

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1139

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 3-15-85
DATE FOR REVIEW
DATE DUE 3-29-85

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

Approved March 29, 1985 (CDS) Disapproved Returned to Agency

Resubmitted Due
Approved Disapproved Returned to Agency

Date filed w/Secretary of State 4-1-85 Revisor approved 3.18.85 disapproved

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✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 2.27.85 Date out-of-date citation to statutory authority

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
1.11.85 At least ~~30~~ 25 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
✓ 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

Statement of Need and Reasonableness

✓ Petition for Adoption of a Rule

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

✓ Certificate of Compliance w/Rulemaking Procedures

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

✓ Notice of Submission to the Attorney General

MINNESOTA
Department of Energy
and Economic Development

Governor's Office of Science and Technology
(612) 297-4368

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

RECEIVED
MAR 15 1985
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

March 7, 1985

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

RE: Proposed Emergency Rules Governing the Technology Product Loan Program

Dear Ms. Wehrwein:

Enclosed is 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 Authorizing 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
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

Please note that the proposed emergency rules were originally published on January 7, 1984 prior to the Authority's adoption of the Authorizing Resolution for Emergency Rules. The proposed rules were published again on January 14, 1985 after the Authority adopted the Authorizing Resolution on January 10, 1985.

No requests were received for a public hearing during the 25-day comment period; however, three letters were received commenting on the proposed rules. The original letters containing the comments along with a copy of our responses are enclosed.

The agency made a number of editorial and clarification changes to the proposed emergency rules as outlined in the Findings of Fact and Conclusions. These changes do not, in our view, affect the substance or scope of the proposed rules but are modifications made to clarify the language of the rules. These rules were 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 the documents would be appreciated. Should you have any questions, please call Tom Pursell at 296-~~9200~~ 2921.

Sincerely yours,

Rosemary T. Fruehling

Rosemary T. Fruehling, Director
Office of Software Technology Development

bh

enclosures

cc: Deena B. Allen
Ed Meyer

To: Larry
Date: 3.20.85
Re: DEED — Technology Product Investment Program

Rules as Adopted

p. 2 line 3 line 16 . 4101, subpt 8 and subpt. 11

These sections contain "includes but not limited to" without criteria ok - merely details examples of what has been defined in more general terms. - CDS

p. 3 lines 12 + 21 . 4102, subpt. 3

This section provides for modification of loan amounts + plans if "necessary". There is no indication of what will constitute "necessity."

ok - capable of objective determination.

p. 6 line 28 . 4105 - CDS

Same problem with "necessary" as above

Ditto. - CDS

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : MARK B. DAYTON, Chairman
Minnesota Energy & Economic Development Authority

DATE: 4-1-85

ATTN: TOM PURSELL
Special Assistant Attorney General

FROM : LARRY D. STARNS LDS
Special Assistant Attorney General

PHONE: 297-3493

SUBJECT: In the Matter of the Proposed Adoption of Emergency Rules of the Minnesota Energy and Economic Development Technology Product Loan Program.

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.

Department of Energy and Economic Development
Energy and Economic Development Authority

Adopted Emergency Rules Relating to the Technology Product Investment Program

Rules as Adopted

8300.4101 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** For the purpose of parts 8300.4102 to 8300.4112 [Emergency], the following terms have the meanings given them.

Subp. 2. **Product rights.** "Product rights" means a product to which the rights have been acquired by the authority through purchase, lease, license, or loan default.

Subp. 3. **Conceptual product.** "Conceptual product" means an idea based upon a mental impression or general notion that can be documented in a technology-related product design or plan.

Subp. 4. **Courseware.** "Courseware" means specialized software for the delivery of education and training.

Subp. 5. **Default.** "Default" means the failure of the loan recipient to repay the principal and interest, to make royalty payments in accordance with the security agreement, or the breach by the loan recipient for more than ten days after mailing written notice of breach by the commissioner of any material covenant in the note, loan agreement, or in any instrument securing the loan which the commissioner determines constitutes an adverse change in the loan recipient's ability to repay the product loan. For purposes of these parts, a loan is considered in default if the principal and interest repayments and royalty payments are not received by the authority within ten days after the day specified in the security agreement.

Subp. 6. **Derivative product.** "Derivative product" means a product that ~~takes~~ <u>contains</u> or uses part of a previous product ~~in its make up~~. FF4

Subp. 7. **Education.** "Education" means the deliberate process of developing knowledge, mind, and character of an

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individual.

Subp. 8. **Product.** "Product" means something produced by a business and that exists in a usable form. Product includes, but is not limited to, a technology related product, a conceptual product, or a prototype product, and all technical and user documentation, drawings, prototypes, models, test results, and source codes associated with the product.

Subp. 9. **Product loan.** "Product loan" means a loan made to a business for the development and for marketing of a product.

Subp. 10. **Prototype product.** "Prototype product" means a working model that approximates the function of a final technology-related product.

Subp. 11. **Royalty.** "Royalty" means the proceeds paid to the authority in connection with the loan agreement or in connection with product rights. Payments can be based on but not limited to a percent of sales of the product or a specific dollar amount for each unit of the product sold.

Subp. 12. **Software.** "Software" means a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result, in any form of material object in which such statements or instructions may be fixed, by any method now known or hereafter developed, regardless of whether the statements or instructions are capable of being perceived by or communicated to humans. Software includes courseware.

Subp. 13. **Technology-related product.** "Technology-related product" means a product that results from a method or process for handling a specific technical problem. Technology-related product includes computer software and computer hardware products.

