

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. ~~1004~~ 05---9 0076

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 9-27
DATE FOR REVIEW
DATE DUE 10-11

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

Approved ____ Disapproved ____ Returned to Agency ____

Resubmitted ____ Due ____
Approved ____ Disapproved ____ Returned to Agency ____

Date filed w/Secretary of State 10-11-85 Revisor approved 9/30/85 disapproved ____

✓ Rule as Adopted

✓ Rule as Proposed see SR

✓ Order Adopting 9.27.85 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
9.28.85 At least ~~30~~ 25 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
8.26.85 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

✓ Affidavit of ~~Mailing~~ Notice of Submission to Attorney General

N/A Notice of Submission to the Attorney General

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO: JAY KIEDROWSKI, Chairman
Agricultural Resource Loan Guaranty Board

DATE: 10-14-85

ATTN: THOMAS F. PURSELL
Special Assistant Attorney General

FROM: J. MICHAEL MILES
Assistant Attorney General

PHONE: 296-6555

SUBJECT: In the Matter of the Proposed Adoption of Emergency Rules of the State Agricultural Resource Loan Guaranty Board Relating to the Agricultural Resource Loan Guaranty Program

Adoption of Rules of the State Department of Public Safety Governing School Safety Patrol Procedures at Street Crossings

The above-referenced rule has been approved as to its legality by the Attorney General on October 11, 1985.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies of the approved rule with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth copy is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submission or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must publish a notice of adoption in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

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

JMM:pmf

Enclosures

cc: Maryanne Hruby
Executive Director
Legislative Commission to Review
Administrative Rules

Duane Harves
Chief Administrative Law Judge
Office of Administrative Hearings

To: Mike
Date: 9/30/85
Re: Agricultural Resource Loan Guaranty Program.

Rules as Adopted

p. 14
line 17

.0800 P.

This section provides that a loan agreement must contain "other terms and conditions that the board determines necessary and appropriate to carry out the purposes of" the statute. This seems somewhat vague and gives the agency broad discretion without specific criteria

SF-00006-04

DEPARTMENT : ATTORNEY GENERAL

PHONE : 296-2921

STATE OF MINNESOTA

Office Memorandum

DATE : September 27, 1985

TO : JUDITH WEHRWEIN
Legal Assistant
Administration Division

FROM : THOMAS F. PURSELL TFP
Special Assistant Attorney General

SUBJECT : PROPOSED EMERGENCY RULES OF THE MINNESOTA AGRICULTURAL RESOURCE LOAN GUARANTY BOARD

Enclosed herewith for the Attorney General's review pursuant to Minn. Stat. § 14.32 are the following documents:

1. Four copies of the emergency rules as adopted.

2. Notice of Intent to Adopt Emergency Rules.

3. Two copies of the Order Adopting Emergency Rules.

4. Certificate of Board's Resolution Adopting Emergency Rules.

5. Order for Publication of the rules.

6. Certificate of Board Resolution Authorizing Publications

7. A photocopy of the State Register pages containing the Notice of Intent to Adopt and the proposed emergency rules.

8. The Board's Findings of Fact and Conclusions explaining the modifications to the rules.

9. The Affidavit of Mailing Notice of Intent to Adopt Emergency Rules. Please note that no person has registered his or her name for the purpose of receiving notices from this Board. However, the Board in fact mailed the Notice to those persons on the mailing list maintained by the Department of Energy and Economic Development (DEED). The latter list includes a substantial number of persons and firms of all types interested in economic development projects such as those which will be financed by the Board.

10. The (DEED) Mailing List Certificate.

11. Affidavit of Kathryn Hahne, which recites that no person asked for notice of submission of the proposed rules to the Attorney General.

12. Public comments received.

13. My Statement of Compliance with Rulemaking Procedures.

Please call me if you have any questions.

TFP/smo
Enclosures

cc: Kathryn Hahne
DEED

AG copy.

Department of Energy and Economic Development

Adopted Emergency Rules Relating to Agricultural Resource Loan Guaranty Program

Rules as Adopted, Emergency

1580.0100 [Emergency] PURPOSE AND AUTHORITY.

Parts 1580.0100 to 1580.1000 [Emergency] are authorized by Minnesota Statutes, section 41A.04, subdivision 4, as amended by Laws of Minnesota 1985, first special session, chapter 13, section 156, to effectuate the purposes of Minnesota Statutes, chapter 41A, as amended by Laws of Minnesota 1985, first special session, chapter 13, and to establish a process for application and approval of eligible financial assistance for agricultural resource projects.

1580.0200 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** For purposes of parts 1580.0100 to 1580.1000 [Emergency], the terms defined in Minnesota Statutes, section 41A.02, as amended by Laws of Minnesota 1985, first special session, chapter 13, sections 146 to 150, and in this part have the meanings given to them.

Subp. 2. **Administrator.** "Administrator" means the commissioner of the Department of Energy and Economic Development acting as the chief administrative officer of the Agricultural Resource Loan Guaranty Board, or the commissioner's designee.

Subp. 3. **Chair.** "Chair" means the commissioner of the Department of Finance acting as chair of the Agricultural Resource Loan Guaranty Board.

Subp. 4. **County authority.** "County authority" means a rural development finance authority, or any county exercising the power of a rural development finance authority, pursuant to Minnesota Statutes, chapter 362A.

1580.0300 [Emergency] AVAILABILITY OF ELIGIBLE FINANCIAL ASSISTANCE.

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

Subp. 2. **Extent of loan guarantee or bond issue.** The total principal amount of any guaranteed loan or bond issue must not exceed 80 percent of the total eligible costs of the project as estimated by the board at the time the commitment to guarantee a loan or issue bonds is made. A loan guarantee must not exceed 90 percent, exclusive of accrued interest, of a loan for the cost of a project or the refunding or refinancing of a loan.

In determining the percentage of a loan guarantee or the amount of a bond issue for the project, the board shall consider the following factors:

A. the amount of state financial assistance necessary to assure the feasibility of the project;

B. the amount of state financial assistance necessary to assure the lender's financial participation in the project;

C. the impact the project will have on the state and its agricultural resources; and

D. the availability of funds for state financial assistance.

Subp. 3. **Eligible project costs.** Project costs eligible for a guaranteed loan or bond proceeds are defined in Minnesota Statutes, section 41A.02, subdivision 10, and include the following:

A. land and building acquisition costs;

B. site preparation;

C. construction costs;

D. engineering costs;

E. equipment and machinery;

F. bond issuance costs;

G. underwriting or placement fees;

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

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I. fees of the board for application and guarantee;

J. certain contingency costs;

K. interest costs during construction;

L. legal fees;

M. costs of environmental review; or

N. any other expenses incurred by the borrower which are reasonably required for the construction and completion of the project.

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

Subp. 4. **Security for a guaranteed loan or bond proceeds.** The guaranteed loan or bond proceeds must be secured by the best available collateral, which must include at a minimum, a mortgage on, and security interest in, all real and personal property comprising the project.

