

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

RULE REVIEW CHECKLIST

File No. 1452
DATE RECEIVED 2/18/88
REVIEW DATE -
DUE DATE 3/3/88 DA

APPROVED 3-3-88 mjc
DISAPPROVED
WITHDRAWN

Docket No. 05.0009.0076
ADOPTED W/O HEARING
EMERGENCY RULE X

REVISOR APPROVED
REVISOR DISAPPROVED
FIELD W/SEC.STATE
RETURNED TO AGENCY

✓ 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
10-29-87 Revisor's Certificate
✓ Notice of Intent to Adopt Rule
41A.04 Statutory Authority
no/N/A Small Business Statement
no Expenditure of public money statement
yes Signature
N/A Statement of Need and Reasonableness
Small Business Statement
Fees - § 16A.128
✓ Affidavit of Mailing Notice of Intent to Adopt Rule
11-19-87 Date 30/25 days before adoption
Publication in State Register
11-23-87 Date 30/25 days before adoption
✓ Resolution Adopting - 1-19-88
✓ Findings of Fact, Conclusions & Order Adopting
1-19-88 Date
none Written requests, submissions or comments
✓ Declaration of attorney
Cam Nelson Name of SAAG representing agency
N/A Notice of Submission to Attorney General
none Affidavit of Mailing Notice to Attorney General
✓ Order to print

Department of Trade and Economic Development

Minnesota Agricultural and Economic Development Board

Adopted Emergency Rules Relating to the Minnesota Development Program

Rules as Adopted

1580.2000 [Emergency] PURPOSE AND AUTHORITY.

Parts 1580.2000 to 1580.2120 [Emergency] 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 financial assistance for eligible projects. The Small Business Development Loan Program and the Hazardous Waste Processing Facility Loan Program are also authorized by Minnesota Statutes, chapter 41A, and have separate rules governing them. Eligible applicants may determine under which program they wish to apply for financial assistance for eligible projects.

1580.2010 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** For purposes of parts 1580.2000 to 1580.2120 [Emergency], 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 Minnesota Agricultural and Economic Development Board.

Subp. 3. **Administrator.** "Administrator" means the commissioner of trade and economic development acting as the chief administrative officer of the Minnesota Agricultural and Economic Development 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, under Minnesota Statutes, chapter 362A.

1580.2020 [Emergency] AVAILABILITY OF ELIGIBLE FINANCIAL ASSISTANCE.

Subpart 1. **Amount of loan guarantee, participation, or bond issue; criteria.** The amount of and criteria of a loan guarantee, participation, or bond issue determined under Minnesota Statutes, sections 41A.03 and 41A.035.

Subp. 2. **Eligible project costs.** Project costs eligible for a guaranteed loan, bond issue, or loan participation are defined in Minnesota Statutes, section 41A.02.

Subp. 3. **Security for guaranteed loan, loan participation, or bond issue.** Security for a guaranteed loan, loan participation, or bond issue is determined under Minnesota Statutes, sections 41A.03 and 41A.036.

Subp. 4. **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, loan participation, or bond issue under Minnesota Statutes, sections 41A.03, subdivision 2, and 474.17 to 474.25, if it determines that the increased costs will not jeapordize 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, loan participation, 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.

1580.2030 [Emergency] CONTENTS OF APPLICATION.

Subpart 1. **Application forms.** The administrator shall prepare application forms for use by applicants. The application must provide the information required by Minnesota Statutes, section 41A.04, subdivision 1, paragraphs (a) and (c), and the following information, unless waived by the board under subpart 2:

A. The following 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; and

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

B. If a loan guarantee or loan participation 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 loan value; and

(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).

C. A description of any legal actions pending or to be commenced against the applicant, including an explanation of each of these actions and applicant's defenses, if any.

D. A description of all potentially competitive products that are produced or processed in Minnesota and an analysis of the 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.

E. 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).

Subp. 2. **Waiver of application requirements.** An applicant may request the board to waive any of the requirements of subpart 1. 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 required 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, loan participation, or 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.

1580.2040 [Emergency] REVIEW OF APPLICATION.

Subpart 1. **Review by administrator.** The administrator shall review the application to determine conformity with Minnesota Statutes, chapter 41A, and according to generally accepted commercial lending practices, to determine whether or not to submit the application to the board for approval or rejection. The administrator shall notify the applicant of the administrator's decision whether or not to submit the application to the board.

Subp. 2. **Board review of the application.** If the

administrator determines not to submit the application to the board for approval or rejection, 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 review the application for approval or rejection. The board shall review the completed application under part 1580.2050 [Emergency].

