

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1116

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 12-6-84
DATE FOR REVIEW _____
DATE DUE 12-20-84

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

Approved 12.26.84 mjc Disapproved _____ Returned to Agency _____

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

Date filed w/Secretary of State 12-26-84 Revisor approved 12/18/84 disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed

? Order Adopting 11.26.84 Date see my note

N/A Notice of Intent to Solicit Outside Opinion

? Order for rulemaking see my note
N/A date of Hearing

✓ Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
? Sufficiency see my note

✓ Affidavit of Mailing Notice or rulemaking
10.24.84 At least ~~30~~ 25 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
10.29.84 At least ~~30~~/20 25 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

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

To: Marty
Date: 12/14/84
Re: Agriculture – Agricultural Resource Loan Guaranty Program.

Order Adopting, ~~Order~~ for Rulemaking, Notice of Rulemaking

All of the above give the appearance that it is the Department of Agriculture which is promulgating these rules. However, Laws 84, Ch. 502, Art. 10 Section 4, subd. 4 clearly gives rulemaking authority to the Agricultural Resource Loan Guaranty Board. The Board does include the Commissioner of Agriculture but the chairman is the Commissioner of Finance.

Rules as Adopted

p. 2, line 7 — .0300, subp. 2.
"include but not limited to" without criteria

p. 15 line 16 — .1000
"hearing examiner" should be "administrative law judge"

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL - Bremer Tower **Office Memorandum**

TO : JUDITH WEHRWEIN
Administration Division

DATE: 12-5-84

FROM : THOMAS F. PURSELL TFP

PHONE: 6-2921
Special Assistant Attorney General

SUBJECT: Agricultural Resource Loan Guarantee Program Rules.

Agricultural Resource Loan Guarantee Board adopted the referenced emergency rules pursuant to Minn. Stat. §§ 14.29-14.36. Enclosed please find the following documents for the Attorney General's review:

1. An original and three copies of the rules as adopted. Please note that there were no changes to the rules as published, and therefore you will not see any additions or deletions on any of the copies.

2. Two copies of the Order Adopting Emergency Rules.

3. The Agricultural Resource Loan Guarantee Board ("Board") Resolution.

4. Order for Publication of Emergency Rules.

5. Board Resolution authorizing publication.

6. The Rules as published in the State Register.

7. Statement of Compliance with Rulemaking Procedures.

8. Mailing list Certificate.

9. Affidavit of Mailing.

10. Notice of Intent to Adopt Emergency Rules.

Since there were no changes in the rules as published, no Findings of Fact were required. Please note too that the agency received no written comments in response to the proposed rules, nor did it receive any requests for notice of submission to the Attorney General.

Please call me if you have any questions.

RECEIVED
DEC 06 1984
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

TFP:bl

cc: Jim Nichols, Comm'r. of Agriculture
Rollin Dennistoun, Ph.D., Deputy Comm'r.
Craig Lindeke, Office of Revisor of Statutes
Gerald Heil, Director, Planning Division
Carol Milligan, Planning Division

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : Gordon M. Donhowe, Chair
Agricultural Resource Loan Guarantee Program

DATE: 12/20/84

ATTN: Tom Pursell

FROM : Special Assistant Attorney General
Martha J. Casserly MJC
Special Assistant Attorney General

PHONE: 296-4692

SUBJECT: In the Matter of the Proposed Adoption of Emergency Rules of the Agricultural Resource Loan Guarantee Board Governing the Administration of the Agricultural Resource Loan Guarantee Program (Minnesota Rules 1580.0100-1580.1200)

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.

MJC:sz

Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

AG copy.

Department of Agriculture

Planning Division

Adopted Emergency Rules Relating to Agricultural Resource Loan Guaranty Program

Emergency Rules as Adopted

1580.0100 [Emergency] PURPOSE AND AUTHORITY.

Parts 1580.0100 to 1580.1200 [Emergency] are adopted under Laws of Minnesota 1984, chapter 502, article 10, section 4, subdivision 4, to effectuate the purposes of Laws of Minnesota 1984, chapter 502, article 10, and to establish a process for application and approval of loan guarantees for agricultural resource projects.

1580.0200 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** For purposes of parts 1580.0100 to 1580.1200 [Emergency], the terms defined in Laws of Minnesota 1984, chapter 502, article 10, section 2, and in this part have the meanings given them.

Subp. 2. **Chair.** "Chair" means the commissioner of finance acting as chair of the Agricultural Resource Loan Guaranty Board.

Subp. 3. **County authority.** "County authority" means a rural development finance authority, or any county exercising the power of a rural development finance authority, pursuant to Minnesota Statutes, chapter 362A.

1580.0300 [Emergency] AVAILABILITY OF LOAN GUARANTEES.

Subpart 1. **Purpose.** Loan guarantees are available from the board to further the development of the state's agricultural resources and to improve the market for its agricultural products.

Subp. 2. **Extent of guarantee.** The board may guarantee up to 90 percent, with accrued interest, of a loan for the construction and completion of a project or the refunding or refinancing of a loan. The total principal amount of any guaranteed loan may not exceed 80 percent of the total eligible

41A.03 sub 2

costs of the project as estimated by the board at the time the commitment to guarantee is made. The remaining 20 percent of the total eligible costs must be financed from equity or other nondebt funds.

Costs of the project eligible for the guaranteed loan are defined in Laws of Minnesota 1984, chapter 502, article 10, section 2, subdivision 10, and include but are not limited to the following:

A. land and building acquisition costs;

B. site preparation;

C. construction costs;

D. engineering costs;

E. equipment and machinery;

F. bond issuance costs;

G. underwriting or placement fees;

H. permit and application fees, guarantee fees, insurance, letters of credit, and surety bonds;

I. fees of the board for application and guarantee;

J. certain contingency costs;

K. interest costs during construction;

L. legal fees; and

M. costs of environmental review.

Working capital is not considered a cost of construction and completion of the project and is not eligible for inclusion in the guaranteed loan. Working capital may be financed through equity or by debt which is neither secured by the state's guarantee nor by pledge or mortgage of any of the security given for the guaranteed loan.

Subp. 3. **Security for guaranteed loan.** The guaranteed loan must be secured by a first mortgage lien and security interest in all real and personal property comprising the project and other collateral as provided in the loan agreement.

Subp. 4. **Increase in project costs.** If the actual cost of a project exceeds the board's cost estimate, the board may consent to an increase in the loan amount if it determines that the increased costs are reasonably required. The increase in

the principal amount of the loan may not be greater than 80 percent of the excess costs. The board may guarantee up to 90 percent of the increase in the principal amount of the loan, and interest on that amount.

1580.0400 [Emergency] REQUEST FOR COMMENTS.

Subpart 1. **Request by county authority or borrower.** A county authority or a borrower may seek comments from the board with respect to a proposed project and its potential eligibility for a loan guarantee prior to submitting a complete application.

A request for comments must be made in writing to the chair and must include:

A. the borrower's name, address, contact person, and telephone number;

B. the amount of the loan guarantee requested and anticipated terms of the loan, including a description of the collateral and other security;

C. the name of the proposed lender, address, contact person, and telephone number;

D. a brief description of the project and the technology involved, the agricultural resources used or processed, and the products and by-products it would provide;

E. the amount of the borrower's equity and a description of other sources of financing available or considered for the project;

F. the availability of raw materials and supplies;

G. if the borrower is a corporation, the names and addresses of its parent, affiliates, and subsidiary firms and a brief description of the relationship, products, and ownership among the borrower, parent, affiliates, and subsidiary firms; and

H. a description of any Minnesota products, processors, or producers which may compete with the project or its products.

Subp. 2. **Reply by board.** Any comments by the board are intended to assist the borrower and county authority in evaluating the project and arranging the total financing

package. The comments do not obligate the board to grant a loan guarantee, and they may be amended or reconsidered by the board without liability at any time prior to a formal resolution of the board authorizing a loan guarantee.

1580.0500 [Emergency] CONTENTS OF APPLICATION.

Subpart 1. **Application forms.** The chair shall prepare application forms for use by the county authority in seeking loan guarantees. The application must set forth information necessary for the determination of eligibility and must provide information similar to that required by an investment bank or other financial institution considering such a project for debt financing. The application forms must provide, among other things, the following information:

A. a description of the scope, nature, extent, and location of the project, including a preliminary or conceptual design of the project and a description of the technology to be applied;

B. the identity of the borrower and the prior construction and operating experience of the borrower as it relates to the project;

C. a detailed, itemized estimate of the total cost of the project, including escalation and contingencies, with an explanation of the assumptions underlying the estimates;

D. a general description of the financial plan of the project, including the mortgage and security interests to be granted as security for the guaranteed loan, and all sources of equity, grants, or contributions, or of borrowing which is not to be secured by the mortgage and security interests, or, if so secured, is expressly subordinated to the guaranteed loan;

E. an environmental report analyzing potential environmental effects of the project, any necessary or proposed mitigation measures, and other available data which is relevant to an environmental assessment;

F. a description of applications to be filed and an estimated timetable of approvals or permits required by federal, state, and local government agencies as conditions for

construction and commencement of operation of the project;

G. an estimated construction schedule;

H. an analysis of the estimated cost and volume of production and market demand for the product, including economic factors justifying the analysis, and proposed and actual contracts or letters of intent relating to the supply of feedstock and raw materials and marketing or purchase of the production;

I. pro forma cash flow statements for the first five years of project operation including income statements and balance sheets;

J. a description of the borrower's organization and, where applicable, a copy of its articles of incorporation or partnership agreement and bylaws;

K. the estimated amount of the loan and percentage of guarantee requested, the proposed repayment schedule, a description of all security and collateral, and other terms and conditions of the loan;

L. an estimate of the amounts and times of receipt of guarantee fees, sales and use taxes, property tax increments, and any other governmental charges which may be available for the support of the state guarantee fund as a result of the construction of the project, with an analysis of the assumptions on which the estimate is based;

M. a copy of any lending commitment or letter of intent issued by a lender to the borrower;

N. a statement from the lender, if identified, as to its general experience in financing and servicing debt incurred for projects of the size and general type of the project, and its proposed servicing and monitoring plan;

O. a description of any legal actions pending or to be commenced against the borrower, including an explanation of each of these actions and borrower's defenses, if any;

P. a list of eligible lenders that have refused to finance the borrower's project and an explanation for each refusal;

Q. a description of all potentially competitive products which are produced or processed in Minnesota and an analysis of the competitive impact of the project on such competing products and producers;

R. any additional information reasonably related to the criteria in part 1580.0700 [Emergency] and reasonably required by the board to aid in its determination that the project conforms to Laws of Minnesota 1984, chapter 502, article 10, section 1.

