

Minnesota Attorney General: Administrative Rules Proceedings

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mjc

RULE REVIEW CHECKLIST

File No. 1589 Docket No. 05.0009.0114

DATE RECEIVED 4-13-89 ADOPTED W/O HEARING X

REVIEW DATE 4-24-89 mjc EMERGENCY RULE _____

DUE DATE 4-27-89 REVISOR APPROVED _____

APPROVED 4.27.89 mjc REVISOR DISAPPROVED _____

DISAPPROVED _____ FILED W/SEC. OF STATE _____

WITHDRAWN _____ RETURNED TO AGENCY _____

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)
- 6/2/86 Date published in State Register
- no Comments

_____ ~~Petition for Adoption of a Rule (if applicable)~~

_____ ~~Board's Authorizing Resolution~~
- _____ ~~Date adopted~~

✓ Proposed Rule
- Yes Revisor's Certificate

✓ Notice of Intent to Adopt Rule
- 45.023-.0497 Statutory Authority
- yes Small Business Statement
- no Expenditure of public money statement
- yes Signature

✓ Statement of Need and Reasonableness (if applicable)
- ~~yes~~ ND Small Business Statement — regulated for cost + sewer
- _____ Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
- 9/23/88 Date (30)/25 days before adoption
- OK Notice attached
- _____ ~~Copy of rule or summary attached~~

✓ Publication in State Register
- 9/26/88 Date (30)/25 days before adoption

_____ 180-day deadline from:
- N/A Effective date of law requiring rule (14.12) (both rules)
- 10/26/88 end of comment period (§ 14.26) (rules without hearing) OK
- _____ ~~effective date of statutory authority (§ 14.29) (emergency rules)~~

_____ ~~Resolution Adopting~~
- _____ ~~Date adopted~~

✓ Findings of Fact, Conclusions & Order Adopting
- 3/10/87 Date

_____ ~~Written requests, submissions or comments~~

✓ Declaration of attorney
- M. Owen Name of SAAG representing agency

✓ Notice of Submission to Atty. Gen. (if applicable)

_____ ~~Aff. of Mailing Notice to Atty. Gen. (if applicable)~~

SF-00006-05 (4/86)

DEPARTMENT : ATTORNEY GENERAL

STATE OF MINNESOTA

Office Memorandum

DATE : April 28, 1989

TO : MICHELE M. OWEN
Special Assistant Attorney General

FROM : MARTY J. CASSERLY
Assistant Attorney General

PHONE : 6-6839

SUBJECT : In the Matter of the Adopted Permanent Rules Relating to Developmental Lending and Investment Performance Ratings for Financial Institutions Owned by Interstate Holding Companies

The above-referenced rule has been approved as to its legality by the Attorney General on April 27, 1989.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies with the Secretary of State who will forward one copy to the Revisor of Statutes. The fourth 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 accoradance 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.

MJC:klk
Enclosures

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

William Brown
Chief Administrative Law Judge
Office of Administrative Hearings

AG Copy

Department of Commerce

Adopted Permanent Rules Relating to Developmental Lending and Investment Performance Ratings of Financial Institutions Owned by Interstate Holding Companies

Rules as Adopted

2655.0700 APPLICABILITY AND SCOPE.

Parts 2655.0700 to 2655.1300 govern the data to be reported and the annual rating of interstate financial institutions operating in Minnesota. A financial institution is rated on its lending and investment performance using a five-point scale as prescribed under Minnesota Statutes, section 48.97.

2655.0800 PURPOSE.

The purpose of the annual rating of financial institution is to set criteria by which an interstate-owned financial institution is evaluated and ranked based on its proven ability to meet the needs of the community where it conducts business in terms of its performance and in reaching its targeted level of developmental loan and investment activity.

2655.0900 DEFINITIONS.

Subpart 1. **Scope.** For the purpose of parts 2655.0700 to 2655.1300, the following terms have the meanings given them.

Subp. 2. **Agricultural loans.** "Agricultural loans" means loans for agricultural purposes that may be secured by real estate but not for the purpose of acquiring real estate.

or secured by anything else?

Subp. 3. **Alternate energy loans and alternate conservation loans.** "Alternate energy loans" and "alternate conservation loans" means all loans for any purpose under Minnesota Statutes, section 116M.03, subdivision 26.

Subp. 4. **Commercial loans.** "Commercial loans" means loans for commercial purposes that may be secured by real estate but not for the purpose of acquiring real estate.

or secured by any other asset?

Subp. 5. **Commissioner.** "Commissioner" means the

commissioner of the Department of Commerce.

Subp. 6. **Community.** "Community" means the area the financial institution has designated for purposes of compliance with the Community Reinvestment Act of 1977, United States Code, title 12, sections 2901 to 2905, and Code of Federal Regulations, title 12, (CFR sub. ctr. D, FSLIC, 563E) as being the areas that it serves.

Subp. 7. **Community development corporation.** "Community development corporation" is as defined in Minnesota Statutes, section 116M.04.

Subp. 8. **Developmental loans.** "Developmental loans" include the following categories:

A. low and moderate income housing;

B. operating loans for family farmers;

C. loans made in distressed areas;

D. minority-owned and woman-owned businesses;

E. alternative energy and energy conservation practices;

F. community development corporations;

G. loans made within Indian reservations;

H. student education loans; and

I. any other specifically defined class of people, businesses, or projects which meet the standards under Minnesota Statutes, section 645.445, subdivision 5, for socially or economically disadvantaged persons, projects, or businesses.

Subp. 9. **Developmental investments.** "Developmental investments" include investments for the following purposes:

A. low and moderate income housing;

B. operating loans for family farmers;

C. loans made in distressed areas;

D. minority-owned and woman-owned businesses;

E. alternative energy and energy conservation practices;

F. community development corporations;

G. loans made within Indian reservations;

H. student education loans; and

I. any other specifically defined class of people, businesses, or projects which meet the standards under Minnesota Statutes, section 645.445, subdivision 5, for socially or economically disadvantaged persons, projects, or businesses.

Subp. 10. **Distressed area.** "Distressed area" includes an area designated as a distressed area under Code of Federal Regulations, title 24, section 24570.452 (1986), as amended by the United States Department of Housing and Urban Development.

Subp. 11. **Family farmers.** "Family farmers" means family farms and family farm corporations as defined in Minnesota Statutes, section 500.24.

Subp. 12. **Financial institution.** "Financial institution" means a bank, savings bank, or savings and loan association doing business at a location in Minnesota that is owned by an interstate bank holding company, savings and loan, or savings and loan holding company in Minnesota under the Reciprocal Interstate Banking Act of 1986, including Minnesota Statutes, section 51A.58.

Subp. 13. **Investments.** "Investments" means funds or capital extended, contributed, or otherwise invested, but not loaned.

Subp. 14. **Low and moderate income housing.** "Low and moderate income housing" means housing defined as such by any of the following:

A. regulations adopted by the Farmers Home Administration; or

B. section 8 of the United States Housing Act of 1937, and the regulation adopted under the act.

Subp. 15. **Minnesota loan.** "Minnesota loan" means loans made to Minnesota residents to be used in Minnesota or loans where the financial institution has been advised by the borrower that the loan proceeds will be used in Minnesota.

Subp. 16. **Minnesota residents.** "Minnesota residents" are:

A. individuals located within a Minnesota zip code;

B. private profit or nonprofit corporations or subsidiaries, or divisions of these corporations, located and

doing business within Minnesota;

C. profit or nonprofit partnerships, trusts, or any form of other business enterprise located and doing business within Minnesota; or

D. any municipality, agency, or other public authority established and operating under the laws of Minnesota.

Subp. 17. **Minority-owned business and woman-owned business.** "Minority-owned business" and "woman-owned business" means a socially or economically disadvantaged person under Minnesota Statutes, section 645.445, subdivision 5. A minority-owned business or woman-owned business must have at least 50 percent of the ownership interest controlled by such disadvantaged class of person.

Subp. 18. **New net funds.** "New net funds" has the meaning given the term in part 2655.0200, subpart 20.

