

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

DT3

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 4-29-86
DATE FOR REVIEW 5-8
DATE DUE 5-13

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

Approved 5/13/86 Disapproved Returned to Agency

Resubmitted Due
Approved Disapproved Returned to Agency

Date filed w/Secretary of State 5-14-86 Revisor approved / disapproved

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✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 4.23.86 Date combined w/ FF

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 no small biz notice but see below

Affidavit of Mailing Notice or rulemaking
3.20.86 / 3.21.86 At least 30 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
3.24.86 At least 30/~~20~~ days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

Chief Hearing Examiner's Report(s)
Approving H.E.'s Report
Approving agency action

✓ Agency's Findings of Fact combined w/ FF

N/A LCRAR Report or agency Affidavit

✓ Certificate of Board's Resolution Adopting Rules

✓ Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness includes small biz statement.

N/A Petition for Adoption of a Rule

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

✓ Certificate of Compliance w/Rulemaking Procedures

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

✓ Notice of Submission to the Attorney General

✓ Notice mailed to 2050 small biz. Question: is this compliance with 14.115 subd 4(c)?

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

MARK B. DAYTON, CHAIR
Minn. Energy and Economic Development Authority

DATE: 5-14-86

ATTN: TO: CHRISTIE B. ELLER
Special Assistant Attorney General

FROM: J. MICHAEL MILES
Assistant Attorney General

PHONE: 296-6555

SUBJECT: In the Matter of the Proposed Adoption of Rules of the Minnesota Energy and Economic Development Authority Governing the Tourism Loan Program

The above-referenced rule has been approved as to its legality by the Attorney General on May 13, 1986.

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

RR1273

AG copy

Energy and Economic Development Authority

Adopted Rules Relating to Tourism Loan Program

Rules as Adopted

CHAPTER 8300

MINNESOTA ENERGY AND ECONOMIC DEVELOPMENT AUTHORITY

TOURISM LOAN PROGRAM

8300.3060 PURPOSE OF TOURISM LOAN PROGRAM.

The purpose of the tourism loan program of the authority is to provide loans to upgrade and improve Minnesota's small tourism businesses. This program would match loans by local financial institutions, share credit risks, and provide for lower interest rates than are otherwise now available.

8300.3061 DEFINITIONS.

Subpart 1. **Statutory terms.** The definitions in Minnesota Statutes, section 116M.03 and this part apply to parts 8300.3060 to 8300.3070.

Subp. 2. **Act.** "Act" means the Minnesota Energy and Economic Development Authority Act.

Subp. 3. **Commissioner.** "Commissioner" means the commissioner of energy and economic development.

Subp. 4. **Eligible borrower.** "Eligible borrower" means a person, partnership, firm, or corporation engaged in, and determined by the authority to constitute, a tourism business as defined by the standard industrial classification (SIC) codes of 7011 and 7033, as set out in Code of Federal Regulations, title 13, section 121.2, and a targeted small business. Any person to whom a loan has been made under parts 8300.3060 to 8300.3070 must maintain the SIC code classification throughout the term of the loan.

Subp. 5. **Eligible project.** "Eligible project" means a project proposed by an eligible borrower that meets the public purpose standards of part 8300.3068, subpart 5.

Subp. 6. **Participation.** "Participation" means a contract

by which the authority purchases a share of the financial institution's loan to an eligible borrower.

8300.3062 ELIGIBILITY OF PROJECT FOR TOURISM LOANS.

In order to receive loan participation by the authority, a financial institution's loan must be to an eligible borrower for an eligible cost in an eligible project. The maximum state participation is 50 percent of the cost of the project, with a maximum for any one project of $50,000. The financial institution shall make application for participation on behalf of an eligible borrower.

8300.3063 ELIGIBLE COSTS FOR TOURISM LOANS.

Subpart 1. **Eligible costs.** Eligible costs for financing by the authority include any costs not prohibited by subpart 2 for:

A. building construction and improvement;

B. site preparation;

C. equipment;

D. construction;

E. engineering;

F. authority fees including application fees of the authority; and

G. interest due on the loan during the period of construction.

Subp. 2. **Ineligible cost.** Capital expenditures for project costs made more than 30 days prior to submission of an application cannot be financed with a tourism loan.

8300.3064 INTEREST RATE FOR TOURISM LOANS.

The interest rate on the authority's participation under the tourism loan program is three percentage points below a full faith and credit obligation of the United States government of comparable maturity, calculated at the time of submission of a completed application to the authority. The authority may, in the alternative, set interest rates at a different rate after reviewing market rates and comparable sources of financing

available to the borrowers at the time the financial assistance is extended.

8300.3065 TERM OF LOAN FOR TOURISM LOANS.

The maximum term of any loan will not exceed the average useful life of the real property, or 80 percent of the useful life of the equipment or machinery, or the following limits, whichever is less:

A. for real property (land or buildings), ten years;

B. for equipment or machinery, five years; and/or

C. for a combination of items A and B, a weighted average of those years will be used.

The financial institution is permitted to amortize the loan over a period of years up to 15 years. If the note between the financial institution and the borrower matures before the expiration of the contract between the financial institution and the authority and the note is renewed, the contract shall remain in effect until the expiration of the contract. The authority need not participate in the refinancing of any remaining portion of the principal not fully amortized and paid at the maturity of the contract between the financial institution and the authority.

8300.3066 SECURITY REQUIREMENTS FOR TOURISM LOANS.

All loans for real property or equipment must be secured by collateral. The financial institution must take a security interest in any collateral acceptable to the financial institution. The personal guarantee of principal owners, officers, sole proprietors, partners, major shareholders or corporate officers of the borrower, or other related entities such as subsidiaries or parent corporations of the borrower, must also be given to the financial institution before loan participation will be approved. For the purposes of this part, principal owners are those having 20 percent or more ownership of any tourism project.

8300.3067 CONTENTS OF APPLICATION FOR TOURISM LOANS.

An application for participation must be made by the

financial institution on behalf of the eligible borrower on a form provided by the commissioner and must contain or be accompanied by:

A. a copy of the financial institution's file regarding the borrower's loan application;

B. a statement by the borrower, in the form provided in Minnesota Statutes, section 13.05, subdivision 4, paragraph (d), or a form similar to it if the borrower is a corporation, consenting to the dissemination of any private or nonpublic data applicable to the loan;

C. a letter containing the financial institution's assessment of the risks associated with the loan, and the credit worthiness of the borrower; and

D. a letter from the borrower demonstrating how the project meets the public purpose requirements of part 8300.3068.

8300.3068 PROCEDURES FOR TOURISM LOAN APPROVAL.

Subpart 1. **Preliminary eligibility review.** An application is considered to have been made upon the commissioner's receipt of a completed application with all required documentation and exhibits. The commissioner shall make a preliminary determination whether the application is complete and whether the borrower, project, and costs are eligible for consideration under the statutes and rules of the tourism loan program.

Subp. 2. **Notification of deficiencies.** If the commissioner determines the application to be incomplete, the commissioner or his or her designee shall notify the borrower, specifying the deficiencies. The financial institution has 60 days from the date of the commissioner's notification to complete the application in accordance with parts 8300.3060 to 8300.3070. If an application is not made complete within 60 days of the date of the commissioner's notification of deficiencies, the application shall be rejected for processing and the financial institution must resubmit the application at a later date in order for it to be considered by the authority. An application which is completed by the last day of the month

must be reviewed at the next month's authority meeting.

