

Minnesota Attorney General: Administrative Rules Proceedings

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Our File No. 847

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 9-1-82
DATE FOR REVIEW 9-10-82
DATE DUE 9-15-82

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

Approved _____ Disapproved 9-15-82 Returned to Agency _____

Resubmitted 10/26/82 Due 11/5/82
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State _____ Revisor approved 10/26/82 9/2/82
disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed See SR.

✓ Order Adopting 8.31.82 10.25.82 Date

✓ Notice of Intent to Solicit Outside Opinion SR. 11.16.81

✓ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

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

✓ Mailing list Certificate

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

N/A Hearing Examiner's Report

Chief Hearing Examiner's Report(s)
_____ Approving H.E.'s Report
_____ Approving agency action

N/A Agency's Findings of Fact no changes

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

✓ 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

Notice of Submission to the Attorney General

In the Matter of the Proposed Adoption of Rules of the Department of Agriculture Governing the Administration of the Family Farm Security Program and Repeal of Existing Rules Governing Administration of the Family Farm Security Program (3 MCAR §§ 1.0543 - 1.0547)

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, [Special Assistant Attorney General] Jon Murphy, 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.

[Special Assistant Attorney General]

Date: 8/31/82

STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION)
OF RULES OF THE DEPARTMENT OF)
AGRICULTURE GOVERNING ADMINISTRATION)
OF THE FAMILY FARM SECURITY PROGRAM)
AND REPEAL OF EXISTING RULES)
GOVERNING ADMINISTRATION OF THE)
FAMILY FARM SECURITY PROGRAM (3 MCAR)
SS 1.0543-1.0547))

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

The subject of this rulemaking is the proposed adoption by the Minnesota Department of Agriculture of rules governing administration of the Family Farm Security Program and repeal of existing rules governing administration of the Family Farm Security Program. These rules are proposed for adoption pursuant to Minnesota Statutes section 41.53, subd. 2 which authorizes the Department to promulgate rules necessary for the efficient administration of the Family Farm Security Program.

Rulemaking on the proposed rules was authorized by the Department on July 2, 1982. Prior to the initiation of rulemaking, the Department found that the proposed adoption of the rules is noncontroversial in nature because while it is proposed that the current rules be repealed and these proposed rules be adopted, there is no repeal of any substantial part of any current rule. Rather, the proposed rules reorganize and amplify present provisions, incorporating legislative changes made since promulgation of the current rules in 1977 and also incorporating procedures developed by the Department through administrative experience with the program since it began in 1976.

Due to the non-controversial nature of the proposed rules, the Department directed that the rulemaking proceedings be conducted in accordance with the statutory provisions governing the adoption of non-controversial rules, Minnesota Statutes section 15.0412, subd. 4h (1981 Supp.). Accordingly, the rulemaking proceedings on the proposed rules are governed by that statute and no hearing will be conducted on the adoption of the rules unless, on or before August 18, 1982, seven or more persons submit to the Department a written request for such a hearing.

In accordance with the requirements of Minnesota Statutes section 15.0412, subd. 4h (1981 Supp.) this document, the Statement of Need and Reasonableness, was prepared and completed prior to the date that the proposed adoption of the rules was noticed in the State Register.

The discussion provided in this Statement is divided into the following parts:

Part II. General Overview

Part III. General Statement of Need and Reasonableness

Part IV. Need for and Reasonableness of Each of the Proposed Rules

II. GENERAL OVERVIEW

A. History of the Family Farm Security Program

In order to understand the need for and reasonableness of these proposed rules, it will be useful to have a general understanding of the purpose and history of the Family Farm Security Program. In 1976, the Minnesota legislature enacted the Family Farm Security Act which gave authority to the Commissioner of Agriculture to aid farmers in obtaining credit for the acquisition of farm land. The Act enables the Commissioner to guarantee 90 percent of the loans made for acquisition of farm land and to pay four

percent of the annual interest on these loans to lenders who make the loans. "Lenders" include both traditional farm real estate financial institutions as well as current owners acting both as sellers of the farm land and financiers of the loan for purchase of the farm land. A Family Farm Advisory Council makes recommendations to the Commissioner as to the likelihood of success of proposed farming operations and acts in conjunction with the Commissioner in setting policies and direction for the program based on Minnesota Statutes, chapter 41 and as reflected in these proposed rules. The Advisory Council, in accordance with Minnesota Statutes section 41.54, subd. 1, is composed of the following seven members: two officers from a commercial lending institution, one dairy farmer, one livestock farmer, one cash grain farmer, one officer from a farm credit association and one agricultural economist.

In order to apply for a Family Farm Security Program loan, the applicant must meet the eligibility criteria outlined in Minnesota Statutes section 41.55 and those set forth in these proposed rules. The applicant must also submit certain documents to the Commissioner, which indicate a firm commitment and interest in obtaining a family farm security loan guarantee. Upon obtaining a preliminary approval from the Commissioner, the applicant must submit additional materials and final approval follows completion of all additional procedures including execution of the state's guarantee documents. Principal benefits of the program are the 90 percent guarantee on loans made by lenders participating in the program and participant eligibility for the payment adjustment which is a 4% interest payment by the state to lenders. Further eligibility criteria, pursuant to statute and these rules, govern this payment adjustment, with one major limiting factor being the requirement that the participant's net worth not exceed $135,000, as currently defined in

Minnesota Statutes, section 41.57, subd. 3. More detailed procedures for these and other parts of the program are contained in these proposed rules.

The first applicant was approved for a family farm security loan guarantee in March, 1977. In the subsequent five years, the program has grown considerably. As of July 1, 1982, there were 345 farmers participating in the program, located in 67 Minnesota counties. These participants own 55,709 acres of farm land, with approximately $60.7 million of the purchase price of this land guaranteed under the program.

B. Format of the Proposed Rules

The proposed rules are set forth in the following manner: purpose and authority; definitions; eligibility; application, preliminary approval, notification and reconsideration; final approval and guarantee; payment adjustment; recipient of payment adjustment; reimbursement of payment adjustment; default of participant; waiver of default; termination of guarantee; loan servicing; and Commissioner's right to information.

III. GENERAL STATEMENT OF NEED AND REASONABLENESS OF THE PROPOSED RULES

The Department has determined that it is timely to revise the rules of the Family Farm Security Program for three reasons. The first is that several legislative amendments have been made to the enabling statute since 1976. The second reason for proposing these rules stems from the need to incorporate into the rules practices which have evolved during the five years of the Department's administrative experience with the program. Such practices have evolved from research done into similar programs in different states; assessments of

procedures and prudent lending practices used by financial institutions such as rural banks, the Farmers Home Administration, and the Federal Land Bank; decisions made by the Commissioner and program administrator based on the recommendations of the Family Farm Advisory Council; and increasing familiarity with the normal practices and legal procedures involved in real estate transactions. The third reason for proposing these rules is to reorganize the language and provisions of the current rules in order to provide clarity in the procedures and to provide a better chronology in the procedures, for example, placing the rule regarding eligibility for the program in the proposed rules in contrast with the current rules where their order is reversed.

In general, these proposed rules are also reasonable for two principal reasons. The first is that it is reasonable for the Department to follow the directive of Minnesota Statutes section 41.53, subd. 2 and provide rules for the efficient administration of the program. During the previous five years of the program, the Department has become increasingly familiar with normal practices in the areas of real estate transactions and real estate financing, and it is reasonable to organize all that information both for the purposes of the Department's administration and also for clarity and ease of understanding for participants seeking to enter the program and also for sellers and lenders participating in the program. The procedures proposed in the rules are reasonable either because they are similar to normal procedures in real estate or financial transactions, or, where they are procedures unique to the Family Farm Security Program, they have been appraised and accepted by the Family Farm Advisory Council and have been proven over time in the Department's administrative experience with the program.

IV. SPECIFIC STATEMENT OF NEED AND REASONABLENESS FOR EACH OF THE PROPOSED RULES

The need for and reasonableness of each of the proposed rules follows. The discussion of the need and reasonableness of the proposed rules has been divided into the following four categories due to the extent of amplification to the current rules which is provided: technical additions to material in current rules; amplification of material in current rules; all new material; and material from current rules not included in proposed rules.

For the sake of brevity, the complete content of each of the rules will not appear here, but rather the number of each rule will be provided for reference.

A. Technical Additions to Material in the Current Rules

In this section, four proposed rules are discussed which contain essentially the same material as in the current rules with only minor technical additions.

3 MCAR S 1.0548

This proposed rule sets forth the purpose of these rules governing administration of the Family Farm Security Program and the authority by which the Commissioner proposes the adoption of these rules. This statement of purpose and authority appears in the current rule, 3 MCAR S 1.0543 A., but is presented here in the format currently prescribed by the Office of the Revisor of Statutes.

3 MCAR S 1.0550

This proposed rule sets forth the eligibility requirements which an applicant must meet in order to apply for approval into the Family Farm Security Program. The material in the current rule, 3 MCAR S 1.0543 C. 1.-7., is basically a repetition of the eligibility requirements outlined in Minnesota Statutes section 41.55, clauses (a)-(e). Thus the material was reorganized in the proposed rule as 3 MCAR S 1.0550 A., pursuant to the rule drafting procedures of the Office of the Revisor of Statutes requiring the minimization of duplication of statutory language, pursuant to Minnesota Statutes section 648.50, subd. 6.

There are, however, five substantive technical additions in this proposed rule. The first is the inclusion of the reference in proposed rule 3 MCAR S 1.0550 A. to Minnesota Statutes section 500.221, subd. 2 (1981 Supp.) which permits permanent resident aliens, as defined in Minnesota Statutes section 500.221, subds. 1 and 1a (1981 Supp.), to acquire farm land in Minnesota but restricts acquisition of farm land by others. It is necessary and reasonable to include permanent resident aliens as eligible to apply for participation in the Family Farm Security Program since Minnesota Statutes section 500.221, subd. 2 (1981 Supp.) does not restrict such persons from acquiring farm land in Minnesota. Such applicants would have to meet other eligibility criteria and follow other procedures as set forth in proposed rules 3 MCAR SS 1.0548-1.0560 in order to be approved for and fully participate in the program. But it is a reasonable provision not to exclude from eligibility for the program a permanent resident alien who is not restricted elsewhere in the statutes from acquiring farm land in Minnesota.

The second technical amendment to the material in the current rule occurs in proposed rule 3 MCAR S 1.0550 B. When the current rules were promulgated in 1977, the statutorily defined limit on net worth as a criterion for eligibility was $50,000 as stated in the current rule, 3 MCAR S 1.0543 C. 4. In 1979 the legislature increased this ceiling to $75,000, which was never reflected in the rules. Thus, it is necessary to update this specific provision. Rather than include the new figure for the net worth limit, however, it is reasonable to reference the section of Minnesota Statutes

where the net worth limitation appears so that the rule will be consistent with the figure set by the legislature, whether the figure increases, decreases or remains the same.

The third substantive addition in this proposed rule is the clarification in 3 MCAR S 1.0550 C. that applications will be accepted only for the acquisition of farm land. This clarification is necessary because the Department has had inquiries regarding the availability of loan guarantees to make improvements such as construction of buildings on farm land already owned. The provision is reasonable because the intent of the program is to assist farmers in obtaining credit for the acquisition of farm land (Minnesota Statutes section 41.52, subds. 5-6) rather than for improvements on the farm land.

The fourth substantive addition to this proposed rule is contained in 3 MCAR S 1.0550 D. This requirement appears neither in the statute nor in the current rule, but it is a necessary requirement because of the manner in which the state's guarantee operates in response to participant default under Minnesota Statutes section 41.56, subd. 3 and proposed rule 3 MCAR S 1.0556. In cases where the state must exercise its guarantee and pay 90 percent of the sums payable to the lender or seller, as defined in proposed rule 3 MCAR S 1.0552 E., it is necessary that the state then be sole holder of the fee title to the farm land so that it might be able to comply with the directive contained in Minnesota Statutes section 41.56, subd. 4 to sell the defaulted property. If the participant in the Family Farm Security Program were permitted to acquire less than 100 percent interest in the farm land, the state would have to negotiate the sale of the property it acquired by default with the remaining partner-owner of the property. The partner may not be interested in selling the property, and the state would be in the position of part landowner of farm land. It is the interpretation of the Department that this would be a situation that the legislature did not intend when it enacted the enabling statute. To protect the interest of the state and be consistent with the legislative intent, then, it is also a reasonable provision to require applicants to purchase 100 percent interest in the farm land.

The last substantive addition to this proposed rule appears in the second half of 3 MCAR S 1.0550 E. The first part of that provision appears in the current rules under 3 MCAR S 1.0543 C. 6. The requirement in the second part, that the applicant substantiate the economic feasibility of the proposed farming operation, is a necessary provision because the state must be reasonably certain that the guarantee will be provided for an operation with a good likelihood of success. This provision is reasonable because it is also fair to the applicant who is presumably similarly interested in the success of the proposed farming operation. The provision is an amplification of the authority granted the Commissioner under Minnesota Statutes section 41.55, clause (e) to provide standards for the credit worthiness of applicants.

3 MCAR S 1.0554

This proposed rule sets forth the procedure for interest payment adjustments to be made on behalf of the participant to the appropriate recipient. The first part of this proposed rule is contained in the current rule, at 3 MCAR S 1.0544 A. 2. and 3 MCAR S 1.0544 A. 2. a., which requires the lender to

annually bill the Commissioner for payment adjustments due and which also requires the Commissioner to pay the payment adjustment to the lender. It is the second part of this proposed rule which contains the substantive technical addition that the state may pay the payment adjustment to the participant who submits proof that a full installment payment was made. This is a necessary provision because the Department's administrative experience has shown that lenders grant the family farm security loan to participants who have received preliminary approval for the program in accordance with proposed rule 3 MCAR S 1.0551. The period of time between this preliminary approval and final approval, as outlined in proposed rule 3 MCAR S 1.0552, may take an additional 6-12 months, during which time a payment on the loan may be required. If the participant makes this full payment on the loan, including both the payment on the principal balance and the full interest payment due, then it is necessary that the state be able to pay the 4 percent payment adjustment directly to the participant who entered into the loan agreement with preliminary approval for participation in the program, since this 4 percent payment adjustment is a benefit of participation in the program. Except in the rare cases where an applicant withdraws an application, every applicant to date who has received preliminary approval also receives final approval for the program. It is reasonable that approved participants in the program should receive a benefit due them from the program, whether directly or indirectly as when paid to the lender.

3 MCAR S 1.0560

This proposed rule contains the same material in essentially the same language as in the current rule, 3 MCAR S 1.0547. One technical addition regarding compliance is the specific reference in the proposed rules to the enabling statute, Minnesota Statutes chapter 41 and the proposed rules, 3 MCAR SS 1.0548-1.0560 rather than the general reference to "law and rules" in the current rule. Another difference between the rule as proposed and the current rule lies in the phrase stating that the Commissioner may request information from the lender "or the participant" at any time. "Applicant" in the current rule is changed to "participant" in the proposed rules to reflect the actual status of the individual once accepted into the program. An error exists, however, in the current 3 MCAR S 1.0547 phrase which is stated "... the lender <u>on</u> the applicant". This is a typographical error in the MCAR printed version as is apparent from reviewing the actual rule as adopted in 1977. (See Attachments A and B.) Thus, the rule as proposed in 3 MCAR S 1.0560 is not a substantive difference requiring information from the participant formerly provided by the lender, but is only a correction of a typographical error printed in the current rule 3 MCAR S 1.0547, but never actually adopted.

B. Amplification of Material in Current Rules

In this section, six proposed rules are discussed which contain language amplifying material in the current rules. The same general procedures from the current rules are retained and more specific and detailed procedures, based on the Department's administrative experience, are provided in the proposed rules. The material from the current rules is also reorganized in the proposed rules to provide more clarity as to the actual chronological order of procedures to be followed.

3 MCAR S 1.0551

This proposed rule sets forth the procedures to be followed by the applicant in applying to the program and to be followed by the Commissioner in reviewing applications and granting preliminary approval. The proposed rule contains several substantive amplifications of procedures outlined in the current rules.

The first substantive amplification occurs in proposed rule 3 MCAR S 1.0551 A. which lists all the material to be contained in an application for participation in the program. New language in 3 MCAR S 1.0551 A. 1.-6. is provided to clarify for readers and users of the rules the documents which comprise an application. The introduction to this part of the proposed rule contains one major difference regarding which party supplies the forms for application to the program. The current rules state that the lender shall provide the forms for the application procedure since at the beginning of the program when the rules were first promulgated in 1977, lenders rather than the Commissioner had loan applications available. The proposed rule states that forms will now be provided by the Commissioner. Since the Commissioner reserves the right to require information under proposed rule 3 MCAR S 1.0560 it is reasonable that the Commissioner also provide pertinent forms. Minnesota Statutes section 41.57, subd. 1 states only that the Commissioner must approve the forms to be used. Thus, it is not inconsistent with the statute for the Commissioner to provide as well as approve the forms for application.

The second substantive amplification in this proposed rule is stated in 3 MCAR S 1.0551 B. The current rule, 3 MCAR S 1.0543 B. 2., contains material which appears in this part of the proposed rule, except that there is no statement in the proposed rule similar to 3 MCAR S 1.0543 B. 2. b. and c. regarding who is to pay for the appraisal. Since it is reasonable that the person seeking approval should provide all the information required for application, it is reasonable that the applicant should also pay for the required documentation. Yet the proposed rule permits the applicant flexibility in arranging payment for an appraisal. This part of the proposed rule also states that a letter of the appraiser's qualifications be on file with the Commissioner. It is necessary to have such a letter so that the Department can be reasonably certain of the true value of the farm land for which the loan and guarantee are sought. It is reasonable, however, that such a letter be on file rather than accompanying each application in order to eliminate any paperwork burden on appraisers who are regularly involved in this type of assessment for the Family Farm Security Program. These appraisal procedures are proposed pursuant to Minnesota Statutes section 41.57, subd. 1.

The third substantive amplification in this proposed rule is stated in 3 MCAR S 1.0551 C. This entire part of this proposed rule is new language except for the last sentence which appears both in Minnesota Statutes section 41.57, subd. 1 and current rule 3 MCAR S 1.0543 B. 2. d. It is necessary that a purchase agreement be included among the documents required for application to the Family Farm Security Program because it is a principal component in any financing arrangement made by financial institutions in cases of real estate transactions. Purchase agreements are thus normally required where any real estate transactions are contemplated. It is reasonable that any purchase agreement made for purposes of securing a family farm security loan guarantee be made in accordance with the provisions of these proposed rules 3 MCAR SS 1.0548-1.0560 and in accordance with the statute since these will govern the applicant's approval into the program. The requirement of a statement in the purchase agreement that the sale of the farm land be contingent upon approval of the applicant for a guarantee is necessary in order to fulfill the purpose of the program. The purpose of the Family Farm Security Program is to provide credit to farmers whose net worth and other relevant financial factors are such that the farmers most likely are not able to get credit for farm land acquisition elsewhere. The contingency clause is essentially a statement of the applicant's need for the benefits of the program, i.e., the guarantee, in order to acquire farm land. Were it not included, it would appear that the applicant does have access to other sources of credit to finance the acquisition because the sale of the farm land would proceed even without the guarantee from the state. It is a reasonable provision that this contingency clause be included in order to be consistent with the legislative intent of the program and in order not to provide unfair advantage to applicants who might well have access to other sources of credit for financing farm land acquisition.

The fourth substantive amplification in this proposed rule is contained in 3 MCAR S 1.0551 D., which requires the applicant to submit the listed letters of commitment where they are appropriate. While the language is new, it only provides an elaboration of the current rule, 3 MCAR S 1.0543 F. 7., which requires arrangements for financing necessary equipment and operating costs. The proposed rule clarifies what should be contained in this documentation if it is required in cases where livestock or equipment will be purchased or where equipment will be shared. Documentation regarding the financing of any portion of the farm land sale not financed by the seller is necessary in order for the Commissioner to be reasonably certain that the entire purchase price of the farm land will be financed. The requirement that arrangements for the first year's operating credit also be made is necessary because administrative experience as well as experience in the general farming community has shown that the first year of operation for a beginning farmer is often the most difficult. All of these provisions are reasonable ones because it is in the best interests of the state and the participant that the proposed farming operation be successful, and both administrative experience as well as experience from the farm and financial communities have shown that the areas addressed in these letters of commitment are potential problem areas for all farmers. Thus it is reasonable to address possible problem areas in order to mitigate undesirable outcomes for the farm operation where possible.

The fifth substantive amplification in this proposed rule is contained in 3 MCAR S 1.0551 E. regarding financial information the applicant must provide. This part of this proposed rule contains mostly new language intended to clarify what is required of the applicant. The first piece of financial information required, the statement of net worth, is necessary so that the Commissioner may determine one of the major conditions of eligibility: whether the applicant has a lower net worth than the limitation set under Minnesota Statutes section 41.55, clause (c). The second and third items regarding past earnings and projected income and expenses for the farm operation are necessary so that the Commissioner may get a clear picture of the financial position of the applicant in order to determine the likelihood of the applicant's success in farming. Credit references are necessary so that the Commissioner can determine the applicant's credit worthiness pursuant to Minnesota Statutes section 41.55, clause (e). These are all reasonable requirements because they have been determined as necessary by the Family Farm Advisory Council in order to determine the likelihood of the applicant's success, the applicant's access to sources of operating credit as discussed at 3 MCAR S 1.0551 D. above, and in order to determine the income producing potential of the farm land as directed by Minnesota Statutes section 41.57, subd. 1. The requirement in this part of the proposed rule that the applicant must submit a statement of the families' ability or willingness to provide financial assistance to the applicant is included in the current rules at 3 MCAR S 1.0543 C. 5. It is necessary that such information be provided so that the Commissioner might determine the true need of the applicant for the loan guarantee. It is also a reasonable provision because if applicants are able to have family financial assistance, the additional assistance of the Family Farm Security Program would provide them unfair economic advantage.

The sixth substantial amplification in this proposed rule is contained in 3 MCAR S 1.0551 F. regarding the privacy of the information supplied by the applicant. It is necessary that the information provided be handled respectfully because it reveals a great deal about the economic situation of the applicant which the applicant would not wish to have distributed indiscriminately. Since the enabling statute did not include any particular data privacy provision, however, it is reasonable to state the intent of the Department with respect to the data so that the applicant is assured of its proper use. The information will be classified as security data because its distribution could jeopardize the possessions of applicants, and as benefit data because the applicant is in part applying for homeownership under a program administered by a state department when applying for a family farm security loan.

The material contained in part 3 MCAR S 1.0551 G. of this proposed rule is essentially the same material which is contained in the current rules at 3 MCAR S 1.0543 G. and 3 MCAR S 1.0543 E. The provisions are necessary to clarify for applicants the review procedures to be employed once the application is submitted to the Commissioner. The provisions are also reasonable because they require the Commissioner's use of the Family Farm Advisory Council as envisioned by Minnesota Statutes section 41.54, subd. 4 (c), and outline a fair procedure for reconsideration of applications in response to Minnesota Statutes section 41.56, subd. 1 which permits applicants to reapply.

The material contained in part 3 MCAR S 1.0551 H. of this proposed rule contains essentially the same material which is contained in the current rule at 3 MCAR S 1.0543 F. These criteria are necessary so that each application will be reviewed in the same objective manner by the Commissioner and the Family Farm Advisory Council, and are reasonable because they were initially developed by the Commissioner in consultation with the Family Farm Advisory Council and have proved reliable indicators in the Department's administrative experience with them. Further, they are reasonable because they include the eligibility requirements in proposed rule 3 MCAR S 1.0550 and are closely related to the application information required of the applicant under proposed rule 3 MCAR S 1.0551 parts A.-E. and thus are not arbitrary criteria on which to base approval.

