


# Minnesota Attorney General: Administrative Rules Proceedings

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SF-00006-05 (4/86)

STATE OF MINNESOTA

# Office Memorandum

DEPARTMENT : ATTORNEY GENERAL

DATE : November 7, 1989

TO : WAYNE M. SAMES, Director
Outdoor Recreation/Tourism Loan Unit, DTED
900 American Center Bldg. (55101)

FROM : MARTHA J. CASSERLY
Special Assistant Attorney General
525 Park Street, Suite 404 (55103)

PHONE : 296-6839

SUBJECT : In the Matter of the Adopted Permanent Rule Relating to Tourism Loan Program

The above-referenced emergency rule has been approved as to its legality by the Attorney General on November 7, 1989.

Enclosed is your 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, submissions or comments along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of the notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published in the State Register in accordance with Minn. Stat. { 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. { 14.34.

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

MJC:bbl
Enclosures
cc: William Brown, Chief Judge (memo only)
MaryAnn Hruby " "
Karl W. Sonneman, S.A.A.G. " "

RULE REVIEW CHECKLIST

File No. 1634 — Docket No. 05-0009-0415

DATE RECEIVED 10-24-89 — ADOPTED W/O HEARING X

REVIEW DATE 11-2-89 — EMERGENCY RULE _____

DUE DATE 11-7-89 — To Revisor: 10-27-89

REVISOR APPROVED _____

APPROVED 11-7-89 mjc — REVISOR DISAPPROVED _____

DISAPPROVED _____ — FILED W/SEC. OF STATE _____

WITHDRAWN _____ — RETURNED TO AGENCY _____

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✓ Rule as adopted (4 copies)

NA Notice to Solicit Outside Information/Opinion (if applicable)
- _____ Date published in State Register
- _____ Comments

NA Petition for Adoption of a Rule (if applicable)

NA Board's Authorizing Resolution
- _____ Date adopted

✓ Proposed Rule
- ✓ Revisor's Certificate

✓ Notice of Intent to Adopt Rule
- _____ Statutory Authority 116J.035 subd. 2 116J.980, subd 1(1) Laws of MN 1989, Chap. 335, art 1 sect. 139
- ✓ Small Business Statement
- NA Expenditure of public money statement
- no date Signature

✓ Statement of Need and Reasonableness (if applicable)
- yes Small Business Statement
- NO Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
- Aug 23, 1989 Date (30/25 days before adoption)
- _____ Notice attached indicates rule is attached
- _____ Copy of rule or summary attached but not attached

✓ Publication in State Register
- Aug 28, 1989 Date (30/25 days before adoption)

_____ 180-day deadline from:
- NA Effective date of law requiring rule (14.12) (both rules)
- ✓ end of comment period (§ 14.26) (rules without hearing)
- _____ effective date of statutory authority (§ 14.29) (emergency rules)

NA Resolution Adopting
- _____ Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
- 10-6-89 Date

NA Written requests, submissions or comments

✓ Declaration of attorney
- Rod Sonneman Name of SAAG representing agency

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

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

Department of Trade and Economic Development

Adopted Permanent Rules Relating to Tourism Loan Program

Rules as Adopted

4308.0010 PURPOSE OF TOURISM LOAN PROGRAM.

The purpose of the tourism loan program of the department is to provide loans or to participate in loans to tourism-related businesses in Minnesota for upgrading and improvement of facilities. The program will provide both direct loans and participation loans in cooperation with local financial institutions. The state will share credit risks with the financial institutions and provide for lower interest rates than are otherwise available.

4308.0020 DEFINITIONS.

Subpart 1. **Scope.** The following terms used in parts 4308.0010 to 4308.0110 have the meanings given them.

Subp. 2. **Commissioner.** "Commissioner" means the commissioner of the Department of Trade and Economic Development or persons delegated to act in the commissioner's behalf.

Subp. 3. **Community development application.** "Community development application" means the official consolidated development application form as developed by the department to be used to apply for funding assistance from various community assistance programs administered by the Community Development Division.

Subp. 4. **Community Development Division.** "Community Development Division" means the Community Development Division of the Department of Trade and Economic Development. The Community Development Division has been designated by the commissioner to receive applications, administer the program, review applications, and approve loans.

Subp. 5. **Department.** "Department" means the Department of Trade and Economic Development.

Subp. 6. **Eligible borrower.** "Eligible borrower" means a

sole proprietorship, partnership, corporation, or other person engaged in, and determined by the Community Development Division to constitute, a tourism-related business or other entity that is defined by the standard industrial classification codes of 7011 and 7033 in Code of Federal Regulations, title 13, section 121.2. A person to whom a loan has been made under parts 4308.0010 to 4308.0110 must maintain the standard industrial classification code through the term of the loan. A borrower is not eligible to receive another loan under the tourism loan program for three years from approval of the earlier loan to approval of the next loan.

Subp. 7. **Eligible project.** "Eligible project" means a project proposed by an eligible borrower that meets the requirements of parts 4308.0010 to 4308.0110.

Subp. 8. **Financial institution.** "Financial institution" means a bank, trust company, mortgage company, credit union, mortgage banker, national banking association, savings bank, savings association, savings and loan association, building and loan association, insurance company, financial organization dealing in commercial credit or venture capital, or a lender certified by the secretary of Housing and Urban Development or by the secretary of Veterans Affairs, or approved or certified by the administrator of the Farmers Home Administration or any other financial lending institution, whether organized under federal law or the laws of any state of the United States, and whether located within or without this state.

Subp. 9. **Local unit of government.** "Local unit of government" means a county, city, township, or Indian tribe or band recognized by the federal government.

Subp. 10. **Real property.** "Real property" means property consisting of land and all appurtenances, such as buildings and other immovable articles, including improvements made to or upon land and buildings.

Subp. 11. **Participation loan.** "Participation loan" means a loan made under a contract with a financial institution in which the department purchases a share of a financial

institution's loan to an eligible borrower.

Subp. 12. **Tourism revolving loan program or program.** "Tourism revolving loan program" or "program" means the tourism loan program created in Minnesota Statutes, section 116J.617.

4308.0030 ELIGIBILITY OF PROJECT FOR TOURISM LOANS.

A direct loan or a participation loan must be to an eligible borrower for an eligible cost in an eligible project. The maximum state contribution for either kind of loan may not be for more than 50 percent of the total cost of the project loan, with a maximum state loan of $50,000 for any one project.

Proposed eligible projects of $10,000 or greater require a participation loan. Proposed eligible projects of under $10,000 may receive a direct loan. The Community Development Division may require a participation loan in lieu of a direct loan if it determines that such action would further the purposes of the tourism revolving loan program.

4308.0040 ELIGIBLE COSTS FOR TOURISM LOANS.

Subpart 1. **Eligible costs.** Eligible costs for the program include costs not prohibited by subpart 2 for:

A. building construction and improvement;

B. site preparation;

C. equipment;

D. other construction costs, such as construction of facilities other than buildings, or costs that may be capitalized as part of overall construction costs; and

E. fees that may be required by the department for administration of the loan.

Subp. 2. **Ineligible costs.** Project-related costs incurred more than 30 days before submission of a completed application as required by the community development application process are ineligible costs.