Subp. 3. **Approval and conditional commitment.** If the board approves an application, it shall adopt a resolution under Minnesota Statutes, section 41A.04, subdivision 3.

Subp. 4. **Denial of application.** If the application is rejected by the board, the administrator shall promptly notify the applicant in writing.

Subp. 5. **Misrepresentation in application.** Whenever a change occurs in the information provided by an applicant to the board or to the lender, the applicant shall immediately update and correct that information. Misrepresentation in the application or failure to update any required information constitutes grounds to reject any application, revoke any notice of approval, and refuse to close any loan guaranty, loan participation, or issue bonds.

1580.2050 [Emergency] CRITERIA FOR APPROVAL OF ELIGIBLE FINANCIAL ASSISTANCE.

In determining whether to approve or deny an application for financial assistance, the board shall consider the following criteria:

A. the extent to which the project will further the economic development in Minnesota;

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 program financial assistance;

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

I. the market conditions and terms required for the sale of any bonds or other financial assistance.

1580.2060 [Emergency] GENERAL TERMS AND CONDITIONS OF LOAN GUARANTEES AND LOAN PARTICIPATIONS.

The loan guarantee or participation 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 according to 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 loan on a proportionate basis, and the lender's or nonguaranteed portion may not in any event receive preferential treatment over the guaranteed or participated portion.

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

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

(2) the board or its authorized representative consents in writing; or

(3) the acceleration is otherwise permitted in

the loan guarantee or loan participation agreement.

In the event of default, the lender may not make demand for payment under the loan 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 under the loan guarantee.

C. 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.

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

E. Authorized representatives of the board must have access to the project site at reasonable times during construction and operation of the project.

F. 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 these taxes must be reported to the board in the manner and at the times required by the board.

G. 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.

H. Orderly liquidation of assets of the project must be provided for in the event of default, with an option for the board to acquire from the lender the lender's interest in the assets under the nonguaranteed or nonparticipated portion of the

loan.

I. The board must be paid at or before the closing of the guaranteed or participated loan a fee or fees for the loan guarantee or loan participation commitment to guarantee or participate in the loan. The aggregate fee may not exceed one percent of the total principal amount of the guaranteed or participated portion of the loan.

J. 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 or participation.

K. 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 ten or more days past due;

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

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

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

(1) required payment of principal or interest is ten or more days past due;

(2) the borrower is or may become unable to meet in full the required 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.

M. 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 lender's portion of the loan or loan servicing functions.

N. The agreement must contain other terms and conditions that the board determines necessary and appropriate to carry out the purposes of Minnesota Statutes, chapter 41A.

1580.2070 [Emergency] PRINCIPAL AND INTEREST ASSISTANCE.

The board may at any time enter into a written contract with the borrower to provide principal and interest loan payment assistance under Minnesota Statutes, section 41A.03, subdivision 4.

1580.2080 [Emergency] ISSUANCE OF BONDS.

Subpart 1. **Bond resolution.** If the board intends to fund the eligible financial assistance by issuing bonds for a project under 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.** 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.

1580.2090 [Emergency] OTHER ELIGIBLE FINANCIAL ASSISTANCE.

The board may provide other financial assistance in the form of municipal bond insurance, letters of credit, surety obligations, or similar agreements from financial institutions and other eligible financial assistance under Minnesota Statutes, section 41A.023.

1580.2100 [Emergency] OTHER ELIGIBLE FINANCIAL ASSISTANCE; CRITERIA.

No applicant is eligible to receive other eligible financial assistance unless the board has first passed a resolution designating the business as being in need of other eligible financial assistance. The resolution must include findings that the designation and receipt of the other eligible financial assistance will be of exceptional benefit to Minnesota in that at least three of the following criteria are met:

(1) in order to expand or remain in Minnesota, the business has demonstrated that it is unable to obtain suitable financing from other sources;

(2) other eligible financial assistance will enable the business which is not currently located in Minnesota, to locate a facility within Minnesota that directly increases the number of jobs within the state;

(3) the business will create or retain significant numbers of jobs within a community in Minnesota;

(4) the business has a significant potential for growth in jobs or economic activities within Minnesota within the ensuing five-year period;

(5) the business will maintain a significant level of productivity within Minnesota within the ensuing five-year period.

1580.2110 [Emergency] CONTENTS AND REVIEW OF APPLICATION.

To apply for other financial assistance, the applicant shall comply with part 1580.2030 [Emergency]. The administrator shall review the application according to part 1580.2040 [Emergency].

1580.2120 [Emergency] SECURITY FOR OTHER ELIGIBLE FINANCIAL ASSISTANCE.