Subp. 5. **Increase in project costs.** If the actual cost of a project exceeds the cost estimate, the board may consent to an increase in the amount of the guaranteed loan or bond issue pursuant to Minnesota Statutes, section 41A.03, subdivision 2, as amended by Laws of Minnesota 1985, first special session, chapter 13, sections 146 to 150, and Minnesota Statutes, ~~chapter 474~~ sections 474.17 to 474.25, if it determines that the increased costs will not jeopardize the state's interest and are necessary for the successful completion or operation of the project. The increase in the principal amount of the guaranteed loan or bond issue must not exceed 80 percent of the increased costs. The board may guarantee up to 90 percent of the increase in the principal amount of the guaranteed loan and interest on that amount.

FF 1a

FF 1b

1580.0400 [Emergency] REQUEST FOR PRELIMINARY COMMENTS.

Subpart 1. **Request by applicant.** An applicant may seek

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preliminary comments from the administrator with respect to a proposed project and its potential eligibility for a loan guarantee or bonds prior to submitting a complete application.

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

A. the borrower's name, form of business organization, address, contact person, and telephone number;

B. the nature and amount of eligible financial assistance requested and the anticipated terms of any loan, including a description of the collateral and other security;

C. if a loan guarantee is requested, the name of the proposed lender, address, contact person, and telephone number;

D. a brief description of the project and the technology involved, the agricultural resources used or processed, including their source state, and the products and by-products it will provide;

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

F. the availability of raw materials and supplies;

G. if the borrower is a corporation, the names and addresses of its parent, affiliates, and subsidiary firms; and

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

Subp. 2. **Reply by administrator.** Any Preliminary comments by the administrator are intended to assist the applicant and the board in evaluating the project and arranging the total financing package. The preliminary comments do not obligate the board to grant a loan guarantee or to issue bonds~~, and they may be amended or reconsidered by the administrator at any time prior to a formal resolution of the board authorizing a loan guarantee or bond issue.~~

1580.0500 [Emergency] CONTENTS OF APPLICATION.

Subpart 1. **Application forms.** The administrator shall prepare application forms for use by applicants. Unless waived

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by the board pursuant to subpart 2, the application must provide the following information:

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

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

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

D. a general description of the financial plan of the project, including the sources and uses of funds, the types and priorities of all security interests to be granted as security for the guaranteed loan or bonds and the project, and all other project related debt and equity; FF lc.

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

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

G. an estimated construction schedule;

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

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

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

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partnership agreement and bylaws;

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

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

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

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

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

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

Q. if the application is made by an applicant other than the county authority and if tax increment financing is to be used for the project pursuant to Minnesota Statutes, section 41A.06, subdivision 5, as amended by Laws of Minnesota 1985, first special session, chapter 13, section 162, a copy of a resolution adopted by the county authority where the project is located authorizing the use of tax increment financing;

R. a statement of informed consent by the applicant regarding the use and dissemination of the private data as provided in Minnesota Statutes, section 13.05, subdivision 4, paragraph (d). If the applicant is a corporation, then an

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authorized representative of the applicant shall provide a statement of informed consent in a form similar to that provided in Minnesota Statutes, section 13.05, subdivision 4, paragraph (d); and

S. any additional information reasonably related to the criteria in part 1580.0700 [Emergency] and reasonably required for the board's consideration of project eligibility and conformity to generally accepted commercial lending practices as required by banks or other financial institutions considering such a project for debt financing and to the purposes of Minnesota Statutes, section 41A.01, as amended by Laws of Minnesota 1985, first special session, chapter 13, section 145.

Subp. 2. **Waiver of application requirements.** An applicant may request the board to waive any of the requirements of subpart 1, items A to O. The request must be made in writing to the administrator. The board may waive a requirement if it determines that the requirement is not necessary to evaluate the eligibility or feasibility of the project. A request for waiver must state the reasons why, in the applicant's judgment, the information is not necessary.

Subp. 3. **Feasibility study.** The board must require a feasibility study for the project, if the board determines that such a study is necessary for its consideration of the project's eligibility for a loan guarantee or bond proceeds. The feasibility study must address those factors which the board determines are necessary in light of generally accepted commercial lending practices and the requirements of Minnesota Statutes, chapter 41A, as amended by Laws of Minnesota 1985, first special session, chapter 13.

1580.0600 [Emergency] APPLICATION PROCEDURE.

Subpart 1. **Application forms.** The administrator must provide application forms for use by an applicant seeking a loan guaranty or bonds upon the request of the applicant.

Subp. 2. **Submission of application.** An applicant for eligible financial assistance must make written application to

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the board. This written application must include the information described in part 1580.0500 [Emergency], subpart 1. The applicant shall submit the completed application along with all necessary exhibits and attachments to the administrator. The administrator may require the borrower or lender to provide additional information which is necessary for the review of the application. The administrator shall notify the applicant of receipt of the application.

Subp. 3. **Review by administrator.** The administrator shall review the application according to generally accepted commercial lending practices in order to determine whether or not to submit it to the board for final action.

~~In order to be submitted to the board for final action,~~ The administrator shall ~~find the following conclusions~~ submit the application to the board for final action if the administrator determines: FF 2

A. that the project appears to be eligible for a loan guarantee or bond proceeds, and conforms to the purpose and requirements of Minnesota Statutes, chapter 41A, as amended by Laws of Minnesota 1985, first special session, chapter 13, and part 1580.0700 [Emergency];

B. that the application is complete or would be complete except for the applicant's request for a waiver pursuant to part 1580.0500 [Emergency], subpart 2;

C. that the project is both economically and technically feasible, and can reasonably be expected to maintain a sound financial condition and to retire the principal and pay interest on the guaranteed loan or bonds in accordance with the terms of the loan agreement;

D. that the project and its development are economically advantageous to the state; and

E. that money is available to fund the loan guaranties or bonds.

The administrator shall notify the applicant of the decision to approve or reject the application. Upon approval, the administrator shall submit copies of the application to each

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of the board members for final action.

Subp. 4. **Appeal of administrator's determination.** If the administrator decides not to submit the application to the board for approval, the applicant may request the board to review the administrator's decision. The request must be made in writing and submitted to the chair. Upon request the board shall conduct a de novo review of the application pursuant to subpart 5 at its next meeting. FP 1d

Subp. 5. **Board review of application.** The board shall review the completed application pursuant to part 1580.0700 [Emergency], and may seek assistance from the administrator and its advisory committee, if one exists. The board may hire consultants or professionals who are reasonably required for an evaluation of the eligibility and feasibility of the project.

Subp. 6. **Approval and conditional commitment.** If the board approves an application, it may adopt a resolution that conditionally commits the state to guarantee the portion of the proposed loan or to issue bonds, not exceeding the limit in part 1580.0300 [Emergency], subpart 2. The commitment is not binding upon the state unless the board has executed on behalf of the state a final loan guarantee agreement or has issued bonds in conformity with parts 1580.0800 [Emergency] and 1580.1000 [Emergency].