Subp. 3. **Determination of eligible or ineligible costs.** The Community Development Division shall make the determination of which proposed project costs are eligible or ineligible.

4308.0050 INTEREST RATE FOR TOURISM LOANS.

The interest rate on a direct loan or on the department's portion of a participation loan shall be determined at the time of closing by the department and shall be set at, or up to, three percentage points below a full faith and credit obligation of the United States government of comparable maturity, calculated at the time of initial implementation of the program, rounded to the nearest one-half percent, and revised as needed on a semiannual basis. The interest rate on a participation loan to the borrower shall be a blended rate of the bank's rate and the state's rate in proportion to the respective rate of participation.

4308.0060 TERM OF LOAN FOR TOURISM LOANS.

The maximum term of a direct loan or participation loan must not exceed the useful life of the real property, or 80 percent of the useful life of the equipment or machinery, or the following limits, whichever is less:

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

B. five years for equipment or machinery; or

C. a weighted average of the limits under items A and B for loans for a combination of real property and equipment or machinery.

4308.0070 SECURITY REQUIREMENTS FOR TOURISM LOANS.

All loans must be secured by collateral. The financial institution or the department shall take a security interest in any collateral acceptable to the financial institution. The personal guarantee of principal owners must also be given to the financial institution or department before the loan is approved. For purposes of this part, principal owners are those having 20 percent or more ownership of tourism project.

4308.0080 APPLICATION PROCESS FOR TOURISM LOANS.

Subpart 1. **General procedures.** Applications for loans under the program must be made by the borrower and, if

applicable, in coordination with a financial institution. Written evidence of support for the proposed project by the local unit of government within which it would be located must accompany the application. Applications may be submitted year round to the Community Development Division using the Community Development Division's community development application.

Subp. 2. **First part of application.** The first part of the community development application must include:

A. a description of the borrower, including the borrower's standard industrial classification code;

B. a narrative summarizing the need for the proposed tourism-related project; and

C. a project summary outlining the construction, site preparation, equipment, or other activities or items to be completed or acquired and the scope of the project.

Subp. 3. **Second part of application.** The second part of the community development application must include:

A. an activities description and budget detailing the specific estimated costs associated with each proposed activity or acquisition;

B. a description of the proposed collateral;

C. supporting materials that are designed to verify or support information presented in subparts 1 and 2 and in items A and B including, if applicable, a copy of the financial institution's file regarding the borrower's loan application and a letter containing the financial institution's assessment of the risks associated with the loan, and the creditworthiness of the borrower;

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

E. copies of building permits, conditional use permits, resolutions, correspondence, and other documentation that the proposed project has been reviewed and approved by the

appropriate local government officials.

Subp. 4. **Additional information.** The Community Development Division may require additional information from the applicant if it is necessary to clarify and evaluate the application.

4308.0090 PROCEDURE FOR TOURISM LOAN EVALUATION AND APPROVAL.

Subpart 1. **Evaluation of eligibility.** Upon receipt of the first part of the community development application, the Community Development Division shall make a determination whether the borrower, project, and costs are eligible for consideration. If it is determined that the borrower, project, or costs are ineligible, the Community Development Division shall notify the borrower and, if applicable, the financial institution and suggest any modifications that would make the application eligible for consideration. If it is determined that the borrower, project, and costs are eligible, the Community Development Division shall notify the borrower and, if applicable, the financial institution and advise the borrower and, if applicable, the financial institution of the additional information required to complete the second part of the community development application.

Subp. 2. **Evaluation of the completed application.** Upon receipt of the completed community development application, the Community Development Division shall evaluate the application based on the following criteria:

A. the ability of the borrower to reasonably repay the loan;

B. the extent to which the proposed project would contribute to upgrading, expanding, and improving Minnesota's tourism industry;

C. the degree to which the proposed project would contribute to the economic viability of the tourism-related facility operated by the borrower;

D. the degree to which the proposed project would contribute to protection or enhancement of the local tax base;

E. demonstration of an overall positive economic impact on the surrounding community; and

F. the degree to which the proposed project would help retain lakeshore and other outdoor recreation and tourism amenities for general use.

Subp. 3. **Approval.** The Community Development Division may reject or disapprove an application for a direct loan or a participation loan that does not provide sufficient documentation or otherwise comply with part 4308.0010 to 4308.0110. If the Community Development Division approves an application for a direct loan or participation loan, it shall address a commitment letter to the financial institution and the borrower. It shall also notify the financial institution and the borrower of the amount of the loan and the amount of interest charged on the department's portion of the loan.

Subp. 4. **Documentation required.** The state shall require an executed promissory note, an executed participation agreement, recorded mortgage, security agreements, personal guarantees, and other documentation needed to close the loan. The Community Development Division shall prepare a loan agreement to be signed by the financial institution, the borrower, and the state. The financial institution shall also certify in the participation agreement that the interest rate approved by the Community Development Division will be passed on to the borrower.

4308.0100 LOAN SERVICING.

Subpart 1. **Collection responsibilities.** In cases where a participation loan is approved, the financial institution shall collect payments according to the payment schedule outlined in the promissory note. The financial institution must remit to the department its pro rata share of a payment within 15 days of receipt. The financial institution may retain interest collected as payment for duties performed by it under the contract in the amount of one percent per annum of the department's share of the loan.

Subp. 2. **Loan default.** The financial institution shall notify the Community Development Division within 30 days after a determination by the financial institution of a default. The financial institution must pursue all reasonable means to collect the defaulted loan from the borrower and must apply and exhaust the loan security as necessary to effect payment of the loan. The financial institution must remit to the department its pro rata share of any amounts collected after subtracting costs to collect upon the defaulted loan. In lieu of foreclosure, either before or after declaring a default, the financial institution and the Community Development Division may agree to refinance or renegotiate the loan when doing so will enhance the possibility of recovery of the debt.

4308.0110 AMORTIZATION SCHEDULES.

Loan payments shall be made according to an amortization schedule established by the Community Development Division for direct loans, or by the financial institution for department participation loans. In the case of participation loans, the Community Development Division shall review and approve the proposed amortization schedule.

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

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

NOV - 7 1989

Joan Anderson Growe

Secretary of State

3:05 PM

APPROVED AS TO FORM AND LEGALITY

November 7 19 89

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY MJ Caosely

SPECIAL ASSISTANT ATTORNEY GENERAL

Department of Trade and Economic Development

Proposed Permanent Rules Relating to Tourism Loan Program

Rules as Proposed (all new material)

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Subp. 2. **Evaluation of the completed application.** Upon receipt of the completed community development application, the Community Development Division shall evaluate the application based on the following criteria:

A. the ability of the borrower to reasonably repay the loan;

B. the extent to which the proposed project would contribute to upgrading, expanding, and improving Minnesota's tourism industry;

C. the degree to which the proposed project would contribute to the economic viability of the tourism-related facility operated by the borrower;

D. the degree to which the proposed project would contribute to protection or enhancement of the local tax base;



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E. demonstration of an overall positive economic impact on the surrounding community; and

F. the degree to which the proposed project would help retain lakeshore and other outdoor recreation and tourism amenities for general use.

