

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1117

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 12/20/84 (LDS) Disapproved _____ Returned to Agency _____

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

Date filed w/Secretary of State 12-21-84

Revisor approved 12/7/84
disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed see SR.

✓ Order Adopting 11.29.84 Date

N/A Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
N/A date of Hearing

✓ Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

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

✓ Mailing list Certificate

✓ Publication in State Register
10.22.84 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

N/A LCRAR Report or agency Affidavit

✓ Certificate of Board's Resolution Adopting Rules

N/A Order Approving Incorporation by Reference

N/A Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

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

✓ Certificate of Compliance w/Rulemaking Procedures

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

✓ Notice of Submission to the Attorney General

✓ Memo to J. Welsweiss from C. Elker re emergency rulemaking authority

To: Larry.

Date: 12/17/84

Re: DEED - General Procedures, Small Business Development Loan Program, Min

Rules As Adopted

p. 3 line 19 . 3012. subp. 3. "include but not limited to" without criteria

OK - "must include" - state minimum req.; LDS

p. 9 line 8 . 3014. subp. 8 "include but not limited to" without criteria

Corrected - LDS

p. 16 line 13 . 3031 Incorrect citation - correct Ch. 583, Section 36

corrected

p 18 Application Does not read as a correct sentence.

12-20-84

SF-00006-02

STATE OF MINNESOTA

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

TO : JUDITH WEHRWEIN, Legal Assistant
Office of Attorney General
Administration Division

DATE: 12-6-84

FROM : CHRISTIE B. ELLER
Special Assistant Attorney General

PHONE: 6-9200

SUBJECT: Proposed Emergency Rules of the Minnesota Energy and Economic Development Authority Relating to General Procedures, Small Business Development Loan Program and Minnesota Fund Loans.

The Minnesota Energy and Economic Development Authority (the "Authority") is authorized to adopt emergency rules by Minn. Stat. § 116J.91, subd. 4 as amended by Minn. Laws 1984, ch. 583, § 17 and to be codified as 116M.08, subd. 4. The Authority is an agency which is authorized to issue bonds to obtain funds to implement its programs. See Minn. Stat. § 116J.91, subd. 11, as amended by Minn. Laws 1984, ch. 583, § 18, to be codified as 116M.08 subd. 11. Thus, under Minn. Laws 1984, ch. 640, § 16, to be codified as Minn. Stat. § 14.29, subd. 3. The Authority may continue to adopt emergency rules governing its programs without regard to the 180 day limit specified in Minn. Laws 1984, ch. 640, § 16, to be codified as § 14.29, subd. 2.

CBE:bl

MINNESOTA
Department of Energy
and Economic Development

Financial Management Division
Energy Finance 297-1332
Business Finance 297-3547

900 American Center
150 East Kellogg Boulevard
St. Paul, Minnesota 55101

November 29, 1984

Ms. Judith Wehrwein
Office of the Attorney General
Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55155

Re: Proposed Emergency Rules of the Minnesota Energy and Economic Development Authority Governing Loan Application Procedures, Small Business Development Loans, Special Assistance and Amending the Adopted Rules Governing Authority Procedures, Pollution Control Financial Assistance and Business Financial Assistance.

Dear Ms. Wehrwein:

Enclosed please find a complete set of documents for the above-entitled proposed emergency rules of the Minnesota Energy and Economic Development Authority, including the following:

1. Rules as adopted
2. Certificate of Authority's Resolution
3. Order for publication
4. Copy of the emergency rules as proposed
5. Mailing list certificate
6. Affidavit of mailing
7. Notice of intent to adopt emergency rules and request for public comment (rules enclosed)
8. Written comments on the rules received by the agency
9. Findings of fact and conclusions
10. Certificate of Authority's adopting resolution
11. Order adopting emergency rules
12. Certificate of compliance with rulemaking procedures.

We have not had any requests for a hearing made during the thirty day period and we received three comments on the rules, copies of which as well as the letters sent in response to the comments are enclosed. The agency has made modifications that do not significantly change the meaning or intent of the rules. These rules are not adopted in response to a petition and no requests have been made to be notified of submission of the rules to the Attorney General.

Your earliest response to these documents is appreciated. Should you have any questions, please call Christie B. Eller at 296-9200.

Sincerely,

Edward J. Meyer, Jr.
Deputy Commissioner of
Financial Management,
Department of Energy and
Economic Development

EJM:dc

Attachments

SF-00006-02

STATE OF [redacted]NESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : Mark B. Dayton, Commissioner
Dept. of Energy & Economic Development

DATE: 12/20/84

ATTN: Christie B. Eller

FROM : Special Assistant Attorney General

PHONE:

Larry D. Starns LDS
Special Assistant Attorney General

297-3493

SUBJECT: In the Matter of the Proposed Adoption of Emergency Rules of the Minnesota Energy & Economic Development Application Procedures, Small Business Development Loans, Special Assistance and Amending the Adopted Ruels Governing Authority Procedures, Pollution Control Financial Assistance and Business Financial Assistance

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

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

1. Affixation of stamps of the Attorney General and Secretary of State;

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

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

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

LDS:sz
Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

AG copy

Minnesota Energy & Economic Development Authority

Emergency Adopted Rules Relating to General Procedures, Small Business Development Loan Program, and Minnesota Fund Loans

Emergency Rules as Adopted

8300.3010 [Emergency] SCOPE.

Parts 8300.3010 to 8300.3014 [Emergency] are general rules that apply to all applications for financial assistance made available by the authority under the act and Minnesota Statutes, chapter 472, as now in effect, and as amended from time to time. Parts 8300.3020 to 8300.3035 [Emergency] specify procedures and criteria for financial assistance from particular programs of the authority.

8300.3011 [Emergency] DEFINITIONS.

Subpart 1. **Statutory terms.** The definitions in Minnesota Statutes, sections 116J.88 and 472.03 and part 8300.0100 apply to parts 8300.3010 to 8300.3035 [Emergency].

Subp. 2. **Project.** "Project" means that which is funded or secured or is proposed to be funded or secured by financial assistance.

FF 3A

8300.3012 [Emergency] PROCEDURES FOR FINANCIAL ASSISTANCE APPLICATIONS.

Subpart 1. **In general.** To apply for assistance from the authority, an applicant shall submit an application form to the commissioner on a form provided by the commissioner. An application must be completed, dated, and signed by an owner, general partner, or an authorized officer of the applicant. The commissioner shall follow the procedures under part 8300.3014 [Emergency].

Subp. 2. **Contents.** An application must contain at a minimum the following information:

FF 3B

A. a written history of the business ~~entity~~;

B. the source and use of funds to finance the project;

C. financial statements that include a balance sheet

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an operating statement, a statement of the sources and uses of funds, and footnotes to the statements if available for the following time periods:

(1) Financial statements from the previous three years, if applicable. If unaudited, the statements must be signed by an authorized financial officer of the business making application.

(2) A current quarterly financial statement that was compiled within 90 days of the date the application was submitted, if quarterly financial statements are regularly prepared.

(3) Federal tax returns filed by the business for the previous three years if applicable, if the applicant is an individual or partnership.

(4) A proforma balance sheet and income statement for the 24 months following the financial assistance closing that shows the financial position of the applicant and that includes the proposed financing.

D. A marketing plan that describes:

FF 2A

(1) the industry the ~~project~~ applicant is in;

(2) the industry outlook for the next three to five years; ~~and~~

(3) the major characteristics of the industry, names, locations, products or services provided~~,-duration-and conditions-of-contracts-in-the-plan,-and-the-percentage-of annual-sales-volume-for-each-major-customer-over-the-previous three-years~~;

FF 2B

(4) the duration and conditions of the applicant's contracts currently in place; and

(5) the percentage of annual sales volume for each major customer over the previous three years.

E. Current resumes of key personnel and signed personal financial statements dated as of the date of the application for any person who owns 20 percent or more interest in the business.

F. A resolution of support or other comparable

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preliminary approval from the local government unit with respect to the project to be financed or secured with financial assistance.

G. A statement of informed consent by the individual subject regarding the use and dissemination of the private data as provided in Minnesota Statutes, section 13.05, subdivision 4, paragraph (d). If the subject of the data is a corporation, then an authorized representative shall provide a statement of informed consent in a form similar to that provided in Minnesota Statutes, section 13.05, subdivision 4, paragraph (d).

H. Certification that the employer does not discriminate in employment in a manner contrary to applicable federal or state laws and regulations.

I. Certification of business compliance with all federal, state, or local laws or regulations that affect the conduct of business in the state.

Subp. 3. **Business plan.** As part of the application, the applicant shall submit to the commissioner a comprehensive business plan. The business plan must include, but is not limited to, the following:

A. a management summary of the plan including:

(1) name of the business;

(2) business location and plan description;

(3) discussion of the product, market, and competition;

(4) expertise of management team;

(5) summary of financial projections;

(6) amount of financial assistance requested;

(7) form of and purpose for the financial assistance; and

(8) purpose for undertaking the project; and

(9) business goals;

B. a description of the company including the following:

(1) date and state of incorporation, date and state of formation of partnership, or date and state of

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formation of sole proprietorship;

(2) history of the company; and

(3) principals and the roles they played in the evolution of the company;

C. a market analysis including:

(1) description of the current industry status and industry trends;

(2) effects of major social, economic, technological, or regulatory trends on the industry;

(3) description of the total market, principal market participants, and their performance; and

(4) discussion of the target market and competition;

D. a description of the product or product line including:

(1) list of patents, copyrights, licenses, or statement of the proprietary interest in the product or product line;

(2) discussion of technical and legal considerations;

(3) comparisons to competitors' products or product lines; and

(4) description of research and development and future plans for research and development;

E. a description of the marketing strategy including:

(1) overall strategy;

(2) pricing policy;

(3) sales channels and terms;

(4) method of selling, distributing, and servicing product;

(5) estimated sales and market share; and

(6) advertising, public relations, and promotion;

F. the management plan including:

(1) form of business organization;

(2) board of directors composition, if applicable;

(3) officers organization chart and

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responsibilities; and

(4) resumes of key personnel;

G. an operating plan including:

(1) schedule of upcoming work for the next one to two years;

(2) facilities plan or planned capital improvements for the next three years;

(3) manufacturing processes; and

(4) staffing plan (number of employees);

H. a schedule indicating the completion dates for realizing the significant aspects of the business plan;

I. a discussion of the risks and problems inherent to the business plan, including both the negative factors and plans to minimize the impact of those factors; and

J. financial data including:

(1) a funding request indicating the desired financing, capitalization, use of funds, and future financing;

(2) financial statements for the past three years, if applicable;

(3) current financial statements;

(4) monthly cash flow financial projections including the proposed financing for two years; and

(5) projected balance sheets, income statement, and statement of changes in financial position for two years including the proposed financing.