Subp. 2. **Feasibility study.** The board may require a feasibility study for the project if it is necessary and reasonably related to its determination that the project is viable and eligible for a loan guarantee. The feasibility study may include any or all of the following evaluations the board considers necessary:

A. evaluation of the project site; availability of trained or trainable labor; utilities; rail, air, and road service to the site; and the overall economic impact of the project on the county and the state as a whole;

B. evaluation of the proposed sales organization and management; nature and extent of product market and geographic market area; marketing plans; extent of competition, both intrastate and interstate; and commitments from customers or brokers;

C. evaluation of the technology to be used in the project; its application and success in similar or related commercial applications; and the commercial feasibility of the proposed application of technology;

D. evaluation of the reliability of the financial projections and the ability of the business to achieve the projected income and cash flow; assessment of the cost-accounting system; the availability of short-term credit for seasonal business; and the adequacy of raw material and supplies;

E. evaluation of the continuity, adequacy, and experience of management.

Any feasibility study must be prepared by a person whose qualifications and experience the board considers adequate. The study must be based upon sufficient data and analyses to justify the conclusions it contains.

Subp. 3. **Data privacy.** If the county authority, the borrower, or the lender considers any information provided in connection with the application and review process to be trade secret information as defined in Minnesota Statutes, section 13.37, that party shall take the following actions:

A. At the time the trade secret information is provided to the board or the board's agents or consultants, the nonpublic or private portions must be clearly identified and marked as trade secret information.

B. Efforts and procedures followed by the county authority, borrower, or lender to maintain secrecy of the trade secret information must be described.

C. A general statement of the reason for its independent economic value must accompany the information.

1580.0600 [Emergency] APPLICATION PROCEDURE.

Subpart 1. **Request by borrower or lender to county authority.** A borrower or lender desiring a loan guarantee shall request the county authority in the county in which the project is located to make an application on its behalf to the board. This written request must include the information described in part 1580.0400 [Emergency], subpart 1. The borrower or lender shall send a copy of the written request to the chair at the time it is submitted to the county authority.

The county authority shall consider the request and determine whether or not to proceed with an application. The county authority may require the borrower or lender to provide additional information which is necessary and reasonably related to its determination whether to proceed with an application. The county authority shall notify the borrower or lender and the chair of its determination after receipt of all information required by the county authority.

Subp. 2. **Application forms.** The board shall provide

application forms for use by the county authority seeking a loan guarantee. The completed application forms with all required exhibits and attachments must be submitted to the chair.

Subp. 3. **Application.** At the time the application is filed, the county authority shall pay a fee equal to 0.25 percent of the amount of the loan guarantee requested. The fee must be paid to the commissioner of finance. The board shall charge against the fee its costs of processing, reviewing, and evaluating the application. The costs charged against the fee may include the direct and indirect cost of work performed by state employees and the advisory committee, together with the fees, charges, and expenses paid to consultants or professionals the board considers necessary and reasonably required for its determination of project viability and eligibility for a loan guarantee.

If the board determines not to issue a commitment for the project, the remaining fee balance must be refunded to the county authority. If the board issues a commitment for the project, the remaining fee balance must be transferred from the general fund to the project account in the guarantee fund and credited against the amount of the commitment fee required in part 1580.0800 [Emergency], subpart 1.

The county authority may require the proposed borrower to pay the application fee, in which case any refund made to the county authority must be returned to the borrower.

Subp. 4. **Review for completeness.** The chair shall review the application for completeness and notify the county authority of any additional information required. When all required information has been received, the chair shall send copies of the application to each of the board members for their review.

Subp. 5. **Board's consideration of application.** The board shall consider the completed application and may seek assistance from its advisory committee. The board may hire consultants or professionals reasonably required for an evaluation of the viability of the project and a determination of eligibility.

Subp. 6. **Approval and conditional commitment.** If the

board approves an application, it may adopt a resolution which conditionally commits the state to guarantee the portion of the proposed loan the board determines, not exceeding the limit in part 1580.0300 [Emergency], subpart 2. The commitment is not binding upon the state until and unless the following conditions are satisfied:

A. The board has created an account for the project in the guarantee fund and has allocated to the project account an aggregate amount sufficient to pay the entire guaranteed principal amount of the proposed loan, plus interest on that amount for one year. Allocation to the account may be made from one or more of the following sources:

(1) funds previously appropriated by the legislature, if any;

(2) proceeds of bonds issued or to be issued for purposes of the guarantee fund, pursuant to legislative authority previously enacted;

(3) fees, balances, or reserves paid by the county authority, borrower, or lender in connection with the loan guarantee program.

The bonds authorized by the legislature need not be issued until and unless the proceeds allocated to a project account must be deposited to comply with item B or C.

B. The board has deposited in the project account an amount not less than the annual amount which would be required to amortize the guaranteed portion of the principal of the loan over the term and at the interest rate (or at the rate of yield resulting from the interest rates) provided in the loan agreement. The deposit may be made from any of the sources provided for allocation in item A.

C. The board has executed on behalf of the state a final loan guarantee agreement in conformity with part 1580.0900 [Emergency]. The agreement must bind the state to offer state bonds for sale as required to pay all amounts which become due and payable under the loan guarantee, within the authorization and allocation referred to in item A, and to issue the bonds

when sold and apply the proceeds to make payment under the guarantee.

Subp. 7. **Denial of application.** If the application is disapproved, the chair shall notify the applicant in writing of the denial.

Subp. 8. **Misrepresentation in application.** The board may reject any application, may revoke any notice of approval, and may refuse to close any loan in the event that any information provided in the application contains a material misrepresentation or omission. The county authority and the borrower have an affirmative and continuing duty to update and correct all information provided to the board or to the lender.

1580.0700 [Emergency] CRITERIA FOR APPROVAL OF LOAN GUARANTEE.

Subpart 1. **Conformity to purposes.** The board shall determine the extent to which the project will further the development of the state's agricultural resources and improve the market for its agricultural products. The board shall also consider the extent to which the public subsidies sought by the applicant under the program would provide the project with an unfair advantage in competing with other products produced or processed in Minnesota.

Subp. 2. **Factors to be evaluated.** In considering applications, the board shall consider the following factors:

A. the viability of the project, including economic and commercial feasibility, technical feasibility, financial projections, and managerial capability;

B. conformity of the project to Laws of Minnesota 1984, chapter 502, article 10, section 1;

C. conformity of the project to environmental standards;

D. the qualifications and credit history of the owners, operators, and lenders;

E. the nature and extent of the security;

F. the degree of financial participation by private persons not supported by the guarantee;

G. the availability of the board's bonding authority,

proceeds, and money from other sources to support the guarantee; and

H. the market conditions and terms required for the sale of any bonds needed to support the guarantee.

1580.0800 [Emergency] GENERAL TERMS AND CONDITIONS OF LOAN GUARANTEES.

The loan guarantee or agreement pertaining to a guaranteed loan must provide, among other things, the following:

A. Payments of principal and interest made by the borrower under the loan must be applied by the lender to reduce the guaranteed and nonguaranteed portion of the loan on a proportionate basis, and the nonguaranteed portion may not in any event receive preferential treatment over the guaranteed portion.

B. A period of grace must be allowed of not less than 60 days from the date a principal or interest payment is due, prior to the making of demand for payment pursuant to the loan guarantee, to permit adequate time for a decision by the board regarding principal and interest assistance in accordance with part 1580.1000 [Emergency]. Payment as required by the loan guarantee must be made within 60 days of receipt by the board of a written demand complying with the terms and conditions of the guarantee.

C. The lender may not accelerate a payment of the loan or exercise other remedies available to the lender if the borrower defaults, unless: (1) the borrower fails to pay a required payment of principal or interest; (2) the board consents in writing; or (3) as otherwise permitted in the loan guarantee. In the event of a default, the lender may not make demand for payment pursuant to the guarantee unless the board agrees in writing that the default has materially affected the rights or security of the parties, and the board finds that the lender should be entitled to receive payment pursuant to the loan guarantee.

D. If a payment of principal or interest is made by the board upon default of the borrower, the state is subrogated

to the rights of the lender with respect to the payment.

E. The borrower shall have promptly prepared and delivered to the board annual audited financial statements of the project prepared according to generally accepted accounting principles.

F. Duly authorized representatives of the board including any trustee appointed under part 1580.1200 [Emergency], subpart 1, shall have access to the project site at reasonable times during construction and operation of the project.

G. The borrower shall maintain adequate records and documents concerning the construction and operation of the project in order that representatives of the board may determine its technical and financial conditions and its compliance with environmental requirements. The records shall include the amounts of all sales and use taxes paid on personal property and services purchased for the construction and operation of the project, with tax receipts furnished by the sellers or other supporting documentation determined by the board to be satisfactory. The amounts of those taxes must be reported to the board in the manner and at the times required by the board.

H. The borrower shall protect and preserve at all times the project assets and other collateral securing the loan and shall assist in liquidation of collateral to minimize loss in the event of default.

I. Orderly liquidation of assets of the project must be provided for in the event of default, with an option on the part of the board to acquire from the lender the lender's interest in the assets pursuant to the nonguaranteed portion of the loan.

J. The state must be paid at or prior to the closing of the guaranteed loan a fee or fees for the loan guarantee or the commitment to guarantee the loan. The aggregate fee may not exceed one percent of the total principal amount of the guaranteed portion of the loan.

K. The lender shall perfect and maintain the mortgage

lien on the real estate and security interest in personal property and collateral granted as security for the loan, and shall cause all other loan servicing functions to be performed which are normally required or performed by a reasonable and prudent lender with respect to a loan without a guarantee.