Subp. 7. **Denial of application.** If the application is not approved by the board, the administrator shall notify the applicant promptly in writing of the denial.

Subp. 8. **Application fee.** At the time the application is filed, the applicant shall pay a fee equal to 0.25 percent of the amount of the loan guarantee or bonds requested. The fee must be paid to the commissioner of the Department of Finance. The board shall charge against the fee its costs of processing, reviewing, and evaluating the application. The costs charged against the fee may include, as applicable, the direct and indirect cost of work performed by state employees, the expenses of the advisory committee, and the fees, charges, and expenses paid to consultants or professionals the board considers

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necessary and reasonably required for its determination of project viability and eligibility for a loan guarantee or bond proceeds.

If the board denies an application, the remaining fee balance must be refunded to the applicant. If the board issues a commitment for the project, the remaining fee balance must be transferred from the general fund to the guaranty fund and credited against the amount of commitment fee required in part 1580.0800 [Emergency].

Subp. 9. **Misrepresentation in application.** ~~The board may reject any application, may revoke any notice of approval, and may refuse to close any loan or issue bonds in the event that any information provided in the application contains a material misrepresentation or omission.~~ The applicant and borrower shall immediately update and correct all information provided to the board or to the lender. Misrepresentation in the application or failure to update any required information shall constitute grounds to reject any application, revoke any notice of approval, and refuse to close any loan or issue bonds.

FF 3

1580.0700 [Emergency] CRITERIA FOR APPROVAL OF ELIGIBLE FINANCIAL ASSISTANCE.

In determining whether to approve or deny an application for a loan guarantee or bond proceeds, the board shall consider the following criteria:

A. the extent to which the project will further the development of the state's agricultural resources and improve the market for its agricultural products;

B. the extent to which the public financial assistance sought by the applicant under the program would provide the project with an unfair advantage in competing with other products produced or processed in Minnesota;

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

D. conformity of the project to environmental standards;

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

F. the nature and extent of the security;

G. the degree of financial participation by private persons not supported by the loan guarantee or bonds;

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

I. the market conditions and terms required for the sale of any bonds or loan guarantee.

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

The loan guarantee agreement between the state and the lender, and the loan agreement between the lender and the borrower must contain the following provisions, unless the board determines that the applicant has shown in writing that a required term or condition is not necessary to ensure the lender and the state of repayment according to the terms of the loan agreement in light of generally accepted commercial lending practices:

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

B. A period of grace must be allowed of not less than 60 days from the date a principal or interest payment is due, prior to the making of demand for payment pursuant to the loan guarantee, to permit adequate time for a decision by the board regarding principal and interest assistance in accordance with part 1580.0900 [Emergency]. Payment as required by the loan guarantee must be made within 60 days of receipt by the board of a written demand complying with the terms and conditions of the guarantee.

C. The lender shall not accelerate a payment of the

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loan or exercise other remedies available to the lender if the borrower defaults, unless:

(1) the borrower fails to pay a required payment of principal or interest;

(2) the board consents in writing; or

(3) it is otherwise permitted in the loan guarantee.

In the event of a default, the lender may not make demand for payment pursuant to the guarantee unless the board agrees in writing that the default has materially affected the rights or security of the parties, and the board finds that the lender should be entitled to receive payment pursuant to the loan guarantee.

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

E. The borrower shall have promptly prepared and delivered to the board annual audited or reviewed financial statements of the project prepared by a certified public accountant according to generally accepted accounting principles.

F. A duly authorized representative of the board shall have access to the project site at reasonable times during construction and operation of the project.

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

H. The borrower shall protect and preserve at all times the project assets and other collateral securing the loan

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and shall assist in liquidation of collateral to minimize loss in the event of default.

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

J. The state must be paid at or prior to the closing of the guaranteed loan a fee or fees for the loan guarantee or the commitment to guarantee the loan. The aggregate fee must be one percent of the total principal amount of the guaranteed portion of the loan.

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

FF 2e

L. The lender shall notify the board in writing without delay of:

(1) the date and amount of and basis for each disbursement of loan proceeds;

(2) any nonpayment of principal or interest due;

(3) any failure to honor a commitment by any person of an intended source of capital for the project; and

(4) any significant adverse changes from original cash flow projections as evidenced by reports from the borrower, or any other known evidence that the borrower might be unable to meet a future scheduled payment of principal or interest.

M. The board or the lender may determine that the loan is in default when:

(1) scheduled payments are 60 days past due;

(2) the borrower is or may become unable to meet in full the principal or interest payments, or both, which are due or to become due within a specified period; or

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(3) the board and the lender mutually determine and agree that the project is no longer viable and financially feasible.

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

O. The lender shall service the loan and receive all payments of principal and interest. In the event of default, the lender must continue to service the loan if requested by the board to do so. Upon written approval of the administrator, the lender may sell or transfer the loan or loan servicing functions.

P. The agreement must contain other terms and conditions that the board determines necessary and appropriate to carry out the purposes of Minnesota Statutes, chapter 41A, as amended by Laws of Minnesota 1985, first special session, chapter 13.

? vague

1580.0900 [Emergency] PRINCIPAL AND INTEREST ASSISTANCE.

Subpart 1. **Availability of assistance.** The board may at any time enter into a written contract with the borrower to pay the lender, an amount not greater than the amount of principal and interest to become due on one or more subsequent dates, without acceleration, if the board determines that:

A. the borrower is not more than 60 days overdue in payments of principal or interest due;

B. the borrower is or may become unable to meet in full principal or interest payments, or both, which are due or to become due within a specified period;

C. it is in the public interest to permit the borrower to continue to pursue the purposes of the project;

D. the probable net financial loss to the state will be less than that which would result in the event of a default;

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E. the borrower is obligated by the contract to reimburse the state for all principal or interest advanced thereunder, with interest on those amounts, upon terms and conditions satisfactory to the board in light of generally accepted commercial lending practices; and

G. adequate funds are available to make the principal and interest payments pursuant to Minnesota Statutes, section 41A.03, subdivision 4, as amended by Laws of Minnesota 1985, first special session, chapter 13.

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

1580.1000 [Emergency] ISSUANCE OF BONDS.