Subp. 3. **Approval for processing.** When an application is determined to be complete, the commissioner shall review it to assess the ability of the borrower to reasonably repay the loan and approve or disapprove the application for processing under subpart 4.

Subp. 4. **Evaluation procedures.** An application which, in the judgment of the commissioner, meets the standards and requirements in the act and parts 8300.3060 to 8300.3070 shall be submitted to the authority with a recommendation for its approval at the earliest possible time. Applications which do not meet the criteria, standards, and requirements of the act and parts 8300.3060 to 8300.3070 shall not be submitted to the authority for its consideration until the application documents have been modified to conform to the standards of the program. If a completed application has not been modified to meet the program financial requirements within 60 days after submission, it is considered rejected and the financial institution must submit a new application for further consideration.

Subp. 5. **Requirements of public purpose.** Loan applications by eligible borrowers for eligible costs shall be recommended for approval by the authority only after the commissioner has determined that the project meets one or more of the following standards of public purpose:

A. that the project would contribute to upgrading, expanding, and improving Minnesota's tourism industry;

B. that the project, in order to be competitive and bring in new travelers to the area, offer additional amenities and improve the quality of the tourism facilities in the state;

C. that the project will protect and enhance the tax base;

D. that the borrower can demonstrate a positive economic impact to the surrounding community; and

E. that the project will retain lakeshore for public use.

Subp. 6. **Approval.** The authority may reject or disapprove

any application for participation that does not provide sufficient documentation or otherwise comply with the provisions of the act and parts 8300.3060 to 8300.3070. If the authority approves an application for participation, it shall pass a resolution stating the name of the borrower, a brief description of the project, the amount of participation, and the amount of and interest charged on participation.

Subp. 7. **Participation agreement.** After participation in a loan is approved by the authority, the financial institution shall provide the authority with copies of its documents for the loan. The financial institution must also submit a certificate to the authority stating that the interest approved by the authority will be passed on to the borrower.

8300.3069 LOAN SERVICING.

The financial institution shall collect payments according to the payment schedule outlined in the note. The financial institution shall notify the authority in case of default, as determined by the financial institution. The financial institution may retain interest collected as payment for duties performed by it pursuant to the contract in the amount of one percent per annum of the authority's proportional share of the loan.

8300.3070 AMORTIZATION SCHEDULES.

The financial institution shall allow loan payments to be made on other than a monthly basis in order to meet the amortization schedule established by the financial institution. A nonmonthly payment schedule shall allow for seasonal payments, where income is generated, or primarily generated, because of seasonal business.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAY 14 1986
Joan Anderson Growe
Secretary of State
10:12 AM

APPROVED AS TO FORM AND LEGALITY
5/13 1986
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY
ASSISTANT ATTORNEY GENERAL

Energy and Economic Development Authority

Proposed Rules Relating to Tourism Loan Program

Rules as Proposed (all new material)

CHAPTER 8300

MINNESOTA ENERGY AND ECONOMIC DEVELOPMENT AUTHORITY

TOURISM LOAN PROGRAM

8300.3060 PURPOSE OF TOURISM LOAN PROGRAM.

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OFFICE BY:

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B. for equipment or machinery, five years; and/or

C. for a combination of items A and B, a weighted average of those years will be used.

The financial institution is permitted to amortize the loan over a period of years up to 15 years. If the note between the financial institution and the borrower matures before the expiration of the contract between the financial institution and the authority and the note is renewed, the contract shall remain in effect until the expiration of the contract. The authority need not participate in the refinancing of any remaining portion of the principal not fully amortized and paid at the maturity of the contract between the financial institution and the authority.

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All loans for real property or equipment must be secured by collateral. The financial institution must take a security interest in any collateral acceptable to the financial institution. The personal guarantee of principal owners, officers, sole proprietors, partners, major shareholders or corporate officers of the borrower, or other related entities such as subsidiaries or parent corporations of the borrower, must also be given to the financial institution before loan participation will be approved. For the purposes of this part, principal owners are those having 20 percent or more ownership of any tourism project.

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APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

OFFICE OF THE REVISOR OF STATUTES

Proposed Rule

RD916

Agency: Energy and Economic Development Authoriy

Division:

Agency Contact: Mark Smith

Minnesota Rules: Parts 8300.3060 to 8300.3070

Title: Proposed Rules Relating to Tourism Loan Program

Type of Rules: Permanent

Incorporations by Reference: None

Steven C. Cross
Revisor of Statutes

David S. Niss
Assistant Revisor
Phone: 297-2948

Date: March 10, 1986

MEEDA RESOLUTION NO. 86-539
MINNESOTA ENERGY AND ECONOMIC DEVELOPMENT AUTHORITY
STATE OF MINNESOTA
ST. PAUL, MINNESOTA

In the Matter of the Proposed Adoption of the Rules of the Minnesota Energy and Economic Development Authority relating to Tourism Loan Program.

Findings of Fact, Conclusions and Order Adopting Noncontroversial Rules

Notice of Intent to adopt rules regarding the above-entitled matter was published in the State Register on March 24, 1986 at 10 S.R. 1961 and was mailed to all persons on the list maintained by the agency pursuant to Minnesota Statutes, section 14.14, subdivision 1, paragraph (a) and 14.22 on March 20, 1986.

All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. The Authority received no written comments on the rules or requests for notification of submission of the rules to the Attorney General.

Having afforded interested parties an opportunity to submit comments on the proposed rules, the Authority makes the following:

Findings and 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 the clarifications thereto, and has fulfilled all other substantive requirements of the law or rules within the meaning of the Administrative Procedures Act.

4. The Authority has determined that the proposed changes to the rules as published do not constitute a substantial change since they do not introduce new subject matter.

5. The Authority has determined the need for and reasonableness of these adopted rules, and the clarifications thereto.

Order

NOW THEREFORE, IT IS ORDERED that these rules identified as Rules governing the Tourism Loan Program, Parts 8300.3060 to 8300.3070 are adopted as modified herein this 23rd day of April, 1986, pursuant to the authority vested in me by Minnesota Statutes 116M.08, subdivision 4 and Minnesota Statutes 116M.07.

State of Minnesota



Mark B. Dayton, Chair
Minnesota Energy and Economic
Development Authority

Dated: this 23rd day of April, 1986

State of Minnesota
Minnesota Energy and Economic Development Authority

In the Matter of the Proposed Permanent Rules of the Minnesota Energy and Economic Development Authority Relating to the Tourism Loan Program

ORDER FOR NOTICE OF PROPOSED ADOPTION OF RULES WITHOUT A PUBLIC HEARING

IT IS ORDERED this tenth day of March, 1986, that a Notice of Proposed Adoption of Rules Without a Public Hearing in the above-entitled matter be given to all persons who have registered their names with the Department of Energy and Economic Development on behalf of the Minnesota Energy and Economic Development Authority for that purpose and be published in the State Register.

STATE OF MINNESOTA

MARK B. DAYTON, CHAIRMAN
MINNESOTA ENERGY AND ECONOMIC
DEVELOPMENT AUTHORITY

MEEDA RESOLUTION NO. 84-265
MINNESOTA ENERGY AND ECONOMIC DEVELOPMENT AUTHORITY
STATE OF MINNESOTA
ST. PAUL, MINNESOTA

In the Matter of the Proposed Permanent Rules of the Energy and Economic Development Authority Relating to Rules for the Tourism Loan Program.