Subp. 3. **Approval.** The Community Development Division may reject or disapprove an application for a direct loan or a participation loan that does not provide sufficient documentation or otherwise comply with part 4308.0010 to 4308.0110. If the Community Development Division approves an application for a direct loan or participation loan, it shall address a commitment letter to the financial institution and the borrower. It shall also notify the financial institution and the borrower of the amount of the loan and the amount of interest charged on the department's portion of the loan.

Subp. 4. **Documentation required.** The state shall require an executed promissory note, an executed participation agreement, recorded mortgage, security agreements, personal guarantees, and other documentation needed to close the loan. The Community Development Division shall prepare a loan agreement to be signed by the financial institution, the borrower, and the state. The financial institution shall also certify in the participation agreement that the interest rate approved by the Community Development Division will be passed on to the borrower.

4308.0100 LOAN SERVICING.

Subpart 1. **Collection responsibilities.** In cases where a participation loan is approved, the financial institution shall collect payments according to the payment schedule outlined in the promissory note. The financial institution must remit to the department its pro rata share of a payment within 15 days of receipt. The financial institution may retain interest collected as payment for duties performed by it under the contract in the amount of one percent per annum of the department's share of the loan.



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Subp. 2. **Loan default.** The financial institution shall notify the Community Development Division within 30 days after a determination by the financial institution of a default. The financial institution must pursue all reasonable means to collect the defaulted loan from the borrower and must apply and exhaust the loan security as necessary to effect payment of the loan. The financial institution must remit to the department its pro rata share of any amounts collected after subtracting costs to collect upon the defaulted loan. In lieu of foreclosure, either before or after declaring a default, the financial institution and the Community Development Division may agree to refinance or renegotiate the loan when doing so will enhance the possibility of recovery of the debt.

4308.0110 AMORTIZATION SCHEDULES.

Loan payments shall be made according to an amortization schedule established by the Community Development Division for direct loans, or by the financial institution for department participation loans. In the case of participation loans, the Community Development Division shall review and approve the proposed amortization schedule.

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



Approved
by Revisor _____

# Office of the Revisor of Statutes

## Administrative Rules

**TITLE:** Proposed Permanent Rules Relating to Tourism Loan Program

**AGENCY:** Department of Trade and Economic Development

**MINNESOTA RULES:** Chapter 4308

The attached rules are approved for publication in the State Register

Carla M. Riehle by KTH

Carla M. Riehle
Assistant Revisor

Department of Trade and Economic Development
Proposed Permanent Rules Relating to
Tourism Loan Program

Notice of Intent to Adopt Rule
Without a Public Hearing

(1) NOTICE IS HEREBY GIVEN that the Minnesota Department of Trade and Economic Development intends to adopt the above entitled rule without a public hearing following the procedures set forth in Minnesota Statutes, § 14.22-14.28.

The rules are authorized by Minnesota Statutes 1988, section 116J.035, subd. 2, 116J.980, subd. 1(1), and Laws of Minn. 1989, ch. 335, art. 1, sect. 139.

(2) All persons have 30 days in which to submit comments in support of or in opposition to the proposed rule or any part or subpart of the rule. (2) Comment is encouraged. (3) Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. (3) The proposed rule may be modified in final adoption if modifications are supported by the data and views submitted to the Department of Trade and Economic Development and do not result in a substantial change in the proposed language.

(4) Any person may make a written request for a public hearing on the rule within the 30-day comment period. (4) If twenty-five or more persons submit written requests for a public hearing on the proposed rule within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. (6) The written request must be specific on which part or subpart of the rule a hearing is desired. Identification of the particular objection, the suggested modifications, and the reasons or data relied upon to support the suggested modifications are desired. (7) If a public hearing is required, the department will proceed pursuant to the provisions of Minnesota Statutes, § 14.131-14.20.

(13) Persons who wish to submit comments or written request for a public hearing, or persons who wish to receive a copy of this notice and/or a copy of the proposed rule, should address their correspondence to:

Wayne Sames
Tourism Loan Program
Minnesota Department of Trade and Economic Development
Community Development Division
900 American Center Building
150 East Kellogg Boulevard
St. Paul, MN 55101-1421

(11) A free copy of the proposed rule and a statement that describes the (12) need for and reasonableness of each provision of the proposed rule is available from the Department of Trade and Economic Development upon request.

(14) The proposed rule will have an impact on small businesses as defined in Minnesota Statutes, 14.115. The rule will establish the maximum amount of state financial assistance to be provided to tourism-related businesses, as well as the level of interest on loans and the terms of loans. The proposed rule will also specify the eligibility criteria for borrowers, types of projects and costs and the application procedures required.

Participation in the program is voluntary, so the proposed rule will have an impact only on those small tourism-related business owners who choose to apply for assistance. For those who do apply for assistance, the proposed rule may limit the size of the proposed project due to the limit on the amount of state financial assistance allowed. It may, however, tend to direct available funds to smaller tourism-related businesses rather than to larger businesses. The

eligibility and security requirements of the proposed rule will tend to favor small tourism-related business owners with well-planned projects, well-managed operations and sound financial status.

The process of applying for assistance will require time and effort equivalent to applying for a bank loan on the part of interested small tourism-related business owners, but will also result in substantial economic assistance to their businesses.

(9) Upon adoption of the final rule without a public hearing, the proposed rule, this notice, the statement of need and reasonableness, all written comments received, and the final rule as adopted will be delivered to the Attorney General for review as to legality and form, to the extent the form relates to legality. (9) Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rule as proposed for adoption, should submit a written request to the above address.

Please be advised that Minnesota Statutes chapter 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. Minnesota Statutes § 10A.01, subdivision 11 defines a lobbyist as any individual: (a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250 not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or (b) who spends more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative administrative action by communicating or urging others to communicate with public officials. The

statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 625 North Robert Street, St. Paul, Minnesota 55101-2520, telephone (612)296-5148.

Dated:

Phyllis A. Hames for DJS
David J. Speer, Commissioner
Department of Trade and Economic Development

OR/10-(1-2)

STATE OF MINNESOTA
DEPARTMENT OF TRADE AND ECONOMIC DEVELOPMENT

In the Matter of the Proposed
Rules Governing the Tourism
Loan Program, Minn. Rules
Parts 4308

STATEMENT OF NEED
AND REASONABLENESS

## I. INTRODUCTION

These proposed rules establish standards and procedures to govern the administration of the Tourism Loan Program. The 1989 Legislature established a new Tourism Loan Program modeled substantially after a program that was in effect from 1985 to 1987. The earlier program rules, adopted in May, 1985, went out of existence with the original program in 1987. While the proposed rules include many of the provisions of the earlier rules, the 1989 legislation included some new features that have resulted in some changes.

In addition, the proposed rules reflect the new Community Development Application process that has been developed within the Community Development Division. This new application process is designed to simplify and streamline the process of requesting financial assistance from the Community Development Division.

