

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : ROBERT A. WORTHINGTON, Chairman
Minnesota Housing Finance Agency

DATE: 8/13/84

ATTN: KARL J. HERMAN, Spec. Ass't. Atty. Gen.

FROM : LARRY D. STARNS LDS
Special Assistant
Attorney General

PHONE: 297-3493

SUBJECT: In the Matter of the Proposed Adoption of Rules Governing the Home Energy Loan Program Without a Public Hearing

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.

LDS:cw
Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

AG copy.

Housing Finance Agency

Adopted Rules Governing Home Energy Loans

Rules as Adopted

HOME ENERGY LOANS

4900.0590 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 4900.0590 to 4900.0594, the following terms have the meanings given them.

Subp. 2. **Borrower.** "Borrower" means one or more persons who apply for and receive a loan under parts 4900.0590 to 4900.0594. A borrower must be a person or family, but need not be of low and moderate income.

Subp. 3. **Home energy loan.** "Home energy loan" means a loan made to a borrower, the proceeds of which are used for energy conservation improvements in an eligible property.

Subp. 4. **Persons and families of low and moderate income.** "Persons and families of low and moderate income" means persons and families whose adjusted income does not exceed $24,000, or such lower amount as the agency may establish to assure that the interest on obligations of the agency will be exempt from federal income taxation.

4900.0591 ELIGIBLE BORROWERS.

Subpart 1. **Interest in property.** A borrower shall individually or in the aggregate possess at least a one-third interest in a fee title, a contract for deed, or a life estate in the property to be improved.

Subp. 2. **Credit review.** A borrower shall be a reasonable credit risk, and shall be able to pay the loan obligation, as determined by the agency under part 4900.0080, or by a lending institution that originates a loan for sale to the agency.

Subp. 3. **Principal place of residence.** A borrower shall occupy the property to be improved as his or her principal place of residence.

4900.0592 ELIGIBLE PROPERTIES.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:
MWH

The property to be improved by a home energy loan is restricted as follows:

A. The property to be improved may not contain more than one dwelling unit.

B. The property to be improved may not be in violation of applicable zoning ordinances or other land use guides.

C. Not more than 15 percent of the total area of the property to be improved may be used primarily in a trade or business.

D. The property to be improved may not be used as investment property or as a recreational home.

E. ~~Mobile homes are not eligible for a home energy loan~~ A manufactured or factory-made house is eligible for home energy loans only if it is permanently fixed to land by way of a foundation and is taxed as real property.

see Amdt to SONR

4900.0593 OTHER REQUIREMENTS.

Subpart 1. **In general.** Improvements made with home energy loan funds must satisfy the following requirements:

A. Improvements made with the proceeds of a home energy loan must be a permanent improvement made upon or in connection with an exisiting structure, and must improve the energy efficiency of the structure or be directly related to energy efficiency.

B. An improvement must be made in compliance with all applicable health, fire prevention, building, or housing codes and standards; provided, however, that no application for a home energy loan may be denied solely because the improvements will not bring the property into full compliance with these codes and standards.

C. The proceeds of a home energy loan must be used only to finance new improvements and may not be used to refinance an existing loan or mortgage.

D. A borrower shall agree to complete all improvements within nine months of the date of the loan.

Subp. 2. **Conventional financing not available.** At the

time of application conventional financing must not be available from private lenders upon equivalent terms and conditions.

Subp. 3. **Qualifications of income.** In order for a borrower to obtain the preference for persons or families of low and moderate income, all persons who, individually or collectively, possess the type of ownership upon which the application is based, or whose income is to be included for purposes of determining the adjusted income, and spouses of these shall join in the application and shall execute the loan note.

4900.0594 PREFERENCE FOR PERSONS AND FAMILIES OF LOW AND MODERATE INCOME.

The agency may, in its sole discretion, give preference to persons and families of low and moderate income by:

A. providing home energy loans to these persons and families at lower rates of interest;

B. providing allocations of funds specifically for use by these persons and families; and

C. other methods as the agency deems appropriate.

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
AUG 14 1984 2:40 PM
Joan Anderson Growe
Secretary of State

APPROVED AS TO LEGALITY
August 13, 1984
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY
SPECIAL ASSISTANT ATTORNEY GENERAL

Our File No. 1052

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 7-30-84
DATE FOR REVIEW 8-8-84
DATE DUE 8-13-84