Certificate of Authority's Authorizing Resolution

I, Mark B. Dayton, do hereby certify that I am a member and the Chairman of the 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 26th day of December, 1984, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

"RESOLVED, that Mark B. Dayton, Chairman or Lyn Burton, Vice Chairman of the Energy and Economic Development Authority, be and they hereby are granted the authority and directed to sign an Order of the Board directing that Notice be given of the Board's intent to adopt without a public hearing rules governing the Tourism Loan Program, to sign the Notice thereof, and to perform any and all acts incidental thereto. In the event a public hearing becomes necessary, they hereby are granted the authority and directed to call a hearing for the purpose of promulgating said rules as well as perform any and all acts incidental thereto, including but without being limited to signing an Order for Hearing and Notice of Hearing as well as acting as the Board's representative at all hearings."

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

By: _____
Chair

Attest: _____
Member

Minnesota Energy and Economic Development Authority

In the Matter of the Proposed Adoption of the Rule of the Minnesota Energy and Economic Development Authority Governing the Tourism Loan Program

NOTICE OF PROPOSED ADOPTION OF A RULE WITHOUT A PUBLIC HEARING

Notice is hereby given that the Minnesota Energy and Economic Development Authority (hereinafter the "Authority") proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in Minnesota Statutes, sections 14.22 to 14.28. The specific statutory authority to adopt the rule is Minn. Stat. sections 116M.07 and 116M.08, subd. 4.

Persons interested in this rule shall have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule and comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed, if a public hearing is required, the Authority will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

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

Mark Smith
Department of Energy and Economic Development
Financial Management Division
900 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
(612) 297-1980

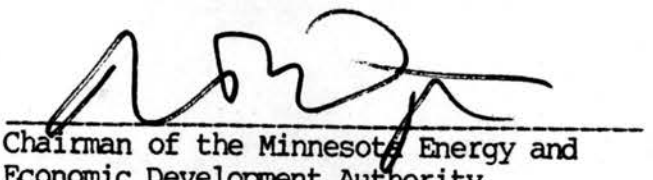
The proposed rule may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this notice.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Mark Smith upon request.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be delivered to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Mark Smith.

State of Minnesota



Chairman of the Minnesota Energy and
Economic Development Authority

MINNESOTA ENERGY AND ECONOMIC DEVELOPMENT AUTHORITY
STATE OF MINNESOTA
ST. PAUL, MINNESOTA

In the Matter of the Proposed Adoption of Rules of the Minnesota Energy and Economic Development Authority Governing the Tourism Loan Program

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) SS.
COUNTY OF RAMSEY)

Darlene Christenson, being first duly sworn deposes and says:

That on the 20th day of March, 1986, at the City of St. Paul, County of Ramsey, State of Minnesota, she served that attached Notice of Intent to Adopt Rules without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the State of Minnesota for the purpose of receiving notice of the proposed adoption of rules by the Department of Energy and Economic Development and the Minnesota Energy and Economic Development Authority.

Darlene A. Christenson
Darlene A. Christenson

Subscribed and sworn to before me
this 25th day of April, 1986
Richard B. Madeau

RICHARD B. MADEAU
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Commission Expires Apr. 9, 1987

MINNESOTA ENERGY AND ECONOMIC DEVELOPMENT AUTHORITY
STATE OF MINNESOTA
ST. PAUL, MINNESOTA

In the Matter of the Proposed Adoption of Rules of the Minnesota Energy and Economic Development Authority Governing the Tourism Loan Program

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) SS.
COUNTY OF RAMSEY)

Dave Gaitley, being first duly sworn deposes and says:

That on the 21st day of March, 1986, at the City of St. Paul, County of Ramsey, State of Minnesota, he served that attached Notice of Intent to Adopt Rules without a Public Hearing 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, to approximately 2,000 tourism businesses known to the Minnesota Office of Tourism.

Dave Gaitley
Dave Gaitley

Subscribed and sworn to before me
this 25th day of April, 1986
Richard B. Nadeau

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

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

CERTIFICATE

In the Matter of the Proposed Adoption
of the permanent rules for the Minnesota
Energy and Economic Development Authority
governing the Tourism Loan Program.

Mary Andresen

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 21 day of March, 1986.

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12 MCAR §§ 2.05302; 2.05304 [Temp, 9 SR 2104] (adopted) . 540

PROPOSED RULES

Pursuant to Minn. Stat. of 1984, §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

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

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

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

Department of Energy and Economic Development Energy and Economic Development Authority

Proposed Rules Relating to Tourism Loan Program

Notice of Proposed Adoption of a Rule without a Public Hearing

Notice is hereby given that the Minnesota Energy and Economic Development Authority (hereinafter the "Authority") proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in Minnesota Statutes, sections 14.22 to 14.28. The specific statutory authority to adopt the rule is Minn. Stat. sections 116M.07 and 116M.08, subd. 4.

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.

Persons interested in this rule shall have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule and comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed, if a public hearing is required, the Authority will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

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

Mark Smith
Department of Energy and Economic Development
Financial Management Division
900 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
(612) 297-1980

The proposed rule may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this notice.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Mark Smith upon request.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be delivered to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Mark Smith.

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

Rules as Proposed (all new material)

CHAPTER 8300

MINNESOTA ENERGY AND ECONOMIC DEVELOPMENT AUTHORITY

TOURISM LOAN PROGRAM

8300.3060 PURPOSE OF TOURISM LOAN PROGRAM.

The purpose of the tourism loan program of the authority is to provide loans to upgrade and improve Minnesota's small tourism businesses. This program would match loans by local financial institutions, share credit risks, and provide for lower interest rates than are otherwise now available.

8300.3061 DEFINITIONS.

Subpart 1. **Statutory terms.** The definitions in Minnesota Statutes, section 116M.03 and this part apply to parts 8300.3060 to 8300.3070.

Subp. 2. **Act.** "Act" means the Minnesota Energy and Economic Development Authority Act.

Subp. 3. **Commissioner.** "Commissioner" means the commissioner of energy and economic development.

Subp. 4. **Eligible borrower.** "Eligible borrower" means a person, partnership, firm, or corporation engaged in, and determined by the authority to constitute, a tourism business as defined by the standard industrial classification (SIC) codes of 7011 and 7033, as set out in Code of Federal Regulations, title 13, section 121.2, and a targeted small business. Any person to whom a loan has been made under parts 8300.3060 to 8300.3070 must maintain the SIC code classification throughout the term of the loan.

Subp. 5. **Eligible project.** "Eligible project" means a project proposed by an eligible borrower that meets the public purpose standards of part 8300.3068, subpart 5.

Subp. 6. **Participation.** "Participation" means a contract by which the authority purchases a share of the financial institution's loan to an eligible borrower.

8300.3062 ELIGIBILITY OF PROJECT FOR TOURISM LOANS.

In order to receive loan participation by the authority, a financial institution's loan must be to an eligible borrower for an eligible cost in an eligible project. The maximum state participation is 50 percent of the cost of the project, with a maximum for any one project of $50,000. The financial institution shall make application for participation on behalf of an eligible borrower.