8300.3013 [Emergency] COLLATERAL REQUIREMENTS AND ADDITIONAL INFORMATION OR CERTIFICATIONS.

Subpart 1. **Collateral requirements.** The authority shall require collateral in accordance with generally accepted commercial lending practices as it deems necessary to protect the interests of the authority in the financial assistance. At a minimum, the collateral will take one or more of the following forms:

A. mortgage on real property;

B. security position on personal property;

C. security of its financial assistance with assets

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being financed by the financial assistance and other assets of the company to protect the interests of the state's financial participation;

D. letter of credit or equivalent instrument;

E. guarantees or other assurances of repayment of affiliates of the applicant or other interested parties with respect thereto;

F. guarantees or other assurances of repayment of shareholders or partners who have 20 percent or more ownership in the applicant; ~~and~~

G. bond insurance or other credit enhancements; and

H. assignments of leases or rents on property or equipment.

FF 3G

Subp. 2. **Additional information or certifications.** The following additional information is required by the authority, if applicable, prior to disbursing financial assistance and other information that the authority in ~~it~~ its sole discretion deems advisable for prudent financial management of authority financial assistance:

FF 3H, 2C

A. a lease agreement on property or equipment;

B. a listing of collateral, including serial numbers for machinery and equipment that will serve as collateral to the financial assistance;

C. certification of insurance for workers' compensation and employer's liability;

D. a statement provided by the Internal Revenue Service of tax clearance;

E. an appraisal of collateral offered to the authority for the financial assistance; and

F. a certificate of the insurers of all collateral that insurance is in force and effect. Prior to expiration of any insurance policy, the applicant shall furnish the commissioner with evidence that the policy has been renewed, replaced, or is no longer required.

8300.3014 [Emergency] PROCEDURES FOR APPLICATION PROCESSING.

Subpart 1. **Deadline for submission.** The applicant shall

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submit a complete application to the commissioner by the first business day of any month in order for the authority to consider it in that month. If an application is received after the first of the month and can be reviewed by the commissioner for eligibility and financial feasibility prior to the authority agenda deadline, the authority may consider the application at the meeting in that month.

Subp. 2. **Completed applications.** An application is complete when the commissioner receives all required documentation and exhibits~~, together with the required fee~~. FF 3I, 2D

Subp. 3. **Incomplete applications.** If an incomplete application is received, the commissioner shall notify the applicant of specific deficiencies in the application. The applicant has 60 days from the date of mailing of the commissioner's notification to complete the application. If the application is not completed and received by the commissioner within 60 days, the application is deemed to be rejected and the applicant shall reapply to be further considered.

Subp. 4. **Review of eligibility of project and applicant.** The commissioner shall review all completed applications to determine if the project and the applicant are eligible and meet the requirements of the act and any of parts 8300.3010 to 8300.3014 [Emergency] and any parts relating to the financial assistance for which the applicant has applied.

If the project and applicant are eligible, the commissioner shall review the application for economic feasibility as provided in subpart 6.

Subp. 5. **Ineligible project or applicant.** The commissioner shall notify the applicant in writing if the applicant or the project is ineligible. The applicant has 30 days from the date of the commissioner's notification to amend the application.

Upon receipt of an amended application, the commissioner shall review the amended application under subpart 4. The commissioner shall reject the amended application if the project ~~and~~ FF 3J or applicant are ineligible. If the project and applicant

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are eligible, the commissioner shall review the amended application for economic feasibility under subpart 6.

If the application is not amended within 30 days, the application must be rejected and will not receive any further consideration.

Subp. 6. **Economic feasibility review.** The commissioner shall review the application in accordance with generally accepted commercial lending practices, including the use of the standards as printed in the most current annually updated version of the Annual Statement Studies, issued by Robert Morris Associates, Philadelphia, PA.

The commissioner shall obtain any other credit information when available from private credit rating agencies including, but not limited to, Standard & Poors and Dun & Bradstreet. In accordance with generally accepted commercial lending practices, the commissioner may check personal references.

The commissioner shall determine if the applicant can generate sufficient cash flow and maintain a sound financial condition.

The commissioner shall determine if there is sufficient collateral for the financial assistance. The submission of the application by the commissioner to the authority at a board meeting shall be deemed conclusive evidence that the commissioner has made the determinations required pursuant to this subpart. FF3K

Subp. 7. **Rejection of application based on economic feasibility.** The commissioner shall notify the applicant in writing if the application is not economically feasible and the application is rejected.

If the application is rejected due to economic feasibility, the applicant may, within 30 days after written notification by the commissioner, request that the commissioner submit the rejected application to the authority for review at the next regularly scheduled meeting of the authority for which the agenda has not been established.

If so submitted, the authority ~~approves~~ must evaluate the

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application at its board meeting, the application will be treated in accordance with subpart 9.

Subp. 8. **Findings of public purpose for small business and business loans.** In addition to the economic feasibility review in subpart 6, the applicant must certify that the project assists in fulfilling the purposes of the act, including the applicable preferences and priorities in Minnesota Statutes, section 116J.89, including, but not limited to one or more of the following criteria:

A. The applicant is located in an area of the state that is experiencing one of the most severe unemployment rates in the state.

B. The applicant is located in a border community that experiences a competitive disadvantage due to location and with this financial assistance the applicant would be induced to stay in Minnesota rather than to move to another state.

C. The applicant is likely to expand within the state and to create additional taxable property to local units of government.

D. This financial assistance will help induce the applicant to locate in an area of economic distress or to provide jobs that would not otherwise be available to that area without the inducement of this financial assistance.

E. This financial assistance will create or maintain sufficient numbers and types of jobs to justify participation in the financial assistance programs.

F. Energy sources and public facilities will be sufficient to support the successful operation of the project.

G. If the financial assistance shall have the effect of a transfer of employment from one area of the state to another, ~~the authority shall determine~~ FF3M that the project is economically advantageous to the state or that the project is necessary to the continued operation of the business enterprise within the state.

Subp. 9. **Authority evaluation procedure.** Applications approved for processing by the commissioner must be presented to

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application at its board meeting, the application will be treated in accordance with subpart 9.

Subp. 8. **Findings of public purpose for small business and business loans.** In addition to the economic feasibility review in subpart 6, the applicant must certify that the project assists in fulfilling the purposes of the act, including the applicable preferences and priorities in Minnesota Statutes, section 116J.89, ~~including, but not limited to~~ or one or more of the following criteria:

A. The applicant is located in an area of the state that is experiencing one of the most severe unemployment rates in the state.

B. The applicant is located in a border community that experiences a competitive disadvantage due to location and with this financial assistance the applicant would be induced to stay in Minnesota rather than to move to another state.

C. The applicant is likely to expand within the state and to create additional taxable property to local units of government.

D. This financial assistance will help induce the applicant to locate in an area of economic distress or to provide jobs that would not otherwise be available to that area without the inducement of this financial assistance.

E. This financial assistance will create or maintain sufficient numbers and types of jobs to justify participation in the financial assistance programs.

F. Energy sources and public facilities will be sufficient to support the successful operation of the project.

G. If the financial assistance shall have the effect of a transfer of employment from one area of the state to another, ~~the authority shall determine~~ that the project is economically advantageous to the state or that the project is necessary to the continued operation of the business enterprise within the state.

Subp. 9. **Authority evaluation procedure.** Applications approved for processing by the commissioner must be presented to

Replacement Page

the authority for approval or disapproval. If the authority disapproves the application, the commissioner shall so notify the applicant. If the authority approves the financial assistance, it shall pass a preliminary or a final resolution giving approval to the project to be financed and stating in either the preliminary or final resolution or combination of both the name of the owner~~,~~; a brief description of the project ~~,~~; the maximum amount of ~~the financial assistance,~~ bonds to be issued or the maximum amount of the loan to be made or the maximum amount of the loan to be guaranteed or insured, whichever is applicable; and other provisions as the authority in its sole discretion deems advisable for prudent financial management of authority financial assistance. The commissioner shall notify the applicant of the authority's approval and provide the applicant with a copy of the resolution passed. If the financial assistance is funded by bonds, then passage of a preliminary and a final resolution as provided in subpart 10 are required before financial assistance is approved. Throughout this process if the authority does not extend financial assistance, the authority shall remain without liability to the applicant.

FF 3N

Subp. 10. **Funding of financial assistance by bonds.** If the authority intends to fund the financial assistance by issuing bonds, the authority shall first pass a preliminary resolution. The preliminary resolution must not obligate the authority to issue bonds or to fund financial assistance, but must only constitute an expression of current intention of the authority to issue bonds or to fund the financial assistance. If the authority subsequently determines that there are no adverse changes in the financial conditions or key personnel of the applicant, market conditions, availability of bond issuance authority, and other ~~financial~~ conditions that the authority deems necessary and the authority decides in accordance with generally accepted commercial lending practices to fund the financial assistance, the authority shall pass a final resolution that authorizes the issuance and sale of bonds to

FF 30

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fund the financial assistance. The final resolution must specify the terms and conditions under which bonds will be issued. The preliminary resolution may contain a time limit with respect to the issuance of the bonds, may be revoked or amended by the authority at any time prior to the final resolution of the authority without liability to the authority, and may impose any conditions or requirements that the authority deems desirable. The commissioner shall notify the applicant of the authority's approval and provide the applicant with a copy of the resolution passed. Throughout this process, if the authority does not extend financial assistance, the authority shall remain without liability to the applicant.

Subp. 11. **Preparation of documents.** The commissioner has the authority and responsibility to prepare or cause to be prepared all necessary documents and to execute them on behalf of the authority.