## II. STATEMENT OF COMMISSIONER'S STATUTORY AUTHORITY

The Department's authority to adopt the rules is set forth in MS s 116J.035, Subd. 2 (1988) which provides:

116J.035 DUTIES AND POWERS OF COMMISSIONER; RULES

Subd. 2. Rules. The Commissioner may adopt rules pursuant to chapter 14 as necessary to carry out the Commissioner's duties and responsibilities pursuant to this chapter.

## III. STATEMENT OF NEED

The 1989 Legislature created a new Tourism Loan Program to provide low interest loans or participate in loans to resorts, campgrounds, lodging facilities, and other tourism-related businesses. While the legislation provides some basic eligibility parameters and guidelines for determining the term of loans, it leaves much of the mechanics and process for administering the program to the discretion of the commissioner. To ensure consistent and equitable administration of the program, and to inform the potential borrowers and the general public of the process required to apply for a loan, it is necessary to develop and adopt rules for administration of the program.

Though rules were adopted in 1985 for the old tourism loan program then administered by the Department of Energy and Economic Development, those rules went out of existence with the old program in 1987. New rules must, therefore, be adopted for the new program.

## IV. STATEMENT OF REASONABLENESS

### A. Reasonableness of the Rules as a Whole

The proposed rules for the Tourism Loan Program are reasonable because they provide potential applicants the information needed to determine whether they and their proposed projects are eligible for a loan, how the interest rate on loans will be determined, what the maximum loan amount will be, what the term of the loan will be, what forms of loan security will be involved, what application procedures must be followed, how the applications will be evaluated, how the decisions will be made to approve or disapprove the applications, how the loans will be serviced, and how amortization schedules for loan payments will be determined.

The proposed rules are also reasonable because they do not impose an undue burden on the applicant in order to apply for assistance and are understandable for the general public.

### B. Reasonableness of Individual Rules

The following discussion addresses the specific provisions of the proposed rules:

#### Part 4308.0010 Purpose of the Tourism Loan Program

It is reasonable to provide a statement of the purpose of the Tourism Loan Program so that the general public and potential clientele will have a clear understanding of the reasons for which the program was established. This statement basically summarizes the purpose of the program as outlined in the legislation.

#### Part 4308.0020 Definitions

It is reasonable to include definitions for some of the terms used in the rule to ensure clear and consistent interpretation of the rule.

The need for and reasonableness of individual definitions are not discussed here because the need for and reasonableness of each definition is self-obvious or the definition has been determined by statutory language.

#### Part 4308.0030 Eligibility of Project for Tourism Loans

It is reasonable to provide guidelines for the types of projects that will be eligible for tourism loans to reflect the restrictions and priorities mandated by the legislation and to provide practical and manageable parameters for implementation of the legislation.

It is reasonable to limit the amount of loan assistance to a maximum of 50 percent of the project cost because the legislation specifically requires such a limitation and because the intent of the legislature is to provide a matching loan program.

It is reasonable to limit the maximum loan amount for any one project to $50,000 because of the limited funding provided for the program, the desire to assist primarily small and medium sized tourism businesses that are in greatest need of state financial assistance, and so that the available funding can be

used to assist several small to moderate sized projects rather than a few large projects.

It is reasonable to require participation by a financial institution for eligible projects of $10,000 or greater because the Community Development Division will have limited capability to service direct loans and many tourism business owners are unlikely to be able to provide a funding match for loans of greater than $10,000.

It is reasonable to allow the Community Development Division to require a participation loan in lieu of a direct loan for projects of under $10,000 so that the program will be flexible enough to allow for participation by a financial institution in situations where such participation would help further the purposes of the program.

Part 4308.0040 Eligible Costs for Tourism Loans

Subpart 1. Eligible costs. It is reasonable to specify the types of projects or activities that may be eligible for financial assistance through the program so that potential applicants can determine whether their particular project would be eligible.

Subpart 2. Ineligible costs. It is reasonable to limit the retroactive eligibility of project-related expenditures to those made within 30 days before submission of a completed application so that the program is not used to assist projects that have already been essentially completed and so that applicants are not encouraged to undertake projects on the assumption of state financial assistance.

Subpart 3. Determination of Eligible and Ineligible Costs. It is reasonable to assign the final determination of eligible or ineligible costs to the Community Development Division because some proposed projects or activities may not clearly be eligible and will require a judgment by the program implementor.

It is reasonable to assign the final determination of eligibility of costs to the Community Development Division rather than the Commissioner because the Community Development Division staff have the expertise needed to make such an evaluation, subject to the constraints of the statute and the rules promulgated by the Commissioner. The Commissioner has the authority to delegate such responsibility under Minn. Statutes 15.06, subd. 6.

Part 4308.0050 Interest Rate for Tourism Loans

It is reasonable to set parameters for the interest rate on the department's portion of a participation loan or on a direct loan under the tourism loan program because the legislature assigned such responsibility to the Commissioner of Trade and Economic Development. It is reasonable to set the interest rate lower than the conventional loan rate charged by private financial institutions in order to provide an incentive for tourism-related businesses to participate in the program and to allow tourism-related businesses to pursue projects that they might postpone, or never undertake, at higher interest rates. It is reasonable to allow for adjustment of the interest rate on a semiannual basis to take account of general interest rate trends and changes.

Part 4308.0060 Term of Loan for Tourism Loans

It is reasonable to set the maximum term of a loan made or participated in by the department based on the useful life of the real property or 80% of the useful life of the equipment or the limits outlined in this part because these limits are specifically mandated in the legislation and the loan amounts are moderate enough to require such reasonable limits on repayment.

Part 4308.0070 Security Requirements for Tourism Loans

It is reasonable to require loans to be secured by collateral in order to protect the investment of state dollars in the event of a default. It is reasonable to require a personal guarantee of the principal owners before loan participation will be approved to further ensure that all loan requirements will be adhered to.

Part 4308.0080 Application Process for Tourism Loans

Subpart 1. General Procedures. It is reasonable to require that, when applicable, the financial institution be involved in the application process because it will be a party in the loan agreement and must provide some of the information required in the application.

It is reasonable to require written evidence of support for the proposed project from the local unit of government in order to ensure that all local requirements will be met and so that the local government will be made aware of tourism-related economic development activities in the area.

Subpart 2. First Part of Application; Subpart 3. Second Part of Application; Subpart 4. Additional Information. It is reasonable to require specific types of information related to the need for the proposed project, a description of the proposed project, specific cost estimates, evidence of compliance with local government requirements, the financial institution's assessment of the proposed project, and other related information in order to allow the Community Development Division to make a thorough evaluation of the proposed project and loan request.

The information requested in subparts 2 through 4 will enable the Community Development Division to determine the eligibility of the borrower, project, and costs; the need for state financial assistance; whether the project would comply with all local government ordinances and requirements; the credit worthiness of the borrower; the economic impact of the project on the tourism-related business to be assisted; the local community and the state's tourism industry; the effect, if any, of the project on the need to retain shoreland areas for general use; and the commitment of the borrower and the financial institution to enter into loan agreements with the state and comply with program requirements. This information is needed to determine whether the state will participate in a loan and the term and amount of the loan to be provided.