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

Approved 8/13/84 (CDS) Disapproved _____ Returned to Agency _____

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

Date filed w/Secretary of State _____ Revisor approved 7.30.84 disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 7.26.84 Date

N/A Notice of Intent to Solicit Outside Opinion ✓

✓ Order for rulemaking
N/A date of Hearing

✓ Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

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

✓ Mailing list Certificate

✓ Publication in State Register
6.11.84 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

Agency's Findings of Fact

✓ LCRAR Report or agency Affidavit

✓ Certificate of Board's Resolution Adopting Rules

N/A Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness + Amendment. contains small biz statement

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

MINNESOTA HOUSING FINANCE AGENCY

RECEIVED
JUL 30 1984
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

July 30, 1984

Mr. Larry Starns
Special Assistant Attorney General
Room 204 Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55155

RE: In the Matter of the Proposed Adoption of Rules Governing Home Energy Loan Program Without a Public Hearing

Dear Mr. Starns:

Enclosed please find for your review pursuant to Minnesota Statutes Sections 14.21 through 14.28, the adopted rules of the Minnesota Housing Finance Agency.

The following materials are submitted to you for your review pursuant to Minnesota Rules, Part 2000.0400:

Rules as Adopted;

Order Adopting;

Certificate of Board's Resolution Adopting the Rule;

Order of Notice to Adopt Rule Without a Public Hearing;

Certificate of Agency's Authorizing Resolution;

Notice of Intent to Adopt Rule Without a Public Hearing;

Affidavit of Mailing Notice of Intent to Adopt a Rule Without a Public Hearing;

Mailing List Certificate;

Rule as Proposed;

Statement of Need and Reasonableness and Amendment;

Written Comment; and

Certificate of Compliance with Rulemaking Procedures.

The Agency did not publish a Notice of Intent to Solicit Outside Opinion in connection with this rule. No requests for a hearing were received during the 30 day

333 Sibley Street, Suite 200, St. Paul, Minnesota 55101 (612) 296-7608
Equal Opportunity Housing and Equal Opportunity Employment

comment period. The only changes in the rule as proposed have been made in response to the enclosed written comment from Minnesota Manufactured Housing Association, which is self-explanatory and, accordingly, no Findings of Fact and Conclusions are enclosed. The Agency did not receive any requests from persons desiring notice of the date of submission of the proposed rule to the Attorney General.

Sincerely,

Alan L. Hans
Deputy Director

ALH/kjj

Encs.

Rules as Proposed (all new material)

HOME ENERGY LOANS

4900.0590 DEFINITIONS.

Subpart 1. Scope. For the purposes of parts 4900.0590 to 4900.0594, the following terms have the meanings given them.

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A. The property to be improved may not contain more than one dwelling unit.

APPROVED IN THE ... OF STATUTES

B. The property to be improved may not be in violation of applicable zoning ordinances or other land use guides.

C. Not more than 15 percent of the total area of the property to be improved may be used primarily in a trade or business.

D. The property to be improved may not be used as investment property or as a recreational home.

E. Mobile homes are not eligible for a home energy loan.

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APPROVED BY THE REVISOR OF STATUTES

application is based, or whose income is to be included for purposes of determining the adjusted income, and spouses of these shall join in the application and shall execute the loan note.

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C. other methods as the agency deems appropriate.

APPROVED BY THE REVISOR OF STATUTES

OFFICE OF THE REVISOR OF STATUTES

Proposed Rule

RD531

Agency: Minnesota Housing Finance Agency

Division:

Agency Contact: Kathy Johnson 6-9793

Minnesota Rules: Parts 4900.0590 to 4900.0594

Title: Proposed Rules Governing Home Energy Loans

Type of Rules: Permanent

Incorporations by Reference: None

Duplication of Statutory Language: None

Steven C. Cross
Revisor of Statutes

Maryanne V. Hruby
Assistant Revisor
Phone: 297-2948

Date: May 18, 1984

STATE OF MINNESOTA

MINNESOTA HOUSING FINANCE AGENCY

In the Matter of the Proposed Adoption
of Rules Governing the Home Energy Loan
Program Without a Public Hearing

ORDER ADOPTING RULES

Notice of the Agency's intent to adopt the above-entitled rules without a public hearing was published in the State Register on June 11, 1984 and was sent by United States mail to all persons on the list maintained by the Agency pursuant to Minnesota Statutes Section 14.14 Subdivision 1 on June 8, 1984. After affording interested and affected persons an opportunity to submit comments for 30 days, receiving fewer than twenty-five written requests for a public hearing within the 30 day comment period, reviewing and considering the comments, supplying notice to all persons requesting notice of the date of submission of the proposed rules to the Attorney General for review, and determining the need for and reasonableness of the above-captioned rules.

