

STATE OF MINNESOTA
MINNESOTA ENERGY AND ECONOMIC DEVELOPMENT AUTHORITY

In the Matter of the Proposed Rules
Governing Loan Application Procedures,
Small Business Development Loans, Minnesota
Fund Loans, Special Assistance and Amending
the Adopted Rules Governing Authority
Procedures, and Business Financial Assistance

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 rules governing loan application procedures, Small Business Development Loans, Minnesota Fund Loans, Special Assistance as well as amendments to the adopted rules governing Authority procedures, and Business Financial Assistance.

8300.0050 Scope

Parts 8300.0100 to 8300.3013 are general rules that apply to all applications for financial assistance made available by the authority under the act and under Minnesota Statutes, chapter 472.

8300.0050 Scope

This section reflects the need for procedural clarification. The authority is granted the authority to promulgate rules in order to implement its programs pursuant to Minnesota Statutes, §116M.08, subdivision 4. The scope explains the structure of the rules which includes standardized procedures and requirements governing application procedures, collateral requirements, application processing, and application fees for all applicants who apply to the authority for all financial assistance programs operated by the authority. In addition to the standardized procedures, program-specific rules are referenced so that applicants for each program operated by the authority know what the program-specific criteria and procedures are. This structure for the rules is reasonable because it permits the Authority to adopt additional programs and utilize the general procedures without having to make amendments to or to repeal the existing rules every time a new program is adopted. The authority can develop new program-specific criteria and procedures for new programs in a format similar to that of parts 8300.3020 to 8300.3042. These are not rules or programs to regulate small business or businesses, these are rules to help small businesses as well as to promote economic development within Minnesota.

8300.0100 Definitions

Subpart 1. Statutory definitions. The terms defined in Minnesota Statutes, §116M.03 and §472.03 have the same meanings when used in chapter 8300 as ascribed to them in the act.

Subpart 2. Act. "Act" means Laws of Minnesota 1980, chapter 547, as now in effect and as amended from time to time.

Subpart 2a. Applicant. "Applicant" means a person, partnership, firm, cor-

poration, or association that applies to the authority for financial assistance.

Subpart 2b. Authority. "Authority" means the Minnesota Energy and Economic Development Authority.

Subpart 3. Commissioner. "Commissioner" means the Commissioner of Energy and Economic Development or a designee.

Subpart 4. Financial assistance. "Financial assistance" means loans, loan guarantees or insurance, and any other use of funds permitted by the act.

Subpart 5. Members. "Members" means the Commissioner and those persons appointed to the Authority under Minnesota Statutes, §116M.09.

Subpart 6. Project. "Project" means that which is funded or secured, or is proposed to be funded or secured, by financial assistance.

8300.0100 DEFINITIONS

Definitions in this section provide common terminology and meaning to terms used in discussing and understanding the substantive provisions of these proposed rules. The definition project provides clarification for persons reading these rules.

8300.3011. PROCEDURES FOR FINANCIAL ASSISTANCE APPLICATIONS.

Subpart 1. In general. To apply for assistance from the authority, an applicant shall submit an application form to the commissioner on a form provided by the commissioner. An application must be completed, dated, and signed by an owner, general partner, or an authorized officer of the applicant. The commissioner shall follow the procedures under part 8300.3014.

Subpart 2. Contents. An application must contain at a minimum the following information:

A. a written history of the business entity;

B. the source and use of funds to finance the project;

C. financial statements that include a balance sheet, an operating statement, a statement of the sources and uses of funds, and footnotes to the statements if available for the following time periods:

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

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

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

(4) A proforma balance sheet and income statement for the 24 months following the financial assistance closing that shows the financial position of the applicant and that includes the proposed financing.

D. A marketing plan that describes:

(1) the industry the applicant is in;

(2) the industry outlook for the next three to five years; and

(3) the major characteristics of the industry, names, locations, products or services provided.

(4) the duration and conditions of the applicant's contracts currently in place; and

(5) the percentage of annual sales volume for each major customer over the previous three years.

E. Current resumes of key personnel and signed personal financial state-

ments dated as of the date of the application for any person who owns 20 percent or more interest in the business.