SMALL BUSINESS DEVELOPMENT LOAN PROGRAM

8300.3020 [Emergency] PURPOSE OF SMALL BUSINESS DEVELOPMENT LOAN PROGRAM.

The small business development loan program issues financial assistance in a form involving a guarantee or insurance from the economic development fund or any account thereof and revenue bonds to finance small business loans.

8300.3021 [Emergency] ELIGIBLE APPLICANTS FOR SMALL BUSINESS DEVELOPMENT LOAN PROGRAM.

Persons, partnerships, firms, or corporations engaged in and determined by the authority to constitute a small business as defined in the regulations of the United States Small Business Administration, Code of Federal Regulations, title 13, part 121, are considered eligible small businesses or eligible applicants.

8300.3022 [Emergency] ELIGIBLE LOANS FOR SMALL BUSINESS DEVELOPMENT LOAN PROGRAM.

Subpart 1. **In general.** The authority shall make small business loans to applicants in compliance with the act and

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parts 8300.3010 to 8300.3024 [Emergency] in order to help create or retain jobs for the state.

Subp. 2. **Purpose of loan.** A small business loan must be used to provide interim or long-term financing for certain capital expenditures as provided in the act, and for expenditures that meet the requirements of federal industrial development bond laws, including:

A. acquisition costs of land, buildings, or both;

B. site preparation;

C. construction costs;

D. engineering costs;

E. costs of equipment, machinery, or both;

F. bond issuance costs;

G. underwriting or placement fees;

H. trustee's fees;

I. fee of guarantor, insurer, or financial institution, other than the authority, who provides letters of credit, surety bonds, or equivalent security;

J. authority fees, including application and guaranty fees of the authority and administrative costs and expenses;

K. certain contingency costs;

L. interest costs during construction;

M. legal fees, including those of the authority's bond counsel; and

N. debt service reserve fund.

Working capital loans are not eligible for financial assistance under this loan program.

Subp. 3. **Size of eligible loans.** The principal amount of any financial assistance in the form of bonds FF 3P to be financed by the authority may be greater than $250,000, but may not exceed the maximum amount permitted to be loaned to an eligible small business as defined in the act for the total value of eligible items listed in subpart 2.

Subp. 4. **Equity requirements.** The maximum loan percentage of the project costs for equipment is 75 percent and for all other authorized expenses is 80 percent. Instead of an equity

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contribution, the authority shall accept adequate collateral to serve as an equity requirement which if contributed to the financial assistance would make the maximum loan percentage of the project costs for equipment equal 75 percent and for all other authorized expenses equal 80 percent. The authority may require a lower loan to project percentage based upon the economic feasibility of the application. The authority may accept letters of credit or other credit enhancements as part of the equity contribution by the applicant. FF3Q

Subp. 5. **Maximum term.** The maximum term of a small business development loan may not exceed the average useful life of the real property, or 80 percent of the useful life of the equipment or machinery, or the following limits, whichever is less:

A. real property, land or buildings, 21 years;

B. equipment or machinery, 11 years;

C. combination of items A and B, weighted average.

Subp. 6. **Interest rate.** The authority shall set interest rates at a negotiated rate that approximates the market rate of interest for securities of equivalent value at the time the bonds are initially sold.

Subp. 7. **Security requirements.** Financial assistance, either for real property or equipment, must be secured as ~~follows~~ with the best available security including one or more of the following: FF3R

A. A mortgage or other adequate security as determined by the authority on the real property to be financed.

B. A lien or other adequate security as determined by the authority on equipment to be financed by the authority.

C. Other security as determined by the commissioner to have a value at least equal to the principal amount to be financed by the authority less the value, as determined by the authority, of the security provided in items A and B, ~~which~~ if any. Such other security shall be in form and kind satisfactory to the authority and may consist of some or all of the following: FF3S

(1) a senior, junior, or parity lien on other

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assets of the applicant; or

(2) a senior, junior, or parity lien on assets of certain owners, officers, and affiliated persons of the applicant (including sole proprietors and their spouses, partners and their spouses, and major shareholders or corporate officers and their spouses)~~.~~; or

~~B.~~ (3) a guarantee of owners, officers, and affiliated persons of the applicant (including sole proprietors and their spouses, partners and their spouses, and major shareholders or corporate officers and their spouses), or other related entities such as subsidiaries or parent corporations of the applicant~~.~~; or

~~E.~~ (4) additional forms of security, if necessary to strengthen the authority's collateral position on the financial assistance.

~~F.~~ D. In addition to or in substitution for any of the items A to E C, any guarantee or other collateral or security, as required by insurers ~~of~~ or other providers of collateral or security with respect to the bonds, other than the authority, or as required by the authority in accordance with generally accepted commercial lending practices. FF3S

8300.3023 [Emergency] DEBT SERVICE RESERVE FUND FOR SMALL BUSINESS DEVELOPMENT LOAN PROGRAM.

In conjunction with each amount of financial assistance it extends, the authority shall establish and fund a debt service reserve fund sufficient to cover approximately 12 months' debt service or such lesser amount to ensure the tax exempt status of interest on the bonds if such bonds are intended to be tax exempt. FF3T The reserve must be funded through the proceeds of the bonds to be issued and sold in conjunction with each particular amount of financial assistance extended. The interest earned on the debt service reserve fund must accrue to the benefit of the applicant except to the extent necessary to ensure the tax exempt status of the interest on the bonds if such bonds are intended to be tax exempt. FF3T This amount must be applied to offset the principal and interest payments on an annual basis or

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to redeem bonds prior to maturity provided the financial assistance is current. FF3T

8300.3024 [Emergency] FINAL RESOLUTION FOR SMALL BUSINESS DEVELOPMENT LOAN PROGRAM.

After the authority passes a preliminary resolution, the authority may pass a final resolution that authorizes the issuance and sale of bonds to fund the financial assistance to the applicant, both as discussed in part 8300.3014, subpart 10. The final resolution for an application under the program depends, in part, upon a determination that there are no adverse changes in the financial condition or key personnel of the applicant, market conditions, availability of bond issuance authority, and other ~~financial~~ conditions that the authority deems necessary in accordance with generally accepted commercial lending practices. FF3LL

Upon passage of the final resolution, the authority shall commence to issue bonds in accordance with market conditions and the other legal conditions that govern the issuance of its bonds and notes. This issuance must be in accordance with the contents of any insurance contracts, agreements with lenders providing letters of credit, or other forms of financial assistance and other terms and conditions necessary to effectuate a bond sale. Funds will not be disbursed at the loan closing until it has been determined by the commissioner that there are no adverse changes in the ~~financial~~ condition or key personnel of the business entity applying for the financial assistance in accordance with generally accepted commercial lending practices. FF3LL After the bonds are issued and sold, there will be a loan closing where the funds are transferred and documents are signed in accordance with the terms of the final resolution and the respective bond resolution.

MINNESOTA FUND LOANS

8300.3030 [Emergency] PURPOSE FOR MINNESOTA FUND LOANS.

The Minnesota Fund loan program issues business loans for fixed-asset financing for new and existing businesses. The

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

authority shall make business loans for fixed asset financing for new and existing businesses from the Minnesota Fund in compliance with the act, Minnesota Statutes, chapter 472, as now in effect, and as amended from time to time and parts 8300.3010 to 8300.3014 [Emergency] and 8300.3030 to 8300.3035 [Emergency]. Under the act, Minnesota Statutes, section 472.11, subdivision 8, the local unit of government must pass and file a resolution in support for the project which stipulates the project's economic benefits to the local community. FF3V

8300.3031 [Emergency] ELIGIBILITY OF PROJECT FOR MINNESOTA FUND LOANS.

An applicant for financial assistance from the Minnesota Fund established under Laws of Minnesota 1984, chapter ~~582~~ 583, section ~~12~~ 36, shall submit to the commissioner an application form approved by the authority. The amount applied for cannot exceed 20 percent of the eligible project costs. The applicant shall provide the commissioner with written verification that an amount at least equal to ten percent of the eligible project costs has been or will be committed by the applicant or local development agency to the project. The applicant shall provide the commissioner with a written commitment from the lender who provides the 70 percent financing. The project must meet the requirements of the act, Minnesota Statutes, chapter 472, as now in effect and as amended from time to time and parts 8300.3010 to 8300.3014 [Emergency] and 8300.3030 to 8300.3035 [Emergency]. If the money to be loaned is from a source other than the Minnesota Fund, then the eligibility criteria required by the source will be imposed.

8300.3032 [Emergency] ELIGIBLE PROJECT COSTS FOR MINNESOTA FUND LOANS.

Eligible project costs for financing by the authority include land or building acquisition, site preparation, building construction or improvement, and architectural engineering, equipment, and machinery.

8300.3033 [Emergency] INTEREST RATE FOR MINNESOTA FUND LOANS.

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

The interest rate of financial assistance from the Minnesota Fund is ~~five~~ three percentage points below a full faith and credit obligation of the United States government of comparable maturity, as of five working days before closing or the authority shall set interest rates at a negotiated rate after reviewing market rates and comparable sources of financing available to the applicant at the time the financial assistance is extended. FF3W

8300.3034 [Emergency] TERM OF FINANCIAL ASSISTANCE FOR MINNESOTA FUND LOANS.

The maximum term of financial assistance from the Minnesota Fund is 20 years. The term of financial assistance will not exceed the maximum useful life of the project financed.

8300.3035 [Emergency] SERVICING OF FINANCIAL ASSISTANCE FOR MINNESOTA FUND LOANS.

The commissioner shall monitor the repayment of the principal and interest as set out in the amortization schedule. The commissioner shall monitor the terms and conditions of the contract to the financial assistance.

The commissioner may restructure the financial assistance at the request of the applicant or upon his or her own initiative if the commissioner determines that restructuring the financial assistance will increase the probability that the financial assistance will be repaid to the state.

If the applicant requests the commissioner to restructure the financial assistance, the commissioner shall charge the applicant a fee in the amount of one-half percent on the outstanding principal amount of the financial assistance.