Security for other eligible financial assistance is as defined in Minnesota Statutes, section 41A.03, subdivision 1.

REPEALER. Minnesota Rules, parts 1580.0100 to 1580.0900 are repealed.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

MAR - 8 1988

Joan Anderson Growe
Secretary of State

11:15 AM

APPROVED AS TO FORM AND LEGALITY

March 3 19 88

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY MJ Carpenter
SPECIAL ASSISTANT ATTORNEY GENERAL

MINNESOTA AGRICULTURAL AND ECONOMIC DEVELOPMENT BOARD

STATE OF MINNESOTA

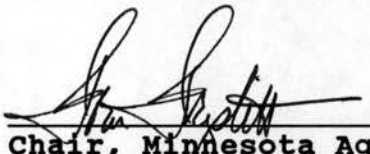
In the Matter of the Proposed
Adoption of Emergency Rules of the Minnesota
Agricultural and Economic Development
Board Governing the Minnesota
Development Program

CERTIFICATE OF BOARD'S
AUTHORIZING RESOLUTION

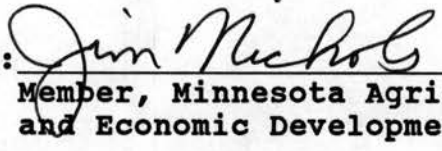
I, Thomas Triplett, do hereby certify that I am a member and the Chair of the Minnesota Agricultural and Economic Development Board, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Minnesota Agricultural and Economic Development Board duly and properly called and held on the 5th day of November, 1987, that a quorum was present, and that a majority of those present voted for the resolution which has not been rescinded or modified.

"Resolved, that Thomas Triplett, Chair of the Minnesota Agricultural and Economic Development Board, is hereby granted the authority and directed to sign and to give the Notice of the Board's Intent to Adopt an Emergency rule governing the Minnesota Development Program to all persons who have registered their names with the Board and the Department of Trade and Economic Development for that purpose and publish the Notice and rule in the State Register, and to perform any and all acts incidental thereto."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 5th day of November, 1987.



Chair, Minnesota Agricultural and
Economic Development Board

ATTEST: 

Member, Minnesota Agricultural
and Economic Development Board

RESOLUTION NO. 87-115

MINNESOTA AGRICULTURAL AND ECONOMIC DEVELOPMENT BOARD

STATE OF MINNESOTA

RESOLVED, that Thomas Triplett, Chair of the Minnesota Agricultural and Economic Development Board, is hereby granted the authority and directed to sign and to give the Notice of the Board's Intent to Adopt an Emergency rule governing the Minnesota Development Program to all persons who have registered their names with the Board and the Department of Trade and Economic Development for that purpose and publish the Notice and rule in the State Register, and to perform any and all acts incidental thereto.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 5th day of November, 1987.

Tom Triplett

Chair, Minnesota Agricultural and Economic Development Board

ATTEST: Jim Nichols

Member, Minnesota Agricultural and Economic Development Board

STATE OF MINNESOTA
MINNESOTA AGRICULTURAL AND ECONOMIC DEVELOPMENT BOARD

In the Matter of the Adoption of the Emergency Rule of the Minnesota Agricultural and Economic Development Board Governing the Minnesota Development Program

DECLARATION OF COUNSEL

I, H. Camilla Nelson, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule, and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is 0076.

H. Camilla Nelson

H. CAMILLA NELSON
Special Assistant
Attorney General

Dated: February 18, 1988

MINNESOTA AGRICULTURAL AND ECONOMIC DEVELOPMENT BOARD

STATE OF MINNESOTA

In the Matter of the Proposed Adoption of Emergency Rules of the Minnesota Agricultural and Economic Development Board Governing the Minnesota Development Program

NOTICE OF INTENT TO ADOPT AN EMERGENCY RULE

Notice is hereby given that the Minnesota Agricultural and Economic Development Board intends to adopt the above-entitled emergency rule. The statutory authority to adopt the emergency rule is contained in Minnesota Statutes, section 41A.04, subd. 4. The agency, in adopting the rule, is following the procedures set forth in the Administrative Procedure Act for adopting emergency rules in Minnesota Statutes, sections 14.29 to 14.36.

All persons have 25 days after publication to submit data and views on the proposed emergency rule or any part or subpart of the rule in writing. Any comments must be submitted to:

John J. O'Brien
Office of Business Finance
Department of Trade and Economic Development
900 American Center Building
150 East Kellogg Boulevard
St. Paul, MN 55101-1429
Telephone: 612-297-1944

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

A free copy of the proposed emergency rule is available by contacting John J. O'Brien.