The material contained in part 3 MCAR S 1.0551 I. of this proposed rule regarding the Commissioner's responsibility to notify the applicant of the determination regarding the application for the guarantee is essentially the same as in the current rule at 3 MCAR S 1.0543 G. It is necessary and reasonable that the Commissioner appraise the applicant of the results of the Commissioner's and the Council's review of the application because it is a fair response after the applicant has spent considerable time in collecting and providing the materials required to make the application. This part of the rule also contains the requirement that the Commissioner specifically note the reasons for nonapproval. This entire part of the proposed rule is consistent with Minnesota Statutes section 41.56, subd. 1.

The provisions contained in part 3 MCAR S 1.0551 J. of this proposed rule are exactly the same as those contained in the current rule at 3 MCAR S 1.0543 E. regarding reconsideration of the Commissioner's nonapproval of a loan guarantee application. What is different is the change in language from determination of "ineligibility" to determination of "nonapproval" in order to clarify for readers and users of the rule that applicants may be eligible to apply for a guarantee but they are not therefore automatically approved for one. It is necessary and reasonable that this part of this proposed rule be retained from the current rule in order to provide a procedure for the possible reapplication envisioned in Minnesota Statutes section 41.56, subd. 1.

3 MCAR S 1.0552

This proposed rule sets forth the procedures to be followed by the applicant who has already received preliminary approval for the program in order to receive final approval for the program. The provisions in this rule are a substantial amplification of provisions in the current rule at 3 MCAR S 1.0544 B.

The material in the first part of this proposed rule, 3 MCAR S 1.0552 A., is substantially the same as appeared in the current rule except for the addition of the requirement of a preliminary title opinion and a limitation on the period during which applicant and lender must prepare for the closing, within 120 days. A preliminary title opinion is a necessary requirement because it would reveal any underlying encumbrances on the property such as tax or other liens, judgements, etc. The program requires that all encumbrances on the

property be less than 90 percent of the loan for acquisition of the property, as noted in part 3 MCAR S 1.0552 D. of this proposed rule. It is reasonable to require satisfaction of these encumbrances in excess of 90 percent of the guaranteed loan so that the participant may receive clear title to the property at the end of the loan period. It is also a reasonable provision for the protection of the state, since in the event of participant default and the lender's choice to have the state pay the guaranteed 90 percent, the state similarly would be able to gain clear title to the property because the lender would be able to satisfy the underlying encumbrances. The second new provision in this part of this proposed rule, the requirement that the applicant complete and submit all documents required for the closing within 120 days of the receipt of notice of preliminary approval, is necessary because the material is needed in order to complete the guarantee agreement. It is a reasonable time frame because administrative experience has shown that most applicants are able to complete the required documents within a couple of months, thus this is a generous time period.

The second and third substantive amplifications in this proposed rule appear in parts 3 MCAR S 1.0552 B. and C. regarding documents required in the event of either type of loan arrangement permitted by the program: seller-sponsored loans or lender-sponsored loans. These provisions are necessary because they clarify for readers and users of the rules the closing documents that are required. Seller-sponsored loans in particular have grown in importance in the program since it began in 1977. The provisions are reasonable because they reference documents normally required by financial institutions such as the Farmers Home Administration and the Federal Land Bank in real estate financing.

The provision contained in part 3 MCAR S 1.0552 D. of this proposed rule is all new language, but it has already been explained earlier in the second paragraph of the discussion on this proposed rule.

The provisions in part 3 MCAR S 1.0552 E. of the proposed rule exist both in Minnesota Statutes section 41.52, subd. 9 and in the current rules at 3 MCAR S 1.0544 A. 1. The second half of this part of the proposed rule, however, regarding the definition of the sums due and payable is new language. Such definition of what is to be paid under the guarantee is necessary to clarify for readers and users of the rules the amounts to be paid. The sums included, payments on the principal balance and accrued interest, are reasonable because they are the components of the loan and their payment meets the intent of the program. Payment of 90 percent of the real estate taxes and other maintenance expenses during the default period is reasonable because it protects the interest of the state in that sale of the property will then yield an appropriate amount and protects the property for the purchaser.

The final parts of this proposed rule, 3 MCAR S 1.0552 F. and G., regarding the requirements for the applicant to have the appropriate instruments recorded and to have a final title opinion prepared, contain all new language. The recording is necessary so that the interests of all parties to the loan and guarantee are reflected on the title and the final title opinion will show both satisfaction of underlying encumbrances in excess of 90 percent of the guaranteed loan and the recording of all parties' interests. They are reasonable procedures employed in most real estate transactions.

3 MCAR S 1.0553

This proposed rule sets forth the requirements for terms of the loan, net worth and the farm business management course that must be met so that the interest payment adjustment may be made. It contains several substantive amplifications of the material in the current rules at 3 MCAR S 1.0544 A. 2., primarily regarding the terms of the family farm security loan.

The introductory parts of this proposed rule contained in 3 MCAR S 1.0553 A. and B. regarding eligibility for payment of the 4 percent payment adjustment to the lender and the 10 or 20 year terms of the loan are consistent with Minnesota Statutes section 41.57, subd. 2, except for the provision regarding variable interest rates used by some lenders which the statute does not address. It is necessary and reasonable to include the provision regarding variable interest rates in order not to discriminate against applicants who may have this type of financing available to them. Despite this variable interest rate, however, the loan must continue to meet the specifications of Minnesota Statutes chapter 41 and these proposed rules.

The material contained in sub-parts 1.-4. of part 3 MCAR S 1.0553 B. is all new material. The provision in B. 1. regarding extra days of interest beyond the normal payment period is a necessary provision because the terms of loans may include options on the relationship between when interest begins to accrue and the due date of the first payment. At times this initial payment may extend longer than the time period of the payments required in the loan repayment terms, which is a normal lending practice. It is reasonable to have flexibility in the rule, then, in order to accommodate this normal lending practice. At the same time, it is reasonable to place the 50 percent limitation on the extra days interest permitted to protect the state from having to pay an excessive interest payment adjustment and protect the participant from making interest only payments but not reducing the principal balance on the loan and thus building equity. It is also necessary and reasonable to set the limitation on balloon payments to meet the requirements of Minnesota Statutes section 41.57, subd. 2.

Sub-part B. 2. of the proposed rule 3 MCAR S 1.0553 regarding interest only payment is new material. It is a necessary provision because in the case of seller-sponsored loans where sellers are also the lenders, the sellers may have a mortgage with the Federal Land Bank and the repayment terms of that loan coincide with the payments that the participant is making on the loan guaranteed by the Family Farm Security Program. A normal lending practice of the Federal Land Bank is to allow for an interest only payment the first year. It is necessary that the state not participate in this interest only payment because participants are not building equity in the farm land and the purpose of the program to assist them in acquiring farm land is thus frustrated. This provision is reasonable because it is flexible in recognizing the practice of this type of payment and permitting such loans to be guaranteed, and also reasonable in protecting the participants' interest in building equity.

Sub-part B. 3. of this proposed rule 3 MCAR S 1.0553 regarding disaster clauses in family farm security loans is also new language. It is a necessary provision because of natural hazards such as weather problems or crop pests that occur in farming. It is reasonable to provide flexibility so that farmers will not experience undue financial hardship because of

disasters. At the same time it is necessary and reasonable to state the limitation on loan terms in order that they remain consistent with Minnesota Statutes section 41.57, subd. 2.

Sub-part B. 4. of this proposed rule 3 MCAR S 1.0553 regarding extensions of the terms of the loans is also new material. This is a necessary provision for participants who originally opted for the 10 year loan term as permitted by the statute to extend the term of their loan to the 20 year period if the listed conditions are met. This provision is reasonable because it permits participants to be flexible at the end of their 10 year loan term should the required balloon payment and the responsibility to reimburse the state for the payment adjustment pursuant to 3 MCAR S 1.0555 A. mean an undue financial hardship for the participant. Permitting the refinancing of the loan for up to 20 years is within the statutory limits for the loan term in Minnesota Statutes section 41.57, subd. 2.

The material contained in part 3 MCAR S 1.0553 C. of this proposed rule regarding the statement of net worth required of participants is basically the same as the provisions in the current rule at 3 MCAR S 1.0544 A. 2. b. except for three changes. The first change is in the date that the annual statement of net worth is due from December 15 to February 20. This is a necessary change because it coincides with the dates farmers normally close their annual operating records and when they compute their taxes. It is also reasonable to provide flexibility in the date so that farmers do not have the paperwork burden of preparing two sets of documents within a few months - one for tax purposes and the second for the Family Farm Security Program. Minnesota Statutes section 41.57, subd. 3 requires only that a statement of net worth be provided by the participant but is silent on any particular date. The second change in this part of this proposed rule is in the statement of the figure for the upper limitation on net worth. In the current rules at 3 MCAR S 1.0544 A. 2. b., a net worth of $100,000 eliminates the participant from eligibility to receive the 4 percent payment adjustment. Since the current rules were promulgated in 1977, the legislature has increased this upper limit, thus it is necessary to change the figure in this proposed rule. It is reasonable, however, to reference Minnesota Statutes section 41.57, subd. 3 rather than citing another specific figure for reasons similar to those offered for the change in the lower net worth limitation at 3 MCAR S 1.0550, part B. Such a reference will keep the rule current with the statute should the legislature increase, decrease or retain the current figure. The third substantive change in the net worth provisions in this rule lie in 3 MCAR S 1.0553 C. 3., which clarified that the net worth statement to be used by the program in granting the first year's payment adjustment to be paid shall be the one used to grant the participant preliminary approval. This is a necessary provision because, as discussed earlier in this document at proposed rule 3 MCAR S 1.0554, the period between preliminary approval and final approval may take 6-12 months. During this length of time it is possible that a participant would have submitted a second net worth statement, notwithstanding part 3 MCAR S 1.0553 C. 1. of this proposed rule. Thus it is necessary to clarify which statement of net worth will be used to judge eligibility for the payment adjustment, and it is reasonable to clarify the matter so that participants do not experience undue financial difficulty because of misunderstandings.

The requirement in part 3 MCAR S 1.0553 D. of this proposed rule regarding continued participation in a farm business management course appeared in the current rule at 3 MCAR S 1.0543 C. 3., but it is stated in this proposed rule to clarify that such registration is required not only to obtain the guarantee initially but also to receive the payment adjustment annually; thus the provision is consistent with Minnesota Statutes section 41.55, clause (b). The due date for the form is reasonable because it is the same date as required for submission of the net worth statement and it is thus more convenient for the participant to prepare all materials for submission to the program simultaneously.

The material in part 3 MCAR S 1.0553 E. of this proposed rule regarding the extension of deadlines for submission of the required net worth statement and farm management course registration form is all new language. It is a necessary provision because administrative experience has shown that there are times when participants have good reasons for not being able to meet the specified deadlines. It is reasonable to provide the Commissioner with the capacity to be flexible in this regard so as not to cause financial hardship for participants who might be ineligible for the substantial benefit of the payment adjustment because of missed deadlines.

3 MCAR S 1.0555

This proposed rule sets forth the procedures to be followed by the participant in reimbursing the Commissioner for sums paid in interest payment adjustments on behalf of the participant and also sets forth provisions for renewal of this payment adjustment benefit. The substance of this material appears in the current rules at 3 MCAR S 1.0544 A. 2. c. but there are some changes and amplifications.

In part 3 MCAR S 1.0555 A. of this proposed rule, the time period for reimbursement is changed from the "90 days" of the current rule to "within 12 months". This is a necessary and reasonable change because it permits more flexibility to participants who often have to arrange financing in order to be able to repay the sums owed to the state. It is a reasonable provision also because it is consistent with Minnesota Statutes section 41.57, subd. 2 which requires reimbursement sometime within the year following cessation of this benefit but does not designate a specific repayment date.

The material in part 3 MCAR S 1.0555 B. of this proposed rule regarding the reimbursement obligation as lien is exactly the same language which appears in the current rule at 3 MCAR S 1.0544 A. 2. c. and at 3 MCAR S 1.0544 A. 2. c. (2). It is a necessary and reasonable provision because it is consistent with Minnesota Statutes section 41.57, subd. 2.

The material in part 3 MCAR S 1.0555 C. of this proposed rule regarding renewals of the payment adjustment contains some amplification of the material which appears in the current rule. In sub-part C. 1. of this part of the proposed rule, the provision for granting renewal of the benefit is consistent with the statute, but the criteria upon which the Commissioner may grant the renewal is new language. It is necessary to have such criteria for granting renewal because the renewal would provide an additional 10 years worth of financial benefits to the participant and the Commissioner's decision should rest upon some basis. The criteria for renewal are reasonable because they are directly related to certain performance on the

part of the participant during the initial 10 year benefit period, i.e., submission of the net worth statement and farm business management course registration forms annually and in a timely manner. Since the program has not yet existed for 10 years, it is difficult to know if these two criteria are at present sufficient ones on which the Commissioner should grant renewal. Yet, they are reasonable because these criteria for renewal are directly related to requirements for continued eligibility for the payment adjustment. Different criteria may be developed once the Department is beyond the first 10-year period in administering the program, but at present, these criteria are proposed as reasonable. The proposed rules do not include a specified period during which the participant may petition for a renewal as in the current rule. This is a necessary and reasonable change because repayment schedules may call for monthly, quarterly, semi-annual or annual payments, and 30 days may be insufficient time in which to process a renewal. Thus, the flexibility is proposed so there is no undue financial hardship for the participant.

The material in sub-part 3 MCAR S 1.0555 C. 2. of this proposed rule is exactly the same as in the current rule at 3 MCAR S 1.0544 A. 2. c. (2) except that the time period for reimbursement of the payment adjustment is extended from the 90 day period of the current rule to the 12 month period of the proposed rule. This extension is still within the one year limit of Minnesota Statutes section 41.57, subd. 2, but permits the participant greater flexibility in arranging financing for reimbursement of the payment adjustment.

The material in sub-part 3 MCAR S 1.0555 C. 3. of this proposed rule regarding the timing of reimbursement for the payment adjustment when several loans are under one guarantee is all new language. It is a necessary provision because it clarifies the point at which reimbursement should occur, that is, when the latest maturing loan in fact matures. This is a reasonable provision because the participant often has to make arrangements to finance the reimbursement owed the state and it is difficult to make such financing arrangements with loans still outstanding, even though the loans are under the guarantee of the program. Further, it is difficult for participants to arrange financing more than once for the same reason of reimbursing the state for payment adjustments received. Thus, it is reasonable to allow participants the flexibility of reimbursing the state for the sums owed on all loans under the guarantee at the time of the latest maturing loan.

The material in part 3 MCAR S 1.0555 D. of this proposed rule regarding the requirement that the participant reimburse the Commissioner for sums owed the state upon sale or conveyance of the farm land is new language in the rules but is consistent with Minnesota Statutes section 41.59, subd. 1. The exception to immediate reimbursement of the payment adjustment provided for in this part of this proposed rule, the case of a new owner approved in his own right for a guarantee, will be discussed below at proposed rule 3 MCAR S 1.0559.

The material in part 3 MCAR S 1.0555 E. of this proposed rule regarding late payment of the reimbursement obligation is all new language. This provision is necessary to prompt participants to reimburse the state within the time period specified. It is a reasonable provision because participants should be aware that this obligation to repay is a major responsibility not to be taken lightly. The provision is reasonable because it provides the

Commissioner with the capacity to charge interest on what is owing but limits this capacity by citing law which would govern the rate of interest and noting that the assessment period is to be only for the period of delinquency. This practice is analogous to normal farm financing practices of commercial banks, savings and loan associations and the Federal Land Bank when payments are due and not forthcoming.

3 MCAR S 1.0556

This proposed rule sets forth the conditions and consequences of participant default in the program, including sale of any land acquired by the state due to such default. While the first part of this proposed rule is the same as the material in the current rule at 3 MCAR S 1.0545 A. 1.-3., the second part of this proposed rule regarding consequences of default is all new language provided to efficiently administer instances of participant default under Minnesota Statutes 41.56, subd. 3.

Sub-parts B. 1. a. and b. of this proposed rule are necessary to clarify the options that sellers and lenders have in the event of participant default. In the case of the lender's option to exercise the guarantee under proposed 3 MCAR S 1.0556 B., it is necessary and reasonable that the state require that any amounts received from sale of the property above the 90 percent guaranteed by the state go toward satisfying the outstanding balance of the state's lien for reimbursement of the payment adjustment, since the general condition under which lenders enter into this program is that they will be guaranteed 90 percent of the sums payable under proposed rule 3 MCAR S 1.0552 E. but not necessarily more.

Sub-part 3 MCAR S 1.0556 B. 1. c. regarding the failure of the lender to notify the Commissioner of participant default within the time limit prescribed by Minnesota Statutes section 41.56, subd. 3 is all new language. The provision is necessary to clarify the actions the Commissioner will take with respect to lenders who fail to provide proper notification. The provisions regarding the payment of the guarantee and the maximum amount of interest to be paid by the state to the lender are reasonable because they limit the amounts which the state would have to pay to lenders. In the event that a lender would delay in notifying the Commissioner, there might be a significant financial advantage to the lender because interest and delinquent interest would continue to accumulate, and the lender might expect to collect 90 percent of all these sums from the state. Thus it is a reasonable provision to limit the amount to be paid to lenders lest there be unfair economic advantage for certain lenders.

Sub-part 3 MCAR S 1.0556 B. 1. d. regarding disposition of the guarantee when one loan among several under the guarantee is delinquent is all new language. It is a necessary provision to clarify for readers and users of the rules the procedure to be followed if such a situation occurs. Further, since it is necessary for the state to be able to obtain fee title in the event that the guarantee is exercised pursuant to Minnesota Statutes section 41.56, subd. 3, all loans under a single guarantee must be considered to be in default if one is in default. This provision regarding clear access to the title is consistent with 3 MCAR S 1.0556 C. regarding sale of the defaulted property.

Part 3 MCAR S 1.0556 B. 2. of this proposed rule regarding the consequences of participant default for failure to maintain the farm land in active agricultural production is all new language. This is a necessary provision in the rule to clarify for participants the consequences of this type of default as defined under Minnesota Statutes section 41.59, subd. 1, and provides for the efficient disposition of such cases of default. The consequences are reasonable because they terminate the payment adjustment and guarantee which are principal benefits of the program and require immediate reimbursement of the state's payment adjustment. These types of procedures appear in others of these proposed rules. The termination of the guarantee for this infraction of the statute and these proposed rules is analogous to terminations pursuant to proposed 3 MCAR S 1.0558; the cessation of payment adjustments is also a consequence of the participant's failure to submit annual net worth statements and farm business management course registration forms as required under proposed rule 3 MCAR S 1.0553; and the immediate reimbursement of payment adjustments to the Commissioner is required under proposed rule 3 MCAR S 1.0555 D. Thus, these consequences are not arbitrary; they are consistent with consequences listed elsewhere in these proposed rules. They are all consequences of this particular case of participant default because of the serious nature of this reason for default. The principal purpose of the Family Farm Security Program is to help family farmers remain in agricultural production, so the failure to farm is directly contrary to the intent of the program and is a situation requiring these serious consequences.

Part 3 MCAR S 1.0556 C. of this proposed rule regarding the sale of defaulted farm land is all new language. The provisions are proposed pursuant to Minnesota Statutes section 41.56, subd. 4, and are necessary to clarify definitions and procedures to be used by the Commissioner, in addition to the provisions of the statute, in selling defaulted property. The provision regarding the Commissioner's right to reject any bid submitted on the farm land to be sold is necessary in order to get a fair price in keeping with the value of the property upon its sale. The administrative experience of the Department has shown that it is possible for potential buyers to collaborate to bid artifically low on such property. The provision is also reasonable because it permits the Commissioner to sell the land so as to regain a reasonable percentage of the amount paid out under the family farm security guarantee and thus protect the interest of the state in the matter. It is further necessary and reasonable to provide definitions for "date of sale" and "proceeds" because the Department's administrative experience has shown that these terms must be clarified for the efficient administration of these sales because the terms are not defined in the statute and misunderstandings have occurred.

3 MCAR S 1.0557

This rule sets forth the provisions governing instances in which participants may be granted a waiver of default, and substantially amplifies the material in the current rule at 3 MCAR S 1.0545 A. 3. a.-c. by clarifying procedures in event of three possible reasons for granting the waiver and by clarifying

provisions for denial and expiration of the waivers. The rule is proposed pursuant to Minnesota Statutes section 41.59, subd. 1.

The provision regarding the waiver for public service is necessary and reasonable because people in many different occupational groups have opportunities to take leaves of absence from their place of employment for public service, and to restrict farmers from such opportunities would unfairly discriminate against this occupational category. At the same time, it is reasonable to require these participants to conform to the requirements of notifying the Commissioner, continuing to submit annual financial statements and making full installment payments on the loan, so that the Commissioner might be able to monitor the impact this waiver has on the participant's financial picture and to thus protect the state's interest in having the operation remain financially sound during the waiver period.

Part 3 MCAR S 1.0557 C. of this proposed rule regarding the waiver for financial difficulty is necessary because administrative experience of the Department has shown that taking a job off the farm is frequently necessary for farmers in the current economic situation. The provision gives the participant the opportunity to improve the cash-flow in order to remain in agricultural production, which is the principal purpose of this program. At the same time that it is reasonable to permit farmers this flexibility, it is necessary and reasonable to require these participants to inform the Commissioner, to submit semi-annual financial statements so that the Commissioner can closely monitor the financial picture of the participant, and to continue enrollment in the farm business management course so that management principles learned might help to ease the cash flow difficulty.

Part 3 MCAR S 1.0557 D. of this proposed rule regarding waiver for physical difficulty or other circumstances beyond the participant's control is contained in the current rule at 3 MCAR S 1.0545 A. 3. b., except for the provisions regarding required documentation. It is necessary and reasonable to require such documentation so that the Commissioner is aware of the physical difficulty or other circumstance and can monitor the financial situation of the participant. These provisions are reasonable to protect the interests of both the participant and the state in maintaining a successful farming operation.

Part 3 MCAR S 1.0557 E. of this proposed rule regarding the denial of waiver is exactly the same provision as in the current rule at 3 MCAR S 1.0545 A. 3. c., while the provision regarding expiration in 3 MCAR S 1.0557 E. is all new language. It is necessary to include this expiration provision because the current rules contain no outer limitation on the time period of a waiver, thus it is necessary to clarify the procedure for participants and readers of the rule. Further, two years is a reasonable time frame in which to render public service, settle cash-flow difficulties or cope with physical difficulty or extenuating circumstance. It is a generous time period in relation to the lapsed time of one year which would normally prompt default under the statute, and setting a limit on the time away from farming is reasonable to fulfill the purpose of the program which is to keep farmers in agricultural production.

C. All New Material

In this section, three proposed rules are discussed which contain all new material.

3 MCAR S 1.0549

The definitions in this proposed rule are necessary to clarify the meanings of the terms used in this rule. There are three different types of definitions provided. The first type of definition is reasonable because terms are defined by reference to Minnesota Statutes section 41.52 (including 1981 Supp.), or have definitions similar to those in that section. These terms are: applicant, Commissioner, cooperating agency, council, farm land, guarantee, lender, loan, memorandum of understanding, payment adjustment and seller-sponsored loan. The second type of definition is reasonable because the terms are drawn from normal financial and real estate transactions. These terms are: balloon payment, even payment, fully amortize, and subordination. The third type of definition is reasonable because the terms more specifically define areas uniquely associated with the Family Farm Security Program, and have developed over the last five years of the Department's experience in administering the program. These terms are: amortization schedule, farm business management course, participant, program and state.