APPLICATION. Until their expiration, Minnesota Rules, parts 8300.3010 to 8300.3035 [Emergency] supercede the following permanent parts: 8300.1500, 8300.1600, 8300.1700, 8300.1800, 8300.1900, 8300.2100, and 8300.2200, whenever a conflict in meaning appears in parts 8300.0100 to 8300.2200 and parts 8300.3000 to 8300.3004 [Emergency]. For any project for which

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

an application for financial assistance has been submitted to the commissioner prior to the effective date of parts 8300.3010 to 8300.3035 [Emergency] need not comply with part 8300.3012 [Emergency], subparts 2 and 3.

FF3X ? does not read as a correct sentence

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

an application for financial assistance has been submitted to the commissioner prior to the effective date of parts 8300.3010 to 8300.3035 [Emergency], the application need not comply with part 8300.3012 [Emergency], subparts 2 and 3.

Replacement Page

RECEIVED BY THE REVISOR OF STATUTES OFFICE

APPROVED AS TO LEGALITY

December 20, 1984

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY _____
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
DEC 26 1984
Joan Anderson Growe
Secretary of State
10:55 A.M.

STATE OF MINNESOTA

MINNESOTA ENERGY AND ECONOMIC DEVELOPMENT AUTHORITY

In the Matter of the Proposed Adoption of Emergency Rules of the Minnesota Energy and Economic Development Application Procedures, Small Business Development Loans, Special Assistance and Amending the Adopted Rules governing Authority Procedures, Pollution Control Financial Assistance and Business Financial Assistance

ORDER ADOPTING EMERGENCY RULES

The above-entitled matter was published in the State Register on Monday, October 22, 1984, as a proposed emergency rule pursuant to Minnesota Statutes, §14.29 to §14.36. After affording interested and affected persons an opportunity to submit written data and news within 25 days of 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 Emergency Rules Governing loan application procedures, Small Business Development Loans, Special Assistance and amending the adopted rules governing authority procedures, pollution control financial assistance and business financial assistance parts 8300.3010 to 8300.3035 (Emergency) are adopted this 29th day of November, 1984, pursuant to the authority vested in the Authority by Minnesota Statutes, §116J.91, subdivision 4.

STATE OF MINNESOTA

Mark B. Dayton
Commissioner of Energy and Economic Development,
and Chairman of Minnesota Energy and Economic Development Authority

STATE OF MINNESOTA

MINNESOTA ENERGY AND ECONOMIC DEVELOPMENT AUTHORITY

In the Matter of the Proposed Adoption of Emergency Rules of the State of Minnesota Governing Loan Application Procedures, Small Business Development Loans, Minnesota Fund Loans, Special Assistance and Amending the Adopted Rules Governing Authority Procedures, Pollution Control Financial Assistance and Business Financial Assistance.

ORDER FOR PUBLICATION OF EMERGENCY RULES

IT IS ORDERED this 5th day of October, 1984 that the proposed emergency rules in the above-entitled matter be published in the State Register.

Mark B. Dayton, Commissioner
Department of Energy and Economic Development and
Chairman, Minnesota Energy and Economic Development Authority

MEEDA RESOLUTION NO. 84-168
MINNESOTA ENERGY AND ECONOMIC DEVELOPMENT AUTHORITY
STATE OF MINNESOTA
ST. PAUL, MINNESOTA

In the Matter of the Proposed Adoption of Emergency Rules Governing Loan Application Procedures, Small Business Development Loans, Minnesota Fund Loans, Special Assistance and Amending the Adopted Rules Governing Authority Procedures, Pollution Control Financial Assistance and Business Financial Assistance.

CERTIFICATE OF AUTHORITY'S AUTHORIZING RESOLUTION.

I. Lyn Burton, do hereby certify that I am a member and the Vice-Chairman of the Minnesota Energy and Economic Development Authority, 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 Minnesota Energy and Economic Development Authority duly and properly called and held on the 22nd day of August, 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 Mark Dayton, Chair, Lyn Burton, Vice Chair or David L. Printy, Secretary of the Minnesota Energy and Economic Development Authority, be and they hereby are granted the authority and directed to sign an Order of the Minnesota Energy and Economic Development Authority directing the publication in the State Register of proposed emergency rules governing loan application procedures, Small Business Development Loans, Minnesota Fund Loans, Special Assistance and Amending the adopted rules governing Authority Procedures, Pollution Control Financial Assistance and Business Financial Assistance as well as perform any and all acts incidental thereto.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 22nd day of August, 1984.

Lyn Burton

Lyn Burton, Vice-Chairman
Minnesota Energy and Economic
Development Authority

ATTEST: _____

Member

MINNESOTA ENERGY & ECONOMIC DEVELOPMENT AUTHORITY

Emergency Rules as Proposed (all new material) Governing Loan Application Procedures, Small Business Development Loans, Special Assistance and Amending the Adopted Rules Governing Authority Procedures, Pollution Control Financial Assistance and Business Financial Assistance

Notice is hereby given that the Minnesota Energy and Economic Development Authority is proposing to adopt emergency rules for loan application procedures, Small Business Development Loans, Minnesota Funds, Special Assistance and amending the adopted rules governing authority procedures, pollution control financial assistance and business financial assistance. The agency is authorized by Minnesota Statutes, section 116J.91, subdivision 4, to adopt emergency rules for its financial assistance programs.

All interested parties have 25 days from the day of publication of this notice in the State Register to submit written comments to the agency in support of or in opposition to the proposed emergency rules, and comments are encouraged. With publication of this notice in the October 22, 1984, State Register, written comments must be received by the agency no later than 4:30 p.m. on November 16, 1984. Written comments should be sent to:

Mary A. Callahan
Financial Management Division
Department of Energy & Economic Development
900 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
Telephone: 612/297-1543

Please be advised that the proposed emergency rules may be modified as a result of the comments received. Any written material received by the agency will become part of the record in this matter.

The proposed emergency rules with any modifications adopted by the agency, will be submitted to the Attorney General for review as to form and legality after close of the comment period. Persons wishing to be informed of the date of submission of the proposed emergency rules to the Attorney General should notify the agency of such desire at the address given above. The Attorney General has ten working days to approve or dissapprove the rules.

The emergency rules will be effective five working days following approval of the rules by the Attorney General. It is the agency's intent to keep the rules in effect for a period of 180 days, although the proposed emergency rules may be continued in effect for an additional period of up to 180 days if the agency publishes a separate notice to such effect in the State Register and mails the same notice to all persons on the agency's list to receive notice of rulemaking proceedings.

A full copy of the proposed emergency rules is available by contacting Ms. Callahan at the above address.

Dated: October 5, 1984

Mark B. Dayton, Commissioner of
the Department of Energy
& Economic Development &
Chairman of the Minnesota
Energy & Economic Development
Authority

In the Matter of the Proposed Adoption of Emergency Rules of the Minnesota Energy and Economic Development Authority Governing Loan Application Procedures, Small Business Development Loans, Minnesota Fund Loans, Special Assistance and Amending the Adopted Rules Governing Authority Procedures, Pollution Control Financial Assistance and Business Financial Assistance.

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) SS.
COUNTY OF RAMSEY)

Darlene Christenson, being first duly sworn deposes and says:

That on the 16th day of October, 1984, at the City of St. Paul, County of Ramsey, State of Minnesota, she served that attached Notice of Intent to Adopt 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 State of Minnesota for the purpose of receiving notice of the proposed adoption of rules by this Authority.

Darlene A. Christenson

Subscribed and sworn to before me this

16th day of October, 1984.

Richard B. Nadeau

RICHARD B. NADEAU
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Commission Expires Apr. 8, 1987

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Adoption of Emergency Rules of the Minnesota Energy and Economic Development Authority Governing Loan Application Procedures, Small Business Development Loans, Minnesota Fund Loans, Special Assistance and Amending the Adopted Rules Governing Authority Procedures, Pollution Control Financial Assistance and Business Financial Assistance

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minnesota Statutes, § 14.14, subdivision 1, that their names be placed on file with and maintained by the State of Minnesota for the purpose of receiving notice of the proposed adoption of rules by The Minnesota Energy and Economic Development Authority is accurate and complete as of 8:45 A.M., this 8th day of October, 1984.

Mary Anderson

Subp. 4. Final report. Within 60 days of the completion of the project, the school district shall submit to the authority, on forms provided by the authority, a final project status report and a financial status report that gives actual expenditures of the measures implemented.

Subp. 5. Annual energy report. The school district shall submit to the authority, on forms provided by the authority, an annual energy use and energy expenditure report by fuel type due each October 31 for the duration of the loan contract period, or for a minimum of three years after project completion if the loan is paid in less than three years, unless the authority cancels this requirement prior to the end of the loan contract period.

8300.2508 SCHOOL ENERGY LOAN PROGRAM EVALUATION.

The authority shall evaluate the program's effectiveness in reducing the energy cost of participating school districts 18 months after the effective date of these permanent rules and annually thereafter until all loan funds are issued. The school district shall provide the authority with information that is reasonably needed to conduct an evaluation of the loan program, which shall include but not be limited to the reports required in part 8300.2507.

8300.2509 CLOSURE OF SCHOOL ENERGY LOAN ACCOUNT.

If the authority determines that the project that was approved for loan funds has been implemented, it shall authorize closure of the loan account upon full repayment.

Minnesota Energy & Economic Development Authority

Emergency Proposed Rules Relating to General Procedures, Small Business Development Loan Program, and Minnesota Fund Loans

Notice is hereby given that the Minnesota Energy and Economic Development Authority is proposing to adopt emergency rules for loan application procedures, Small Business Development Loans, Minnesota Funds, Special Assistance and amending the adopted rules governing authority procedures, pollution control financial assistance and business financial assistance. The agency is authorized by Minnesota Statutes, section 116J.91, subdivision 4, to adopt emergency rules for its financial assistance programs.

All interested parties have 25 days from the day of publication of this notice in the *State Register* to submit written comments to the agency in support of or in opposition to the proposed emergency rules, and comments are encouraged. With publication of this notice in the October 22, 1984, *State Register*, written comments must be received by the agency no later than 4:30 p.m. on November 16, 1984. Written comments should be sent to:

Mary A. Callahan
Financial Management Division
Department of Energy & Economic Development
900 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
Telephone: 612/297-1543

Please be advised that the proposed emergency rules may be modified as a result of the comments received. Any written material received by the agency will become part of the record in this matter.