Subpart 1. **Bond resolution.** If the board intends to fund the eligible financial assistance by issuing bonds for a project pursuant to Minnesota Statutes, section 41A.05, subdivision 2, as amended by Laws of Minnesota 1985, first special session, chapter 13, section 158, the board shall first pass a preliminary resolution. The preliminary resolution must not obligate the board to issue bonds or to fund eligible financial assistance, but must constitute an expression of current intention of the board to issue bonds or to fund eligible financial assistance. If the board subsequently determines that there are no adverse changes in the financial conditions or key personnel of the applicant or borrower, market conditions, availability of bond issuance authority, and other conditions

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that the board considers necessary, and the board decides in conformance with Minnesota Statutes, section 41A.01, as amended by Laws of Minnesota 1985, first special session, chapter 13, section 24, and in accordance with generally accepted commercial lending practices to make eligible financial assistance available, the board shall pass a final resolution that authorizes the issuance and sale of bonds to extend eligible financial assistance to the project. 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 bonds, may be revoked or amended by the board at any time prior to the final resolution of the board without liability to the board, and may impose any conditions or requirements that the board considers desirable. The administrator shall notify the applicant of the board's approval and provide the applicant with a copy of the resolution passed. Throughout this process, if the board does not extend financial assistance, the board has no liability to the applicant or borrower. FF 1f

Subp. 2. **Bond reserve.** If the board determines, in light of market conditions, that a bond reserve fund is necessary to provide additional security for the bonds, then it must require the borrower to establish a reserve for the bonds. The reserve may come out of bond proceeds, in order to provide such additional security for the bonds as market conditions may require. The amount of the reserve must not be less than one-half of the annual amount which would be required to amortize the entire amount of the bonds over the term and at the interest rate (or at the rate of yield resulting from the interest rates) provided in the bond resolution. FF 1g

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

OCT 14 1985 10:10 A.M

Joan Anderson Growe
Secretary of State

APPROVED AS TO FORM AND LEGALITY

10/11 19 85

T H. HUMPHREY, III
RNEY GENERAL

BY

ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA

AGRICULTURAL RESOURCE LOAN GUARANTY BOARD

In the Matter of the Proposed Adoption of Emergency Rules of the State Agricultural Resource Loan Guaranty Board Relating to the Agricultural Resource Loan Guaranty Program

ORDER ADOPTING EMERGENCY RULES

A notice of intent to adopt emergency rules, and the proposed emergency rules, in this matter were published in the State Register on August 26, 1985 pursuant to Minn. Stat. § 14.30 (1984). After affording interested and affected persons an opportunity to submit written data and views for 25 days after the date of publication, and after 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 governing the Agricultural Resource Loan Guaranty Program are adopted this 27th day of September, 1985, pursuant to the authority vested in the Agricultural Resource Loan Guaranty Board by Minn. Stat. § 41A.04, subd. 4 (1984), as amended by Minn. Laws 1985, 1st Sp. Sess., ch. 13, § 156.

STATE OF MINNESOTA

Jay Kiedrowski

JAY KIEDROWSKI, Chairman
Agricultural Resource Loan
Guaranty Board

STATE OF MINNESOTA

AGRICULTURAL RESOURCE LOAN GUARANTY BOARD

In the Matter of the Proposed Adoption of Emergency Rules of the Agricultural Resource Loan Guaranty Board Governing the Agricultural Resource Loan Guaranty Program

ORDER FOR PUBLICATION OF PROPOSED EMERGENCY RULES IN THE STATE REGISTER

IT IS ORDERED this 6th day of August, 1985 that Mark Dayton, a member of the Board and Commissioner of the Department of Energy and Economic Development is granted the authority and directed by the Board to have published in the State Register the proposed emergency rules governing the Agricultural Resource Loan Guaranty Program.

Mark Dayton, Commissioner
Department of Energy and
Economic Development

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CERTIFICATE OF BOARD'S

AUTHORIZING RESOLUTION

I, Mark Dayton, do hereby certify that I am a member of the Agricultural Resource Loan Guaranty Board, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Board duly and properly called and held on the 6th day of August, 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 Dayton, a member of the Board and Commissioner of the Department of Energy and Economic Development, be and he hereby is granted the authority and directed to sign an order of the Board directing that the proposed emergency rules governing the administration of the Agricultural Resource Loan Guaranty Program be published in the State Register, as well as perform any and all acts incidental thereto.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 6th day of August, 1985.

Mark Dayton
Commissioner
Energy and Economic Development

Attest: Jay Kiedrowski
Member, Board of Directors
Agricultural Resource Loan
Guaranty Board

PROPOSED EMERGENCY RULES GOVERNING THE AGRICULUTRAL RESOURCE LOAN GUARANTY PROGRAM

Notice of Intent to Adopt Emergency Rules

Notice is hereby given that the Minnesota Agricultural Resource Loan Guaranty Board proposes to adopt the above-entitled emergency rules following the procedures set forth in Minnesota Statutes, section 14.29 to 14.36. The specific statutory authority to adopt these rules is Minnesota Statutes, section 41A.04, subdivisions 3 and 4, as amended by Laws of Minnesota 1985, first special session, chapter 13, sections 135 and 136.

Persons interested in these emergency rules shall have 25 days from the date the rules are published in the State Register to submit written comments in support of or in opposition to the proposed rules. Each comment should identify the portion of the proposed rule addressed by the comment, the reason for the comment, and any change that is proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the Board and do not result in a substantial change in the proposed language.

Persons who wish to submit written comments or receive a free copy of the proposed rules should submit their comments to:

Kathryn Hahne
Minnesota Department of Energy and Economic Development
900 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
Telephone: 612/297-1940

These rules specify procedures and criteria for eligible financial assistance from the Minnesota Agricultural Resource Loan Guaranty Board for the development of agricultural processing facilities.

Upon adoption of the emergency rules, the proposed rules, this notice, all written comments received, and the emergency rules as adopted, will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change.

These emergency rules will take effect 5 working days after approval by the Attorney General, and will be effective for 180 days. The rules will be continued in effect if the agency gives notice of continuation in accordance with Minnesota Statutes, section 14.35.

Persons who want to receive a free copy of the proposed emergency rules or want to be advised of the date of submission of the rules to the Attorney General or want to recieve a copy of the final rules as proposed for adoption must submit a written request to Kathryn Hahne at the above address.

August 5, 1985

Jay Kiedrowski, Chairman
Agricultural Resource Loan
Guaranty Board

In the Matter of the Proposed Adoption of Emergency Rules of the State of Minnesota Governing the Agricultural Resource Loan Guaranty Program

AFFADAVIT OF MAILING

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

I, CASSANDRA BROWN, being first duly sworn, deposes and says:

That on the 28th day of August, 1985, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Intent to Adopt Emergency Rules by depositing in the State of Minnesota Central Mail System for United States mail at the 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 Agricultural Resource Loan Guaranty Board and the Department of Energy and Economic Development for the purposes of receiving notice of the proposed adoption of emergency rules by this Agricultural Resource Loan Guaranty Board.

Cassandra Brown 9/26/85
CASSANDRA BROWN

Subscribed and sworn to before me this 26th day of September, 1985.

Bradley L. Simenson

BRADLEY L. SIMENSON
NOTARY PUBLIC—MINNESOTA
ANOKA COUNTY
My Commission Expires Dec. 27, 1985

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

CERTIFICATE

In the Matter of the Proposed Adoption of the Emergency rules for the Agricultural Resource Loan Guarantee Board governing the procedures and criteria for eligible financial assistance for the development of agricultural processing facilities.

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 Wednesday, this 28 day of August, 1985.