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

Upon adoption of the emergency rule by the agency, the emergency rule as adopted and its supporting documents will be delivered to the Attorney General for review as to legality and form to the extent 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 wish to receive a copy of the adopted rule, must submit the written request to John J. O'Brien.

The emergency rule will take effect five working days after approval by the Attorney General and be effective for 360 days. The emergency rule will be continued in effect for an additional 180 days if the agency gives notice of continuation in accordance with Minnesota Statutes, section 14.35.

November 6, 1987

Thomas Triplett, Chair, Minnesota Agricultural and Economic Development Board

STATE OF MINNESOTA

MINNESOTA AGRICULTURAL AND ECONOMIC DEVELOPMENT BOARD

In the Matter of the Proposed Adoption of the Rule of the Minnesota Agricultural and Economic Development Board Governing the Minnesota Development Program

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT AN EMERGENCY RULE

I hereby certify that on the 19th day of November, 1987, at the City of Saint Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt an Emergency Rule by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, with postage prepaid, to all persons and associations on the State of Minnesota, Department of Trade and Economic Development rulemaking mailing list.

Sherri Valek
Secretary

Subscribed and sworn to before me this 13th day of January, 1988.

Richard B. Nadeau

RICHARD B. NADEAU
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Comm Expires Apr. 12, 1993

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

AFFIDAVIT OF CERTIFICATE
OF MAILING LIST

In the Matter of the Proposed Adoption of the Temporary Rules of the Minnesota Agriculture and Economic Development Board Governing The Minnesota Development Program.

Mary Anderson, being sworn says:

I hereby certify that the list of persons, associations and other interested groups who have requested, pursuant to Minnesota Statute 14.14, subd. 1 and 14.22 or 14.30, that their names be placed on file with and maintained by the State Department of Trade and Economic Development for the purpose of receiving notice of the proposed adoption of rules by the Department of Trade and Economic Development is accurate, complete and current as of Tuesday, November 17, 1987.

Subscribed and sworn to before me
this 17th day of November, 1987. Richard Nadeau
NAME

TITLE

RICHARD B. NADEAU
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Comm. Expires Apr. 12, 1993

State of Minnesota

STATE REGISTER

Department of Administration—Documents Division

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ST PAUL MN 55101



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23 November 1987

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Pages 1089-1128

Subp. 2. **Decertification.** If a voting machine or system no longer meets the standards of Minnesota statutes or parts 8220.0050 to 8230.4250, the secretary of state may withdraw ~~approval~~ certification of the voting machine or system ~~after a hearing~~. The vendor must be given written notification of intent to withdraw certification and may within ten days of receipt of the notification submit a written request to the secretary of state for a contested case hearing under Minnesota Statutes, sections 14.57 to 14.62.

Department of Trade and Economic Development Minnesota Agricultural and Economic Development Board

Proposed Emergency Rules Relating to the Minnesota Development Program

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Dated: 6 November 1987

Thomas Triplett, Chair, Minnesota
Agricultural and Economic Development Board

Rules as Proposed (all new material)

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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.

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Subp. 3. **Administrator.** "Administrator" means the commissioner of trade and economic development acting as the chief administrative officer of the Minnesota Agricultural and Economic Development Board, or a designee.

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1580.2030 [Emergency] CONTENTS OF APPLICATION.

Subpart 1. **Application forms.** The administrator shall prepare application forms for use by applicants. The application must provide the information required by Minnesota Statutes, section 41A.04, subdivision 1, paragraphs (a) and (c), and the following information, unless waived by the board under subpart 2:

A. The following 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; and

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

B. If a loan guarantee or loan participation 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 loan value; and

(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).

C. A description of any legal actions pending or to be commenced against the applicant, including an explanation of each of these actions and applicant's defenses, if any.

D. A description of all potentially competitive products that are produced or processed in Minnesota and an analysis of the

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.

E. 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).

Subp. 2. **Waiver of application requirements.** An applicant may request the board to waive any of the requirements of subpart 1. 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 required 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, loan participation, or 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.

1580.2040 [Emergency] REVIEW OF APPLICATION.

Subpart 1. **Review by administrator.** The administrator shall review the application to determine conformity with Minnesota Statutes, chapter 41A, and according to generally accepted commercial lending practices, to determine whether or not to submit the application to the board for approval or rejection. The administrator shall notify the applicant of the administrator's decision whether or not to submit the application to the board.

Subp. 2. **Board review of the application.** If the administrator determines not to submit the application to the board for approval or rejection, 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 review the application for approval or rejection. The board shall review the completed application under part 1580.2050 [Emergency].

