

STATE OF MINNESOTA

MINNESOTA ENERGY AND ECONOMIC DEVELOPMENT AUTHORITY

In the Matter of the Proposed Rules
Governing the Minnesota Energy and
Economic Development Authority and
Repealing Parts 8300.0200 and 8300.0700.

STATEMENT OF NEED
AND REASONABLENESS

I. The Minnesota Energy and Economic Development Authority ("Authority") presents herein facts and justifications establishing the need for reasonableness of its proposed amendments to general operation procedures of the Minnesota Energy and Economic Development Authority.

8300.0100 Definitions.

Minnesota Statutes, section 14.07 requires that agency rules comply with the requirements set out by the revisor regarding the form of the drafted rules. The addition of subdivision headings in this section are to meet this requirement of compliance.

Technical changes. Changes in citation of statute and rule are nonsubstantive technical changes to update the rule in conformance with current citations and references (Laws of Minn., 1983 ch. 289).

Definitions. Definitions in this section provide common terminology and meaning for terms used in discussing and understanding the substantive provisions of this proposed rule. The definition of Authority, while duplicating statutory language, is included because it is the legal successor to the Small Business Finance Agency (SBFA) and the definition will provide clarification for persons reading the rule. The statute creating the SBFA provided for an executive director. However, the provisions providing for an executive director was deleted by Laws of Minn., 1983 ch. 289 § 78. Thus, the elimination of the executive director is required by statute. The Commissioner is given the power to administer a statewide program for the Authority (ch. 289, sec. 45, subd. h). The definition of financial assistance reflects the additional types of assistance the Authority is able to provide pursuant to Laws of Minn., 1983, ch. 289.

8300.0300 Regular Meetings.

Changes in this section, bring these rules in conformance with statutory changes in Laws of Minn., 1983, ch. 289, and change certain terms to preferred language alternatives

in conformance with revisor's guidelines. The change in date of regular authority meetings is being made for the convenience of board members.

8300.0500 Public Appearances at Meetings of Members.

Changes in this section are nonsubstantive changes that bring these rules in conformance with statutory changes in Laws of Minn., 1983, ch. 289 and change certain terms to preferred alternatives in conformance with revisor's guidelines.

8300.0600 Misrepresentation of Application Information.

This section reflects the need for a procedural clarification. Prior to the passage of Laws of Minn., 1983 ch. 289, the Small Business Finance Agency (SBFA) financed projects primarily through the issuance or direct placements of tax-exempt bonds. Laws of Minn., 1983, ch. 289 broadens the types of financial assistance the Authority is able to provide. The amendments describe the affirmative burdens placed on applicants to ensure that the necessary information to determine eligibility for assistance provided to the Authority is correct and current. It further describes the alternatives the Authority may take if these affirmative burdens are not met.

8300.0700 Severability.

MS 645.001 makes the provisions of MS 645.20 applicable to rules. Therefore, it is unnecessary to have a rule severability provision.

830.1000 Uniform Pollution Control Financial Assistance Application Forms.

Changes in this section reflect the broader areas of financial assistance the Authority is able to offer as a result of Laws of Minn., 1983 ch. 289. As a result of this legislation, pollution control equipment or operational financial assistance no longer need to be guaranteed by an agency of the federal government. The Authority is able to make direct loans and loan guarantees. Accordingly, it is no longer necessary or reasonable to limit the Authority to participation in a particular SBA program. Changes also reflect preferred language alternatives of the revisor.

8300.1100 Acceptance of Pollution Control Financial Assistance Applications.

Changes in this section are nonsubstantive and reflect the additional types of financial assistance the Authority is able to offer pursuant to Laws of Minn., 1983 ch. 289 as well as preferred style and language alternatives.

8300.1200 Authorization of Pollution Control Financial Assistance.

Changes in this section reflect the additional areas of financial assistance the Authority is able to offer as a result of Laws of Minn., 1983 ch. 289. As a result of this legislation, pollution control equipment or operational financial assistance no longer needs to be guaranteed by an agency of the federal government. The Authority is able to make direct loan guarantees that no longer need to be tied into (referenced to) a single SBA program. Changes also reflect preferred language alternatives.

