

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

RULE REVIEW CHECKLIST

File No. 1311 Docket No. 05.0009.0076

DATE RECEIVED 9/8
REVIEW DATE 9/17
DUE DATE 9/22

APPROVED 9/22/86
DISAPPROVED
WITHDRAWN

ADOPTED W/O HEARING ✓
EMERGENCY RULE

REVISOR APPROVED 9/12
REVISOR DISAPPROVED
FILED W/SEC. STATE 9/22
RETURNED TO AGENCY 9/22

✓ Rule as adopted (4 copies)

N/A Notice to Solicit Outside Information/Opinion
Date published in State Register
Comments

N/A Petition for Adoption of a Rule

✓ Board's Authorizing Resolution

✓ Proposed rule
5-21-86 Revisor's Certificate

✓ Notice of Intent to Adopt Rule
14A.04 subd 4 Statutory Authority
yes Small business statement
no Expenditure of public money statement
yes Signature

✓ Statement of Need and Reasonableness

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
July 8, 1986 Date (30/25 days before adoption

✓ Publication in State Register
June 9, 1986 Date (30/25 days before adoption

✓ Resolution Adopting

✓ ✓ Findings of Fact
~~Findings of Fact, Conclusions &~~ Order Adopting
Aug 6, 1986 Date

✓ ~~Written requests, submissions or comments~~ comments

✓ Declaration of attorney
Christie B. Eller Name of SAAG representing agency

~~Notice of Submission to Attorney General~~

~~Affidavit of Mailing Notice to Attorney General~~

✓ Order for Notice of Intent

✓ Certificate

SF-00006-03

File

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO: JOHN J. O'BRIEN
Resource Development Finance Division

DATE: 9/23/86

ATTN: CHRISTIE B. ELLER
Special Assistant Attorney General

FROM: J. MICHAEL MILES JMM
Assistant Attorney General

PHONE: 296-6555

SUBJECT: Adopted Rules Relating to the Agricultural Resource Loan Guaranty Program

The above-referenced rule has been approved as to its legality by the Attorney General on September 22, 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/rmk
Enclosures

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

Duane Harves
Chief Administrative Law Judge
Office of Administrative Hearings

RR#1311

Agricultural Resources Loan Guaranty Board

Adopted Rules Relating to the Agricultural Resource Loan Guaranty Program

Rules as Adopted

1580.0100 PURPOSE AND AUTHORITY.

Parts 1580.0100 to 1580.0900 are authorized by Minnesota Statutes, section 41A.04, subdivision 4, to carry out the purposes of Minnesota Statutes, chapter 41A, and to establish a process for application and approval of eligible financial assistance for agricultural resource projects.

1580.0200 DEFINITIONS.

Subpart 1. **Scope.** For purposes of parts 1580.0100 to 1580.0900, the terms defined in this part and in Minnesota Statutes, section 41A.02, have the meanings given to them.

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

Subp. 3. **Administrator.** "Administrator" means the commissioner of energy and economic development acting as the chief administrative officer of the Agricultural Resource Loan Guaranty Board, or a designee.

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 AVAILABILITY OF ELIGIBLE FINANCIAL ASSISTANCE.

Subpart 1. **Purpose.** Loan guarantees or loans from 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. **Amount of loan guarantee or bond issue; criteria.** The total principal amount of any guaranteed loan or bond issue may not exceed 80 percent of the total eligible costs

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of the related project as estimated by the board at the time the commitment to guarantee a loan or issue bonds is made, or in the case of a refunding or refinancing loan, 80 percent of the aggregate amount of principal and interest refunded or refinanced.

In determining the percentage of a loan guarantee or the amount of a bond issue for the project, the board will 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 issue 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 that are reasonably required for the construction and completion of

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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 issue.

Subp. 4. **Security for guaranteed loan or bond issue.** The guaranteed loan or bond issue 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, sections 41A.03, subdivision 2, and 474.17 to 474.25, if it determines that the increased costs will not jeopardize the board'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 CONTENTS OF APPLICATION.

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

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;

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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 loans or loans from bond proceeds and the project, and all other project related debt and equity;

E. an environmental report analyzing potential environmental effects of the project, any necessary or proposed mitigation measures, and other available data that 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~~ financial statements that include a balance sheet, an opening statement, and footnotes to the statements if available for the following time periods:

(1) financial statements for the previous three years, if applicable; and if unaudited, the statements must be signed by an authorized financial officer of the business making application;

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

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

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(4) 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 from bond proceeds or 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, concerning the lender's 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. In addition, the following information must be submitted:

(1) the term of the loan, the interest rate, and amortization schedule and other terms and conditions of the lender;

(2) a certification and supporting documentation that the lender has determined the project to be economically feasible in accordance with generally accepted commercial lending practices;

(3) an appraisal of collateral showing total retail value;

(4) a statement of informed consent signed by an authorized officer of the lender regarding the use and dissemination of the private data as provided in Minnesota

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Statutes, section 13.05, subdivision 4, paragraph (d).

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 that are produced or processed in Minnesota and an analysis of the competitive impact of the project on the 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, 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 (1) the criteria in part 1580.0600, 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 (2) to the purposes of Minnesota Statutes, section 41A.01.

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

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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 a study is necessary for its consideration of the project's eligibility for a loan guarantee or a loan from bond proceeds. The feasibility study must address those factors that the board determines are necessary in light of generally accepted commercial lending practices and the requirements of Minnesota Statutes, chapter 41A.

1580.0500 APPLICATION PROCEDURE.

Subpart 1. **Application forms.** Upon the request of a person seeking a loan guaranty or a loan from bond proceeds, the administrator shall provide application forms for use by the person.

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 1580.0400, subpart 1. The applicant shall submit the completed application along with the necessary exhibits and attachments to the administrator. The administrator may require the borrower or lender to provide additional information that 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 to determine whether or not to submit the application to the board for final action.

The administrator shall submit the application to the board for final action if the administrator determines:

A. that the project appears to be eligible for a loan guarantee or a loan from bond proceeds, and conforms to the purpose and requirements of Minnesota Statutes, chapter 41A;

B. that the application is complete or would be complete except for the applicant's request for a waiver

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pursuant to part 1580.0400, 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 on the 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 administrator's decision whether or not to submit the application to the board. If the administrator determines to submit the application to the board, the administrator shall submit copies of the application to the board for approval or rejection.

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 1580.0600, and may seek assistance from the administrator and the board's 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, 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

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with parts 1580.0700 and 1580.0900.

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.** When the application is filed, the applicant shall pay a fee equal to 0.25 percent of the amount of the loan guarantee or loan from bond proceeds requested. The fee must be paid to the commissioner of finance. The board must 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 feasibility and eligibility for a loan guarantee or loan from 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 1580.0700.

Subp. 9. **Misrepresentation in application.** Whenever a change occurs in the information provided by an applicant and borrower to the board or to the lender, the applicant and borrower shall immediately update and correct that information. 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 guaranty or issue bonds.

1580.0600 CRITERIA FOR APPROVAL OF ELIGIBLE FINANCIAL ASSISTANCE.

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

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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.

1580.0700 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

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any event receive preferential treatment over the guaranteed portion.