L. The lender must notify the board in writing without delay of: (1) the date and amount of and basis for each disbursement of loan proceeds; (2) any nonpayment of principal or interest due, within ten days after the due date and with evidence of notification to the borrowers; (3) any failure to honor a commitment by any person of an intended source of capital for the project; and (4) any significant adverse changes from original cash flow projections as evidenced by reports from the borrower, or any other known evidence that the borrower might be unable to meet a future scheduled payment of principal or interest.

M. The board or the lender may determine that the loan is in default when: (1) scheduled payments are 60 days past due; (2) the borrower is or may become unable to meet in full principal or interest payments, or both, which are due or to become due within a specified period; or (3) the board and the lender mutually determine and agree that the project is no longer viable and financially feasible.

N. The borrower must be required to establish a reserve, from the proceeds of the loan or otherwise, to be maintained with the lender or with a trustee for the holders of the borrower's obligations, in cash or securities of a specified market value not less than the annual amount which would be required to amortize the entire amount of the loan over the term (or at the rate of yield resulting from the interest rates) provided in the loan agreement.

41A.03 Subd 4 verbatim

1580.0900 [Emergency] PRINCIPAL AND INTEREST ASSISTANCE.

Subpart 1. **Availability of assistance.** The board may at any time enter into a written assistance contract with the borrower to pay the lender, on behalf of the borrower, an amount not greater than the amount of principal and interest to become

due on one or more subsequent dates, without acceleration, if the board determines that: (1) the borrower is not more than 60 days overdue in payments of principal or interest due; (2) the borrower is or may become unable to meet in full principal or interest payments, or both, which are due or to become due within a specified period; (3) it is in the public interest to permit the borrower to continue to pursue the purposes of the project; (4) the probable net financial loss to the state will be less than that which would result in the event of a default; (5) the borrower is obligated by the assistance contract to reimburse the state for all principal or interest advanced, with interest on those amounts, upon terms and conditions satisfactory to the board; and (6) funds are available for allocation to the account established for the project in the guarantee fund, and are continuously allocated to the account in accordance with Laws of Minnesota 1984, chapter 502, article 10, in an amount equal to the amount of interest on the advances until actually reimbursed to the state by the borrower.

Subp. 2. **Terms of assistance.** All sums advanced and interest on those amounts must be secured by the mortgage lien and security interest granted by the loan agreement, but none of the advances may thereafter be repaid to the state until and unless all principal and interest currently due on the loan has been fully paid. In the event of subsequent default by the borrower, acceleration by the lender, and payment by the state of the full amount due under the loan guarantee, the state is subrogated to the rights of the lender with respect to the principal paid by it under the contract. Upon payment of the loan in full, with accrued interest, the remaining amount of the advances and interest on the advances may be paid by the state.

41A.03 subd 4

statutory authority 41A.04 subd 2

1580.1000 [Emergency] ENVIRONMENTAL ASSESSMENT.

Notwithstanding any other law or rule, no environmental impact statement must be completed prior to the following events:

A. the approval of the application and the issuance of a conditional commitment for a loan guarantee;

B. the issuance of bonds; or

C. the taking of any other action permitted by parts 1580.0100 to 1580.1200 [Emergency] which is considered necessary or desirable by the board to prepare for a final commitment and to make it effective.

Environmental review, to the extent required by law, must be made in conjunction with the issuance by state agencies of environmental permits for the project. Applications for permits may be made prior to the issuance of a conditional commitment. Action must be taken as expeditiously as possible on environmental review and all permits required. Environmental review must be completed within 180 days after the initial filing of an application to the Pollution Control Agency for the first permit. Final action must be taken on permits within 90 days after completion of environmental review or, as to any permit requiring a public hearing, within 90 days after the receipt of the hearing examiner's report.

1580.1100 [Emergency] ADVISORY COMMISSION.

The board may appoint an advisory commission, consisting of at least five members. The advisory commission must include individuals with expertise in agricultural processing, commercial lending and financing of similar or related projects, agricultural economics, and engineering, chemistry, and other natural sciences related to the projects. Upon request by the board, the advisory commission may advise the board on policies and procedures relating to the loan guarantee program and may provide assistance in evaluating applications for loan guarantees.

1580.1200 [Emergency] LOAN ADMINISTRATION.

Subpart 1. Trustee. The board may appoint a trustee who has expertise in commercial lending and financing of similar or related projects. As directed by the board, the trustee shall monitor the construction and progress of the project and the loan payments by the borrower. The trustee shall work with the lender to ensure prompt payments by the borrower, and shall report any loan payment delays or defaults to the board.

Subp. 2. **Servicing.** The lender shall service the loan and receive all payments of principal and interest. In the event of default, the lender shall continue to service the loan if requested by the board to do so.

APPROVED AS TO FORM AND LEGALITY

December 20 1984

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY MJ Casserly
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
DEC 26 1984

Joan Anderson Growe
Secretary of State

10:55
A.M.

Stripped proposed

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT REVISOR OF STATUTES

Office Memorandum

TO: Sue Halvorson
Department of Agriculture

RECEIVED
OCT 31 1984
ATTORNEY GENERAL

DATE: 10-29-83

FROM: Corrine Staeheli
Rules Supervisor

PHONE: 297-2955

SUBJECT: Proposed Rules, stripped copy

Enclosed is a stripped copy of your proposed rules as published in the State Register. The copy shows the text of the rules as you proposed them with the stricken text deleted and the underscoring removed.

Please use this copy to indicate any modifications you wish to make. Our office will input the changes on our computer, certify the document as to form, and turn out copies for you to submit for final approval to the Attorney General or the Office of Administrative Hearings, as appropriate.

If your proposed emergency rules or proposed rules adopted without public hearing are adopted without modification, please submit the required number of copies of this document to the Attorney General for final approval.

If your proposed rules are adopted without modification after public hearing, please submit one copy of this document to our office for final approval as to form.

Your rules were published on October 29, 1984 at 9 S.R. 874, pages 874 through 881.

CRS/kh
Enclosure
ARO 639E

Emergency Rules as Proposed (all new material)

1580.0100 [Emergency] PURPOSE AND AUTHORITY.

Parts 1580.0100 to 1580.1200 [Emergency] are adopted under Laws of Minnesota 1984, chapter 502, article 10, section 4, subdivision 4, to effectuate the purposes of Laws of Minnesota 1984, chapter 502, article 10, and to establish a process for application and approval of loan guarantees for agricultural resource projects.

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Subpart 1. **Scope.** For purposes of parts 1580.0100 to 1580.1200 [Emergency], the terms defined in Laws of Minnesota 1984, chapter 502, article 10, section 2, and in this part have the meanings given them.

Subp. 2. **Chair.** "Chair" means the commissioner of finance acting as chair of the Agricultural Resource Loan Guaranty Board.

Subp. 3. **County authority.** "County authority" means a rural development finance authority, or any county exercising the power of a rural development finance authority, pursuant to Minnesota Statutes, chapter 362A.

1580.0300 [Emergency] AVAILABILITY OF LOAN GUARANTEES.

Subpart 1. **Purpose.** Loan guarantees are available from the board to further the development of the state's agricultural resources and to improve the market for its agricultural products.

Subp. 2. **Extent of guarantee.** The board may guarantee up to 90 percent, with accrued interest, of a loan for the construction and completion of a project or the refunding or refinancing of a loan. The total principal amount of any guaranteed loan may not exceed 80 percent of the total eligible costs of the project as estimated by the board at the time the commitment to guarantee is made. The remaining 20 percent of the total eligible costs must be financed from equity or other nondebt funds.

Costs of the project eligible for the guaranteed loan are defined in Laws of Minnesota 1984, chapter 502, article 10,

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section 2, subdivision 10, and include but are not limited to the following:

A. land and building acquisition costs;

B. site preparation;

C. construction costs;

D. engineering costs;

E. equipment and machinery;

F. bond issuance costs;

G. underwriting or placement fees;

H. permit and application fees, guarantee fees, insurance, letters of credit, and surety bonds;

I. fees of the board for application and guarantee;

J. certain contingency costs;

K. interest costs during construction;

L. legal fees; and

M. costs of environmental review.

Working capital is not considered a cost of construction and completion of the project and is not eligible for inclusion in the guaranteed loan. Working capital may be financed through equity or by debt which is neither secured by the state's guarantee nor by pledge or mortgage of any of the security given for the guaranteed loan.

Subp. 3. **Security for guaranteed loan.** The guaranteed loan must be secured by a first mortgage lien and security interest in all real and personal property comprising the project and other collateral as provided in the loan agreement.

Subp. 4. **Increase in project costs.** If the actual cost of a project exceeds the board's cost estimate, the board may consent to an increase in the loan amount if it determines that the increased costs are reasonably required. The increase in the principal amount of the loan may not be greater than 80 percent of the excess costs. The board may guarantee up to 90 percent of the increase in the principal amount of the loan, and interest on that amount.

1580.0400 [Emergency] REQUEST FOR COMMENTS.

Subpart 1. **Request by county authority or borrower.** A

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county authority or a borrower may seek comments from the board with respect to a proposed project and its potential eligibility for a loan guarantee prior to submitting a complete application.

A request for comments must be made in writing to the chair and must include:

A. the borrower's name, address, contact person, and telephone number;

B. the amount of the loan guarantee requested and anticipated terms of the loan, including a description of the collateral and other security;

C. the name of the proposed lender, address, contact person, and telephone number;

D. a brief description of the project and the technology involved, the agricultural resources used or processed, and the products and by-products it would provide;

E. the amount of the borrower's equity and a description of other sources of financing available or considered for the project;

F. the availability of raw materials and supplies;

G. if the borrower is a corporation, the names and addresses of its parent, affiliates, and subsidiary firms and a brief description of the relationship, products, and ownership among the borrower, parent, affiliates, and subsidiary firms; and

H. a description of any Minnesota products, processors, or producers which may compete with the project or its products.

Subp. 2. **Reply by board.** Any comments by the board are intended to assist the borrower and county authority in evaluating the project and arranging the total financing package. The comments do not obligate the board to grant a loan guarantee, and they may be amended or reconsidered by the board without liability at any time prior to a formal resolution of the board authorizing a loan guarantee.