Mary Anderson

Department of Energy & Economic Development

Proposed Emergency Rules Relating to Agricultural Resource Loan Guaranty Program

Notice of Intent to Adopt Emergency Rules

Notice is hereby given that the Minnesota Agricultural Resource Loan Guaranty Board proposes to adopt the above-entitled emergency rules following the procedures set forth in Minnesota Statutes, section 14.29 to 14.36. The specific statutory authority to adopt these rules is Minnesota Statutes, section 41A.04, subdivisions 3 and 4, as amended by Laws of Minnesota 1985, first special session, chapter 13, sections 135 and 136.

Persons interested in these emergency rules shall have 25 days from the date the rules are published in the *State Register* to submit written comments in support of or in opposition to the proposed rules. Each comment should identify the portion of the proposed rule addressed by the comment, the reason for the comment, and any change that is proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the Board and do not result in a substantial change in the proposed language.

Persons who wish to submit written comments or receive a free copy of the proposed rules should submit their comments to:

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150 East Kellogg Boulevard
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These rules specify procedures and criteria for eligible financial assistance from the Minnesota Agricultural Resource Loan Guaranty Board for the development of agricultural processing facilities.

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These emergency rules will take effect 5 working days after approval by the Attorney General, and will be effective for 180 days. The rules will be continued in effect if the agency gives notice of continuation in accordance with Minnesota Statutes, section 14.35.

Persons who want to receive a free copy of the proposed emergency rules or want to be advised of the date of submission of the rules to the Attorney General or want to receive a copy of the final rules as proposed for adoption must submit a written request to Kathryn Hahne at the above address.

August 5, 1985

Jay Kiedrowski, Chairman
Agricultural Resource Loan
Guaranty Board

Emergency Rules as Proposed (all new material)

1580.0100 [Emergency] PURPOSE AND AUTHORITY.

Parts 1580.0100 to 1580.1000 [Emergency] are authorized by Minnesota Statutes, section 41A.04, subdivision 4, as amended by Laws of Minnesota 1985, first special session, chapter 13, section 156, to effectuate the purposes of Minnesota Statutes, chapter 41A, as amended by Laws of Minnesota 1985, first special session, chapter 13, and to establish a process for application and approval of eligible financial assistance for agricultural resource projects.

1580.0200 [Emergency] DEFINITIONS.

Subpart 1. Scope. For purposes of parts 1580.0100 to 1580.1000 [Emergency], the terms defined in Minnesota Statutes, section 41A.02, as amended by Laws of Minnesota 1985, first special session, chapter 13, sections 146 to 150, and in this part have the meanings given to them.

Subp. 2. Administrator. "Administrator" means the commissioner of the Department of Energy and Economic Development acting as the chief administrative officer of the Agricultural Resource Loan Guaranty Board, or the commissioner's designee.

Subp. 3. Chair. "Chair" means the commissioner of the Department of Finance acting as chair of the Agricultural Resource Loan Guaranty Board.

Subp. 4. County authority. "County authority" means a rural development finance authority, or any county exercising the power of a rural development finance authority, pursuant to Minnesota Statutes, chapter 362A.

1580.0300 [Emergency] AVAILABILITY OF ELIGIBLE FINANCIAL ASSISTANCE.

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

Subp. 2. Extent of loan guarantee or bond issue. The total principal amount of any guaranteed loan or bond issue must not exceed 80 percent of the total eligible costs of the project as estimated by the board at the time the commitment to guarantee a loan or issue bonds is made. A loan guarantee must not exceed 90 percent, exclusive of accrued interest, of a loan for the cost of a project or the refunding or refinancing of a loan.

In determining the percentage of a loan guarantee or the amount of a bond issue for the project, the board shall consider the following factors:

A. the amount of state financial assistance necessary to assure the feasibility of the project;

B. the amount of state financial assistance necessary to assure the lender's financial participation in the project;

C. the impact the project will have on the state and its agricultural resources; and

D. the availability of funds for state financial assistance.

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

Subp. 3. Eligible project costs. Project costs eligible for a guaranteed loan or bond proceeds are defined in Minnesota Statutes, section 41A.02, subdivision 10, and include the following:

A. land and building acquisition costs;

B. site preparation;

C. construction costs;

D. engineering costs;

E. equipment and machinery;

F. bond issuance costs;

G. underwriting or placement fees;

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

I. fees of the board for application and guarantee;

J. certain contingency costs;

K. interest costs during construction;

L. legal fees;

M. costs of environmental review; or

N. any other expenses incurred by the borrower which are reasonably required for the construction and completion of the project.

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

Subp. 4. Security for a guaranteed loan or bond proceeds. The guaranteed loan or bond proceeds must be secured by the best available collateral, which must include at a minimum, a mortgage on, and security interest in, all real and personal property comprising the project.

Subp. 5. Increase in project costs. If the actual cost of a project exceeds the cost estimate, the board may consent to an increase in the amount of the guaranteed loan or bond issue pursuant to Minnesota Statutes, section 41A.03, subdivision 2, as amended by Laws of Minnesota 1985, first special session, chapter 13, sections 146 to 150, and Minnesota Statutes, chapter 474, if it determines that the increased costs will not jeopardize the state's interest and are necessary for the successful completion or operation of the project. The increase in the principal amount of the guaranteed loan or bond issue must not exceed 80 percent of the increased costs. The board may guarantee up to 90 percent of the increase in the principal amount of the guaranteed loan and interest on that amount.

1580.0400 [Emergency] REQUEST FOR COMMENTS.

Subpart 1. Request by applicant. An applicant may seek comments from the administrator with respect to a proposed project and its potential eligibility for a loan guarantee or bonds prior to submitting a complete application.

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

A. the borrower's name, form of business organization, address, contact person, and telephone number;

B. the nature and amount of eligible financial assistance requested and the anticipated terms of any loan, including a description of the collateral and other security;

C. if a loan guarantee is requested, the name of the proposed lender, address, contact person, and telephone number;

D. a brief description of the project and the technology involved, the agricultural resources used or processed, including their source state, and the products and by-products it will provide;

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

F. the availability of raw materials and supplies;

G. if the borrower is a corporation, the names and addresses of its parent, affiliates, and subsidiary firms; and

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

Subp. 2. Reply by administrator. Any comments by the administrator are intended to assist the applicant and the board in evaluating the project and arranging the total financing package. The comments do not obligate the board to grant a loan guarantee or to issue bonds, and they may be amended or reconsidered by the administrator at any time prior to a formal resolution of the board authorizing a loan guarantee or bond issue.

1580.0500 [Emergency] CONTENTS OF APPLICATION.