B. A period of grace must be allowed of at least 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 under part 1580.0800. 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) as otherwise permitted in the loan guarantee.

In the event of a default, the lender may not make demand for payment pursuant to the guarantee unless the board agrees in writing that the default has materially affected the rights or security of the board and lender, 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 board 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. Duly authorized representatives of the board must 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

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

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

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

J. The board must be paid at or before 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 that are normally required or performed by a reasonable and prudent lender with respect to a loan without a guarantee.

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

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

(2) any loan payments that are two weeks overdue;

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

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(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, that are due or to become due within a specified period; or

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

N. The borrower must be required to establish a reserve, from the proceeds of the loan or otherwise, to be maintained with the lender or with a trustee for the holders of the borrower's obligations, with a letter of credit, or in cash or securities of a specified market value at least one-half of the annual amount that 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 must service the loan and receive the 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 shall contain other terms and conditions that the board determines necessary and appropriate to carry out the purposes of Minnesota Statutes, chapter 41A.

1580.0800 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,

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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, that 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 board 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 the 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

F. adequate funds are available to make the principal and interest payments pursuant to Minnesota Statutes, section 41A.03, subdivision 4.

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 made thereafter be repaid to the board 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 board of the full amount due under the loan guarantee or bonds, the board 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 board.

1580.0900 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,

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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 conformance with Minnesota Statutes, section 41A.01, 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 issuance of bonds, may be revoked or amended by the board at any time before 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 the additional security for the bonds as market conditions may require~~ A bond reserve fund must be established by the borrower in order to provide additional security for the bonds. The reserve may come out of bond proceeds. The amount of the reserve must not be less than one-half of the annual amount that

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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 issue resolution.

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APPROVED AS TO FORM AND LEGALITY,

9/22 19 86

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY _____
ASSISTANT ATTORNEY GENERAL

RESOLUTION NO.
AGRICULTURAL RESOURCE LOAN GUARANTY BOARD
STATE OF MINNESOTA
ST. PAUL, MINNESOTA

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

Certificate of Board's
Authorizing Resolution

I, Jay Kiedrowski, do hereby certify that I am a member and the Chairman of the Board 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 Agricultural Resource Loan Guaranty Board duly and properly called and held on the 30th 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 the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, that Jay Kiedrowski, Chairman of the Board of the Agricultural Resource Loan Guaranty Board be and he hereby is granted the authority and directed to sign an Order of the Board directing that Notice be gicen of the Board's intent to adopt without a public hearing rules governing the Agricultural Resource Loan Guaranty Program, to sign the Notice thereof, and to perform any and all acts incidental thereto. In the event a public hearing becomes necessary, he hereby is 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 30th day of April, 1986.

By: Jay Kiedrowski
Chair

ATTEST: _____
Member

OFFICE OF THE REVISOR OF STATUTES

Proposed Rule

RD954

Agency: Department of Energy and Economic Development

Division: Energy Finance

Agency Contact: John O'Brien

Minnesota Rules: Parts 1580.0100 to 1580.0900

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

Type of Rules: Permanent

Incorporations by Reference: none
Rule Number: Material Incorporated:

Steven C. Cross
Revisor of Statutes

David S. Niss
Assistant Revisor
Phone: 297-2948

Date: May 21, 1986

Department of Energy and Economic Development

Energy Finance Division

Proposed Rules Relating to the Agricultural Resource Loan Guaranty Program

Rules as Proposed (all new material)

1580.0100 PURPOSE AND AUTHORITY.

Parts 1580.0100 to 1580.0900 are authorized by Minnesota Statutes, section 41A.04, subdivision 4, to carry out the purposes of Minnesota Statutes, chapter 41A, and to establish a process for application and approval of eligible financial assistance for agricultural resource projects.

1580.0200 DEFINITIONS.

Subpart 1. **Scope.** For purposes of parts 1580.0100 to 1580.0900, the terms defined in this part and in Minnesota Statutes, section 41A.02, have the meanings given to them.

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

Subp. 3. **Administrator.** "Administrator" means the commissioner of energy and economic development acting as the chief administrative officer of the Agricultural Resource Loan Guaranty Board, or a designee.

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 AVAILABILITY OF ELIGIBLE FINANCIAL ASSISTANCE.

Subpart 1. **Purpose.** Loan guarantees or loans from 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. **Amount of loan guarantee or bond issue;**

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criteria. The total principal amount of any guaranteed loan or bond issue may not exceed 80 percent of the total eligible costs of the related project as estimated by the board at the time the commitment to guarantee a loan or issue bonds is made, or in the case of a refunding or refinancing loan, 80 percent of the aggregate amount of principal and interest refunded or refinanced.

In determining the percentage of a loan guarantee or the amount of a bond issue for the project, the board will 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 issue 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

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N. any other expenses incurred by the borrower that 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 issue.

Subp. 4. **Security for guaranteed loan or bond issue.** The guaranteed loan or bond issue 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, sections 41A.03, subdivision 2, and 474.17 to 474.25, if it determines that the increased costs will not jeopardize the board'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 CONTENTS OF APPLICATION.

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

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

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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 loans or loans from bond proceeds and the project, and all other project related debt and equity;

E. an environmental report analyzing potential environmental effects of the project, any necessary or proposed mitigation measures, and other available data that 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 from bond proceeds or 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

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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, concerning the lender's 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. In addition, the following information must be submitted:

(1) the term of the loan, the interest rate, and amortization schedule and other terms and conditions of the lender;

(2) a certification and supporting documentation that the lender has determined the project to be economically feasible in accordance with generally accepted commercial lending practices;

(3) an appraisal of collateral showing total retail value;

(4) a statement of informed consent signed by an authorized officer of the lender regarding the use and dissemination of the private data as provided in Minnesota Statutes, section 13.05, subdivision 4, paragraph (d).

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 that are produced or processed in Minnesota and an analysis of the competitive impact of the project on the 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, a copy of a resolution adopted by the county authority where the project is located authorizing the use of tax increment financing;

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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 (1) the criteria in part 1580.0600, 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 (2) to the purposes of Minnesota Statutes, section 41A.01.

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 a study is necessary for its consideration of the project's eligibility for a loan guarantee or a loan from bond proceeds. The feasibility study must address those factors that the board determines are necessary in light of generally accepted commercial lending practices and the requirements of Minnesota Statutes, chapter 41A.

1580.0500 APPLICATION PROCEDURE.

Subpart 1. **Application forms.** Upon the request of a person seeking a loan guaranty or a loan from bond proceeds, the administrator shall provide application forms for use by the

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person.

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 1580.0400, subpart 1. The applicant shall submit the completed application along with the necessary exhibits and attachments to the administrator. The administrator may require the borrower or lender to provide additional information that 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 to determine whether or not to submit the application to the board for final action.

The administrator shall submit the application to the board for final action if the administrator determines:

A. that the project appears to be eligible for a loan guarantee or a loan from bond proceeds, and conforms to the purpose and requirements of Minnesota Statutes, chapter 41A;

B. that the application is complete or would be complete except for the applicant's request for a waiver pursuant to part 1580.0400, 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 on the 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 administrator's decision whether or not to submit the application to the board. If the administrator determines to submit the application to the board, the administrator shall

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submit copies of the application to the board for approval or rejection.