NOW, THEREFORE, IT IS ORDERED that these rules identified as Rules of the Minnesota Housing Finance Agency Governing the Home Energy Loan Program are adopted this 26th day of July, 1984 pursuant to authority vested in the Agency by Minnesota Statutes Section 462A.06, Subdivisions 4 and 11.

James J. Solem, Executive Director

STATE OF MINNESOTA

MINNESOTA HOUSING FINANCE AGENCY

In the Matter of the Proposed Adoption of Rules Governing the Home Energy Loan Program

ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

It is ordered this 24th day of May, 1984 that a Notice of Intent to Adopt Rules without a Public Hearing in the above-entitled matter be given to all persons who have registered their names with the Minnesota Housing Finance Agency for that purpose and be published in the State Register.

MINNESOTA HOUSING FINANCE AGENCY

James J. Solem, Executive Director

CERTIFICATE OF AGENCY'S

AUTHORIZING RESOLUTION

I, Robert A. Worthington, do hereby certify that I am Chairman of the Minnesota Housing Finance Agency, an Agency duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resoluiton adopted at a meeting of the Agency and properly called and held on the 24th day of May, 1984, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, that James J. Solem, Executive Director of the Minnesota Housing Finance Agency, be and he hereby is authorized and directed to give public notice for the purpose of promulgating rules of the Minnesota Housing Finance Agency without a public hearing, said rules relating to Governing the Home Energy Loan Program, as well as to perform any and all acts incidental thereto, including the signing of a notice of intent to adopt rules without a public hearing."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 24th day of May, 1984.

Robert A. Worthington

Chairman

MINNESOTA HOUSING FINANCE AGENCY

In the Matter of the Proposed Adoption of Rules Relating to the Home Energy Loan Program

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

Notice is hereby given that the Minnesota Housing Finance Agency ("agency") proposes to adopt the above-entitled rules without a public hearing. The agency has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. § 14.21 to 14.28.

Persons interested in these rules shall have 30 days to submit comments in support of or in opposition to the proposed rules within the 30-day comment period. Such comments are encouraged, and should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed rule may be modified as the result of comments received 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 twenty-five or more persons submit written requests for a public hearing on the proposed rule within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. § 14.14 et. seq. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed.

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

Kathleen J. Johnson
Legal Division
Minnesota Housing Finance Agency
Suite 200
333 Sibley Street
St. Paul, Minnesota 55101
Telephone: 612/296-9793

Authority for the adoption of these rules is contained in Minn. Stat. § 462A.06, Subd. 4 and 11. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules, and that identifies the data and information relied upon to support the proposed rules has been prepared and is available from Kathleen J. Johnson upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the Statement of Need and Reasonableness, all written comments received, and the final rules as adopted will be delivered to a designee of the Attorney General for review as to form and legality, including the issue of substantial change, and to determine whether the agency has the authority to adopt the rules and whether the record demonstrates a rational basis for the need for and reasonableness of the proposed rules. Persons who wish to receive notice of the date of submission of these rules to the Attorney General for review, or who wish to receive a free copy of the final rules as adopted, should make such requests to Kathleen J. Johnson.

A copy of the proposed rule is attached to this notice. Additional copies may be obtained by contacting Kathleen J. Johnson.

Please be advised that Minn. Stat. Ch. 10A.03 requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences

lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, Subd. 11 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, 41 State Office Building, St. Paul, Minnesota 55155, (612) 296-5615.

Dated: June 8, 1984

James J. Solem
Executive Director

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the Matter of the Proposed Adoption of Rules Governing the Home Energy Loan Program Without a Public Hearing

AFFIDAVIT OF MAILING

Faye L. Smiles, being first duly sworn, deposes and says:

That on the 8th day of June, 1984, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Intent to Adopt Rules Without a Public Hearing by depositing in the United States mail at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid to all persons and associations who have requested that their names be placed on file with the Minnesota Housing Finance Agency for the purpose of receiving notice of the proposed adoption of rules by this Agency.

Faye L. Smiles

Faye L. Smiles

Subscribed and sworn to before me this 8th day of June, 1984.

Roseann M. Koran

Notary Public

ROSEANN M. KORAN
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Commission Expires Mar. 31, 1986.