2655.1000 FILING REQUIREMENTS.

A financial institution on or before March 31 each year shall file with the commissioner: (1) a copy of each report and document which it is required to prepare and/or file with one or more federal agencies by the Community Reinvestment Act of 1977, United States Code, title 12, as amended, and the rules and regulations under that act; (2) a copy of the most recent, complete, disclosure statement prepared under the reporting requirements and the rules and regulations of the Federal Home Mortgage Disclosure Act of 1975, United States Code, title 12, as amended; and (3) a report, in a form to be prescribed by the commissioner, which shall be the basis for, along with other information regarding the financial institution obtained by the commissioner, the annual community reinvestment rating assigned to the financial institution by the commissioner. The report must:

A. List the volume of developmental loans in the community, outside of the community, in the state, in terms of number and amount originated by the financial institution in the preceding calendar year and those outstanding at the end of the

preceding calendar year.

B. Project the volume of developmental loans in the community, outside of the community, in the state, in terms of number and amount, to be originated during the current calendar year and those to be outstanding at the end of the current calendar year.

C. List by zip code or census tract the number and volume of agricultural loans by the following categories for the preceding calendar year:

(1) by purpose of loan for:

(a) machinery and equipment;

(b) crop inputs and harvest;

(c) livestock purchase and feed;

(d) where a combination of the above purposes list by purpose to which a majority of proceeds were devoted; and

(e) restructuring existing agricultural loans originally made for the above purposes; and

(2) by the repayment terms of:

(a) demand;

(b) amortizing-installments;

(c) single payment; or

(d) revolving credit agreement.

For the purposes of the report submitted in 1989 only, this data must be reported for both calendar years 1987 and 1988.

D. List by zip code or census tract the number and volume of commercial loans by the following categories for the preceding calendar year:

(1) by purpose of loan for:

(a) purchase or maintenance of machinery, equipment, furniture, and fixtures;

(b) financing inventory;

(c) cash flow, including accounts receivable;

(d) improvements to commercial real estate; or

(e) capitol or equity formation loans; and

(2) by the repayment terms of:

(a) demand;

(b) amortizing-installments;

(c) single payment; or

(d) revolving credit agreement.

For the purposes of the report submitted in 1989 only, this data must be reported for both calendar years 1987 and 1988.

E. List any developmental investments for the classifications and time periods described in items A and B.

F. List any developmental loans or developmental investments originated by the financial institution which has or will be participated in or sold to other institutions during the time periods described in items A and B.

G. List by zip code or census tract the dollar value and volume of deposits received during the preceding calendar year.

H. Describe the economic condition of the community during the time periods described in items A and B, using among other criteria, those listed in part 2655.1100, which relate to economic and social conditions in the community and establish the basis for the financial institution's obligation to place developmental loans to residents within the community or outside of the community or in distressed areas in the state of Minnesota.

I. Include a copy of the financial institution's Federal Financial Institution Examination Council Call Report or similar report required by the Federal Home Loan Bank Board that had been filed for the preceding December 31.

J. Determine the extent of nondevelopmental loans and investments made by the financial institution in Minnesota and outside of Minnesota during the time period described in items A and B.

K. Describe in detail the methods used by the financial institution in determining the credit needs of its local community.

L. Describe in detail the methods used and the media employed to make the members of the organization's community aware of the credit services it offers.

M. Describe the extent of participation by the organization's board of directors or trustees in formulating the financial institution's policies and reviewing its performance with respect to the purpose of the Community Reinvestment Act and Minnesota Statutes, section 48.97.

N. Describe the financial institution's participation, leadership, and creativeness in:

(1) local development, redevelopment, and rehabilitation projects or programs;

(2) programs or organizations which promote and assist in the development and growth of small business in Minnesota; and

(3) programs or organizations that address the financial needs of minorities.

O. Explain how and to what extent the financial institution has brought into Minnesota the net new funds described in the acquisition application.

P. Describe any other community activities that bear upon the extent to which the financial institution is helping to meet local credit needs. Information and data required under subparts A to M may be incorporated by reference if the information and data are already included in the report and document filed in connection with the Community Reinvestment Act as required by this part.

2655.1100 RATING CRITERIA.

On the basis of the reports required under part 2655.1000, the commissioner shall classify each financial institution in relation to the estimated need for developmental loans and rate each financial institution using the following criteria:

A. the economic condition of the community or communities to be served (including, but not limited to, population trends and area use for residential, commercial,

industrial, and agricultural purposes;

B. the social composition of the community or communities to be served including the level of socially and economically disadvantaged persons, families of low and moderate income and low and moderate income housing, the number of women 18 to 60 years of age, and location of distressed areas;

C. the actual fiscal capacity of the financial institution to provide loans and credit;

D. the amount of developmental loan and developmental investment transactions and programs in relation to the actual local demand for credit and loans without economic reinvestment leadership intervention, including the number of loans and amount of investments that are not classified as developmental and are out of the financial institution's service area in relation to the measured activity of developmental loans and developmental investments within the financial institution's service area; and

E. the financial institution's plan and demonstrated experience in assisting in:

(1) the development of economically disadvantaged and underserved neighborhoods, including Indian reservations;

(2) meeting the credit and deposit service needs of low-income, moderate-income, and minority residents; and

(3) helping small, minority-owned and women-owned businesses.

2655.1200 REVIEW REPORTS.

When rating a financial institution, the commissioner will review all reports and documents filed with the department under part 2655.1000 and any signed, written comments received by the commissioner which specifically relate to the financial institution's performance in helping to meet the credit needs of its community. In addition, the commissioner will consider the following factors in assessing a financial institution's record of performance:

A. activities conducted by the financial institution

to ascertain credit needs of its community, including the extent of the financial institution's efforts to communicate with members of its community regarding the credit services being provided the financial institution;

B. the extent of the financial institution's marketing and special credit-related programs that make members of the community, including members of targeted groups and populations, aware of the credit services provided;

C. the extent of participation of the financial institution's board of directors or board of trustees in formulating the financial institution's policies and reviewing its performance with respect to the purposes of the Community Reinvestment Act of 1977;

D. the geographic distribution of the financial institution's credit extensions, credit applications, and credit denials;

E. any practices intended to discourage applications for types of credit in the financial institution's annual community reinvestment plan;

F. evidence of prohibited discriminatory or other illegal credit practices;

G. the total dollar volume and number of loans and investments made by the financial institution in its community and outside of its community, in the state of Minnesota during the time periods described in part 2655.1000, items A and B;

H. the financial institution's ability to meet various community credit needs based on its financial condition, size, legal impediments, local economic conditions, and other factors; and

I. other factors that, in the judgment of the commissioner reasonably bear upon the extent to which a financial institution is helping to meet the credit needs of its entire community.

Assessment of a financial institution's record of performance, under this part, will be the basis for the financial institution's rating under Minnesota Statutes, section

48.97, subdivision 3.

2655.1300 ANNUAL RATING.

Subpart 1. **Community reinvestment assessment.** Annually on or before June 30, the department shall make a community reinvestment assessment of each financial institution. The assessment will be based upon information compiled under parts 2655.0700 to 2655.1300 or obtained from other sources, including information obtained from state or federal banking regulators. The commissioner shall prepare a written report summarizing the results of the assessment and assign to each financial institution a numerical rating based on a one to five scoring system. Specifically, the numerical scores shall represent performance assessments as follows:

A. excellent performance;

B. good performance;

C. satisfactory performance;

D. less than satisfactory performance; and

E. unsatisfactory performance.

Subp. 2. **Rating scale.** Rating shall be based on a five-point scale. An annual rating of excellent to poor shall then be given based on the percentile and of the total score of the financial institution in question, unless the distribution is unusually skewed, then the commissioner shall adopt an appropriate measure of the distribution. In assigning the rating, the five performance categories will be weighed and evaluated according to how well the financial institution meets the descriptive characteristics listed below:

A. "Excellent" means the financial institution has a strong record of meeting community credit needs and performance in reaching the target level of developmental loans and developmental investments. Both the board of directors and management take an active part in the process and demonstrate an affirmative commitment to the community. Financial institutions receiving this rating rank high in all performance categories.