The proposed emergency rules with any modifications adopted by the agncy, will be submitted to the Attorney General for review as to form and legality after close of the comment period. Persons wishing to be informed of the date of submission of the proposed emergency rules to the Attorney General should notify the agency of such desire at the address given above. The Attorney General has ten working days to approve or disapprove the rules.

The emergency rules will be effective five working days following approval of the rules by the Attorney General. It is the agency's intent to keep the rules in effect for a period of 180 days, although the proposed emergency rules may be continued in effect for an additional period of up to 180 days if the agency publishes a separate notice to such effect in the *State Register* and mails the same notice to all persons on the agency's list to receive notice of rulemaking proceedings.

A full copy of the proposed emergency rules is available by contacting Ms. Callahan at the above address.

Dated: October 5, 1984

Mark B. Dayton, Commissioner of
the Department of Energy
& Economic Development &
Chairman of the Minnesota
Energy & Economic Development
Authority

Emergency Rules as Proposed (all new material)

8300.3010 [Emergency] SCOPE.

Parts 8300.3010 to 8300.3014 [Emergency] are general rules that apply to all applications for financial assistance made available by the authority under the act and Minnesota Statutes, chapter 472, as now in effect, and as amended from time to time. Parts 8300.3020 to 8300.3035 [Emergency] specify procedures and criteria for financial assistance from particular programs of the authority.

8300.3011 [Emergency] DEFINITIONS.

Subpart 1. Statutory terms. The definitions in Minnesota Statutes, sections 116J.88 and 472.03 and part 8300.0100 apply to parts 8300.3010 to 8300.3035 [Emergency].

Subp. 2. Project. "Project" means that which is funded or is proposed to be funded by financial assistance.

8300.3012 [Emergency] PROCEDURES FOR FINANCIAL ASSISTANCE APPLICATIONS.

Subpart 1. In general. To apply for assistance from the authority, an applicant shall submit an application form to the commissioner on a form provided by the commissioner. An application must be completed, dated, and signed by an owner, general partner, or an authorized officer of the applicant. The commissioner shall follow the procedures under part 8300.3014 [Emergency].

Subp. 2. Contents. An application must contain at a minimum the following information:

A. a written history of the business entity;

B. the source and use of funds to finance the project;

C. financial statements that include a balance sheet, an operating statement, a statement of the sources and uses of funds, and footnotes to the statements if available for the following time periods:

(1) Financial statements from the previous three years, if applicable. If unaudited, the statements must be signed by an authorized financial officer of the business making application.

(2) A current quarterly financial statement that was compiled within 90 days of the date the application was submitted, if quarterly financial statements are regularly prepared.

(3) Federal tax returns filed by the business for the previous three years if applicable, if the applicant is an individual or partnership.

(4) A proforma balance sheet and income statement for the 24 months following the financial assistance closing that shows the financial position of the applicant and that includes the proposed financing.

D. A marketing plan that describes:

(1) the industry the project is in;

(2) the industry outlook for the next three to five years; and

(3) the major characteristics of the industry, names, locations, products or services provided, duration and conditions of contracts in the plan, and the percentage of annual sales volume for each major customer over the previous three years.

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

E. Current resumes of key personnel and signed personal financial statements dated as of the date of the application for any person who owns 20 percent or more interest in the business.

F. A resolution of support or other comparable preliminary approval from the local government unit.

G. A statement of informed consent by the individual subject regarding the use and dissemination of the private data as provided in Minnesota Statutes, section 13.05, subdivision 4, paragraph (d). If the subject of the data is a corporation, then an authorized representative shall provide a statement of informed consent in a form similar to that provided in Minnesota Statutes, section 13.05, subdivision 4, paragraph (d).

H. Certification that the employer does not discriminate in employment.

I. Certification of business compliance with all federal, state, or local laws or regulations that affect the conduct of business in the state.

Subp. 3. Business plan. As part of the application, the applicant shall submit to the commissioner a comprehensive business plan. The business plan must include, but is not limited to, the following:

A. a management summary of the plan including:

(1) name of the business;

(2) business location and plan description;

(3) discussion of the product, market, and competition;

(4) expertise of management team;

(5) summary of financial projections;

(6) amount of financial assistance requested;

(7) form of and purpose for the financial assistance; and

(8) business goals;

B. a description of the company including the following:

(1) date and state of incorporation, date and state of formation of partnership, or date and state of formation of sole proprietorship;

(2) history of the company; and

(3) principals and the roles they played in the evolution of the company;

C. a market analysis including:

(1) description of the current industry status and industry trends;

(2) effects of major social, economic, technological, or regulatory trends on the industry;

(3) description of the total market, principal market participants, and their performance; and

(4) discussion of the target market and competition;

D. a description of the product or product line including:

(1) list of patents, copyrights, licenses, or statement of the proprietary interest in the product or product line;

(2) discussion of technical and legal considerations;

(3) comparisons to competitors' products or product lines; and

(4) description of research and development and future plans for research and development;

E. a description of the marketing strategy including:

(1) overall strategy;

(2) pricing policy;

(3) sales channels and terms;

(4) method of selling, distributing, and servicing product;

(5) estimated sales and market share; and

(6) advertising, public relations, and promotion;

F. the management plan including:

(1) form of business organization;

(2) board of directors composition, if applicable;

(3) officers organization chart and responsibilities; and

(4) resumes of key personnel;

G. an operating plan including:

(1) schedule of upcoming work for the next one to two years;

(2) facilities plan or planned capital improvements for the next three years;

(3) manufacturing processes; and

(4) staffing plan (number of employees);

H. a schedule indicating the completion dates for realizing the significant aspects of the business plan;

I. a discussion of the risks and problems inherent to the business plan, including both the negative factors and plans to minimize the impact of those factors; and

J. financial data including:

(1) a funding request indicating the desired financing, capitalization, use of funds, and future financing;

(2) financial statements for the past three years, if applicable;

(3) current financial statements;

(4) monthly cash flow financial projections including the proposed financing for two years; and

(5) projected balance sheets, income statement, and statement of changes in financial position for two years including the proposed financing.

8300.3013 [Emergency] COLLATERAL REQUIREMENTS AND ADDITIONAL INFORMATION OR CERTIFICATIONS.

Subpart 1. Collateral requirements. The authority shall require collateral in accordance with generally accepted commercial lending practices as it deems necessary to protect the interests of the authority in the financial assistance. At a minimum, the collateral will take one or more of the following forms:

A. mortgage on real property;

B. security position on personal property;

C. security of its financial assistance with assets being financed by the financial assistance and other assets of the company to protect the interests of the state's financial participation;

D. letter of credit or equivalent instrument;

E. guarantees of affiliates of the applicant;

F. guarantees of shareholders or partners who have 20 percent or more ownership in the applicant; and

G. bond insurance or other credit enhancements.

Subp. 2. Additional information or certifications. The following additional information is required by the authority, if applicable, prior to disbursing financial assistance and other information that the authority in its sole discretion deems advisable for prudent financial management of authority financial assistance:

A. a lease agreement on property or equipment;

B. a listing of collateral, including serial numbers for machinery and equipment that will serve as collateral to the financial assistance;

C. certification of insurance for workers' compensation and employer's liability;

D. a statement provided by the Internal Revenue Service of tax clearance;

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

E. an appraisal of collateral offered to the authority for the financial assistance; and

F. a certificate of the insurers of all collateral that insurance is in force and effect. Prior to expiration of any insurance policy, the applicant shall furnish the commissioner with evidence that the policy has been renewed, replaced, or is no longer required.

8300.3014 [Emergency] PROCEDURES FOR APPLICATION PROCESSING.

Subpart 1. Deadline for submission. The applicant shall submit a complete application to the commissioner by the first business day of any month in order for the authority to consider it in that month. If an application is received after the first of the month and can be reviewed by the commissioner for eligibility and financial feasibility prior to the authority agenda deadline, the authority may consider the application at the meeting in that month.

Subp. 2. Completed applications. An application is complete when the commissioner receives all required documentation and exhibits, together with the required fee.

Subp. 3. Incomplete applications. If an incomplete application is received, the commissioner shall notify the applicant of specific deficiencies in the application. The applicant has 60 days from the date of mailing of the commissioner's notification to complete the application. If the application is not completed and received by the commissioner within 60 days, the application is deemed to be rejected and the applicant shall reapply to be further considered.

Subp. 4. Review of eligibility of project and applicant. The commissioner shall review all completed applications to determine if the project and the applicant are eligible and meet the requirements of the act and any of parts 8300.3010 to 8300.3014 [Emergency] and any parts relating to the financial assistance for which the applicant has applied.

If the project and applicant are eligible, the commissioner shall review the application for economic feasibility as provided in subpart 6.

Subp. 5. Ineligible project or applicant. The commissioner shall notify the applicant in writing if the applicant or the project is ineligible. The applicant has 30 days from the date of the commissioner's notification to amend the application.

Upon receipt of an amended application, the commissioner shall review the amended application under subpart 4. The commissioner shall reject the amended application if the project and applicant are ineligible. If the project and applicant are eligible, the commissioner shall review the amended application for economic feasibility under subpart 6.

If the application is not amended within 30 days, the application must be rejected and will not receive any further consideration.

Subp. 6. Economic feasibility review. The commissioner shall review the application in accordance with generally accepted commercial lending practices, including the use of the standards as printed in the most current annually updated version of the Annual Statement Studies, issued by Robert Morris Associates, Philadelphia, PA.

The commissioner shall obtain any other credit information when available from private credit rating agencies including, but not limited to, Standard & Poors and Dun & Bradstreet. In accordance with generally accepted commercial lending practices, the commissioner may check personal references.

The commissioner shall determine if the applicant can generate sufficient cash flow and maintain a sound financial condition.

The commissioner shall determine if there is sufficient collateral for the financial assistance.

Subp. 7. Rejection of application based on economic feasibility. The commissioner shall notify the applicant in writing if the application is not economically feasible and the application is rejected.