1580.0500 [Emergency] CONTENTS OF APPLICATION.

Subpart 1. **Application forms.** The chair shall prepare

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application forms for use by the county authority in seeking loan guarantees. The application must set forth information necessary for the determination of eligibility and must provide information similar to that required by an investment bank or other financial institution considering such a project for debt financing. The application forms must provide, among other things, the following information:

A. a description of the scope, nature, extent, and location of the project, including a preliminary or conceptual design of the project and a description of the technology to be applied;

B. the identity of the borrower and the prior construction and operating experience of the borrower as it relates to the project;

C. a detailed, itemized estimate of the total cost of the project, including escalation and contingencies, with an explanation of the assumptions underlying the estimates;

D. a general description of the financial plan of the project, including the mortgage and security interests to be granted as security for the guaranteed loan, and all sources of equity, grants, or contributions, or of borrowing which is not to be secured by the mortgage and security interests, or, if so secured, is expressly subordinated to the guaranteed loan;

E. an environmental report analyzing potential environmental effects of the project, any necessary or proposed mitigation measures, and other available data which is relevant to an environmental assessment;

F. a description of applications to be filed and an estimated timetable of approvals or permits required by federal, state, and local government agencies as conditions for construction and commencement of operation of the project;

G. an estimated construction schedule;

H. an analysis of the estimated cost and volume of production and market demand for the product, including economic factors justifying the analysis, and proposed and actual contracts or letters of intent relating to the supply of

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feedstock and raw materials and marketing or purchase of the production;

I. pro forma cash flow statements for the first five years of project operation including income statements and balance sheets;

J. a description of the borrower's organization and, where applicable, a copy of its articles of incorporation or partnership agreement and bylaws;

K. the estimated amount of the loan and percentage of guarantee requested, the proposed repayment schedule, a description of all security and collateral, and other terms and conditions of the loan;

L. an estimate of the amounts and times of receipt of guarantee fees, sales and use taxes, property tax increments, and any other governmental charges which may be available for the support of the state guarantee fund as a result of the construction of the project, with an analysis of the assumptions on which the estimate is based;

M. a copy of any lending commitment or letter of intent issued by a lender to the borrower;

N. a statement from the lender, if identified, as to its general experience in financing and servicing debt incurred for projects of the size and general type of the project, and its proposed servicing and monitoring plan;

O. a description of any legal actions pending or to be commenced against the borrower, including an explanation of each of these actions and borrower's defenses, if any;

P. a list of eligible lenders that have refused to finance the borrower's project and an explanation for each refusal;

Q. a description of all potentially competitive products which are produced or processed in Minnesota and an analysis of the competitive impact of the project on such competing products and producers;

R. any additional information reasonably related to the criteria in part 1580.0700 [Emergency] and reasonably

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required by the board to aid in its determination that the project conforms to Laws of Minnesota 1984, chapter 502, article 10, section 1.

Subp. 2. **Feasibility study.** The board may require a feasibility study for the project if it is necessary and reasonably related to its determination that the project is viable and eligible for a loan guarantee. The feasibility study may include any or all of the following evaluations the board considers necessary:

A. evaluation of the project site; availability of trained or trainable labor; utilities; rail, air, and road service to the site; and the overall economic impact of the project on the county and the state as a whole;

B. evaluation of the proposed sales organization and management; nature and extent of product market and geographic market area; marketing plans; extent of competition, both intrastate and interstate; and commitments from customers or brokers;

C. evaluation of the technology to be used in the project; its application and success in similar or related commercial applications; and the commercial feasibility of the proposed application of technology;

D. evaluation of the reliability of the financial projections and the ability of the business to achieve the projected income and cash flow; assessment of the cost-accounting system; the availability of short-term credit for seasonal business; and the adequacy of raw material and supplies;

E. evaluation of the continuity, adequacy, and experience of management.

Any feasibility study must be prepared by a person whose qualifications and experience the board considers adequate. The study must be based upon sufficient data and analyses to justify the conclusions it contains.

Subp. 3. **Data privacy.** If the county authority, the borrower, or the lender considers any information provided in

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connection with the application and review process to be trade secret information as defined in Minnesota Statutes, section 13.37, that party shall take the following actions:

A. At the time the trade secret information is provided to the board or the board's agents or consultants, the nonpublic or private portions must be clearly identified and marked as trade secret information.

B. Efforts and procedures followed by the county authority, borrower, or lender to maintain secrecy of the trade secret information must be described.

C. A general statement of the reason for its independent economic value must accompany the information.

1580.0600 [Emergency] APPLICATION PROCEDURE.

Subpart 1. **Request by borrower or lender to county authority.** A borrower or lender desiring a loan guarantee shall request the county authority in the county in which the project is located to make an application on its behalf to the board. This written request must include the information described in part 1580.0400 [Emergency], subpart 1. The borrower or lender shall send a copy of the written request to the chair at the time it is submitted to the county authority.

The county authority shall consider the request and determine whether or not to proceed with an application. The county authority may require the borrower or lender to provide additional information which is necessary and reasonably related to its determination whether to proceed with an application. The county authority shall notify the borrower or lender and the chair of its determination after receipt of all information required by the county authority.

Subp. 2. **Application forms.** The board shall provide application forms for use by the county authority seeking a loan guarantee. The completed application forms with all required exhibits and attachments must be submitted to the chair.

Subp. 3. **Application.** At the time the application is filed, the county authority shall pay a fee equal to 0.25 percent of the amount of the loan guarantee requested. The fee

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must be paid to the commissioner of finance. The board shall charge against the fee its costs of processing, reviewing, and evaluating the application. The costs charged against the fee may include the direct and indirect cost of work performed by state employees and the advisory committee, together with the fees, charges, and expenses paid to consultants or professionals the board considers necessary and reasonably required for its determination of project viability and eligibility for a loan guarantee.

If the board determines not to issue a commitment for the project, the remaining fee balance must be refunded to the county authority. If the board issues a commitment for the project, the remaining fee balance must be transferred from the general fund to the project account in the guarantee fund and credited against the amount of the commitment fee required in part 1580.0800 [Emergency], subpart 1.

The county authority may require the proposed borrower to pay the application fee, in which case any refund made to the county authority must be returned to the borrower.

Subp. 4. **Review for completeness.** The chair shall review the application for completeness and notify the county authority of any additional information required. When all required information has been received, the chair shall send copies of the application to each of the board members for their review.

Subp. 5. **Board's consideration of application.** The board shall consider the completed application and may seek assistance from its advisory committee. The board may hire consultants or professionals reasonably required for an evaluation of the viability of the project and a determination of eligibility.

Subp. 6. **Approval and conditional commitment.** If the board approves an application, it may adopt a resolution which conditionally commits the state to guarantee the portion of the proposed loan the board determines, not exceeding the limit in part 1580.0300 [Emergency], subpart 2. The commitment is not binding upon the state until and unless the following conditions are satisfied:

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A. The board has created an account for the project in the guarantee fund and has allocated to the project account an aggregate amount sufficient to pay the entire guaranteed principal amount of the proposed loan, plus interest on that amount for one year. Allocation to the account may be made from one or more of the following sources:

(1) funds previously appropriated by the legislature, if any;

(2) proceeds of bonds issued or to be issued for purposes of the guarantee fund, pursuant to legislative authority previously enacted;

(3) fees, balances, or reserves paid by the county authority, borrower, or lender in connection with the loan guarantee program.

The bonds authorized by the legislature need not be issued until and unless the proceeds allocated to a project account must be deposited to comply with item B or C.

B. The board has deposited in the project account an amount not less than the annual amount which would be required to amortize the guaranteed portion of the principal of the loan over the term and at the interest rate (or at the rate of yield resulting from the interest rates) provided in the loan agreement. The deposit may be made from any of the sources provided for allocation in item A.

C. The board has executed on behalf of the state a final loan guarantee agreement in conformity with part 1580.0900 [Emergency]. The agreement must bind the state to offer state bonds for sale as required to pay all amounts which become due and payable under the loan guarantee, within the authorization and allocation referred to in item A, and to issue the bonds when sold and apply the proceeds to make payment under the guarantee.

Subp. 7. **Denial of application.** If the application is disapproved, the chair shall notify the applicant in writing of the denial.

Subp. 8. **Misrepresentation in application.** The board may

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reject any application, may revoke any notice of approval, and may refuse to close any loan in the event that any information provided in the application contains a material misrepresentation or omission. The county authority and the borrower have an affirmative and continuing duty to update and correct all information provided to the board or to the lender.

1580.0700 [Emergency] CRITERIA FOR APPROVAL OF LOAN GUARANTEE.

Subpart 1. **Conformity to purposes.** The board shall determine the extent to which the project will further the development of the state's agricultural resources and improve the market for its agricultural products. The board shall also consider the extent to which the public subsidies sought by the applicant under the program would provide the project with an unfair advantage in competing with other products produced or processed in Minnesota.

Subp. 2. **Factors to be evaluated.** In considering applications, the board shall consider the following factors:

A. the viability of the project, including economic and commercial feasibility, technical feasibility, financial projections, and managerial capability;

B. conformity of the project to Laws of Minnesota 1984, chapter 502, article 10, section 1;

C. conformity of the project to environmental standards;

D. the qualifications and credit history of the owners, operators, and lenders;

E. the nature and extent of the security;

F. the degree of financial participation by private persons not supported by the guarantee;

G. the availability of the board's bonding authority, proceeds, and money from other sources to support the guarantee; and

H. the market conditions and terms required for the sale of any bonds needed to support the guarantee.

1580.0800 [Emergency] GENERAL TERMS AND CONDITIONS OF LOAN

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GUARANTEES.

The loan guarantee or agreement pertaining to a guaranteed loan must provide, among other things, the following:

A. Payments of principal and interest made by the borrower under the loan must be applied by the lender to reduce the guaranteed and nonguaranteed portion of the loan on a proportionate basis, and the nonguaranteed portion may not in any event receive preferential treatment over the guaranteed portion.