Subp. 3. **Approval and conditional commitment.** If the board approves an application, it shall adopt a resolution under Minnesota Statutes, section 41A.04, subdivision 3.

Subp. 4. **Denial of application.** If the application is rejected by the board, the administrator shall promptly notify the applicant in writing.

Subp. 5. **Misrepresentation in application.** Whenever a change occurs in the information provided by an applicant to the board or to the lender, the applicant shall immediately update and correct that information. Misrepresentation in the application or failure to update any required information constitutes grounds to reject any application, revoke any notice of approval, and refuse to close any loan guaranty, loan participation, or issue bonds.

1580.2050 [Emergency] CRITERIA FOR APPROVAL OF ELIGIBLE FINANCIAL ASSISTANCE.

In determining whether to approve or deny an application for financial assistance, the board shall consider the following criteria:

A. the extent to which the project will further the economic development in Minnesota;

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 program financial assistance;

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

I. the market conditions and terms required for the sale of any bonds or other financial assistance.

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

1580.2060 [Emergency] GENERAL TERMS AND CONDITIONS OF LOAN GUARANTEES AND LOAN PARTICIPATIONS.

The loan guarantee or participation 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 according to 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 loan on a proportionate basis, and the lender's or nonguaranteed portion may not in any event receive preferential treatment over the guaranteed or participated portion.

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

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

(2) the board or its authorized representative consents in writing; or

(3) the acceleration is otherwise permitted in the loan guarantee or loan participation agreement.

In the event of default, the lender may not make demand for payment under the loan 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 under the loan guarantee.

C. 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.

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

E. Authorized representatives of the board must have access to the project site at reasonable times during construction and operation of the project.

F. 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 these taxes must be reported to the board in the manner and at the times required by the board.

G. 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.

H. Orderly liquidation of assets of the project must be provided for in the event of default, with an option for the board to acquire from the lender the lender's interest in the assets under the nonguaranteed or nonparticipated portion of the loan.

I. The board must be paid at or before the closing of the guaranteed or participated loan a fee or fees for the loan guarantee or loan participation commitment to guarantee or participate in the loan. The aggregate fee may not exceed one percent of the total principal amount of the guaranteed or participated portion of the loan.

J. 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 or participation.

K. 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 ten or more days past due;

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

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

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

(1) required payment of principal or interest is ten or more days past due;

(2) the borrower is or may become unable to meet in full the required 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.

M. 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 lender's portion of the loan or loan servicing functions.

N. The agreement must contain other terms and conditions that the board determines necessary and appropriate to carry out the purposes of Minnesota Statutes, chapter 41A.

1580.2070 [Emergency] PRINCIPAL AND INTEREST ASSISTANCE.

The board may at any time enter into a written contract with the borrower to provide principal and interest loan payment assistance under Minnesota Statutes, section 41A.03, subdivision 4.

1580.2080 [Emergency] ISSUANCE OF BONDS.

Subpart 1. **Bond resolution.** If the board intends to fund the eligible financial assistance by issuing bonds for a project under 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.** 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.

1580.2090 [Emergency] OTHER ELIGIBLE FINANCIAL ASSISTANCE.

The board may provide other financial assistance in the form of municipal bond insurance, letters of credit, surety obligations, or similar agreements from financial institutions and other eligible financial assistance under Minnesota Statutes, section 41A.023.

1580.2100 [Emergency] OTHER ELIGIBLE FINANCIAL ASSISTANCE; CRITERIA.

No applicant is eligible to receive other eligible financial assistance unless the board has first passed a resolution designating the business as being in need of other eligible financial assistance. The resolution must include findings that the designation and receipt of the other eligible financial assistance will be of exceptional benefit to Minnesota in that at least three of the following criteria are met:

(1) in order to expand or remain in Minnesota, the business has demonstrated that it is unable to obtain suitable financing from other sources;

(2) other eligible financial assistance will enable the business which is not currently located in Minnesota, to locate a facility within Minnesota that directly increases the number of jobs within the state;

(3) the business will create or retain significant numbers of jobs within a community in Minnesota;

(4) the business has a significant potential for growth in jobs or economic activities within Minnesota within the ensuing five-year period;

(5) the business will maintain a significant level of productivity within Minnesota within the ensuing five-year period.

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.

1580.2110 [Emergency] CONTENTS AND REVIEW OF APPLICATION.

To apply for other financial assistance, the applicant shall comply with part 1580.2030 [Emergency]. The administrator shall review the application according to part 1580.2040 [Emergency].

1580.2120 [Emergency] SECURITY FOR OTHER ELIGIBLE FINANCIAL ASSISTANCE.