3 MCAR S 1.0558

This proposed rule sets forth the three conditions and consequences under which the guarantee on the family farm security loan will be terminated by the Commissioner. The first and third conditions regarding the lender's alteration or violation of any of the terms of the loan or guarantee are necessary and reasonable grounds for termination of the guarantee since such documents are legally binding and entered into with full knowledge of all parties at the time of execution of the guarantee. It is reasonable for the Commissioner to expect that the lender will abide by provisions in such documents.

The provision in sub-part 3 MCAR S 1.0558 A. 2. of this proposed rule regarding the transfer or assignment of the loan is included for the smooth administration of Minnesota Statutes section 41.58, subd. 2 which requires the lender to notify the Commissioner of such transfer or assignment. It is reasonable to allow the lender the flexibility of transferring or assigning the family farm security loan so that the lender is able to manage the financial affairs of his business in the most appropriate way, provided that the interests of the state are protected.

Part 3 MCAR S 1.0558 B. of this proposed rule regarding termination of the guarantee is necessary to clarify for lenders the consequences of particular actions. It is a reasonable provision because it is consistent with Minnesota Statutes section 41.56, subd. 5 which indicates that guarantees will not be honored where fraud or material misrepresentation

by the lender occurs. The provision regarding continued payment to the participant in the event of such lender actions is a necessary and reasonable one because it is not the intent of the rule to create financial hardship for the participant in cases where the guarantee is terminated, therefore participants should still be able to receive the benefits of the program they applied for in good faith if they had no knowledge of the lender's actions.

3 MCAR S 1.0559

This proposed rule sets forth four major provisions for servicing the family farm security loan once the guarantee agreements are entered into.

Part 3 MCAR S 1.0559 A. of this proposed rule regarding partial release of the state's lien for reimbursement of the payment adjustment is a necessary provision because administrative experience of the Department has shown that such release is sometimes necessary for the participant to be able to best manage his financial affairs. At the same time that it is reasonable to permit this flexibility for the participant, it is reasonable to place some restriction on this type of transaction, so as to protect the interests of the state. The first restriction is reasonable because it is the purpose of the program to assist farmers in maintaining agricultural production, thus it is important that such release of a portion of the property not jeopardize the participant's ability to continue in the program. It is necessary that the second restriction regarding all parties' interests in the matter be included because all were involved in the original agreements, so it also is reasonable that they be apprised of changes. In the particular case where the participant wants to sell the released portion of the property, it is necessary that the Commissioner be able to stipulate that the proceeds from the sale be used as a special principal payment on the loans under the guarantee since in the administrative experience of the Department such a sale generally occurs because the participant is in some financial difficulty. It is reasonable for the proceeds to be used to reduce the principal balance on the loans and thus protect the state from possible financial loss under the guarantee and from the financial burden of continuing to pay payment adjustments on a higher principal balance.

Part 3 MCAR S 1.0559 B. regarding reamortization of the loan is a necessary and reasonable provision because it permits the participant to take advantage of the flexibility in the possible length of loans, 10-20 years, envisioned in Minnesota Statutes section 41.57, subd. 2 and these proposed rules, at 3 MCAR S 1.0553 B. Administrative experience has shown that though a participant may make a sizeable principal payment, his financial circumstances may be such that he may not be able to continue making payments called for in the loan agreement. Thus, the reamortization may occur, but must still meet the requirements of the program. It is reasonable because it could save the state the expense of having to perform under the guarantee if the participant went into default for not being ablt to make the payments called for in the original amortization schedule.

Part 3 MCAR S 1.0559 C. of this proposed rule regarding the new owner guarantee clarifies that the former guarantee may not be assumed by the new owner, and sets forth conditions under which the debt owed the Commissioner may be assumed by the new owner. It is necessary that the new owner of the property not be able to assume the **old guarantee, since** the new owner should

apply and be approved for the program in his own right pursuant to law and these proposed rules. At the same time it is reasonable to permit the new owner to assume the indebtedness owed the state if the conditions listed are met since it may be in the state's best interest to allow the payment adjustment to be repaid by the new owner and save the state the expense of exercising the guarantee, and foreclosing on the original owner and reselling the farm. These situations would be very carefully reviewed by the Family Farm Advisory Council.

Part 3 MCAR S 1.0559 D. of this proposed rule regarding subordination of the state's lien for reimbursement of the payment adjustment is a necessary provision because it may be in the best interests of the state to permit this subordination. There are instances where participants may need to refinance one of the loans under the guarantee, and the policy of their lending institution may be such that the institution must have the first lien for such a loan. The Federal Land Bank has this policy with respect to liens. In such a case where it would benefit the state and the participant to permit the subordination, for example, to refinance an entire loan to accommodate building a new barn after a fire, it is reasonable to permit this type of loan servicing.

D. Material From Current Rules Not Included in Proposed Rules

While it is proposed that the current rules, 3 MCAR S 1.0543-1.0547 be repealed and these proposed rules be adopted, as stated throughout this document, almost all of the repealed material is incorporated in these proposed rules. There are, however, three minor points from the current rules which are not included in the proposed rules.

In the current rules, the role of the lender under 3 MCAR S 1.0543 B. and B. 1. with respect to providing forms, reviewing the loan application, and in submitting material to the Commissioner is very prominent. At the beginning of the program, this role was very important since the state had no experience in administering the program and most lenders were bankers who had forms available. As seller-sponsored loans have grown in importance in the program, now accounting for a large portion of the family farm security loans, it is reasonable for the applicant to find out from the program what is required, since the applicant is seeking the program's benefits, and inform the seller who is also lender in this case. Thus, in the proposed rules, responsibility for providing application materials to the Commissioner rests more appropriately with the applicant who is, at the same time, able to get assistance from program staff. Because of the Department's administrative experience with the program over the last five years and the increased importance of seller-sponsored loans, this is a method satisfactory to all parties. Similarly, the role of the lender in current rule 3 MCAR S 1.0544 B. has not been incorporated in as great detail in proposed rule 3 MCAR S 1.0552 A. Again, the responsibility of the applicant in the proposed rule is more clearly defined as a result of the Department's experience with the program and the growing importance of seller-sponsored loans. It is reasonable that applicants, lenders and sellers who are lenders know what is expected of them.

The second minor change is in the repeal of the four month time frame during which the Department may review and act upon the application for a loan as stated in current rule 3 MCAR S 1.0543 G. This is a necessary change because administrative experience has shown that it is frequently not possible for the applicant to gather all materials for submission to the Commissioner within that time frame. It is reasonable, therefore, that the time frame be repealed in order not to jeopardize the chances of the applicant to be approved for a loan guarantee. It is the practice of the Family Farm Advisory Council and the Commissioner to review loan applications as soon as all materials are available.

The third minor change is in the statement of the frequency of the Family Farm Advisory Council meetings from the "monthly" in current rule 3 MCAR S 1.0543 G. to the "regularly scheduled" language of proposed rule 3 MCAR S 1.0551 G.

RULES

Department of Agriculture
Family Farm Security Program

Rules Adopted as Proposed

The following rules are adopted and are identical in every respect to their proposed form as published in State Register Vol. 1, No. 10, September 14, 1976 (1 S.R. 316-319), and are published here by reference only as provided in RGSTR 5.

Chapter 22 Family Farm Security Program

AGR 543 Family farm security loans, application, eligibility, review.

AGR 543 A.

AGR 543 A.2.d.

AGR 543 C.1.-3.

AGR 543 C.6., 7.

AGR 543 D., E., F.

AGR 543 F.1.

AGR 543 F.3.-7.

AGR 544 Family farm security loan, guarantee, payment adjustment, closing.

AGR 544 A.

AGR 544 A.1.

AGR 544 A.1.a.

AGR 544 A.1.c.

AGR 544 A.1.c. (1), (2)

AGR 544 B.

AGR 545 Family farm security loans, defaults.

AGR 545 A.

AGR 545 A.1.

AGR 545 A.3.

AGR 545 A.3.a., b.

AGR 546 Transfer of family farm security loan note.

AGR 547 Commissioner's right to information.

AGR 547 A.

AGR 548-562

Rules Adopted with Amendments

The following rules are adopted and have been amended from their proposed form as published in State Register Vol. 1, No. 10, September 14, 1976 (1 S.R. 316-319).

Agr 543 B. Applications. Any natural person wishing to participate in the family farm security program may make application to the commissioner jointly with a participating lender on forms provided by the lender, or in the case of seller-sponsored loans, if requested, on forms provided by the commissioner.

Agr 543 B. 1. Responsibility of lenders. The lender shall process applications for family farm security loans using its existing real estate loan forms, supplementing these forms with additional information requested by the commissioner. It shall be the duty of the lender to review the application to make certain that all information required by the commissioner is included with the application, to attest that to the lender's best knowledge, all information contained in the loan application is true and correct, and to submit the application in duplicate to the commissioner. In the case of seller-sponsored loans, the commissioner, upon request, will provide forms and assist the applicant and the lender in preparing the loan application.

Agr 543 B. 2. a. The lender shall include with the application an appraisal of the land for which a family farm security loan is requested. The appraisal shall include the market value and income potential of the land, and all other relevant information requested by the commissioner, and it shall be signed by the person who performed the appraisal or by an officer or officers of the lending institution, indicating there has been an actual appraisal of the land.

Agr 543 B. 2. b. In the case of loans wholly financed by the seller, [[the commissioner shall pay to have the land appraised and the costs of said appraisal shall be added to the sale price of the land if a family farm security loan is

KEY: New rules and material proposed to be added to an existing rule are printed in **boldface.** Material proposed to be deleted from an existing rule is printed in [single brackets]. Underlining indicates additions to proposed rules, while [[double brackets]] indicate matter stricken from proposed rules. Existing material is printed in standard type face.

approved.]] either the buyer or the seller shall pay to have the land appraised.

Agr 543 B. 2. c. To protect the interests of the applicant, the lender, or the state, the commissioner may require an additional independent appraisal of any land for which a family farm security loan is requested. The costs of appraisals performed under this section shall be assessed to the loan applicant.

Agr 543 C. 4. The total net worth of the applicant and the applicant's spouse and dependents as determined by generally accepted accounting principles, must be less than $50,000. The commissioner, upon request, will provide the applicant or the lender with forms and assistance in preparing the net worth statement.

Agr 543 C. 5. The applicant must demonstrate a need for the loan. In determining the applicant's need for the loan, the commissioner may consider all relevant considerations, including but not limited to the applicant's financial statement and the possible availability and terms of a non-guaranteed loan from any lender. The commissioner may also consider the financial situation of the applicant's immediate family so far as said financial situation indicates the ability of the [[applicant's family to provide financial assistance to the applicant]] applicant to obtain financial assistance from the applicant's immediate family for the purchase of farmland.

Agr 543 F. 2. [[a determination that]] The degree to which the applicant intends to make farming the applicant's principal occupation;

Agr 543 G. Period for granting family farm security loans. The commissioner upon recommendation of the family farm advisory council, shall on a monthly basis, consider and act upon family farm security loan applications. An application meeting the eligibility requirements of subsection C. above, shall remain eligible for approval and may be acted upon by the commissioner for four months from the date of receipt, unless either the applicant or the lender requests in writing that the application be withdrawn. In addition, the lender or the applicant may request that a final decision concerning an application be made in less than four months, and the commissioner and the council shall, if possible, review and act upon the application within the requested time frame. Each time an eligible application is reviewed by the commissioner and not approved, the commissioner shall notify the applicant and the lender of this fact. Upon the expiration of the four month period, the commissioner shall return the application and notify the applicant and the lender that the application has not been approved. An eligible applicant not receiving a family farm security loan under these circumstances may reapply at any time in the future.

Agr 544 A. 2. Payment adjustment. If the approved family farm security loan has a term of 20 years or less and provides for payments at least annually so the loan is amortized over its term with equal annual payments, and if the applicant requests a payment adjustment, [[and if sufficient state monies are available]] the commissioner shall annually pay to the lender, an amount of money equal to four percent of the principal balance of the family farm security loan, provided that:

Agr 544 A. 2. b. Prior to December 15 of each year, the lender or the applicant submits to the commissioner a statement of current net worth for the applicant and the applicant's dependents and spouse. If the total net worth as determined by generally accepted accounting principles, exceeds $100,000, the applicant shall not be eligible for a payment adjustment for the next year of the loan, and the commissioner shall notify the applicant and the lender that the applicant is responsible for all interest payments for that year of the loan. The commissioner upon request, will provide the applicant or the lender with forms and assistance in preparing the net worth statement;

Agr 545 A. 2. The borrower breaches a material obligation in the note, loan agreement, or any instrument securing the loan, and the lender determines that this breach constitutes an adverse change in the borrower's ability to repay the guaranteed loan provided that under this section and subsection 1 above, the lender and the applicant may agree to take any steps reasonable to assure fulfillmen: of the loan obligation.

Agr 545 A. 3. c. If the commissioner determines that a default should not be waived, the borrower is entitled to a contested case hearing pursuant to the provisions of Minnesota Statutes Chapter 15 to review this determination.

[[Agr 545 B. After a family farm security loan has been in default for 100 days, the lender shall, within 30 days, notify the commissioner of this fact in writing. Such notification by the lender shall be a condition precedent to the lender's right to payment according to the terms of the family farm security loan guarantee.]]

[[Agr 547 B. Failure to comply with all reasonable requests for information by the commissioner pursuant to this rule shall be grounds for terminating participation in the family farm security program, after notice and a hearing pursuant to Minn. Stat. §§ 15.0418 — 15.0426 as amended.]]

Attachment A

Proposed Rulemaking

DEPARTMENT OF AGRICULTURE

PROPOSED RULES GOVERNING THE FARM SECURITY PROGRAM

Notice of Hearing

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

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

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

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

Jon Wefald
Commissioner of Agriculture

Rules as Proposed

Chapter 22 Family Farm Security Program

AGR 543 Family farm security loans, application, eligibility, review.

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

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

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

2. Land appraisal.

a. The lender shall include with the application

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

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

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

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

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

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

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

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

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

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

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

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

D. Determination of ineligibility, reapplication. If the commissioner determines that an applicant does not meet one or more of the eligibility criteria in subsection C. above, the commissioner shall return a copy of the application to the lender with a notice to the applicant and the lender stating specifically why the applicant is not eligible for the loan. If the circumstances of the applicant change such that in the future the applicant becomes eligible for a family farm security loan, the applicant may reapply without prejudice.

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

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

1. The recommendation of the family farm ad-

KEY: New rules and both proposed and adopted additions to existing rules are printed in boldface. Proposed and adopted deletions from existing rules are printed in [single brackets]. Underlining indicates additions from proposed to adopted rules, while [[double brackets]] indicate deletions from proposed to adopted rules. Existing rules are printed in standard type face.

visory council which shall be based on the criteria contained herein;

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

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

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

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

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

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

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

AGR 544 Family farm security loan, guarantee, payment adjustment, closing.

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

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

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

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

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

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

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

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

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

The lender shall cause to be executed a note and all necessary additional instruments, and the lender shall take other actions, consistent with prudent lending practices, required to protect or preserve the interests of the applicant, the lender, and the commissioner. Immediately after a loan is closed, the lender shall furnish the commissioner with a copy of the executed note and

loan agreement. The commissioner shall also be entitled to examine on request copies of other security instruments or loan documents, or other records held by the lender or its agents, which relate to the applicant. The lender shall also execute all relevant statements or declarations required for loan transactions by federal or state law or regulations.

AGR 545 Family farm security loans, defaults.

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

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

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

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

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

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

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

AGR 546 Transfer of family farm security loan note. The lender shall notify the commissioner in writing within 30 days after a family farm security loan note is sold or exchanged. The family farm security loan guarantee shall remain in effect if the commissioner is notified pursuant to this section, provided that the purchaser of the family farm security loan note assumes all duties and obligations of the original lender, and agrees to comply with all applicable requirements of Laws of 1976, ch. 210 [Minn. Stat. §§ 41.51 - 41.61 (1976)] and these rules.

AGR 547 Commissioner's right to information.

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

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

AGR 548-562 Reserved for future use.

KEY: New rules and both proposed and adopted additions to existing rules are printed in boldface. Proposed and adopted deletions from existing rules are printed in [single brackets]. Underlining indicates additions from proposed to adopted rules, while [[double brackets]] indicate deletions from proposed to adopted rules. Existing rules are printed in standard type face.

transport a manufactured home if the total length of the manufactured home is required to include drawbars, couplings, or hitches. Room additions must be noted and measured separately.

2 MCAR § 1.8023 Disclosure. If a manufactured home being sold is located in a manufactured home park, the dealer, prior to the buyer's signing of the purchase agreement, shall obtain a written statement signed by the buyer acknowledging the dealer's disclosure of the contents of Laws of 1982, ch. 526, art. II, § 7, subd. 1, regarding in-park sales of manufactured homes.

2 MCAR § 1.8024 Enforcement. The commissioner shall administer and enforce 2 MCAR §§ 1.8001-1.8024. Any authorized representative of the commissioner may at any reasonable time enter the premises where manufactured homes are manufactured, or where new or used manufactured homes are sold, solicited, brokered, or advertised for sale, and may examine the manufacturer's or dealer's records to the extent necessary to enforce the provisions of 2 MCAR §§ 1.8001-1.8024.

Department of Agriculture
Family Farm Security Program

Proposed Rules Governing the Administration of the Family Farm Security Program and Repeal of Existing Rules Governing Administration of the Family Farm Security Program (3 MCAR §§ 1.0543-1.0547)

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Department of Agriculture proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Agriculture has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes § 15.0412, subdivision 4h (1980).

Persons interested in these rules shall have 30 days to submit comment 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 § 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 requests to: Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-1486.

Authority to adopt these rules is contained in Minnesota Statutes § 41.53, subd. 2. Additionally, a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available upon request from Mr. Heil.

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 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 this material to the Attorney General, or who wish to receive a copy of the final rules as adopted, should submit a written statement of such request to Mr. Heil.

The commissioner is authorized by Minnesota Statutes § 41.53, subd. 2 (1980) to adopt rules for administration of the Family Farm Security Program. The proposed rules provide eligibility criteria for the program; provisions for application, preliminary approval, notification and reconsideration; closing procedures for the family farm security loan; conditions and termination of the 90 percent guarantee; payment, renewal and reimbursement of the state's 4 percent interest payment adjustment; conditions, consequences and waiver of participant default; family farm security loan servicing; and the commissioner's right to information. The proposed rules also provide definitions of terms used in the rules.

The proposed rules provide an amplification of the current rules governing the Family Farm Security Program due to statutory changes and the department's experience in administering the program since the current rules were promulgated in 1977. Because the proposed rules substantially amplify various parts of the current rules, it was determined easier to repeal the current rules and reorganize their language into these proposed rules. Thus, the language of the present rules is included but new language is also provided in many of these proposed rules.

Please be advised that Minnesota Statutes 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 Minnesota Statutes, Section 10A.01, subdivision 11 (Supp. 1979) 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, St. Paul, MN 55155, (612) 296-5615.

Copies of this notice and proposed rules are available and may be obtained by contacting Mr. Heil.

July 2, 1982

Rollin M. Dennistoun
Deputy Commissioner

Rules as Proposed (all new material)

3 MCAR § 1.0548 Purpose and authority.

A. Purpose. It is the purpose of 3 MCAR §§ 1.0548-1.0560 to carry out and administer the family farm security program established by Minn. Stat. ch. 41.

B. Authority. Rules 3 MCAR §§ 1.0548-1.0560 are adopted pursuant to Minn. Stat. § 41.53, subd. 2.

3 MCAR § 1.0549 Definitions.

A. Applicability. For the purposes of 3 MCAR §§ 1.0548-1.0560 the terms defined in this rule have the meanings given them.

B. Amortization schedule. "Amortization schedule" means the loan repayment schedule approved by the commissioner.

C. Applicant. "Applicant" means a natural person applying for a family farm security loan.

D. Balloon payment. "Balloon payment" means the final payment of an amortization schedule which is equal to or exceeds four times the amount of the immediately preceding payment.

E. Commissioner. "Commissioner" means the Commissioner of Agriculture or the commissioner's authorized representative.

F. Cooperating agency. "Cooperating agency" has the meaning given in Minn. Stat. § 41.52, subd. 11.

G. Council. "Council" means the Family Farm Advisory Council.

H. Even payment. "Even payment" means the payment amount necessary at a given interest rate to fully amortize the loan over a given period of time.

I. Farm business management course. "Farm business management course" means a course in farm record keeping, farm business management, or other related areas approved by the commissioner.

J. Farm land. "Farm land" has the meaning given in Minn. Stat. § 41.52, subd. 6.

K. Fully amortize. "Fully amortize" means to insert terms or provisions in a loan which do not result in a balloon payment.

L. Guarantee. "Guarantee" means the "family farm loan guarantee" defined in Minn. Stat. § 41.52, subd. 9.

M. Lender. "Lender" has the meaning given in Minn. Stat. § 41.52, subd. 7.

N. Loan. "Loan" means "family farm security loan" as defined in Minn. Stat. § 41.52, subd. 5.

O. Memorandum of understanding. "Memorandum of understanding" has the meaning given in Minn. Stat. § 41.52, subd. 12.

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.

P. Participant. "Participant" means an applicant who has received final approval for a guarantee which has been fully executed by the state.

Q. Payment adjustment. "Payment adjustment" has the meaning given in Minn. Stat. § 41.52, subd. 10.

R. Program. "Program" means the family farm security program of the Department of Agriculture.

S. Seller-sponsored loan. "Seller-sponsored loan" has the meaning given in Minn. Stat. § 41.52, subd. 8.

T. State. "State" means the State of Minnesota.

U. Subordination. "Subordination" means that the commissioner agrees that the state's interest in a loan has a lower lien priority than the interest of another party.

3 MCAR § 1.0550 Eligibility.

A. Criteria. To be eligible for a guarantee, an applicant must meet the criteria listed in Minn. Stat. §§ 41.55 and 500.221, subd. 2 and those in this rule.

B. Net worth. The current net worth of the applicant, dependents, and spouse, as determined by generally accepted accounting principles, must not exceed the level set in Minn. Stat. § 41.55, clause (c).

C. Farm land. Applications will be accepted only for loans to acquire farm land.

D. Ownership. The applicant must be purchasing a 100 percent interest in the farm land. The farm may be operated in partnership, but the applicant must own the farm land individually.

E. Use and feasibility. The applicant must detail the intended agricultural uses of the land and substantiate the economic feasibility of the proposed farming operation.

3 MCAR § 1.0551 Preliminary approval; notification and reconsideration.

A. Application. An applicant must apply for a guarantee on forms provided by the commissioner. The application must include, but is not limited to, the following:

1. a farm land appraisal;
2. a purchase agreement;
3. letters of commitment, if appropriate;
4. the financial information required in E.;
5. copies of any partnership agreements; and
6. a farm business management course registration form.

B. Farm land appraisal. An appraisal of the market value of the farm land to be guaranteed must be performed by a qualified appraiser and recorded on the form provided by the commissioner. The appraiser must sign the form. A letter stating the appraiser's qualifications and experience must be on file with the commissioner. The commissioner may require the applicant to obtain an additional independent appraisal when it is necessary to determine the current market value.