8300.3063 ELIGIBLE COSTS FOR TOURISM LOANS.

Subpart 1. **Eligible costs.** Eligible costs for financing by the authority include any costs not prohibited by subpart 2 for:

A. building construction and improvement;

B. site preparation;

C. equipment;

D. construction;

E. engineering;

F. authority fees including application fees of the authority; and

G. interest due on the loan during the period of construction.

Subp. 2. **Ineligible cost.** Capital expenditures for project costs made more than 30 days prior to submission of an application cannot be financed with a tourism loan.

8300.3064 INTEREST RATE FOR TOURISM LOANS.

The interest rate on the authority's participation under the tourism loan program is three percentage points below a full faith and credit obligation of the United States government of comparable maturity, calculated at the time of submission of a completed application to the authority. The authority may, in the alternative, set interest rates at a different rate after reviewing market rates and comparable sources of financing available to the borrowers at the time the financial assistance is extended.

8300.3065 TERM OF LOAN FOR TOURISM LOANS.

The maximum term of any loan will not exceed the average useful life of the real property, or 80 percent of the useful life of the equipment or machinery, or the following limits, whichever is less:

A. for real property (land or buildings), ten years;

B. for equipment or machinery, five years; and/or

C. for a combination of items A and B, a weighted average of those years will be used.

The financial institution is permitted to amortize the loan over a period of years up to 15 years. If the note between the financial institution and the borrower matures before the expiration of the contract between the financial institution and the authority and the note is renewed, the contract shall remain in effect until the expiration of the contract. The authority need not participate in the refinancing of any remaining portion of the principal not fully amortized and paid at the maturity of the contract between the financial institution and the authority.

8300.3066 SECURITY REQUIREMENTS FOR TOURISM LOANS.

All loans for real property or equipment must be secured by collateral. The financial institution must take a security interest in any collateral acceptable to the financial institution. The personal guarantee of principal owners, officers, sole proprietors, partners, major shareholders or corporate officers of the borrower, or other related entities such as subsidiaries or parent corporations of the borrower, must also be given to the financial institution before loan participation will be approved. For the purposes of this part, principal owners are those having 20 percent or more ownership of any tourism project.

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.

8300.3067 CONTENTS OF APPLICATION FOR TOURISM LOANS.

An application for participation must be made by the financial institution on behalf of the eligible borrower on a form provided by the commissioner and must contain or be accompanied by:

A. a copy of the financial institution's file regarding the borrower's loan application;

B. a statement by the borrower, in the form provided in Minnesota Statutes, section 13.05, subdivision 4, paragraph (d), or a form similar to it if the borrower is a corporation, consenting to the dissemination of any private or nonpublic data applicable to the loan;

C. a letter containing the financial institution's assessment of the risks associated with the loan, and the credit worthiness of the borrower; and

D. a letter from the borrower demonstrating how the project meets the public purpose requirements of part 8300.3068.

8300.3068 PROCEDURES FOR TOURISM LOAN APPROVAL.

Subpart 1. **Preliminary eligibility review.** An application is considered to have been made upon the commissioner's receipt of a completed application with all required documentation and exhibits. The commissioner shall make a preliminary determination whether the application is complete and whether the borrower, project, and costs are eligible for consideration under the statutes and rules of the tourism loan program.

Subp. 2. **Notification of deficiencies.** If the commissioner determines the application to be incomplete, the commissioner or his or her designee shall notify the borrower, specifying the deficiencies. The financial institution has 60 days from the date of the commissioner's notification to complete the application in accordance with parts 8300.3060 to 8300.3070. If an application is not made complete within 60 days of the date of the commissioner's notification of deficiencies, the application shall be rejected for processing and the financial institution must resubmit the application at a later date in order for it to be considered by the authority. An application which is completed by the last day of the month must be reviewed at the next month's authority meeting.

Subp. 3. **Approval for processing.** When an application is determined to be complete, the commissioner shall review it to assess the ability of the borrower to reasonably repay the loan and approve or disapprove the application for processing under subpart 4.

Subp. 4. **Evaluation procedures.** An application which, in the judgment of the commissioner, meets the standards and requirements in the act and parts 8300.3060 to 8300.3070 shall be submitted to the authority with a recommendation for its approval at the earliest possible time. Applications which do not meet the criteria, standards, and requirements of the act and parts 8300.3060 to 8300.3070 shall not be submitted to the authority for its consideration until the application documents have been modified to conform to the standards of the program. If a completed application has not been modified to meet the program financial requirements within 60 days after submission, it is considered rejected and the financial institution must submit a new application for further consideration.

Subp. 5. **Requirements of public purpose.** Loan applications by eligible borrowers for eligible costs shall be recommended for approval by the authority only after the commissioner has determined that the project meets one or more of the following standards of public purpose:

A. that the project would contribute to upgrading, expanding, and improving Minnesota's tourism industry;

B. that the project, in order to be competitive and bring in new travelers to the area, offer additional amenities and improve the quality of the tourism facilities in the state;

C. that the project will protect and enhance the tax base;

D. that the borrower can demonstrate a positive economic impact to the surrounding community; and

E. that the project will retain lakeshore for public use.

Subp. 6. **Approval.** The authority may reject or disapprove any application for participation that does not provide sufficient documentation or otherwise comply with the provisions of the act and parts 8300.3060 to 8300.3070. If the authority approves an application for participation, it shall pass a resolution stating the name of the borrower, a brief description of the project, the amount of participation, and the amount of and interest charged on participation.

Subp. 7. **Participation agreement.** After participation in a loan is approved by the authority, the financial institution shall provide the authority with copies of its documents for the loan. The financial institution must also submit a certificate to the authority stating that the interest approved by the authority will be passed on to the borrower.

8300.3069 LOAN SERVICING.

The financial institution shall collect payments according to the payment schedule outlined in the note. The financial institution shall notify the authority in case of default, as determined by the financial institution. The financial institution may retain interest

collected as payment for duties performed by it pursuant to the contract in the amount of one percent per annum of the authority's proportional share of the loan.

8300.3070 AMORTIZATION SCHEDULES.

The financial institution shall allow loan payments to be made on other than a monthly basis in order to meet the amortization schedule established by the financial institution. A nonmonthly payment schedule shall allow for seasonal payments, where income is generated, or primarily generated, because of seasonal business.

Department of Health

Proposed Rules Relating to Health, Morticians, Funeral Directors, Fees, and Licensing

Notice of Intent to Amend Rules without a Public Hearing

Notice is hereby given that the Commissioner of Health (hereinafter "Commissioner") proposes to adopt amendments to Minnesota Rules, chapter 4610, which relates to mortuary science and the disposition of the dead.

A copy of the proposed amendments is attached to this notice. One additional free copy is available upon request from David F. Schwietz at the address shown below.

The Commissioner has determined that the proposed amendments will be noncontroversial in nature and has elected to follow the provisions of Minnesota Statutes, sections 14.22 to 14.28 (1984). Sections 14.21 to 14.28 provide for an expedited process for the adoption of administrative rule changes without the holding of a public hearing.

The implementation of these amendments will not require the expenditure of public money by local bodies of greater than $100,000.00 in either of the two years following their adoption, nor do the amendments have any impact on agricultural land. The small business considerations in rulemaking are not believed to apply to these amendments pursuant to Minnesota Statutes, section 14.115. Nevertheless, in accordance with section 14.115, subdivision 4(b), notice of this proceeding has been given to the Minnesota Funeral Directors Association for publication in their bulletin. This Association has a membership of 95% of the state's licensed funeral establishments.