B. "Good" means a financial institution has a very

acceptable record of helping to meet community credit needs and performance in reaching the target level of developmental loans and developmental investments. A financial institution receiving this rating is ranked in the good levels of the performance categories.

C. "Satisfactory" means a financial institution has an acceptable record of helping to meet community credit needs and in meeting the target level of developmental loans and investments. The board of directors and management have not placed strong emphasis on the credit needs of the community. An institution receiving this rating has rankings surrounding the midrange levels of performance categories.

D. "Less than satisfactory" means a financial institution has an inadequate record of helping to meet the community credit needs and reaching the target level of developmental loans and developmental investments. The board of directors and management give inadequate consideration to the credit needs of the institution's community. An institution receiving the rating generally ranks below satisfactory in the majority of performance categories.

E. "Unsatisfactory" means a financial institution has a very poor record of helping to meet the community credit needs and in reaching the target level of developmental loans and developmental investments. The board of directors and management appear to give little consideration to the credit needs of the institution's community. An institution receiving this rating ranks in the lowest levels of the performance categories.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

APR 27 1989

Joan Anderson Growe

Secretary of State

3:30 PM

APPROVED AS TO FORM AND LEGALITY,

April 27 1989

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY MJ Cassedy

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE REGISTER

STATE OF MINNESOTA



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Questions regarding the MJUA, the MAP, or this notice should be directed to:

David Corum
Research Analyst
Minnesota Department of Commerce
500 Metro Square Building
St. Paul, MN 55101
(612) 297-3301

Michael A. Hatch
Commissioner

Department of Commerce
Division of Financial Examinations

Outside Opinions Sought Concerning Proposed Rules Governing Development Loans for Financial Institutions Owned by Interstate Bank Holding Companies Including the Impact of the Rules on Small Business

Notice is hereby given that the Minnesota Department of Commerce is soliciting information and opinions from sources outside the agency in preparing to promulgate new rules relating to the requirement that a financial institution located in this state owned by an interstate bank holding company provide a level of development loans in this state. The adoption of the rules is authorized by 1986 Minn. Laws ch. 339, § 14.

The Department of Commerce requests information and opinions concerning the subject matter of the rules. Outside opinion is also being solicited as to how these rules will affect small businesses as defined by Minnesota Statutes § 14.115, subdivision 1. Interested persons or groups may submit data or views on the subject matter of concern orally or in writing. Written statements should be addressed to:

James G. Miller, Deputy Commissioner
Division of Financial Examinations
500 Metro Square Building
Seventh and Robert Streets
St. Paul, Minnesota 55101
(612) 296-2135

Oral statements will be received during regular business hours over the telephone at (612) 296-2715 and in person at the above address.

All statements of information and comment shall be accepted until July 31, 1986. Any written material received by the Department of Commerce shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

Michael A. Hatch
Commissioner of Commerce

Department of Commerce
Division of Financial Examinations

Outside Opinions Sought Concerning Proposed Rules Governing Reciprocal Interstate Branching by Savings and Loan Associations Including the Impact of the Rules on Small Business

Notice is hereby given that the Minnesota Department of Commerce is seeking information and opinions from sources outside the agency in preparing to propose new rules governing procedural requirements for savings and loan associations to establish or operate branch offices in this state and other states by acquisition, merger, or consolidation under reciprocating state law. The adoption of the rules is authorized by 1986 Minn. Laws, ch. 339, § 16, which requires the agency to adopt rules to provide that procedural requirements equivalent to those established by law for banks to apply to reciprocal interstate branching by savings and loan associations.

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed
Rules Relating to the Rating
of Interstate Banks

Statement of Need
and Reasonableness

I. INTRODUCTION

The proposed rules outline a process to financial institutions in the state of Minnesota which are owned by an interstate bank holding company to rate their lending performance as it relates to meeting the needs of their service areas and in reaching goals for community reinvestment and developmental loans.

II STATEMENT OF STATUTORY AUTHORITY

1) The Minnesota Department of Commerce proposes to adopt as permanent rules Minn. Rules Parts 2655.0700 to 2655.1300. Under the terms and conditions of the Reciprocal Interstate Banking Act (Laws 1986, Chapter 339, Section 49.9)

II. STATEMENT OF NEED

2)Minn. Stat. ch 14 (1986) requires the Commissioner to make an affirmative presentation of facts establishing the need for and reasonableness of the rules being proposed. In general terms, this means that the Commissioner must set fourth the reasons for the Departments proposal, and the reasons must not be arbitrary or capricious. However, to the extent that need and reasonableness are separate, need has come to mean that a problem exists which requires administrative attention, and reasonableness means that the solution proposed by the commissioner is appropriate.

3) The Commissioner of Commerce is required to (among other duties) "rate each financial institution owned by an interstate bank holding company on its lending performance." (48.98 Subd.3).

4) Further this performance shall be evaluated on the basis of a five point scale. The law specifically states that: "The commissioner shall adopt by rule a five point rating scale based on the institution's financial performance in meeting the credit needs of the community and its performance in reaching its targeted level of developmental loans."

5) The premise and rationale for this rating system is established and outlined in the law which requires that "an interstate bank holding company shall provide a level of developmental loans as defined by the commissioner by rule" (48.991).

6) This developmental loan requirement level has been established to assure that the legislative intent that interstate banks participate actively in the stabilization and growth of the state economy, is fulfilled.

III. STATEMENT OF REASONABLENESS

7) The Commissioner is required by Minn. Stat. ch. 14 to make an affirmative presentation of facts establishing the reasonableness of the proposed rules. Reasonableness is the opposite of arbitrariness or capriciousness. It means that there is a rational basis for the Departments proposed action. It is reasonable to assume that in order for the Commissioner to rate the performance of an Interstate Bank, measurable criteria must be set fourth.

8) In addition, economic distress results from a failure of leadership and it is both reasonable and realistic to conclude that ~~Bankers~~ financial institutions who are major leaders in economic matters at all levels have an obligation and duty to provide positive leadership.

IV. FILING REQUIREMENTS

9) Prior to receiving approval to operate in Minnesota under the Reciprocal Interstate Banking Act ~~an interstate bank much submit~~ must be submitted an application and supporting information which justifies the fiduciary and ethical suitability to conduct business in the state of Minnesota.(48.99). In order for the commissioner to measure a financial institutions performance over a given period of time, a portion of this material shall include an analysis of the distress and loan entitlement needs of the community, areas and persons the financial institution plans to serve and further a proposal and set of objectives with regard to service to loan entitled persons and distressed areas.

10) This analysis should yield a targeted level of developmental loans specific for the financial institution making the application and this targeted level then becomes the basis for the commissioner's annual review of the ~~banks~~ institutions performance.

V. DEVELOPMENTAL LOANS

11) Developmental loans may be broadly defined as loans to individuals, families, proprietorships, partnerships, corporations, eleemosynary and quasi-public and public bodies which can be regarded as particularly beneficial to the stabilization or growth of a local economy, especially a distressed economic area; and loans to individuals or families, whether in distressed areas or not who may be disadvantaged or in need of special consideration, herein referred to as loan entitled persons or families. The developmental loan, while it is an economic instrument, is also a social instrument which, when wisely administered provides guidance, counsel, and care. Thus, the developmental loan becomes a tool for wise economic leadership, a charactreristic that is encouraged by the Reciprocal Interstate Banking Act.

12) The law specifically states that: "A 'developmental loan' includes, but is not limited to, (1) loans for low and moderate income housing, loans for community development corporations, loans to women and minority owned businesses, student education loans, and (2) loans within distressed areas and on any Indian reservation for any commercial non-real estate purpose, home loans, home improvement loans, and operating loans to family farmers" (48.991).

13) A distressed area may be defined as an area of economic decline or stagnation which can be identified by high levels of unemployment, difficult economic conditions, and special credit needs. In fact, the law requires that the commissioner define distressded areas in terms of the related "area's unemployment rate, economic conditions, and credit needs",on an annual basis.

14) A distressed area outside of the Twin City area would normally be designated as an entire county, however in the case of the Twin City Metropolitan area, the commissioner may designate an area smaller than a county as distressed. The Twin City Metropolitan area counties are Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington.