Security for other eligible financial assistance is as defined in Minnesota Statutes, section 41A.03, subdivision 1.

REPEALER. Minnesota Rules, parts 1580.0100 to 1580.0900 are repealed.

Department of Transportation

Proposed Permanent Rules Relating to Licensing of Hazardous Waste Transporters

Notice of Intent to Adopt a Rule Without a Public Hearing

Notice is hereby given that the State Department of Transportation intends to adopt the above-entitled rules without a public hearing, following the procedures set forth in the Administrative Procedure Act, *Minnesota Statutes*, section 14.22 to 14.28, for adopting rules without a public hearing. The statutory authority to adopt these rules is *Laws 1987*, Chapter 393, Article 1, Section 1.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rules or any part or subpart of the rules. 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 rules 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 in writing. Any person requesting a public hearing must state his or her name and address, and is encouraged to provide a telephone number and 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 14.14 to 14.20.

Comments or written requests for a public hearing must be submitted to: Elizabeth M. Parker, 815 Transportation Building, St. Paul, Minnesota 55155, (612) 297-2913.

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

The adoption of the proposed rules will not require the expenditure of public money by local public bodies as the rules will not apply to government agencies and political subdivisions.

The rules proposed for adoption relate to the following matters. The proposed rules repeat the requirement in the law that, with certain exceptions, no person may transport hazardous waste without a license. They also describe the categories of hazardous waste that may be transported without obtaining a hazardous waste transporter license. The exemption of those wastes is authorized by the statute, but is described in greater detail in the rules. The proposed rules describe the kind of information that will be required on the application forms for the license and the vehicle decals. The law requires a decal on each vehicle, and the rules describe where the decal must be placed on the vehicle. The rules restate the fees and insurance requirements imposed by the law. The proposed rules require transporters to notify the Commissioner of Transportation of changes in name, address, and telephone number, and to report each accident and each accidental release of hazardous waste involving motor vehicle transportation.

The proposed rules also require the applicant to sign statements accepting responsibility for knowing and complying with all state and federal laws and regulations that govern hazardous waste transportation. In addition, the applicant must certify that it has trained the drivers of hazardous waste vehicles in compliance with the federal hazardous material transportation regulations that are adopted by reference in *Minnesota Statutes*, section 221.033. The proposed rules will make failure to comply with reporting requirements grounds for revocation or suspension of the license.

The proposed rules will affect small businesses and all other businesses that transport hazardous wastes that must be transported with a manifest or shipping papers. The rules will require payment of a license fee of $500 every three years for each person (business, not per driver) that transports hazardous waste. That fee and the decal fee of $25 per vehicle per year are required by the law and are restated in the rules. The rules will require the transporter to fill out an application form or renewal form every three years, and a decal purchase form every year. They require the transporter to maintain insurance that meets the requirements of the U.S. Department of Transportation. In addition, each transporter that has not previously filed a certificate of insurance with the Minnesota Department of Transportation must do so in order to obtain a license. This is a new requirement for private carriers that transport hazardous waste and is required by the authorizing statute.

CERTIFICATE OF THE

Minnesota Agricultural and Economic Development Board

RESOLUTION ADOPTING THE RULE

I, Thomas Triplett, do hereby certify that I am a member and the Chair of the Minnesota Agricultural and Economic Development 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 Minnesota Agricultural and Economic Development Board, duly and properly called and held on the 19th day of January, 1988, that a quorum was present, and that a majority of those present voted for the resolution which has not been rescinded or modified.

> "Resolved that the rule relating to the Minnesota Development Program is approved and adopted pursuant to authority vested in the Minnesota Agricultural and Economic Development Board by Minnesota Statutes, section 41A.04, subdivision 4. Thomas Triplett, the Chair of the Minnesota Agricultural and Economic Development Board, is authorized to sign the findings of fact, conclusions, and order adopting the rule and further is authorized to modify the rule if necessary to obtain the approval of the rule by the Attorney General and to perform the necessary acts to provide that the rule shall have the force and effect of law."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 19th day of January, 1988.

Chair, Minnesota Agricultural
and Economic Development Board

Attest: David J. Speer

Member, Minnesota Agricultural
and Economic Development Board

AEDP.GEN/II14-CP

Resolution No. 88-119

STATE OF MINNESOTA

DEPARTMENT OF TRADE AND ECONOMIC DEVELOPMENT

In the Matter of the Proposed Adoption of the Rule of the Minnesota Agricultural and Economic Development Board Governing the Minnesota Development Program	FINDINGS OF FACT CONCLUSIONS, AND ORDER ADOPTING EMERGENCY RULE

Notice of the Board's intent to adopt the above-entitled emergency rule was published in the State Register on November 23, 1987 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, section 14.30, on November 19, 1987.