The public is hereby advised that:

1. They have 30 days in which to submit comment in support of or in opposition to the proposed amendments, and comment is encouraged;

2. Each comment should identify the portion of the proposed amendments addressed, the reason for the comment, and any change proposed;

3. If twenty-five or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held pursuant to Minnesota Statutes, sections 14.13 to 14.20;

4. All comments and any written requests for a public hearing shall be submitted to David F. Schwietz, Supervisor, Mortuary Science Unit, Minnesota Department of Health, 717 Delaware Street Southeast, Minneapolis, Minnesota 55440;

5. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed amendments addressed, the reason for the request, and any change proposed;

6. The proposed amendments may be modified if modifications are supported by the data and views submitted and do not result in a substantial change in the proposed language;

7. Under this expedited procedure, if a hearing is not required the department must submit any action on its rules to the attorney general for review of the form and legality of the rule change. Notice of the date of submission of the proposed amendments to the attorney general for review will be mailed to any person who requests to receive the notice. Requests to receive notice must be submitted to David Schwietz at the above address;

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.

MEEDA RESOLUTION NO. 86-539
MINNESOTA ENERGY AND ECONOMIC DEVELOPMENT AUTHORITY
STATE OF MINNESOTA
ST. PAUL, MINNESOTA

In the Matter of the Proposed Adoption of the Rules of the Minnesota Energy and Economic Development Authority relating to Tourism Loan Program.

Findings of Fact, Conclusions and Order Adopting Noncontroversial Rules

Notice of Intent to adopt rules regarding the above-entitled matter was published in the State Register on March 24, 1986 at 10 S.R. 1961 and was mailed to all persons on the list maintained by the agency pursuant to Minnesota Statutes, section 14.14, subdivision 1, paragraph (a) and 14.22 on March 20, 1986.

All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. The Authority received no written comments on the rules or requests for notification of submission of the rules to the Attorney General.

Having afforded interested parties an opportunity to submit comments on the proposed rules, the Authority makes the following:

Findings and 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 the clarifications thereto, and has fulfilled all other substantive requirements of the law or rules within the meaning of the Administrative Procedures Act.

4. The Authority has determined that the proposed changes to the rules as published do not constitute a substantial change since they do not introduce new subject matter.

5. The Authority has determined the need for and reasonableness of these adopted rules, and the clarifications thereto.

Order

NOW THEREFORE, IT IS ORDERED that these rules identified as Rules governing the Tourism Loan Program, Parts 8300.3060 to 8300.3070 are adopted as modified herein this 23rd day of April, 1986, pursuant to the authority vested in me by Minnesota Statutes 116M.08, subdivision 4 and Minnesota Statutes 116M.07.

State of Minnesota



Mark B. Dayton, Chair
Minnesota Energy and Economic
Development Authority

Dated: this 23rd day of April, 1986

MEEDA RESOLUTION NO. 86-540
MINNESOTA ENERGY AND ECONOMIC DEVELOPMENT AUTHORITY
STATE OF MINNESOTA
ST. PAUL, MINNESOTA

In the matter of the adoption of Noncontroversial Rules of the Minnesota Energy and Economic Development Authority Governing the Tourism Loan Program

Certificate of the Authority's Authorizing Resolution to Adopt Noncontroversial 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 Authority duly and properly called and held on the 23rd day of April, 1986, 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 minutes of said meeting and has not been rescinded or modified.

> "Resolved, that the proposed rules governing the Tourism Loan Program be and hereby are approved and adopted pursuant to the authority invested in my by Minnesota Statutes Section 116M.07, Minnesota Statutes, Section 116M.08, Subdivision 4, and that Mark B. Dayton, Chairman of the Minnesota Energy and Economic Development Authority, Lyn Burton, Vice Chair and David L. Printy, Secretary, be and hereby are authorized to sign the findings of fact, conclusions and order adopting these rules and further are authorized to perform the necessary acts to provide that these rules shall have the force and effect of law."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 23rd day of April, 1986.

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

ATTEST: Lyn Burton
Member of the Authority

STATE OF MINNESOTA
MINNESOTA ENERGY AND ECONOMIC DEVELOPMENT AUTHORITY

In the Matter of the Proposed Rules
Governing Loan Application Procedures,
Tourism Fund Loans

STATEMENT OF NEED
AND REASONABLENESS

I. The Minnesota Energy and Economic Development Authority (Authority) presents herein facts and justifications establishing the need for and reasonableness of its proposed rules governing loan application procedures. Tourism Fund Loans. These proposed permanent rules are similar to the existing emergency rules for tourism loans. Minn. Rules 8300.3060-8300.3070 [Emergency].

II. Impact on small business. Under the Emergency Rules the Authority has approved participation in 43 tourism loans. The total amount of the loan participation approved by the Authority is approximately $1.2 million. Attached as exhibit A is a map showing the locations of the tourism businesses for which loan participations have been approved. The Authority's authorizing legislation directs that their powers be used for small business purposes. The Authority manages several loan programs and is able to help qualified small businesses through the loan gaurantees, loan participations, or outright loans. The proposed tourism rules do not establish a regulatory compliance or reporting program with mandatory application. The rules prescribe policy and procedures for the operation of a benefit program, and the decision to participate in a financial assistance program is voluntary. A tourism business can elect to participate in a financial assistance program, and that decision can be made for each individual transaction.

In terms of compliance and reporting requirements, because the Authority operates benefit programs, rather than regulatory programs, it operates on eligibility rather than compliance requirements. However, the Authority has adopted the least stringent eligibility requirements consistent with statutory authorizations of the programs. For example "eligible borrower" is defined to refer to targeted small businesses which are smaller businesses. The proposed rules do not contain any design or operational standards.

As previously discussed, the financial assistance programs are aimed at targeted small business. All of the proposed rule requirements are promulgated with the capabilities and needs of smaller businesses in mind. The requirements adopted in the rules are those minimal and necessary to fulfillment of statutory requirements and standards; further exemptions are neither appropriate nor authorized. It should be noted that because these rules will govern a benefit program for only the Tourism Industry, the Authority has made special dfforts to make all known tourism businesses aware of the proposed rules. In addition to mailing the Notice of Intent to Adopt the Rules to those individuals on the rulemaking notice list, the Authority will mail the Notice of Intent to Adopt these Rules to the approximately 2000 Tourism businesses known to the Minnesota Office of Tourism.

III. Discusion of Proposed Rules. For the convenience of the reader, the proposed text of the rule is set forth followed by the section of the Statement of Need and Reasonableness which relates to the proposed section of the rule set forth.

8300.3060 PURPOSE OF TOURISM LOAN PROGRAM

The purpose of the tourism loan program of the Authority is to provide loans to upgrade and improve Minnesota's small tourism businesses. This program would match loans by local financial institutions, share credit risks, and provide for lower interest rates than are otherwise now available.

8300.3060 PURPOSE OF THE TOURISM LOAN PROGRAM

Parts 8300.3060 to 8300.3070 pertain to the tourism loan program. Under Minnesota Statutes, section 116M.08, subd. 4 the Authority can adopt rules. These program specific rules outline the parameters and requirements unique to this program. The program is defined as the provision of financial assistance by purchasing a participation in a loan made to an eligible tourism business for an eligible tourism project. By purchasing a participation with funds from the Economic Development Fund, the Authority will, in partnership with Minnesota private lending institutions, increase the amount of money available for loans to the State's tourism business. The tourism loan program will also reduce the effective cost of borrowing to tourism businesses. The borrower has a lower effective interest rate because the Authority participates in up to 50% of a loan made by private lending institutions. This participation is at a lower interest rate than the lending institution, thereby lowering the overall rate of interest from what it would have been without the program.