VI. RATING CRITERIA AND PROCEDURE

15) The targeted level of developmental loans and a financial institution's rating under Part 2655.1300 shall be based on the situation of its community and the financial institution's performance based on the twelve basic criteria listed in paragraph 20. The situtation of the community shall be determined from the following characteristics:

A) The economic condition of the community or communities which the financial institution intends to serve. This shall be measured

by criteria that include unemployment rates, industrial growth, commercial growth, single and multi-family housing starts, government and institutional growth, and agricultural growth.

B) The social composition of the community as measured by the incidence of entitled individuals. This shall be measured by the actual incidence of unemployment, the incidence of persons of color, the incidence of women eighteen to sixty years of age.

C) The actual fiscal capacity of the financial institution to provide loans and credit. This shall be determined by a composite factor which shall include loan exposure, capital adequacy, asset quality, earnings, and liquidity.

D) The actual local demand for credit and loans without economic leadership intervention; and, as a corrollary measure the proportion of loans and credits made in the local community(ies) as compared with loans and credits made out of the communities. This shall be measured by a composite factor made up of the proportion of loans made in the service area of the financial institutionin the State of Minnesota and outside the state of Minnesota, the quality of these loans as indicated by the level of nonperforming loans and the economic value of these loans, that is the estimated economic growth impact of these loans on the State of Minnesota and the community(ies) served by the financial institution.

16) Each of the four situtational variables must be made objective or explicit in advance as part of the interstate banking plan and application.

In other words, the financial institution, in cooperation with the Commissioner, must prepare a report which shows what the actual need for developmental loans is in the area the financial institution expects to serve, and show how its plan undertakes to meet this need in its own service area or in other areas of the state.

17) While a whole series of situtations and combinations of situtations will appear from these norms two polar types can be identified at this time:

A) A financial institution could be located in an area in which there is no need for developmental loans.

B) A financial institution could be located in an area in which the levels of economic distress are so high that almost all individuals and institutions could benefit from developmental assistance.

18) These types of financial institutions provide the basis for establishing developmental loan obligations, and in particular, provide the basis for a sliding scale measure to assess the financial institution's responsibility to provide developmental loans.

19) This analysis will yield a classification of financial institution's in terms of community type, and by extension, the obligation of the bank to make developmental loans.

20) The Commissioner shall make the annual rating based on the financial institution's performance performance on the following 12 basic criteria;

A) Activities conducted by the financial institutionto ascertain credit needs of its community, including the extent of the financial institution's efforts to communicate with members of its

community regarding the credit services being provided by the financial institution.

B) the extent of the financial institution's marketing and special credit related programs to make members of the community aware of the credit services being provided by the financial institution.

C) The extent of participation by the financial institution board of directors or board of trustees in formulating the financial institutionpolicies and reviewing its performance with respect to the purposes of th e Community Reinvestment Act of 1977.

D) The geographic distribution of the financial institutioncredit extensions, credit applications and credit denials;

E) Any practices intended to discourage application for types of credit set fourth in the financial institution's annual community reinvestment plan or application;

F) Evidence of prohibited discriminatory or other illegal credit practices:

G) the financial institution's participation, including investments, in local community development and redevelopment projects or programs;

H) the financial institution's origination of residential mortgage loans, housing rehabilitation loans, home improvement loans and small business or small farm loans within its community or the purchase of such loans originated in its community;

I) the financial institution's participation in governmentally insured, guaranteed or subsidized loan programs for housing, small business or small farms;

J) The financial institution's plan and demonstrated experience in assisting in (1) the development of ecomomically disadvantaged and underserved neighborhoods, (2) meeting the credit and deposit service needs of low-income, moderate-income and minority residents, and (3) helping small, minority, and women owned businesses.

K) The financial institution's ability to meet various community credit needs based on its financial condition, size, legal impediments, local economic conditions and other factors. and

L) Other factors that in the judgment of the commissioner, reasonably bear upon the extent to which a financial institution is helping to meet the credit needs of its entire community, including, without limitation, the financial institution's participation in credit counseling services.

(21) The Commissioner shall make the annual rating based on a five-point scale using data provided by the financial institution. Scoring will be occur based on empirical data provided by the financial institution and few subjective judgments will be required. Financial institutions will be ranked in one of the following catagories;

A. Excellent performance

B. Good performance

C. Satisfactory performance

D. Less than satisfactory performance

E. Unsatisfactory performance

Department of Commerce

Proposed Permanent Rules Relating to Developmental Lending and Investment Performance Ratings of Financial Institutions Owned by Interstate Holding Companies

Rules as Proposed (all new material)

2655.0700 APPLICABILITY AND SCOPE.

Parts 2655.0700 to 2655.1300 govern the data to be reported and the annual rating of interstate financial institutions operating in Minnesota. A financial institution is rated on its lending and investment performance using a five-point scale as prescribed under Minnesota Statutes, section 48.97.

2655.0800 PURPOSE.

The purpose of the annual rating of financial institution is to set criteria by which an interstate-owned financial institution is evaluated and ranked based on its proven ability to meet the needs of the community where it conducts business in terms of its performance and in reaching its targeted level of developmental loan and investment activity.

2655.0900 DEFINITIONS.

Subpart 1. **Scope.** For the purpose of parts 2655.0700 to 2655.1300, the following terms have the meanings given them.

Subp. 2. **Agricultural loans.** "Agricultural loans" means loans for agricultural purposes that may be secured by real estate but not for the purpose of acquiring real estate.

Subp. 3. **Alternate energy loans and alternate conservation loans.** "Alternate energy loans" and "alternate conservation loans" means all loans for any purpose under Minnesota Statutes, section 116M.03, subdivision 26.

Subp. 4. **Commercial loans.** "Commercial loans" means loans for commercial purposes that may be secured by real estate but not for the purpose of acquiring real estate.

Subp. 5. **Commissioner.** "Commissioner" means the

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commissioner of the Department of Commerce.

Subp. 6. **Community.** "Community" means the area the financial institution has designated for purposes of compliance with the Community Reinvestment Act of 1977, United States Code, title 12, sections 2901 to 2905, and Code of Federal Regulations, title 12, (CFR sub. ctr. D, FSLIC, 563E) as being the areas that it serves.

Subp. 7. **Community development corporation.** "Community development corporation" is as defined in Minnesota Statutes, section 116M.04.

Subp. 8. **Developmental loans.** "Developmental loans" include the following categories:

A. low and moderate income housing;

B. operating loans for family farmers;

C. loans made in distressed areas;

D. minority-owned and woman-owned businesses;

E. alternative energy and energy conservation practices;

F. community development corporations;

G. loans made within Indian reservations;

H. student education loans; and

I. any other specifically defined class of people, businesses, or projects which meet the standards under Minnesota Statutes, section 645.445, subdivision 5, for socially or economically disadvantaged persons, projects, or businesses.

Subp. 9. **Developmental investments.** "Developmental investments" include investments for the following purposes:

A. low and moderate income housing;

B. operating loans for family farmers;

C. loans made in distressed areas;

D. minority-owned and woman-owned businesses;

E. alternative energy and energy conservation practices;

F. community development corporations;

G. loans made within Indian reservations;

H. student education loans; and

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I. any other specifically defined class of people, businesses, or projects which meet the standards under Minnesota Statutes, section 645.445, subdivision 5, for socially or economically disadvantaged persons, projects, or businesses.

Subp. 10. **Distressed area.** "Distressed area" includes an area designated as a distressed area under Code of Federal Regulations, title 24, section 24570.452 (1986), as amended by the United States Department of Housing and Urban Development.

Subp. 11. **Family farmers.** "Family farmers" means family farms and family farm corporations as defined in Minnesota Statutes, section 500.24.

Subp. 12. **Financial institution.** "Financial institution" means a bank, savings bank, or savings and loan association doing business at a location in Minnesota that is owned by an interstate bank holding company, savings and loan, or savings and loan holding company in Minnesota under the Reciprocal Interstate Banking Act of 1986, including Minnesota Statutes, section 51A.58.