Subp. 14. **Training.** "Training" means the process which instructs so as to make a person proficient or qualified.

8300.4102 [Emergency] TECHNOLOGY PRODUCT LOAN PROGRAM.

Subpart 1. **Purpose.** The authority shall make technology product loans to eligible applicants in compliance with Minnesota Statutes, chapter 116M in order to help create or

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retain jobs for the state. The authority shall also consider the value of the product to promote the public good of the state, especially in education and training. Loans may be made to eligible applicants for the development and marketing of technology-related products that exist as completed products, prototypes, or as conceptual ~~product designs~~ products. FF 6

Subp. 2. **Use of loan proceeds.** The loan must be made to provide financial assistance for the development and marketing of a technology-related product. Proceeds of the loan may be used to pay the costs of computer and other technology-related equipment, and for working capital.

Subp. 3. **Size of loan.** The principal amount of any product loan issued by the authority may not exceed $250,000 for technology-related equipment and for working capital for any one product, provided, however, the authority may make an additional loan not to exceed $100,000 for the same product if the applicant can demonstrate that the additional loan is necessary to develop and market the product as described in the loan agreement or to modify the development and marketing plans if the commissioner determines that such modifications are necessary. Proceeds of the loan must be issued to the eligible applicant in accordance with an approved plan and timetable. The plan must establish significant events in the development and marketing activities of the product which, when determined by the commissioner to be complete, shall serve as an indicator to release subsequent loan proceeds in accordance with the plan and timetable.

? what are the standards for "necessary"

Subp. 4. **Loan-to-project percentage.** The maximum loan percentages of the project costs are 50 percent for working capital, and 75 percent for equipment.

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 contributions of the borrower and may accept in kind contributions if specifically related to the development and marketing of the

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product.

In kind contributions may include the fair market value of services and other support activities provided directly and indirectly to a product. Included may be items such as direct labor, management services, and the use of facilities and equipment.

Subp. 5. **Maximum term.** The maximum term of the loan may not exceed the average useful life of the computer and other technology-related equipment, or the following limit, whichever is less: FF 7

A. computer ~~or~~ and other technology-related equipment, four years;

B. working capital, three years;

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

Subp. 6. **Interest rate.** The interest rate of a loan is five percentage points below a full faith and credit obligation of the United States government of comparable maturity, as of five working days before closing.

Subp. 7. **Security requirements.** In addition to security interests in collateral as specified in part 8300.3013 [Emergency] as proposed at State Register, volume 9, page 826 (October 22, 1984), and as adopted at State Register, volume ~~:~~ 9, page ~~:~~ 1615, (January ~~:~~ 14, 1985), the authority shall require a security interest in the product in the form of a royalty on the product and, in case of default, full rights to the product, including all patents, copyrights, mask work, trade secrets, trademarks, service marks, and any other intellectual property rights. FF 8 The royalty payment must be based upon net receipts of the product not to exceed 25 percent and must be set forth in a security agreement that shall be entered into at the same time the loan is made. Royalty payments must be made to the authority in accordance with the schedule appearing in the security agreement.

The security agreement must set forth the terms and conditions applicable to all derivatives of the product, and must bind all future assignees of the product. The amount of

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royalty paid to the authority shall be set forth in the security agreement. Royalty terms provided in the security agreement may not extend more than seven years from the date of the loan agreement unless the authority and the eligible applicant agree to an extension. The maximum amount of royalty paid to the authority shall not exceed three times the amount of the loan principal. The security agreement must contain a provision for assignment of all product rights, including copyrights and patents to the authority upon default of the loan.

Subp. 8. **Loan servicing.** The commissioner shall monitor the repayment of the principal and interest as provided in the amortization schedule. The commissioner may restructure the loan at the request of the borrower or upon his or her own initiative if the commissioner determines that restructuring the loan will increase the probability that the loan will be repaid to the state.

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

Subp. 9. **Loan payments; royalties.** Loan payments must be made as provided in the amortization schedule. The first principal payment is due ~~upon the date of completion of the product or~~ 12 months after ~~the date of~~ issuance of the final proceeds of the loan~~, whichever occurs first~~. FF 1

The authority, in its sole discretion, may accept royalty payments in lieu of loan payments if it appears that this arrangement will increase the probability that the loan will be repaid. The amount of royalty paid in lieu of loan payments may not reduce the total amount of royalty due.

8300.4103 [Emergency] ELIGIBLE LOAN APPLICANTS.

A person, partnership, firm, or corporation 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, standard industrial code (SIC) 7372, is considered an eligible

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small business or an eligible applicant for a technology product loan.

8300.4104 [Emergency] FINANCING ELIGIBLE SMALL BUSINESSES AND TARGETED SMALL BUSINESSES.

The authority may use funds available for product loans to help finance eligible small businesses. Two-thirds of these available funds must be allocated to help finance targeted small businesses.

The authority shall make a determination as to the use of funds four months prior to the close of its fiscal year. At that time the authority may reallocate its remaining funds between the categories of eligible small businesses and targeted small businesses if it determines that by doing so participation in the program may increase.

8300.4105 [Emergency] LOAN DEFAULT.