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 1580.0600, and may seek assistance from the administrator and the board's 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, 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 1580.0700 and 1580.0900.

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.** When the application is filed, the applicant shall pay a fee equal to 0.25 percent of the amount of the loan guarantee or loan from bond proceeds requested. The fee must be paid to the commissioner of finance. The board must 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

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considers necessary and reasonably required for its determination of project feasibility and eligibility for a loan guarantee or loan from 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 1580.0700.

Subp. 9. **Misrepresentation in application.** Whenever a change occurs in the information provided by an applicant and borrower to the board or to the lender, the applicant and borrower shall immediately update and correct that information. 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 guaranty or issue bonds.

1580.0600 CRITERIA FOR APPROVAL OF ELIGIBLE FINANCIAL ASSISTANCE.

In determining whether to approve or deny an application for a loan guarantee or a loan from 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;

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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.

1580.0700 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 at least 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 under part 1580.0800. 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

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of principal or interest;

(2) the board consents in writing; or

(3) as otherwise permitted in the loan guarantee.

In the event of a default, the lender may not make demand for payment pursuant to the guarantee unless the board agrees in writing that the default has materially affected the rights or security of the board and lender, 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 board 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. Duly authorized representatives of the board must have access to the project site at reasonable times during construction and operation of the project.

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

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

I. Orderly liquidation of assets of the project must be provided for in the event of default, with an option on the

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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 board must be paid at or before 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 that are normally required or performed by a reasonable and prudent lender with respect to a loan without a guarantee.

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

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

(2) any loan payments that are two weeks overdue;

(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, that are due or to become due within a specified period; or

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

N. The borrower must be required to establish a

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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, with a letter of credit, or in cash or securities of a specified market value at least one-half of the annual amount that 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 must service the loan and receive the 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 shall contain other terms and conditions that the board determines necessary and appropriate to carry out the purposes of Minnesota Statutes, chapter 41A.

1580.0800 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, that 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 board 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 the principal or interest advanced thereunder, with interest on those amounts, upon terms and conditions satisfactory to the board in light of generally

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accepted commercial lending practices; and

F. adequate funds are available to make the principal and interest payments pursuant to Minnesota Statutes, section 41A.03, subdivision 4.

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 made thereafter be repaid to the board 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 board of the full amount due under the loan guarantee or bonds, the board 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 board.

1580.0900 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, 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 conformance with Minnesota Statutes, section 41A.01, 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

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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 issuance of bonds, may be revoked or amended by the board at any time before 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 the 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 that 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 issue resolution.

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Proposed Rule

RD954

Agency: Department of Energy and Economic Development

Division: Energy Finance

Agency Contact: John O'Brien

Minnesota Rules: Parts 1580.0100 to 1580.0900

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

Type of Rules: Permanent

Incorporations by Reference: none
Rule Number: Material Incorporated:

Steven C. Cross
Revisor of Statutes

David S. Niss
Assistant Revisor
Phone: 297-2948

Date: May 21, 1986

AGRICULTURAL RESOURCE LOAN GUARANTY BOARD
STATE OF MINNESOTA
ST. PAUL, MINNESOTA

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

Notice of Proposed Adoption of Rules Without a Public Hearing

Notice is hereby given that the Agricultural Resource Loan Guaranty Board proposes to adopt the above-entitled rules 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 rules is Minnesota Statutes, section 41A.04, subdivision 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 agency 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:

John J. O'Brien
Resource Development Finance Division
900 American Center Building
150 East Kellogg Boulevard
St. Paul, MN 55101
Telephone: 612/297-1944

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.

These rules govern loan application and bond issuance procedures for the Agricultural Resource Loan Guaranty Board's agricultural processing financial programs. The rules may affect small businesses by making available the opportunity to obtain project financing for eligible costs at a favorable rate of interest through the issuance of industrial revenue bonds. The rules also allow the use of the program to offer loan guaranties to lenders for loans made to agricultural processing businesses for eligible project costs.

The rules describe the purpose of the program, definitions and the availability for businesses of eligible financial assistance. The rules also describe the contents of an application and the application procedures. Also, the criteria for approval of eligible financial assistance is outlined along with the general terms and conditions of loan guarantees. The rules additionally describe principal and interest assistance through the program and bond issuance procedures.

(A copy of the rule is available for review from John O'Brien at the aforementioned address upon request.)

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 John O'Brien at the aforementioned address upon request.

If no hearing is required, upon adoption of the noncontroversial rule, the rule and the required supporting noncontroversial 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 final rule as proposed for adoption, must submit the written request to John O'Brien at the aforementioned address.

STATE OF MINNESOTA

May 23, 1986

Jay Kiedrowski
Chairman, Agricultural Resource
Loan Guaranty Board

STATE OF MINNESOTA
Agricultural Resource Loan Guaranty Board
Department of Energy and Economic Development

In The Matter Of The Proposed Rules Governing The Agricultural Resource Loan Guaranty Program

Statement Of Need And Reasonableness

I. The Minnesota Agricultural Resource Loan Guaranty Board (Board) presents herein facts and justifications establishing the need and reasonableness of its proposed rules governing the Agricultural Resource Loan Guaranty Program.

II. Impact on small business. The Board's authorizing legislation directs the Board to use their powers for small business purposes. The Board is able to help qualified small businesses through loans form bond proceeds and loan guarantees. 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. An agricultural 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 Board operates a benefit program, rather than a regulatory program, it operates on eligibility rather than compliance requirements. However, the Board has adopted the least stringent eligibility requirements consistent with statutory authorization of the program.

As discussed above, this financial assistance program is 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 these rules are those minimal and necessary to fulfillment of statutory requirements and standards; further exemptions are neither appropriate nor authorized.

III. Discussion 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.

1580.0100 PURPOSE AND AUTHORITY.

Parts 1580.0100 to 1580.0900 are authorized by Minnesota Statutes, section 41A.04, subdivision 4, to carry out the purposes of Minnesota Statutes, chapter 41A, and to establish a process for application and approval of eligible financial assistance for agricultural resource projects.

1580.0100 PURPOSE AND AUTHORITY.

This section grants the Board the authority to promulgate rules in order to implement its program pursuant to Minnesota Statutes, section 41A.04, subdivision 4, as amended by Laws of Minnesota 1985, first special session, chapter 13, section 156. The purpose explains the structure of the rules which includes standardized procedures and specific requirements governing application procedures, collateral and loan requirements, application processing, and application fees for all applicants who apply to the Board for program financial assistance. The rules inform applicants of the scope, process, and requirements necessary to receive program financial assistance.

1580.0200 DEFINITIONS.

Subpart 1. Scope. For purposes of parts 1580.0100 to 1580.0900, the terms defined in this part and in Minnesota Statutes, section 41A.02, have the meanings given to them.

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

Subp. 3. Administrator. "Administrator" means the commissioner of energy and economic development acting as the chief administrative officer of the Agricultural Resource Loan Guaranty Board, or his designee.

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.