F. A resolution of support or other comparable preliminary approval from the local government unit with respect to the project to be financed or secured with financial assistance.

G. A statement of informed consent by the individual subject regarding the use and dissemination of the private data as provided in Minnesota §13.05, subdivision 4, paragraph (d). If the subject of the data is a corporation, then an authorized representative shall provide a statement of informed consent in a form similar to that provided in Minnesota Statutes, §13.05, subdivision 4, paragraph (d).

H. Certification that the employer does not discriminate in employment, in a manner contrary to applicable federal or state laws and regulations.

I. Certification of business compliance with all Federal, State or local laws or regulations that affect the conduct of business in the state.

Subpart 3. Business Plan.

As part of the application, the applicant shall submit to the commissioner a comprehensive business plan. The business plan must include, but is not limited to, the following:

A. A management summary of the plan including:

- (1) Name of the business;
- (2) Business location and plan description;
- (3) Discussion of the product, market and competition;
- (4) Expertise of management team;
- (5) Summary of financial projections;
- (6) Amount of financial assistance requested;

(7) Form of and purpose for the financial assistance; and

(8) Purpose for undertaking the project; and

(9) Business goals.

B. A description of the company including the following:

(1) Date and state of incorporation, date and state of formation of partnerships, or date and state of formation of sole-proprietorship

(2) History of the company; and

(3) Principals and the roles they played in the evolution of the company.

C. A market analysis including:

(1) Description of the current industry status and industry trends;

(2) Effects of major social, economic, technological or regulatory trends on the industry;

(3) Description of the total market, principal market participants and their performance; and

(4) Discussion of the target market and competition.

D. A description of the product line including:

(1) List of patents, copyrights, licenses, or statement of the proprietary interest in the product or product line;

(2) Discussion of technical and legal considerations;

(3) Comparisons to competitors' products or product lines; and

(4) Description of current research and development and future plans for research and development.

E. A description of the marketing strategy including:

(1) Overall strategy;

(2) Pricing policy;

- (3) Sales channels and terms;
- (4) Method of selling, distributing and servicing product;
- (5) Estimated sales and market share; and
- (6) Advertising, public relations and promotion.

F. The management plan including:

- (1) Form of business organization;
- (2) Board of directors composition if applicable;
- (3) Officers organization chart and responsibilities; and
- (4) Resumes of key personnel.

G. An operating plan including;

- (1) Schedule of upcoming work for the next one to two years;
- (2) Facilities plan or planned capital improvements for the next three years;
- (3) Manufacturing processes; and
- (4) Staffing plan (number of employees).

H. A schedule indicating the completion dates for realizing the significant aspects of the business plan.

I. A discussion of the risks and problems inherent to the business plan, including both the negative factors and plans to minimize the impact of those factors.

J. Financial data that includes the following:

- (1) A funding request indicating the desired financing, capitalization, use of funds and future financing;
- (2) Financial Statements for the past three years, if applicable;
- (3) Current financial Statements;
- (4) Monthly cash flow financial projections including the proposed

financing for two years; and

(5) Projected balance sheets, income statement, and statement of changes in financial position for two years including the proposed financing.

8300.3011 PROCEDURES FOR FINANCIAL ASSISTANCE APPLICATIONS.

This section provides an overview of the application procedures in general, some detail about the minimum contents of an application, and a description of a required business plan to be included as part of an application. The purpose of this section is to tell applicants and potential applicants what is expected from them in order to complete an application for financial assistance. It is reasonable to inform the public about the type of information required of all applicants in order to apply to the authority for financial assistance. At the same time, it is reasonable for the commissioner to maintain the ability to request applicants for additional types of information, if the commissioner determines that the applicant or the project warrant something special in order to determine the economic feasibility or eligibility of the applicant or project. It is necessary to require that the applicant provide the necessary financial information in order for the authority to make prudent lending decisions.