If the commissioner determines the loan to be in default, the authority may take such actions provided in law or in equity to protect its interests. FF 9 Upon default, the commissioner shall notify the loan recipient in writing of the default and give the loan recipient 60 days to re-establish the good standing of the loan. During this time period the commissioner may permit the borrower to sell or reassign the product rights or licenses, prepare derivative products, or undertake other measures that will increase the probability that remaining loan payments will be made. If the loan remains in default at the end of the initial 60-day time period, the commissioner may extend the time period for an additional 60 days if the loan recipient can demonstrate that the additional period of time is necessary to re-establish the good standing of the loan. What standard for necessary? If the loan remains in default at the end of the initial 60-day time period and any granted extension, all product rights as provided in the security agreement ~~revert~~ transfer automatically FF 10 to the authority. The loan recipient shall also provide to the commissioner, if requested, all relevant materials including technical documentation, drawings, prototypes, models, test

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results, and source code associated with the product.

8300.4106 [Emergency] DISPOSITION OF ACQUIRED PRODUCTS.

Subpart 1. **Sales.** For product rights acquired under loan default, the authority may sell the acquired product and all intellectual property rights incident to in a commercially reasonable manner to any person or business.

Subp. 2. **No product warranty.** No warranty may be expressed or implied by the authority for products distributed under subpart 1. Product recipients shall assume all risk of use. The state, the authority, and its employees may not be held liable for any damages, including any lost profits, lost savings, or other incidental or consequential damages arising out of the use or inability to use the product.

8300.4107 [Emergency] CERTIFICATIONS.

For products financed by the authority, the eligible loan recipient shall agree to and execute a certification statement acceptable in form and content to the commissioner. This statement must certify at least the following:

A. that the product is original;

B. that the product does not infringe upon copyrights and, patents, mask work, trade secrets, trademarks, service marks, and any other intellectual product rights;

C. that the product will ~~basically~~ substantially perform the tasks it has represented in its documentation that it will perform;

D. that the loan recipient will hold the authority harmless.

8300.4108 [Emergency] DATA, PUBLIC AND PRIVATE.

An applicant shall execute an acknowledgement that data provided as part of the application or loan servicing process may be considered public data. If the eligible applicant considers any part of the data to be provided to the authority to be a trade secret, and if the authority agrees that the data is a trade secret as defined in the Minnesota Government Data Practices Act, Minnesota Statutes, chapter 13, then the

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authority shall enter into an agreement with the eligible applicant regarding the data.

8300.4109 [Emergency] CONTENT OF APPLICATION.

In addition to the data required by part 8300.3012 [Emergency], as proposed at State Register, volume 9, page 826 (October 22, 1984), and as adopted at State Register, volume ~~9~~ 9, page ~~1615~~ 1615, (January ~~14~~ 14, 1985), an applicant for the technology product loan program shall provide the following information:

A. specific product descriptions and comparison data to similar or related products, projected life cycle of the product, need for the product, pricing considerations, profit margins, and future product trends;

B. market research data including a description of the targeted audience that will use and purchase the product; how the product will be packaged, promoted, and sold, including pricing considerations;

C. a market plan describing primary strategies, distribution agreements, if any, and opportunities for leverage with other products;

D. a product packaging, documentation, and manufacturing plan including projected cost of product and inventory levels;

E. product descriptions, sales, and profit data on other technology products under the control of the business;

F. projected financial performance of the proposed product including sales and profit projections and cash flow and return on investment analysis;

G. jobs maintained or created as a result of the loan; and

H. a description of how the product will serve the public good of the state, especially in education and training.

8300.4110 [Emergency] SUBMISSION AND EVALUATION CRITERIA.

Subpart 1. **Evaluation criteria.** The authority shall evaluate an application according to the standards and

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requirements in parts 8300.4101 to 8300.4112 [Emergency], the laws governing the program, and the following criteria:

A. the number of jobs created and maintained;

B. the ability of the product to attract private investment capital;

C. the projected financial success of the product;

D. the probability that royalty projections will be realized;

E. the projected return on investment to the state;

F. the degree to which the product serves the public good and reduces other state expenses; and

G. the degree to which the product can be expected to meet the needs of the marketplace.

Subp. 2. **Use of consultants.** The authority shall evaluate applications using the evaluation criteria. The commissioner may employ consultants as needed to extend the expertise of staff. The commissioner shall take steps that are reasonable to ensure that consultants are free from any conflicts of interests and that they use reasonable means to protect confidentiality of data.

Subp. 3. **Priority funding.** The commissioner may make priority funding recommendations to the authority based on the evaluation of the applications.

8300.4111 [Emergency] ~~COPYRIGHT OR PATENT~~ INTELLECTUAL PROPERTY RIGHTS.

~~The copyright or patent for~~ Copyrights, patents, mask work, trade secrets, trademarks, service marks, and any other intellectual property rights in the product shall remain with the business unless specifically ~~acquired by~~ transferred to the authority.

FF 15

8300.4112 [Emergency] DERIVATIVE PRODUCTS AND SUCCESSOR BUSINESS.

All agreements made as part of the technology product loan program, including product loan and security agreements, must contain an appropriate clause to maintain and secure the authority's financial interests in derivative products and

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successor businesses.

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APPROVED AS TO LEGALITY

March 29, 1985

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY Amy D. James
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
APR 01 1985
Joan Anderson Growe
Secretary of State

10:58 A.M.

Rules as Proposed (all new material)

8300.4101 [Emergency] DEFINITIONS.

Subpart 1. Scope. For the purpose of parts 8300.4102 to 8300.4112 [Emergency], the following terms have the meanings given them.

Subp. 2. Product rights. "Product rights" means a product to which the rights have been acquired by the authority through purchase, lease, license, or loan default.

Subp. 3. Conceptual product. "Conceptual product" means an idea based upon a mental impression or general notion that can be documented in a technology-related product design or plan.

Subp. 4. Courseware. "Courseware" means specialized software for the delivery of education and training.