1580.0200. DEFINITIONS.

Definitions in this section are additional terms to the definitions provided in Minnesota Statutes, section 41A.02. These terms clarify to persons reading the rules, the program's executive and administrative authorities and the ability for county rural development finance authorities to participate in the program pursuant to Minnesota Statutes, chapter 362A.

1580.0300 AVAILABILITY OF ELIGIBLE FINANCIAL ASSISTANCE.

Subpart 1. Purpose. Loan guarantees or loans from 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. Amount of loan guarantee or bond issue; criteria. The total principal amount of any guaranteed loan or bond issue may not exceed 80 percent of the total eligible costs of the project as estimated by the board at the time the commitment to guarantee a loan or issue bonds is made, or in the case of a refunding or refinancing loan, 80 percent of the aggregate amount of principal and interest refunded or refinanced.

In determining the percentage of a loan guarantee or the amount of a bond issue for the project, the board will 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 issue 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.

Subp. 4. Security for a guaranteed loan or bond issue. 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, and 474.17 to 474.25, if it determines that the increased costs will not jeopardize the board'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.

1580.0300 AVAILABILTIY OF ELIGIBLE FINANCIAL ASSISTANCE.

This section describes the type, extent, use, and availability of eligible financial assistance under the program. The purpose of this section is to inform potential applicants of the factors the Board shall consider in awarding financial assistance for a project. It is reasonable for potential applicants to fully understand the parameters of the program in order for them to properly prepare their application for eligible financial assistance

Subpart 1, states the purpose of providing financial assistance as authorized by Minnesota Statutes, section 41A.01.

Subpart 2 describes the maximum amount of a loan and loan guarantees available under the program which is authorized by Minnesota Statutes, section 41A.03, subd. 2. It also describes the factors the board will consider in determining the percentage of financial assistance awarded. It is necessary that applicants know the limits of state financial assistance available for their projects and that the public knows that program purposes are being followed by the board in determining the amount of financial assistance awarded. The criteria are reasonable because the amount of state assistance should be based upon the amount needed for the project to be successful and be based upon the amount of state assistance needed to insure participation by the lender. The Board also is charged under Minnesota Statute, section 41A.01, with furthering the development of the states agricultural resources and, thus, it is reasonable for the Board to consider the impact of the project on the state's agricultural resources. Finally, it is obviously relevant for the Board to consider the availability of state funds.

Subpart 3, lists the project costs eligible for use in the construction and completion of the project under the program. It is necessary to inform applicants and the public of the project costs which are eligible for financial assistance so that program funds may be used appropriately and in conformance with Minnesota Statutes, section 41A.02, subdivision 10. The eligible project costs listed are reasonalbe because they are consistant with the definition of cost in Minnesota Statute, section 41A.02, subdivision 10.

Subpart 4, describes the minimum collateral required as security for the available financial assistance. It is necessary that applicants and lenders know the type and priority of any collateral or security interest that must be provided for the project. The collateral requirements are prudent and consistant with protecting the intent of the state as a guarantor of issuer of bonds. The state has the obligation to be a prudent creditor and to obtain adequate security.

Subpart 5, describes the process and amount available for cost increases in the construction and completion of the project and the conditions under which cost increases will be permitted. It is necessary to permit borrowers to increase the amount of their approved financial assistance which is the result of unexpected and reasonable project cost increases in order to complete or operate the project and avoid jeopardizing the state's interest in the project.

1580.0400 CONTENTS OF APPLICATION.

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

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 loans 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 statments for the first five years of project operation, including income statments 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 from bond proceeds or 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 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. In addition, the following information must be submitted:

(1) the term of the loan, the interest rate, and amortization schedule and other terms and conditions of the lender;

(2) a certification and supporting documentation that the lender has determined the project to be economically feasible in accordance with generally accepted commercial lending practices;

(3) an appraisal of collateral showing total retail value;

(4) a statement of informed consent signed by an authorized officer of the lender regarding the use and dissemination of the private data as provided in Minnesota Statutes, section 13.05, subdivision 4, paragraph (d).

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 1580.0600 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 judgement, 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 a loan from 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.

1580.0400 CONTENTS OF APPLICATION.

Pursuant to Minnesota Statutes, section 41A.04, this section is consistant with requirements set forth in Minnesota Statute, section 41A.04, subdivision 1, (1985 Supp.), and informs potential applicants of the contents of the application form.

Subpart 1, is necessary to inform applicants of the information they must provide in their application for financial assistance so that they can provide the appropriate information to enable the Board to properly evaluate a proposed project for conformance with program requirements. It is necessary to have the application contents specified by rule so that potential applicants' can find all the requirements in one place rather than referring back and forth between Statute and the rules.

Subpart 2, informs applicants of the process they must follow in order to waive certain application requirements. It is reasonable to permit applicants not to provide information in the application which is not necessary to evaluate the eligibility or feasibility of their project. Project financing varies from project to project, and not all items required in the application may be needed to evaluate a given project.

Subpart 3, informs an applicant that the Board may require a feasibilty study for the proposed project. It is reasonable that the Board may require an applicant to provide additional information which is necessary for its consideration of the project's eligibility and feasibility for state financial assistance. The state has an obligation to insure its' acts as a prudent lender. Thus it is reasonable for the state to require a feasibility study before it commits substantial state financial resources to the project.

1580.0500 APPLICATION PROCEDURE.

Subpart 1. Application forms. Upon the request of a person seeking a loan guaranty or a loan from bond proceeds, the administrator shall provide application forms for use by the person.

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 1580.0400, 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 approval or rejection.

The administrator shall submit the application to the board for final action if the administrator determines:

A. that the project appears to be eligible for a loan guarantee or a loan from bond proceeds, and conforms to the purpose and requirements of Minnesota Statutes, chapter 41A;

B. that the application is complete or would be complete except for the applicant's request for a waiver pursuant to part 1580.0400, 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 on the 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 monies are available to fund the loan guaranties or bonds.

The administrator shall notify the applicant of the administrator's decision whether or not to submit the application to the board. If the administrator determines to submit the application to the board, the administrator shall submit copies of the application to the board members for final action.

Subp. 4. Appeal of adminstrator'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 1580.0600, and may seek assistance from the administrator and the Board's 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 which conditionally commits the state to guarantee the portion of the proposed loan or to issue bonds, not exceeding the limit in part 1580.0300, 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 1580.0700 and 1580.0900.

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 loan from bond proceeds requested. The fee must be paid to the commissioner of finance. The board must 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 feasibility and eligibility for a loan guarantee or loan from 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 1580.0700.

Subp. 9. Misrepresentation in application. Whenever a change occurs in the information provided by an applicant and borrower to the board or to the lender, the applicant and borrower shall immediately update and correct that information. 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 guaranty or issue bonds.

1580.0500 APPLICATION PROCEDURE.

Consistant with Minnesota Statutes, section 41A.04, this section is necessary because it describes the process which an applicant must follow in applying for state financial assistance. It informs applicants of the time frame involved in processing program applications, the various steps in the evaluation process, and of the approval and disapproval processes for clarification and understanding of what is expected from an applicant, the Administrator, and the Board. It is reasonalbe as it sets forth a process which is not burdensome to the applicant, yet provides for a careful review of an application.