B. A period of grace must be allowed of not less than 60 days from the date a principal or interest payment is due, prior to the making of demand for payment pursuant to the loan guarantee, to permit adequate time for a decision by the board regarding principal and interest assistance in accordance with part 1580.1000 [Emergency]. Payment as required by the loan guarantee must be made within 60 days of receipt by the board of a written demand complying with the terms and conditions of the guarantee.

C. The lender may not accelerate a payment of the loan or exercise other remedies available to the lender if the borrower defaults, unless: (1) the borrower fails to pay a required payment of principal or interest; (2) the board consents in writing; or (3) as otherwise permitted in the loan guarantee. In the event of a default, the lender may not make demand for payment pursuant to the guarantee unless the board agrees in writing that the default has materially affected the rights or security of the parties, and the board finds that the lender should be entitled to receive payment pursuant to the loan guarantee.

D. If a payment of principal or interest is made by the board upon default of the borrower, the state is subrogated to the rights of the lender with respect to the payment.

E. The borrower shall have promptly prepared and delivered to the board annual audited financial statements of the project prepared according to generally accepted accounting principles.

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F. Duly authorized representatives of the board including any trustee appointed under part 1580.1200 [Emergency], subpart 1, shall have access to the project site at reasonable times during construction and operation of the project.

G. The borrower shall maintain adequate records and documents concerning the construction and operation of the project in order that representatives of the board may determine its technical and financial conditions and its compliance with environmental requirements. The records shall include the amounts of all sales and use taxes paid on personal property and services purchased for the construction and operation of the project, with tax receipts furnished by the sellers or other supporting documentation determined by the board to be satisfactory. The amounts of those taxes must be reported to the board in the manner and at the times required by the board.

H. The borrower shall protect and preserve at all times the project assets and other collateral securing the loan and shall assist in liquidation of collateral to minimize loss in the event of default.

I. Orderly liquidation of assets of the project must be provided for in the event of default, with an option on the part of the board to acquire from the lender the lender's interest in the assets pursuant to the nonguaranteed portion of the loan.

J. The state must be paid at or prior to the closing of the guaranteed loan a fee or fees for the loan guarantee or the commitment to guarantee the loan. The aggregate fee may not exceed one percent of the total principal amount of the guaranteed portion of the loan.

K. The lender shall perfect and maintain the mortgage lien on the real estate and security interest in personal property and collateral granted as security for the loan, and shall cause all other loan servicing functions to be performed which are normally required or performed by a reasonable and prudent lender with respect to a loan without a guarantee.

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L. The lender must notify the board in writing without delay of: (1) the date and amount of and basis for each disbursement of loan proceeds; (2) any nonpayment of principal or interest due, within ten days after the due date and with evidence of notification to the borrowers; (3) any failure to honor a commitment by any person of an intended source of capital for the project; and (4) any significant adverse changes from original cash flow projections as evidenced by reports from the borrower, or any other known evidence that the borrower might be unable to meet a future scheduled payment of principal or interest.

M. The board or the lender may determine that the loan is in default when: (1) scheduled payments are 60 days past due; (2) the borrower is or may become unable to meet in full principal or interest payments, or both, which are due or to become due within a specified period; or (3) the board and the lender mutually determine and agree that the project is no longer viable and financially feasible.

N. The borrower must be required to establish a reserve, from the proceeds of the loan or otherwise, to be maintained with the lender or with a trustee for the holders of the borrower's obligations, in cash or securities of a specified market value not less than the annual amount which would be required to amortize the entire amount of the loan over the term (or at the rate of yield resulting from the interest rates) provided in the loan agreement.

1580.0900 [Emergency] PRINCIPAL AND INTEREST ASSISTANCE.

Subpart 1. **Availability of assistance.** The board may at any time enter into a written assistance contract with the borrower to pay the lender, on behalf of the borrower, an amount not greater than the amount of principal and interest to become due on one or more subsequent dates, without acceleration, if the board determines that: (1) the borrower is not more than 60 days overdue in payments of principal or interest due; (2) the borrower is or may become unable to meet in full principal or interest payments, or both, which are due or to become due

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within a specified period; (3) it is in the public interest to permit the borrower to continue to pursue the purposes of the project; (4) the probable net financial loss to the state will be less than that which would result in the event of a default; (5) the borrower is obligated by the assistance contract to reimburse the state for all principal or interest advanced, with interest on those amounts, upon terms and conditions satisfactory to the board; and (6) funds are available for allocation to the account established for the project in the guarantee fund, and are continuously allocated to the account in accordance with Laws of Minnesota 1984, chapter 502, article 10, in an amount equal to the amount of interest on the advances until actually reimbursed to the state by the borrower.

Subp. 2. **Terms of assistance.** All sums advanced and interest on those amounts must be secured by the mortgage lien and security interest granted by the loan agreement, but none of the advances may thereafter be repaid to the state until and unless all principal and interest currently due on the loan has been fully paid. In the event of subsequent default by the borrower, acceleration by the lender, and payment by the state of the full amount due under the loan guarantee, the state is subrogated to the rights of the lender with respect to the principal paid by it under the contract. Upon payment of the loan in full, with accrued interest, the remaining amount of the advances and interest on the advances may be paid by the state.

1580.1000 [Emergency] ENVIRONMENTAL ASSESSMENT.

Notwithstanding any other law or rule, no environmental impact statement must be completed prior to the following events:

A. the approval of the application and the issuance of a conditional commitment for a loan guarantee;

B. the issuance of bonds; or

C. the taking of any other action permitted by parts 1580.0100 to 1580.1200 [Emergency] which is considered necessary or desirable by the board to prepare for a final commitment and to make it effective.

Environmental review, to the extent required by law, must

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be made in conjunction with the issuance by state agencies of environmental permits for the project. Applications for permits may be made prior to the issuance of a conditional commitment. Action must be taken as expeditiously as possible on environmental review and all permits required. Environmental review must be completed within 180 days after the initial filing of an application to the Pollution Control Agency for the first permit. Final action must be taken on permits within 90 days after completion of environmental review or, as to any permit requiring a public hearing, within 90 days after the receipt of the hearing examiner's report.

1580.1100 [Emergency] ADVISORY COMMISSION.

The board may appoint an advisory commission, consisting of at least five members. The advisory commission must include individuals with expertise in agricultural processing, commercial lending and financing of similar or related projects, agricultural economics, and engineering, chemistry, and other natural sciences related to the projects. Upon request by the board, the advisory commission may advise the board on policies and procedures relating to the loan guarantee program and may provide assistance in evaluating applications for loan guarantees.

1580.1200 [Emergency] LOAN ADMINISTRATION.

Subpart 1. **Trustee.** The board may appoint a trustee who has expertise in commercial lending and financing of similar or related projects. As directed by the board, the trustee shall monitor the construction and progress of the project and the loan payments by the borrower. The trustee shall work with the lender to ensure prompt payments by the borrower, and shall report any loan payment delays or defaults to the board.

Subp. 2. **Servicing.** The lender shall service the loan and receive all payments of principal and interest. In the event of default, the lender shall continue to service the loan if requested by the board to do so.

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Proposed Rule

RD639E

Agency: Department of Agriculture

Division:

Agency Contact: Sue Halvorson

Minnesota Rules: Parts 1580.0100 to 1580.1200 [Emergency]

Title: Proposed Emergency Rules Relating to Agricultural Resource Loan Guaranty Program

Type of Rules: Emergency

Incorporations by Reference: None

Steven C. Cross
Revisor of Statutes

Craig E. Lindeke
Senior Assistant Revisor
Phone: 296-0946
Date: October 5, 1984

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Adoption of Emergency Rules of the Agricultural Resource Loan Guarantee Board Governing the Administration of the Agricultural Resource Loan Guarantee Program (Minnesota Rules 1580.0100-1580.1200)

ORDER ADOPTING EMERGENCY RULES

The above-entitled matter was published in the State Register on October 29, 1984, as proposed emergency rules pursuant to Minnesota Statutes section 14.30. After affording interested and affected persons an opportunity to submit written data and views for at least 25 days after the publication date, reviewing and considering the data and views, and determining that the above-captioned rules are needed and reasonable.

NOW THEREFORE, IT IS ORDERED that these rules identified as the emergency Rules Governing the Administration of the Agricultural Resource Loan Guarantee Program are adopted this 26th day of November, 1984 pursuant to authority vested in me by Laws of Minnesota 1984, chapter 502, article 10, section 4, subd. 4.

STATE OF MINNESOTA

Gordon M. Donhowe, Chair
Agricultural Resource
Loan Guarantee Board

STATE OF MINNESOTA

AGRICULTURAL RESOURCE LOAN GUARANTEE BOARD

In the Matter of the Proposed Adoption of Emergency Rules Governing the Administration of the Agricultural Resource Loan Guarantee Program

ORDER FOR PUBLICATION OF EMERGENCY RULES

IT IS ORDERED THIS 10th day of October 1984, that the proposed emergency rules in the above-entitled matter be published in the State Register.

STATE OF MINNESOTA

Gordon M. Donhowe, Chair
Agricultural Resource Loan
Guaranty Board

CERTIFICATE OF BOARD'S

AUTHORIZING RESOLUTION

I, Gordon M. Donhowe, do hereby certify that I am a member and the chairman of the Agricultural Resource Loan Guarantee Board, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Board duly and properly called and held on the 14th day of September, 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 Gordon M. Donhowe, Chair of the Agricultural Resource Loan Guarantee Board, be and he hereby is granted the authority and directed to sign an order of the Board directing that proposed emergency rules governing the administration of the Agricultural Resource Loan Guarantee Program be published in the State Register, as well as perform any and all acts incidental thereto.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 14th day of September, 1984.

Gordon M. Donhowe
Chairman
Agricultural Resource Loan
Guarantee Board

Attest:

Member, Board of Directors
Agricultural Resource Loan
Guarantee Board

(612) 296-6906

October 24, 1984

TO: Individuals, Firms and Organizations on the
Minnesota Department of Agriculture Rulemaking List

FROM: Carol Milligan, CM Management Analyst
Planning Division

SUBJ: Proposed Emergency Rules Governing Administration of the
Agricultural Resource Project Loan Guaranty Program

Enclosed you will find a "Notice of Intent to Adopt Emergency Rules" in the above-entitled matter. The Notice explains the proposed rules and procedures that will be followed in adopting them, including opportunities for public comment.