Subp. 5. Default. "Default" means the failure of the loan recipient to repay the principal and interest, to make royalty payments in accordance with the security agreement, or the breach by the loan recipient for more than ten days after mailing written notice of breach by the commissioner of any material covenant in the note, loan agreement, or in any instrument securing the loan which the commissioner determines constitutes an adverse change in the loan recipient's ability to repay the product loan. For purposes of these parts, a loan is considered in default if the principal and interest repayments and royalty payments are not received by the authority within ten days after the day specified in the security agreement.

Subp. 6. Derivative product. "Derivative product" means a product that takes or uses part of a previous product in its make up.

Subp. 7. Education. "Education" means the deliberate process of developing knowledge, mind, and character of an individual.

Subp. 8. Product. "Product" means something produced by a business and that exists in a usable form. Product includes, but is not limited to, a technology related product, a conceptual product, or a prototype product.

Subp. 9. Product loan. "Product loan" means a loan made

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to a business for the development and for marketing of a product.

Subp. 10. Prototype product. "Prototype product" means a working model that approximates the function of a final technology-related product.

Subp. 11. Royalty. "Royalty" means the proceeds paid to the authority in connection with the loan agreement or in connection with product rights. Payments can be based on but not limited to a percent of sales of the product or a specific dollar amount for each unit of the product sold.

Subp. 12. Software. "Software" means a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result, in any form of material object in which such statements or instructions may be fixed, by any method now known or hereafter developed, regardless of whether the statements or instructions are capable of being perceived by or communicated to humans. Software includes courseware.

Subp. 13. Technology-related product. "Technology-related product" means a product that results from a method or process for handling a specific technical problem. Technology-related product includes computer software and computer hardware products.

Subp. 14. Training. "Training" means the process which instructs so as to make a person proficient or qualified.

8300.4102 [Emergency] TECHNOLOGY PRODUCT LOAN PROGRAM.

Subpart 1. Purpose. The authority shall make technology product loans to eligible applicants in compliance with Minnesota Statutes, chapter 116M in order to help create or retain jobs for the state. The authority shall also consider the value of the product to promote the public good of the state, especially in education and training. Loans may be made to eligible applicants for the development and marketing of technology-related products that exist as completed products, prototypes, or as conceptual product designs.

Subp. 2. Use of loan proceeds. The loan must be made to provide financial assistance for the development and marketing

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of a technology-related product. Proceeds of the loan may be used to pay the costs of computer and other technology-related equipment, and for working capital.

Subp. 3. Size of loan. The principal amount of any product loan issued by the authority may not exceed $250,000 for technology-related equipment and for working capital for any one product, provided, however, the authority may make an additional loan not to exceed $100,000 for the same product if the applicant can demonstrate that the additional loan is necessary to develop and market the product as described in the loan agreement or to modify the development and marketing plans if the commissioner determines that such modifications are necessary. Proceeds of the loan must be issued to the eligible applicant in accordance with an approved plan and timetable. The plan must establish significant events in the development and marketing activities of the product which, when determined by the commissioner to be complete, shall serve as an indicator to release subsequent loan proceeds in accordance with the plan and timetable.

Subp. 4. Loan-to-project percentage. The maximum loan percentages of the project costs are 50 percent for working capital, and 75 percent for equipment.

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 contributions of the borrower and may accept in kind contributions if specifically related to the development and marketing of the product.

In kind contributions may include the fair market value of services and other support activities provided directly and indirectly to a product. Included may be items such as direct labor, management services, and the use of facilities and equipment.

Subp. 5. Maximum term. The maximum term of the loan may not exceed the average useful life of the equipment, or the

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following limit, whichever is less:

A. computer or technology-related equipment, four years;

B. working capital, three years;

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

Subp. 6. Interest rate. The interest rate of a loan is five percentage points below a full faith and credit obligation of the United States government of comparable maturity, as of five working days before closing.

Subp. 7. Security requirements. In addition to security interests in collateral as specified in part 8300.3013 [Emergency] as proposed at State Register, volume 9, page 826 (October 22, 1984), and as adopted at State Register, volume .., page .., (January .., 1985), the authority shall require a security interest in the product in the form of a royalty on the product and, in case of default, full rights to the product. The royalty payment must be based upon net receipts of the product not to exceed 25 percent and must be set forth in a security agreement that shall be entered into at the same time the loan is made. Royalty payments must be made to the authority in accordance with the schedule appearing in the security agreement.

The security agreement must set forth the terms and conditions applicable to all derivatives of the product, and must bind all future assignees of the product. The amount of royalty paid to the authority shall be set forth in the security agreement. Royalty terms provided in the security agreement may not extend more than seven years from the date of the loan agreement unless the authority and the eligible applicant agree to an extension. The maximum amount of royalty paid to the authority shall not exceed three times the amount of the loan principal. The security agreement must contain a provision for assignment of all product rights, including copyrights and patents to the authority upon default of the loan.

Subp. 8. Loan servicing. The commissioner shall monitor the repayment of the principal and interest as provided in the

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amortization schedule. The commissioner may restructure the loan at the request of the borrower or upon his or her own initiative if the commissioner determines that restructuring the loan will increase the probability that the loan will be repaid to the state.

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

Subp. 9. Loan payments; royalties. Loan payments must be made as provided in the amortization schedule. The first payment is due upon the date of completion of the product or 12 months after the date of issuance of the loan, whichever occurs first.