Subpart 1, informs applicants that they can obtain a program application form from the Administrator upon request.

Subpart 2, informs applicants that they must make written application to the Board on forms provided by the Administrator, along with all necessary exhibits and attachments.

Subpart 3, describes the process and factors the Administrator must follow in reviewing an application according to generally accepted commercial lending practices. It outlines the criteria the Administrator must follow in order to submit an application to the Board for final action. It is reasonable to inform applicants of the standards under which the Administrator reviews and submits their application to the Board, and provides applicants a basis upon which to determine whether or not they should appeal the Administrator's decision, according to the requirements of subpart 4. The criteria are reasonable because prudent lending practices should determine that a project is economically and technically feasible and that the

application is complete so that the Board has the information necessary to make a prudent lending decision. The project must also meet the public purposes of program. The Board is charged under Minnesota Statute, section 41A.01 with furthering the development of the states' agricultural resources, and thus, it is reasonable for the Board to determine if the project meets these needs. It also is relevant for the Board to consider the availability of state funds.

Subpart 4, informs applicants of the process they must follow in order to appeal the Administrator's decision not to submit their application to the Board for final action. It is necessary that the Board review such appeals since Minnesota Statutes, section 41A.01, authorizes the Board to investigate the feasibility of each project and approve or disapprove projects for financial assistance.

Subpart 5, informs applicants of the process the Board will follow in reviewing applications for financial assistance and that the Board may seek assistance from the Administrator, the Advisory committee, and consultants or other professionals. It is reasonable that applicants know the process and standards the Board will use in reviewing their projects in order for them to determine whether the Board has done a fair and just review of their projects.

Subpart 6, informs applicants that if the Board approves an application it may adopt a resolution that is non-binding and conditionally commits the state to guarantee financial assistance. It is necessary that applicants know that the Board's resolution may be conditional in order for them to avoid unreasonable reliance on the Board's non-binding approval.

Subpart 7, informs applicants that they will be promptly notified in writing that their request for financial assistance has been denied by the Board.

Subpart 8, informs applicants that they must pay an application fee, the amount of the fee, who it is paid to and when, what costs the fee pays for, and what happens to any remaining fee amounts after the application has been approved or disapproved. It is resonable that applicants know the costs they must pay in applying to the program and how their money is being spent and whether they are entitled to a refund of any remaining fee amounts. The fee is taht specified in Minnesota Statute, section 41A.04, subd. 1 (b). It is reasonable to set forth the fee requirement in the rules because otherwise the requirement of a fee would not be in the rules and an applicant might not be aware of the requirement. However, since the amount of the fee is set by the statute, the Board need not have the fee approved by the Commissioner of Finance under Minnesota Statute, section 16A.128, as the fee is not being set by rule. Instead, the rule is restating the statutory fee requirement.

Subpart 9, informs applicants of the consequences they may suffer in the event they misrepresent or fail to promptly update or correct any information provided to the Board or lender. It is reasonable to inform applicants of any grounds upon which the Board may reject or revoke an application or commitment to provide financial assistance.

1580.0600 CRITERIA FOR APPROVAL OF ELIGIBLE FINANCIAL ASSISTANCE.

In determining whether to approve or deny an application for a loan guarantee or a loan from 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.

1580.0600 CRITERIA FOR APPROVAL OF ELIGIBLE FINANCIAL ASSISTANCE.

It is reasonable for the Board to inform both applicants and the public of the criteria they will use in deciding on whether or not to approve or disapprove an application. It is necessary that the Board review and evaluate applications according to the requirements of the program found in Minnesota Statutes, chapter 41A, and its public purpose in section 41A.01. The purpose of this section is to show that the Board will apply the same standards in its review of all applications. The criteria for approval of eleigible financial assistance are reasonable because the Board must act as a prudent lender in determining whether to approve or deny an application for financial assistance. The Board is also charged under Minnesota Statute, section 41A.01, with furthering the development of agricultural resources with the state, and thus, it is reasonable for the Board to consider the impact of the project upon agricultural resources within the state. It is also relevant and necessary for the Board to consider the availability of state funds.

1580.0700 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 under part 1580.0800. 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) as otherwise permitted in the loan guarantee. In the event of a default, the lender may not make demand for payment pursuant to the guarantee unless the board agrees in writing that the default has materially affected the rights or security of the parties, and the board finds that the lender should be entitled to receive payment pursuant to the loan guarantee.

D. If a payment of principal or interest is made by the board upon default of the borrower, the state is subrogated to the rights of the lender with respect to 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. Duly authorized representative of the board must have access to the project site at reasonable times during construction and operation of the project.

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

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

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

J. The state must be paid at or prior to the closing of the guaranteed loan a fee or fees for the loan guarantee or the commitment to guarantee the loan. The aggregate fee 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 must notify the board in writing without delay of:

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

(2) any loan payments that are two weeks overdue;

(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 must be required to establish a reserve, from the proceeds of the loan or otherwise, to be maintained with the lender or with a trustee for the holders of the borrower's obligations, in cash or securities of a specified market value not less than 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 must 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 shall contain other terms and conditions that the board determines necessary and appropriate to carry out the purposes of Minnesota Statutes, chapter 41A.

1580.0700 GENERAL TERMS AND CONDITIONS OF LOAN GUARANTEES.

This section describes the specific terms and conditions which must be included in all loan guarantee agreements between the borrower and the lender as required by Minnesota Statutes, section 41A.03, subdivision 3. It is reasonable that applicants and lenders know the specific contractual conditions they must agree to in order for them to fully comply with the requirements of the program. It is necessary for borrowers and lenders to understand their legal rights and obligations for participating in the program. For the convenience of the applicants and lenders, it is helpful that all requirements are set forth in one place and require the applicant to refer to both the statute and the rules.

1580.0800 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 board 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

F. adequate funds are available to make the principal and interest payments pursuant to Minnesota Statutes, section 41A.03, subdivision 4.

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 board 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 board of the full amount due under the loan guarantee or bonds, the board 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 board.

1580.0800 PRINCIPAL AND INTEREST ASSISTANCE.

Pursuant to Minnesota Statutes, section 41A.03, subdivision 4, this section describes the process and requirements for borrowers to obtain special financial assistance to make debt service principal and interest payments in order to avoid defaulting on program financial asssistance. Since such financial assistance is permitted by law, it is necessary to inform borrowers that it is available to them and under what circumstances and conditions it can be obtained. It is reasonable that this type of special financial assistance be provided in order for the Board, borrower, and lender to work through financial difficulties for the project whenever possible and avoid the harsh measures of default and foreclosure.

1580.0900 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,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 conformance with Minnesota Statutes, section 41A.01, 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 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.

1580.0900 ISSUANCE OF BONDS.

Pursuant to Minnesota Statutes, section 41A.05, subdivision 2, this section explains the process the Board must follow in issuing its bonds to provide program financial assistance. It is reasonable to inform potential borrowers that they must receive preliminary and final Board resolution commitments prior to receiving program funds, and in order to reserve the program funds used to finance their projects. It is necessary that potential borrowers understand the nature and extent of the Board's commitment and obligation to finance their projects, since they may expend money and start construction of their projects after the Board approves a non-binding preliminary resolution commitment for financing, prior to the Board approving a binding final resolution commitment.