Subp. 13. **Investments.** "Investments" means funds or capital extended, contributed, or otherwise invested, but not loaned.

Subp. 14. **Low and moderate income housing.** "Low and moderate income housing" means housing defined as such by any of the following:

A. regulations adopted by the Farmers Home Administration; or

B. section 8 of the United States Housing Act of 1937, and the regulation adopted under the act.

Subp. 15. **Minnesota loan.** "Minnesota loan" means loans made to Minnesota residents to be used in Minnesota or loans where the financial institution has been advised by the borrower that the loan proceeds will be used in Minnesota.

Subp. 16. **Minnesota residents.** "Minnesota residents" are:

A. individuals located within a Minnesota zip code;

B. private profit or nonprofit corporations or subsidiaries, or divisions of these corporations, located and

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doing business within Minnesota;

C. profit or nonprofit partnerships, trusts, or any form of other business enterprise located and doing business within Minnesota; or

D. any municipality, agency, or other public authority established and operating under the laws of Minnesota.

Subp. 17. **Minority-owned business and woman-owned business.** "Minority-owned business" and "woman-owned business" means a socially or economically disadvantaged person under Minnesota Statutes, section 645.445, subdivision 5. A minority-owned business or woman-owned business must have at least 50 percent of the ownership interest controlled by such disadvantaged class of person.

Subp. 18. **New net funds.** "New net funds" has the meaning given the term in part 2655.0200, subpart 20.

2655.1000 FILING REQUIREMENTS.

A financial institution on or before March 31 each year shall file with the commissioner: (1) a copy of each report and document which it is required to prepare and/or file with one or more federal agencies by the Community Reinvestment Act of 1977, United States Code, title 12, as amended, and the rules and regulations under that act; (2) a copy of the most recent, complete, disclosure statement prepared under the reporting requirements and the rules and regulations of the Federal Home Mortgage Disclosure Act of 1975, United States Code, title 12, as amended; and (3) a report, in a form to be prescribed by the commissioner, which shall be the basis for, along with other information regarding the financial institution obtained by the commissioner, the annual community reinvestment rating assigned to the financial institution by the commissioner. The report must:

A. List the volume of developmental loans in the community, outside of the community, in the state, in terms of number and amount originated by the financial institution in the preceding calendar year and those outstanding at the end of the

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preceding calendar year.

B. Project the volume of developmental loans in the community, outside of the community, in the state, in terms of number and amount, to be originated during the current calendar year and those to be outstanding at the end of the current calendar year.

C. List by zip code or census tract the number and volume of agricultural loans by the following categories for the preceding calendar year:

(1) by purpose of loan for:

(a) machinery and equipment;

(b) crop inputs and harvest;

(c) livestock purchase and feed;

(d) where a combination of the above purposes list by purpose to which a majority of proceeds were devoted; and

(e) restructuring existing agricultural loans originally made for the above purposes; and

(2) by the repayment terms of:

(a) demand;

(b) amortizing-installments;

(c) single payment; or

(d) revolving credit agreement.

For the purposes of the report submitted in 1989 only, this data must be reported for both calendar years 1987 and 1988.

D. List by zip code or census tract the number and volume of commercial loans by the following categories for the preceding calendar year:

(1) by purpose of loan for:

(a) purchase or maintenance of machinery, equipment, furniture, and fixtures;

(b) financing inventory;

(c) cash flow, including accounts receivable;

(d) improvements to commercial real estate; or

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(e) capitol or equity formation loans; and

(2) by the repayment terms of:

(a) demand;

(b) amortizing-installments;

(c) single payment; or

(d) revolving credit agreement.

For the purposes of the report submitted in 1989 only, this data must be reported for both calendar years 1987 and 1988.

E. List any developmental investments for the classifications and time periods described in items A and B.

F. List any developmental loans or developmental investments originated by the financial institution which has or will be participated in or sold to other institutions during the time periods described in items A and B.

G. List by zip code or census tract the dollar value and volume of deposits received during the preceding calendar year.

H. Describe the economic condition of the community during the time periods described in items A and B, using among other criteria, those listed in part 2655.1100, which relate to economic and social conditions in the community and establish the basis for the financial institution's obligation to place developmental loans to residents within the community or outside of the community or in distressed areas in the state of Minnesota.

I. Include a copy of the financial institution's Federal Financial Institution Examination Council Call Report or similar report required by the Federal Home Loan Bank Board that had been filed for the preceding December 31.

J. Determine the extent of nondevelopmental loans and investments made by the financial institution in Minnesota and outside of Minnesota during the time period described in items A and B.

K. Describe in detail the methods used by the financial institution in determining the credit needs of its local community.

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L. Describe in detail the methods used and the media employed to make the members of the organization's community aware of the credit services it offers.

M. Describe the extent of participation by the organization's board of directors or trustees in formulating the financial institution's policies and reviewing its performance with respect to the purpose of the Community Reinvestment Act and Minnesota Statutes, section 48.97.

N. Describe the financial institution's participation, leadership, and creativeness in:

(1) local development, redevelopment, and rehabilitation projects or programs;

(2) programs or organizations which promote and assist in the development and growth of small business in Minnesota; and

(3) programs or organizations that address the financial needs of minorities.

O. Explain how and to what extent the financial institution has brought into Minnesota the net new funds described in the acquisition application.

P. Describe any other community activities that bear upon the extent to which the financial institution is helping to meet local credit needs. Information and data required under subparts A to M may be incorporated by reference if the information and data are already included in the report and document filed in connection with the Community Reinvestment Act as required by this part.

2655.1100 RATING CRITERIA.

On the basis of the reports required under part 2655.1000, the commissioner shall classify each financial institution in relation to the estimated need for developmental loans and rate each financial institution using the following criteria:

A. the economic condition of the community or communities to be served including, but not limited to, population trends and area use for residential, commercial,

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industrial, and agricultural purposes;

B. the social composition of the community or communities to be served including the level of socially and economically disadvantaged persons, families of low and moderate income and low and moderate income housing, the number of women 18 to 60 years of age, and location of distressed areas;

C. the actual fiscal capacity of the financial institution to provide loans and credit;

D. the amount of developmental loan and developmental investment transactions and programs in relation to the actual local demand for credit and loans without economic reinvestment leadership intervention, including the number of loans and amount of investments that are not classified as developmental and are out of the financial institution's service area in relation to the measured activity of developmental loans and developmental investments within the financial institution's service area; and

E. the financial institution's plan and demonstrated experience in assisting in:

(1) the development of economically disadvantaged and underserved neighborhoods, including Indian reservations;

(2) meeting the credit and deposit service needs of low-income, moderate-income, and minority residents; and

(3) helping small, minority-owned and women-owned businesses.

2655.1200 REVIEW REPORTS.

When rating a financial institution, the commissioner will review all reports and documents filed with the department under part 2655.1000 and any signed, written comments received by the commissioner which specifically relate to the financial institution's performance in helping to meet the credit needs of its community. In addition, the commissioner will consider the following factors in assessing a financial institution's record of performance:

A. activities conducted by the financial institution

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to ascertain credit needs of its community, including the extent of the financial institution's efforts to communicate with members of its community regarding the credit services being provided the financial institution;

B. the extent of the financial institution's marketing and special credit-related programs that make members of the community, including members of targeted groups and populations, aware of the credit services provided;

C. the extent of participation of the financial institution's board of directors or board of trustees in formulating the financial institution's policies and reviewing its performance with respect to the purposes of the Community Reinvestment Act of 1977;

D. the geographic distribution of the financial institution's credit extensions, credit applications, and credit denials;

E. any practices intended to discourage applications for types of credit in the financial institution's annual community reinvestment plan;

F. evidence of prohibited discriminatory or other illegal credit practices;

G. the total dollar volume and number of loans and investments made by the financial institution in its community and outside of its community, in the state of Minnesota during the time periods described in part 2655.1000, items A and B;

H. the financial institution's ability to meet various community credit needs based on its financial condition, size, legal impediments, local economic conditions, and other factors; and

I. other factors that, in the judgment of the commissioner reasonably bear upon the extent to which a financial institution is helping to meet the credit needs of its entire community.