Subpart 1. Application forms. The administrator shall prepare application forms for use by applicants. Unless waived by the board pursuant to subpart 2, the application must provide the following information:

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

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

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

D. a general description of the financial plan of the project, including the sources and uses of funds, the types and priorities of all security interests to be granted as security for the guaranteed loan or bonds and the project, and all other project related debt;

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

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

G. an estimated construction schedule;

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

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

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

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

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

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

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

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

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

Q. if the application is made by an applicant other than the county authority and if tax increment financing is to be used for the project pursuant to Minnesota Statutes, section 41A.06, subdivision 5, as amended by Laws of Minnesota 1985, first special session, chapter 13, section 162, a copy of a resolution adopted by the county authority where the project is located authorizing the use of tax increment financing;

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

S. any additional information reasonably related to the criteria in part 1580.0700 [Emergency] and reasonably required for the board's consideration of project eligibility and conformity to generally accepted commercial lending practices as required by

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banks or other financial institutions considering such a project for debt financing and to the purposes of Minnesota Statutes, section 41A.01, as amended by Laws of Minnesota 1985, first special session, chapter 13, section 145.

Subp. 2. Waiver of application requirements. An applicant may request the board to waive any of the requirements of subpart 1, items A to O. The request must be made in writing to the administrator. The board may waive a requirement if it determines that the requirement is not necessary to evaluate the eligibility or feasibility of the project. A request for waiver must state the reasons why, in the applicant's judgment, the information is not necessary.

Subp. 3. Feasibility study. The board must require a feasibility study for the project, if the board determines that such a study is necessary for its consideration of the project's eligibility for a loan guarantee or bond proceeds. The feasibility study must address those factors which the board determines are necessary in light of generally accepted commercial lending practices and the requirements of Minnesota Statutes, chapter 41A, as amended by Laws of Minnesota 1985, first special session, chapter 13.

1580.0600 [Emergency] APPLICATION PROCEDURE.

Subpart 1. Application forms. The administrator must provide application forms for use by an applicant seeking a loan guaranty or bonds upon the request of the applicant.

Subp. 2. Submission of application. An applicant for eligible financial assistance must make written application to the board. This written application must include the information described in part 1580.0500 [Emergency], subpart 1. The applicant shall submit the completed application along with all necessary exhibits and attachments to the administrator. The administrator may require the borrower or lender to provide additional information which is necessary for the review of the application. The administrator shall notify the applicant of receipt of the application.

Subp. 3. Review by administrator. The administrator shall review the application according to generally accepted commercial lending practices in order to determine whether or not to submit it to the board for final action.

In order to be submitted to the board for final action, the administrator shall find the following conclusions:

A. that the project appears to be eligible for a loan guarantee or bond proceeds, and conforms to the purpose and requirements of Minnesota Statutes, chapter 41A, as amended by Laws of Minnesota 1985, first special session, chapter 13, and part 1580.0700 [Emergency];

B. that the application is complete or would be complete except for the applicant's request for a waiver pursuant to part 1580.0500 [Emergency], subpart 2;

C. that the project is both economically and technically feasible, and can reasonably be expected to maintain a sound financial condition and to retire the principal and pay interest on the guaranteed loan or bonds in accordance with the terms of the loan agreement;

D. that the project and its development are economically advantageous to the state; and

E. that money is available to fund the loan guaranties or bonds.

The administrator shall notify the applicant of the decision to approve or reject the application. Upon approval, the administrator shall submit copies of the application to each of the board members for final action.

Subp. 4. Appeal of administrator's determination. If the administrator decides not to submit the application to the board for approval, the applicant may request the board to review the administrator's decision. The request must be made in writing and submitted to the chair. Upon request the board shall conduct a de novo review of the application pursuant to subpart 5.

Subp. 5. Board review of application. The board shall review the completed application pursuant to part 1580.0700 [Emergency], and may seek assistance from the administrator and its advisory committee, if one exists. The board may hire consultants or professionals who are reasonably required for an evaluation of the eligibility and feasibility of the project.

Subp. 6. Approval and conditional commitment. If the board approves an application, it may adopt a resolution that conditionally commits the state to guarantee the portion of the proposed loan or to issue bonds, not exceeding the limit in part 1580.0300 [Emergency], subpart 2. The commitment is not binding upon the state unless the board has executed on behalf of the state a final loan guarantee agreement or has issued bonds in conformity with parts 1580.0800 [Emergency] and 1580.1000 [Emergency].

Subp. 7. Denial of application. If the application is not approved by the board, the administrator shall notify the applicant promptly in writing of the denial.

Subp. 8. Application fee. At the time the application is filed, the applicant shall pay a fee equal to 0.25 percent of the amount of the loan guarantee or bonds requested. The fee must be paid to the commissioner of the Department of Finance. The board shall charge against the fee its costs of processing, reviewing, and evaluating the application. The costs charged against the fee may include, as applicable, the direct and indirect cost of work performed by state employees, the expenses of the advisory committee, and the fees, charges, and expenses paid to consultants or professionals the board considers necessary and reasonably required for its determination of project viability and eligibility for a loan guarantee or bond proceeds.

If the board denies an application, the remaining fee balance must be refunded to the applicant. If the board issues a commitment for the project, the remaining fee balance must be transferred from the general fund to the guaranty fund and credited against the amount of commitment fee required in part 1580.0800 [Emergency].

Subp. 9. Misrepresentation in application. The board may reject any application, may revoke any notice of approval, and may refuse to close any loan or issue bonds in the event that any information provided in the application contains a material misrepresentation or omission. The applicant and borrower shall immediately update and correct all information provided to the board or to the lender.

1580.0700 [Emergency] CRITERIA FOR APPROVAL OF ELIGIBLE FINANCIAL ASSISTANCE.

In determining whether to approve or deny an application for a loan guarantee or bond proceeds, the board shall consider the following criteria:

A. the extent to which the project will further the development of the state's agricultural resources and improve the market for its agricultural products;

B. the extent to which the public financial assistance sought by the applicant under the program would provide the project with an unfair advantage in competing with other products produced or processed in Minnesota;

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

D. conformity of the project to environmental standards;

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

F. the nature and extent of the security;

G. the degree of financial participation by private persons not supported by the loan guarantee or bonds;

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

I. the market conditions and terms required for the sale of any bonds or loan guarantee.

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

The loan guarantee agreement between the state and the lender, and the loan agreement between the lender and the borrower must contain the following provisions, unless the board determines that the applicant has shown in writing that a required term or condition is not necessary to ensure the lender and the state of repayment according to the terms of the loan agreement in light of generally accepted commercial lending practices:

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

B. A period of grace must be allowed of not less than 60 days from the date a principal or interest payment is due, prior to the making of demand for payment pursuant to the loan guarantee, to permit adequate time for a decision by the board regarding principal and interest assistance in accordance with part 1580.0900 [Emergency]. Payment as required by the loan guarantee must be made within 60 days of receipt by the board of a written demand complying with the terms and conditions of the guarantee.

C. The lender shall not accelerate a payment of the loan or exercise other remedies available to the lender if the borrower defaults, unless:

(1) the borrower fails to pay a required payment of principal or interest;

(2) the board consents in writing; or

(3) it is otherwise permitted in the loan guarantee.