8300.3061 DEFINITIONS

Subpart 1. Statutory terms. The definitions in Minnesota Statutes, section 116M.03 and this part apply to parts 8300.3060 to 8300.3070.

Subpart 2. Act. Act means the Minnesota Energy and Economic Development Authority Act.

Subpart 3. Commissioner. Commissioner means the commissioner of energy and economic development.

Subpart 4. Eligible borrower. Eligible borrower means a person, partnership, firm, or corporation engaged in, and determined by the Authority to constitute a tourism business as defined by the standard industrial classification (SIC) codes 7011 and 7033 is a targeted small business. Any person to whom a loan has been made under parts 8300.3060 to 8300.3070 must maintain the (SIC) code classification as approved by the Authority throughout the loan.

8300.3061 DEFINITIONS

It is necessary and reasonable to tell readers definitions involved in these rules and what the eligibility criteria are for the program. The definition of an eligible borrower to be tourism business as defined by the Standard Industrial Classification (SIC) code is consistant with the Authority's other programs which also use that same regulation. Under Minnesota Statutes 116.03, subd. 4 (1984), "eligible small business" considered to be eligible under the regulations of the United States Small Business Administration (SBA) pursuant to United States code, title 15, sections 631 to 647. The SIC code found at 13 CFR is a regulation of the SBA. We note that the Minnesota Supreme Court has expressly held the incorporation of SBA definitions as to eligible small business is not an unconstitutional delegation of state legislative power to the federal government. See Minn. Energy and Economic Development Authority v. Printy, 351 N.W. 2d 319, 351 (Minn. 1984). The SIC codes listed in the rules are the most appropriate SIC codes for the tourism businesses. It is also important to note that SIC codes are widely used by commercial lenders in classification of businesses.

It is also reasonable for the Authority to limit the program to target small businesses as defined in Minnesota Statutes §116.03, subd. 8 (1984). Targeted businesses are defined to be very small businesses. Typically it is the smaller tourism businesses which have the most difficulty obtaining financing and are most in need of assistance. According to officials at the Minnesota Office of Tourism, "most tourism businesses throughout the state were built in the 1930's, 40's, and 50's and are in desparate need of improvements and renovation. Of these businesses, 75 to 80 percent have gross sales under $150,000 thereby making it difficult to obtain financing". Since it is the smaller tourism businesses which are most in need of assistance it is reasonable for the Authority to use it's limited funds to those businesses with the greatest need. Moreover, the legislature has specically directed the Authority to "make every effort to assure that at least 50% of the loans made or purchased by the Authority in each fiscal year consist of loans with a principal amount of $100,000 or less to targeted small businesses." Minnesota Statute §116M.07, subd. 10 (1984). By establishing a program designed only for "targeted small

businesses" the Authority is implementing the directive of the legislature and helping to assure that "targeted businesses" receive financial assistance from the Authority instead of having all the financial assistance go to larger businesses.

8300.3062 ELIGIBILTY OF PROJECT FOR TOURISM LOANS

In order to receive loan participation by the Authority, a financial institutions loan must be to an eligible borrower for an eligible cost in an eligible project. The maximum state participation is 50 percent of the project, with a maximum for any one project of $50,000. The financial institution shall make application for participation on behalf of an eligible borrower.

8300.3062 ELIGIBILITY OF PROJECT FOR TOURISM LOANS

The eligibility requirements are needed to inform readers of the rules concerning funding under the program. The parameters are reasonable because the participation of the Authority is 50 percent of the project costs, with a maximum participation of $50,000 on any one project, and it provides the incentive for an outside lender to participate in the financing of a project. It is possible that money to make tourism loans may be made available from other sources, i.e.,for example, a federal grant, or a grant from a private foundation. When that is the case it is reasonable that the project comply with the eligible criteria required by the funding source. The limit of $50,000 per participation helps the Authority to implement the legislative mandate set forth in Minn. Stat.§116M.07, subd. 10 that 50 percent of the loans made or purchased by the Authority be in a principal amount of $100,000 or less.

8300.3063 ELIGIBLE PROJECT COSTS FOR TOURISM LOANS

Subpart 1. Eligible costs. Eligible costs for financing by the Authority include any costs not prohibited by subpart 2 for:

A. building construction and improvement;
B. site preparation:
C. equipment:
D. construction:
E. engineering:
F. authority fees including application fees of the authority; and
G. interest due on the loan during the period of construction.

Subpart 2. Ineligible cost. Capital expenditures for project costs made more than 30 days prior to submission of an application cannot be financed with a tourism loan.

8300.3063 ELIGIBLE PROJECT COSTS FOR TOURISM LOANS

It is necessary to define for the potential applicants what is specifically meant by eligible project costs permitted under the program. The financing of building equipment and their related costs are reasonable because they upgrade and improve Minnesota's tourism industry. All of the assets listed should provide adequate collateral for our participation and for an outside lender's participation in the project financing. Such eligible costs are similar to eligible costs specified for other Authority programs, see e.g. Minn. Rules, pt 8300.3022, 8330.3042 and 8300.4017. In addition the costs listed are consistant with those costs listed as eligible under the definition of a small business loan under Minn. Stat.§116M.03, subd.19(1984).

It is necessary and reasonable to establish a cut off date for what costs are are expended. The purpose of the Authority participation is to permit tourism projects to be financed which might not have been able to go forward without Authority participation in the loan. If the Authority funded costs made more than one month prior to the application, it would be difficult to justify the proposition that the Authority funding made the tourism project possible.

8300.3064 INTEREST RATE FOR TOURISM LOANS

The interest rate on the Authority's participation under the tourism loan program is three percentage points below a full faith and credit obligation of the United States government of comparable maturity, at the time of submission of completed applications to the Authority. The Authority may, in the alternative set interest rates at a different rate after reviewing market rates and comparable sources of financing available to the borrowers at the time the financial assistance is extended.

8300.3064 INTEREST RATE FOR TOURISM LOANS

It is necessary to tell readers of the rules and what they can expect in terms of interest rates. An interest rate that is three percentage points below a full faith and credit obligation of the United States government of compareable maturity, and at the time of submission of complete applications to the Authority, is reasonable because the program provides a credit product which is not currently available through the market place. The program fills a void that helps promote economic development in the State and helps to fulfill the purposes of the Act. The interest rate set is similar to the rate set for other Authority programs. See e.g. Minn. Rules pt 8300.3033.

8300.3065 TERM OF LOAN FOR TOURISM LOANS

The maximum term of any loan will not exceed the average useful life of the real property, or 80 percent of the useful life of the equipment or machinery, or the following limits, whichever is less:

A. for real property (land or building), ten years;
B. for equipment or machinery, five years; and/or
C. for a combination of items A and B, a weighted average of those years will be used.

The financial institution is permitted to amortize the loan over a period of years up to 15 years. If the note between the financial institution and the borrower matures before the expiration of the contract between the financial institution and the Authority and the note is renewed, the contract shall remain in effect until the expiration of the contract. The Authority need not participate in the refinancing of any remaining portion of the principal not fully amortized and paid at the maturity of the contract between the financial institution and the Authority.