Part 4308.0090 Procedure for Tourism Loan Evaluation and Approval

Subpart 1. Evaluation of Eligibility. It is reasonable that the Community Development Division make an early determination of the eligibility of the borrower, project and/or costs so that the applicant can be notified promptly of any modifications that may be necessary or advise the applicant of additional

information needed to complete the application process.

Subpart 2. Evaluation of the Completed Application. It is reasonable that the applications be evaluated according to criteria related to the ability of the borrower to repay the loan; the impact of the proposed project on the specific tourism-related business, the tourism industry as a whole, and the local economy and tax base; and the degree to which shoreland areas may be protected so that the state's investment will be safeguarded and will have the greatest positive impact on the tourism industry of the state.

Subpart 3. Approval. It is reasonable to allow for rejection or disapproval of any applications that do not meet the requirements of the program rules so that applications can be considered in an equitable and consistent manner.

Subpart 4. Documentation Required. It is reasonable that the Community Development Division require the borrower and the participating financial institution to submit documents needed to close the loan.

It is reasonable that the Community Development Division enter into a formal loan agreement or participation agreement for approved applications so that the terms of the loan can be specifically spelled out and documented.

It is reasonable to require the financial institution to certify that the interest rate approved by the Community Development Division will be passed on to the borrower so that the low-interest incentive provided by the program will be effective.

Part 4308.0100 Loan Servicing

Subpart 1. Collection Responsibilities. It is reasonable to assign payment collection to the financial institution in cases where a participation loan has been approved because the financial institution will have greater resources than the division to service loans.

It is reasonable to allow the financial institution to retain a small portion of the interest collected as payment for duties performed by it pursuant to the contract as an incentive for financial institutions to participate in the program and to cover their costs of servicing the loan.

Subpart 2. Loan Default. It is reasonable to require the financial institution to notify the division in case of default so that the state's investment can be adequately protected.

It is reasonable to pursue all reasonable means to collect the defaulted loan from the borrower, including exhausting the loan security, in order to protect the state's investment.

It is reasonable to require the financial institution to remit to the state its pro rata share of any amounts collected after subtracting costs for collection because the state will be a participant in the loan and should share appropriately in the amount collected.

It is reasonable to allow for renegotiation or refinancing of the loan when doing so will enhance the possibility of recovery of the debt so that the

purpose of the loan may still be realized and the state's investment may be better protected.

Part 4308.0110 Amortization Schedules

It is reasonable to require establishment of amortization schedules for loan repayment and to require approval of such schedules by the Community Development Division to ensure that the loans will be repaid according to a fair and logical schedule. It is reasonable to allow payments to be made on a seasonable or other than monthly basis to allow for the seasonal nature of the tourism industry.

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

The proposed rules will affect small businesses as defined in Minn. Stat. 14.115, Subd. 1 (1988). The Department of Trade and Economic Development, Community Development Division, has considered each of the following methods for reducing the impact of the rule on small businesses:

A. The establishment of less stringent compliance or reporting requirements for small businesses:

The proposed rule requires minimal compliance and reporting requirements for tourism-related businesses affected by the Tourism Loan Program. An eligible borrower must maintain the business or other entity as a tourism-related entity during the term of the loan in order to meet the intent of the legislation of benefiting the tourism industry. The businesses must also, of course, repay the loan in a timely manner within a reasonable period of time. Otherwise, the rule requires no stringent compliance or reporting requirements.

B. The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses:

The proposed rule recognizes the seasonal nature of the tourism industry by requiring that participating financial institutions allow loan payments to be made on other than monthly basis and allow for seasonal payments where income is generated, or primarily generated, because of seasonal business.

C. The consolidation or simplification of compliance or reporting requirements for small businesses:

For participation loans, the proposed rule allows the tourism-related business to make payments to the financial institution only. The financial institution services the loan on behalf of the state, so the business does not have to deal directly with both the financial institution and the state.

D. The establishment of performance standards for small businesses to replace design or operational standards required in the rule:

There are no design or operational standards required in the proposed rule.

E. The exemption of small businesses from any or all requirements of the rule:

It was not feasible to exempt small businesses from any or all requirements of the rule since the rule applies specifically and is directed specifically toward small businesses.

The Community Development Division has incorporated into this proposed rule the methods specified in Minn. Stat. 14.115, Subd. 2, to the extent feasible given the statutory objectives of the Tourism Loan Program legislation.

The Community Development Division intends to provide an opportunity for small businesses to participate in the rulemaking process by including in the Notice of Intent to Adopt Rule Without a Public Hearing a statement that the rule will have an impact on small businesses and a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon tourism-related business owners.

VI. AGRICULTURAL IMPACT.

Minn. Stat. 14.11, Subd. 2 and 17.83 (1988) require the Department to address any direct and substantial adverse effect on agricultural land as a consequence of the proposed rule and to state what alternatives it has considered in order to avoid or reduce that effect. The Department has found that a direct adverse impact on agricultural land will not result from adoption of the proposed rule.

TLP/1-CP

STATE OF MINNESOTA

In the Matter of the Proposed Amendment to the Permanent Rules of the Commissioner of the Department of Trade and Economic Development Governing the:

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING AND CERTIFICATE OF MAILING LIST

Tourism Loan Program

STATE OF MINNESOTA )
)
COUNTY OF RAMSEY )

Mary Andersen, being duly sworn says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minn. Stat. 14.14, Subd. 1a and 14.22 (1986) that their names be placed on the Minnesota Department of Trade and Economic Development rulemaking mailing list is accurate, complete, and current as of this 23rd day of August, 1989.

Mary Andersen
Name
D.P. Coordinator
Title

Subscribed and sworn to before me

this 23 day of August, 1989.

MADELINE HARRIS
NOTARY PUBLIC – MINNESOTA
CHISAGO COUNTY
My commission expires 8-17-91

madeline Harris
Notary Public

Wayne Sames, being duly sworn says:

That on the 23rd day of August, 1989, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt Rules Without a Public Hearing by depositing in the State of Minnesota Central Mail System of United States Mail or in the United States mail a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

Wayne M. Sames
Name
Director, Tourism Loan Program
Title

BONNIE S. BURT
NOTARY PUBLIC – MINNESOTA
RAMSEY COUNTY
My commission expires Aug. 23, 1989

Subscribed and sworn to before me

this 23 day of August, 1989.

Bonnie S. Burt
Notary Public

# Department of Trade and Economic Development

## Proposed Permanent Rules Relating to Tourism Loan Program

### Notice of Intent to Adopt Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Department of Trade and Economic Development intends to adopt the above entitled rule without a public hearing following the procedures set forth in *Minnesota Statutes*, § 14.22-14.28.

The rules are authorized by *Minnesota Statutes 1988*, section 116J.035, subd. 2, 116J.980, subd. 1(1), and *Laws of Minnesota 1989*, ch. 335, art. 1, sect. 139.