STATE OF MINNESOTA

MINNESOTA HOUSING FINANCE AGENCY

MAILING LIST CERTIFICATE

In the Matter of the Proposed Adoption
of Rules Governing the Home Energy Loan
Program Without a Public Hearing

I hereby certify that the list of persons, associations and other interested groups who have requested, pursuant to Minnesota Statutes Section 14.14, Subdivision 1, that their names be placed on file with and maintained by the Minnesota Housing Finance Agency for the purpose of receiving notice of the proposed adoption of rules by this Agency is accurate and complete this 8th day of June, 1984.

Faye L. Smiles

Faye L. Smiles

Comments, written requests for a public hearing, and requests for notice of the date of submission to the Attorney General should be submitted to:

Larry Simmons, Director
Grants Management Unit
690 American Center Building
150 West Kellogg Blvd.
St. Paul, MN 55101
(612) 296-6066

Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available upon request from Mr. Simmons.

You are hereby advised, pursuant to Minnesota Statutes, section 14.115, small business considerations in rulemaking, that the proposed rule may affect small businesses in Minnesota. For more information, please see the Statement of Need and Reasonableness.

Barbara Beerhalter
Commissioner, Department of Economic Security

Rule as Proposed (all new material)

3300.3300 OPPORTUNITIES INDUSTRIALIZATION CENTERS; JOB TRAINING.

Subpart 1. Purpose. The purpose of this part is to define "economically disadvantaged" for the purpose of job training and related services through opportunities industrialization centers according to Minnesota Statutes, section 268.61.

Subp. 2. Economically disadvantaged, defined. The term "economically disadvantaged" means an individual who:

A. receives, or is a member of a family which receives, cash welfare payments under a federal, state, or local welfare program;

B. has, or is a member of a family which has, received a total family income for the six-month period prior to application for the program involved (exclusive of unemployment compensation, child support payments, and welfare payments) which, in relation to family size, was not in excess of the higher of the poverty level determined in accordance with criteria established by the director of the Office of Management and Budget, or 70 percent of the lower living standard income level;

C. is receiving food stamps pursuant to the Food Stamp Act of 1977;

D. is a foster child on behalf of whom state or local government payments are made; or

E. in cases permitted by regulation of the Secretary of the Department of Labor, is an adult handicapped individual whose own income meets the requirements of item A or B, but who is a member of a family whose income does not meet those requirements.

Housing Finance Agency

Proposed Rules Governing Home Energy Loans

Notice of Intent to Adopt Rules without a Public Hearing

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June 8, 1984

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Executive Director

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4900.0591 ELIGIBLE BORROWERS.

Subpart 1. Interest in property. A borrower shall individually or in the aggregate possess at least a one-third interest in a fee title, a contract for deed, or a life estate in the property to be improved.

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.

Subp. 2. **Credit review.** A borrower shall be a reasonable credit risk, and shall be able to pay the loan obligation, as determined by the agency under part 4900.0080, or by a lending institution that originates a loan for sale to the agency.

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C. Not more than 15 percent of the total area of the property to be improved may be used primarily in a trade or business.

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E. Mobile homes are not eligible for a home energy loan.

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B. providing allocations of funds specifically for use by these persons and families; and

C. other methods as the agency deems appropriate.

Housing Finance Agency

Proposed Emergency Rules Governing the Temporary Housing Demonstration Program

Request for Public Comment

Notice is hereby given that the Minnesota Housing Finance Agency has proposed the following emergency rules for the purpose of establishing procedures for application for participation in and setting income limits for the Temporary Housing Demonstration Program, pursuant to Subdivision 10 of Chapter 462A.03, Subdivision 11 of Chapter 462A.06, and Subdivision 20 of Chapter 462A.05 of Minnesota Statutes.

All interested persons are herein afforded the opportunity to submit their comments on the proposed rules for 25 days immediately following publication of this material in the *State Register* by writing to Kathleen J. Johnson, Legal Division,

STATE OF MINNESOTA

MINNESOTA HOUSING FINANCE AGENCY

In the Matter of the Proposed Adoption of Rules Governing the Home Energy Loan Program Without a Public Hearing

CERTIFICATE OF BOARD'S RESOLUTION ADOPTING RULES

I, Robert A. Worthington, do hereby certify that I am Chairman of the Minnesota Housing Finance Agency, an agency duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Agency, duly and properly called and held on the 26th day of July, 1984, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, that the rules relating to the Home Energy Loan Program attached hereto as Exhibit A be and they hereby are approved and adopted pursuant to authority vested in us by Minnesota Statutes Section 462A.06, Subdivisions 4 and 11 and that James J. Solem, Executive Director of the Agency, be and hereby is authorized to sign an order adopting these rules and further is authorized to perform the necessary acts to provide that these rules shall have the force and effect of law."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 26th day of July, 1984.