C. Purchase agreement. A binding purchase agreement between the seller of the farm land and the applicant, containing all terms agreed upon by the two parties, must be completed. The terms must be in accordance with Minn. Stat. ch. 41 and 3 MCAR §§ 1.0548-1.0560. The agreement must include a statement that the sale of the farm land is contingent upon the applicant's obtaining a guarantee from the commissioner. The purchase price of the farm land cannot exceed the appraisal value.

D. Letters of commitment. The following information must accompany the application:

1. A letter of commitment for the financing, containing all the terms and provisions of the loan and signed by the lender, if any portion of the farm land purchase price is to be financed through a lender other than the seller;
2. A letter of credit from a financial institution for required operating credit for the first year of operation;
3. A written financing commitment, if financing is necessary for the purchase of livestock and equipment; and
4. Written equipment use agreements signed by both the applicant and the equipment owner, if equipment will be shared.

E. Financial information. The application must include the following financial information:

1. a statement of the applicant's current net worth;
2. at least two years' statements of the applicant's past earnings, if available;

3. at least two years' statements of projected income and expenses for the farm operation;

4. credit references; and

5. a statement of the applicant's parents' net worth and the applicant's spouse's parents' net worth or other documentation of the parents' ability or willingness to financially assist the applicant.

F. Privacy of information. Personal financial documents submitted in support of an application shall be treated as security information under Minn. Stat. § 15.1673 and benefit data under Minn. Stat. § 15.783 and is considered to be private data pursuant to those sections.

G. Review of applications. The commissioner shall consider and act upon an application for a guarantee, taking into account the recommendations of the council. In the event of a request for reconsideration of the commissioner's decision pursuant to J., the matter shall be reviewed at a regularly scheduled meeting of the council.

H. Criteria for preliminary approval. The following criteria shall be considered by the commissioner in granting the preliminary approval for a guarantee:

1. the eligibility criteria set forth in 3 MCAR § 1.0550;

2. submission of a complete application and any additional information requested by the commissioner;

3. the degree to which farming will be the applicant's principal occupation;

4. the extent to which the applicant demonstrates financial need for the guarantee to acquire farm land;

5. the existence of or provisions for financing-related farm expenses other than real estate;

6. the economic feasibility of the loans as evidenced by the applicant's present, past, and projected financial situation;

7. the applicant's credit rating;

8. an analysis of the applicant's debt-to-worth ratio and other factors related to risk and profit potential; and

9. the likelihood of success of the applicant's proposed farming operation, based on the criteria in 1.-8.

I. Notification. After each review of an application for a guarantee, the commissioner shall provide written notification of the determination. If the application is approved, the commissioner shall notify the applicant and the lender. If the application is not approved, the commissioner shall notify the applicant and specify the reasons for disapproval.

J. Reconsideration of decision. An applicant who wishes the commissioner to reconsider the decision may request, within 90 days of the notification of nonapproval, that the application be reconsidered. The applicant may present to the council, in writing or in person, any additional facts relevant to the reasons given for nonapproval of the application.

3 MCAR § 1.0552 Final approval.

A. Closing. Upon receiving notice of preliminary approval for a guarantee, the applicant shall proceed in accordance with instructions provided by the commissioner for obtaining final approval for the guarantee. All actions required of the applicant and lender to prepare for the state's execution of guarantee documents, including submission of a preliminary title opinion and execution of all relevant statements or declarations required for loan transactions by federal or state law, regulation, or rule, should normally be completed within 120 days of receipt of the notice. The commissioner may request and examine copies of other security agreements or loan documents or other records which relate to the applicant's farm land purchase in order to determine all liens and encumbrances on the property.

B. Closing documents; seller-sponsored loan. If the loan to be guaranteed is seller-sponsored, the applicant and seller must execute a contract for deed or purchase money real estate mortgage and all additional instruments required to protect the interests of the applicant, the seller, and the state in accordance with the terms and conditions upon which the preliminary approval for the guarantee was granted.

C. Closing documents; lender-sponsored loan. If the loan to be guaranteed is lender-sponsored, the applicant and lender must execute a mortgage and note or an assignment of contract for deed and any additional instruments. The lender shall take other actions consistent with prudent lending practices required to protect the interests of the applicant, the lender, and the state.

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.

D. Closing documents; releases. The seller must obtain a release or satisfaction of any underlying mortgages, liens, or encumbrances that exceed 90 percent of the balance of the loan to be guaranteed.

E. Guarantee. When the closing documents are properly executed, the commissioner shall enter into an agreement with the participant and the lender providing that in the event of default by the participant of any of the terms of the contract for deed, mortgage and note, or assignment of contract for deed, the state shall pay the lender 90 percent of the sums due and payable under those terms. Sums due and payable include the principal balance outstanding, accrued interest up to the date on which the state performs under the guarantee, real estate taxes paid by the lender, and any other expenses incurred by the lender for maintenance and protection of the property during the default period which are determined by the commissioner to be reasonable and prudent.

F. Recording. After the loan is closed, the appropriate instruments shall be recorded. The applicant shall furnish the commissioner with copies of the recorded instruments.

G. Final title opinion. After the appropriate instruments are recorded, the applicant shall furnish the commissioner with a final title opinion which recognizes the interests of all parties.

3 MCAR § 1.0553 Payment adjustment.

A. Amount and eligibility requirement. The state shall pay to the lender, according to the amortization schedule, an amount of money equal to four percent of the principal balance of the loan, provided that the conditions in B.-D. are met.

B. Loan terms and payments. The loan must either have a term of 20 years or less and require payments so that the loan is amortized with equal annual payments, including consideration of variable interest rates used by some lenders, or the loan must have a reasonable reduction of the principal balance with a balloon payment in ten years or less.

1. Extra days of interest may be included in calculating total interest for the first payment, provided that the total number of days used does not exceed an additional 50 percent of the normal payment period and does not cause a balloon payment for those loans on a fully amortized schedule.

2. Certain 20-year loans which have a specified interest only payment preceding the 20-year schedule of principal and interest payments will be accepted for the guarantee, but the state shall not participate in the interest-only payment.

3. A disaster clause may be included in provisions of a loan to be eligible for a payment adjustment, provided that it does not cause repayment to extend beyond 20 years or cause a balloon payment for loans on a fully amortized schedule.

4. An extension may be granted to the length of a loan that would require a balloon payment in ten years or less and the stated interest rate may be adjusted by consent of all parties to the loan including the state, the participant, and the lender, if the following conditions are met:

a. the participant and lender both sign a written request for extension;

b. the repayment provisions of the loan are based on a fully amortized schedule of 20 years or less; and

c. the extension is for the total remaining portion of the amortization schedule.

C. Net worth. The conditions in 1.-3. regarding net worth apply to all participants.

1. Before February 20 of each year, on forms provided by the commissioner, the participant must submit to the commissioner a statement of the participant's, dependents', and spouse's net worth as of December 31 of the year immediately preceding the filing date, except for the first year of participation. This statement is not required if the statement of net worth submitted with the original application is less than ten months old on the February 15 following the applicant's preliminary approval by the commissioner.

2. If the total net worth as determined by generally accepted accounting principles exceeds the limitation stated in Minn. Stat. § 41.57, subd. 3, the participant shall not be eligible for a payment adjustment for the next 12 months commencing April 1. The commissioner shall notify the participant and the lender that the participant is responsible for all interest payments for that 12-month period of the loan.

3. The net worth statement used by the council to recommend preliminary approval shall prevail in matters of determining eligibility for the guarantee and the first year's payment adjustment.

D. Course registration. Before February 20 of each year, the participant must submit a farm business management course registration form.

E. Extension of deadline. The commissioner may grant an extension of up to 30 days on the deadlines stated in C. and D. if the participant is not able to submit the net worth statement or the farm business management course registration form on time due to circumstances beyond the participant's immediate control.

3 MCAR § 1.0554 Recipient of payment adjustments. Payment adjustments are made by the state directly to the lender, who

annually bills the commissioner for the amounts due for the current loan year. Under circumstances where the participant has paid a full installment, including the state's payment adjustment, to the lender, the participant may request that the payment adjustment be made to him by submitting proof to the commissioner that the full installment was paid.

3 MCAR § 1.0555 Reimbursement of payment adjustments.

A. Time; generally. The participant shall reimburse the state within 12 months after the tenth anniversary of the date of the loan for all sums paid as payment adjustments by the state on the participants' behalf.

B. Reimbursement obligation as lien. The reimbursement obligation shall be a lien against the property and be subordinate to the real estate mortgage or contract for deed.

C. Renewals and reimbursement.

1. The participant may petition the commissioner for up to a ten-year renewal of the payment adjustment which the commissioner shall grant if the participant has complied with all terms of the loan guarantee and has submitted to the commissioner a net worth statement and a farm business management course registration form annually within the time frames prescribed in 3 MCAR § 1.0553.

2. If the payment adjustment is renewed for an additional period of years, within 12 months after the final payment date of the mortgage or contract for deed, the participant shall reimburse the state for all payment adjustments paid on the participant's behalf.

3. If the participant has more than one loan approved under a single guarantee, disposition of the renewal request on the latest maturing loan governs when reimbursement of the payment adjustment will be made on all the loans included under that guarantee.

D. Reimbursement upon sale or conveyance. Except as provided in 3 MCAR § 1.0559 C., a participant who sells or conveys the farm land for which a guarantee was approved shall immediately retire the entire debt owed the state for payment adjustments paid on the participant's behalf.

E. Interest; late payment. If the participant does not reimburse the state within the required time period, the commissioner may charge the maximum interest provided by law on the outstanding debt for the period of delinquency.

3 MCAR § 1.0556 Default of participant.

A. Conditions. A participant is in default if one or more of the following conditions exist:

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

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

3. the participant fails to personally maintain the farm land in active agricultural production for longer than one year.

B. Consequences.

1. If the participant is in default for reasons given in A.1. or A.2., the lender, the participant, and the commissioner may take any steps reasonable to assure fulfillment of the loan obligation. If the matter is not resolved, the lender or seller and the commissioner shall take action according to the following procedures, dependent on who sponsored the loan.

a. Under a contract for deed, the seller has two options which may be pursued.

(1) The seller may proceed according to the contract law in Minn. Stat. § 559.21 to cancel the contract. In this event, the seller shall forward to the commissioner all sums owed the state and regain real estate interest in the property.

(2) The seller may exercise the state's guarantee pursuant to Minn. Stat. § 41.56, subd. 3.

b. A lender may use statutory foreclosure proceedings in lieu of exercising the guarantee provisions of Minn. Stat. ch. 41 provided that the following conditions are met:

(1) The lender pledges to take all reasonable and prudent steps to protect and maintain the farm land and to obtain the highest possible net proceeds from the subsequent sale of the property; and

(2) The lender agrees that any money from the foreclosure sale in excess of 90 percent of the balance of the loan,

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.

plus 90 percent of the accrued interest calculated to the end of the 180-day default period, plus 90 percent of reasonable costs incurred during the foreclosure period will first be applied toward the satisfaction of the outstanding balance of the state's lien for reimbursement of the payment adjustment prior to any other disbursements, settlements, or satisfactions.

c. If the lender fails to notify the commissioner in writing within 180 days of the initial default of the participant, the state shall exercise its guarantee based on the principal balance of the loan at the time of notification of the default according to the amortization schedule of the loan. Maximum accrued interest to be paid by the state, calculated on the principal balance at the time of notification of default, may not exceed 180 days beyond the normal payment period.

d. When there is more than one loan under a single guarantee, all loans are considered to be in default if one is in default. The lenders concerned must then exercise their options in concert with each other and with the commissioner.

2. If a participant is in default under A.3. and has not received a waiver pursuant to 3 MCAR § 1.0557, the state shall cease its payment adjustments on the loan, all payment adjustments made on the participant's behalf will be due and payable to the state within 12 months of the default date, the participant will no longer be considered active in the program, and the guarantee will no longer be in force or effect.

C. Sale of defaulted farm land. In the event of default, the commissioner shall sell the farm land involved pursuant to Minn. Stat. § 41.56, subd. 4 and the following:

1. The commissioner has the right to reject any bid submitted on the farm land to be sold.

2. For the purposes of Minn. Stat. § 41.56, subd. 4, the following definitions apply:

a. "Date of sale" means the date on which the state fully executed the purchase agreement.

b. "Proceeds" means the sale price less reasonable closing costs, including but not limited to, payment of taxes due, expenses for abstracting, custom field work completed, and other reasonable costs associated with the sale.

3 MCAR § 1.0557 Waiver of default.

A. Granting waiver. The commissioner may waive the default resulting from a participant's failure to personally continue agricultural production pursuant to 3 MCAR § 1.0556 A.3. The waiver shall be granted for the reasons and following the procedures in B.-D. If the waiver is granted, the participant shall continue to be eligible to receive the payment adjustment.

B. Waiver for public service. The participant may be granted a waiver if the participant has accepted a position of public service through a government agency, church, charitable organization, or similar organization, with the intent to serve for a limited period of time and then return to full-time farming, provided that:

1. the participant submits a written notice of intent to the commissioner within 60 days after accepting the position;

2. the participant continues to submit annual financial statements to the commissioner; and

3. the participant agrees to make the full loan installments, including the state's payment adjustment, due during the waiver period.

C. Waiver for financial difficulty. The participant may be granted a waiver and remain eligible for the payment adjustment if the participant demonstrates to the commissioner, as evidenced by financial statements and discussions with lenders, that the participant is in financial difficulty and has taken a job off the farm with the intent of providing the cash flow needed to return to full-time production, provided that:

1. the participant submits a written notice of intent to the commissioner within 60 days of taking an off-farm job;

2. the participant submits semiannual financial statements to the commissioner; and

3. the participant continues enrollment in a farm business management course.

D. Waiver for physical disability or extenuating circumstances. The participant may be granted a waiver and remain eligible for the payment adjustment if the participant demonstrates to the commissioner that the farm land was not personally farmed by the participant because of the participant's physical disability or other extenuating circumstances beyond the immediate control of the participant, provided that:

1. the participant submits documentation as to the disability or other circumstances which prohibit continuation in full-time farming; and

2. the participant submits semiannual financial statements to the commissioner.

E. Denial of waiver. If the commissioner determines that the default should not be waived, the participant is entitled to a contested case hearing pursuant to Minn. Stat. ch. 15 to review the commissioner's determination.

F. Expiration. If the participant does not return to full-time farming at the end of a two-year waiver period and does not

provide convincing evidence that he will do so in the near future, the commissioner shall inform the participant that he is in default.

3 MCAR § 1.0558 Termination of Guarantee.

A. Conditions. The guarantee will remain in force and effect until maturity of the loan unless default occurs under 3 MCAR § 1.0556 and no waiver is granted pursuant to 3 MCAR § 1.0557 or any of the conditions in 1.-3. occur.

1. The lender consents to the change or alteration of any of the terms and provisions of the loan, or attempts to waive or waives any rights of the lender, the participant, the commissioner, or the state included in the loan, in a manner inconsistent with the terms of the loan as represented to and approved by the commissioner at the time of delivery of the guarantee, without the written consent and approval of the commissioner;

2. The lender fails to notify the commissioner in writing within 30 days of a transfer or assignment of the loan. The guarantee shall remain in force and effect if the commissioner is notified, provided that the purchaser of the loan assumes all duties and obligations of the original lender and agrees to comply with all the requirements of the laws and rules governing the program; or

3. The lender violates any terms, provisions, covenants, or conditions of any document or agreement to which the lender is a party for purposes of the guarantee.

B. Consequences. In the event that any of the conditions in A.1., A.2., or A.3. occur, where there is substantial evidence that the lender's actions were calculated to defraud the state or misrepresent conditions of the loan, the state may terminate its guarantee and immediately and forever be released from all claims and demands based on the guarantee. If it can be clearly ascertained that the participant had no knowledge of and did not collaborate with the lender's actions, the state may make the payment adjustment directly to the participant.

3 MCAR § 1.0559 Loan servicing.

A. Partial release. The commissioner may approve the release of a portion of the property purchased under a loan from the state's lien for reimbursement of the payment adjustment under the following conditions:

1. the participant requests the release and pledges that it will not adversely affect the participant's ability to continue in the program; and

2. all lenders included in the guarantee agree to release their interest in the property and agree to the commissioner's conditions for release from the state's lien for reimbursement of the payment adjustment.

If the release is requested because the participant wishes to sell a portion of the property, the commissioner may stipulate to what use the proceeds from that sale may be put. Ordinarily a certain portion of these proceeds will be used as a special principal payment on the loans included under the guarantee.

B. Reamortization. Reamortization of a loan will normally be considered only in cases where the participant has made a sizeable, special principal payment. The reamortization shall not extend the maturity date of the loan, except for those loans originally calling for a balloon payment which have been approved for an extension according to 3 MCAR § 1.0553 B.4.

C. New owner guarantee. If the participant sells the property for which a guarantee was issued, the purchaser may apply for a guarantee in his own right, but under no circumstances may the original loan guarantee be directly assumed by the purchaser. The purchaser may assume the former participant's responsibility for reimbursing the state for payment adjustments made if the following conditions are met:

1. the purchaser has obtained preliminary approval for a guarantee;

2. the council determines that permitting this assumption will be in the best interests of the state; and

3. the assumed indebtedness is not included in the guarantee for which the purchaser may receive final approval.

D. Subordination. The commissioner may approve a request for subordination of the state's lien for reimbursement of the payment adjustment if he determines this action is in the best interests of the state and the participant, or provisions for subordination are included in the memorandum of understanding with a cooperating agency.

3 MCAR § 1.0560 Commissioner's right to information. At any time during the existence of a loan, the commissioner may request information and documents from the lender or the participant to enable the commissioner to determine that all terms and

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conditions of any agreements made pursuant to Minn. Stat. ch. 41 or 3 MCAR §§ 1.0548-1.0560 are in compliance with the statutes and rules.

Repealer. Rules 3 MCAR §§ 1.0543; 1.0544; 1.0545; 1.0546; and 1.0547 are repealed.

Department of Energy, Planning and Development Energy Division

Proposed Amendment of Rules Governing the Petroleum Supply Shortage Conservation and Allocation Plan

Notice of Intent to Amend Rules without a Public Hearing

Notice is hereby given that the Department of Energy, Planning and Development, hereinafter "department," intends to adopt the above-entitled amendments without a public hearing. The commissioner has determined that the amendment of the rules will not be controversial and has elected to follow the procedures set out in Minn. Stat. § 15.0412, subd. 4h.

Rules for the petroleum emergency plan program were adopted recently. Those rules were published in the *State Register* on May 24, 1982. The department is now proposing amendments to those rules. The amendments would simply delay the availability of two emergency measures. The delay would allow schools and employers more time to prepare plans for their conservation measures and will delay possible initiation of the two affected measures to a time when their effect will be greater. Copies of the amendments now proposed may be obtained by writing or calling Ms. Abigail McKenzie at the address or telephone number given below.

Please be advised that you have an opportunity for the 30-day period following publication of this notice and the proposed amendments to submit comments in writing on the proposed amendments and to object to the lack of public hearing on the proposed amendments. Your written comments or request for hearings should be submitted to the Department of Energy, Planning and Development, Energy Division, c/o Abigail McKenzie, 980 American Center Building, 150 East Kellogg Boulevard, Saint Paul, Minnesota 55101. Unless seven or more persons submit written requests for a public hearing on the proposed amendments within the 30-day comment period, no public hearing will be held. If seven or more persons request hearings on the proposed amendments, the department will order public hearings in accordance with Minn. Stat. § 15.0412, subds. 4-4(f). The department may modify the proposed amendments if modification is supported by the data and views submitted in written comments and if no substantial change results from the modification.

If no hearing is required, and the department decides to adopt the amendments as proposed, or as modified if written comments justify modification, the department will submit to the Attorney General for review of form, legality and substantial change the following documents: this notice with the amendments as proposed, the amendments as adopted, the order adopting the amendments, any written comments received by the department, the department's statement of need and reasonableness supporting adoption of the amendments, and any written comments received by the department in response to the earlier notices seeking outside opinions. Any person may request notification of the date the department makes the submission to the Attorney General. If you desire to be so notified, you must inform the department in writing during the 30-day comment period.

The department has prepared a statement of need and reasonableness in support of the proposed amendments which is also available from the department in writing to the address indicated above or calling (612) 296-8285.

The department's authority to promulgate the proposed amendments can be found in Minn. Stat. § 116H.09.

Please be advised that Minnesota Statutes ch. 10A requires each lobbyist to register with the Ethical Practices Board within five days after he/she becomes a lobbyist. Lobbying includes attempting to influence rulemaking by communicating or using others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $150 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, Telephone (612) 296-5615.

July 2, 1982

Kent E. Ecklund

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Adoption of Rules of the Minnesota Department of Agriculture Governing Administration of the Family Farm Security Program and Repeal of Existing Rules Governing Administration of the Family Farm Security Program (3 MCAR §§ 1.0543 - 1.0547)

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 Minnesota Department of Agriculture for the purpose of receiving notice of the proposed adoption of rules by this Department is accurate and complete as of 10:00 a.m., this 16th day of July, 1982.

Harold J Heil

In the Matter of the Proposed Adoption of
Rules of the Minnesota Department of Agriculture
Governing Administration of the Family Farm
Security Program and Repeal of Existing Rules
Governing Administration of the Family Farm
Security Program (3 MCAR §§ 1.0543 - 1.0547)

AFFIDAVIT OF
MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Joyce Walkosz, being first duly sworn, deposes and says:

That on the 16th day of July, 1982, at the City of St. Paul, County of Ramsey, State of Minnesota, he/she served the attached Notice of Intent to Adopt Rules Without Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing 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 Minnesota Department of Agriculture for the purpose of receiving notice of the proposed adoption of rules by this Department.

Joyce Walkosz

Subscribed and sworn to before me
this 16th day of July, 1982.

Christine Canaday

Christine Canaday
NOTARY PUBLIC — MINNESOTA
RAMSEY COUNTY
My commission expires June 25, 1986

Department of Agriculture

Family Farm Security Program

In the Matter of the Proposed Adoption of Rules Governing the Administration of the Family Farm Security Program and Repeal of Existing Rules Governing Administration of the Family Farm Security Program (3 MCAR §§ 1.0543 - 1.0547)

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the Minnesota Department of Agriculture proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Agriculture has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, Section 15.0412, subdivision 4h (1980).

Persons interested in these rules shall have 30 days to submit comment 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: Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-1486.

Authority to adopt these rules is contained in Minnesota Statutes, Section 41.53, subd. 2. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available upon request from Mr. Heil.

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 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 this material to the Attorney General, or who wish to receive a copy of the final rules as adopted, should submit a written statement of such request to Mr. Heil.

The Commissioner is authorized by Minnesota Statutes, Section 41.53, subd. 2 (1980) to adopt rules for administration of the Family Farm Security Program. The proposed rules provide eligibility criteria for the program; provisions for application, preliminary approval, notification and reconsideration; closing procedures for the family farm security loan; conditions and terminiation of the 90 percent guarantee; payment, renewal and reimbursement of the state's 4 percent interest payment adjustment; conditions, consequences and waiver of participant default; family farm security loan servicing; and the Commissioner's right to information. The proposed rules also provide definitions of terms used in the rules.

The proposed rules provide an amplification of the current rules governing the Family Farm Security Program due to statutory changes and the Department's experience in administering the program since the current rules were promulgated in 1977. Because the proposed rules substantially amplify various parts of the current rules, it was determined easier to repeal the current rules and reorganize their language into these proposed rules. Thus, the language of the present rules is included but new language is also provided in many of these proposed rules.