8300.3012 COLLATERAL REQUIREMENTS AND ADDITIONAL INFORMATION OR CERTIFICATIONS.

Subpart 1. Collateral requirements. The authority shall require collateral in accordance with generally accepted commercial lending practices as it deems necessary to protect the interests of the authority in the financial assistance. At a minimum, the collateral will take one or more of the following forms:

A. mortgage on real property;

B. security position on personal property;

C. security of its financial assistance with assets being financed by the financial assistance and other assets of the company to protect the interests of the state's financial participation;

D. letter of credit or equivalent instrument;

E. guarantees or other assurances of repayment of affiliates of the applicant; or other interested parties with respect thereto;

F. guarantees or other assurances of repayment of shareholders or partners who have 20 percent or more ownership in the applicant; and

G. bond insurance or other credit enhancements.

H. assignments of leases or rents on property or equipment.

Subpart 2. Additional information or certifications. The following additional information is required by the authority, if applicable, prior to disbursing financial assistance and other information that the authority in its sole discretion deems advisable for prudent financial management of authority financial assistance:

A. a lease agreement on property or equipment;

B. a listing of collateral, including serial numbers for machinery and equipment that will serve as collateral to the financial assistance;

C. certification of insurance for workers' compensation and employer's liability;

D. a statement provided by the Internal Revenue Service of tax clearance

E. an appraisal of collateral offered to the authority for the financial assistance; and

F. a certificate of the insurers of all collateral that insurance is in force and effect. Prior to expiration of any insurance policy, the applicant shall furnish the commissioner with evidence that the policy has been renewed, replaced, or is no longer required.

8300.3012 COLLATERAL REQUIREMENTS AND ADDITIONAL INFORMATION OR CERTIFICATIONS.

It is necessary for the authority to protect its financial exposure pursuant to Minnesota Statutes, §116M.08. It is reasonable for the authority to require collateral in accordance with generally accepted commercial lending practices to protect its interests in the financial assistance. The specified forms of acceptable collateral are permitted by Minnesota Statutes, §116M.08 and are also generally accepted forms by commercial lending practices and standards. The discretion to require additional information or certifications is reasonable because it permits the Authority to enter into various types of financial assistance agreements pursuant to Minnesota Statutes, §116M.08, subdivision 1a and at the same time tailor the required information to support an application based on prudent financial management decisions pursuant to Minnesota Statutes, §116M.

8300.3013 PROCEDURES FOR APPLICATION PROCESSING.

Subpart 1. Deadline for submission. The applicant shall submit a complete application to the commissioner by the first business day or any month in order for the authority to consider it in that month. After the first of the month and can be reviewed by the commissioner for eligibility and financial feasibility prior to the authority agenda deadline, the authority may consider the application at the meeting in that month.

Subpart 2. Completed applications. An application is complete when the commissioner receives all required documentation and exhibits.

Subpart 3. Incomplete applications. If an incomplete application is received, the commissioner shall notify the applicant of specific deficiencies in the application. The applicant has 60 days from the date of mailing of the

commissioner's notification to complete the application. If the application is not completed and received by the commissioner within 60 days, the application is deemed to be rejected and the applicant shall reapply to be further considered.

Subpart 4. Review of eligibility of project and applicant. The commissioner shall review all completed applications to determine if the project and the applicant are eligible and meet the requirements of the act and any of parts 8300.3010 to 8300.3014 [Emergency] and any parts relating to the financial assistance for which the applicant has applied.

If the project and applicant are eligible, the commissioner shall review the application for economic feasibility as provided in subpart 6.

Subpart 5. Ineligible project or applicant. The commissioner shall notify the applicant in writing if the applicant or the project is ineligible. The applicant has 30 days from the date of the commissioner's notification to amend the application.

Upon receipt of an amended application, the commissioner shall review the amended application under subpart 4. The commissioner shall reject the amended application if the project or applicant are ineligible. If the project and applicant are eligible, the commissioner shall review the amended application for economic feasibility under subpart 6.

If the application is not amended within 30 days, the application must be rejected and will not receive any further consideration.

Subpart 6. Economic feasibility review. The commissioner shall review the application in accordance with generally accepted commercial lending practices, including the use of the standards as printed in the most current annually updated version of the Annual Statement Studies, issued by Robert Morris

Associates, Philadelphia, PA.

The commissioner shall obtain any other credit information when available from private credit rating agencies including, but not limited to, Standard & Poors and Dun & Bradstreet. In accordance with generally accepted commercial lending practices, the commissioner may check personal references.