In the event of a default, the lender may not make demand for payment pursuant to the guarantee unless the board agrees in writing that the default has materially affected the rights or security of the parties, and the board finds that the lender should be entitled to receive payment pursuant to the loan guarantee.

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

E. The borrower shall have promptly prepared and delivered to the board annual audited or reviewed financial statements of the project prepared by a certified public accountant according to generally accepted accounting principles.

F. A duly authorized representative of the board shall have access to the project site at reasonable times during construction and operation of the project.

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

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

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

J. The state must be paid at or prior to the closing of the guaranteed loan a fee or fees for the loan guarantee or the commitment to guarantee the loan. The aggregate fee must be one percent of the total principal amount of the guaranteed portion of the loan.

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

L. The lender shall notify the board in writing without delay of:

(1) the date and amount of and basis for each disbursement of loan proceeds;

(2) any nonpayment of principal or interest due;

(3) any failure to honor a commitment by any person of an intended source of capital for the project; and

(4) any significant adverse changes from original cash flow projections as evidenced by reports from the borrower, or any other known evidence that the borrower might be unable to meet a future scheduled payment of principal or interest.

M. The board or the lender may determine that the loan is in default when:

(1) scheduled payments are 60 days past due;

(2) the borrower is or may become unable to meet in full the principal or interest payments, or both, which are due or to become due within a specified period; or

(3) the board and the lender mutually determine and agree that the project is no longer viable and financially feasible.

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

O. The lender shall service the loan and receive all payments of principal and interest. In the event of default, the lender must continue to service the loan if requested by the board to do so. Upon written approval of the administrator, the lender may sell or transfer the loan or loan servicing functions.

P. The agreement must contain other terms and conditions that the board determines necessary and appropriate to carry out the purpose of Minnesota Statutes, chapter 41A, as amended by Laws of Minnesota 1985, first special session, chapter 13.

1580.0900 [Emergency] PRINCIPAL AND INTEREST ASSISTANCE.

Subpart 1. Availability of assistance. The board may at any time enter into a written contract with the borrower to pay the lender, an amount not greater than the amount of principal and interest to become due on one or more subsequent dates, without acceleration, if the board determines that:

A. the borrower is not more than 60 days overdue in payments of principal or interest due;

B. the borrower is or may become unable to meet in full principal or interest payments, or both, which are due or to become due within a specified period;

C. it is in the public interest to permit the borrower to continue to pursue the purposes of the project;

D. the probable net financial loss to the state will be less than that which would result in the event of a default;

E. the borrower is obligated by the contract to reimburse the state for all principal or interest advanced thereunder, with interest on those amounts, upon terms and conditions satisfactory to the board in light of generally accepted commercial lending practices; and

G. adequate funds are available to make the principal and interest payments pursuant to Minnesota Statutes, section 41A.03, subdivision 4, as amended by Laws of Minnesota 1985, first special session, chapter 13.

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

1580.1000 [Emergency] ISSUANCE OF BONDS.

Subpart 1. Bond resolution. If the board intends to fund the eligible financial assistance by issuing bonds for a project pursuant to Minnesota Statutes, section 41A.05, subdivision 2, as amended by Laws of Minnesota 1985, first special session, chapter 13, section 158, the board shall first pass a preliminary resolution. The preliminary resolution must not obligate the board to issue bonds or to fund eligible financial assistance, but must constitute an expression of current intention of the board to issue bonds or to fund eligible financial assistance. If the board subsequently determines that there are no adverse changes in the financial conditions or key personnel of the applicant or borrower, market conditions, availability of bond issuance authority, and other conditions that the board considers necessary, and the board decides in accordance with generally accepted commercial lending practices to make eligible financial assistance available, the board shall pass a final resolution that authorizes the issuance and sale of bonds to extend eligible financial assistance to the project. 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 bonds, may be revoked or amended by the board at any time prior to the final resolution of the board without liability to the board, and may impose any conditions or requirements that the board considers desirable. The administrator shall notify the applicant of the board's approval and provide the applicant with a copy of the resolution passed. Throughout this process, if the board does not extend financial assistance, the board has no liability to the applicant or borrower.

Subp. 2. Bond reserve. If the board determines, in light of market conditions, that a bond reserve fund is necessary to provide additional security for the bonds, then it must require the borrower to establish a reserve for the bonds. The reserve may come out of bond proceeds, in order to provide such additional security for the bonds as market conditions may require. The amount of the reserve must not be less than one-half of the annual amount which would be required to amortize the entire amount of the bonds over the term and at the interest rate provided in the bond resolution.

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

AGRICULTURAL RESOURCE LOAN GUARANTY BOARD

In the Matter of the Proposed Emergency Rules of the Agricultural Resource Loan Guaranty Board Relating to the Agricultural Resource Loan Guaranty Board Program

FINDINGS OF FACT AND CONCLUSIONS

Notice of Intent to Adopt the captioned Emergency Rules was published in the State Register on August 26, 1985, and was mailed to all persons who had registered their names with the Agricultural Resource Loan Guaranty Board ("Board") and the Department of Energy and Economic Development. The Notice offered interested persons 25 days in which to submit data and views to the Board, and to request notification of the submission of final rules to the Attorney General.

After offering interested parties an opportunity to submit data and views, the Board makes the following

FINDINGS

1. The Board received a letter from Ms. Christine M. Chale, an attorney with the law firm of Holmes & Graves, Minneapolis, Minnesota. The letter contained ten enumerated comments regarding the proposed rules. Based on the comments, the Board made the following changes to the rules:

a. In response to comment no. 3, pt. 1580.0300, subp. 5 was amended to include specific citations to the applicable statutory sections of chapter 474, rather than the more general citation to the entire chapter.

b. The Board responded to comment no. 4 by inserting the word "preliminary" in the title to proposed pt. 1580.0400, and in each other place in that part where the word "comment" appears. Since the intent of the rule is to provide for an informal review of a proposed project, before an application is even submitted, the term "preliminary comments" is more accurate. In addition, because such comments, issued before filing of the required application, could in no event bind the Board, the language deleted from pt. 1580.0400, subp. 2 was deemed unnecessary. The Board intends to respond to all requests for preliminary comments, in order to give maximum assistance to potential applicants, and does not believe that the costs of doing so will be unduly burdensome. p.3, 4

c. In response to comment no. 5, the Board has inserted the requested reference to "equity" in the required description of the project set forth in pt. 1580.0500, subp. 1.D. Lenders, underwriters and others involved in the financing of a project will, as a practical matter, require such a description. In any event the description of equity is implicit in the requirement of a description of debt. p.5.