The Notice and the proposed rules will be published in the Minnesota State Register on Monday, October 29, 1984. The 25-day comment period provided for by the Administrative Procedures Act will extend from that date through November 22, 1984.

If you wish to receive copies of the proposed amendments, or have any questions, please call me at (612) 296-6906.

CM:cs

Enclosure

cc: Gerald Heil, Director
Planning Division

Department of Agriculture

Planning Division

In the Matter of the Proposed Emergency Rules Governing Administration of the Agricultural Resource Project Loan Guaranty Program

Notice of Intent to Adopt Emergency Rules

Notice is hereby given that the Minnesota Department of Agriculture proposes to adopt the above entitled emergency rules. The Commissioner of Agriculture will follow the procedures set forth in Minnesota Statutes, sections 14.29-14.36 in adopting these rules.

Persons interested in these emergency rules shall have 25 days from the date the rules are published in the State Register to submit comments on the proposed amendments. The proposed amendments may be modified if the modifications are supported by the data and views submitted to the department.

Persons who wish to submit oral or written comments should submit the comments to: Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, Minnesota 55107, (612) 296-1486.

Authority to adopt this rule is contained in Laws of Minnesota 1984, chapter 502, article 10, section 4, subd. 4. The Commissioner is authorized by this section to adopt emergency rules for administration of the Agricultural resource loan guaranty program. The program is intended to further the development of the states agricultural resources and improve the market for its agricultural products by providing financial guarantees for viable projects to enable qualified developers to secure private financing.

Upon adoption of the emergency rules, this Notice, all written comments received, and the emergency Rules as Adopted, will be delivered to the Attorney General for review as to form and legality.

In accordance with Laws of Minnesota 1984, chapter 502, article 10, section 4, subd. 4, these emergency rules will be effective until December 31, 1985.

One free copy of this Notice and the proposed emergency rules may be obtained by contacting Mr. Heil. Persons who wish to be notified by mail that the proposed emergency rule has been submitted to the Attorney General or who wish to receive a copy of the emergency rule as adopted should also contact Mr. Heil.

STATE OF MINNESOTA

Date: Oct 12, 1984

Jim Nichols

Jim Nichols
Commissioner of Agriculture

In the Matter of the Proposed Adoption of Emergency Rules of the Department of Agriculture Governing Administration of the Agricultural Resource Loan Guaranty Program (Minnesota Rules 1580.0100 - 1580.1200)

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Marie Skerbitz, being first duly sworn, deposes and says:

That on the 24th day of October, 1984, at the City of St. Paul, County of Ramsey, State of Minnesota, he/she served the attached Notice of Extension of Emergency Rules 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.

Marie Skerbitz

Subscribed and sworn to before me
this 24th day of October, 1984.

Diane M. Windham

DIANE M. WINDHAM
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES NOVEMBER 1, 1990

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Adoption of Emergency Rules of the Department of Agriculture Governing Administration of the Agricultural Resource Loan Guaranty Program (Minnesota Rules 1580.0100 - 1580.1200)

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. § 14.14, subd. 1, 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 24th day of October, 1984.

Carol Milligan

PROPOSED RULES

Pursuant to Minn. Stat. of 1982, §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Agriculture
Planning Division

Proposed Emergency Rules Relating to Agricultural Resource Loan Guaranty Program

Notice of Intent to Adopt Emergency Rules

Notice is hereby given that the Minnesota Department of Agriculture proposes to adopt the above entitled emergency rules. The Commissioner of Agriculture will follow the procedures set forth in Minnesota Statutes, sections 14.29-14.36 in adopting these rules.

Persons interested in these emergency rules shall have 25 days from the date the rules are published in the *State Register* to submit comments on the proposed amendments. The proposed amendments may be modified if the modifications are supported by the data and views submitted to the department.

Persons who wish to submit oral or written comments should submit the comments to: Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, Minnesota 55107, (612) 296-1486.

Authority to adopt this rule is contained in Laws of Minnesota 1984, chapter 502, article 10, section 4, subd. 4. The Commissioner is authorized by this section to adopt emergency rules for administration of the Agricultural resource loan guaranty program. The program is intended to further the development of the states agricultural resources and improve the market for its agricultural products by providing financial guarantees for viable projects to enable qualified developers to secure private financing.

Upon adoption of the emergency rules, this notice, all written comments received, and the emergency Rules as Adopted, will be delivered to the Attorney General for review as to form and legality.

In accordance with Laws of Minnesota 1984, chapter 502, article 10, section 4, subd. 4, these emergency rules will be effective until December 31, 1985.

One free copy of this notice and the proposed emergency rules may be obtained by contacting Mr. Heil. Persons who wish to be notified by mail that the proposed emergency rule has been submitted to the Attorney General or who wish to receive a copy of the emergency rule as adopted should also contact Mr. Heil.

October 12, 1984

Jim Nichols
Commissioner of Agriculture

Emergency Rules as Proposed (all new material)

1580.0100 [Emergency] PURPOSE AND AUTHORITY.

Parts 1580.0100 to 1580.1200 [Emergency] are adopted under Laws of Minnesota 1984, chapter 502, article 10, section 4, subdivision 4, to effectuate the purposes of Laws of Minnesota 1984, chapter 502, article 10, and to establish a process for application and approval of loan guarantees for agricultural resource projects.

1580.0200 [Emergency] DEFINITIONS.

Subpart 1. Scope. For purposes of parts 1580.0100 to 1580.1200 [Emergency], the terms defined in Laws of Minnesota 1984, chapter 502, article 10, section 2, and in this part have the meanings given them.

Subp. 2. Chair. "Chair" means the commissioner of finance acting as chair of the Agricultural Resource Loan Guaranty Board.

Subp. 3. County authority. "County authority" means a rural development finance authority, or any county exercising the power of a rural development finance authority, pursuant to Minnesota Statutes, chapter 362A.

1580.0300 [Emergency] AVAILABILITY OF LOAN GUARANTEES.

Subpart 1. Purpose. Loan guarantees are available from the board to further the development of the state's agricultural resources and to improve the market for its agricultural products.

Subp. 2. Extent of guarantee. The board may guarantee up to 90 percent, with accrued interest, of a loan for the construction and completion of a project or the refunding or refinancing of a loan. The total principal amount of any guaranteed loan may not exceed 80 percent of the total eligible costs of the project as estimated by the board at the time the commitment to guarantee is made. The remaining 20 percent of the total eligible costs must be financed from equity or other nondebt funds.

Costs of the project eligible for the guaranteed loan are defined in Laws of Minnesota 1984, chapter 502, article 10, section 2, subdivision 10, and include but are not limited to the following:

A. land and building acquisition costs;

B. site preparation;

C. construction costs;

D. engineering costs;

E. equipment and machinery;

F. bond issuance costs;

G. underwriting or placement fees;

H. permit and application fees, guarantee fees, insurance, letters of credit, and surety bonds;

I. fees of the board for application and guarantee;

J. certain contingency costs;

K. interest costs during construction;

L. legal fees; and

M. costs of environmental review.

Working capital is not considered a cost of construction and completion of the project and is not eligible for inclusion in the guaranteed loan. Working capital may be financed through equity or by debt which is neither secured by the state's guarantee nor by pledge or mortgage of any of the security given for the guaranteed loan.

Subp. 3. Security for guaranteed loan. The guaranteed loan must be secured by a first mortgage lien and security interest in all real and personal property comprising the project and other collateral as provided in the loan agreement.

Subp. 4. Increase in project costs. If the actual cost of a project exceeds the board's cost estimate, the board may consent to an increase in the loan amount if it determines that the increased costs are reasonably required. The increase in the principal amount of the loan may not be greater than 80 percent of the excess costs. The board may guarantee up to 90 percent of the increase in the principal amount of the loan, and interest on that amount.

1580.0400 [Emergency] REQUEST FOR COMMENTS.

Subpart 1. Request by county authority or borrower. A county authority or a borrower may seek comments from the board with respect to a proposed project and its potential eligibility for a loan guarantee prior to submitting a complete application.

A request for comments must be made in writing to the chair and must include:

A. the borrower's name, address, contact person, and telephone number;

B. the amount of the loan guarantee requested and anticipated terms of the loan, including a description of the collateral and other security;

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C. the name of the proposed lender, address, contact person, and telephone number;

D. a brief description of the project and the technology involved, the agricultural resources used or processed, and the products and by-products it would provide;

E. the amount of the borrower's equity and a description of other sources of financing available or considered for the project;

F. the availability of raw materials and supplies;

G. if the borrower is a corporation, the names and addresses of its parent, affiliates, and subsidiary firms and a brief description of the relationship, products, and ownership among the borrower, parent, affiliates, and subsidiary firms; and

H. a description of any Minnesota products, processors, or producers which may compete with the project or its projects.

Subp. 2. Reply by board. Any comments by the board are intended to assist the borrower and county authority in evaluating the project and arranging the total financing package. The comments do not obligate the board to grant a loan guarantee, and they may be amended or reconsidered by the board without liability at any time prior to a formal resolution of the board authorizing a loan guarantee.

1580.0500 [Emergency] CONTENTS OF APPLICATION.