The commissioner shall determine if the applicant can generate sufficient cash flow and maintain a sound financial condition.

The commissioner shall determine if there is sufficient collateral for the financial assistance. The submission of the application by the Commissioner to the authority at a board meeting shall be deemed conclusive evidence that the Commissioner has made the determinations required pursuant to this subpart.

Subpart 7. Rejection of application based on economic feasibility. The commissioner shall notify the applicant in writing if the application is not economically feasible and the application is rejected.

If the application is rejected due to economic feasibility, the applicant may, within 30 days after written notification by the commissioner, request that the commissioner submit the rejected application to the authority for review at the next regularly scheduled meeting of the authority for which the agenda has not been established.

If so submitted the authority must evaluate the application at its board meeting. The application will be treated in accordance with subpart 9.

Subpart 8. Findings of public purpose for small business and business loans. In addition to the economic feasibility review in subpart 6, the applicant must certify that the project assists in fulfilling the purposes of the act, including the applicable preferences and priorities in Minnesota Statutes, or one or more of the following criteria:

A. The applicant is located in an area of the state that is experiencing one of the most severe unemployment rates in the state.

B. The applicant is located in a border community that experiences a competitive disadvantage due to location and with this financial assistance the applicant would be induced to stay in Minnesota rather than to move to another state.

C. The applicant is likely to expand within the state and to create additional taxable property to local units of government.

D. This financial assistance will help induce the applicant to locate in an area of economic distress or to provide jobs that would not otherwise be available to that area without the inducement of this financial assistance.

E. This financial assistance will create or maintain sufficient numbers and types of jobs to justify participation in the financial assistance programs.

F. Energy sources and public facilities will be sufficient to support the successful operation of the project.

G. If the financial assistance shall have the effect of a transfer of employment from one area of the state to another, that the project is economically advantageous to the state or that the project is necessary to the continued operation of the business enterprise within the state.

Subpart 9. Authority evaluation procedure. Applications approved for processing by the commissioner must be presented to the authority for approval or disapproval. If the authority disapproves the application, the commissioner shall so notify the applicant. If the authority approves the financial assistance, it shall pass a preliminary or a final resolution giving approval to the project to be financed and stating in either the preliminary or final resolution or combination of both the name of the owner; a brief description of the

project, the maximum amount of bonds to be issued or the maximum amount of the loan to be made or the maximum amount of the loan to be guaranteed or insured, whichever is applicable; and other provisions as the authority in its sole discretion deems advisable for prudent financial management of authority financial assistance. The commissioner shall notify the applicant of the authority's approval and provide the applicant with a copy of the resolution passed. If the financial assistance is funded by bonds, then passage of a preliminary and a final resolution as provided in subpart 10 are required before financial assistance is approved. Throughout this process if the authority does not extend financial assistance, the authority shall remain without liability to the applicant.

Subpart 10. Funding of financial assistance by bonds. If the authority intends to fund the financial assistance by issuing bonds, the authority shall first pass a preliminary resolution. The preliminary resolution must not obligate the Authority to issue bonds or to fund financial assistance, but must only constitute an expression of current intention of the authority to issue bonds or to fund the financial assistance. If the authority subsequently determines that there are no adverse changes in the financial conditions or key personnel of the applicant, market conditions, availability of bond issuance authority, and other financial conditions that the authority deems necessary and the authority decides to fund the financial assistance, the authority shall pass a final resolution that authorizes the issuance and sale of bonds to fund the financial assistance. The final resolution must specify the terms and conditions under which bonds will be issued. The preliminary resolution may contain a time limit with respect to the issuance of the bonds, may be revoked or amended by the authority at any time prior to the final resolution of the

authority without liability to the authority, and may impose any conditions or requirements that the authority deems desirable. The commissioner shall notify the applicant of the authority's approval and provide the applicant with a copy of the resolution passed. Throughout this process, if the authority does not extend financial assistance, the authority shall remain without liability to the applicant.

Subpart 11. Preparation of documents. The commissioner has the authority and responsibility to prepare or cause to be prepared all necessary documents and to execute them on behalf of the authority.