The authority, in its sole discretion, may accept royalty payments in lieu of loan payments if it appears that this arrangement will increase the probability that the loan will be repaid. The amount of royalty paid in lieu of loan payments may not reduce the total amount of royalty due.

8300.4103 [Emergency] ELIGIBLE LOAN APPLICANTS.

A person, partnership, firm, or corporation 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, standard industrial code (SIC) 7372, is considered an eligible small business or an eligible applicant for a technology product loan.

8300.4104 [Emergency] FINANCING ELIGIBLE SMALL BUSINESSES AND TARGETED SMALL BUSINESSES.

The authority may use funds available for product loans to help finance eligible small businesses. Two-thirds of these available funds must be allocated to help finance targeted small businesses.

The authority shall make a determination as to the use of funds four months prior to the close of its fiscal year. At

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that time the authority may reallocate its remaining funds between the categories of eligible small businesses and targeted small businesses if it determines that by doing so participation in the program may increase.

8300.4105 [Emergency] LOAN DEFAULT.

If the commissioner determines the loan to be in default, the authority may take such actions provided in law to protect its interests. Upon default, the commissioner shall notify the loan recipient in writing of the default and give the loan recipient 60 days to re-establish the good standing of the loan. During this time period the commissioner may permit the borrower to sell or reassign the product rights or licenses, prepare derivative products, or undertake other measures that will increase the probability that remaining loan payments will be made. If the loan remains in default at the end of the initial 60-day time period, the commissioner may extend the time period for an additional 60 days if the loan recipient can demonstrate that the additional period of time is necessary to re-establish the good standing of the loan. If the loan remains in default at the end of the initial 60-day time period and any granted extension, all product rights as provided in the security agreement revert to the authority. The loan recipient shall also provide to the commissioner, if requested, all relevant materials including technical documentation, drawings, prototypes, models, test results, and source code associated with the product.

8300.4106 [Emergency] DISPOSITION OF ACQUIRED PRODUCTS.

Subpart 1. Sales. For product rights acquired under loan default, the authority may sell the acquired product in a commercially reasonable manner to any person or business.

Subp. 2. No product warranty. No warranty may be expressed or implied by the authority for products distributed under subpart 1. Product recipients shall assume all risk of use. The state, the authority, and its employees may not be held liable for any damages, including any lost profits, lost

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savings, or other incidental or consequential damages arising out of the use or inability to use the product.

8300.4107 [Emergency] CERTIFICATIONS.

For products financed by the authority, the eligible loan recipient shall agree to and execute a statement acceptable in form and content to the commissioner. This statement must certify at least the following:

A. that the product is original;

B. that the product does not infringe upon copyrights and patents;

C. that the product will basically perform the tasks it has represented in its documentation that it will perform;

D. that the loan recipient will hold the authority harmless.

8300.4108 [Emergency] DATA, PUBLIC AND PRIVATE.

An applicant shall execute an acknowledgement that data provided as part of the application or loan servicing process may be considered public data. If the eligible applicant considers any part of the data to be provided to the authority to be a trade secret, and if the authority agrees that the data is a trade secret as defined in the Minnesota Government Data Practices Act, Minnesota Statutes, chapter 13, then the authority shall enter into an agreement with the eligible applicant regarding the data.

8300.4109 [Emergency] CONTENT OF APPLICATION.

In addition to the data required by part 8300.3012 [Emergency], as proposed at State Register, volume 9, page 826 (October 22, 1984), and as adopted at State Register, volume .., page .., (January .., 1985), an applicant for the technology product loan program shall provide the following information:

A. specific product descriptions and comparison data to similar or related products, projected life cycle of the product, need for the product, pricing considerations, profit margins, and future product trends;

B. market research data including a description of

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the targeted audience that will use and purchase the product; how the product will be packaged, promoted, and sold, including pricing considerations;

C. a market plan describing primary strategies, distribution agreements, if any, and opportunities for leverage with other products;

D. a product packaging, documentation, and manufacturing plan including projected cost of product and inventory levels;

E. product descriptions, sales, and profit data on other technology products under the control of the business;

F. projected financial performance of the proposed product including sales and profit projections and cash flow and return on investment analysis;

G. jobs maintained or created as a result of the loan; and

H. a description of how the product will serve the public good of the state, especially in education and training.

8300.4110 [Emergency] SUBMISSION AND EVALUATION CRITERIA.

Subpart 1. Evaluation criteria. The authority shall evaluate an application according to the standards and requirements in parts 8300.4101 to 8300.4112 [Emergency], the laws governing the program, and the following criteria:

A. the number of jobs created and maintained;

B. the ability of the product to attract private investment capital;

C. the projected financial success of the product;

D. the probability that royalty projections will be realized;

E. the projected return on investment to the state;

F. the degree to which the product serves the public good and reduces other state expenses; and

G. the degree to which the product can be expected to meet the needs of the marketplace.

Subp. 2. Use of consultants. The authority shall evaluate applications using the evaluation criteria. The commissioner

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may employ consultants as needed to extend the expertise of staff. The commissioner shall take steps that are reasonable to ensure that consultants are free from any conflicts of interests and that they use reasonable means to protect confidentiality of data.

Subp. 3. Priority funding. The commissioner may make priority funding recommendations to the authority based on the evaluation of the applications.

8300.4111 [Emergency] COPYRIGHT OR PATENT.

The copyright or patent for the product shall remain with the business unless specifically acquired by the authority.

8300.4112 [Emergency] DERIVATIVE PRODUCTS AND SUCCESSOR BUSINESS.

