider approval of an application for a business loan, on the basis of effectuating the purposes of the Act, including determinations regarding the following:

A. That the applicant is an owner as defined in the Act,

B. That the small business reasonably can be expected to maintain a sound financial condition and to retire the principal and pay the interest on the loan made or guaranteed in accordance with the terms of the loan agreement,

C. That the project is economically feasible with a reasonable expectation that the life of its economic feasibility will exceed the maturity of the loan,

D. That the project will create or maintain a sufficient number and type of jobs to justify agency participation in its financing,

E. That the project feasibility is sufficient to allow the agency to sell the bonds required for its financing,

F. That the project and its development is economically advantageous to the state, that the provision to meet increased demand upon public facilities as a result of the project is reasonably assured, and that energy sources to support the successful operation of the project are adequate,

G. That if the project shall have the effect of a transfer of employment from one area of this state to another the agency determines that the project is economically advantageous to the state or that the project is necessary to the continued operation of the business enterprise within the state,

H. That other criteria have been met which the agency has determined will effectuate the purposes of the Act.

4 MCAR §§ 14.024-14.029 [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.

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)(l) 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

STATE OF MINNESOTA

SMALL BUSINESS FINANCE AGENCY

In the Matter of the Proposed Rules of the Minnesota Small Business Finance Agency Relating to Amendment of the General Provisions Section of Existing Rules of the Agency and the Making of Business Loans.

ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT PUBLIC HEARING

IT IS ORDERED this 11th day of June, 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

In the Matter of the Proposed Rules of the Minnesota Small Business Finance Agency Relating to Amendment of the General Provisions Section of Existing Rules of the Agency and the Making of Business 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 May, 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 Eklund, vice chairman and one of the members of the Minnesota Small Business Finance Agency, be and he hereby is authorized and directed to sign an order for notice of intent to adopt rules without a public hearing and 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 amendment of the general provisions section of existing rules of the Agency and adoption of new rules relating to the making of business 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 27th day of May, 1981.

M. Jean Laubach

M. Jean Laubach
Executive Director

ATTEST:

Robert J. Nelson

STATE OF MINNESOTA

SMALL BUSINESS FINANCE AGENCY

In the Matter of the Proposed Rules of the Minnesota Small Business Finance Agency Relating to Amendment of the General Provisions Section of Existing Rules of the Agency and the Making of Business 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). 2

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. 3 4

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. 5 7

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 6

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. 9

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: May 27, 1981

Kent E. Eklund
Vice Chairman
Small Business Finance Agency

In the Matter of the Proposed Rules of the Minnesota Small Business Finance Agency Relating to Amendment of the General Provisions Section of Existing Rules of the Agency and the Making of Business Loans.

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

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

That on the 11 day of June, 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 16th day of July,
1981.

Arthur G. Belair
NOTARY PUBLIC — MINNESOTA
WASHINGTON COUNTY
My commission expires Dec. 23, 1987

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Rules of the Minnesota Small Business Finance Agency Relating to Amendment of the General Provisions Section of Existing Rules of the Agency and the Making of Business 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 11 day of June, 1981.

M. Jean Laubach

M. JEAN LAUBACH, EXECUTIVE DIRECTOR

STATE OF MINNESOTA

SMALL BUSINESS FINANCE AGENCY

In the Matter of the Proposed Rules of the Minnesota Small Business Finance Agency Relating to Amendment of the General Provisions Section of Existing Rules of the Agency and the Making of Business Loans.

CERTIFICATE OF BOARD'S RESOLUTION ADOPTING RULES

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 15th day of July, 1981, that a quorum was present at said meeting, that a majority of those present voted for the resolution, that said resolution was approved at 3:25 o'clock p.m., 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 Amendment of the General Provisions Section of Existing Rules of the Agency and the Making of Business Loans be and they hereby are approved and adopted, pursuant to authority vested in us by Minnesota Statutes section 362.53, subdivision 4 (1980) and that Kent E. Eklund, the Vice Chairman of the 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 by name this 15th day of July, 1981.

M. Jean Laubach

M. JEAN LAUBACH
Executive Director

Member

ATTEST

STATE OF MINNESOTA

SMALL BUSINESS FINANCE AGENCY

In the Matter of the Proposed Rules of the Minnesota Small Business Finance Agency Relating to Amendment of the General Provisions Section of Existing Rules of the Agency and the Making of Business Loans.

STATEMENT OF NEED AND REASONABLENESS

The Minnesota Small Business Finance Agency ("Agency") presents herein its statement of the need for and reasonableness of its proposed rules relating to the amendment of the general provisions section of its existing rules and the adoption of rules for the making of business loans. The above-captioned rules are new rules and amendments to existing rules. The Agency's existing rules were adopted by the Agency on April 22, 1981.