Robert A. Worthington

Chairman

STATE OF MINNESOTA

MINNESOTA HOUSING FINANCE AGENCY

In the Matter of the Proposed
Adoption of Rules of the Minnesota
Housing Finance Agency Governing
the Home Energy Loan Program

Amendment to
Statement of Need and Reasonableness

4900.0592

Paragraph E is amended based on comments received from the Minnesota Manufactured Housing Association. The intent of the paragraph is not changed by the amendment. Rather, the revised language clarifies that manufactured housing which is permanently fixed to land and is taxed as real property is considered an eligible property. It also removes the term mobile home, which is no longer commonly used by the industry and replaces it with the term manufactured housing.

STATE OF MINNESOTA

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Statement of Need and Reasonableness

4900.0590

This part sets forth definitions for the purposes of Parts 4900.0590 to 4900.0594.

Subp. 2

Borrower is defined as one or more persons who apply for and receive a home energy loan. A borrower must be a person or family but need not be of low and moderate income. The definition is necessary to delineate the entities who may borrow under this program. The limitation to persons and families and the lack of income limitations are specifically set forth in the statute authorizing the program.

Subp. 3

Home Energy Loan is defined as a loan made to a borrower, the proceeds of which are used for energy conservation improvements in an eligible property.

Subp. 4

Persons and Families of Low and Moderate Income are defined as persons and families whose adjusted income does not exceed $24,000. This definition is necessary to clarify which borrowers may obtain the preferences described in Part 4900.0594. This definition of low and moderate income coincides with the same definition for the agency's Home Improvement Loan Program. This is a reasonable definition because the loans are of a similar nature and are available at similar rates of interest.

4900.0591

This part establishes eligibility criteria for borrowers in the Home Energy Loan Program.

Subp. 1

This subpart requires that the borrower must have at least a one-third interest in the property to be improved. This requirement is necessary because the program will be financed with the proceeds of tax-exempt bonds. The regulations governing such bonds require that the borrower have at least a one-third interest in the property to be improved.

Subp. 2

This subpart requires that the borrower shall be a reasonable credit risk and able to repay the loan obligation. This requirement is necessary to ensure that the Agency is able to repay the bonds used to finance the program. It is reasonable for the Agency to limit participation in the program to those borrowers who will repay the Agency, thereby enabling the Agency to repay its obligations.

Subp. 3

This subpart requires that the borrower occupy the property to be improved as his or her principal place of residence. This requirement is necessary because the program will be financed with the proceeds of tax-exempt bonds. The regulations governing such bonds require that the borrower occupy the property to be improved as his or her principal place of residence.

4900.0592

This part sets restrictions on the kinds of properties to be improved.

Paragraph A restricts the size of the property to be improved to no more than one dwelling unit. This restriction is necessary to promote widespread lender participation in the program. Federal regulations relating to the use of the proceeds of tax-exempt bonds require that multi-unit properties have been used as a residence for the previous five years. These same regulations require significant additional documentation to ensure multi-unit properties meet that standard. Inclusion of multi-unit properties could deter lenders from participating and hinder the Agency's ability to deliver the program on a statewide basis. The restriction is reasonable because the Agency provides other financial resources for energy conservation programs for multi-unit properties.

Paragraph B requires that the property to be improved may not be in violation of applicable zoning ordinances or other land use guides. The restriction is reasonable because the Agency should not encourage investment in properties that violate public policy regarding their use or location.

Paragraph C prohibits more than 15% of the total area of the property to be improved to be used primarily in a trade or business. This restriction is necessary for loans to comply with federal regulations relating to the use of proceeds from tax-exempt bonds.

Paragraph D prohibits loan funds from being used to improve investment property or recreational homes. This restriction is necessary for loans to comply with federal regulations relating to the use of proceeds from tax-exempt bonds.

Paragraph E prohibits loan funds from being used to improve mobile homes. This restriction is necessary for loans to comply with federal regulations relating to the use of proceeds from tax-exempt bonds.

4900.0593

This part sets forth requirements related to eligible uses of loan proceeds, availability of conventional financing, and participants in loan applications.