All agreements made as part of the technology product loan program, including product loan and security agreements, must contain an appropriate clause to maintain and secure the authority's financial interests in derivative products and successor businesses.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

STATE OF MINNESOTA

MINNESOTA ENERGY AND ECONOMIC DEVELOPMENT AUTHORITY

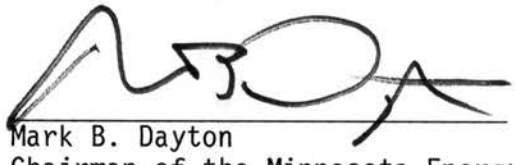
In the Matter of the Proposed Adoption of Emergency Rules of the Minnesota Energy and Economic Development Technology Product Loan Program

ORDER ADOPTING EMERGENCY RULES

The above-entitled matter was published in the **State Register** on Monday, January 14, 1985, 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 views 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 the Technology Product Loan Program, Parts 8300.4101 to 8300.4112 (Emergency), are adopted this 27th day of February, 1985, pursuant to the authority vested in the Authority by Minnesota Statutes §116J.91, subdivision 4.

STATE OF MINNESOTA



Mark B. Dayton
Chairman of the 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 Minnesota Energy and Economic Development Authority Governing the Technology Product Loan Program.

ORDER OF PUBLICATION OF EMERGENCY RULES

IT IS ORDERED this 10th day of January, 1985 that the proposed emergency rules in the above-entitled matter be published in the State Register.

STATE OF MINNESOTA

Mark B. Dayton, Chairman
Minnesota Energy & Economic Development Authority

MEEDA RESOLUTION NO. 85- 272
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 the Technology Product Loan Program.

Certificate of Authority's Authorizing Resolution For Emergency Rules

I, Mark B. Dayton, do hereby certify that I am a member and the 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 Energy and Economic Development Authority duly and properly called and held on the 10th day of January, 1985, 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 B. Dayton, Chairman, Lyn Burton, Vice Chair or David Printy, Secretary of the 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 the Technology Product Loan Program, as well as perform any and all acts incidental thereto."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 10th day of January, 1985.

BY: _____
Chair, Vice Chair or Secretary

ATTEST: _____
Member

Department of Energy and Economic Development
Energy and Economic Development Authority

Proposed Emergency Rules Relating to the Technology Product Loan Program

Notice is hereby given that the Minnesota Energy and Economic Development Authority is proposing to adopt emergency rules for the Technology Product Loan Program. The agency is authorized by Minnesota Statutes 116M.08, subdivision 4, to adopt emergency rules for its financial assistance programs. This notice supercedes the notice published at **State Register,** Volume 9, #28, pages 1544-48, on January 7, 1985 [SR 1544].

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. Any comments received in response to the January 7, 1985 notice will become part of the record in this matter. With publication of this notice in the January 14, 1985 **State Register,** written comments must be received by the agency no later than 4:30 p.m. on February 8, 1985. Written comments should be sent to:

Rosemary T. Fruehling, Director
Office of Software/Courseware
Technology Development
900 American Center Building
150 East Kellogg Boulevard
St. Paul, MN 55101
Telephone: 612-297-1554

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 the 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. The proposed rules were published at **State Register,** Volume 9, #28, on pages 1544-48 [SR 1544].

A free copy of the proposed emergency rules is available by contacting Dr. Fruehling at the above address.

January 14, 1985

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

In the Matter of the Proposed Adoption of Emergency Rules of the Minnesota Energy and Economic Development Technology Product Loan Program

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) SS.
COUNTY OF RAMSEY)

Bette A. Hedin, being first duly sworn deposes and says:

That on the 11th day of January, 1985, 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 Minensota for the purpose of receiving notice of the proposed adoption of rules by this Department.

Bette A. Hedin

Subscribed and sworn to before me this

11 day of January, 1985.

Ruth D. Bartling

RUTH D. BARTLING
RAMSEY COUNTY
NOTARY PUBLIC-MINNESOTA
MY COMMISSION EXPIRES AUG. 17, 1985

My commission expires Aug. 17, 1985.

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

CERTIFICATE

In the Matter of the Proposed Adoption
of the Temporary Rules for the
Energy and Economic Development Authority
Governing the Technology Loan Program

I hereby certify that the list of persons, associations and other interested groups who have requested, pursuant to Minnesota Statute 14.14 subd.1, that their names be placed on file with and maintained by the State Department of Energy and Economic Development for both the Department and the Energy Economic Development Authority for the purpose of receiving notice of the proposed adoption of rules by both the Energy and Economic Development Authority and the Department of Energy and Economic Development is accurate and complete as of Friday, this 11th day of January, 1985.

Mary Anderson

9. to 15. [Unchanged.]

16. Attach an irrevocable appointment of the commissioner to receive service of any lawful process, any civil proceeding arising under this act against the subdivider, or his personal representative, in accordance with part 2810.9920.

THE SUBDIVIDER CONSENTS TO PERMIT INSPECTION OF THE LOTS, PARCELS, UNITS OR INTERESTS TO BE OFFERED AND FURTHER TO PERMIT INSPECTION OF ITS BOOKS, RECORDS, ACCOUNTS, AND FILES BY THE COMMISSIONER OF COMMERCE OR HIS DESIGNEE WITH REFERENCE TO THE SALE OF THE SUBDIVIDED LANDS DESCRIBED HEREIN, AND AGREES TO PROVIDE THE COMMISSIONER WITH SUCH ADDITIONAL INFORMATION WITH RESPECT TO THE SALE OF THESE SUBDIVIDED LANDS AS HE MAY REQUIRE.