Assessment of a financial institution's record of performance, under this part, will be the basis for the financial institution's rating under Minnesota Statutes, section

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48.97, subdivision 3.

2655.1300 ANNUAL RATING.

Subpart 1. **Community reinvestment assessment.** Annually on or before June 30, the department shall make a community reinvestment assessment of each financial institution. The assessment will be based upon information compiled under parts 2655.0700 to 2655.1300 or obtained from other sources, including information obtained from state or federal banking regulators. The commissioner shall prepare a written report summarizing the results of the assessment and assign to each financial institution a numerical rating based on a one to five scoring system. Specifically, the numerical scores shall represent performance assessments as follows:

A. excellent performance;

B. good performance;

C. satisfactory performance;

D. less than satisfactory performance; and

E. unsatisfactory performance.

Subp. 2. **Rating scale.** Rating shall be based on a five-point scale. An annual rating of excellent to poor shall then be given based on the percentile and of the total score of the financial institution in question, unless the distribution is unusually skewed, then the commissioner shall adopt an appropriate measure of the distribution. In assigning the rating, the five performance categories will be weighed and evaluated according to how well the financial institution meets the descriptive characteristics listed below:

A. "Excellent" means the financial institution has a strong record of meeting community credit needs and performance in reaching the target level of developmental loans and developmental investments. Both the board of directors and management take an active part in the process and demonstrate an affirmative commitment to the community. Financial institutions receiving this rating rank high in all performance categories.

B. "Good" means a financial institution has a very

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acceptable record of helping to meet community credit needs and performance in reaching the target level of developmental loans and developmental investments. A financial institution receiving this rating is ranked in the good levels of the performance categories.

C. "Satisfactory" means a financial institution has an acceptable record of helping to meet community credit needs and in meeting the target level of developmental loans and investments. The board of directors and management have not placed strong emphasis on the credit needs of the community. An institution receiving this rating has rankings surrounding the midrange levels of performance categories.

D. "Less than satisfactory" means a financial institution has an inadequate record of helping to meet the community credit needs and reaching the target level of developmental loans and developmental investments. The board of directors and management give inadequate consideration to the credit needs of the institution's community. An institution receiving the rating generally ranks below satisfactory in the majority of performance categories.

E. "Unsatisfactory" means a financial institution has a very poor record of helping to meet the community credit needs and in reaching the target level of developmental loans and developmental investments. The board of directors and management appear to give little consideration to the credit needs of the institution's community. An institution receiving this rating ranks in the lowest levels of the performance categories.

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Development Lending and Investment Performance Ratings of Financial Institutions Owned by Interstate Holding Companies

AGENCY: Department of Commerce

MINNESOTA RULES: Chapter 2655

The attached rules are approved for publication in the State Register

Paul M. Marinac
Assistant Deputy Revisor

State of Minnesota
Department of Commerce

In the Matter of the Proposed Adoption of Rules Relating to Developmental Lending and Investment Ratings

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the Department of Commerce intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedures Act for adopted rules without a public hearing in Minnesota Statutes, section 14.22-14.28. Authority for the adoption of these rules is contained in Minnesota Statutes, Section 45.023 and 48.97.

All persons have 30 days to submit comments in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the Department and do not result in a substantial change.

Any person may make a written request for a public hearing 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 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 department will proceed pursuant to Minnesota Statutes, sections 14.13 to 14.20.

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

James Miller
Deputy Commissioner
Department of Commerce
500 Metro Square Building
St. Paul, MN 55101
(612) 296-2715

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 rules has been prepared and is available upon request from James Miller.

Pursuant to Minnesota Statutes Section 14.115, subdivision 2, the impact on small business has been considered in the promulgation of the rules. Anyone wishing to present evidence or argument as to the rules' effect on small business may do so. The Department's position regarding the impact of the rules on small business is set forth in the Statement of Need and Reasonableness.

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

MICHAEL A. HATCH
Commissioner of Commerce

In the Matter of the Proposed Rules
Relating to Developmental Lending and
Investment Performance Ratings of Financial
Institutions Owned by Interstate Holding
Companies

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

AFFIDAVIT OF
MAILING

Jane Schaub being first duly sworn, deposes and says:

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minnesota Statutes, section 14.14, subd. 1a, that their names be placed on file with and maintained by the Department of Commerce for the purpose of receiving notice of the proposed adoption of rules is accurate and complete as of 12:00 P.M., this 23rd day of September 1988.

That on the 23rd day of September 1988, at the City of St. Paul, County of Ramsey, State of Minnesota, the attached Notice of Intent to Adopt Rules Without a Public Hearing was served by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy properly prepared with first-class postage prepaid, on all persons and associations who have requested that their names be placed on file with the Minnesota Department of Commerce for the purpose of receiving notice of the proposed adoption of rules by the department.

Jane Schaub
Jane Schaub

Cynthia Claason
Subscribed and sworn to before me
this 27th day of September 1988.

Notary Public

CYNTHIA L. CLAASON
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES FEBRUARY 11, 1992

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C. a statement that the select group eligibility will not be used by the credit union to solicit members for the existing credit union unless such individuals are already members of the select group.

Department of Commerce

Proposed Permanent Rules Relating to Developmental Lending and Investment Performance Ratings of Financial Institutions Owned by Interstate Holding Companies

Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Department of Commerce intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedures Act for adopted rules without a public hearing in *Minnesota Statutes*, section 14.22-14.28. Authority for the adoption of these rules is contained in *Minnesota Statutes*, Section 45.023 and 48.97 and 48.991.

All persons have 30 days to submit comments in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the Department and do not result in a substantial change.

Any person may make a written request for a public hearing 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 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 department will proceed pursuant to *Minnesota Statutes*, sections 14.13 to 14.20.

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

James G. Miller, Deputy Commissioner
Division of Financial Examinations
Department of Commerce
500 Metro Square Building
St. Paul, MN 55101
(612) 296-2135

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 rules has been prepared and is available upon request from James G. Miller.

Pursuant to *Minnesota Statutes* Section 14.115, subdivision 2, the impact on small business has been considered in the promulgation of the rules. Anyone wishing to present evidence or argument as to the rules' effect on small business may do so. The Department's position regarding the impact of the rules on small business is set forth in the Statement of Need and Reasonableness.

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

Michael A. Hatch
Commissioner of Commerce

Rules as Proposed (all new material)

2655.0700 APPLICABILITY AND SCOPE.

Parts 2655.0700 to 2655.1300 govern the data to be reported and the annual rating of interstate financial institutions operating in Minnesota. A financial institution is rated on its lending and investment performance using a five-point scale as prescribed under Minnesota Statutes, section 48.97.

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.

2655.0800 PURPOSE.

The purpose of the annual rating of financial institution is to set criteria by which an interstate-owned financial institution is evaluated and ranked based on its proven ability to meet the needs of the community where it conducts business in terms of its performance and in reaching its targeted level of developmental loan and investment activity.

2655.0900 DEFINITIONS.

Subpart 1. **Scope.** For the purpose of parts 2655.0700 to 2655.1300, the following terms have the meanings given them.

Subp. 2. **Agricultural loans.** "Agricultural loans" means loans for agricultural purposes that may be secured by real estate but not for the purpose of acquiring real estate.

Subp. 3. **Alternate energy loans and alternate conservation loans.** "Alternate energy loans" and "alternate conservation loans" means all loans for any purpose under Minnesota Statutes, section 116M.03, subdivision 26.

Subp. 4. **Commercial loans.** "Commercial loans" means loans for commercial purposes that may be secured by real estate but not for the purpose of acquiring real estate.

Subp. 5. **Commissioner.** "Commissioner" means the commissioner of the Department of Commerce.

Subp. 6. **Community.** "Community" means the area the financial institution has designated for purposes of compliance with the Community Reinvestment Act of 1977, United States Code, title 12, sections 2901 to 2905, and Code of Federal Regulations, title 12, (CFR sub. ctr. D, FSLIC, 563E) as being the areas that it serves.

Subp. 7. **Community development corporation.** "Community development corporation" is as defined in Minnesota Statutes, section 116M.04.