Please be advised that Minnesota Statutes, Chapter 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 Minnesota Statutes, Section 10A.01, subdivision 11 (Supp. 1979) 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, St. Paul, MN 55155, (612) 296-5615.

Copies of this Notice and proposed rules are available and may be obtained by contacting Mr. Heil.

STATE OF MINNESOTA

Dated: July 2, 1982

FOR THE Commissioner of Agriculture

DEPUTY COMMISSIONER

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Adoption of Rules of the Department of Agriculture Governing the Administration of the Family Farm Security Program and Repeal of Existing Rules Governing Administration of the Family Farm Security Program (3 MCAR §§ 1.0543 - 1.0547)

ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT PUBLIC HEARING

IT IS ORDERED this 2nd day of July, 19 82, 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 Minnesota Department of Agriculture for that purpose and be published in the State Register.

STATE OF MINNESOTA

Ralph W. Dennis

FOR COMMISSIONER OF AGRICULTURE

DEPUTY COMMISSIONER

Rexford D. Singer, 144 Englewood Ave., St. Paul 55104; (612) 644-0535; (9/80-1/84); public member; Ramsey; CD4; LD62B; M; IR; W.
Sarah Tufford, Dept. of Natural Resources, 444 Lafayette Rd., St. Paul 55101; (612) 296-4800; D.N.R. representative; (9/77-1/84); Washington; CD1; LD50A.
Matt Walton, Minnesota Geological Survey, 1633 Eustis, St. Paul 55108; (1/79-1/83); Ramsey; CD4; LD65A.
Ted Waskosky, Rt. 2, Elbow Lake 56531; (218) 948-2956; (3/79-1/83); Grant; CD7; LD11A; M.

WORKERS COMPENSATION COURT OF APPEALS: M.E.A. Bldg., 55 Sherburne Ave., St. Paul 55103; (612) 296-6409; (Minn. Stat. § 175.006, as amended by Laws of 1979, Special Session, chapter 3).

Has appellate jurisdiction on all workers compensation claims, and original jurisdiction on peace officers dependents claims; establishes rules for the Workers Compensation Division of the Department of Labor and Industry. 5 members, appointed by the Governor and confirmed by the Senate, serve 6 year terms. Members must file with EPB; 3 members must be learned in the law. Full time position; members receive $43,000 per year.

Current members:

Raymond O. Adel, 2801 Nash Rd., Brooklyn Center 55430; (612) 561-4059; (7/80-7/86); Hennepin; CD3; LD45B; M.
Leigh J. Gard, Route 2, Box 263G, Lakeville 55044; (612) 461-2560; (7/81-6/87); Scott; CD2; LD36B; M; W.
Robert B. McCarthy, 2356 Swan Dr., Mendota Heights 55120; (9/77-9/83); Dakota; CD1; LD53B; M; DFL; W.
Paul V. Rieke, 13404 Washburn Ave. S., Burnsville 55337; (612) 894-3746; (9/79-9/85); Dakota; CD2; LD53B; M.
John C. Wallraff, 47-32nd Ave. N.W., New Brighton 55112; (612) 631-2359; (11/79-11/85); Ramsey; CD4; LD48A; M; IR; W.

ZOOLOGICAL BOARD: 12101 Johnny Cake Road, Apple Valley 55124; (612) 432-9010; (Minn. Stat. § 85A.01).

Operates and maintains the Minnesota zoological garden; 11 members, appointed by the Governor and confirmed by the Senate, must file with EPB. A resident of Dakota County who may be a member of the county board is an ex-officio member appointed by the county board in consultation with the Governor. Monthly meetings; members receive $35 per diem plus expenses.

Current members:

James L. Hetland, Jr., chr., 5850 Irving Ave. So., Minneapolis 55419; (612) 926-6284; (4/79-1/83); Hennepin; CD5; LD58A; M; IR; W.
Richard M. Arndt, 669 Laura Ct., Mendota Heights 55118; (612) 457-3482; (4/79-1/83); Dakota; CD1; LD32A; M; W.
Patricia Davies, 3424 Edmund Blvd., Minneapolis 55406; (612) 721-2347; (4/79-1/83); Hennepin; CD5; LD60; F; DFL; W.
*Stephen D. Doyle, 185 Bushaway Road, Wayzata 55391; (612) 941-0934; (5/81-1/82); Hennepin; CD3; LD42; M; W.
Herbert R. Goldenberg, 4925 W. Coventry Road, Minnetonka 55343; (612) 938-7151; (3/80-1/84); Hennepin; CD3; LD40A; M; W.
Randall J. Gort, 1904 Fremont Ave. So., Minneapolis 55403; (612) 377-2892; (6/81-1/85); Hennepin; CD5; LD56B; M; W.
*Toni L. Hengesteg, 3385 Chandler; Shoreview 55112; (612) 484-1938; (5/81-1/82); Ramsey; CD4; LD48A; F; W.
James W. Kennedy, 848 Allen Ave., W. St. Paul 55118; (612) 227-1852; ex-officio member; (5/81-1/85); Dakota; CD1; LD67A; M.
Harveydale Maruska, 198 S. 5th St., Warren 56762; (218) 745-5919; (3/80-1/84); Marshall; CD7; LD1B; M; W.
Hazel H. Reinhardt, 5116 Abercrombie Dr., Edina 55435; (612) 941-6640; (3/80-1/84); Hennepin; CD3; LD39B; F; W.
James L. Weaver, 4235 Dupont Ave. So., Minneapolis 55407; (612) 822-9185; (5/81-1/85); Hennepin; CD5; LD58B; M; W.
Paul E. Zollman, 200 First St. S.W., Rochester 55901; (507) 289-4442; (5/79-1/83); Olmsted; CD1; LD33A; M; IR; W.

Department of Agriculture
Family Farm Security Program

Notice of Intent to Solicit Outside Opinion Regarding Proposed Amendments to Rules Governing the Family Farm Security Program (3 MCAR §§ 1.0543-1.0547)

Notice is hereby given that the department is seeking information or opinions from sources outside the agency in preparing to amend the existing rules governing the Family Farm Security Program. The promulgation of these rules is authorized by Minnesota Statutes § 41.53, subd. 2, which requires the department to adopt rules governing the administration of the program.

The department requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to:

Gerald F. Heil
Planning Division
Minnesota Department of Agriculture
90 West Plato Boulevard
St. Paul, MN 55107

Oral statements will be received during regular business hours over the telephone at (612) 296-1486 and in person at the above address.

All statements of information and comment shall be accepted until December 15, 1981. Any written material received by the department shall become part of the record in the event that the rules are promulgated.

Mark W. Seetin, Commissioner
Department of Agriculture

Department of Agriculture Food Inspection Division

Notice of Intent to Solicit Outside Opinion Regarding Proposed Amendments to Rules Governing the Candling and Grading of Eggs (AGR 388-417)

Notice is hereby given that the department is seeking information or opinions from sources outside the agency in preparing to amend the existing rules governing the candling and grading of eggs. The promulgation of these rules is authorized by Minnesota Statutes § 29.27, which permits the department to adopt and enforce such rules as are necessary to carry out the provisions of Minnesota Statutes §§ 29.021-29.091.

The department requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to:

Gerald Heil
Planning Division
Minnesota Department of Agriculture
90 West Plato Boulevard
St. Paul, MN 55107

Oral statements will be received during regular business hours over the telephone at (612) 296-1486 and in person at the above address.

All statements of information and comment shall be accepted until December 15, 1981. Any written material received by the department shall become part of the record in the event that the rules are promulgated.

Mark W. Seetin, Commissioner
Department of Agriculture

State Board of Investment

Notice of Regular Meeting

The State Board of Investment will meet Tuesday, November 17, 1981, at 9:30 a.m. in the State Capitol, Room 130, Saint Paul.

Investment Advisory Council

Notice of Regular Meeting

The Investment Advisory Council will meet Tuesday, November 17, 1981, at the MEA Conference Room, 41 Sherburne Avenue, Saint Paul, at 7:30 a.m.

Minnesota Teachers Retirement Association

Notice of Meeting

The Board of Trustees, Minnesota Teachers Retirement Association will hold a meeting on Friday, December 4, 1981, at 9 a.m. in the office of the Association, 302 Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota, to consider matters which may properly come before the board.

disapproved version 9/15

Department of Agriculture
Family Farm Security Program

Adopted Rules Governing the Administration of the Family Farm Security Program and Repeal of Existing Rules Governing Administration of the Family Farm Security Program (3 MCAR SS 1.0543-1.0547)

Rules as Adopted

3 MCAR S 1.0548 Purpose and authority.

A. Purpose. It is the purpose of 3 MCAR SS 1.0548-1.0560 to carry out and administer the family farm security program established by Minn. Stat. ch. 41.

B. Authority. Rules 3 MCAR SS 1.0548-1.0560 are adopted pursuant to Minn. Stat. S 41.53, subd. 2.

3 MCAR S 1.0549 Definitions.

A. Applicability. For the purposes of 3 MCAR SS 1.0548-1.0560 the terms defined in this rule have the meanings given them.

B. Amortization schedule. "Amortization schedule" means the loan repayment schedule approved by the commissioner.

C. Applicant. "Applicant" means a natural person applying for a family farm security loan.

D. Balloon payment. "Balloon payment" means the final payment of an amortization schedule which is equal to or exceeds four times the amount of the immediately preceding payment.

E. Commissioner. "Commissioner" means the Commissioner of Agriculture or the commissioner's authorized representative.

F. Cooperating agency. "Cooperating agency" has the meaning given in Minn. Stat. S 41.52, subd. 11.

G. Council. "Council" means the Family Farm Advisory Council.

H. Even payment. "Even payment" means the payment amount necessary at a given interest rate to fully amortize the loan over a given period of time.

I. Farm business management course. "Farm business management course" means a course in farm record keeping, farm business management, or other related areas approved by the commissioner.

J. Farm land. "Farm land" has the meaning given in Minn. Stat. S 41.52, subd. 6.

K. Fully amortize. "Fully amortize" means to insert terms or provisions in a loan which do not result in a balloon payment.

L. Guarantee. "Guarantee" means the "family farm loan guarantee" defined in Minn. Stat. S 41.52, subd. 9.

M. Lender. "Lender" has the meaning given in Minn. Stat. S 41.52, subd. 7.

N. Loan. "Loan" means "family farm security loan" as defined in Minn. Stat. S 41.52, subd. 5.

O. Memorandum of understanding. "Memorandum of understanding" has the meaning given in Minn. Stat. S 41.52, subd. 12.

P. Participant. "Participant" means an applicant who has received final approval for a guarantee which has been fully executed by the state.

Q. Payment adjustment. "Payment adjustment" has the meaning given in Minn. Stat. S 41.52, subd. 10.

R. Program. "Program" means the family farm security program of the Department of Agriculture.

S. Seller-sponsored loan. "Seller-sponsored loan" has the meaning given in Minn. Stat. S 41.52, subd. 8.

T. State. "State" means the State of Minnesota.

U. Subordination. "Subordination" means that the commissioner agrees that the state's interest in a loan has a lower lien priority than the interest of another party.

3 MCAR S 1.0550 Eligibility.

A. Criteria. To be eligible for a guarantee, an applicant must meet the criteria listed in Minn. Stat. SS 41.55 and 500.221, subd. 2 and those in this rule.

B. Net worth. The current net worth of the applicant, dependents, and spouse, as determined by generally accepted

accounting principles, must not exceed the level set in Minn. Stat. S 41.55, clause (c).

C. Farm land. Applications will be accepted only for loans to acquire farm land.

D. Ownership. The applicant must be purchasing a 100 percent interest in the farm land. The farm may be operated in partnership, but the applicant must own the farm land individually.

E. Use and feasibility. The applicant must detail the intended agricultural uses of the land and substantiate the economic feasibility of the proposed farming operation.

3 MCAR S 1.0551 Preliminary approval; notification and reconsideration.

A. Application. An applicant must apply for a guarantee on forms provided by the commissioner. The application must include, but is not limited to, the following:

1. a farm land appraisal;
2. a purchase agreement;
3. letters of commitment, if appropriate;
4. the financial information required in E.;
5. copies of any partnership agreements; and
6. a farm business management course registration form.

B. Farm land appraisal. An appraisal of the market value of the farm land to be guaranteed must be performed by a qualified appraiser and recorded on the form provided by the commissioner. The appraiser must sign the form. A letter stating the appraiser's qualifications and experience must be on file with the commisioner. The commissioner may require the applicant to obtain an additional independent appraisal when it is necessary to determine the current market value.

C. Purchase agreement. A binding purchase agreement between the seller of the farm land and the applicant, containing all terms agreed upon by the two parties, must be completed. The terms must be in accordance with Minn. Stat. ch. 41 and 3 MCAR SS 1.0548-1.0560. The agreement must include a statement that the sale of the farm land is contingent upon the applicant's

obtaining a guarantee from the commissioner. The purchase price of the farm land cannot exceed the appraisal value.

D. Letters of commitment. The following information must accompany the application:

1. A letter of commitment for the financing, containing all the terms and provisions of the loan and signed by the lender, if any portion of the farm land purchase price is to be financed through a lender other than the seller;

2. A letter of credit from a financial institution for required operating credit for the first year of operation;

3. A written financing commitment, if financing is necessary for the purchase of livestock and equipment; and

4. Written equipment use agreements signed by both the applicant and the equipment owner, if equipment will be shared.

E. Financial information. The application must include the following financial information:

1. a statement of the applicant's current net worth;

2. at least two years' statements of the applicant's past earnings, if available;

3. at least two years' statements of projected income and expenses for the farm operation;

4. credit references; and

5. a statement of the applicant's parents' net worth and the applicant's spouse's parents' net worth or other documentation of the parents' ability or willingness to financially assist the applicant.

F. Privacy of information. Personal financial documents submitted in support of an application shall be treated as security information under Minn. Stat. S 15.1673 and benefit data under Minn. Stat. S 15.783 and is considered to be private data pursuant to those sections.

G. Review of applications. The commissioner shall consider and act upon an application for a guarantee, taking into account the recommendations of the council. In the event of a request for reconsideration of the commissioner's decision pursuant to J., the matter shall be reviewed at a regularly scheduled

meeting of the council.

H. Criteria for preliminary approval. The following criteria shall be considered by the commissioner in granting the preliminary approval for a guarantee:

1. the eligibility criteria set forth in 3 MCAR S 1.0550;

2. submission of a complete application and any additional information requested by the commissioner;

3. the degree to which farming will be the applicant's principal occupation;

4. the extent to which the applicant demonstrates financial need for the guarantee to acquire farm land;

5. the existence of or provisions for financing-related farm expenses other than real estate;

6. the economic feasibility of the loans as evidenced by the applicant's present, past, and projected financial situation;

7. the applicant's credit rating;

8. an analysis of the applicant's debt-to-worth ratio and other factors related to risk and profit potential; and

9. the likelihood of success of the applicant's proposed farming operation, based on the criteria in 1.-8.

I. Notification. After each review of an application for a guarantee, the commissioner shall provide written notification of the determination. If the application is approved, the commissioner shall notify the applicant and the lender. If the application is not approved, the commissioner shall notify the applicant and specify the reasons for disapproval.

J. Reconsideration of decision. An applicant who wishes the commissioner to reconsider the decision may request, within 90 days of the notification of nonapproval, that the application be reconsidered. The applicant may present to the council, in writing or in person, any additional facts relevant to the reasons given for nonapproval of the application.

3 MCAR S 1.0552 Final approval.

A. Closing. Upon receiving notice of preliminary approval for a guarantee, the applicant shall proceed in accordance with instructions provided by the commissioner for obtaining final

approval for the guarantee. All actions required of the applicant and lender to prepare for the state's execution of guarantee documents, including submission of a preliminary title opinion and execution of all relevant statements or declarations required for loan transactions by federal or state law, regulation, or rule, should normally be completed within 120 days of receipt of the notice. The commissioner may request and examine copies of other security agreements or loan documents or other records which relate to the applicant's farm land purchase in order to determine all liens and encumbrances on the property.

B. Closing documents; seller-sponsored loan. If the loan to be guaranteed is seller-sponsored, the applicant and seller must execute a contract for deed or purchase money real estate mortgage and all additional instruments required to protect the interests of the applicant, the seller, and the state in accordance with the terms and conditions upon which the preliminary approval for the guarantee was granted.

C. Closing documents; lender-sponsored loan. If the loan to be guaranteed is lender-sponsored, the applicant and lender must execute a mortgage and note or an assignment of contract for deed and any additional instruments. The lender shall take other actions consistent with prudent lending practices required to protect the interests of the applicant, the lender, and the state.

D. Closing documents; releases. The seller must obtain a release or satisfaction of any underlying mortgages, liens, or encumbrances that exceed 90 percent of the balance of the loan to be guaranteed.

E. Guarantee. When the closing documents are properly executed, the commissioner shall enter into an agreement with the participant and the lender providing that in the event of default by the participant of any of the terms of the contract for deed, mortgage and note, or assignment of contract for deed, the state shall pay the lender 90 percent of the sums due and payable under those terms. Sums due and payable include the principal balance outstanding, accrued interest up to the date

on which the state performs under the guarantee, real estate taxes paid by the lender, and any other expenses incurred by the lender for maintenance and protection of the property during the default period which are determined by the commissioner to be reasonable and prudent.

F. Recording. After the loan is closed, the appropriate instruments shall be recorded. The applicant shall furnish the commissioner with copies of the recorded instruments.

G. Final title opinion. After the appropriate instruments are recorded, the applicant shall furnish the commissioner with a final title opinion which recognizes the interests of all parties.

3 MCAR S 1.0553 Payment adjustment.

A. Amount and eligibility requirement. The state shall pay to the lender, according to the amortization schedule, an amount of money equal to four percent of the principal balance of the loan, provided that the conditions in B.-D. are met.

B. Loan terms and payments. The loan must either have a term of 20 years or less and require payments so that the loan is amortized with equal annual payments, including consideration of variable interest rates used by some lenders, or the loan must have a reasonable reduction of the principal balance with a balloon payment in ten years or less.

1. Extra days of interest may be included in calculating total interest for the first payment, provided that the total number of days used does not exceed an additional 50 percent of the normal payment period and does not cause a balloon payment for those loans on a fully amortized schedule.

2. Certain 20-year loans which have a specified interest only payment preceding the 20-year schedule of principal and interest payments will be accepted for the guarantee, but the state shall not participate in the interest-only payment.

3. A disaster clause may be included in provisions of a loan to be eligible for a payment adjustment, provided that it does not cause repayment to extend beyond 20 years or cause a balloon payment for loans on a fully amortized schedule.

4. An extension may be granted to the length of a loan that would require a balloon payment in ten years or less and the stated interest rate may be adjusted by consent of all parties to the loan including the state, the participant, and the lender, if the following conditions are met:

a. the participant and lender both sign a written request for extension;

b. the repayment provisions of the loan are based on a fully amortized schedule of 20 years or less; and

c. the extension is for the total remaining portion of the amortization schedule.

C. Net worth. The conditions in 1.-3. regarding net worth apply to all participants.

1. Before February 20 of each year, on forms provided by the commissioner, the participant must submit to the commissioner a statement of the participant's, dependents', and spouse's net worth as of December 31 of the year immediately preceding the filing date, except for the first year of participation. This statement is not required if the statement of net worth submitted with the original application is less than ten months old on the February 15 following the applicant's preliminary approval by the commissioner.

2. If the total net worth as determined by generally accepted accounting principles exceeds the limitation stated in Minn. Stat. S 41.57, subd. 3, the participant shall not be eligible for a payment adjustment for the next 12 months commencing April 1. The commissioner shall notify the participant and the lender that the participant is responsible for all interest payments for that 12-month period of the loan.

3. The net worth statement used by the council to recommend preliminary approval shall prevail in matters of determining eligibility for the guarantee and the first year's payment adjustment.

D. Course registration. Before February 20 of each year, the participant must submit a farm business management course registration form.

E. Extension of deadline. The commissioner may grant an extension of up to 30 days on the deadlines stated in C. and D. if the participant is not able to submit the net worth statement or the farm business management course registration form on time due to circumstances beyond the participant's immediate control.

3 MCAR S 1.0554 Recipient of payment adjustments. Payment adjustments are made by the state directly to the lender, who annually bills the commissioner for the amounts due for the current loan year. Under circumstances where the participant has paid a full installment, including the state's payment adjustment, to the lender, the participant may request that the payment adjustment be made to him by submitting proof to the commissioner that the full installment was paid.

3 MCAR S 1.0555 Reimbursement of payment adjustments.

A. Time; generally. The participant shall reimburse the state within 12 months after the tenth anniversary of the date of the loan for all sums paid as payment adjustments by the state on the participant's behalf.

B. Reimbursement obligation as lien. The reimbursement obligation shall be a lien against the property and be subordinate to the real estate mortgage or contract for deed.

C. Renewals and reimbursement.

1. The participant may petition the commissioner for up to a ten-year renewal of the payment adjustment which the commissioner shall grant if the participant has complied with all terms of the loan guarantee and has submitted to the commissioner a net worth statement and a farm business management course registration form annually within the time frames prescribed in 3 MCAR S 1.0553.

2. If the payment adjustment is renewed for an additional period of years, within 12 months after the final payment date of the mortgage or contract for deed, the participant shall reimburse the state for all payment adjustments paid on the participant's behalf.

3. If the participant has more than one loan approved

under a single guarantee, disposition of the renewal request on the latest maturing loan governs when reimbursement of the payment adjustment will be made on all the loans included under that guarantee.

D. Reimbursement upon sale or conveyance. Except as provided in 3 MCAR S 1.0559 C., a participant who sells or conveys the farm land for which a guarantee was approved shall immediately retire the entire debt owed the state for payment adjustments paid on the participant's behalf.

E. Interest; late payment. If the participant does not reimburse the state within the required time period, the commissioner may charge the maximum interest provided by law on the outstanding debt for the period of delinquency.

3 MCAR S 1.0556 Default of participant.

A. Conditions. A participant is in default if one or more of the following conditions exist:

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

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

3. the participant fails to personally maintain the farm land in active agricultural production for longer than one year.

B. Consequences.

1. If the participant is in default for reasons given in A.1. or A.2., the lender, the participant, and the commissioner may take any steps reasonable to assure fulfillment of the loan obligation. If the matter is not resolved, the lender or seller and the commissioner shall take action according to the following procedures, dependent on who sponsored the loan.

a. Under a contract for deed, the seller has two options which may be pursued.

(1) The seller may proceed according to the contract law in Minn. Stat. S 559.21 to cancel the contract. In this

event, the seller shall forward to the commissioner all sums owed the state and regain real estate interest in the property.

(2) The seller may exercise the state's guarantee pursuant to Minn. Stat. S 41.56, subd. 3.

b. A lender may use statutory foreclosure proceedings in lieu of exercising the guarantee provisions of Minn. Stat. ch. 41 provided that the following conditions are met:

(1) The lender pledges to take all reasonable and prudent steps to protect and maintain the farm land and to obtain the highest possible net proceeds from the subsequent sale of the property; and

(2) The lender agrees that any money from the foreclosure sale in excess of 90 percent of the balance of the loan, plus 90 percent of the accrued interest calculated to the end of the 180-day default period, plus 90 percent of reasonable costs incurred during the foreclosure period will first be applied toward the satisfaction of the outstanding balance of the state's lien for reimbursement of the payment adjustment prior to any other disbursements, settlements, or satisfactions.

c. If the lender fails to notify the commissioner in writing within 180 days of the initial default of the participant, the state shall exercise its guarantee based on the principal balance of the loan at the time of notification of the default according to the amortization schedule of the loan. Maximum accrued interest to be paid by the state, calculated on the principal balance at the time of notification of default, may not exceed 180 days beyond the normal payment period.

d. When there is more than one loan under a single guarantee, all loans are considered to be in default if one is in default. The lenders concerned must then exercise their options in concert with each other and with the commissioner.