Subpart 1. Application forms. The chair shall prepare application forms for use by the county authority in seeking loan guarantees. The application must set forth information necessary for the determination of eligibility and must provide information similar to that required by an investment bank or other financial institution considering such a project for debt financing. The application forms must provide, among other things, the following information:

A. a description of the scope, nature, extent, and location of the project, including a preliminary or conceptual design of the project and a description of the technology to be applied;

B. the identity of the borrower and the prior construction and operating experience of the borrower as it relates to the project;

C. a detailed, itemized estimate of the total cost of the project, including escalation and contingencies, with an explanation of the assumptions underlying the estimates;

D. a general description of the financial plan of the project, including the mortgage and security interests to be granted as security for the guaranteed loan, and all sources of equity, grants, or contributions, or of borrowing which is not to be secured by the mortgage and security interests, or, if so secured, is expressly subordinated to the guaranteed loan;

E. an environmental report analyzing potential environmental effects of the project, any necessary or proposed mitigation measures, and other available data which is relevant to an environmental assessment;

F. a description of applications to be filed and an estimated timetable of approvals or permits required by federal, state, and local government agencies as conditions for construction and commencement of operation of the project;

G. an estimated construction schedule;

H. an analysis of the estimated cost and volume of production and market demand for the product, including economic factors justifying the analysis, and proposed and actual contracts or letters of intent relating to the supply of feedstock and raw materials and marketing or purchase of the production;

I. pro forma cash flow statements for the first five years of project operation including income statements and balance sheets;

J. a description of the borrower's organization and, where applicable, a copy of its articles of incorporation or partnership agreement and bylaws;

K. the estimated amount of the loan and percentage of guarantee requested, the proposed repayment schedule, a description of all security and collateral, and other terms and conditions of the loan;

L. an estimate of the amounts and times of receipt of guarantee fees, sales and use taxes, property tax increments, and any other governmental charges which may be available for the support of the state guarantee fund as a result of the construction of the project, with an analysis of the assumptions on which the estimate is based;

M. a copy of any lending commitment or letter of intent issued by a lender to the borrower;

N. a statement from the lender, if identified, as to its general experience in financing and servicing debt incurred for projects of the size and general type of the project, and its proposed servicing and monitoring plan;

O. a description of any legal actions pending or to be commenced against the borrower, including an explanation of each of these actions and borrower's defenses, if any;

P. a list of eligible lenders that have refused to finance the borrower's project and an explanation for each refusal;

Q. a description of all potentially competitive products which are produced or processed in Minnesota and an analysis of the competitive impact of the project on such competing products and producers;

R. any additional information reasonably related to the criteria in part 1580.0700 [Emergency] and reasonably required by the board to aid in its determination that the project conforms to Laws of Minnesota 1984, chapter 502, article 10, section 1.

Subp. 2. Feasibility study. The board may require a feasibility study for the project if it is necessary and reasonably related to its determination that the project is viable and eligible for a loan guarantee. The feasibility study may include any or all of the following evaluations the board considers necessary:

A. evaluation of the project site; availability of trained or trainable labor; utilities; rail, air, and road service to the site; and the overall economic impact of the project on the county and the state as a whole;

B. evaluation of the proposed sales organization and management; nature and extent of product market and geographic market area; marketing plans; extent of competition, both intrastate and interstate; and commitments from customers or brokers;

C. evaluation of the technology to be used in the project; its application and success in similar or related commercial applications; and the commercial feasibility of the proposed application of technology;

D. evaluation of the reliability of the financial projections and the ability of the business to achieve the projected income and cash flow; assessment of the cost-accounting system; the availability of short-term credit for seasonal business; and the adequacy of raw material and supplies;

E. evaluation of the continuity, adequacy, and experience of management.

Any feasibility study must be prepared by a person whose qualifications and experience the board considers adequate. The study must be based upon sufficient data and analyses to justify the conclusions it contains.

Subp. 3. Data privacy. If the county authority, the borrower, or the lender considers any information provided in connection with the application and review process to be trade secret information as defined in Minnesota Statutes, section 13.37, that party shall take the following actions:

A. At the time the trade secret information is provided to the board or the board's agents or consultants, the nonpublic or private portions must be clearly identified and marked as trade secret information.

B. Efforts and procedures followed by the county authority, borrower, or lender to maintain secrecy of the trade secret information must be described.

C. A general statement of the reason for its independent economic value must accompany the information.

1580.0600 [Emergency] APPLICATION PROCEDURE.

Subpart 1. Request by borrower or lender to county authority. A borrower or lender desiring a loan guarantee shall request the county authority in the county in which the project is located to make an application on its behalf to the board. This written request must include the information described in part 1580.0400 [Emergency], subpart 1. The borrower or lender shall send a copy of the written request to the chair at the time it is submitted to the county authority.

The county authority shall consider the request and determine whether or not to proceed with an application. The county authority may require the borrower or lender to provide additional information which is necessary and reasonably related to its determination whether to proceed with an application. The county authority shall notify the borrower or lender and the chair of its determination after receipt of all information required by the county authority.

Subp. 2. Application forms. The board shall provide application forms for use by the county authority seeking a loan guarantee. The completed application forms with all required exhibits and attachments must be submitted to the chair.

Subp. 3. Application. At the time the application is filed, the county authority shall pay a fee equal to 0.25 percent of the amount of the loan guarantee requested. The fee must be paid to the commissioner of finance. The board shall charge against

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the fee its costs of processing, reviewing, and evaluating the application. The costs charged against the fee may include the direct and indirect cost of work performed by state employees and the advisory committee, together with the fees, charges, and expenses paid to consultants or professionals the board considers necessary and reasonably required for its determination of project viability and eligibility for a loan guarantee.

If the board determines not to issue a commitment for the project, the remaining fee balance must be refunded to the county authority. If the board issues a commitment for the project, the remaining fee balance must be transferred from the general fund to the project account in the guarantee fund and credited against the amount of the commitment fee required in part 1580.0800 [Emergency], subpart 1.

The county authority may require the proposed borrower to pay the application fee, in which case any refund made to the county authority must be returned to the borrower.

Subp. 4. Review for completeness. The chair shall review the application for completeness and notify the county authority of any additional information required. When all required information has been received, the chair shall send copies of the application to each of the board members for their review.

Subp. 5. Board's consideration of application. The board shall consider the completed application and may seek assistance from its advisory committee. The board may hire consultants or professionals reasonably required for an evaluation of the viability of the project and a determination of eligibility.

Subp. 6. Approval and conditional commitment. If the board approves an application, it may adopt a resolution which conditionally commits the state to guarantee the portion of the proposed loan the board determines, not exceeding the limit in part 1580.0300 [Emergency], subpart 2. The commitment is not binding upon the state until and unless the following conditions are satisfied:

A. The board has created an account for the project in the guarantee fund and has allocated to the project account an aggregate amount sufficient to pay the entire guaranteed principal amount of the proposed loan, plus interest on that amount for one year. Allocation to the account may be made from one or more of the following sources:

(1) funds previously appropriated by the legislature, if any;

(2) proceeds of bonds issued or to be issued for purposes of the guarantee fund, pursuant to legislative authority previously enacted;

(3) fees, balances, or reserves paid by the county authority, borrower, or lender in connection with the loan guarantee program.

The bonds authorized by the legislature need not be issued until and unless the proceeds allocated to the project account must be deposited to comply with item B or C.

B. The board has deposited in the project account an amount not less than the annual amount which would be required to amortize the guaranteed portion of the principal of the loan over the term and at the interest rate (or at the rate of yield resulting from the interest rates) provided in the loan agreement. The deposit may be made from any of the sources provided for allocation in item A.

C. The board has executed on behalf of the state a final loan guarantee agreement in conformity with part 1580.0900 [Emergency]. The agreement must bind the state to offer state bonds for sale as required to pay all amounts which become due and payable under the loan guarantee, within the authorization and allocation referred to in item A, and to issue the bonds when sold and apply the proceeds to make payment under the guarantee.

Subp. 7. Denial of application. If the application is disapproved, the chair shall notify the applicant in writing of the denial.

Subp. 8. Misrepresentation in application. The board may reject any application, may revoke any notice of approval, and may refuse to close any loan in the event that any information provided in the application contains a material misrepresentation or omission. The county authority and the borrower have an affirmative and continuing duty to update and correct all information provided to the board or to the lender.

1580.0700 [Emergency] CRITERIA FOR APPROVAL OF LOAN GUARANTEE.

Subpart 1. Conformity to purposes. The board shall determine the extent to which the project will further the development of the state's agricultural resources and improve the market for its agricultural products. The board shall also consider the extent to which the public subsidies sought by the applicant under the program would provide the project with an unfair advantage in competing with other products produced or processed in Minnesota.

Subp. 2. Factors to be evaluated. In considering applications, the board shall consider the following factors:

A. the viability of the project, including economic and commercial feasibility, technical feasibility, financial projections, and managerial capability;

B. conformity of the project to Laws of Minnesota 1984, chapter 502, article 10, section 1;

C. conformity of the project to environmental standards;

D. the qualifications and credit history of the owners, operators, and lenders;

E. the nature and extent of the security;

F. the degree of financial participation by private persons not supported by the guarantee;

G. the availability of the board's bonding authority, proceeds, and money from other sources to support the guarantee; and

H. the market conditions and terms required for the sale of any bonds needed to support the guarantee.

1580.0700 [Emergency] GENERAL TERMS AND CONDITIONS OF LOAN GUARANTEES.

The loan guarantee or agreement pertaining to a guaranteed loan must provide, among other things, the following:

A. Payments of principal and interest made by the borrower under the loan must be applied by the lender to reduce the guaranteed and nonguaranteed portion of the loan on a proportionate basis, and the nonguaranteed portion may not in any event receive preferential treatment over the guaranteed portion.

B. A period of grace must be allowed of not less than 60 days from the date a principal or interest payment is due, prior to the making of demand for payment pursuant to the loan guarantee, to permit adequate time for a decision by the board regarding principal and interest assistance in accordance with part 1580.1000 [Emergency]. Payment as required by the loan guarantee must be made within 60 days of receipt by the board of a written demand complying with the terms and conditions of the guarantee.

C. The lender may not accelerate a payment of the loan or exercise other remedies available to the lender if the borrower defaults, unless: (1) the borrower fails to pay a required payment of principal or interest; (2) the board consents in writing; or (3) as otherwise permitted in the loan guarantee. In the event of a default, the lender may not make demand for payment pursuant to the guarantee unless the board agrees in writing that the default has materially affected the rights or security of the parties, and the board finds that the lender should be entitled to receive payment pursuant to the loan guarantee.

D. If a payment of principal or interest is made by the board upon default of the borrower, the state is subrogated to the rights of the lender with respect to the payment.