Subp. 8. **Developmental loans.** "Developmental loans" include the following categories:

A. low and moderate income housing;

B. operating loans for family farmers;

C. loans made in distressed areas;

D. minority-owned and woman-owned businesses;

E. alternative energy and energy conservation practices;

F. community development corporations;

G. loans made within Indian reservations;

H. student education loans; and

I. any other specifically defined class of people, businesses, or projects which meet the standards under Minnesota Statutes, section 645.445, subdivision 5, for socially or economically disadvantaged persons, projects, or businesses.

Subp. 9. **Developmental investments.** "Developmental investments" include investments for the following purposes:

A. low and moderate income housing;

B. operating loans for family farmers;

C. loans made in distressed areas;

D. minority-owned and woman-owned businesses;

E. alternative energy and energy conservation practices;

F. community development corporations;

G. loans made within Indian reservations;

H. student education loans; and

I. any other specifically defined class of people, businesses, or projects which meet the standards under Minnesota Statutes, section 645.445, subdivision 5, for socially or economically disadvantaged persons, projects, or businesses.

Subp. 10. **Distressed area.** "Distressed area" includes an area designated as a distressed area under Code of Federal Regulations, title 24, section 24570.452 (1986), as amended by the United States Department of Housing and Urban Development.

Subp. 11. **Family farmers.** "Family farmers" means family farms and family farm corporations as defined in Minnesota Statutes, section 500.24.

Subp. 12. **Financial institution.** "Financial institution" means a bank, savings bank, or savings and loan association doing business

at a location in Minnesota that is owned by an interstate bank holding company, savings and loan, or savings and loan holding company in Minnesota under the Reciprocal Interstate Banking Act of 1986, including Minnesota Statutes, section 51A.58.

Subp. 13. **Investments.** "Investments" means funds or capital extended, contributed, or otherwise invested, but not loaned.

Subp. 14. **Low and moderate income housing.** "Low and moderate income housing" means housing defined as such by any of the following:

A. regulations adopted by the Farmers Home Administration; or

B. section 8 of the United States Housing Act of 1937, and the regulation adopted under the act.

Subp. 15. **Minnesota loan.** "Minnesota loan" means loans made to Minnesota residents to be used in Minnesota or loans where the financial institution has been advised by the borrower that the loan proceeds will be used in Minnesota.

Subp. 16. **Minnesota residents.** "Minnesota residents" are:

A. individuals located within a Minnesota zip code;

B. private profit or nonprofit corporations or subsidiaries, or divisions of these corporations, located and doing business within Minnesota;

C. profit or nonprofit partnerships, trusts, or any form of other business enterprise located and doing business within Minnesota; or

D. any municipality, agency, or other public authority established and operating under the laws of Minnesota.

Subp. 17. **Minority-owned business and woman-owned business.** "Minority-owned business" and "woman-owned business" means a socially or economically disadvantaged person under Minnesota Statutes, section 645.445, subdivision 5. A minority-owned business or woman-owned business must have at least 50 percent of the ownership interest controlled by such disadvantaged class of person.

Subp. 18. **New net funds.** "New net funds" has the meaning given the term in part 2655.0200, subpart 20.

2655.1000 FILING REQUIREMENTS.

A financial institution on or before March 31 each year shall file with the commissioner: (1) a copy of each report and document which it is required to prepare and/or file with one or more federal agencies by the Community Reinvestment Act of 1977, United States Code, title 12, as amended, and the rules and regulations under that act; (2) a copy of the most recent, complete, disclosure statement prepared under the reporting requirements and the rules and regulations of the Federal Home Mortgage Disclosure Act of 1975, United States Code, title 12, as amended; and (3) a report, in a form to be prescribed by the commissioner, which shall be the basis for, along with other information regarding the financial institution obtained by the commissioner, the annual community reinvestment rating assigned to the financial institution by the commissioner. The report must:

A. List the volume of developmental loans in the community, outside of the community, in the state, in terms of number and amount originated by the financial institution in the preceding calendar year and those outstanding at the end of the preceding calendar year.

B. Project the volume of developmental loans in the community, outside of the community, in the state, in terms of number and amount, to be originated during the current calendar year and those to be outstanding at the end of the current calendar year.

C. List by zip code or census tract the number and volume of agricultural loans by the following categories for the preceding calendar year:

(1) by purpose of loan for:

(a) machinery and equipment;

(b) crop inputs and harvest;

(c) livestock purchase and feed;

(d) where a combination of the above purposes list by purpose to which a majority of proceeds were devoted; and

(e) restructuring existing agricultural loans originally made for the above purposes; and

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(2) by the repayment terms of:

(a) demand;

(b) amortizing-installments;

(c) single payment; or

(d) revolving credit agreement.

For the purposes of the report submitted in 1989 only, this data must be reported for both calendar years 1987 and 1988.

D. List by zip code or census tract the number and volume of commercial loans by the following categories for the preceding calendar year:

(1) by purpose of loan for:

(a) purchase or maintenance of machinery, equipment, furniture, and fixtures;

(b) financing inventory;

(c) cash flow, including accounts receivable;

(d) improvements to commercial real estate; or

(e) capitol or equity formation loans; and

(2) by the repayment terms of:

(a) demand;

(b) amortizing-installments;

(c) single payment; or

(d) revolving credit agreement.

For the purposes of the report submitted in 1989 only, this data must be reported for both calendar years 1987 and 1988.

E. List any developmental investments for the classifications and time periods described in items A and B.

F. List any developmental loans or developmental investments originated by the financial institution which has or will be participated in or sold to other institutions during the time periods described in items A and B.

G. List by zip code or census tract the dollar value and volume of deposits received during the preceding calendar year.

H. Describe the economic condition of the community during the time periods described in items A and B, using among other criteria, those listed in part 2655.1100, which relate to economic and social conditions in the community and establish the basis for the financial institution's obligation to place developmental loans to residents within the community or outside of the community or in distressed areas in the state of Minnesota.

I. Include a copy of the financial institution's Federal Financial Institution Examination Council Call Report or similar report required by the Federal Home Loan Bank Board that had been filed for the preceding December 31.

J. Determine the extent of nondevelopmental loans and investments made by the financial institution in Minnesota and outside of Minnesota during the time period described in items A and B.

K. Describe in detail the methods used by the financial institution in determining the credit needs of its local community.

L. Describe in detail the methods used and the media employed to make the members of the organization's community aware of the credit services it offers.

M. Describe the extent of participation by the organization's board of directors or trustees in formulating the financial institution's policies and reviewing its performance with respect to the purpose of the Community Reinvestment Act and Minnesota Statutes, section 48.97.

N. Describe the financial institution's participation, leadership, and creativeness in:

(1) local development, redevelopment, and rehabilitation projects or programs;

(2) programs or organizations which promote and assist in the development and growth of small business in Minnesota; and

(3) programs or organizations that address the financial needs of minorities.

O. Explain how and to what extent the financial institution has brought into Minnesota the net new funds described in the acquisition application.

P. Describe any other community activities that bear upon the extent to which the financial institution is helping to meet local

credit needs. Information and data required under subparts A to M may be incorporated by reference if the information and data are already included in the report and document filed in connection with the Community Reinvestment Act as required by this part.

2655.1100 RATING CRITERIA.

On the basis of the reports required under part 2655.1000, the commissioner shall classify each financial institution in relation to the estimated need for developmental loans and rate each financial institution using the following criteria:

A. the economic condition of the community or communities to be served including, but not limited to, population trends and area use for residential, commercial, industrial, and agricultural purposes;

B. the social composition of the community or communities to be served including the level of socially and economically disadvantaged persons, families of low and moderate income and low and moderate income housing, the number of women 18 to 60 years of age, and location of distressed areas;

C. the actual fiscal capacity of the financial institution to provide loans and credit;

D. the amount of developmental loan and developmental investment transactions and programs in relation to the actual local demand for credit and loans without economic reinvestment leadership intervention, including the number of loans and amount of investments that are not classified as developmental and are out of the financial institution's service area in relation to the measured activity of developmental loans and developmental investments within the financial institution's service area; and

E. the financial institution's plan and demonstrated experience in assisting in:

(1) the development of economically disadvantaged and underserved neighborhoods, including Indian reservations;

(2) meeting the credit and deposit service needs of low-income, moderate-income, and minority residents; and

(3) helping small, minority-owned and women-owned businesses.