In the Matter of the Proposed Rules
Governing Agricultural Financial Assistance

AFFIDAVIT OF MAILING

STATE OF MINNESOTA

ss

COUNTY OF RAMSEY

Rachel Henderson, being first duly sworn deposes and says:

That on the 10th day of June 1986, at the City of St. Paul, County of Ramsey, State of Minnesota she served the attached Notice of Intent to Adopt Rules Without Public hearing by depositing in the State of Minnesota Central Mail System for United States mailing as 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 Energy & Economic Development Authority for the purpose of receiving notice of the proposed adoption of rules by this Authority.

Rachel Henderson

Subscribed and sworn to before me
8th day of July, 1986.

Brooke L Manley
Notary

rh

BROOKE L. MANLEY
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires June 28, 1988

STATE REGISTER

STATE OF MINNESOTA



VOLUME 10, NUMBER 50

Monday 9 June 1986

Pages 2441-2496

2805.0400 NOTICE TO COMMISSIONER.

Subpart 1. **Mandatory.** Licensees shall notify the commissioner of the facts in subparts 2 to 4.

Subp. 2. **Civil judgment.** Licensees must notify the commissioner in writing within ten days of a final adverse decision or order of a court, whether or not the decision or order is appealed, regarding any proceeding in which the licensee was named as a defendant, and which alleged fraud, misrepresentation, or the conversion of funds, if the final adverse decision relates to the allegations of fraud, misrepresentation, or the conversion of funds.

Subp. 3. **Disciplinary action.** The licensee must notify the commissioner in writing within ten days of the suspension or revocation of the licensee's real estate or other occupational license issued by this state or another jurisdiction.

Subp. 4. **Criminal offense.** The licensee must notify the commissioner in writing within ten days if the licensee is charged with, adjudged guilty of, or enters a plea of guilty or nolo contendere to a charge of any felony, or of any gross misdemeanor alleging fraud, misrepresentation, conversion of funds, or a similar violation of any real estate licensing law.

RENUMBERING. Renumber the parts in colume A as the parts in column B.

Column A	Column B
2800.3100	2805.0500
2800.3200	2805.0600
2800.3300	2805.0700
2800.3400	2805.0800
2800.3500	2805.0900
2800.3600	2805.1000
2800.3700	2805.1100
2800.3800	2805.1200
2800.3900	2805.1300
2800.4000	2805.1400
2800.4100	2805.1500
2800.4200	2805.1600
2800.4300	2805.1700
2800.4400	2805.1800
2800.4500	2805.1900
2800.4600	2805.2000

REPEALER. Minnesota Rules, parts 2800.1600, subparts 1, 3, 4, and 5; 2800.2175; 2800.5500; 2800.6800, subparts 2 and 3; 2800.7200, subparts 3 and 5; 2800.9910; 2800.9915; 2800.9920; 2800.9925; 2800.9930; 2800.9935; 2800.9940; 2800.9945; 2800.9950; and 2800.9955 are repealed.

Department of Energy and Economic Development Energy Finance Division

Proposed Rules Relating to the Agricultural Resource Loan Guaranty Program

Notice of Proposed Adoption of Rules without a Public Hearing

Notice is hereby given that the Agricultural Resource Loan Guaranty Board proposes to adopt the above-entitled rules 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 rules is Minnesota Statutes, section 41A.04, subdivision 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.

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.

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 agency 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:

John J. O'Brien
Resource Development Finance Division
900 American Center Building
150 East Kellogg Boulevard
St. Paul, MN 55101
Telephone: 612/297-1944

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.

These rules govern loan application and bond issuance procedures for the Agricultural Resource Loan Guaranty Board's agricultural processing financial programs. The rules may affect small businesses by making available the opportunity to obtain project financing for eligible costs at a favorable rate of interest through the issuance of industrial revenue bonds. The rules also allow the use of the program to offer loan guaranties to lenders for loans made to agricultural processing businesses for eligible project costs.

The rules describe the purpose of the program, definitions and the availability for businesses of eligible financial assistance. The rules also describe the contents of an application and the application procedures. Also, the criteria for approval of eligible financial assistance is outlined along with the general terms and conditions of loan guarantees. The rules additionally describe principal and interest assistance through the program and bond issuance procedures.

(A copy of the rule is available for review from John O'Brien at the aforementioned address upon request.)

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 John O'Brien at the aforementioned address upon request.

If no hearing is required, upon adoption of the noncontroversial rule, the rule and the required supporting noncontroversial 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 final rule as proposed for adoption, must submit the written request to John O'Brien at the aforementioned address.

23 May 1986

Jay Kiedrowski
Chairman, Agricultural Resource
Loan Guaranty Board

Rules as Proposed (all new material)

1580.0100 PURPOSE AND AUTHORITY.

Parts 1580.0100 to 1580.0900 are authorized by Minnesota Statutes, section 41A.04, subdivision 4, to carry out the purposes of Minnesota Statutes, chapter 41A, and to establish a process for application and approval of eligible financial assistance for agricultural resource projects.

1580.0200 DEFINITIONS.

Subpart 1. **Scope.** For purposes of parts 1580.0100 to 1580.0900, the terms defined in this part and in Minnesota Statutes, section 41A.02, have the meanings given to them.

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

Subp. 3. **Administrator.** "Administrator" means the commissioner of energy and economic development acting as the chief administrative officer of the Agricultural Resource Loan Guaranty Board, or a designee.

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 AVAILABILITY OF ELIGIBLE FINANCIAL ASSISTANCE.

Subpart 1. **Purpose.** Loan guarantees or loans from 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. **Amount of loan guarantee or bond issue; criteria.** The total principal amount of any guaranteed loan or bond issue may not exceed 80 percent of the total eligible costs of the related project as estimated by the board at the time the commitment to guarantee a loan or issue bonds is made, or in the case of a refunding or refinancing loan, 80 percent of the aggregate amount of principal and interest refunded or refinanced.

In determining the percentage of a loan guarantee or the amount of a bond issue for the project, the board will 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 issue 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 that 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 issue.

Subp. 4. **Security for guaranteed loan or bond issue.** The guaranteed loan or bond issue 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, sections 41A.03, subdivision 2, and 474.17 to 474.25, if it determines that the increased costs will not jeopardize the board'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.

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1580.0400 CONTENTS OF APPLICATION.

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

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 loans or loans from bond proceeds and the project, and all other project related debt and equity;

E. an environmental report analyzing potential environmental effects of the project, any necessary or proposed mitigation measures, and other available data that 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 from bond proceeds or 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, concerning the lender's 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. In addition, the following information must be submitted:

(1) the term of the loan, the interest rate, and amortization schedule and other terms and conditions of the lender;

(2) a certification and supporting documentation that the lender has determined the project to be economically feasible in accordance with generally accepted commercial lending practices;

(3) an appraisal of collateral showing total retail value;

(4) a statement of informed consent signed by an authorized officer of the lender regarding the use and dissemination of the private data as provided in Minnesota Statutes, section 13.05, subdivision 4, paragraph (d).