8300.3013 PROCEDURES FOR APPLICATION PROCESSING.

Pursuant to Laws of Minn. Stat. 116J.10(e), the Commissioner has the power to administer statewide programs of the Authority. It is reasonable to inform the public of the expected time frame involved in processing loan applications, of the various steps in the evaluation process itself, and of the procedures for approval and disapproval processes for clarification and understanding of what is expected from an applicant, the commissioner and the authority.

Subpart 1 is an overview of the deadline to submit a completed application in order for an application to be forwarded to the authority, given that an application meets eligibility and feasibility requirements. Subpart 2 discusses what is meant by a completed application to provide clarification for persons reading these rules. Subpart 3 provides a reader with the procedures concerning the handling of incomplete applications. Subpart 4 describes the first review step for completed applications based on a comparison of the project and applicant to the requirements set forth in the law, general application rules and program-specific rules. Eligible projects proceed through the evaluation pro-

cess for economic feasibility as discussed in subpart 6. Subpart 5 clarifies the procedures for ineligible projects or applicants so as to provide an understanding of the time frame in order to resubmit an ineligible application, and of what is expected of the applicant, the commissioner and the authority. Subpart 6 provides the reader information concerning the standards used for comparative purposes to evaluate an application for economic feasibility. Subpart 7 provides the reader of these rules with procedures and the associated time frame for the handling of applications which are rejected on the grounds of economic feasibility. Subpart 8 provides the reader with information concerning public purpose guidelines. Pursuant to Minnesota Statutes, §116M.06 , Subd. 6 all financial assistance awards must fulfill a public purpose. It is reasonable to refer readers to the preferences and priorities set forth in the legislation, in addition to the criteria which is examined during the application evaluation process. Subpart 9 provides the applicant with an overview of when the authority receives an application for authority approval or disapproval. The procedures for both approval and disapproval processes are described. It is reasonable to tell the reader of these rules how the process works and what the possible outcomes of the process may be. Subpart 10 provides the reader information concerning the approval process of an application when the financial assistance is funded by bonds. This particular funding mechanism has more approval steps than other mechanisms. It is reasonable to tell readers that additional steps are involved in this type of process. Subpart 11 provides the commissioner with the authority and responsibility to prepare or cause to be prepared all necessary documents and execute them for the authority. It is necessary and reasonable for the commissioner to have these powers and duties since he has the power to administer a statewide program for the authority under

the Laws of Minnesota 1983, chapter 289, §45, subdivision h.

SMALL BUSINESS DEVELOPMENT LOAN PROGRAM

8300.3020 PURPOSE OF SMALL BUSINESS DEVELOPMENT LOANS

The small business development loan program issues financial assistance in a form involving a guarantee or insurance from the economic development fund or any account thereof and revenue bonds to finance small business loans.

8300.3020 PURPOSE OF SMALL BUSINESS DEVELOPMENT LOANS

Parts 8300.3020 to 8300.3023 pertain to the Small Business Development Loan Program. Under Minnesota Statutes 116M.08, subdivision 4, the authority can adopt rules. These program-specific rules outline the parameters and requirements unique to this program. The program is defined as the issuance of financial assistance in a form involving a guarantee or insurance from the economic development fund or any account thereof and revenue bonds to finance small business loans.

8300.3021 ELIGIBLE APPLICANTS FOR SMALL BUSINESS DEVELOPMENT LOAN PROGRAM

Persons, partnerships, firms, or corporations engaged in and determined by the authority to constitute a small business as defined in the regulations of the United States Small Business Administration, Code of Federal Regulations, title 13, part 121, are considered eligible small businesses or eligible applicants.

8300.3021 ELIGIBLE APPLICANTS FOR SMALL BUSINESS DEVELOPMENT LOAN PROGRAM

For convenience of potential applicants it is reasonable to tell readers of these rules what the eligibility criteria are for the program. The criteria in the rule are established by Minn. Stat. §116M.03 Subd. 4.

8300.3022 ELIGIBLE LOANS FOR SMALL BUSINESS DEVELOPMENT LOAN PROGRAM

Subpart 1. In general. The authority shall make small business loans to applicants in compliance with the act and parts 8300.3010 to 8300.3024 in order to help create or retain jobs for the state.