2. If a participant is in default under A.3. and has not received a waiver pursuant to 3 MCAR S 1.0557, the state shall cease its payment adjustments on the loan, all payment adjustments made on the participant's behalf will be due and payable to the state within 12 months of the default date, the

participant will no longer be considered active in the program, and the guarantee will no longer be in force or effect.

C. Sale of defaulted farm land. In the event of default, the commissioner shall sell the farm land involved pursuant to Minn. Stat. S 41.56, subd. 4 and the following:

1. The commissioner has the right to reject any bid submitted on the farm land to be sold.

2. For the purposes of Minn. Stat. S 41.56, subd. 4, the following definitions apply:

a. "Date of sale" means the date on which the state fully executed the purchase agreement.

b. "Proceeds" means the sale price less reasonable closing costs, including but not limited to, payment of taxes due, expenses for abstracting, custom field work completed, and other reasonable costs associated with the sale.

3 MCAR S 1.0557 Waiver of default.

A. Granting waiver. The commissioner may waive the default resulting from a participant's failure to personally continue agricultural production pursuant to 3 MCAR S 1.0556 A.3. The waiver shall be granted for the reasons and following the procedures in B.-D. If the waiver is granted, the participant shall continue to be eligible to receive the payment adjustment.

B. Waiver for public service. The participant may be granted a waiver if the participant has accepted a position of public service through a government agency, church, charitable organization, or similar organization, with the intent to serve for a limited period of time and then return to full-time farming, provided that:

1. the participant submits a written notice of intent to the commissioner within 60 days after accepting the position;

2. the participant continues to submit annual financial statements to the commissioner; and

3. the participant agrees to make the full loan installments, including the state's payment adjustment, due during the waiver period.

C. Waiver for financial difficulty. The participant may be

granted a waiver and remain eligible for the payment adjustment if the participant demonstrates to the commissioner, as evidenced by financial statements and discussions with lenders, that the participant is in financial difficulty and has taken a job off the farm with the intent of providing the cash flow needed to return to full-time production, provided that:

1. the participant submits a written notice of intent to the commissioner within 60 days of taking an off-farm job;

2. the participant submits semiannual financial statements to the commissioner; and

3. the participant continues enrollment in a farm business management course.

D. Waiver for physical disability or extenuating circumstances. The participant may be granted a waiver and remain eligible for the payment adjustment if the participant demonstrates to the commissioner that the farm land was not personally farmed by the participant because of the participant's physical disability or other extenuating circumstances beyond the immediate control of the participant, provided that:

1. the participant submits documentation as to the disability or other circumstances which prohibit continuation in full-time farming; and

2. the participant submits semiannual financial statements to the commissioner.

E. Denial of waiver. If the commissioner determines that the default should not be waived, the participant is entitled to a contested case hearing pursuant to Minn. Stat. ch. 15 to review the commissioner's determination.

F. Expiration. If the participant does not return to full-time farming at the end of a two-year waiver period and does not provide convincing evidence that he will do so in the near future, the commissioner shall inform the participant that he is in default.

3 MCAR S 1.0558 Termination of Guarantee.

A. Conditions. The guarantee will remain in force and

effect until maturity of the loan unless default occurs under 3 MCAR S 1.0556 and no waiver is granted pursuant to 3 MCAR S 1.0557 or any of the conditions in 1.-3. occur.

1. The lender consents to the change or alteration of any of the terms and provisions of the loan, or attempts to waive or waives any rights of the lender, the participant, the commissioner, or the state included in the loan, in a manner inconsistent with the terms of the loan as represented to and approved by the commissioner at the time of delivery of the guarantee, without the written consent and approval of the commissioner;

2. The lender fails to notify the commissioner in writing within 30 days of a transfer or assignment of the loan. The guarantee shall remain in force and effect if the commissioner is notified, provided that the purchaser of the loan assumes all duties and obligations of the original lender and agrees to comply with all the requirements of the laws and rules governing the program; or

3. The lender violates any terms, provisions, covenants, or conditions of any document or agreement to which the lender is a party for purposes of the guarantee.

B. Consequences. In the event that any of the conditions in A.1., A.2., or A.3. occur, where there is substantial evidence that the lender's actions were calculated to defraud the state or misrepresent conditions of the loan, the state may terminate its guarantee and immediately and forever be released from all claims and demands based on the guarantee. If it can be clearly ascertained that the participant had no knowledge of and did not collaborate with the lender's actions, the state may make the payment adjustment directly to the participant.

3 MCAR S 1.0559 Loan servicing.

A. Partial release. The commissioner may approve the release of a portion of the property purchased under a loan from the state's lien for reimbursement of the payment adjustment under the following conditions:

1. the participant requests the release and pledges that

it will not adversely affect the participant's ability to continue in the program; and

2. all lenders included in the guarantee agree to release their interest in the property and agree to the commissioner's conditions for release from the state's lien for reimbursement of the payment adjustment.

If the release is requested because the participant wishes to sell a portion of the property, the commissioner may stipulate to what use the proceeds from that sale may be put. Ordinarily a certain portion of these proceeds will be used as a special principal payment on the loans included under the guarantee.

B. Reamortization. Reamortization of a loan will normally be considered only in cases where the participant has made a sizeable, special principal payment. The reamortization shall not extend the maturity date of the loan, except for those loans originally calling for a balloon payment which have been approved for an extension according to 3 MCAR S 1.0553 B.4.

C. New owner guarantee. If the participant sells the property for which a guarantee was issued, the purchaser may apply for a guarantee in his own right, but under no circumstances may the original loan guarantee be directly assumed by the purchaser. The purchaser may assume the former participant's responsibility for reimbursing the state for payment adjustments made if the following conditions are met:

1. the purchaser has obtained preliminary approval for a guarantee;

2. the council determines that permitting this assumption will be in the best interests of the state; and

3. the assumed indebtedness is not included in the guarantee for which the purchaser may receive final approval.

D. Subordination. The commissioner may approve a request for subordination of the state's lien for reimbursement of the payment adjustment if he determines this action is in the best interests of the state and the participant, or provisions for subordination are included in the memorandum of understanding

with a cooperating agency.

3 MCAR S 1.0560 Commissioner's right to information. At any time during the existence of a loan, the commissioner may request information and documents from the lender or the participant to enable the commissioner to determine that all terms and conditions of any agreements made pursuant to Minn. Stat. ch. 41 or 3 MCAR SS 1.0548-1.0560 are in compliance with the statutes and rules.

Repealer. Rules 3 MCAR SS 1.0543; 1.0544; 1.0545; 1.0546; and 1.0547 are repealed.

OFFICE OF THE REVISOR OF STATUTES

Certificate of Approval of Adopted Rules

Agency: Department of Agriculture AR0155

Division: Family Farm Security Program

Agency Contact: Gerald Heil, Planning Division

Rule Numbers: 3 MCAR SS 1.0548-1.0560

Title: Adopted Rules Governing the Administration of the Family Farm Security Program and Repeal of Existing Rules Governing the Administration of the Family Farm Security Program (3 MCAR SS 1.0543-1.0547)

Type of Rules: Permanent

Incorporations by Reference: None

Rule Number: Material Incorporated:

Duplication of Statutory Language: None

Rule Number: Statutory Section Duplicated:

The attached rules are approved as to form, subject to the following editorial changes:

Steven C. Cross

Revisor of Statutes

Name: Craig E. Lindeke

Title: Assistant Revisor

Date: 9/2/82

Phone:296-0946

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Adoption of
Rules of the Department of Agriculture Governing
the Administration of the Family Farm Security
Program and Repeal of Existing Rules Governing
Administration of the Family Farm Security Program
(3 MCAR §§ 1.0543 - 1.0547)

ORDER ADOPTING
RULES

Notice of the Commissioner's intent to adopt the above-entitled rules without a public hearing was published in the State Register on July 19, 1982, and was sent by United States mail to all persons on the list maintained by the department pursuant to Minnesota Statutes, section 15.0412, subdivision 4, on July 16, 1982. 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 the Rules Governing the Administration of the Family Farm Security Program are adopted this 31st day of August, 1982, pursuant to authority vested in me by Minnesota Statutes, section 41.53, subd. 2.

STATE OF MINNESOTA

Mark W. Seetin

MARK W. SEETIN
COMMISSIONER OF AGRICULTURE

SF-00006-02

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT OF AGRICULTURE

TO : Judith Wehrwein
Administration - Finance Division
Office of the Attorney General

DATE: 08/31/82

FROM : Gerald Heil, Director GH
Planning Division

PHONE: 296-1486

SUBJECT: Review of Rules Adopted Without A Public Hearing

The Department of Agriculture has adopted Rules Governing the Administration of the Family Farm Security Program (3 MCAR §§ 1.0548 - 1.0560) and has repealed existing Rules Governing the Administration of the Family Farm Security Program (3 MCAR §§ 1.0543 - 1.0547) without a public hearing pursuant to Minnesota Statutes section 15.0412, subd. 4h.

Accompanying this memorandum you will find the documents which are required to be submitted for your review. A list of these documents is attached.

Since no person requested to be notified when these documents were submitted to the Office of the Attorney General, no Notice of Submission nor Affidavit of Mailing such Notice are part of this record. No written comments were received during the solicitation of outside opinion, but one written commentary on the proposed rules was received during the 30 day comment period following the publication of the Rules as Proposed in the State Register. This commentary is included in this record as are the responses to the comments which have already been sent to the organization. Though this commentary was received, no requests for a public hearing on the proposed rules were received during this 30 day period.

No changes were made between the Rules as Proposed and the Rules as Adopted.

A copy of the Rules as Adopted is also being submitted to the Revisor of Statutes in order to obtain approval as to form as required by Minnesota Statutes section 15.0412, subd. 10.

If you have any questions, please call me.

GH:rl

Enclosures

cc: Office of Revisor of Statutes
Darryl L. Anderson
Rollin M. Dennistoun, Ph.D.
Jon Murphy
Wayne Marzolf

PLANNING DIVISION
DEPARTMENT OF AGRICULTURE

ATTACHMENT A

LIST OF ATTACHED DOCUMENTS

A. Rule as Adopted (original and three copies).

B. Order Adopting the Rule (two copies).

C. Notice of Intent to Solicit Outside Opinion (one copy).

D. Order for Notice of Intent to Adopt Rule Without Public Hearing (one copy).

E. Notice of Intent to Adopt a Rule Without Public Hearing (one copy).

F. Affidavit of Mailing Notice of Intent to Adopt a Rule Without Public Hearing (one copy).

G. Mailing List Certificate (one copy).

H. Rule as Proposed (one copy).

I. Statement of Need and Reasonableness (one copy).

J. Written Comments on the Proposed Rule (one copy).

K. Statement of Compliance with Rulemaking Procedures (one copy).

LR File #847

1981 Amend's

CHAPTER 41

FAMILY FARM SECURITY PROGRAM

41.52 Definitions.
41.54 Advisory council.
41.56 Procedure.
41.58 Seller-sponsored loans.

41.52 DEFINITIONS.

[For text of subds 1 to 4, see M.S.1980]

Subd. 5. "Family farm security loan", except in the case of a seller-sponsored loan, means a loan secured by a first real estate mortgage. In the case of a seller-sponsored loan, it means a loan secured either by a real estate mortgage evidenced by one or more notes or secured by a contract for deed. It shall be used for acquisition of farm land and shall be approved by the commissioner. This loan shall be guaranteed and may qualify for a payment adjustment as defined in subdivision 10 and may be a seller-sponsored loan as defined in subdivision 8.

[For text of subds 6 and 7, see M.S.1980]

Subd. 8. "Seller-sponsored loan" means a loan in which part or all of the purchase price of the farm is financed by a loan from the seller of the property who is a natural person, a partnership or a family farm corporation as defined in section 500.24, and the remainder of the loan, if any, is supplied by a lender as defined in subdivision 7 or other person. This loan shall be secured by a real estate mortgage evidenced by one or more notes that may carry different interest rates, or by a contract for deed.

Subd. 9. "Family farm loan guarantee" means an agreement that in the event of default the state of Minnesota shall pay the lender 90 percent of the sums due and payable under the first real estate mortgage, or, in the case of a seller-sponsored loan, 90 percent of the sums due and payable under the note and mortgage or contract for deed.

[For text of subd 10, see M.S.1980]

Subd. 11. "Cooperating agency" means any individual, financial institution, state or federal agency, or any other legal entity which executes a memorandum of understanding with the family farm security program.

Subd. 12. "Memorandum of understanding" means an agreement outlining conditions under which a cooperating agency will provide farm real estate loan funds not to be included under a family farm loan guarantee to applicants.

History: *1981 c 261 s 4-8*

41.54 ADVISORY COUNCIL.

[For text of subd 1, see M.S.1980]

Subd. 2. **Terms and compensation.** The compensation and removal of members of the council shall be governed by section 15.059. The council shall meet monthly or more often as needed.

The terms of the members serving on January 15, 1981, shall end on the first Monday in April in the year indicated as follows:

(a) The dairy farmer and one officer from a commercial lending institution, 1982;

(b) The cash grain farmer and the officer from a farm credit association, 1983;

(c) The livestock farmer and one officer from a commercial lending institution, 1984; and

(d) The agricultural economist, 1985.

After a term expires as provided in clauses (a) to (d), all successors shall be appointed for four year terms. The terms of the present officers from a commercial lending institution shall be decided by lot subject to clauses (a) and (c).

[For text of subds 3 to 5, see M.S.1980]

History: *1981 c 261 s 9*

41.56 PROCEDURE.

Subdivision 1. **Loan application; denial.** Any person desiring to acquire farm land may make application with a lender for a family farm security loan. Upon completion of the appropriate forms by the applicant and the lender, the applicant shall forward the application to the commissioner for approval. The commissioner shall prescribe a screening process to determine eligibility and he may arrange for local lenders to perform this function for the state. The commissioner may approve the application if the criteria of sections 41.55 and 41.57 are satisfied, and shall notify the applicant and the lender of his decision.

If the application is denied, the commissioner shall provide the applicant with a written statement of the reasons for the denial. If the circumstances of the applicant change such that he becomes eligible, he may reapply.

Subd. 2. **Approved loans.** If the commissioner approves the loan application, he shall notify the applicant and lender of his decision. The applicant and the lender may then complete the transaction for the loan.

Subd. 3. **Default, filing claim.** Within 90 days of a default on a guaranteed family farm security loan, the lender shall send notice to the applicant stating that the commissioner must be notified if the default continues for 180 days, and the consequences of that default. The lender and the applicant may agree to take any steps reasonable to assure the fulfillment of the loan obligation.

After 180 days from the initial default, if the applicant has not made arrangements to meet his obligation, the lender shall file a claim with the commissioner, identifying the loan and the nature of the default, and assigning to the state all of the lender's security and interest in the loan in exchange for payment according to the terms of the family farm security loan guarantee. In the case of a seller-sponsored loan, the seller may elect to pay the commissioner all sums owed the commissioner by the applicant and retain title to the property in lieu of payment by the commissioner under the terms of the loan guarantee. If the commissioner determines that the terms of the family farm security loan guarantee have been met, he shall authorize payment of state funds to the lender, and shall notify the defaulting party. The state of Minnesota shall then succeed to the interest of the mortgagee or the vendor of the contract for deed. Taxes shall be levied and paid on the land as though the owner were a natural person and not a political subdivision of the state. The commissioner may, on behalf of the state, commence foreclosure or termination proceedings in the manner provided by law.

Subd. 4. **Sale of defaulted property.** In the event that title to the property is acquired by the state, upon conveyance of title to the state and expiration of the period of redemption, the commissioner shall, within 15 days of the expiration of such period, undertake to sell the property by publishing a notice of the impending

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sale at least once each week for four successive weeks in a legal newspaper and also in a newspaper of general distribution in the county in which the property to be sold is situated. Such notice shall specify the time and place in the county at which the sale will commence, a description of the lots or tracts to be offered, and a general statement of the terms of sale. Except as further provided in this subdivision, the terms and method of sale shall be determined by the commissioner. The commissioner shall sell the property to the highest bidder as determined by taking sealed bids or by public auction, provided that in either event he shall select the successful bidder within 15 days of the date of the last published notice of sale. Bidders shall submit bid security in the form of a certified check or bid bond in the amount of two percent of their bid price and the successful bidder shall remit the balance of the purchase price to the commissioner within 90 days of the date of sale. Upon remittance of such balance within 90 days of the date of sale, the commissioner shall transfer title to the property, including any acquired mineral rights, to the purchaser by quitclaim deed. In the event that the purchaser fails to remit any part of such balance within 90 days of the date of sale, the purchaser shall forfeit all rights to the property and any moneys paid thereon and the state shall recommence the sale process as specified in this subdivision. Proceeds from the sale of a parcel of property obtained by the state pursuant to this section shall be paid into the special account authorized in section 41.61, subdivision 1, to the extent that funds from the special account were disbursed according to the terms of the family farm security loan guarantee and into the general fund to the extent that funds were disbursed as payment adjustments by the commissioner. Proceeds in excess of these amounts shall be paid to the lender to the extent that payment to the lender pursuant to the loan guarantee was less than the money due and payable to the lender under the family farm security loan. Proceeds in excess of these amounts shall be paid to cooperating agencies according to the terms of the family farm security memorandum of understanding. Additional proceeds, if any, shall be paid into the general fund.

[For text of subds 5 and 6, see M.S.1980]

History: *1981 c 261 s 10-13*

41.58 SELLER-SPONSORED LOANS.

[For text of subd 1, see M.S.1980]

Subd. 2. **Negotiability and marketability.** A seller-sponsored loan shall be secured by a purchase money real estate mortgage evidenced by negotiable note or notes as defined in section 336.3-104 or by a contract for deed. The commissioner must be notified in writing within 30 days after a family farm security loan note is sold or exchanged or vendor's interest in a contract for deed is sold, exchanged, assigned or transferred.

[For text of subd 3, see M.S.1980]

History: *1981 c 261 s 14*

1980 Statutes

CHAPTER 41

FAMILY FARM SECURITY PROGRAM

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41.52 Definitions.
41.53 Administration and rules.
41.54 Advisory council.
41.55 Eligibility.
41.56 Procedure.
41.57 Terms of the loan.
41.58 Seller-sponsored loans.
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41.01 [Repealed, 1973 c 87 s 3; 1973 c 494 s 3]
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41.03 [Repealed, 1973 c 87 s 3; 1973 c 494 s 3]
41.04 [Repealed, 1973 c 87 s 3; 1973 c 494 s 3]
41.041 [Repealed, 1951 c 68 s 6]
41.05 [Repealed, 1973 c 87 s 3; 1973 c 494 s 3]
41.06 [Repealed, 1973 c 87 s 3; 1973 c 494 s 3]
41.07 [Repealed, 1973 c 87 s 3; 1973 c 494 s 3]
41.08 [Repealed, 1973 c 87 s 3; 1973 c 494 s 3]
41.09 [Repealed, 1973 c 87 s 3; 1973 c 494 s 3]
41.10 [Repealed, 1973 c 87 s 3; 1973 c 494 s 3]
41.101 [Repealed, 1951 c 68 s 6]
41.11 [Repealed, 1973 c 87 s 3; 1973 c 494 s 3]
41.12 Subdivision 1. [Repealed, 1973 c 87 s 3; 1973 c 494 s 3]
Subd. 2. [Repealed, 1973 c 87 s 3; 1973 c 494 s 3]
Subd. 3. [Repealed, 1973 c 87 s 3; 1973 c 494 s 3]
Subd. 4. [Repealed, 1951 c 68 s 6]
41.13 [Repealed, 1951 c 68 s 6]
41.14 [Repealed, 1973 c 87 s 3; 1973 c 494 s 3]
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41.46 [Repealed, 1973 c 87 s 3; 1973 c 494 s 3]
41.47 [Repealed, 1973 c 87 s 3; 1973 c 494 s 3]

41.51 PURPOSE.

In order to aid farmers in obtaining credit for the acquisition of farm real estate, there is established a family farm security program which shall provide state money in guarantee of loans made according to the provisions of Laws 1976, Chapter 210.

History: *1976 c 210 s 1*

41.52 DEFINITIONS.

Subdivision 1. For the purposes of Laws 1976, Chapter 210 the following terms shall have the meanings given.

Subd. 2. "Applicant" means a natural person applying for a family farm security loan.

Subd. 3. "Council" means the family farm advisory council.

Subd. 4. "Commissioner" means the commissioner of agriculture.

Subd. 5. "Family farm security loan", except in the case of a seller-sponsored loan, means a loan secured by a first real estate mortgage. It shall be used for acquisition of farm land and shall be approved by the commissioner. This loan shall be guaranteed and may qualify for a payment adjustment as defined in subdivision 10 and may be a seller-sponsored loan as defined in subdivision 8.

Subd. 6. "Farm land" means land in Minnesota that is capable of supporting the commercial production of agricultural crops, livestock or livestock products, poultry products, milk or dairy products, or fruit or other horticultural products.

Subd. 7. "Lender" means any bank, savings bank, mutual savings bank, building and loan association, savings and loan association, organized under the laws of this state or the United States, trust companies, trust companies acting as fiduciaries, and other financial institutions subject to the supervision of the commissioner of banks; and any foreign or domestic corporation engaged in the business of insurance which is subject to the supervision of the commissioner of insurance as defined in section 60A.02, subdivision 3; and any financial institution operating under the supervision of the farm credit administration. In case of seller-sponsored loans as authorized in section 41.58, "lender" also means the seller of the property.

Subd. 8. "Seller-sponsored loan" means a loan in which part or all of the purchase price of the farm is financed by a loan from the seller of the property

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who is a natural person or a family farm corporation as defined in section 500.24, and the remainder of the loan, if any, is supplied by a lender as defined in subdivision 7. This loan shall be secured by a real estate mortgage evidenced by one or more notes that may carry different interest rates.

Subd. 9. "Family farm loan guarantee" means an agreement that in the event of default the state of Minnesota shall pay the lender 90 percent of the sums due and payable under the first real estate mortgage.

Subd. 10. "Payment adjustment" means an amount of money equal to four percent interest on the principal balance of the family farm security loan.

History: *1976 c 210 s 2; 1977 c 170 s 1,2*

41.53 ADMINISTRATION AND RULES.

Subdivision 1. The family farm security program shall be administered by the commissioner.

Subd. 2. The commissioner shall promulgate rules necessary for the efficient administration of sections 41.51 to 41.57; 41.58, subdivisions 1 and 2; 41.59, subdivision 1; and 41.61.

Subd. 3. On or before January 1 of each year the commissioner shall submit a report to the legislature, as provided in section 3.195, concerning the actions of the commissioner and the status of loans granted.

History: *1976 c 210 s 3; 1978 c 674 s 9*

41.54 ADVISORY COUNCIL.

Subdivision 1. **Membership.** There is established a family farm advisory council composed of seven members appointed by the commissioner of agriculture as follows:

(a) Two officers from a commercial lending institution;

(b) One dairy farmer;

(c) One livestock farmer;

(d) One cash grain farmer;

(e) One officer from a farm credit association;

(f) One agricultural economist.