8300.3065 TERM OF LOAN FOR TOURISM LOANS

The indication of the term of a loan issued under the program is necessary in order to inform potential applicants about the terms. The maximum term of ten years of the useful life of the project financed, which ever is shorter is reasonable because long term financing is not available for these assets in the marketplace; therefor, the Authority's program is not in competition with other lenders in the market place. In addition, this term financing provides further incentive for an outside lender to participate in financing projects.

8300.3066 SECURITY REQUIREMENTS FOR TOURISM LOANS

All loans for real property or equipment must be secured by collateral. The financial institution must take a security interest in any collateral acceptable to the financial institution. The personal gaurantee of principal owners, officers, sole proprietors, partners, major shareholders or corporate officers of the borrower, or other related entities such as subsidiaries or parent corporations of the borrower, must also be given to the financial institution before loan participation will be approved. For purposes of this part, principal owners are those having 20 percent or more ownership of any tourism project.

8300.3066 SECURITY REQUIREMENTS FOR TOURISM LOANS.

It is necessary for the Authority to protect its financial exposure pursuant to Minnesota Statutes, §116M.06, subd. 2. It is reasonable for the Authority to require collateral in accordance with generally accepted commercial lending practices to protect its interests in the financial assistance. The specified forms of acceptable collateral are generally accepted forms by commercial lending practices and standards. The discretion to require additional information or certificates is reasonable because it permits the Authority to enter into various types of financial assistance agreements and obtain the best available collateral as required pursuant to Minnesota Statutes, §116M.06. subd. 2, and at the same time tailor the required information to support an application to that information needed for the Authority to prudently manage the State loan programs pursuant to Minnesota Statutes, ch 116M.

8300.3067 CONTENTS OF APPLICATION FOR TOURISM LOANS.

An application for participation must be made by the financial institution on behalf of the eligible borrower on a form provided by the commissioner and must contain or be accompanied by:

A. a copy of the financial institution's file regarding the borrower's loan application;

B. a statement by the borrower, in the form provided in Minnesota Statutes, section 13.05, subdivision 4, paragraph (d), or a form similar to it if the borrower is a corporation, consenting to the dissemination of any private or nonpublic data applicable to the loan;

C. a letter containing the financial institution's assesment of the risks associated with the loan, and the credit worthiness of the borrower; and

D. a letter from the borrower demonstrating how the project meets the public purpose requirements of part 8300.3068.

8300.3067 CONTENTS OF APPLECATION FOR TOURISM LOANS.

It is reasonable to inform prospective applicants of the required contents of an application for funds under the tourism loan program. The contents of the application are reasonable and only request information necessary for the Authority to adequately evaluate the loan. Again the contents of the application are similar to the application contents for other similar Authority programs. See e.g. Minn. Rule. pt. 8300.4023. It should be noted that the application is submitted by the lender on behalf of the borrower. Thus, the application will be submitted by a lending institution. Any lending institution is familiar with various federal and state loan programs and will have experience with participation in government loan programs. Thus, the program is structured so the lending institution rather than the borrower is responsible for the submitting of an application. This should assist the tourism business by placing the responsibility with the more experienced lending institution.

8300.3068 PROCEDURES FOR TOURISM LOAN APPROVAL

Subpart 1. Preliminary eligibility review. An application is considered to have been made upon the commissioner's receipt of a completed application with all documentation and exhibits. The commissioner shall make a preliminary determination whether the application is complete and whether the borrower, project, and costs are eligible for consideration under the statutes and rules of the tourism loan program.

Subpart 2. Notification of deficiencies. If the commissioner determines the application to be incomplete, the commissioner or his or her designee shall notify the borrower, specifying the deficiencies. The financial institution has 60 days from the date of the commissioner's notification to complete the application in accordance with parts 8300.3060 to 8300.3070. If an application is not made complete within 60 days of the date of the commissioner's notification of deficiencies, the application shall be rejected for processing and the financial institution must resubmit the application at a later date in order for it to be considered by the Authority. An application which is completed by the last day of the month must be reviewed at the next month's authority meeting.

Subpart 3. Approval for processing. When an application is determined to be complete, the commissioner shall review it to assess the ability of the borrower to reasonably

repay the loan and approve or disapprove the application for processing under subpart 4.

Subpart 4. Evaluation procedures. An application which, in the judgement of the commissioner, meets the standards and requirements in the act and parts 8300.3060 to 8300.3070 shall be submitted to the Authority with a recommendation for its approval at the earliest possible time. Applications which do not meet the criteria, standards, and requirements of the act and parts 8300.3060 to 8300.3070 shall not be submitted to the Authority for its consideration until the application documents have been modified to conform to the standards of the program. If a completed application has not been modified to meet the program financial requirements within 60 days after submission, it is considered rejected and the financial institution must submit a new application for futher consideration.

Subpart 5. Requirements of public purpose. Loan applications by eligible borrowers for eligible costs shall be recommended for approval by the Authority only after the commissioner has determined that the project meets one or more of the following standards of public purpose:

A. that the project would contribute to upgrading, expanding, and improving Minnesota's tourism industry;

B. that the project, in order to be competitive and bring in new travelers to the area, offer additional amenities and improve the quality of the tourism facilities in the state;

C. that the project will protect and enhance the tax base;

D. that the borrower can demonstrate a positive economic impact to the surrounding community; and

E. that the project will retain lakeshore for public use.

Subpart 6. Approval. The Authority may reject or disprove any application that does not provide sufficient documentation or otherwise comply with the provisions of the act and parts 8300.3060 to 8300.3070. If the Authority approves an application for participation, it shall pass a resolution stating the name of the borrower, a brief description of the project, the amount of participation, and the amount of and interest charged on participation.

Subpart 7. Participation agreement. After participation in a loan is approved by the Authority, the financial institution shall provide the Authority with copies of its documents for the loan. The financial institution must also submit a certificate to the Authority stating that the interest approved by the Authority will be passed on to the borrower.

8300.3068 PROCEDURES FOR TOURISM LOAN APPROVAL

Pursuant to Minn. Stat., 116J.10(h), the commissioner has the power to administer statewide programs of the Authority. It is reasonable to inform the public of the expected time frame involved in processing loan applications, of the various steps in the evaluation process itself, and of the procedures for approval and disapproval process for clarification and understanding of what is expected from an applicant, the commissioner and the Authority.

Subpart 1 discusses what is meant by a completed application to provide clarification for potential applicants. Subpart 2 provides a potential applicant procedures concerning the handling of incomplete applications. Subparts 3 and 4 describe the first review steps for completed applications based on a comparision of the project and applicant set forth in the law, general application rules and program specific rules. It is reasonable to tell potential applicants how the process works. Subpart 5 provides the reader with information concerning public purpose guidelines. Pursuant to Minnesota Statutes, § 116J.89, all financial assistance awards must fulfill a public purpose. The public purpose standards set forth in proposed subpart 5 are necessary to insure that public money is spent for a public purpose as required by the Minnesota Const. in art. X, Section 1 art. XI 2 and art. XII Section 1. Numerous Minnesota cases have set forth parameters for determining whether an expenditure of public funds is for a public purpose. The Minnesota Supreme Court has upheld the Minnesota Energy and Economic Development Act against a challenge as to the public purpose for several Authority programs. See Minn. Energy and Economic Dev. Auth. v. Printy, 351 N.W. 2d 319, 337-343 (Minn. 1984). The public purpose criteria set forth for this program are designed to insure that projects funded will improve the Minnesota tourism industry and thus, benefit an industry important to the economy of the State.