The undersigned certifies that he has read the contents of the above form and the exhibits appended hereto and certifies that he has personal knowledge of the contents hereof and knows the responses set forth are true and accurate.

Dated this _____ day of _____

_____
SUBDIVIDER

BY ITS _____

Subscribed and sworn to before me this ____ day of ____

_____

A $100 fee must be filed with this application. Make check payable to Treasurer, State of Minnesota.

Department of Economic Security

Proposed Rules Governing Fees Charged to Qualified Rehabilitation Consultants and Approved Vendors for Rehabilitation Services

Notice of Withdrawal of Proposed Rules

Notice is hereby given that the Department of Economic Security has withdrawn the above-entitled proposed rules (MN Rules 3325.0010-.0040) which were published in the *State Register* on Monday, October 15, 1984 (9 S.R. 762).

Barbara Beerhalter
Commissioner

Department of Energy and Economic Development Energy and Economic Development Authority

Proposed Emergency Rules Relating to the Technology Product Loan Program

Notice is hereby given that the Minnesota Energy and Economic Development Authority is proposing to adopt emergency rules for the Technology Product Loan Program. The agency is authorized by Minnesota Statutes 116M.03, subdivision 4, to adopt emergency rules for its financial assistance programs. This notice supercedes the notice published at *State Register*, Volume 9, #28, pages 1544-48, on January 7, 1985 [SR 1544].

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. Any comments received in response to the January 7, 1985 notice will become part of the record in this matter. With publication of this notice in the January 14, 1985, *State Register*, written comments must be received by the agency no later than 4:30 p.m. on February 8, 1985. Written comments should be sent to:

Rosemary T. Fruehling, Director
Office of Software/Courseware
Technology Development
900 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
Telephone: 612-297-1554

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 the 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. The proposed rules were published at *State Register*, Volume 9, #28, on pages 1544-48 [SR 1544].

A free copy of the proposed emergency rules is available by contacting Dr. Fruehling at the above address.

january 14, 1985

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

Higher Education Coordinating Board

Proposed Rules Relating to State Scholarships and Grants; Adding Eligible Schools

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the State Higher Education Coordinating Board proposes to adopt the above-entitled rules without a public hearing. The Executive Director has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes section 14.21-14.28 (1982).

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes section 14.13-14.15 (1982).

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

Rose Herrera Hamerlinck
Minnesota Higher Education
Coordinating Board
400 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
612/296-7963

Authority for the adoption of these rules is contained in Minnesota Statutes section 136A.111 (1982). Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from Rose Herrera Hamerlinck, Higher Education Coordinating Board, upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for

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.

STATE OF MINNESOTA

#85-288

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
the Technology Product Loan Program

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 January 14, 1985 and was mailed to all persons who had registered their names with the Authority or the Department of Energy and Economic Development. The Notice was also mailed to approximately 400 Minnesota software development companies identified from various sources that may be affected by this rule. The Notice offered interested parties 25 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 written 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 recommendations:

FINDINGS

1. The Authority received a letter (attached) from Mr. Thorwald Esbensen from Micro-Ed, Inc. in Eden Prairie, Minnesota, supporting the proposed rules. A letter was sent to Mr. Esbensen thanking him for his comments.

2. The Authority received a letter (attached) commenting on the proposed rules from Mr. John Center, Principal Consultant, Center Associates. Mr. Center's concerns focused on loan servicing with respect to when the first loan payment is due. His specific concern deals with **8300.4102, subpart 9, loan payments; royalties, lines 11, 12, and 13** which state: "The first payment is due upon the date of completion of the product or 12 months after the date of issuance of the loan, whichever occurs first." Mr. Center contends that requiring a small company to make their first loan payment in the way specified could present a significant financial and cash flow problem to a small company. He suggested that loan payments be deferred for a period of time.

   We concur with Mr. Center and the following modifications have been made in response to his comments:

   Part 8300.4102, subpart 9, Loan payments; royalties, lines 11, 12, 13, and 14 will be changed to read "made as provided in the amortization schedule. The first principal payment is due 12 months after issuance of the final proceeds of the loan." This change clarifies the language of the proposed rules and is consistent with Mr. Center's request.

   It should be noted that interest will accrue from the date of issuance of the loan proceeds and interest payments should commence immediately upon issuance of the loan proceeds. Also, royalty payments are due upon sale of the product.

3. The Authority received a letter (attached) with comments from Mr. Richard Harrison, Land Innovation, Inc. of Maple Grove, Minnesota. Mr. Harrison expressed concern about the possibility of granting a loan based on an "idea without having actual code written."

   The Department responded in writing to Mr. Harrison's letter (response attached). We concur with Mr. Harrison's concern and would like to state that it is not the intent of the Authority to grant a loan for a "conceptual product" without a product design or plan which would include comprehensive specifications for the proposed product. As outlined under **Part 8300.4102, subpart 3, lines 13-19,** the Authority will issue loan proceeds in accordance with an approved plan and timetable.