Subd. 2. **Terms and compensation.** The council shall expire and the terms, compensation and removal of members of the council shall be governed by section 15.059. The council shall meet monthly or more often as needed. Initial members shall be appointed for terms as follows: (a) for terms ending the first Monday in January, 1979: one officer from a commercial lending institution, the dairy farmer, and the cash grain farmer; and (b) for terms ending the first Monday in January, 1980: the remaining members.

Subd. 3. **Chairman.** The members of the council shall annually elect a chairman and other officers they deem necessary.

Subd. 4. **Duties.** The duties of the council shall be as follows:

(a) To review and appraise the family farm security program;

(b) To give advice and counsel to the commissioner regarding the family farm security program;

(c) To review all applications for family farm security loans and make recommendations to the commissioner as to their disposition;

(d) To make recommendations to the commissioner of agriculture, legislature and the public on or before December 31 of each year regarding any needed state policy or program changes to foster and promote the economic health and viability of the family farm.

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Subd. 5. **Staff services.** commissioner of agriculture shall provide the council with necessary staff, office space and administrative services.

History: *1976 c 210 s 4; 1977 c 170 s 3*

41.55 ELIGIBILITY.

A family farm security loan approval may be granted if the following criteria are satisfied:

(a) That the applicant is a resident of the state of Minnesota, or shows sufficient evidence that he intends to become a resident;

(b) That the applicant has sufficient education, training, or experience in the type of farming for which he wishes the loan and continued participation in a farm management program, approved by the commissioner, for the duration of the family farm security loan;

(c) That the applicant, his dependents and spouse have total net worth valued at less than $75,000 and has demonstrated a need for the loan;

(d) That the applicant intends to purchase farm land to be used by the applicant for agricultural purposes;

(e) That the applicant is credit worthy according to standards prescribed by the commissioner;

(f) That the seller has not acquired the farm land for purposes of obtaining the income tax exemption allowed by sections 41.58 and Laws 1976, Chapter 210, Section 12.

History: *1976 c 210 s 5; 1979 c 236 s 1*

41.56 PROCEDURE.

Subdivision 1. **Loan application; denial.** Any person desiring to acquire farm land may make application with a lender for a family farm security loan. Upon completion of the appropriate forms by the applicant and the lender, the lender shall forward the application to the commissioner for approval. The commissioner shall prescribe a screening process to determine eligibility and he may arrange for local lenders to perform this function for the state. The commissioner may approve the application if the criteria of sections 41.55 and 41.57 are satisfied, and shall notify the applicant and the lender of his decision.

If the application is denied, the commissioner shall return the application to the lender with a written statement of the reasons for the denial. The applicant shall be given a copy of the reasons for the denial of the loan. If the circumstances of the applicant change such that he becomes eligible, he may reapply.

Subd. 2. **Approved loans.** If the commissioner approves the loan application, he shall retain a copy of the application for his files and return the original to the lender. The applicant and the lender may then complete the transaction for the loan.

Subd. 3. **Default, filing claim.** Within 90 days of a default on a guaranteed family farm security loan, the lender shall send notice to the applicant stating that the commissioner must be notified if the default continues for 180 days, and the consequences of that default. The lender and the applicant may agree to take any steps reasonable to assure the fulfillment of the loan obligation.

After 180 days from the initial default, if the applicant has not made arrangements to meet his obligation, the lender shall file a claim with the commissioner, identifying the loan and the nature of the default, and assigning to the state all of the lender's security and interest in the loan in exchange for payment according to the terms of the family farm security loan guarantee. In the case of a seller-sponsored loan, the seller may elect to pay the commissioner all

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Subd. 4. **Sale of defaulted property.** In the event that title to the property is acquired by the state, upon conveyance of title to the state and expiration of the period of redemption, the commissioner shall, within 15 days of the expiration of such period, undertake to sell the property by publishing a notice of the impending sale at least once each week for four successive weeks in a legal newspaper and also in a newspaper of general distribution in the county in which the property to be sold is situated. Such notice shall specify the time and place in the county at which the sale will commence, a description of the lots or tracts to be offered, and a general statement of the terms of sale. Except as further provided in this subdivision, the terms and method of sale shall be determined by the commissioner. The commissioner shall sell the property to the highest bidder as determined by taking sealed bids or by public auction, provided that in either event he shall select the successful bidder within 15 days of the date of the last published notice of sale. Bidders shall submit bid security in the form of a certified check or bid bond in the amount of two percent of their bid price and the successful bidder shall remit the balance of the purchase price to the commissioner within 90 days of the date of sale. Upon remittance of such balance within 90 days of the date of sale, the commissioner shall transfer title to the property to the purchaser by quitclaim deed. In the event that the purchaser fails to remit any part of such balance within 90 days of the date of sale, the purchaser shall forfeit all rights to the property and any moneys paid thereon and the state shall recommence the sale process as specified in this subdivision. Proceeds from the sale of a parcel of property obtained by the state pursuant to this section shall be paid into the into the special account authorized in section 41.61, subdivision 1, to the extent that funds from the special account were disbursed according to the terms of the family farm security loan guarantee and into the general fund to the extent that funds were disbursed as payment adjustments by the commissioner. Proceeds in excess of these amounts shall be paid to the lender to the extent that payment to the lender pursuant to the loan guarantee was less than the money due and payable to the lender under the family farm security loan. Additional proceeds, if any, shall be paid into the general fund.

Subd. 5. **Guarantee void.** The loan guarantee shall be void only if the guaranteed loan was obtained by fraud or material misrepresentation of which the original lender or subsequent holder had actual knowledge.

Subd. 6. **Secondary market guarantees without recourse.** In the case of all family farm loan guarantees, except seller-sponsored loan guarantees, the commissioner is authorized to extend said guarantees to a bona fide purchaser of the guaranteed portion of the note and mortgage executed by an original lender and borrower without recourse by the state of Minnesota against said bona fide purchaser of said guaranteed portion, provided the state of Minnesota is made the named beneficiary of a title insurance policy insuring marketable title to the farm land in question and the state of Minnesota is given the written opinion of original lender's counsel that the original loan transaction was fully closed, that disbursements were made correctly, that lender's security was properly perfected and constitutes a valid first lien upon the property, that original borrower's note

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is a valid and binding obligation, and that all conditions deemed desirable to assure the validity and legal enforceability of the note and mortgage and all agreements delivered to the original lender in connection with the original loan have been complied with satisfactorily. In the event title insurance is, as a practical matter, unavailable or an undue hardship, the commissioner is authorized to provide said guarantee without recourse by the state of Minnesota against said bona fide purchaser provided the state of Minnesota is given the written opinion of competent local counsel concerning marketable title and the written opinion of original lender's counsel that the original loan transaction was fully closed, that disbursements were made correctly, that lender's security was properly perfected and constitutes a valid first lien upon the property, that original borrower's note is a valid and binding obligation, and that all conditions deemed desirable to assure the validity and legal enforceability of the note and mortgage and all agreements delivered to the original lender in connection with the original loan have been complied with satisfactorily. The making of such a guarantee without recourse shall not affect the rights the state of Minnesota may have with respect to the original lender, mortgagor, or any other party.

History: *1976 c 210 s 6; 1977 c 170 s 4,5; 1979 c 236 s 2*

41.57 TERMS OF THE LOAN.

Subdivision 1. **Forms; appraisal procedure; limitations.** A family farm security loan shall be transacted on forms approved by the commissioner with the advice of the attorney general. The commissioner shall establish by rule an appraisal procedure. He shall thereby determine the value and income potential of the property before guaranteeing a family farm security loan. No guarantee shall be made if the purchase price of the farm land exceeds the appraisal value as determined under the provisions of this subdivision.

Subd. 2. **Payment adjustment.** To be eligible for payment adjustment a family farm security loan shall have a maximum term of 20 years and shall provide for payments at least annually so that the loan shall be amortized over its term with equal annual payments of principal and interest, except that a loan to be amortized over a term of ten years or less need not provide for equal annual payments of principal and interest. During the first ten years of a family farm security loan, the commissioner shall annually pay to the lender four percent of the outstanding balance due at the beginning of that year and the applicant shall pay the remainder of the payment due. After the tenth year, the applicant shall make payments according to the stated interest rate. The applicant may petition the commissioner for one ten year renewal of the payment adjustment. If a renewal is granted, in the 21st year the applicant shall reimburse the commissioner for the sums paid on the applicant's behalf under this subdivision. If no renewal is granted, the applicant shall reimburse the commissioner in the 11th year for the sums paid on the applicant's behalf under this subdivision. The obligation to repay the payment adjustment shall be a lien against the property.

Subd. 3. **Annual review of net worth.** The applicant, his dependents and spouse shall annually submit to the commissioner a statement of their net worth. If their net worth in any year exceeds the sum of $135,000, the applicant shall be ineligible for a payment adjustment in that year.

History: *1976 c 210 s 7; 1977 c 170 s 6; 1977 c 347 s 11; 1979 c 236 s 3*

41.58 SELLER-SPONSORED LOANS.

Subdivision 1. **Authorization.** The commissioner may provide a guarantee to the lenders on seller-sponsored loans when the buyer satisfies the eligibility criteria in section 41.55. The commissioner may also provide a payment adjustment on behalf of the applicant in the case of seller-sponsored loans.

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Subd. 2. **Negotiability and marketability.** A seller-sponsored loan shall be secured by a purchase money real estate mortgage evidenced by negotiable note or notes as defined in section 336.3-104. The commissioner must be notified in writing within 30 days after a family farm security loan note is sold or exchanged.

Subd. 3. **Taxability.** The interest earned by the seller of the property on a seller-sponsored loan that is guaranteed by the commissioner shall be excludable from gross income for purposes of chapter 290 for the year in which it is received.

History: *1976 c 210 s 8; 1977 c 170 s 7; 1978 c 763 s 1*

41.59 SALE OR CONVEYANCE.

Subdivision 1. **Immediate repayment of loan.** Any applicant who sells or conveys the property for which a family farm security loan was issued shall immediately retire the entire indebtedness still owed to the lender and the commissioner. The new owner may negotiate a family farm security loan in his own right, but under no circumstances may the original loan be assumed by the new owner. This subdivision is not intended to prohibit the applicant from granting a security interest in the property for the purposes of securing an additional loan.

Any applicant who fails to maintain the land covered by a family farm security loan in active agricultural production for a period of time longer than one year shall be in default. Such a default may be waived by the commissioner in the event of a physical disability or other extenuating circumstances.

Subd. 2. **Tax penalty on capital gain.** Chapter 290 shall apply to determine the amount of the gain realized on the sale of property for which a family farm security loan has been issued. The tax imposed by chapter 290 shall be imposed on the following percentages of any gain realized on the sale of the property:

Time lapsed from issuance of loan

	At least	but less than	Percent
(a)		1 year	100
(b)	1 year	3 years	90
(c)	3 years	5 years	80
(d)	5 years	7 years	70
(e)	7 years	9 years	60
(f)	9 years	10 years	50

This tax shall no longer be applicable and the tax imposed by chapter 290 shall apply when the property for which a family farm security loan was issued has been held by the applicant for more than ten years after the issuance of the loan. Chapter 290 shall apply when the applicant has realized a loss on the sale of the property.

Subd. 3. **Waiver of tax penalty.** The commissioner of revenue shall waive the additional tax imposed in subdivision 2 if the applicant has died or suffered a total disability, and the tax imposed in chapter 290 shall apply.

For the purposes of this section, "total disability" means the total and permanent loss of sight of both eyes, the loss of both arms at the shoulder, the loss of both legs so close to the hips that no effective artificial members can be used, complete and permanent paralysis, total and permanent loss of mental faculties, or any other injury which totally incapacitates the applicant from working his farm.

History: *1976 c 210 s 9*

Over

41.60 DISCRIMINATION PROHIBITED.

In carrying out their respective duties under Laws 1976, Chapter 210, the council and the commissioner shall not discriminate between applicants because of race, color, creed, religion, national origin, sex, marital status, disability, political or ideological persuasion.

History: *1976 c 210 s 10*

41.61 APPROPRIATIONS.

Subdivision 1. There is appropriated from the general fund to a special account in the state treasury the sum of $10,000,000 to be invested by the state board of investment in such securities as authorized by law.

Such sums as may be needed from time to time to pay lenders for defaulted loans is appropriated from the special account to the commissioner. The sum of all outstanding family farm security loans guaranteed by the commissioner at any time shall not exceed ten times the amount of money in the special account created in this subdivision.

Subd. 2. The sum of $800,000 from the general fund is appropriated to the commissioner to be used for payment adjustment under section 41.57, subdivision 2.

Subd. 3. There is appropriated from the general fund to the commissioner the sum of $74,300 for the biennium ending June 30, 1977, for administrative expenses incurred in fulfilling the provisions of Laws 1976, Chapter 210.

History: *1976 c 210 s 13*

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Adoption of
Rules of the Department of Agriculture Governing
the Administration of the Family Farm Security
Program and Repeal of Existing Rules Governing
Administration of the Family Farm Security Program
(3 MCAR §§ 1.0543 - 1.0547)

ORDER ADOPTING
RULES

Notice of the Commissioner's intent to adopt the above-entitled rules without a public hearing was published in the State Register on July 19, 1982, and was sent by United States mail to all persons on the list maintained by the department pursuant to Minnesota Statutes, section 15.0412, subdivision 4, on July 16, 1982. 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 the Rules Governing the Administration of the Family Farm Security Program which were adopted the 31st day of August, 1982, pursuant to authority vested in me by Minnesota Statutes, section 41.53, subdivision 2, are re-adopted this 25th day of October, 1982, incorporating changes recommended by the Office of the Attorney General.

STATE OF MINNESOTA

MARK W. SEETIN
COMMISSIONER OF AGRICULTURE

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

Office Memorandum

TO : Larry D. Starns
Special Assistant Attorney General
Office of the Attorney General

DATE: 10/25/82

FROM : Gerald Heil, Director GH
Planning Division

PHONE: 296-1486

SUBJECT: In the Matter of the Proposed Rules of the Department of Agriculture Governing the Administration of the Family Farm Security Program and Repeal of Existing Rules Governing Administration of the Family Farm Security Program (3 MCAR SS 1.0543-1.0547)

The enclosed materials are being resubmitted for your review in connection with the above-mentioned rules.

The changes recommended by your office and outlined in your memorandum of September 15, 1982, have been incorporated into the rules. Two copies of the revised rules and a new Order Adopting the Rules are enclosed. Two copies of the revised rules are also being submitted to the Revisor's Office.

If you have any questions, please contact me.

GH:dw

Enclosures

cc: Office of the Revisor of Statutes
Darryl L. Anderson
Jon Murphy
Wayne Marzolf
Margaret Reed
Julie Smendzuik
Kathy Burek
Theresa Lauterbach

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO MARK W. SEETIN
Commissioner of Agriculture

DATE: 9/15/82

ATTN: JON MURPHY, Spec. Ass't. Atty. Gen.

FROM : LARRY D. STARNS
Special Assistant
Attorney General

PHONE: 297-3493

SUBJECT: In the Matter of the Proposed Adoption of Rules of the Department of Agriculture Governing the Administration of the Family Farm Security Program and Repeal of Existing Rules Governing Administration of the Family Farm Security Program (3 MCAR §§ 1.0543 - 1.0547)

As indicated in my phone conversation of September 15, 1982, the rules as described above have not been approved by this office for the following reasons:

1. 3 MCAR § 1.0550.E states that an applicant for the Family Farm Assistance Program must "substantiate" the economic feasibility of the proposed farming operation. The use of the term "substantiate" is impermissibly vague in that it leaves unclear the requirements to be imposed on the applicant in determining whether or not he or she has established such economic feasibility. The use of another term which more particularly describes what will be required of the applicant, or a delineation of the standards to be used by the agency in determining economic feasibility, will correct this defect.

2. 3 MCAR § 1.0551.A establishes the required information which must be submitted with an application for assistance, using the introductory phrase "but is not limited to." Such phrasing permits the agency to impose additional requirements that are not articulated in this rule. This is impermissible for it fails to provide notice to the applicant of the additional requirements that must be met. To correct this defect, the phrase "but is not limited to" must be deleted and any additional requirements contemplated must be clearly articulated in the rule.

3. 3 MCAR § 1.0551.B states that the Commissioner may require an additional appraisal "when it is necessary to determine the current market value". The quoted language is vague in that it fails to articulate what factors will trigger the requirement of an additional appraisal. To correct the defect, these factors must be enumerated in the rule.

4. 3 MCAR § 1.0551.E.2 requires the applicant to provide "at least two years' statements of applicant's past earnings, if available." This requirement is ambiguous in that it does not specify which two years' statements will satisfy the requirement.

The rule should be clarified to correct the ambiguity.

5. 3 MCAR § 1.0551.E.3 requires the applicant to provide "at least two years' statements of projected income and expenses for the farm operation." This requirement is ambiguous for the reason stated in Paragraph No. 4 above, and the rule must be clarified to correct the ambiguity.

6. 3 MCAR § 1.0551.F states that personal financial documents submitted to the agency will be treated as "security information under Minn. Stat. § 15.1673 and benefit data under Minn. Stat. § 15.783 and is considered to be private . . ." By virtue of Minn. Stat. § 15.1621, Subd. 1, classification of data under the Data Privacy Act can only occur by virtue of the Act itself or by state or federal law. An agency cannot, by rule-making, additionally classify data. Therefore, this rule cannot be promulgated.

7. 3 MCAR § 1.0551.H.2 establishes, among the criteria for preliminary approval for a guarantee, that an applicant must submit "any additional information requested by the Commissioner." This language allows too much discretion in the Commissioner and fails to adequately notify the applicant what all of the requirements are.

8. 3 MCAR § 1.0552.A provides that all actions required of an applicant "should normally" be completed within 120 days of the notice of preliminary approval. This appears to be a suggestion rather than a stated requirement of the applicant and thus does not constitute a rule; therefore, it cannot be promulgated.

9. 3 MCAR § 1.0553.B.3 refers to disaster clauses and states that such a clause "may be included in provisions of a loan to be eligible for a payment adjustment . . . ." (emphasis added). Such wording is ambiguous in that it appears to treat such clauses as discretionary with the agency and yet, at the same time, appears to make such mandatory in order for the loan to be eligible for a payment adjustment. Additional interpretations are also possible. The intent behind this statement must be clarified and the ambiguity resolved accordingly.

10. 3 MCAR § 1.0553.B.4 uses the term "may" with respect to the grant of an extension of the term of the loan and the adjustment of the stated interest rate upon consent of all of the parties "including the state." Since the state must consent to such changes, the applicant should have a reasonable degree of certainty that agency discretion will not be arbitrarily exercised when he or she satisfies the stated requirements as delimited at

subparagraphs a-c. To insure this, "may" should be changed to "shall." Additionally, the criteria to be used by the agency in determining when it will consent to these changes must be specifically stated.

11. 3 MCAR § 1.0553.E provides that the Commissioner "may" extend deadlines contained in the rules when an applicant fails to submit documentation on time "due to circumstances beyond the participant's immediate control." The use of the word "may" makes uncertain, at best, the likelihood that, if such "circumstances" are proven by the applicant, an extension will be granted. "May" must be changed to "shall" to correct this defect. Additionally, absent a delimiting of the "circumstances" that will entitle an applicant to obtain an extension, the rule is too vague. The establishing, in the rule, of a finite number of such "circumstances" will cure this defect.

12. 3 MCAR § 1.0557.A states that the Commissioner "may" waive the default occurring under 3 MCAR § 1.0556.A.3. The use of the word "may" leaves uncertain whether a waiver will be granted should a participant meet all of the requirements established for such. This constitutes impermissibly broad discretion and to cure the defect, "shall" must be substituted for "may."

13. 3 MCAR § 1.0557.B states that an applicant "may" be granted a waiver for public service upon the satisfaction of stated requirements. The use of "may" permits unrestricted discretion in the Commissioner and for the reasons stated in Paragraph No. 12 above, "shall" must be substituted for "may."

14. 3 MCAR § 1.0557.C provides a waiver for financial difficulty. Once again, the use of the term "may" in conjunction with the Commissioner's discretion is impermissible. "Shall" must be substituted for "may" so that the applicant is assured of a waiver upon satisfaction of the enumerated requirements and the potential of an abuse of discretion is reduced.

15. 3 MCAR § 1.0557.D provides for a waiver of default based upon physical disability or "extenuating circumstances." Such waiver "may" be granted if the participant demonstrates to the Commissioner such physical disability or "other extenuating circumstances beyond the immediate control of the participant." The quoted language is overly vague. To cure these defects, the agency must change "may" to "shall" and delimit those "circumstances" that will qualify the participant for the waiver as more particulary discussed in Paragraph No. 11 above.

16. 3 MCAR § 1.0559.B provides that reamortization for a loan will "normally" be "considered" only when the participant

has made a sizeable, special principal payment. This wording is ambiguous in that it fails to alert the participant to whether or not reamortization will be permitted and, if so, when he or she will have met stated requirements which entitle the participant to approval of reamortization by the agency. To correct this defect, the words "normally" and "considered" must be deleted. Additionally, standards for determining when such reamortization will be permitted by the agency should be stated in the rule.

After consideration of the above comments and agency action, if any, these rules may be resubmitted for our review. Upon resubmission, please include a new or supplemental Order Adopting 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.

Additionally, 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.

LDS:drw

cc: Ms. Kathy Burek
Ms. Theresa Lauterbach
Mr. Duane Harves

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL Office Memorandum

TO MARK W. SEETIN
Commissioner of Agriculture

DATE: 11/16/82

Attn: JON MURPHY, Special Assistant Attorney General

FROM : LARRY D. STARNS
Special Assistant
Attorney General

PHONE: 297-3493

SUBJECT: In the Matter of the Proposed Adiption of Rules of the Department of Agriculture Governing the Administration of the Family Farm Security Program and Repeal of Existing Rules Governing Administration of the Family Farm Security Program (3 MCAR §§ 1.0543 - 1.0547)

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;

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.

Encs.

LDS/ls
cc: Ms. Kathy Burek
Mr. Duane Harves

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : FILE # 847

DATE: 11/16/82

FROM : LARRY D. STARNS
Special Assistant
Attorney General

PHONE: 297-3493

SUBJECT: Changes in Curative Requirements Numbered 12-15 contained in my memorandum dated September 15, 1982 as a result of a meeting between myself and employees of the Agriculture Department (Gerald Heil, Director, Planning Division, et al) held on October 1, 1982.

1. Requirement No. 12 The use of "may" is proper because such discretionary authority is directly granted to the commissioner by virtue of Minn. Stat. § 41.59 subd. 1, which uses the term "may."

2. Requirement No. 13 The use of "may" is permissible because public service participation properly falls under the general category of "extenuating circumstances" provided for in Minn. Stat. § 41.59 subd. 1 and said statute clearly grants the discretion contemplated in the rule (see # 1, above).

3. Requirement No. 14 The use of may is permissible for the reasons stated in paragraphs one and two above, "financial difficulty" also being within the ambit of "extenuating circumstances."

4. Requirement No. 15 Minn. Stat. § 41.59 subd. 1 clearly authorized the broad discretion provided the commissioner in this rule.

LDS/ls

AG copy.

Department of Agriculture

Family Farm Security Program

Adopted Rules Governing the Administration of the Family Farm Security Program and Repeal of Existing Rules Governing Administration of the Family Farm Security Program (3 MCAR SS 1.0543-1.0547)

Rules as Adopted

3 MCAR S 1.0548 Purpose and authority.

A. Purpose. It is the purpose of 3 MCAR SS 1.0548-1.0560 to carry out and administer the family farm security program established by Minnesota Statutes, chapter 41.