2655.1200 REVIEW REPORTS.

When rating a financial institution, the commissioner will review all reports and documents filed with the department under part 2655.1000 and any signed, written comments received by the commissioner which specifically relate to the financial institution's performance in helping to meet the credit needs of its community. In addition, the commissioner will consider the following factors in assessing a financial institution's record of performance:

A. activities conducted by the financial institution to ascertain credit needs of its community, including the extent of the financial institution's efforts to communicate with members of its community regarding the credit services being provided the financial institution;

B. the extent of the financial institution's marketing and special credit-related programs that make members of the community, including members of targeted groups and populations, aware of the credit services provided;

C. the extent of participation of the financial institution's board of directors or board of trustees in formulating the financial institution's policies and reviewing its performance with respect to the purposes of the Community Reinvestment Act of 1977;

D. the geographic distribution of the financial institution's credit extensions, credit applications, and credit denials;

E. any practices intended to discourage applications for types of credit in the financial institution's annual community reinvestment plan;

F. evidence of prohibited discriminatory or other illegal credit practices;

G. the total dollar volume and number of loans and investments made by the financial institution in its community and outside of its community, in the state of Minnesota during the time periods described in part 2655.1000, items A and B;

H. the financial institution's ability to meet various community credit needs based on its financial condition, size, legal impediments, local economic conditions, and other factors; and

I. other factors that, in the judgment of the commissioner reasonably bear upon the extent to which a financial institution is helping to meet the credit needs of its entire community.

Assessment of a financial institution's record of performance, under this part, will be the basis for the financial institution's rating under Minnesota Statutes, section 48.97, subdivision 3.

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.

2655.1300 ANNUAL RATING.

Subpart 1. **Community reinvestment assessment.** Annually on or before June 30, the department shall make a community reinvestment assessment of each financial institution. The assessment will be based upon information compiled under parts 2655.0700 to 2655.1300 or obtained from other sources, including information obtained from state or federal banking regulators. The commissioner shall prepare a written report summarizing the results of the assessment and assign to each financial institution a numerical rating based on a one to five scoring system. Specifically, the numerical scores shall represent performance assessments as follows:

A. excellent performance;

B. good performance;

C. satisfactory performance;

D. less than satisfactory performance; and

E. unsatisfactory performance.

Subp. 2. **Rating scale.** Rating shall be based on a five-point scale. An annual rating of excellent to poor shall then be given based on the percentile and of the total score of the financial institution in question, unless the distribution is unusually skewed, then the commissioner shall adopt an appropriate measure of the distribution. In assigning the rating, the five performance categories will be weighed and evaluated according to how well the financial institution meets the descriptive characteristics listed below:

A. "Excellent" means the financial institution has a strong record of meeting community credit needs and performance in reaching the target level of developmental loans and developmental investments. Both the board of directors and management take an active part in the process and demonstrate an affirmative commitment to the community. Financial institutions receiving this rating rank high in all performance categories.

B. "Good" means a financial institution has a very acceptable record of helping to meet community credit needs and performance in reaching the target level of developmental loans and developmental investments. A financial institution receiving this rating is ranked in the good levels of the performance categories.

C. "Satisfactory" means a financial institution has an acceptable record of helping to meet community credit needs and in meeting the target level of developmental loans and investments. The board of directors and management have not placed strong emphasis on the credit needs of the community. An institution receiving this rating has rankings surrounding the midrange levels of performance categories.

D. "Less than satisfactory" means a financial institution has an inadequate record of helping to meet the community credit needs and reaching the target level of developmental loans and developmental investments. The board of directors and management give inadequate consideration to the credit needs of the institution's community. An institution receiving the rating generally ranks below satisfactory in the majority of performance categories.

E. "Unsatisfactory" means a financial institution has a very poor record of helping to meet the community credit needs and in reaching the target level of developmental loans and developmental investments. The board of directors and management appear to give little consideration to the credit needs of the institution's community. An institution receiving this rating ranks in the lowest levels of the performance categories.

Department of Commerce

Proposed Permanent Rules Relating to Reciprocal Interstate Branching by Savings and Loan Associations

Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Department of Commerce intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedures Act for adopted rules without a public hearing in *Minnesota Statutes*, section 14.22-14.28. Authority for the adoption of these rules is contained in *Minnesota Statutes*, Section 45.023 and 51A.58.

All persons have 30 days to submit comments in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the Department and do not result in a substantial change.

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Adoption of Rules Relating to Developmental Lending and Investment Performance Ratings of Financial Institutions Owned by Interstate Holding Companies

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT A PUBLIC HEARING

Notice of the Commissioner's intent to adopt the above-entitled rule was published in the State Register on September 26, 1988 and was sent by United States mail to all persons on the list maintained by the department pursuant to Minnesota Statutes, Section 14.14, subdivision 1a and 14.22 on September 23, 1988. The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking list and published in the State Register and was available to the public.

All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. No requests for a public hearing on the rule were received by the department.

Based on the comments and evidence in the record before the agency, I find the following:

The above-captioned rule is needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rules identified as Rules Relating to Developmental Lending and Investment Performance Ratings of Financial Institution Owned by Interstate Holding Companies is adopted this 10th day of March, 1989, pursuant to authority vested in me by Minnesota Statutes, Sections 45.023, 48.97 and 48.991.

MICHAEL A. HATCH
Commissioner of Commerce

Dated this 10th day of March, 1989.

In the Matter of the Adoption
of the Rule of the State
Department of Commerce
Governing Development Loans
for Financial Institutions
Owned by Interstate Bank
Holding Companies Including
the Impact of the Rules on
Small Business

DECLARATION
OF COUNSEL

I, Michele M. Owen, 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 0114.

Michele M. Owen

MICHELE M. OWEN
Special Assistant
Attorney General

Dated: 4/13/89

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Rules Relating to Developmental Lending and Investment Performance Owned by Interstate Holding Companies	AFFIDAVIT RE NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Richard G. Gomsrud, being first duly sworn, deposes and says:

That he is Department Counsel for the Department of Commerce.

That part of his duties is the promulgation and adoption of departmental rules, including those captioned above.

That to date, no person has requested notice of submission of the rules in the above-entitled matter to the Attorney General.

Richard G. Gomsrud
Department Counsel
Department of Commerce

Subscribed and sworn to
before me this 5 th day
of April, 1989. 13th

Nancy I. Link
Notary Public

NANCY I. LINK
NOTARY PUBLIC-MINNESOTA
HENNEPIN COUNTY
MY COMMISSION EXPIRES DECEMBER 3, 1990

DEPARTMENT : of Commerce

STATE OF MINNESOTA

Office Memorandum

DATE :

TO :

FROM : Richard G. Gomsrud

PHONE : 296-5689

SUBJECT : CRA Rules

Enclosed are copies of the following materials regarding the above captioned rules:

1. Notice of Intent to Solicit Outside Opinion as published in State Register (2010.0300 A)
2. Copy of the Proposed Rules with Revisor's Certificate (2010.0300 D)
3. Notice of Intent to Adopt Rule Without Public Hearing (2010.0300 E)
4. Statement of Need and Reasonableness (2010.0300 F)
5. Affidavit of Mailing Notice of Intent to Adopt Rule Without Public Hearing (2010.0300 G)
6. Copy of Notice of Intent to Adopt Rule Without Public Hearing and Rules as published in the State Register (2010.0300 H)
7. Four copies of Rule as adopted (2010.0300 I)
8. Findings of Fact, Conclusions & Order Adopting Rule (2010.0300 K)
9. ~~Written Comments, Submission & Requests on Rule (2010.0300 L)~~ None
10. Declaration of Attorney General (2010.0300 M)
11. Notice of Submission to Attorney General (2010.0300 N)
12. N/A ~~Affidavit of Mailing Notice of Submission to Attorney General (2010.0300 O)~~