If the financial assistance provided is going to be bonds, a resolution to this effect is required in conformation with federal tax law. Since federal tax laws are subject to change and bond rates fluctuate, it is unreasonable for the Authority to be obligated to sell bonds. Additionally, since the Authority will not always be doing bond resolutions, it may be appropriate to include other conditions and provisions that are appropriate for the type of financial assistance provided.

This language is necessary to make this section parallel to existing rule language on business financial assistance (see for example, page 9 line 17-21; page 6 line 3). Because of constantly changing conditions in the financial markets, it is impossible and thus unreasonable for the Authority to specify every condition that may be appropriate for prudent financial management of the Authority's financial assistance programs.

8300.1500 Overview of Procedure for Approval of Business Financial Assistance.

Changes in this section are nonsubstantive changes that bring the rules in conformance with statutory changes in Laws of Minn., 1983 ch. 289 and reflect the Revisor's preferred alternative language for rules.

8300.1600 Application Procedure.

Changes in this section are not substantive and bring the rules in conformance with statutory changes in Laws of Minn., 1983 ch. 289 and reflect the Revisor's preferred alternative language for rules.

8300.1700 Expenditures Eligible for Financial Assistance.

Changes in this section are nonsubstantive, and bring the rules into conformance with statutory changes in Laws of Minn., 1983 ch. 289, and reflect the revisor's preferred alternative rule language and style. Additional eligible funding costs are permitted in

ch. 289 as follows: Authority and administrative costs and expenses (section 71, subd. g); short term costs of conducting an eligible small business (section 66, subd. 7); fees on insurance contracts, letters of credit, municipal bond insurance and surety bonds (sec. 71, subd. (a (e))). "Initial" fees (sec. 71, subd. g. specifies these fees may be collected either initially or from time to time).

8300.1800 Notification of Approval or Disapproval of Appliance.

8300.1900 Review of Rejected Application.

8300.2000 Uniform Business Financial Assistance.

Changes in these sections are nonsubstantive and bring the rules into conformance with statutory changes in Laws of Minn., 1983 ch. 289 and the revisor's preferred language alternatives.

8300.2100 Evaluation Procedure.

Changes in this section bring these rules in conformance with statutory changes in Laws of Minn., 1983 ch. 289 and reflect preferred language alternatives. A preliminary resolution for bonds is required by federal tax law. The amendment serves only to clarify the preliminary resolution requirement, such a requirement was implicit in the rules as initially adopted.

II. Impact on Small Business.

Impact on small business. The Authority's authorizing legislation directs that their powers be used for small business purposes. Laws of Minn., 1983 ch. 289 reorganized the SBFA into the MEEDA. The Authority manages several loan programs and is able to help qualified small businesses through loan guarantees or outright loans. Since the original rules were formulated for small business, and the 1983 legislative session expanded the range of alternatives available to assist small businesses, there is no need to enumerate special provisions or exceptions to minimize the impact on small businesses. The proposed amendments do not establish a regulatory compliance or reporting program with mandatory application to a particular small business sector. The rules prescribe policy and procedures for the operation of a benefit program, and the decision to participate is voluntary. A small business can elect to participate in the financial assistance program, and that decision can be made for an individual transaction.

In terms of compliance and reporting requirements, because the Authority operates benefit programs, rather than regulatory programs, it operates on eligibility requirements rather than compliance requirements. However, the Authority has adopted the least stringent

eligibility requirements consistent with statutory authorizations of the programs. For example, "applicant" is defined broadly so that a small business need not be in a particular line of business. "Financial assistance", similarly, is defined to be inclusive rather than exclusive.

The proposed rules do not contain any design or operational standards.

Exemption of Small Business from Rule Requirements. As previously discussed, the financial assistance program is aimed at small business. All of the proposed rule requirements are promulgated with the capabilities and needs of smaller businesses in mind. The requirements adopted in the rules are those minimal and necessary to fulfillment of statutory requirements and standards; further exemptions are neither appropriate nor authorized.