B. Authority. Rules 3 MCAR SS 1.0548-1.0560 are adopted pursuant to Minnesota Statutes, section 41.53, subdivision 2.

3 MCAR S 1.0549 Definitions.

A. Applicability. For the purposes of 3 MCAR SS 1.0548-1.0560 the terms defined in this rule have the meanings given them.

B. Amortization schedule. "Amortization schedule" means the loan repayment schedule approved by the commissioner.

C. Applicant. "Applicant" means a natural person applying for a family farm security loan.

D. Balloon payment. "Balloon payment" means the final payment of an amortization schedule which is equal to or exceeds four times the amount of the immediately preceding payment.

E. Commissioner. "Commissioner" means the Commissioner of Agriculture or the commissioner's authorized representative.

F. Cooperating agency. "Cooperating agency" has the meaning given in Minnesota Statutes, section 41.52, subdivision 11.

G. Council. "Council" means the Family Farm Advisory Council.

H. Even payment. "Even payment" means the payment amount necessary at a given interest rate to fully amortize the loan over a given period of time.

I. Farm business management course. "Farm business management course" means a course in farm record keeping, farm business management, or other related areas approved by the commissioner.

J. Farm land. "Farm land" has the meaning given in Minnesota Statutes, section 41.52, subdivision 6.

K. Fully amortize. "Fully amortize" means to insert terms or provisions in a loan which do not result in a balloon payment.

L. Guarantee. "Guarantee" means the "family farm loan guarantee" defined in Minnesota Statutes, section 41.52, subdivision 9.

M. Lender. "Lender" has the meaning given in Minnesota Statutes, section 41.52, subdivision 7.

N. Loan. "Loan" means "family farm security loan" as defined in Minnesota Statutes, section 41.52, subdivision 5.

O. Memorandum of understanding. "Memorandum of understanding" has the meaning given in Minnesota Statutes, section 41.52, subdivision 12.

P. Participant. "Participant" means an applicant who has received final approval for a guarantee which has been fully executed by the state.

Q. Payment adjustment. "Payment adjustment" has the meaning given in Minnesota Statutes, section 41.52, subdivision 10.

R. Program. "Program" means the family farm security program of the Department of Agriculture.

S. Seller-sponsored loan. "Seller-sponsored loan" has the meaning given in Minnesota Statutes, section 41.52, subdivision 8.

T. State. "State" means the State of Minnesota.

U. Subordination. "Subordination" means that the commissioner agrees that the state's interest in a loan has a lower lien priority than the interest of another party.

3 MCAR S 1.0550 Eligibility.

A. Criteria. To be eligible for a guarantee, an applicant must meet the criteria listed in Minnesota Statutes, sections 41.55 and 500.221, subd. 2 and those in this rule.

B. Net worth. The current net worth of the applicant, dependents, and spouse, as determined by generally accepted accounting principles, must not exceed the level set in Minnesota Statutes, section 41.55, clause (c).

C. Farm land. Applications will be accepted only for loans to acquire farm land.

D. Ownership. The applicant must be purchasing a 100 percent interest in the farm land. The farm may be operated in partnership, but the applicant must own the farm land individually.

E. Use ~~and feasibility. The applicant must detail the intended agricultural uses of the land and substantiate the economic feasibility of the proposed farming operation~~ The farm land must be purchased for agricultural uses.

3 MCAR S 1.0551 Preliminary approval; notification and reconsideration.

A. Application. An applicant must apply for a guarantee on forms provided by the commissioner. The application must include~~, but is not limited to,~~ the following:

1. a farm land appraisal;
2. a purchase agreement;
3. letters of commitment, if appropriate;
4. the financial information required in E.;
5. copies of any partnership agreements; ~~and~~
6. a farm business management course registration form~~.~~; and
7. other information reasonably necessary to determine the likelihood of success of the applicant's proposed farming operation.

B. Farm land appraisal. An appraisal of the market value of the farm land to be guaranteed must be performed by a qualified appraiser and recorded on the form provided by the commissioner. The appraiser must sign the form. A letter stating the appraiser's qualifications and experience must be on file with the commisioner. The commissioner may require the applicant to obtain an additional ~~independent~~ appraisal ~~when it is necessary~~

~~to determine the current market value~~ from another appraiser when comparable sales do not reasonably reflect the value of the farm land stated in the original appraisal.

C. Purchase agreement. A binding purchase agreement between the seller of the farm land and the applicant, containing all terms agreed upon by the two parties, must be completed. The terms must be in accordance with Minnesota Statutes, chapter 41 and 3 MCAR SS 1.0548-1.0560. The agreement must include a statement that the sale of the farm land is contingent upon the applicant's obtaining a guarantee from the commissioner. The purchase price of the farm land cannot exceed the appraisal value.

D. Letters of commitment. The following information must accompany the application:

1. A letter of commitment for the financing, containing all the terms and provisions of the loan and signed by the lender, if any portion of the farm land purchase price is to be financed through a lender other than the seller;

2. A letter of credit from a financial institution for required operating credit for the first year of operation;

3. A written financing commitment, if financing is necessary for the purchase of livestock and equipment; and

4. Written equipment use agreements signed by both the applicant and the equipment owner, if equipment will be shared.

E. Financial information. The application must include the following financial information:

1. a statement of the applicant's current net worth;

2. ~~at least two years'~~ statements of the applicant's ~~past~~ earnings for the two years immediately prior to the year of application, if available;

3. ~~at least two years'~~ statements of projected income and expenses for the first two years of the proposed farm operation;

4. credit references; and

5. a statement of the applicant's parents' net worth and the applicant's spouse's parents' net worth or other documentation of the parents' ability or willingness to

financially assist the applicant.

~~F. Privacy of information. Personal financial documents submitted in support of an application shall be treated as security information under Minnesota Statutes, section 15.1673 and benefit data under Minnesota Statutes, section 15.783 and is considered to be private data pursuant to these sections.~~

~~G.~~ F. Review of applications. The commissioner shall consider and act upon an application for a guarantee, taking into account the recommendations of the council. In the event of a request for reconsideration of the commissioner's decision pursuant to ~~J.~~ I., the matter shall be reviewed at a regularly scheduled meeting of the council.

~~H.~~ G. Criteria for preliminary approval. The following criteria shall be considered by the commissioner in granting the preliminary approval for a guarantee:

1. the eligibility criteria set forth in 3 MCAR S 1.0550;

2. submission of a complete application ~~and any additional information requested by the commissioner~~;

3. the degree to which farming will be the applicant's principal occupation;

4. the extent to which the applicant demonstrates financial need for the guarantee to acquire farm land;

5. the existence of or provisions for financing-related farm expenses other than real estate;

6. the economic feasibility of the loans as evidenced by the applicant's present, past, and projected financial situation;

7. the applicant's credit rating;

8. an analysis of the applicant's debt-to-worth ratio and other factors related to risk and profit potential; and

9. the likelihood of success of the applicant's proposed farming operation, based on the criteria in 1.-8.

~~I.~~ H. Notification. After each review of an application for a guarantee, the commissioner shall provide written notification of the determination. If the application is approved, the commissioner shall notify the applicant and the lender. If the application is not approved, the commissioner shall notify the

applicant and specify the reasons for disapproval.

~~J.~~ I. Reconsideration of decision. An applicant who wishes the commissioner to reconsider the decision may request, within 90 days of the notification of nonapproval, that the application be reconsidered. The applicant may present to the council, in writing or in person, any additional facts relevant to the reasons given for nonapproval of the application.

3 MCAR S 1.0552 Final approval.

A. Closing.

1. Upon receiving notice of preliminary approval for a guarantee, the applicant shall proceed in accordance with instructions provided by the commissioner for obtaining final approval for the guarantee.

2. All actions required of the applicant and lender to prepare for the state's execution of guarantee documents, including submission of a preliminary title opinion and execution of all relevant statements or declarations required for loan transactions by federal or state law, regulation, or rule, ~~should normally~~ must be completed within 120 days of receipt of the notice~~.~~ unless an extension is granted. An extension for a reasonable period of time shall be granted under the following conditions related to either the farm land being guaranteed under the program or assets of the applicant essential to completing the farm land purchase:

a. where title defects cannot reasonably be cured within a time frame which permits compliance with the 120 day deadline;

b. where title encumbrances cannot be released or satisfied within a time frame which permits compliance with the 120 day deadline; or

c. where other matters beyond the control of the applicant reasonably unforeseen prevent compliance with the 120 day deadline.

3. The commissioner may request and examine copies of other security agreements or loan documents or other records which relate to the applicant's farm land purchase in order to

determine all liens and encumbrances on the property.

B. Closing documents; seller-sponsored loan. If the loan to be guaranteed is seller-sponsored, the applicant and seller must execute a contract for deed or purchase money real estate mortgage and all additional instruments required to protect the interests of the applicant, the seller, and the state in accordance with the terms and conditions upon which the preliminary approval for the guarantee was granted.

C. Closing documents; lender-sponsored loan. If the loan to be guaranteed is lender-sponsored, the applicant and lender must execute a mortgage and note or an assignment of contract for deed and any additional instruments. The lender shall take other actions consistent with prudent lending practices required to protect the interests of the applicant, the lender, and the state.

D. Closing documents; releases. The seller must obtain a release or satisfaction of any underlying mortgages, liens, or encumbrances that exceed 90 percent of the balance of the loan to be guaranteed.

E. Guarantee. When the closing documents are properly executed, the commissioner shall enter into an agreement with the participant and the lender providing that in the event of default by the participant of any of the terms of the contract for deed, mortgage and note, or assignment of contract for deed, the state shall pay the lender 90 percent of the sums due and payable under those terms. Sums due and payable include the principal balance outstanding, accrued interest up to the date on which the state performs under the guarantee, real estate taxes paid by the lender, and any other expenses incurred by the lender for maintenance and protection of the property during the default period which are determined by the commissioner to be reasonable and prudent.

F. Recording. After the loan is closed, the appropriate instruments shall be recorded. The applicant shall furnish the commissioner with copies of the recorded instruments.

G. Final title opinion. After the appropriate instruments

are recorded, the applicant shall furnish the commissioner with a final title opinion which recognizes the interests of all parties.

3 MCAR S 1.0553 Payment adjustment.

A. Amount and eligibility requirement. The state shall pay to the lender, according to the amortization schedule, an amount of money equal to four percent of the principal balance of the loan, provided that the conditions in B.-D. are met.

B. Loan terms and payments. The loan must either have a term of 20 years or less and require payments so that the loan is amortized with equal annual payments, including consideration of variable interest rates used by some lenders, or the loan must have a reasonable reduction of the principal balance with a balloon payment in ten years or less.

1. Extra days of interest may be included in calculating total interest for the first payment, provided that the total number of days used does not exceed an additional 50 percent of the normal payment period and does not cause a balloon payment for those loans on a fully amortized schedule.

2. Certain 20-year loans which have a specified interest only payment preceding the 20-year schedule of principal and interest payments will be accepted for the guarantee, but the state shall not participate in the interest-only payment.

3. A disaster clause may be included in provisions of a loan ~~to be eligible for a payment adjustment~~, provided that it does not cause repayment to extend beyond 20 years or cause a balloon payment for loans on a fully amortized schedule.

4. An extension ~~may~~ must be granted to the length of a loan that would require a balloon payment in ten years or less and the stated interest rate may be adjusted by consent of all parties to the loan including the state, the participant, and the lender, if the following conditions are met:

a. the participant and lender both sign a written request for extension;

b. the repayment provisions of the loan are based on a fully amortized schedule of 20 years or less; ~~and~~

c. the extension is for the total remaining portion of the amortization schedule.; and

d. the participant has complied with all terms of the loan guarantee and has submitted to the commissioner a net worth statement and a farm business management course registration form annually within the times set in 3 MCAR S 1.0553.

C. Net worth. The conditions in 1.-3. regarding net worth apply to all participants.

1. Before February 20 of each year, on forms provided by the commissioner, the participant must submit to the commissioner a statement of the participant's, dependents', and spouse's net worth as of December 31 of the year immediately preceding the filing date, except for the first year of participation. This statement is not required if the statement of net worth submitted with the original application is less than ten months old on the February 15 following the applicant's preliminary approval by the commissioner.

2. If the total net worth as determined by generally accepted accounting principles exceeds the limitation stated in Minnesota Statutes, section 41.57, subdivision 3, the participant shall not be eligible for a payment adjustment for the next 12 months commencing April 1. The commissioner shall notify the participant and the lender that the participant is responsible for all interest payments for that 12-month period of the loan.

3. The net worth statement used by the council to recommend preliminary approval shall prevail in matters of determining eligibility for the guarantee and the first year's payment adjustment.

D. Course registration. Before February 20 of each year, the participant must submit a farm business management course registration form.

E. Extension of deadline. The commissioner may will grant an extension of up to 30 days on the deadlines stated in C. and D. if the participant is not able to submit the net worth statement or the farm business management course registration

form on time due to other circumstances beyond the ~~participant's~~ ~~immediate~~ control of the participant which were reasonably unforeseen and which prevent meeting the deadlines stated in C. and D.

3 MCAR S 1.0554 Recipient of payment adjustments. Payment adjustments are made by the state directly to the lender, who annually bills the commissioner for the amounts due for the current loan year. Under circumstances where the participant has paid a full installment, including the state's payment adjustment, to the lender, the participant may request that the payment adjustment be made to him by submitting proof to the commissioner that the full installment was paid.

3 MCAR S 1.0555 Reimbursement of payment adjustments.

A. Time; generally. The participant shall reimburse the state within 12 months after the tenth anniversary of the date of the loan for all sums paid as payment adjustments by the state on the participant's behalf.

B. Reimbursement obligation as lien. The reimbursement obligation shall be a lien against the property and be subordinate to the real estate mortgage or contract for deed.

C. Renewals and reimbursement.

1. The participant may petition the commissioner for up to a ten-year renewal of the payment adjustment which the commissioner shall grant if the participant has complied with all terms of the loan guarantee and has submitted to the commissioner a net worth statement and a farm business management course registration form annually within the time frames prescribed in 3 MCAR S 1.0553.

2. If the payment adjustment is renewed for an additional period of years, within 12 months after the final payment date of the mortgage or contract for deed, the participant shall reimburse the state for all payment adjustments paid on the participant's behalf.

3. If the participant has more than one loan approved under a single guarantee, disposition of the renewal request on

the latest maturing loan governs when reimbursement of the payment adjustment will be made on all the loans included under that guarantee.

D. Reimbursement upon sale or conveyance. Except as provided in 3 MCAR S 1.0559 C., a participant who sells or conveys the farm land for which a guarantee was approved shall immediately retire the entire debt owed the state for payment adjustments paid on the participant's behalf.

E. Interest; late payment. If the participant does not reimburse the state within the required time period, the commissioner may charge the maximum interest provided by law on the outstanding debt for the period of delinquency.

3 MCAR S 1.0556 Default of participant.

A. Conditions. A participant is in default if one or more of the following conditions exist:

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

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

3. the participant fails to personally maintain the farm land in active agricultural production for longer than one year.

B. Consequences.

1. If the participant is in default for reasons given in A.1. or A.2., the lender, the participant, and the commissioner may take any steps reasonable to assure fulfillment of the loan obligation. If the matter is not resolved, the lender or seller and the commissioner shall take action according to the following procedures, dependent on who sponsored the loan.

a. Under a contract for deed, the seller has two options which may be pursued.

(1) The seller may proceed according to the contract law in Minnesota Statutes, section 559.21 to cancel the contract. In this event, the seller shall forward to the

commissioner all sums owed the state and regain real estate interest in the property.

(2) The seller may exercise the state's guarantee pursuant to Minnesota Statutes, section 41.56, subdivision 3.

b. A lender may use statutory foreclosure proceedings in lieu of exercising the guarantee provisions of Minnesota Statutes, chapter 41 provided that the following conditions are met:

(1) The lender pledges to take all reasonable and prudent steps to protect and maintain the farm land and to obtain the highest possible net proceeds from the subsequent sale of the property; and

(2) The lender agrees that any money from the foreclosure sale in excess of 90 percent of the balance of the loan, plus 90 percent of the accrued interest calculated to the end of the 180-day default period, plus 90 percent of reasonable costs incurred during the foreclosure period will first be applied toward the satisfaction of the outstanding balance of the state's lien for reimbursement of the payment adjustment prior to any other disbursements, settlements, or satisfactions.

c. If the lender fails to notify the commissioner in writing within 180 days of the initial default of the participant, the state shall exercise its guarantee based on the principal balance of the loan at the time of notification of the default according to the amortization schedule of the loan. Maximum accrued interest to be paid by the state, calculated on the principal balance at the time of notification of default, may not exceed 180 days beyond the normal payment period.

d. When there is more than one loan under a single guarantee, all loans are considered to be in default if one is in default. The lenders concerned must then exercise their options in concert with each other and with the commissioner.

2. If a participant is in default under A.3. and has not received a waiver pursuant to 3 MCAR S 1.0557, the state shall cease its payment adjustments on the loan, all payment adjustments made on the participant's behalf will be due and

payable to the state within 12 months of the default date, the participant will no longer be considered active in the program, and the guarantee will no longer be in force or effect.

C. Sale of defaulted farm land. In the event of default, the commissioner shall sell the farm land involved pursuant to Minnesota Statutes, section 41.56, subdivision 4 and the following:

1. The commissioner has the right to reject any bid submitted on the farm land to be sold.

2. For the purposes of Minnesota Statutes, section 41.56, subdivision 4, the following definitions apply:

a. "Date of sale" means the date on which the state fully executed the purchase agreement.

b. "Proceeds" means the sale price less reasonable closing costs, including but not limited to, payment of taxes due, expenses for abstracting, custom field work completed, and other reasonable costs associated with the sale.

3 MCAR S 1.0557 Waiver of default.

A. Granting waiver. The commissioner may waive the default resulting from a participant's failure to personally continue agricultural production pursuant to 3 MCAR S 1.0556 A.3~~.~~ ~~The waiver shall be granted~~ for the reasons and following the procedures in B.-D. If the waiver is granted, the participant shall continue to be eligible to receive the payment adjustment.

B. Waiver for public service. The participant may be granted a waiver if the participant has accepted a position of public service through a government agency, church, charitable organization, or similar organization, with the intent to serve for a limited period of time and then return to full-time farming, provided that:

1. the participant submits a written notice of intent to the commissioner within 60 days after accepting the position;

2. the participant continues to submit annual financial statements to the commissioner; and

3. the participant agrees to make the full loan installments, including the state's payment adjustment, due

during the waiver period.

C. Waiver for financial difficulty. The participant may be granted a waiver and remain eligible for the payment adjustment if the participant demonstrates to the commissioner, as evidenced by financial statements and discussions with lenders, that the participant is in financial difficulty and has taken a job off the farm with the intent of providing the cash flow needed to return to full-time production, provided that:

1. the participant submits a written notice of intent to the commissioner within 60 days of taking an off-farm job;

2. the participant submits semiannual financial statements to the commissioner; and

3. the participant continues enrollment in a farm business management course.

D. Waiver for physical disability or extenuating circumstances. The participant may be granted a waiver and remain eligible for the payment adjustment if the participant demonstrates to the commissioner that the farm land was not personally farmed by the participant because of the participant's physical disability or other extenuating circumstances beyond the ~~immediate~~ control of the participant which were reasonably unforeseen and which prevent the participant from personally maintaining the farm land in agricultural production, provided that:

1. the participant submits documentation as to the disability or other circumstances which prohibit continuation in full-time farming; and

2. the participant submits semiannual financial statements to the commissioner.

E. Denial of waiver. If the commissioner determines that the default should not be waived, the participant is entitled to a contested case hearing pursuant to Minnesota Statutes, chapter 15 to review the commissioner's determination.

F. Expiration. If the participant does not return to full-time farming at the end of a two-year waiver period and does not provide convincing evidence that he will do so in the

near future, the commissioner shall inform the participant that he is in default.

3 MCAR S 1.0558 Termination of Guarantee.

A. Conditions. The guarantee will remain in force and effect until maturity of the loan unless default occurs under 3 MCAR S 1.0556 and no waiver is granted pursuant to 3 MCAR S 1.0557 or any of the conditions in 1.-3. occur.

1. The lender consents to the change or alteration of any of the terms and provisions of the loan, or attempts to waive or waives any rights of the lender, the participant, the commissioner, or the state included in the loan, in a manner inconsistent with the terms of the loan as represented to and approved by the commissioner at the time of delivery of the guarantee, without the written consent and approval of the commissioner;

2. The lender fails to notify the commissioner in writing within 30 days of a transfer or assignment of the loan. The guarantee shall remain in force and effect if the commissioner is notified, provided that the purchaser of the loan assumes all duties and obligations of the original lender and agrees to comply with all the requirements of the laws and rules governing the program; or

3. The lender violates any terms, provisions, covenants, or conditions of any document or agreement to which the lender is a party for purposes of the guarantee.

B. Consequences. In the event that any of the conditions in A.1., A.2., or A.3. occur, where there is substantial evidence that the lender's actions were calculated to defraud the state or misrepresent conditions of the loan, the state may terminate its guarantee and immediately and forever be released from all claims and demands based on the guarantee. If it can be clearly ascertained that the participant had no knowledge of and did not collaborate with the lender's actions, the state may make the payment adjustment directly to the participant.

3 MCAR S 1.0559 Loan servicing.

A. Partial release. The commissioner may approve the release of a portion of the property purchased under a loan from the state's lien for reimbursement of the payment adjustment under the following conditions:

1. the participant requests the release and pledges that it will not adversely affect the participant's ability to continue in the program; and

2. all lenders included in the guarantee agree to release their interest in the property and agree to the commissioner's conditions for release from the state's lien for reimbursement of the payment adjustment.

If the release is requested because the participant wishes to sell a portion of the property, the commissioner may stipulate to what use the proceeds from that sale may be put. Ordinarily a certain portion of these proceeds will be used as a special principal payment on the loans included under the guarantee.

B. Reamortization. Reamortization of a loan will ~~normally~~ be ~~considered~~ permitted only in cases where the participant has made a sizeable, special principal payment and where reamortization is jointly requested in writing by the participant and the lender. The reamortization shall not extend the maturity date of the loan, except for those loans originally calling for a balloon payment which have been approved for an extension according to 3 MCAR S 1.0553 B.4.

C. New owner guarantee. If the participant sells the property for which a guarantee was issued, the purchaser may apply for a guarantee in his own right, but under no circumstances may the original loan guarantee be directly assumed by the purchaser. The purchaser may assume the former participant's responsibility for reimbursing the state for payment adjustments made if the following conditions are met:

1. the purchaser has obtained preliminary approval for a guarantee;

2. the council determines that permitting this assumption will be in the best interests of the state; and

3. the assumed indebtedness is not included in the guarantee for which the purchaser may receive final approval.

D. Subordination. The commissioner may approve a request for subordination of the state's lien for reimbursement of the payment adjustment if he determines this action is in the best interests of the state and the participant, or provisions for subordination are included in the memorandum of understanding with a cooperating agency.

3 MCAR S 1.0560 Commissioner's right to information. At any time during the existence of a loan, the commissioner may request information and documents from the lender or the participant to enable the commissioner to determine that all terms and conditions of any agreements made pursuant to Minnesota Statutes, chapter 41 or 3 MCAR SS 1.0548-1.0560 are in compliance with the statutes and rules.

Repealer. Rules 3 MCAR SS 1.0543; 1.0544; 1.0545; 1.0546; and 1.0547 are repealed.

APPROVED AS TO LEGALITY
November 5, 1982
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STATE OF MINNESOTA
DEPARTMENT OF STATE
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