E. The borrower shall have promptly prepared and delivered to the board annual audited financial statements of the project prepared according to generally accepted accounting principles.

F. Duly authorized representatives of the board including any trustee appointed under part 1580.1200 [Emergency], subpart 1, shall have access to the project site at reasonable times during construction and operation of the project.

G. The borrower shall maintain adequate records and documents concerning the construction and operation of the project in order that representatives of the board may determine its technical and financial conditions and its compliance with environmental requirements. The records shall include the amounts of all sales and use taxes paid on personal property and services purchased for the construction and operation of the project, with tax receipts furnished by the sellers or other supporting documentation determined by the board to be satisfactory. The amounts of those taxes must be reported to the board in the manner and at the times required by the board.

H. The borrower shall protect and preserve at all times the project assets and other collateral securing the loan and shall assist in liquidation of collateral to minimize loss in the event of default.

I. Orderly liquidation of assets of the project must be provided for in the event of default, with an option on the part of the board to acquire from the lender the lender's interest in the assets pursuant to the nonguaranteed portion of the loan.

J. The state must be paid at or prior to the closing of the guaranteed loan a fee or fees for the loan guarantee or the commitment to guarantee the loan. The aggregate fee may not exceed one percent of the total principal amount of the guaranteed portion of the loan.

K. The lender shall perfect and maintain the mortgage lien on the real estate and security interest in personal property

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and collateral granted as security for the loan, and shall cause all other loan servicing functions to be performed which are normally required or performed by a reasonable and prudent lender with respect to a loan without a guarantee.

L. The lender must notify the board in writing without delay of: (1) the date and amount of and basis for each disbursement of loan proceeds; (2) any nonpayment of principal or interest due, within ten days after the due date and with evidence of notification to the borrowers; (3) any failure to honor a commitment by any person of an intended source of capital for the project; and (4) any significant adverse changes from original cash flow projections as evidenced by reports from the borrower, or any other known evidence that the borrower might be unable to meet a future scheduled payment of principal or interest.

M. The board or the lender may determine that the loan is in default when: (1) scheduled payments are 60 days past due; (2) the borrower is or may become unable to meet in full principal or interest payments, or both, which are due or to become due within a specified period; or (3) the board and the lender mutually determine and agree that the project is no longer viable and financially feasible.

N. The borrower must be required to establish a reserve, from the proceeds of the loan or otherwise, to be maintained with the lender or with a trustee for the holders of the borrower's obligations, in cash or securities of a specified market value not less than the annual amount which would be required to amortize the entire amount of the loan over the term (or at the rate of yield resulting from the interest rates) provided in the loan agreement.

1580.0900 [Emergency] PRINCIPAL AND INTEREST ASSISTANCE.

Subpart 1. Availability of assistance. The board may at any time enter into a written assistance contract with the borrower to pay the lender, on behalf of the borrower, an amount not greater than the amount of principal and interest to become due on one or more subsequent dates, without acceleration, if the board determines that: (1) the borrower is not more than 60 days overdue in payments of principal or interest due; (2) the borrower is or may become unable to meet in full principal or interest payments, or both, which are due or to become due within a specified period; (3) it is in the public interest to permit the borrower to continue to pursue the purposes of the project; (4) the probable net financial loss to the state will be less than that which would result in the event of a default; (5) the borrower is obligated by the assistance contract to reimburse the state for all principal or interest advanced, with interest on those amounts, upon terms and conditions satisfactory to the board; and (6) funds are available for allocation to the account established for the project in the guarantee fund, and are continuously allocated to the account in accordance with Laws of Minnesota 1984, chapter 502, article 10, in an amount equal to the amount of interest on the advances until actually reimbursed to the state by the borrower.

Subp. 2. Terms of assistance. All sums advanced and interest on those amounts must be secured by the mortgage lien and security interest granted by the loan agreement, but none of the advances may thereafter be repaid to the state until and unless all principal and interest currently due on the loan has been fully paid. In the event of subsequent default by the borrower, acceleration by the lender, and payment by the state of the full amount due under the loan guarantee, the state is subrogated to the rights of the lender with respect to the principal paid by it under the contract. Upon payment of the loan in full, with accrued interest, the remaining amount of the advances and interest on the advances may be paid by the state.

1580.1000 [Emergency] ENVIRONMENTAL ASSESSMENT.

Notwithstanding any other law or rule, no environmental impact statement must be completed prior to the following events:

A. the approval of the application and the issuance of a conditional commitment for a loan guarantee;

B. the issuance of bonds; or

C. the taking of any other action permitted by parts 1580.0100 to 1580.1200 [Emergency] which is considered necessary or desirable by the board to prepare for a final commitment and to make it effective.

Environmental review, to the extent required by law, must be made in conjunction with the issuance by state agencies of environmental permits for the project. Applications for permits may be made prior to the issuance of a conditional commitment. Action must be taken as expeditiously as possible on environmental review and all permits required. Environmental review must be completed within 180 days after the initial filing of an application to the Pollution Control Agency for the first permit. Final action must be taken on permits within 90 days after completion of environmental review or, as to any permit requiring a public hearing, within 90 days after the receipt of the hearing examiner's report.

1580.1100 [Emergency] ADVISORY COMMISSION.

The board may appoint an advisory commission, consisting of at least five members. The advisory commission must include individuals with expertise in agricultural processing, commercial lending and financing of similar or related projects, agricultural economics, and engineering, chemistry, and other natural sciences related to the projects. Upon request by the board, the advisory commission may advise the board on policies and procedures relating to the loan guarantee program and may provide assistance in evaluating applications for loan guarantees.

1580.1200 [Emergency] LOAN ADMINISTRATION.

Subpart 1. Trustee. The board may appoint a trustee who has expertise in commercial lending and financing of similar or related projects. As directed by the board, the trustee shall monitor the construction and progress of the project and the loan payments by the borrower. The trustee shall work with the lender to ensure prompt payments by the borrower, and shall report any loan payment delays or defaults to the board.

Subp. 2. Servicing. The lender shall service the loan and receive all payments of principal and interest. In the event of default, the lender shall continue to service the loan if requested by the board to do so.

Department of Commerce

Proposed Rules Relating to Insurance Continuing Education

Notice of Hearing

Notice is given that a public hearing will be held pursuant to Minn. Stat. § 14.14, Subd. 1, as amended by Minn. Laws 1984, ch. 640 in the above-entitled matter in the Large Hearing Room, 500 Metro Square Building, St. Paul, Minnesota 55101, on December 14, 1984, at 9:00 a.m. and continuing until all interested persons and groups have had an opportunity to be heard concerning adoption of these proposed rules by submitting either oral or written data, statements, or arguments. Statements or briefs may be submitted without appearing at the hearing by sending them to Administrative Law Judge, Peter C. Erickson, 4th Floor, Summit Bank Building, 310 4th Avenue South, Minneapolis, Minnesota 55415, telephone (612) 341-7606. The rule hearing procedure is governed by Minn. Stat. §§ 14.02-14.45, as amended by Minn. Laws 1984, ch. 640, and by Minn. Rule 1400.0200-1400.1200 (10831). Questions regarding procedure may be directed to the Administrative Law Judge at the above-listed address.

The Commissioner proposes to adopt rules relating to continuing education for insurance agents. Authority for adoption of these rules is contained in Minn. Stat. § 60A.1701, Subd. 6(c). A copy of the proposed rules accompanies this notice.

The proposed rules, if adopted, will govern Continuing Education for Insurance Agents and are intended to assure the quality of courses as well as to set the administrative procedure for course approval, course credit, reporting requirements and similar functions.

Notice is hereby given that a Statement of Need and Reasonableness is available for review at the Department of Commerce and will be available at the Office of Administrative Hearings 25 days prior to the hearing.

Pursuant to Minn. Laws 1983, ch. 188 codified as Minn. Stat. § 14.115, Subd. 2, the impact on small business has been considered in the promulgation of the rules. Anyone wishing to present evidence or argument as to the rules' effect on small business may do so. The Department's position regarding the impact of the rules on small business is set forth in the Statement of Need and Reasonableness.

All interested or affected persons will have an opportunity to participate by presenting oral and/or written evidence at the hearing. Questioning of agency representatives or witnesses, and of interested persons making oral statements will be allowed in order to explain the purpose or intended operation of the proposed rules, or a suggested modification, or for other purposes material to the evaluation or formulation of the proposed rules.

As a result of the hearing process, the proposed rule may be modified. Written material may be submitted to the Administrative Law Judge and recorded in the hearing record for five working days after the public hearing ends. The comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the Administrative Law Judge at the hearing. Following the five to twenty day submission period, there will be a three-day period in which the Commissioner and interested persons may respond in writing to any new information submitted. During the three-day period, the agency may indicate in writing whether there are any amendments suggested by other persons which the agency is willing to adopt. Additional evidence may not be submitted during the three-day period. The written responses will be added to the record of the proceeding.

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CERTIFICATE OF BOARD'S

RESOLUTION ADOPTING RULES

I, Gordon M. Donhowe, do hereby certify that I am a member and the Chairman of the Board of the Agricultural Resource Loan Guarantee Board, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Agricultural Resource Loan Guarantee Board, duly and properly called and held on the 26th day of November, 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 emergency rules governing administration of the Agricultural Resource Loan Guarantee Program be and they hereby are approved and adopted, pursuant to authority vested in us by Laws of Minnesota 1984, Chapter 502, article 10, section 4, subd. 4, and that Gordon M. Donhowe, the Chairman of the Board of the Agricultural Resource Loan Guarantee Board, 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 November, 1984.

Gordon Donhowe
(Chairman of the Board)

Jim Nichols
Attest by one other Board member

In the Matter of the Proposed Adoption
of Emergency Rules Governing
Administration of the Agricultural
Resource Loan Guarantee Program
(Minnesota Rules 1580.0100-1580.1200)

STATEMENT OF
COMPLIANCE WITH
RULEMAKING PROCEDURES

I, Special Assistant Attorney General Thomas F. Pursell, 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.

Thomas F. Pursell

Thomas F. Pursell
Special Assistant Attorney General

Date: December 5, 1984