The authority of the Agency to adopt these rules and the need for and reasonableness of the proposed rules are as follows:

I. Authority Of The Agency To Promulgate And Adopt Rules

Minn. Stat. § 362.53, subd. 4 (1980) empowers the Agency to adopt, amend and repeal rules not inconsistent with the provisions of Minn. Stat. §§ 362.132 and 362.50 to 362.53 as necessary to effectuate its corporate purposes.

II. Rules Amending The General Provisions Section Of The Agency's Existing Rules

4 MCAR §§ 14.001, 14.005 and 14.006

The Agency proposes to amend the general provisions section of its existing rules by amending 4 MCAR § 14.001 and by adding two new rules, 4 MCAR §§ 14.005 and 14.006. The amendment to 4 MCAR § 14.001 is reasonable and necessary to reflect the fact that the scope of the Agency's rules now will include the providing of Business Loans. The addition of 4 MCAR § 14.005, a general provision with respect to the making of a material misrepresentation or the omission of a material fact in a loan application, is reasonable and necessary to

assure that the information upon which the Agency makes its decisions in connection with the funding of its loan programs is complete and accurate. The requirement that information be updated and corrected by the applicant is reasonable and necessary to protect the Agency from a change in circumstance, subsequent to the filing of an application, which should be considered in the decisions to approve an application, to fund a loan or to sell notes and bonds. Section 14.006 is added to clarify the Agency's intent that the provisions of these rules and their application to particular persons or circumstances be interpreted as being severable from one another, such that a finding of invalidly as to any provision or the application thereof would not affect the validity of the remainder of the rules.

III. Rules Relating To The Making Of Business Loans

The Agency proposes to adopt a new set of rules to implement a program for the making of business loans. The Agency's enabling legislation, Minn. Stat. § 362.52 (1980), provides that the Agency may make, purchase or participate in the making of pollution control loans and business loans. The Agency, having previously adopted 4 MCAR §§ 14.010 to 14.012 to implement a pollution control loan program, now proposes to adopt a program to permit the sale of the Agency's notes and bonds for the purpose of making business loans.

4 MCAR § 14.020

Proposed section 14.020 provides a summary and overview of the procedures involved in applying for and obtaining Agency approval of a business loan. Subsections A through C trace the processing of a loan from the submission of the application to the Agency through the review and acceptance of the application by the Executive Director to the final Agency determination as to whether the loan should be funded. These subsections are a necessary and reasonable summary of the loan application process for the benefit of the public.

Subsection D of proposed section 14.020 is a substantive provision which is reasonable and necessary to set forth the process for approval of a loan once the Agency has determined that a project should be funded. This subsection provides for the adoption of a preliminary resolution after the Agency has determined to fund a loan. Subsection D is intended to make it clear to the public that Agency acceptance of a loan application for funding is subject to numerous contingencies and that loans are only made at the time that the Agency, having considered factors such as market conditions, sells its notes on bonds. This subsection also reflects the authority given to the Agency under Minn. Stat. §§ 362.53, subd. 11 and 462A.08 to 462A.13 (1980) to enter into contracts, and to place certain contractual provisions in its authorizing resolutions, as a condition to making any loan.

4 MCAR § 14.021

Proposed section 14.021 establishes a reasonable and necessary procedure for submission of an application for a business loan and review and approval of the application by the Agency.

Subsection A requires the submission of a loan application on forms prepared by the Agency. This requirement is reasonable and necessary to assure that necessary information is submitted in a uniform manner to assist in the administrative processing of each loan application.

Subsection B provides a reasonable time period within which an application must be completed after the applicant receives notice from the Agency's Executive Director that the application is deficient. This subsection is necessary to assure that business loan applications contain current information which properly reflects the eligibility of the business and the proposed project for funding by the Agency. As both the eligibility of a business for loan funding by the Agency as a small business and the economic feasibility of a project can change in a short period

of time, sixty days is a reasonable period within which to require an applicant to complete a deficient application.

Subsection C requires the Executive Director to determine whether a completed application may be subject to funding by the Agency based on determinations that the applicant is an owner, as defined in the Act, and that the proposed loan will be used to finance eligible expenditures under the Act. It is reasonable and necessary that the Agency rely on its Executive Director to make the initial determination of loan eligibility. However, it is also reasonable and necessary to provide an applicant who disagrees with the Executive Director's administrative decision with a means of obtaining review of that decision by the Agency. Therefore, subsection F of this rule sets forth a reasonable and necessary procedure whereby a rejected loan application may, upon timely request, be placed before the Agency board for review at its next regularly scheduled meeting for which the agenda has not already been established.