If the application is rejected due to economic feasibility, the applicant may, within 30 days after written notification by the commissioner, request that the commissioner submit the rejected application to the authority for review at the next regularly scheduled meeting of the authority for which the agenda has not been established.

If the authority approves the application at its board meeting, the application will be treated in accordance with subpart 9.

Subp. 8. Findings of public purpose for small business and business loans. In addition to the economic feasibility review in subpart 6, the applicant must certify that the project assists in fulfilling the purposes of the act, including the applicable preferences and priorities in Minnesota Statutes, section 116J.89, including, but not limited to one or more of the following criteria:

A. The applicant is located in an area of the state that is experiencing one of the most severe unemployment rates in the state.

B. The applicant is located in a border community that experiences a competitive disadvantage due to location and with this financial assistance the applicant would be induced to stay in Minnesota rather than to move to another state.

C. The applicant is likely to expand within the state and to create additional taxable property to local units of government.

D. This financial assistance will help induce the applicant to locate in an area of economic distress or to provide jobs that would not otherwise be available to that area without the inducement of this financial assistance.

E. This financial assistance will create or maintain sufficient numbers and types of jobs to justify participation in the financial assistance programs.

F. Energy sources and public facilities will be sufficient to support the successful operation of the project.

G. If the financial assistance shall have the effect of a transfer of employment from one area of the state to another, the authority shall determine that the project is economically advantageous to the state or that the project is necessary to the continued operation of the business enterprise within the state.

Subp. 9. Authority evaluation procedure. Applications approved for processing by the commissioner must be presented to the authority for approval or disapproval. if the authority disapproves the application, the commissioner shall so notify the applicant. If the authority approves the financial assistance, it shall pass a preliminary or a final resolution giving approval to the project to be financed and stating the name of the owner, a brief description of the project, the maximum amount of the financial assistance, and other provisions as the authority in its sole discretion deems advisable for prudent financial management of authority financial assistance. The commissioner shall notify the applicant of the authority's approval and provide the applicant with a copy of the resolution passed. If the financial assistance is funded by bonds, then passage of a preliminary and a final resolution as provided in subpart 10 are required before financial assistance is approved. Throughout this process if the authority does not extend financial assistance, the authority shall remain without liability to the applicant.

Subp. 10. Funding of financial assistance by bonds. If the authority intends to fund the financial assistance by issuing bonds, the authority shall first pass a preliminary resolution. The preliminary resolution must not obligate the authority to issue bonds or to fund financial assistance, but must only constitute an expression of current intention of the authority to issue bonds or to fund the financial assistance. If the authority subsequently determines that there are no adverse changes in the financial conditions or key personnel of the applicant, market conditions, availability of bond issuance authority, and other financial conditions that the authority deems necessary and the authority decides to fund the financial assistance, the authority shall pass a final resolution that authorizes the issuance and sale of bonds to fund the financial assistance. The final resolution must specify the terms and conditions under which bonds will be issued. The preliminary resolution may contain a time limit with respect to the issuance of the bonds, may be revoked or amended by the authority at any time prior to the final resolution of the authority without liability to the authority, and may impose any conditions or requirements that the authority deems desirable. The commissioner shall notify the applicant of the authority's approval and provide the applicant with a copy of the resolution passed. Throughout this process, if the authority does not extend financial assistance, the authority shall remain without liability to the applicant.

Subp. 11. Preparation of documents. The commissioner has the authority and responsibility to prepare or cause to be prepared all necessary documents and to execute them on behalf of the authority.

SMALL BUSINESS DEVELOPMENT LOAN PROGRAM

8300.3020 [Emergency] PURPOSE OF SMALL BUSINESS DEVELOPMENT LOAN PROGRAM.

The small business development loan program issues financial assistance in a form involving a guarantee or insurance from the economic development fund or any account thereof and revenue bonds to finance small business loans.

8300.3021 [Emergency] ELIGIBLE APPLICANTS FOR SMALL BUSINESS DEVELOPMENT LOAN PROGRAM.

Persons, partnerships, firms, or corporations engaged in and determined by the authority to constitute a small business as defined in the regulations of the United States Small Business Administration, Code of Federal Regulations, title 13, part 121, are considered eligible small businesses or eligible applicants.

8300.3022 [Emergency] ELIGIBLE LOANS FOR SMALL BUSINESS DEVELOPMENT LOAN PROGRAM.

Subpart 1. In general. The authority shall make small business loans to applicants in compliance with the act and parts 8300.3010 to 8300.3024 [Emergency] in order to help create or retain jobs for the state.

Subp. 2. Purpose of loan. A small business loan must be used to provide interim or long-term financing for certain capital

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expenditures as provided in the act, and for expenditures that meet the requirements of federal industrial development bond laws, including:

A. acquisition costs of land, buildings, or both;

B. site preparation;

C. construction costs;

D. engineering costs;

E. costs of equipment, machinery, or both;

F. bond issuance costs;

G. underwriting or placement fees;

H. trustee's fees;

I. fee of guarantor, insurer, or financial institution, other than the authority, who provides letters of credit, surety bonds, or equivalent security;

J. authority fees, including application and guaranty fees of the authority and administrative costs and expenses;

K. certain contingency costs;

L. interest costs during construction;

M. legal fees, including those of the authority's bond counsel; and

N. debt service reserve fund.

Working capital loans are not eligible for financial assistance under this loan program.

Subp. 3. Size of eligible loans. The principal amount of any financial assistance to be financed by the authority may be greater than $250,000, but may not exceed the maximum amount permitted to be loaned to an eligible small business as defined in the act for the total value of eligible items listed in subpart 2.

Subp. 4. Equity requirements. The maximum loan percentage of the project costs for equipment is 75 percent and for all other authorized expenses is 80 percent. The authority may require a lower loan to project percentage based upon the economic feasibility of the application. The authority may accept letters of credit or other credit enhancements as part of the equity contribution by the applicant.

Subp. 5. Maximum term. The maximum term of a small business development loan may not exceed the average useful life of the real property, or 80 percent of the useful life of the equipment or machinery, or the following limits, whichever is less:

A. real property, land or buildings, 21 years;

B. equipment or machinery, 11 years;

C. combination of items A and B, weighted average.

Subp. 6. Interest rate. The authority shall set interest rates at a negotiated rate that approximates the market rate of interest for securities of equivalent value at the time the bonds are initially sold.

Subp. 7. Security requirements. Financial assistance, either for real property or equipment, must be secured as follows:

A. A mortgage or other adequate security as determined by the authority on the real property to be financed.

B. A lien or other adequate security as determined by the authority on equipment to be financed by the authority.

C. Other security as determined by the commissioner to have a value at least equal to the principal amount to be financed by the authority less the value, as determined by the authority, of the security provided in items A and B, which other security shall be in form and kind satisfactory to the authority and may consist of some or all of the following:

(1) a senior, junior, or parity lien on other assets of the applicant; or

(2) a senior, junior, or parity lien on assets of certain owners, officers, and affiliated persons of the applicant (including sole proprietors and their spouses, partners and their spouses, and major shareholders or corporate officers and their spouses).

D. A guarantee of owners, officers, and affiliated persons of the applicant (including sole proprietors and their spouses, partners and their spouses, and major shareholders or corporate officers and their spouses), or other related entities such as subsidiaries or parent corporations of the applicant.

E. Additional forms of security, if necessary to strengthen the authority's collateral position on the financial assistance.

F. In addition to or in substitution for any of the items A to E, any guarantee as required by insurers of the bonds, other than the authority.

8300.3023 [Emergency] DEBT SERVICE RESERVE FUND FOR SMALL BUSINESS DEVELOPMENT LOAN PROGRAM.

In conjunction with each amount of financial assistance it extends, the authority shall establish and fund a debt service reserve fund sufficient to cover approximately 12 months' debt service. The reserve must be funded through the proceeds of the bonds to be issued and sold in conjunction with each particular amount of financial assistance extended. The interest earned on the debt service reserve fund must accrue to the benefit of the applicant. This amount must be applied to offset the principal and interest payments on an annual basis provided the financial assistance is current.

8300.3024 [Emergency] FINAL RESOLUTION FOR SMALL BUSINESS DEVELOPMENT LOAN PROGRAM.

After the authority passes a preliminary resolution, the authority may pass a final resolution that authorizes the issuance and sale of bonds to fund the financial assistance to the applicant, both as discussed in part 8300.3014, subpart 10. The final resolution for an application under the program depends, in part, upon a determination that there are no adverse changes in the financial condition or key personnel of the applicant, market conditions, availability of bond issuance authority, and other financial conditions that the authority deems necessary.

Upon passage of the final resolution the authority shall commence to issue bonds in accordance with market conditions and the other legal conditions that govern the issuance of its bonds and notes. This issuance must be in accordance with the contents of any insurance contracts, agreements with lenders providing letters of credit, or other forms of financial assistance and other terms and conditions necessary to effectuate a bond sale. Funds will not be disbursed at the loan closing until it has been determined by the commissioner that there are no adverse changes in the financial condition or key personnel of the business entity applying for the financial assistance. After the bonds are issued and sold, there will be a loan closing where the funds are transferred and documents are signed in accordance with the terms of the final resolution and the respective bond resolution.

MINNESOTA FUND LOANS

8300.3030 [Emergency] PURPOSE FOR MINNESOTA FUND LOANS.

The Minnesota Fund loan program issues business loans for fixed-asset financing for new and existing businesses. The authority shall make business loans for fixed asset financing for new and existing businesses from the Minnesota Fund in compliance with the act, Minnesota Statutes, chapter 472, as now in effect, and as amended from time to time and parts 8300.3010 to 8300.3014 [Emergency] and 8300.3030 to 8300.3035 [Emergency].

8300.3031 [Emergency] ELIGIBILITY OF PROJECT FOR MINNESOTA FUND LOANS.

An applicant for financial assistance from the Minnesota Fund established under Laws of Minnesota 1984, chapter 582, section 12, shall submit to the commissioner an application form approved by the authority. The amount applied for cannot exceed 20 percent of the eligible project costs. The applicant shall provide the commissioner with written verification that an amount at least equal to ten percent of the eligible project costs has been or will be committed by the applicant or local development agency to the project. The applicant shall provide the commissioner with a written commitment from the lender who provides the 70 percent financing. The project must meet the requirements of the act, Minnesota Statutes, chapter 472, as now in effect and as amended from time to time and parts 8300.3010 to 8300.3014 [Emergency] and 8300.3030 to 8300.3035 [Emergency]. If the money to be loaned is from a source other than the Minnesota Fund, then the eligibility criteria required by the source will be imposed.