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 that are produced or processed in Minnesota and an analysis of the competitive impact of the project on the 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, 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 (1) the criteria in part 1580.0600, 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 (2) to the purposes of Minnesota Statutes, section 41A.01.

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 a study is necessary for its consideration of the project's eligibility for a loan guarantee or a loan from bond proceeds. The feasibility study must address those factors that the board determines are necessary in light of generally accepted commercial lending practices and the requirements of Minnesota Statutes, chapter 41A.

1580.0500 APPLICATION PROCEDURE.

Subpart 1. **Application forms.** Upon the request of a person seeking a loan guaranty or a loan from bond proceeds, the administrator shall provide application forms for use by the person.

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 1580.0400, subpart 1. The applicant shall submit the completed application along with the necessary exhibits and attachments to the administrator. The administrator may require the borrower or lender to provide additional information that 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 to determine whether or not to submit the application to the board for final action.

The administrator shall submit the application to the board for final action if the administrator determines:

A. that the project appears to be eligible for a loan guarantee or a loan from bond proceeds, and conforms to the purpose and requirements of Minnesota Statutes, chapter 41A;

B. that the application is complete or would be complete except for the applicant's request for a waiver pursuant to part 1580.0400, 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 on the 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 administrator's decision whether or not to submit the application to the board. If the administrator determines to submit the application to the board, the administrator shall submit copies of the application to the board for approval or rejection.

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 1580.0600, and may seek assistance from the administrator and the board's 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, 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 1580.0700 and 1580.0900.

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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.** When the application is filed, the applicant shall pay a fee equal to 0.25 percent of the amount of the loan guarantee or loan from bond proceeds requested. The fee must be paid to the commissioner of finance. The board must 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 feasibility and eligibility for a loan guarantee or loan from 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 1580.0700.

Subp. 9. **Misrepresentation in application.** Whenever a change occurs in the information provided by an applicant and borrower to the board or to the lender, the applicant and borrower shall immediately update and correct that information. 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 guaranty or issue bonds.

1580.0600 CRITERIA FOR APPROVAL OF ELIGIBLE FINANCIAL ASSISTANCE.

In determining whether to approve or deny an application for a loan guarantee or a loan from 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.

1580.0700 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 at least 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 under part 1580.0800. 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) as otherwise permitted in the loan guarantee.

In the event of a default, the lender may not make demand for payment pursuant to the guarantee unless the board agrees in writing

that the default has materially affected the rights or security of the board and lender, 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 board 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. Duly authorized representatives of the board must have access to the project site at reasonable times during construction and operation of the project.

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

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

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

J. The board must be paid at or before 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 that are normally required or performed by a reasonable and prudent lender with respect to a loan without a guarantee.

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

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

(2) any loan payments that are two weeks overdue;

(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, that are due or to become due within a specified period; or

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

N. The borrower must be required to establish a reserve, from the proceeds of the loan or otherwise, to be maintained with the lender or with a trustee for the holders of the borrower's obligations, with a letter of credit, or in cash or securities of a specified market value at least one-half of the annual amount that 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 must service the loan and receive the 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 shall contain other terms and conditions that the board determines necessary and appropriate to carry out the purposes of Minnesota Statutes, chapter 41A.

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1580.0800 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, that 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 board 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 the 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

F. adequate funds are available to make the principal and interest payments pursuant to Minnesota Statutes, section 41A.03, subdivision 4.

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 made thereafter be repaid to the board 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 board of the full amount due under the loan guarantee or bonds, the board 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 board.

1580.0900 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, 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 conformance with Minnesota Statutes, section 41A.01, 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 issuance of bonds, may be revoked or amended by the board at any time before 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 the 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 that 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 issue resolution.

Department of Energy and Economic Development

Proposed Permanent Rules Relating to Technology Product Investment Program

Notice of Proposed Adoption of Rules 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 rules without a public hearing following the procedures set forth in Minnesota Statutes, Sections 14.29 to 14.36. The specific statutory authority to adopt these rules is Minnesota Statute 116.M.08, Subdivision 4. The proposed rules were published at *State Register*, Volume 10, #50, on pages 2466-2471 [10 SR 2466].

RESOLUTION NO. 86-4
State of Minnesota
Agricultural Resources Loan Guaranty Board

In the Matter of the Proposed
Rules of the Agricultural
Resources Loan Guaranty Board
Governing Fianacial Assistance

CERTICATE OF BOARD'S
RESOLUTION ADOPTING RULES

I, Jay Kiedrowski, do hereby certify that I am a member and the Chairman of the Agricultural Resources 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 Agricultural Resources Loan Guaranty Board duly and properly called and held on the 6th day of August, 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 the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, that the rules governing financial assistance be and are hereby approved and adopted, pursuant to the authority vested in us by Minnesota Statute 41A.04, subd. 4, and that Jay Kiedrowski, Chairman, be and hereby is authorized to sign an order adopting the rules and further is authorized to perform the necessary acts to provide that the rules shall have the force and effect of law."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 6th day of August, 1986.

By: Jay Kiedrowski
Chairman of the Agricultural
Resources Loan Guaranty Board

By: _____
Member of the Agricultural
Resources Loan Guaranty Board

RESOULUTION No. 86-3
State of Minnesota
Agricultural Resources Loan Guaranty Board

In the Matter of the Adoption of Permanent Rules of the Agricultural Resources Loan Guaranty Board Governing Financial Assistance

Findings of Fact Conclusions, and Order Adopting Permanent Rules

Notice of Intent to Adopt Rules without a Public Hearing regarding the above entitled matter was published in the State Register on June 9, 1986, at 10 S.R.2459-2466, and was mailed to all persons who had registered their names with the Agricultural Resources Loan Guaranty Board (Board) or the Department of Energy and Economic Development pursuant to Minnesota Statute Sections 14.14, subd. 1, paragraph (a) and 14.22, on June 10, 1986. The Notice afforded interested parties 30 days in which to submit comments to the Board on the proposed rules.

The Board received no requests for a public hearing and one written comment which is attached as Exhibit "A". The Board received no other verbal or written comments on the rules or requests for notification of submission of the rules to the Attorney General.

After affording interested parties an opportunity to submit comments and requests for a public hearing on the proposed rules, and having received the set of comments, the Board makes the following:

FINDINGS

1. The Board received a written comment from Tom Varberg, Economic Development Planner for the Headwaters Regional Development Commission requesting additional definitions, and further clarification of the rules. He suggested that the definitions for "applicant", "lender", and "borrower", be added; asked for further clarification of the operational differences between a loan guarantee and a loan from bond proceeds; the addition of a clause requiring past financial information from a borrower; questioned whether personal guarantees are required to enable financial assistance; a further interpretation of eligible project costs; and whether a reserve fund is a necessity and if so it should be an eligible project cost.

2. The first comment concerned the definitions for "applicant", "borrower", and "lender". All three are defined in Minnesota Statute 41A.02, subds. 7,8 and 11. Minnesota Statute 14.07, subd. 3 (1), states that program rules should avoid the duplication of statutory language, therefore the above definitions were not repeated in the rules as proposed.