All persons have 30 days in which 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 rule may be modified in final adoption if modifications are supported by the data and views submitted to the Department of Trade and Economic Development and do not result in a substantial change in the proposed language.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If twenty-five or more persons submit written requests for a public hearing on the proposed rule within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. The written request must be specific on which part or subpart of the rule a hearing is desired. Identification of the particular objection, the suggested modifications, and the reasons or data relied upon to support the suggested modifications are desired. If a public hearing is required, the department will proceed pursuant to the provisions of *Minnesota Statutes*, § 14.131-14.20.

Persons who wish to submit comments or written request for a public hearing, or persons who wish to receive a copy of this notice and/or a copy of the proposed rule, should address their correspondence to:

Wayne Sames
Tourism Loan Program
Minnesota Department of Trade and Economic Development
Community Development Division
900 American Center Building
150 East Kellogg Boulevard
St. Paul, MN 55101-1421

A free copy of the proposed rule and a statement that describes the need for and reasonableness of each provision of the proposed rule is available from the Department of Trade and Economic Development upon request.

The proposed rule will have an impact on small businesses as defined in *Minnesota Statutes*, 14.115. The rule will establish the maximum amount of state financial assistance to be provided to tourism-related businesses, as well as the level of interest on loans and the terms of loans. The proposed rule will also specify the eligibility criteria for borrowers, types of projects and costs and the application procedures required.

Participation in the program is voluntary, so the proposed rule will have an impact only on those small tourism-related business owners who choose to apply for assistance. For those who do apply for assistance, the proposed rule may limit the size of the proposed project due to the limit on the amount of state financial assistance allowed. It may, however, tend to direct available funds to smaller tourism-related businesses rather than to larger businesses. The eligibility and security requirements of the proposed rule will tend to favor small tourism-related business owners with well-planned projects, well-managed operations and sound financial status.

The process of applying for assistance will require time and effort equivalent to applying for a bank loan on the part of interested small tourism-related business owners, but will also result in substantial economic assistance to their businesses.

Upon adoption of the final rule without a public hearing, the proposed rule, this notice, the statement of need and reasonableness, all written comments received, and the final rule as adopted will be delivered to the Attorney General for review as to legality and form, to the extent the form relates to legality. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rule as proposed for adoption, should submit a written request to the above address.

Please be advised that *Minnesota Statutes* chapter 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. *Minnesota Statutes* § 10A.01, subdivision 11 defines a lobbyist as any individual: (a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250 not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or (b) who spends more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative administrative action by communicating or urging others to communicate with public officials. The

statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 625 North Robert Street, St. Paul, Minnesota 55101-2520, telephone (612) 296-5148.

David J. Speer, Commissioner
Department of Trade and Economic Development

## Rules as Proposed (all new material)

### 4308.0010 PURPOSE OF TOURISM LOAN PROGRAM.

The purpose of the tourism loan program of the department is to provide loans or to participate in loans to tourism-related businesses in Minnesota for upgrading and improvement of facilities. The program will provide both direct loans and participation loans in cooperation with local financial institutions. The state will share credit risks with the financial institutions and provide for lower interest rates than are otherwise available.

### 4308.0020 DEFINITIONS.

Subpart 1. **Scope.** The following terms used in parts 4308.0010 to 4308.0110 have the meanings given them.

Subp. 2. **Commissioner.** "Commissioner" means the commissioner of the Department of Trade and Economic Development or persons delegated to act in the commissioner's behalf.

Subp. 3. **Community development application.** "Community development application" means the official consolidated development application form as developed by the department to be used to apply for funding assistance from various community assistance programs administered by the Community Development Division.

Subp. 4. **Community Development Division.** "Community Development Division" means the Community Development Division of the Department of Trade and Economic Development. The Community Development Division has been designated by the commissioner to receive applications, administer the program, review applications, and approve loans.

Subp. 5. **Department.** "Department" means the Department of Trade and Economic Development.

Subp. 6. **Eligible borrower.** "Eligible borrower" means a sole proprietorship, partnership, corporation, or other person engaged in, and determined by the Community Development Division to constitute, a tourism-related business or other entity that is defined by the standard industrial classification codes of 7011 and 7033 in Code of Federal Regulations, title 13, section 121.2. A person to whom a loan has been made under parts 4308.0010 to 4308.0110 must maintain the standard industrial classification code through the term of the loan. A borrower is not eligible to receive another loan under the tourism loan program for three years from approval of the earlier loan to approval of the next loan.

Subp. 7. **Eligible project.** "Eligible project" means a project proposed by an eligible borrower that meets the requirements of parts 4308.0010 to 4308.0110.

Subp. 8. **Financial institution.** "Financial institution" means a bank, trust company, mortgage company, credit union, mortgage banker, national banking association, savings bank, savings association, savings and loan association, building and loan association, insurance company, financial organization dealing in commercial credit or venture capital, or a lender certified by the secretary of Housing and Urban Development or by the secretary of Veterans Affairs, or approved or certified by the administrator of the Farmers Home Administration or any other financial lending institution, whether organized under federal law or the laws of any state of the United States, and whether located within or without this state.

Subp. 9. **Local unit of government.** "Local unit of government" means a county, city, township, or Indian tribe or band recognized by the federal government.

Subp. 10. **Real property.** "Real property" means property consisting of land and all appurtenances, such as buildings and other immovable articles, including improvements made to or upon land and buildings.

Subp. 11. **Participation loan.** "Participation loan" means a loan made under a contract with a financial institution in which the department purchases a share of a financial institution's loan to an eligible borrower.

Subp. 12. **Tourism revolving loan program or program.** "Tourism revolving loan program" or "program" means the tourism loan program created in *Minnesota Statutes*, section 116J.617.

**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.

**4308.0030 ELIGIBILITY OF PROJECT FOR TOURISM LOANS.**

A direct loan or a participation loan must be to an eligible borrower for an eligible cost in an eligible project. The maximum state contribution for either kind of loan may not be for more than 50 percent of the total cost of the project loan, with a maximum state loan of $50,000 for any one project.

Proposed eligible projects of $10,000 or greater require a participation loan. Proposed eligible projects of under $10,000 may receive a direct loan. The Community Development Division may require a participation loan in lieu of a direct loan if it determines that such action would further the purposes of the tourism revolving loan program.

**4308.0040 ELIGIBLE COSTS FOR TOURISM LOANS.**

Subpart 1. **Eligible costs.** Eligible costs for the program include costs not prohibited by subpart 2 for:

A. building construction and improvement;

B. site preparation;

C. equipment;

D. other construction costs, such as construction of facilities other than buildings, or costs that may be capitalized as part of overall construction costs; and

E. fees that may be required by the department for administration of the loan.

Subp. 2. **Ineligible costs.** Project-related costs incurred more than 30 days before submission of a completed application as required by the community development application process are ineligible costs.

Subp. 3. **Determination of eligible or ineligible costs.** The Community Development Division shall make the determination of which proposed project costs are eligible or ineligible.