8300.3032 [Emergency] ELIGIBLE PROJECT COSTS FOR MINNESOTA FUND LOANS.

Eligible project costs for financing by the authority include land or building acquisition, site preparation, building construction or improvement, and architectural engineering, equipment, and machinery.

8300.3033 [Emergency] INTEREST RATE FOR MINNESOTA FUND LOANS.

The interest rate of financial assistance from the Minnesota Fund is five percent points below a full faith and credit obligation of the United States government of comparable maturity, as of five working days before closing.

8300.3034 [Emergency] TERM OF FINANCIAL ASSISTANCE FOR MINNESOTA FUND LOANS.

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The maximum term of financial assistance from the Minnesota Fund is 20 years. The term of financial assistance will not exceed the maximum useful life of the project financed.

8300.3035 [Emergency] SERVICING OF FINANCIAL ASSISTANCE FOR MINNESOTA FUND LOANS.

The commissioner shall monitor the repayment of the principal and interest as set out in the amortization schedule. The commissioner shall monitor the terms and conditions of the contract to the financial assistance.

The commissioner may restructure the financial assistance at the request of the applicant or upon his or her own initiative if the commissioner determines that restructuring the financial assistance will increase the probability that the financial assistance will be repaid to the state.

If the applicant requests the commissioner to restructure the financial assistance, the commissioner shall charge the applicant a fee in the amount of one-half percent on the outstanding principal amount of the financial assistance.

APPLICATION. Until their expiration, Minnesota Rules, parts 8300.3010 to 8300.3035 [Emergency] supercede the following permanent parts: 8300.1500, 8300.1600, 8300.1700, 8300.1800, 8300.1900, 8300.2100, and 8300.2200, whenever a conflict in meaning appears in parts 8300.0100 to 8300.2200 and parts 8300.3000 to 8300.3004 [Emergency].

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.14-14.28 have been met and five working days after the rule is published in *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

An emergency rule becomes effective five working days after the approval of the Attorney General as specified in Minn. Stat. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted emergency rule will be published in the manner provided for adopted rules under § 14.18.

State Board of Education
Department of Education—Operations Division

Adopted Rules Governing Automobile and Motorcycle Driver Education Programs

The rules proposed and published at *State Register*, Volume 9, Number 3, pages 168-173, July 16, 1984 (9 S.R. 168) are adopted as proposed.

Department of Health
Office of Health Systems Development

Republishing of Rules Governing Health Care Costs Information Requirements

Minnesota Laws 1984, Chapter 534 amended Minn. Stat. 1982 § 144.695 to 144.703, changing the central purpose of the Minnesota Hospital Rate Review System. In keeping with the statutory changes, certain portions of the rules adopted under sections 144.695 to 144.703 were repealed. See Minnesota Laws 1984, Chapter 534, Section 11. This section also directed the commissioner of health to publish in the *State Register* rules already adopted under sections 144.695 to 144.703 which have not been repealed. These rules are published below. The rule parts have been renumbered for clarity.

Throughout the rules, the term "Minnesota health care cost information system" replaces "Minnesota hospital rate review system," and the term "voluntary nonprofit reporting organization" replaces the term "voluntary nonprofit rate review organization." The term "facility" replaces the term "hospital" where appropriate. Definitions of certain terms previously contained in parts of the rule which are repealed now appear in part 4650.0102 (Definitions). These changes conform to the changes made in the statute.

STATE OF MINNESOTA
Minnesota Energy and Economic Development Authority

In the Matter of the Proposal
Adoption of Emergency Rules of
the Minnesota Energy and Economic
Development Authority Governing
Loan Application Procedures,
Small Business Development Loans
Special Assistance and Amending
the Adopted Rules Governing
Authority Procedures, Pollution
Control Financial Assistance and
Business Financial Assistance

FINDINGS OF FACT
AND CONCLUSIONS

Notice of Intent to Adopt Rules without a Public Hearing regarding the above entitled matter was published in the State Register on October 22, 1984, and was mailed to all persons who had registered their names with the Authority or the Department of Energy and Economic Development. The Notice offered interested parties 30 days in which to submit comments to the Authority, to request a public hearing on the proposed rules or to request notification of the submission of final rules to the Attorney General.

The Authority received three comments during that period. The Authority received no requests for a public hearing or for notification of the submission of the final rules to the Attorney General.

After affording interested parties an opportunity to submit comments and to request a public hearing on the proposed rules, and having received the sets of comments, the Authority makes the following:

1. The Authority received a letter with comments from Mr. Marshall Weems, Assistant Business Developer of the City of Duluth

   The response to his comments is that these loans were not intended to be seed capital but long term fixed asset financing and consequently, the restrictions are necessary in order to protect the State's investment.

2. The Authority received comments from Mr. Richard Johnson, Vice President of Piper, Jaffray, and Hopwood of Minneapolis.

   The Authority is proposing the following modifications to the Rules in response to his comments.

   A. Part 8300.3012, subpart 2, paragraph (D), clause 1, will be changed to read "the industry the applicant is in;". We agree that the marketing plan should be for the business entity making application and not just for the proposed project. The term applicant is used because it is defined in the rules.

B. Part 8300.3012, subpart 2, paragraph (D), clause 3, will be modified and broken down into three clauses. We agreed that clause 3 combined different ideas that were lumped together and therefore were confusing. The clauses read as follows:

"(3) the major characteristics of the industry, names, locations, products or services provided;

(4) the duration and conditions of the applicant's contracts currently in place; and

(5) the percentage of annual sales volume for each major customer over the previous three years." p.2

C. Part 8300.3013, subpart 2, will be changed to correct the grammar from "in it sole discretion" to "in its sole discretion." p.6

D. Part 8300.3014, subpart 2, the reference to the required fee will be dropped rather than adding the clause "if applicable." We agree with your position that since the Authority does not collect application fees there should not be mention of one. The sentence will read as follows: Application is complete when the Commissioner receives all required documentation and exhibits." p.7

3. The Authority received comments from Jeff Nemecek of Lindquist and Vennum of Minneapolis and the Authority makes the following changes:

A. Part 8300.3011, subpart 2 should be amended. The definition of project has been changed from "°Project' means that which is funded or is proposed to be funded or secured by financial assistance." This is a technical change that is consistent with the definition of financial assistance - involving loan guarantees and loan insurance as well as direct loans. p.1

B. Part 8300.3012, subpart 2, clause A, should be changed from "a written history of the business entity" to "a written history of the business." This deletion is technical in nature. First of all, business entity is duplicative language. Second, business is a defined term, whereas business entity is not. p.1

C. Part 8300.3012, subpart 2, paragraph D, clause a, should be changed from "the industry the project is in" to "the industry the the applicant is in". This paragraph outlines what is to be included in the marketing plan an applicant needs to submit as part of an application to the Authority. The intent of the plan is to make a determination using this information concerning the future operating success of the applicant's business operations.

D. Part 8300.3012, subpart 2, paragraph D. clauses 2 to 5 should be changed in order to separate different ideas that were together in the proposed rules. The different format provides clarity for the reader. These clauses should be amended to read as follows:

"(2) The industry outlook for the next three to five years;
(3) The major characteristics of the industry, names, locations products or services provided;
(4) The duration and conditions of the applicant's contracts currently in place; and
(5) The percentage of annual sales volume for each major customer over the previous three years."

D. Part 8300.3012, subpart 2, clause F, should be modified and clarified by adding the following language: "with respect to the project to be financed or secured with financial assistance." p.3

E. Part 8300.3012, subpart 2, clause H should be modified to require the certification as to discrimination in employment. The clause should be amended to read as follows:

"H. Certification that the employer does not discriminate in employment in a manner contrary to applicable federal or state laws and regulations."

F. Part 8300.3012, subpart 3, paragraph A, clauses (7) and (8) should be changed and expanded to clauses (F) through (9). They formerly read as "(F) form of and purpose for the financial assistance; and (8) business goals;" They should be amended to read as follows:

"(7) form of and purpose for the financial assistance;
(8) purpose for undertaking the project; and
(9) business goals;" p.3

The original intent was to find out how the financial assistance would be used, what form the applicant requested and why the applicant wanted to build or undertake the project. It was an oversight that the specific request for the purpose of the project was not included earlier.

G. Part 8300.3013, subpart 1, clauses E through G should be changed and expanded. The purpose for the expansion is technical in nature so that these rules are consistent with the underlying bond documents drawn up by the agency's bond counsel for the Authority°s bond program. In addition, the rules should reflect the operation of the programs and the Authority does accept assurances as well as guarantees by affiliates, other parties, shareholders and partners, as well as assignments of leases or rents in addition to the other forms of security used as collateral for financial assistance. These clauses did read

as "E. guarantees of affiliates of the applicant; F. guarantees of shareholders or partners who have 20 percent or more ownership in the applicant; and G. Bond insurance or other credit enhancements.

These clauses should be modified as follows:

"E. guarantees or other assurances of repayment of affiliates of the applicant of other interested parties with respect thereto;

F. guarantees or other assurances of repayment of shareholders or partners who have 20 percent or more ownership in the applicant;

G. bond insurance or other credit enhancements; and

H. assignments of leases or rents on property or equipment." p.6

H. Part 8300.3013, subpart 2, should be corrected to read "in its sole discretion". The "s" had been inadvertently left off the word "its". p.6

I. Part 8300.3014, subpart 2, should be amended to read as follows:

"An application is complete when the Commissioner receives all required documentation and exhibits".