d. Comment no. 7 raises the issue of whether the Board may adopt, by rule, what is in affect a jurisdictional limitation period, without express statutory authority to do so. Because the Minnesota Court of Appeals recently answered that question in the negative in Leisure Hills of Grand Rapids, Inc. v. Levine, 366 N.W.2d 302 (Minn. App. 1985) which involved a similar situation, the Board has decided not to adopt the suggested limitation. However, for the sake of certainty and in fairness to applicants, the Board did decide to hear such matters at its meeting next following the appeal, and amended proposed pt. 1580.0600, subp. 4 accordingly. p.9

e. Comment no. 8 suggested a clarification to the lender's duties with respect to certain security interests. Since those duties, set forth in proposed pt. 1580.0800, subp. K, run to the Board, the clarifying modifier "Board's" was added to that subpart in appropriate places. p.13

f. Comment no. 9 raised an issue pertaining to the need for specificity of standards by which the Board will ultimately decide to issue bonds. Because the proper standard implicitly includes the standards and purposes of Minn. Stat. ch. 41A, as set forth in Minn. Stat. § 41A.01, The Board has amended proposed pt. 1580.1000, subp. 1 by including explicit reference to that statute. p.16

g. Comment no. 10 pointed out a parenthetical phrase, contained in the statute, which was inadvertently omitted from proposed pt. 1580.1000, subp. 2. The Board has amended the proposed rule accordingly. p.6

h. The Board made no changes to the rules based on Ms. Chale's comments nos. 1, 2 and 6, since, in the first two instances, the Board believes that the rules required no clarification, and, in the last case, the Board believes that the need for a feasibility study may become apparent at virtually any stage of the application process.

2. Upon review of the rules, the Board determined that part of the introductory language to proposed pt. 1580.0600, subp. 3, needed grammatical clarification. The Board therefore changed the wording of that phrase to make it grammatically accurate. p.8

3. The Board further determined that the language of pt. 1580.0600, subp. 9, relating to misrepresentations in applications, could be construed as an overly broad grant of discretion in rejecting an application. The Board feels that rejection of an application for a material misrepresentation or omission is entirely appropriate, and may indeed be compelled by private parties involved in the transaction. However, the Board decided to change the rule to provide that material misrepresentations and omissions shall constitute grounds for the adverse actions noted in the revised rule. p.10

4. The above-discussed changes to the rules are shown in the attached Revisor's draft dated September 25 , 1985 and are incorporated herein by reference.

5. The rules in this matter, as modified, are needed and reasonable.

6. Any Finding herein which should have been made as a Conclusion is hereby adopted as such.

CONCLUSIONS

1. The Board gave proper notice of the rules and has complied with all applicable procedural requirements.

2. The changes to the proposed rules as published are supported by the date and views submitted and are not substantial changes.

3. The published rules, as modified, should be adopted.

4. Any Conclusion herein which should have been made as a Finding is hereby adopted as such.

Dated: 9-27-85

Jay Kiedrowski

JAY KIEDROWSKI
Chair, Agricultural
Resource Loan Guaranty Board

STATE OF MINNESOTA

AGRICULTURAL RESOURCE LOAN GUARANTY BOARD

CERTIFICATE OF BOARD'S RESOLUTION ADOPTING EMERGENCY RULES

BOARD RESOLUTION NO. 85-_____

I, Jay Kiedrowski, do hereby certify that I am a member and the Chairman of the Agricultural Resource Loan Guaranty Board of the State of Minnesota (hereinafter "Board"), a board duly authorized under the laws of the State of Minnesota; that the following is a true and correct copy of a resolution adopted at a meeting of the Board, duly and properly called and held on the 27th day of September, 1985; that a quorum was present at the meeting; that a majority of the members of the Board voted in favor of the resolution; and that the said resolution is set forth in the minutes of the meeting and has not been rescinded or modified.

> "RESOLVED, that the rules relating to the Agricultural Resource Loan Guaranty Program be and hereby are approved and adopted, pursuant to authority vested in us by Minn. Stat. § 41A.04, and that Jay Kiedrowski, Chairman of the Board, be and hereby is authorized to sign an order adopting these rules and further is authorized to perform the necessary acts to provide that these rules shall have the force and effect of law."

IN WITNESS WHEREOF, I have hereunto subscribed by name this 27th day of September, 1985,

ATTEST: James Nichols
MEMBER OF THE BOARD

Jay Kiedrowski
JAY KIEDROWSKI, Chairman
Agricultural Resource Loan
Guaranty Board

STATE OF MINNESOTA

AGRICULTURAL RESOURCE LOAN GUARANTY BOARD

BOARD RESOLUTION NO. 85-3

WHEREAS, the Agricultural Resource Loan Guaranty Board (hereinafter "Board"), has published proposed emergency rules relating to the Agricultural Resource Loan Guaranty Program in the State Register on August 26, 1985; and

WHEREAS, the Board has considered the written data and views submitted by interested and affected persons; and

WHEREAS, the Board, at a meeting duly called, has reviewed and considered and approved certain changes to the rules as published, based on the data and views submitted; and

WHEREAS, the Board desires to adopt the rules, as modified in accordance with said data and views;

NOW THEREFORE IT IS HEREBY:

"RESOLVED, that the rules relating to the Agricultural Resource Loan Guaranty Program be and hereby are approved and adopted, pursuant to authority vested in us by Minn. Stat. § 41A.04, and that Jay Kiedrowski, Chairman of the Board, be and hereby is authorized to sign an order adopting these rules and further is authorized to perform the necessary acts to provide that these rules shall have the force and effect of law."

Dated: 9-27-85

Jay Kiedrowski

JAY KIEDROWSKI, Chairman
Agricultural Resource Loan
Guaranty Board

ATTEST: James McCarthy

BOARD MEMBER

In the Matter of the Proposed Adoption of Emergency Rules of the State Agricultural Resource Loan Guaranty Board Relating to the Agricultural Resource Loan Guaranty Program

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Thomas F. Pursell, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative 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: 9/22/95

Thomas F. Pursell
Special Assistant
Attorney General

In the Matter of the Proposed Adoption of Emergency Rules of the Argicultural Resource Loan Guaranty Board relating to the Agricultural Resource Loan Guaranty Program

AFFIDAVIT OF KATHRYN HAHNE

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

I, KATHRYN HAHNE, being first duly sworn, deposes and says that:

1. I am an employee of the Minnesota Department of Energy and Economic Development, and have been appointed by the Commissioner of said Department pursuant to Minn. Laws 1985, 1st Sp. Sess., ch. 13, § 163, to act as a staff person for the Agricultural Resource Loan Guaranty Board.

2. In my official capacity I was listed as the contact person in the Board's published Notice of Intent to Adopt Emergency Rules in the above-captioned matter, and have familiarized myself with all written matter received pursuant to said Notice.

3. During the 25-day comment period after publication of the captioned rules, no requests for notice of submission of the rules to the Attorney General, as provided in Minn. Stat. § 14.32 (1984), were received.

FURTHER AFFIANT SAYETH NOT.

Kathryn Hahne
KATHRYN HAHNE

Subscribed and sworn to before me this 27th day of September, 1985.

Bradley L. Simenson

BRADLEY L. SIMENSON
NOTARY PUBLIC—MINNESOTA
ANOKA COUNTY
My Commission Expires Dec. 27, 1985