All persons were given the opportunity to submit written comment on the rules for at least 25 days after notice of proposed rulemaking.

No submissions or comments on the rule were received by the agency. No requests for notice of submission to the Attorney General were received by the agency.

NOW, THEREFORE, IT IS ORDERED that the rule identified as the rule of the Minnesota Agricultural and Economic Development Board governing the Minnesota Development Program is adopted this 19th day of January, 1988, pursuant to authority vested in the Board of Minnesota Statutes, section 41A.04, subdivision 4.

Thomas Triplett, Chair
Minnesota Agricultural and
Economic Development Board

AEDP.GEN/II15-CP

Department of Trade and Economic Development

Minnesota Agricultural and Economic Development Board

Proposed Emergency Rules Relating to the Minnesota Development Program

Rules as Proposed (all new material)

1580.2000 [Emergency] PURPOSE AND AUTHORITY.

Parts 1580.2000 to 1580.2120 [Emergency] 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 financial assistance for eligible projects. The Small Business Development Loan Program and the Hazardous Waste Processing Facility Loan Program are also authorized by Minnesota Statutes, chapter 41A, and have separate rules governing them. Eligible applicants may determine under which program they wish to apply for financial assistance for eligible projects.

1580.2010 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** For purposes of parts 1580.2000 to 1580.2120 [Emergency], 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 Minnesota Agricultural and Economic Development Board.

Subp. 3. **Administrator.** "Administrator" means the commissioner of trade and economic development acting as the chief administrative officer of the Minnesota Agricultural and Economic Development 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, under Minnesota Statutes, chapter 362A.

Approved by Revisor

1580.2020 [Emergency] AVAILABILITY OF ELIGIBLE FINANCIAL ASSISTANCE.

Subpart 1. **Amount of loan guarantee, participation, or bond issue; criteria.** The amount of and criteria of a loan guarantee, participation, or bond issue determined under Minnesota Statutes, sections 41A.03 and 41A.035.

Subp. 2. **Eligible project costs.** Project costs eligible for a guaranteed loan, bond issue, or loan participation are defined in Minnesota Statutes, section 41A.02.

Subp. 3. **Security for guaranteed loan, loan participation, or bond issue.** Security for a guaranteed loan, loan participation, or bond issue is determined under Minnesota Statutes, sections 41A.03 and 41A.036.

Subp. 4. **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, loan participation, or bond issue under Minnesota Statutes, sections 41A.03, subdivision 2, and 474.17 to 474.25, if it determines that the increased costs will not jeapordize 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, loan participation, 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.

1580.2030 [Emergency] CONTENTS OF APPLICATION.

Subpart 1. **Application forms.** The administrator shall prepare application forms for use by applicants. The application must provide the information required by Minnesota Statutes, section 41A.04, subdivision 1, paragraphs (a) and (c), and the following information, unless waived by the board under subpart 2:

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

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(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; and

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

B. If a loan guarantee or loan participation 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 loan value; and

(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).

C. A description of any legal actions pending or to be commenced against the applicant, including an explanation of each of these actions and applicant's defenses, if any.

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D. A description of all potentially competitive products that are produced or processed in Minnesota and an analysis of the 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.

E. 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).

Subp. 2. **Waiver of application requirements.** An applicant may request the board to waive any of the requirements of subpart 1. 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 required 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, loan participation, or 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.

1580.2040 [Emergency] REVIEW OF APPLICATION.

Subpart 1. **Review by administrator.** The administrator shall review the application to determine conformity with Minnesota Statutes, chapter 41A, and according to generally accepted commercial lending practices, to determine whether or not to submit the application to the board for approval or rejection. The administrator shall notify the applicant of the administrator's decision whether or not to submit the application to the board.

Subp. 2. **Board review of the application.** If the

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administrator determines not to submit the application to the board for approval or rejection, 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 review the application for approval or rejection. The board shall review the completed application under part 1580.2050 [Emergency].

Subp. 3. **Approval and conditional commitment.** If the board approves an application, it shall adopt a resolution under Minnesota Statutes, section 41A.04, subdivision 3.

Subp. 4. **Denial of application.** If the application is rejected by the board, the administrator shall promptly notify the applicant in writing.

Subp. 5. **Misrepresentation in application.** Whenever a change occurs in the information provided by an applicant to the board or to the lender, the applicant shall immediately update and correct that information. Misrepresentation in the application or failure to update any required information constitutes grounds to reject any application, revoke any notice of approval, and refuse to close any loan guaranty, loan participation, or issue bonds.