**4308.0050 INTEREST RATE FOR TOURISM LOANS.**

The interest rate on a direct loan or on the department's portion of a participation loan shall be determined at the time of closing by the department and shall be set at, or up to, three percentage points below a full faith and credit obligation of the United States government of comparable maturity, calculated at the time of initial implementation of the program, rounded to the nearest one-half percent, and revised as needed on a semiannual basis. The interest rate on a participation loan to the borrower shall be a blended rate of the bank's rate and the state's rate in proportion to the respective rate of participation.

**4308.0060 TERM OF LOAN FOR TOURISM LOANS.**

The maximum term of a direct loan or participation loan must not exceed the useful life of the real property, or 80 percent of the useful life of the equipment or machinery, or the following limits, whichever is less:

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

B. five years for equipment or machinery; or

C. a weighted average of the limits under items A and B for loans for a combination of real property and equipment or machinery.

**4308.0070 SECURITY REQUIREMENTS FOR TOURISM LOANS.**

All loans must be secured by collateral. The financial institution or the department shall take a security interest in any collateral acceptable to the financial institution. The personal guarantee of principal owners must also be given to the financial institution or department before the loan is approved. For purposes of this part, principal owners are those having 20 percent or more ownership of tourism project.

**4308.0080 APPLICATION PROCESS FOR TOURISM LOANS.**

Subpart 1. **General procedures.** Applications for loans under the program must be made by the borrower and, if applicable, in coordination with a financial institution. Written evidence of support for the proposed project by the local unit of government within which it would be located must accompany the application. Applications may be submitted year round to the Community Development Division using the Community Development Division's community development application.

Subp. 2. **First part of application.** The first part of the community development application must include:

A. a description of the borrower, including the borrower's standard industrial classification code;

B. a narrative summarizing the need for the proposed tourism-related project; and

C. a project summary outlining the construction, site preparation, equipment, or other activities or items to be completed or acquired and the scope of the project.

Subp. 3. **Second part of application.** The second part of the community development application must include:

A. an activities description and budget detailing the specific estimated costs associated with each proposed activity or acquisition;

B. a description of the proposed collateral;

C. supporting materials that are designed to verify or support information presented in subparts 1 and 2 and in items A and B including, if applicable, a copy of the financial institution's file regarding the borrower's loan application and a letter containing the financial institution's assessment of the risks associated with the loan, and the creditworthiness of the borrower;

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

E. copies of building permits, conditional use permits, resolutions, correspondence, and other documentation that the proposed project has been reviewed and approved by the appropriate local government officials.

Subp. 4. **Additional information.** The Community Development Division may require additional information from the applicant if it is necessary to clarify and evaluate the application.

**4308.0090 PROCEDURE FOR TOURISM LOAN EVALUATION AND APPROVAL.**

Subpart 1. **Evaluation of eligibility.** Upon receipt of the first part of the community development application, the Community Development Division shall make a determination whether the borrower, project, and costs are eligible for consideration. If it is determined that the borrower, project, or costs are ineligible, the Community Development Division shall notify the borrower and, if applicable, the financial institution and suggest any modifications that would make the application eligible for consideration. If it is determined that the borrower, project, and costs are eligible, the Community Development Division shall notify the borrower and, if applicable, the financial institution and advise the borrower and, if applicable, the financial institution of the additional information required to complete the second part of the community development application.

Subp. 2. **Evaluation of the completed application.** Upon receipt of the completed community development application, the Community Development Division shall evaluate the application based on the following criteria:

A. the ability of the borrower to reasonably repay the loan;

B. the extent to which the proposed project would contribute to upgrading, expanding, and improving Minnesota's tourism industry;

C. the degree to which the proposed project would contribute to the economic viability of the tourism-related facility operated by the borrower;

D. the degree to which the proposed project would contribute to protection or enhancement of the local tax base;

E. demonstration of an overall positive economic impact on the surrounding community; and

F. the degree to which the proposed project would help retain lakeshore and other outdoor recreation and tourism amenities for general use.

Subp. 3. **Approval.** The Community Development Division may reject or disapprove an application for a direct loan or a participation loan that does not provide sufficient documentation or otherwise comply with part 4308.0010 to 4308.0110. If the Community Development Division approves an application for a direct loan or participation loan, it shall address a commitment letter to the financial institution and the borrower. It shall also notify the financial institution and the borrower of the amount of the loan and the amount of interest charged on the department's portion of the loan.

Subp. 4. **Documentation required.** The state shall require an executed promissory note, an executed participation agreement, recorded mortgage, security agreements, personal guarantees, and other documentation needed to close the loan. The Community Development Division shall prepare a loan agreement to be signed by the financial institution, the borrower, and the state. The financial institution shall also certify in the participation agreement that the interest rate approved by the Community Development Division will be passed on to the borrower.

**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.

**4308.0100 LOAN SERVICING.**

Subpart 1. **Collection responsibilities.** In cases where a participation loan is approved, the financial institution shall collect payments according to the payment schedule outlined in the promissory note. The financial institution must remit to the department its pro rata share of a payment within 15 days of receipt. The financial institution may retain interest collected as payment for duties performed by it under the contract in the amount of one percent per annum of the department's share of the loan.

Subp. 2. **Loan default.** The financial institution shall notify the Community Development Division within 30 days after a determination by the financial institution of a default. The financial institution must pursue all reasonable means to collect the defaulted loan from the borrower and must apply and exhaust the loan security as necessary to effect payment of the loan. The financial institution must remit to the department its pro rata share of any amounts collected after subtracting costs to collect upon the defaulted loan. In lieu of foreclosure, either before or after declaring a default, the financial institution and the Community Development Division may agree to refinance or renegotiate the loan when doing so will enhance the possibility of recovery of the debt.

**4308.0110 AMORTIZATION SCHEDULES.**

Loan payments shall be made according to an amortization schedule established by the Community Development Division for direct loans, or by the financial institution for department participation loans. In the case of participation loans, the Community Development Division shall review and approve the proposed amortization schedule.

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

# Department of Transportation

## Proposed Permanent Rules Relating to State Highway Market Artery System

### Notice of Intent to Adopt a Rule Without a Public Hearing and Notice of Intent to Adopt a Rule With a Public Hearing if Twenty-Five or More Persons Request a Hearing

NOTICE IS HEREBY GIVEN that the State Department of Transportation intends to adopt the above entitled rule without a public hearing following the procedures for adopting rules without a public hearing set forth in *Minnesota Statutes*, Sections 14.22 to 14.28. The specific statutory authority to adopt the rule is *Minnesota Statutes*, Section 169.832, Subdivision 13, and *Laws 1986*, Chapter 398, Article 13, Section 10.

All persons have 30 days in which 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.

Any person may make a written request for a public hearing on the rule within the 30 day comment period. If 25 or more persons submit written request for a public hearing within the 30 day comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. Any person requesting a public hearing should state his or her name and address and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change propoposed.