Subsection D, setting forth a list of the kinds of costs that may normally be funded through the proceeds of an agency loan, is reasonable and necessary to advise the public as to permissible use of loan proceeds. This subsection lists the more common expenditures permitted under section 362.50, subd. 9 of the Act and under applicable tax laws. The provision that expenditures which might adversely affect the exemption from federal income taxation of interest on the Agency's evidences of indebtedness be considered not eligible for funding is reasonable and necessary to preserve the economic viability of the Agency's loan programs. This provision recognizes that the principal advantage to a small business which seeks an agency loan is the more favorable interest rates available in the market place in financing tax exempt indebtedness. It is therefore reasonable to assure that loan proceeds are not used in such a manner as might adversely affect the tax exempt status of the Agency's indebtedness.

Subsection E of this rule is reasonable and necessary to set forth a procedure for the approval or disapproval of loan applications by the Executive Director and notification of the Executive Director's action to the applicant. Section 362.51, subd. 10 of the Act specifically authorizes the designation of an executive director to assist the Agency in the administration of its duties. Subsection E(1) provides that approved applications are processed in accordance with proposed rule 14.023. Subsection E(2) provides that where the Executive Director determines an applicant is not an owner as defined in the Act, the application must be rejected. This procedure is reasonable and necessary as the Act does not permit the funding of a loan to such a business. Finally, subsection E(3) provides that where certain of the costs identified in the application are determined to be ineligible by the Executive Director, the application may be amended and submitted to the Agency board for approval. Failure to amend within 30 days will result in rejection of the application.

4 MCAR § 14.022

Proposed section 14.022 provides that the Agency shall prepare application forms upon which all business loan applications shall be submitted. It is reasonable and necessary to require the submission of applications on uniform application forms to assure that necessary information is presented in such a manner as to assist in the administrative review of loan applications as to eligibility under the Act.

4 MCAR § 14.023

Proposed section 14.023 sets forth the procedure by which loan applications which have been approved by the Executive Director are to be evaluated by the Agency.

The first paragraph of this rule provides that when an application is approved by the Agency, the Agency shall pass a preliminary resolution giving the project preliminary approval. This provision is reasonable and necessary to preserve the federal

income tax exemption for the interest on any bonds or notes the Agency may sell, in conformity with the requirements of applicable federal tax regulations. Treas. Reg. § 1.103-8(a)(5) provides that prior to construction or acquisition of a project the issuer of tax exempt notes or bonds must take formal action toward bond issuance. The adoption of a preliminary resolution, which expresses a current intention to issue notes or bonds or to fund a loan, is reasonable and necessary to meet this requirement.

The second paragraph of proposed section 14.023 is reasonable and necessary to set forth the substantive criteria that the Agency will assess in evaluating the feasibility and desirability of funding a particular loan. These criteria, A through H, are reasonable and necessary for the following reasons:

A. The Act requires that an applicant be an owner, that is a person engaged in a small business, before the Agency can fund a loan;

B. As the only source of payment for the Agency's obligations is the borrower, it is reasonable to require that the borrower be capable of paying principal and interest over the life of the loan;

C. It is reasonable to require that a project be economicably feasible over the life of a loan as the project will constitute security for repayment of the loan and is subject to foreclosure in the event of default;

D. The requirement that a project create or maintain jobs sufficient to justify a loan is based on section 362.51, subd. 2 which states that a purpose of the Act is to increase and maintain career and job opportunities;

E. It is necessary that a project be of sufficient feasibility to make the Agency's bonds marketable or no bond proceeds will be available to fund a loan;

F. Consideration of whether a project will be of economic advantage to the state and whether the increased

demands upon public facilities and energy sources can be met is in keeping with the purposes of the Act as set forth in Minn. Stat. § 362.51, subd. 2 (1980);

G. As a purpose of the Act is to create and maintain jobs, rather than merely to relocate them, it is reasonable and necessary to consider the overall impact of a transfer of employment from one area of the state to another;

H. Finally, it is reasonable and necessary to require the Agency to consider such other criteria as the purposes of the Act may make applicable to the evaluation of a particular project.

Dated: June 15, 1981

Kent E. Eklund

KENT E. EKLUND
Vice Chairman
Small Business Finance Agency

STATE OF MINNESOTA

SMALL BUSINESS FINANCE AGENCY

In the Matter of the Proposed Rules of the Minnesota Small Business Finance Agency Relating to Amendment of the General Provisions Section of Existing Rules of the Agency and the Making of Business 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: 7/23/81