3. Mr. Varberg's second comment concerned operational differences between loan guarantees and loans, and a request for further clarification of these. The application requirements for either a loan guaranty or a loan from bond proceeds are the same. An application is submitted for financial assistance in the form of either a loan guaranty or a loan from bond proceeds, the applicant will determine the form of financial assistance most appropriate to its' needs prior to submission of the application. It is not the intention of the Board to dictate to a prospective applicant the form of that applicant's request. Parts 1580.0700, General Terms and Conditions of Loan Guarantees, and, 1580.0900, Issuance of Bonds, clearly state any operational differences between the two forms of financial assistance so that the applicant can make a choice of which type of assistance to request.

4. The third comment referred to adding a clause requiring past financial information from the applicant. Part 1580.0400, subps. A through S, describe what must be contained in an application submitted for financial assistance. Subp. S, states that additional information will be 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. It was felt this subpart would be adequate to require the submission of past financial information from an existing company. However, it is reasonable to amend subpart I to include in subp. I, a request of and form of past financial information from an existing company so that it may prepare the information. Also since it would be requested by the Board, it is appropriate to state in the rules the conditions for submission of information and the proper form and content of the financial information.

5. The fourth comment concerned personal guarantees. Personal guarantees are not a requirement to enable financial assistance. Part 1580.0300, subp. 4, does require that the loan guarantee or loan from bond proceeds be secured by the best available collateral which must include at a minimum, a mortgage or security interest in all real and personal property comprising the project.

This change is reasonable and is not a substantive change since it does not introduce new subject matter, but is further clarification of existing application requirements. Part 1580.0400, subp. S, states that additional information may be required for the Board's consideration of project eligibility and conformity to generally accepted commercial lending practices as required by banks and other financial institutions. Past financial information from an existing company would always be requested by such institutions and would likewise have been so requested by the Board.

9. The Board also finds that it is appropriate to change the wording of Part 1580.0900, subp. 2, to read as follows:

Subp. 2. A bond reserve fund must be established by the borrower in order to provide additional security for the bonds. The reserve may come out of bond proceeds. The amount of the reserve must not be less than one-half of the annual amount that 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 issue resolution.

This change is reasonable to clarify the necessity of the bond reserve fund and is not substantive as it conforms with statutory requirements and is not introducing new subject matter to the rules as proposed.

CONCLUSIONS

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

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

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

4. The Board has determined the need for and reasonableness of these rules as proposed and amended herein.

5. The Board has determined that the amendments to the rules as proposed are necessary and reasonable and do not constitute a substantive change from the rules as proposed.

6. The fifth comment again concerned definitions. Part 1580.0300, subp. 3, Eligible Project Costs, includes construction costs, which as defined in Minnesota Statute, 41A.02, means construction of a new agricultural resource project, or expansion or improvement of a project to increase its capacity or efficiency. The list of eligible project costs in the proposed rules has been generalized from the Statutory language, and is only presented for the applicants reference. Again, the rules are to avoid duplication of statutory language. A feasibility study, even though it may be required by the Board to determine project eligibility, economic or technical feasibility, is not an eligible project cost as it is not considered to be a cost of construction.

7. The sixth and final comment on the proposed rules was in regard to the reserve requirement. In either case of financial assistance, a debt reserve fund must be established. Part 1580.0700, subp. N is clear in this regard, while Part 1580.0900, subp 2, is somewhat ambiguous. While both clearly state that a debt reserve fund is an eleigible project cost, 1580.0900, subp. 2, does not clearly state that a debt reserve fund must be established. It is reasonable to clarify the wording to comply with statutory requirements of the establishment of a debt reserve fund, so that an applicant will be able to ascertain all project costs that are a part of project financing.

8. After reviewing the comments, the Board has found merit in parts of what Mr. Varberg has proposed. The board hereby finds that it is appropriate to add the requirement for past financial statements and/or tax statements when applicable and to revise Part 1580.0400, subp. 1, (I), to read as follows:

I. financial statements that include a balance sheet, an opening statement, and footnotes to the statements if available for the following time periods:

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

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

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

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

ORDER

NOW, THEREFORE, IT IS ORDERED that these rules identified as Permanent Rules of the Agricultural Resources Loan Guaranty Board Governing Financial Assistance are adopted as modified herein, this 6th day of August, 1986, pursuant to authority vested in the Agricultural Resources Loan Guaranty Board by Minnesota Statute 41A.04, subd. 4.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 6th day of August, 1986.

By: Jay Kiedrowski
Chairman of the Agricultural
Resources Loan Guaranty Board

By:
Member of the Agricultural
Resources Loan Guaranty Board

In the Matter of the Proposed
Adoption of the Rules of the
Agricultural Resources Loan
Guaranty Board Governing Financial
Assistance.

CERTIFICATE OF COUNSEL

I, CHRISTIE B. ELLER, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rules, and the rule making record, and that, based upon my examination, the Administrative Procedure Act and the rules of the Attorney General have been followed. Any exceptions are noted below.

Dated: September 5, 1986

Christie B Eller

Special Assistant
Attorney General

State of Minnesota
Agricultural Resource Loan Guaranty Board

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

ORDER FOR NOTICE OF
INTENT TO ADOPT RULES
WITHOUT A PUBLIC HEARING

IT IS ORDERED this 30th day of April, 1986, that a Notice of Intent to Adopt Rules Without 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 for that purpose and be published in the State Register.

STATE OF MINNESOTA

Jay Kiedrowski

JAY KIEDROWSKI, CHAIRMAN
OF THE AGRICULTURAL RESOURCE
LOAN GUARANTY BOARD

ATTEST: _____
Member

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

CERTIFICATE

In the Matter of the Proposed Adoption of the permanent rules for the Minnesota Department of Energy and Economic Development governing the Agricultural Resource Loan Guarantee.

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 Monday, this 9th day of June, 1986.

Mary Anderson

SF-00006-03

STATE OF MINNESOTA

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

TO: MARTY CASSERLY,
Special Assistant Attorney General
Administration Division

DATE: 9-5-86

FROM: CHRISTIE B. ELLER CBE
Special Assistant
Attorney General

PHONE: 6-9200

SUBJECT: Proposed Rules of the Agricultural Resources Loan Guarantee Board Governing Financial Assistance.

Enclosed please find copies of the following rule making documents necessary for review of the above-entitled rules.

Certificate of Board's Authorizing Resolution
Order for Publication
Copy of Proposed Rule
Notice of Adoption of the Proposed Rule
Statement of Need and Reasonableness
Affidavit of Mailing Notice of Proposed Adoption
Mailing List Certificate
Copy of State Register
4 Copies of Rule as Adopted
Certificate of Board's Resolution Adopting the Rule
2 Copies of the Findings of Fact, Conclusions and Order
Copy of all comments received by the Board (attached to the Findings)
Certificate of Compliance with Rule Making Procedures

The Attorney General Docket Number for the project is 40 A677 0076. If you have any questions regarding this matter, please do not hesitate to contact me.

RECEIVED
SEP 09 1986
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

CBE:bl

Enclosures