The clause "together with the required fee" should be deleted because the Authority does not collect an application fee. p.7

J. In Part 8300.3014, subpart 5, paragraph 2, the second sentence had an incorrect conjunction "and" which has been changed to "or." This is a technical change needed because either a project or an applicant can be rejected as being ineligible for a particular program. The error was typographical in nature. p.7

K. Part 8300.3014,subpart 6, paragraph 4 should be amended. It originally read as follows: "The Commission shall determine if there is sufficient collateral for the financial assistance." This paragraph should be modified by an addition of one sentence as follows: "The submission of the application by the Commissioner to the Authority at a board meeting shall be deemed conclusive evidence that the Commissioner made the determinations required pursuant to the subpart." p.8

This amendment clarifies and actually states that which was implied before.

L. Part 8300.3014, subpart 7 should be amended to read "If so submitted, the Authority must evaluate the application at its board meeting, the application will be treated in accordance with subpart 9.". The intent of this paragraph is to tell readers of the rules that if the Commissioner approves an application for processing it is submitted to the Authority for approval or disapproval. The reference to subpart 9 directs readers to the subpart entitled "Authority evaluation procedure." Before this change the sentence said that if the Authority approves an application it will be presented to the Authority for approval or disapproval which is procedurally incorrect.

M. Part 8300.3014, subpart 8, paragraph G should be modified slightly by the deletion of the phrase "the Authority shall determine." The Commissioner is asking the applicant to certify as to the public purpose of the proposed project. *The Commissioner does not have the resources to take it upon him or herself to make independent determinations for all financial assistance applicants.

N. Part 8300.3014, subpart 9 should be amended. The third sentence should be changed in order to clarify the intent of this sentence and be more specific in the language. The sentence should read as follows:

"If the Authority approves the financial assistance, it shall pass a preliminary or a final resolution giving approval to the project to be financed and stating in either the preliminary or final resolution or combination of both the name of the owner; a brief description of the projects; the maximum amount of bonds to be issued or the maximum amount of the loan to be made or the maximum amount of the loan to be guaranteed or insured, whichever is applicable . . ."

O. Part 8300.3014, subpart 10, the third sentence should be modified. The sentence as modified includes a standard by which the Authority will make its determinations. In addition, a technical change was made because the Authority needs to consider all of the conditions of an applicant and not just financial conditions when extending financial assistance. This was the original intent of this sentence. The amended sentence now reads as follows:

". . . adverse changes in the financial conditions or key personnel of the applicant and other condition that the Authority deems necessary and the Authority decides in accordance with generally accepted commercial lending practices to fund the financial assistance, . . ."

P. Part 8300.3022, subpart 3, should be modified because the size of the loan under this program includes the transaction costs incurred when issuing bonds in addition to the actual loan amount for the project. The addition to clarify this point is "any financial assistance in the form of bonds to be financed." p.12

Q. Part 8300.3022, subpart 4 should be modified in order to make what is actually being practiced under this program consistent with the rules for the program. The program does not require that equity be contributed as an injection into the financial assistance; however, an equity contribution is an option for the applicant. The requirement is really a collateralization requirement; therefore, the following sentence should be added:

"Instead of an equity contribution, the Authority shall accept adequate collateral to serve as an equity requirement which if contributed to the financial assistance would make the maximum 1 percentage of the project costs for the equipment equal 75 percent and for all other authorized expenses equal 80 percent." p.13

R. Part 8300.3022, subpart 7, should be modified to clarify the real security requirements of the program. The original introduction required all of the listed security which was an error. The Authority statute requires the best available security for its financial assistance and that security can take various forms. The first sentence should be amended to reflect this requirement as follows:

". . . must be secured with the best available security including one or more of the following:" p.13

S. Part 8300.3022, subpart 7, clauses C through F should be renumbered in order to clarify how we intended this section to read. The modifications are needed so that the clauses are consistent with the rest of the rules. The clauses should read as follows:

"C. Other security as determined by the Commissioner to have a value at least equal to the principal amount to be financed by the Authority less the value, as determined by the Authority, of the security provided in items A and B, if any. Such other security shall be in form and kind satisfactory to the Authority and may consist of some or all of the following: p.13

(1) a senior, junior, or parity lien on other assets of the applicant; or
(2) a senior, junior, or parity lien on assets of certain owners, officers, and affiliated persons of the applicant (including sole proprietors and their spouses, partners and their spouses, and major shareholders or corporate officers

and their spouses); or
(3) A guarantee of owners, officers, and affiliated persons of the applicant (including sole proprietors and their spouses, partners and their spouses, and major shareholders or corporate officers and their spouses), or other related entitles such as subsidiaries or parent corporations of the applicant.
(4) Additional forms of security, if necessary to strengthen the Authority's collateral position on the financial assistance.

D. In addition to or in substitution for any of the items A to C any guarantee or other credit enhancement as required by insurers or other providers of credit enhancements with respect to the bonds, other than the Authority, or other form of collateral or security, as required by the Authority in accordance with generally accepted commercial lending practices." p.14

T. Part 8300.3023 should be modified to make the rules consistent with the bond documents of the program. Two clauses which are essentially the same have been added which provide that the debt service reserve fund not exceed the limit under the federal code governing tax exempt financing in order to insure the tax exempt status of the Authority's bonds. The third change is technical and was originally intended to be included in this section. This change makes these rules consistent with the underlying bond documents.

The end of the first sentence should be amended to read:
. . . approximately 12 months' debt services or such lesser amount to insure the tax exempt status of interest on the bonds, if such bonds are intended to be tax exempt." p.14

The end of the second sentence should be amended to read:
". . . benefit of the applicant except to the extent necessary to insure the tax exempt status of the interest on the bonds, if such bonds are intended to be tax exempt." p.14

The middle of the last sentence should be amended to read:
". . . annual basis or to redeem bonds prior to maturity provided . . ."

U. Part 8300.3024, paragraphs 1 and 2 should be modified to include a standard by which the Authority will make its determinations of whether the condition of the applicant has changed. The condition of the company is broader than just the financial condition of the company. The change to reflect this was to clarify what we intended the determination to encompass. The last sentence of paragraph 1 should be modified as follows:

". . . and other conditions that the Authority deems necessary in accordance with generally accepted commercial lending practices." The second to last sentence of paragraph 2 should be amended to read as follows:

"in the condition or key personnel of the business entity applying for financial assistance in accordance with generally accepted commercial lending practices."

V. Part 8300.3030 should be amended by adding a sentence at the end of the paragraph. The paragraph states that an applicant must comply with the statute governing the ARA loans, which have been renamed the Minnesota Fund, and the general application rules. Except in the general application rules a resolution of support or other comparable form of support is requested as part of the application. However, the statute requires a resolution of support for the Minnesota Fund; therefore, some other indication of support is unacceptable. The following sentence has been added to reflect this requirement:

"Under the act, Minnesota Statutes, Section 472.11, subdivision 8, the local unit of government must pass and file a resolution in support for the project which stipulates the project's economic benefits to the local community."

W. Part 8300.3033 should be changed in order to maintain the flexibility that currently exists under the adopted rules of the Authority with regard to interest rates. The interest rate has been changed from "five" to "three". This modification reflects the rates that the Authority have been giving to applicants as does the addition of discretion so that the Authority can examine applications on a case by case basis and negotiate some other rate of circumstances warrant the change. The addition reads as follows:

". . . or the Authority shall set interest rates at a negotiated rate after reviewing market rates and comparable services of financing available to the applicant at the time the financial assistance is extended."

X. The application section should be amended to include an effective date for applicants to comply with the form and application procedures of these rules. This effective date is to avoid having to redo the applications that are submitted under the existing rules of the Authority once these rules become effective The added sentence is:

"For any project for which an application for financial assistance has been submitted to the Commissioner prior to the effective date of Parts 8300.3010 to 7300.3035 (Emergency) need not comply with Part 8300.3012 (Emergency), subparts 2 and 3."

Conclusions

1. The Authority gave proper notice of its intent to adopt the proposed rules.

2. The Authority has fulfilled the procedural requirements of Chapter 14, and all other procedural requirements of law or rule.

3. The Authority has statutory authority to adopt the proposed rules and has fulfilled all other substantive requirements of the law or rule within the meaning of the Administrative Procedures Act.

4. The Authority has determined that the amendments do not constitute a substantial change from the rules as originally proposed and published in the State Register.

Mark B. Dayton
Commissioner of Energy and
Economic Development, and
Chairman, Minnesota Energy
Economic Development
Authority

MEEDA RESOLUTION NO. 84-242
MINNESOTA ENERGY AND ECONOMIC DEVELOPMENT AUTHORITY
STATE OF MINNESOTA
ST. PAUL, MINNESOTA

In the Matter of the Proposed Adoption of Emergency Rules of the Minnesota Energy and Economic Development Authority Governing Loan Application Procedures, Small Business Development Loans, Special Assistance and Amending the Adopted Rules Governing Authority Procedures, Pollution Control Financial Assistance and Business Financial Assistance

CERTIFICATE OF AUTHORITY'S RESOLUTION ADOPTING RULES

I, MARK B. DAYTON, do hereby certify that I am a member and the Chairman of the Minnesota Energy and Economic Development Authority, an Authority 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 Minnesota Energy and Economic Development Authority, duly and properly called and held on the 28th 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 rules relating to the Loan Application Procedures, Small Business Development Loans, Special Assistance and Amending the Adopted Rules Governing Authority Procedures, Pollution Control Financial Assistance and Business Financial Assistance be and they hereby are approved and adopted, pursuant to authority vested in me by Minnesota Statutes, Section 116J.91, Subdivision 4, and that Mark B. Dayton, the Chairman of the Minnesota Energy and Economic Development Authority, Lyn Burton, Vice Chair or David Printy, Secretary, be and hereby are authorized to sign an order adopting these rules and further are 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 28th day of November, 1984.

Mark B. Dayton, Chairman and Commissioner of Energy and Economic Development

Attest: _____
Member

STATE OF MINNESOTA

MINNESOTA ENERGY AND ECONOMIC DEVELOPMENT AUTHORITY

In the Matter of the Proposed Adoption of Emergency Rules of the Minnesota Energy and Economic Development Authority Governing Loan Application Procedures, Small Business Development Loans, Special Assistance and Amending the Adopted Rules Governing Authority Procedures, Pollution Control Financial Assistance and Business Financial Assistance

STATEMENT OF COMPLIANCE

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

Dated: 12-6-84

Christie B. Eller

Christie B. Eller
Special Assistant Attorney General