1580.2050 [Emergency] CRITERIA FOR APPROVAL OF ELIGIBLE FINANCIAL ASSISTANCE.

In determining whether to approve or deny an application for financial assistance, the board shall consider the following criteria:

A. the extent to which the project will further the economic development in Minnesota;

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;

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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 program financial assistance;

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

I. the market conditions and terms required for the sale of any bonds or other financial assistance.

1580.2060 [Emergency] GENERAL TERMS AND CONDITIONS OF LOAN GUARANTEES AND LOAN PARTICIPATIONS.

The loan guarantee or participation 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 according to 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 loan on a proportionate basis, and the lender's or nonguaranteed portion may not in any event receive preferential treatment over the guaranteed or participated portion.

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

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

(2) the board or its authorized representative consents in writing; or

(3) the acceleration is otherwise permitted in

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the loan guarantee or loan participation agreement.

In the event of default, the lender may not make demand for payment under the loan 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 under the loan guarantee.

C. 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.

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

E. Authorized representatives of the board must have access to the project site at reasonable times during construction and operation of the project.

F. 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 these taxes must be reported to the board in the manner and at the times required by the board.

G. 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.

H. Orderly liquidation of assets of the project must be provided for in the event of default, with an option for the board to acquire from the lender the lender's interest in the assets under the nonguaranteed or nonparticipated portion of the

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by Revisor _____

loan.

I. The board must be paid at or before the closing of the guaranteed or participated loan a fee or fees for the loan guarantee or loan participation commitment to guarantee or participate in the loan. The aggregate fee may not exceed one percent of the total principal amount of the guaranteed or participated portion of the loan.

J. 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 or participation.

K. 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 ten or more days past due;

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

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

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

(1) required payment of principal or interest is ten or more days past due;

(2) the borrower is or may become unable to meet in full the required 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.

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M. 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 lender's portion of the loan or loan servicing functions.

N. The agreement must contain other terms and conditions that the board determines necessary and appropriate to carry out the purposes of Minnesota Statutes, chapter 41A.

1580.2070 [Emergency] PRINCIPAL AND INTEREST ASSISTANCE.

The board may at any time enter into a written contract with the borrower to provide principal and interest loan payment assistance under Minnesota Statutes, section 41A.03, subdivision 4.

1580.2080 [Emergency] ISSUANCE OF BONDS.

Subpart 1. **Bond resolution.** If the board intends to fund the eligible financial assistance by issuing bonds for a project under 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

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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.** 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.

1580.2090 [Emergency] OTHER ELIGIBLE FINANCIAL ASSISTANCE.

The board may provide other financial assistance in the form of municipal bond insurance, letters of credit, surety obligations, or similar agreements from financial institutions and other eligible financial assistance under Minnesota Statutes, section 41A.023.

1580.2100 [Emergency] OTHER ELIGIBLE FINANCIAL ASSISTANCE; CRITERIA.

No applicant is eligible to receive other eligible financial assistance unless the board has first passed a resolution designating the business as being in need of other eligible financial assistance. The resolution must include findings that the designation and receipt of the other eligible financial assistance will be of exceptional benefit to Minnesota in that at least three of the following criteria are met:

(1) in order to expand or remain in Minnesota, the business has demonstrated that it is unable to obtain suitable financing from other sources;

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(2) other eligible financial assistance will enable the business which is not currently located in Minnesota, to locate a facility within Minnesota that directly increases the number of jobs within the state;

(3) the business will create or retain significant numbers of jobs within a community in Minnesota;

(4) the business has a significant potential for growth in jobs or economic activities within Minnesota within the ensuing five-year period;

(5) the business will maintain a significant level of productivity within Minnesota within the ensuing five-year period.

1580.2110 [Emergency] CONTENTS AND REVIEW OF APPLICATION.

To apply for other financial assistance, the applicant shall comply with part 1580.2030 [Emergency]. The administrator shall review the application according to part 1580.2040 [Emergency].

1580.2120 [Emergency] SECURITY FOR OTHER ELIGIBLE FINANCIAL ASSISTANCE.

Security for other eligible financial assistance is as defined in Minnesota Statutes, section 41A.03, subdivision 1.

REPEALER. Minnesota Rules, parts 1580.0100 to 1580.0900 are repealed.

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Emergency Rules Relating to the Minnesota Development Program

AGENCY: Department of Trade and Economic Development

MINNESOTA RULES: Chapter 1580

The attached rules are approved for publication in the State Register

David S. Niss
Assistant Revisor