Subp. 1

This subpart sets forth eligible uses of loan proceeds.

Paragraph A restricts eligible improvements to permanent improvements made upon or in connection with an existing structure for purposes of improving the energy efficiency of the structure. The restriction that improvements be made only to existing structures for the purpose of improving energy efficiency is necessary to ensure compliance with the statute creating the program. Federal regulations relating to the use of proceeds from tax-exempt bonds also require that improvements be made only to existing structures.

Paragraph B requires that improvements be made in compliance with applicable health, fire prevention, building, or housing codes and standards. This requirement is necessary to ensure the health and safety of the borrower and the community in which the property is located. It is reasonable for the Agency to encourage borrowers to comply with such standards. The paragraph does not require that the property be brought into full compliance with such codes and standards and, thereby, complies with the statute creating the program. This is reasonable since the cost of bringing properties into full compliance could be prohibitive and thereby discourage participation in the program and conservation of energy.

Paragraph C restricts the use of home energy loan proceeds to financing new improvements. Loan proceeds may not be used to refinance an existing loan or mortgage. These restrictions are reasonable because one of the home energy loan program's purposes is to encourage energy conservation improvements by providing an incentive through low interest rates. If funds are used to pay for improvements already completed or to refinance debt incurred in connection with previously completed energy improvements, the program will fail because the

incentive did not stimulate energy conservation. The restrictions are necessary to ensure compliance with federal regulations relating to the use of proceeds of tax-exempt bonds.

Paragraph D requires that the borrower agrees to complete all improvements within nine months of the date of the loan. It is necessary to set a maximum period of time in which improvements must be completed so that borrowers understand the performance standards they must meet and the Agency can determine if improvements have been or will be performed. The nine-month period is reasonable in that it allows sufficient time for borrowers to perform the improvements but a short enough period to keep materials and labor costs from changing drastically from the time the loan is made.

Subp. 2

This subpart prohibits home energy loans from being made when conventional financing is available from private lenders upon equivalent terms and conditions. This requirement is necessary to comply with the statute creating the Home Energy Loan Program.

Subp. 3

This subpart requires that if a borrower wishes to obtain the preference for persons and families of low and moderate income, all persons who, individually or collectively, possess the type of ownership upon which the application is based, or whose income is to be included for purposes of determining the adjusted income, and spouses of these shall join in the application and shall execute the loan note. Where the borrower wishes to obtain the preference as a person and family of low and moderate income, it is necessary for the others specified above to join in the application to demonstrate that the household is of low and moderate income. It is reasonable to require those who join in the application to execute the loan note because all who join in an application are committing their resources to repayment of the loan. Because low and moderate income borrowers have fewer resources with which to repay their loan, it is reasonable for the Agency to seek additional security for the loan by requiring all in the household with incomes to join in the application and execute the loan note. It is also reasonable to require the spouse, whether or not he or she has an income, to join in the application and execute the loan note since he or she will benefit directly from the improved property.

4900.0594

This part sets forth preferences the Agency may, in its sole discretion, give to persons and families of low and moderate income. Preferences to low and moderate income persons and families include lower rates of interest, special allocations of funds for their use, and other methods the Agency deems appropriate. Another purpose of the home energy loan program is to make energy improvements affordable. Provision of such preferences is reasonable in that it ensures that

affordable home energy loan funds will be available to those who are in greatest need of them, either through lower interest rates or a special allocation of funds.

The Agency is cognizant of the provisions of Section 14.115 of the Minnesota Statutes, entitled Small Business Considerations in Rulemaking; however, since the recipients of the funds under the Home Energy Loan Program must be individuals who will use the funds to finance energy conservation measures, the proposed rules do not affect small businesses directly, and the said law, by its terms, is inapplicable to the proposed rules. In addition, the proposed rules do not establish any compliance or reporting requirements, design or operational standards, or directly affect the way any business must operate. Further, to the extent the proposed rules may have an indirect effect on small businesses, the effect is to make such funds more readily available and, as a result, the proposed rule has no negative effect on small businesses. Therefore, the provisions contained in Minn. Stat. 14.115 (1983 Supp.) do not apply to the proposed rules discussed herein.

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STATEMENT OF COMPLIANCE WITH THE RULEMAKING PROCEDURES

I, Special Assistant Attorney General, Karl J. Herman 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.

Dated: 7/30/84

Karl J. Herman
Special Assistant Attorney General