4. **8300.4101 [Emergency] DEFINITIONS, subpart 6, Derivative Product, lines 27 and 28** should be changed from "product that takes or uses part of a previous product in its make up" to "product that contains or uses part of a previous product." This editorial change clarifies the definition of derivative product. p.1

5. **8301.4101 [Emergency] DEFINITIONS, subpart 8, Product, line 35.** The present definition of "product" is "something produced by a business and that exists in a usable form. Product includes, but is not limited to, a technology related product, a conceptual product, or a prototype product." This definition should be amended and expanded at the end of line 35 (end of current definition) to include "and all technical and user documentation, drawings, prototypes, models, test results, and source codes associated with the product." This expanded definition provides clarification of the items included as part of the product. p.2

6. **8300.4102 [Emergency] TECHNOLOGY PRODUCT LOAN PROGRAM, subpart 1, Purpose, line 34** refers to "prototype, or as conceptual product designs." **Line 34** should be changed to read "prototypes, or as conceptual products." The word "designs" has been deleted from line 34 after "conceptual product." This change allows for consistency in referring to the term "conceptual product" which is defined without the word "design" and without the "s" on "product" under 8300.4101, subpart 3. p.3

7. **8300.4102 [Emergency] TECHNOLOGY PRODUCT LOAN PROGRAM, subpart 5, Maximum Term, line 36** currently reads "not exceed the average useful life of the equipment or the". The reference to equipment should be modified and expanded to read "not exceed the average useful life of the computer and other technology-related equipment or the". Also, a similar change in reference to equipment is in **8300.4102, subpart 5, line 2** which should be changed from "computer or technology-related equipment, four" to "computer and other technology-related equipment, four". These changes provide for consistency in references to the type of equipment purchases allowable under this loan program. p.4

8. **8300.4102 [Emergency] TECHNOLOGY PRODUCT LOAN PROGRAM, subpart 7, Security Requirements, line 16** currently reads "product and, in case of default, full rights to the product." **Line 16** should be amended and expanded to read "product and, in case of default, full rights to the product including all patents, copyrights, mask work, trade secrets, trade marks, service marks, and any other intellectual property rights." This amendment clarifies the meaning of full rights to the product. p.4

9. **8300.4105 [Emergency] LOAN DEFAULT, line 7** should be changed from "the authority may take such actions provided in law to protect" to "the authority may take such actions provided in law or in equity to protect." This amendment, which adds the words "or in equity" provides protection to the State if the law does not cover this situation. p.6

10. **8300.4105 [Emergency] LOAN DEFAULT, line 22** should be amended to read "security agreements transfer automatically to the authority. The loan recipient". The word "revert" was replaced with the words "transfer automatically" in order to clarify the intent of this sentence. p.6

11. **8300.4106 [Emergency] DISPOSITION OF ACQUIRED PRODUCTS, subpart 1, Sales, line 29** should be changed from "default, the authority may sell the acquired product in a" to read "default, the authority may sell the acquired product and all intellectual property rights incident to in a". The inclusion of "and all intellectual property rights incident to" clarifies the meaning of product rights and is consistent with additional changes made in reference to intellectual property rights.

12. **8300.4107 [Emergency] CERTIFICATIONS, lines 4, 5, and 6** read "For products financed by the authority, the eligible loan recipient shall agree to and execute a statement acceptable in form and content to the commissioner. This statement must". **Line 5** should be modified to include the word "certification" prior to the word "statement." This editorial change clarifies that the statement to be executed is a certification statement. p.7

13. **8300.4107 [Emergency] CERTIFICATIONS, lines 9 and 10** refer to a certification statement which the applicant must provide to the authority which reads: "B. that the product does not infringe upon copyrights and patents;". **Lines 9 and 10** should be changed to "B. that the product does not infringe upon copyrights, patents, mask work, trade secrets, trade marks, service marks, and any other intellectual property rights." This amendment clarifies the meaning of property rights and is consistent with the changes included under Part 8300.4102, subpart 7, line 16 and 8300.4111, lines 10 and 11. p.7

14. **8300.4107 [Emergency] CERTIFICATIONS, line 11** should be modified to include the word "substantially" in place of "basically." This change clarifies the intent of this statement which, with the change, would read "C. that the product will substantially perform the tasks it has represented in its documentation that it will perform;". p.7

15. **8300.4111 [Emergency] COPYRIGHT OR PATENT, line 9** should be changed from **"COPYRIGHT OR PATENT"** to **"INTELLECTUAL PROPERTY RIGHTS."** Also, **lines 10 and 11** should be changed from "The copyright or patent for the product shall remain with the business unless specifically acquired by the authority" to read "Copyrights, patents, mask work, trade secrets, trade marks, service marks, and any other intellectual property rights in the product shall remain with the business unless specifically transferred to the authority." This modification clarifies the meaning of copyrights and patents and is consistent with previous changes made in these rules. The term "Intellectual Property Rights" is a more comprehensive term than "copyright" or "patent" and, consequently, is a more appropriate heading for this section. p.9

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**.

Mack B. Dayton

Chairman, Minnesota Energy and
Economic Development Authority

MEEDA RESOLUTION NO. 85-280

MINNESOTA ENERGY AND ECONOMIC DEVELOPMENT AUTHORITY

STATE OF MINNESOTA

ST. PAUL, MINNESOTA

In the Matter of the Proposed Adoption of Emergency Rules of the State of Minnesota Governing the Technology Product Loan Program

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 27th day of February, 1985, that a quorum was present at said meeting, that a majority of those present voted for the resolution, and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, that the emergency rules relating to the Technology Product Loan Program 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 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 27th day of February, 1985.

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

Attest: _____
Member

STATE OF MINNESOTA

DEPARTMENT OF ENERGY AND ECONOMIC DEVELOPMENT

In the Matter of the Proposed
Adoption of Emergency Rules of the
State of Minnesota Governing the
Technology Product Loan Program

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Tom Pursell, Special Assistant Attorney General, do hereby declare that I have examined the emergency rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedures 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: 3/14/85

Thomas F. Pursell

Tom Pursell
Special Assistant Attorney
General