Subpart 6 provides the applicant with an overview of when the Authority either approves or disproves the application. The procedures for both approval and disapproval are described. It is reasonable to tell potential applicants what the possible outcome of the process may be. Subpart 7 discusses the documentation needed by the Authority from the financial institution after the loan is approved by the Authority. It is reasonable to tell the potential applicant what documentation the Authority will require upon approval of the participation in a loan.

8300.3069 LOAN SERVICING

The financial institution shall collect payments according to the payment schedule outlined in the note. The financial institution shall notify the Authority in case of default, as determined by the financial institution. The financial institution may retain interest collected as payment for duties performed by it pursuant to the contract in the amount of one percent per annum of the Authority's proportional share of the loan.

8300.3069 LOAN SERVICING

It is necessary for the potential lender and borrower to understand the servicing of a loan. It is reasonable for the financial institution to collect payments and notify the Authority in the case of default because the financial institution is the originator of the loan. It is also reasonable for the financial institution to retain a portion of the interest collected because of the staff time of the lender involved in the process. Such a servicing arangement is typical of other loan participations.

8300.3070 AMORTIZATION SCHEDULES

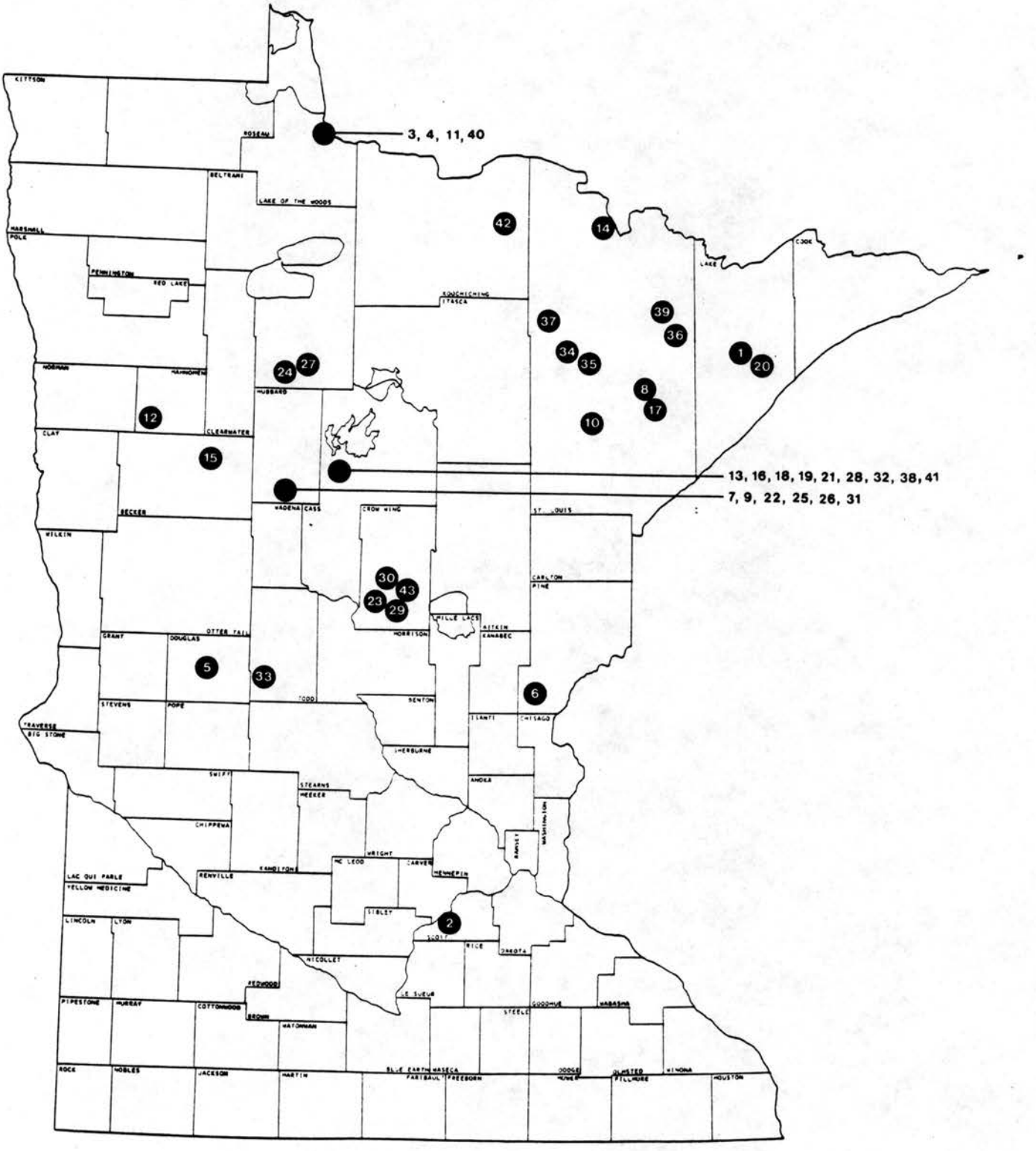
The financial institution shall allow loan payments to be made on other than a monthly basis in order to meet the amortization schedule established by the financial institution. A nonmonthly payment schedule shall allow for seasonal payments, where income is generated, or primarily generated, because of seasonal business.

8300.3070 AMORTIZATION SCHEDULES

It is necessary for the lender and the potential borrower to be informed that the financial institution may allow other than nonmonthly loan payments. It is reasonable to provide other than monthly payments because the income generated by many of the businesses under this program will be on a seasonal basis which is typical of the tourism industry, particularly among the smaller tourism businesses.

EXHIBIT A

THE TOURISM LOAN PROGRAM



Minnesota Division of Economic Development 900 American Center 150 East Kellogg Boulevard St. Paul, Minnesota 55101 612 297-1300

In the Matter of the Proposed Adoption of Rules of the Minnesota Energy and Economic Development Authority Governing the Tourism Loan Program

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

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

Christie B. Eller 4-28-86

CHRISTIE B. ELLER
Special Assistant
Attorney General

SF-00006-03

STATE OF MINNESOTA

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

TO: JUDITH WEHRWEIN
Legal Assistant

DATE: 4-28-86

FROM: CHRISTIE B. ELLER CBE
Special Assistant Attorney General

PHONE: 6-9200

SUBJECT: **In the Matter of the Proposed Rules of the Minnesota Energy and Economic Development Authority relating to the Tourism Loan Program**

Enclosed please find submitted the following rulemaking documents relating to the above-entitled rules:

1. Certificate of Authority Authorizing Resolution
2. Order for Notice of Adoption
3. Copy of proposed rule
4. Notice of Adoption
5. Statement of Need and Reasonableness
6. Affidavits of Mailing Notice
7. Mailing List Certificate
8. Copy of Notice in State Register
9. Four copies of rule as adopted.
10. Certificate of Authority's Resolution Adopting the Rules
11. 2 Copies of Findings of Fact, Conclusions and Order
12. Certificate of Compliance

The Attorney General Docket number for these rules is 40 898B 0183. Please do not hesitate to call if you have any questions.

CBE:bl

Enclosures