If a public hearing is required, the agency will proceed pursuant to *Minnesota Statutes*, Section 14.131 to 14.20. PLEASE NOTE THAT IF 25 OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN 30 DAY COMMENT PERIOD, A HEARING WILL BE HELD ON TUESDAY, OCTOBER 10, 1989, THROUGH WEDNESDAY OCTOBER 11, 1989, IN THE COUNCIL CHAMBERS, CITY HALL, 400 SECOND STREET, SOUTH, ST. CLOUD, MINNESOTA. THE HEARING WILL COMMENCE AT 9:30 A.M. ON OCTOBER 10, 1989 AND CONTINUE ON TO OCTOBER 11, 1989, IF ADDITIONAL TIME IS NECESSARY TO PROVIDE INTERESTED OR AFFECTED PERSONS WITH AN OPPORTUNITY TO PARTICIPATE. THE HEARING WILL BE CANCELLED IF SUFFICIENT NUMBER WITHDRAW THEIR REQUEST, IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARINGS ON THESE SAME RULES, PUBLISHED IN THIS ISSUE OF THE *STATE REGISTER* AND MAILED TO PERSONS REGISTERED WITH THE MINNESOTA DEPARTMENT OF TRANSPORTATION. TO VERIFY WHETHER OR NOT A HEARING WILL BE HELD, **YOU MUST CALL** THE DEPARTMENT OF TRANSPORTATION BETWEEN OCTOBER 5, 1989 AND OCTOBER 9, 1989, AT 612-296-8477 OR 612-296-1635.

Comments or written requests for a public hearing must be submitted to:

Jonette Kreideweis
Minnesota Department of Transportation
Room 807, Transportation Building
St. Paul, Minnesota 55155
(612) 296-8477

STATE OF MINNESOTA

DEPARTMENT OF TRADE AND ECONOMIC DEVELOPMENT

In the Matter of the Proposed
Permanent Rules Relating to
Tourism Loans

FINDINGS OF FACT,
CONCLUSIONS, AND
ORDER ADOPTING RULES

After affording all interested persons the opportunity to present written and oral data, statements and arguments to the Department, in accordance with the statutory requirements regarding the adoption of noncontroversial rules, after considering the Statement of Need and Reasonableness, after considering all of the evidence adduced upon the records, files and proceedings herein, the Department hereby adopts the following Findings of Fact, Conclusions and Order:

## FINDINGS OF FACT

1. Notice of the Minnesota Department of Trade and Economic Development's intent to adopt the above-entitled rules without a public hearing was published in the State Register on August 28, 1989, and was sent by mail to all persons on the list maintained by the Department pursuant to Minn. Stat. section 14.14, subd. 1a and 14.22 (1988) on August 23, 1989.

2. The Statement of Need and Reasonableness was prepared prior to mailing and publication of the notice of proposed rulemaking and was made available to the public.

3. All persons were given the opportunity to submit comments on the rule for 30 days after notice of proposed rulemaking. The 30-day comment period, as set out in the notice, expired on September 27, 1989.

4. No requests for public hearing were received during the comment period.

5. No requests for notice of submission to the Attorney General were received by the Department.

6. During the comment period, the Department received no comments.

7. The Department adopts the Statement of Need and Reasonableness, in its entirety, as the factual basis for the proposed rules. The Department hereby incorporates the Statement of Need and Reasonableness into these findings.

8. The above captioned rule is needed and reasonable.

## CONCLUSION

1. The Minnesota Department of Trade and Economic Development duly acquired and has jurisdiction over this proceeding.

2. The Department published and served due, timely, and adequate notice of the intent to adopt the rules without a public hearing.

3. All relevant legal and procedural requirements of statute and rule have been complied with.

## ORDER

(8) NOW, THEREFORE, IT IS ORDERED, that the attached Minn. Rules pts. 4308.0010 to 4308.0110 relating to Tourism Loans are adopted pursuant to the authority vested in the Minnesota Department of Trade and Economic Development by Minn. Stat. section 116J.035, subd. 2, section 116J.980, subd 1(1) (1988) and Laws of Minn. 1989, ch. 335, art. 1, sect. 139.

MINNESOTA DEPARTMENT OF TRADE AND
ECONOMIC DEVELOPMENT

(9) David J Speer 10/6/89

David J. Speer, Commissioner
Department of Trade and Economic
Development

TLP/2-CP

STATE OF MINNESOTA
DEPARTMENT OF TRADE AND ECONOMIC DEVELOPMENT

In the Matter of Proposed Permanent Rules
Relating to Tourism Loans, Minn. Rules
Pts. 4308.0010 - 4308.00110

DECLARATION
OF COUNSEL

I, KARL W. SONNEMAN, Special Assistant Attorney General, do hereby declare that I 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 0413.

KARL W. SONNEMAN

DATED: 10/24/89

Rules 4308.0010 Tourism

116J.035 subd 2

The Commissioner may adopt rules pursuant to Chapter 14 as necessary to carry out the Commissioners duties and resp pursuant to this chapter.

116J 980, subd 1 (1)

The Community Dev. Division is responsible for all community development and assistance programs .....

nothing about Tourism

Chapter 335, art 1 Sect 139 — This gives them the necessary authority

The commissioner may establish a tourism revolving loan program to provide loans or participate in loans to resorts ... Commissioner shall work with financial institutions in making or participating in loans.

Notice of Intent

E.(6) no statement that a person requesting a hearing should state his or her name and address

E (11) no statement that the rule is either attached or a statement describing the nature and effect of the proposed rule - it does say you can get a free copy of the rule.

Minnesota Department of
Trade and Economic Development

Community Development Division

900 American Center
150 East Kellogg Boulevard
St. Paul, MN 55101-1421

612/296-5005
Fax: 612/296-1290

October 23, 1989

Ms. Marty Casserly
Special Assistant Attorney General
Office of the Attorney General
515 Transportation Building
John Ireland Boulevard
St. Paul, MN 55155

RE: In the Matter of Proposed Rules Governing the Tourism Loan Program, Minn. Rules, Pt. 4308

Dear Ms. Casserly:

On October 6, 1989, the Minnesota Department of Trade and Economic Development by Commissioner David J. Speer adopted the above-captioned rules governing the Tourism Loan Program. Enclosed for your review are the following:

1. Rules as adopted (original and 3 copies).
2. Findings of Fact, Conclusions and Order Adopting Rules.
3. State Register Notice of Intent to Adopt Rules Without a Public Hearing.
4. Notice of Intent to Adopt Rules Without a Public Hearing as mailed.
5. Rules as proposed.
6. Affidavit of Mailing the Notice of Intent to Adopt the Rule Without a Public Hearing and Certificate of Mailing List.
7. Statement of Need and Reasonableness.
8. Declaration of Counsel.

No comments were received during the comment period and outside opinion was not solicited prior to proposing the Rule. Therefore, other documents addressed in Minn. Rule pt. 2010.0300 are not applicable.

Celebrate MINNESOTA 1990

An Equal Opportunity Employer

If you have any questions related to these documents, please call me at 296-1567.

Thank you.

Sincerely,

Wayne M. Sames

Wayne M. Sames, Director
Outdoor Recreation/Tourism Loan Unit

WMS:km
TLP.GEN/I1-(1-2)

Enclosures