Subpart 2. Purpose of loan. A small business loan must be used to provide interim or long-term financing for certain capital expenditures as provided in the act, and for expenditures that meet the requirements of federal industrial development bond laws, including:

- A. acquisition costs of land, buildings, or both;
- B. site preparation;
- C. construction costs;
- D. engineering costs;
- E. costs of equipment, machinery, or both;
- F. bond issuance costs;
- G. underwriting or placement fees;
- H. trustee's fees;
- I. fee of guarantor, insurer, or financial institution, other than the authority, who provides letters of credit, surety bonds, or equivalent security;
- J. authority fees, including application and guaranty fees of the authority and administrative costs and expenses;
- K. certain contingency costs;
- L. interest costs during construction;
- M. legal fees including those of the authority's bond counsel; and
- N. debt service reserve fund.

Working capital loans are not eligible for financial assistance under this loan program.

Subpart 3. Size of eligible loans. The principal amount of any financial assistance in the form of bonds to be financed by the authority may be greater than \$250,000, but may not exceed the maximum amount permitted to be loaned to an eligible small business as defined in the act for the total value of eligible items listed in sub-part 2.

Subpart 4. Equity requirements. The maximum loan percentage of the project costs for equipment is 75 percent and for all other authorized expenses is 80 percent. Instead of an equity contribution, the authority shall accept adequate collateral to serve as an equity requirement which if contributed to the financial assistance would make the maximum loan percentage of the project costs for equipment equal 75 percent and for all other authorized expense equal 80 percent. The authority may require a lower loan to project percentage based upon the economic feasibility of the application. The authority may accept letters of credit or other credit enancements as part of the equity contribution by the applicant.

Subpart 5. Maximum term. The maximum term of a small business development loan may not exceed the average useful life of the real property, or 80 percent of the useful life of the equipment or machinery, of the following limits, whichever is less:

- A. real property, land or buildings, 21 years;
- B. equipment or machinery, 11 years;
- C. combination of items A and B, weighted average.

Subpart 6. Interest rate. The authority shall set interest rates at a negotiated rate that approximates the market rate of interest for securities of

equivalent value at the time the bonds are initially sold.

Subpart 7. Security requirements. Financial assistance, either for real property or equipment, must be secured with the best available security including one or more of the following:

A. A mortgage or other adequate security as determined by the authority on the real property to be financed.

B. A lien or other adequate security as determined by the authority on equipment to be financed by the authority.

C. Other security as determined by the commissioner to have a value at least equal to the principal amount to be financed by the authority less the value, as determined by the authority, of the security provided in items A and B, if any. Such other security shall be in form and kinds satisfactory to the authority and may consist of some or all of the following:

(1) a senior, junior, or parity lien on other assets of the applicant; or

(2) a senior, junior, or parity lien on assets of certain owners, officers, and affiliated persons of the applicant (including sole proprietors and their spouses, partners and their spouses, and major shareholders or corporate officers and their spouses); or

(3) a guarantee of owners, officers, and affiliated persons of the applicant (including sole proprietors and their spouses, partners and their spouses, and major shareholders or corporate officers and their spouses), or other related entities such as subsidiaries or parent corporations of the applicant.

(4) additional forms of security, if necessary to strengthen the authority's collateral position on the financial assistance.

D. In addition to or in substitution for any of the items A to C, any

guarantee or other collateral or security, as required by insurers or other providers of collateral or security with respect to the bonds other than the authority, or as required by the authority in accordance with generally accepted commercial lending practices.

8300.3022 ELIGIBLE LOANS FOR SMALL BUSINESS DEVELOPMENT LOAN PROGRAM

It is reasonable to outline what types of expenditures qualify for financial assistance under this program. Subpart 1 is an overview of the program that states that eligible loans are small business loans which comply with the Act and the rules of the program as well as create or retain jobs for Minnesota. Subpart 2 actually lists the types of loan expenditures that can be made under this program. The list of expenditures is reasonable since it is consistent with state (M.S. Chapter 474) and federal legislation governing industrial development bonds and the types of financial assistance allowable under the Act. The Authority cannot fund working capital loans under the Internal Revenue Code 26 USC, 103b. Subpart 3 describes the size of eligible loans. The minimum size of a loan under the program is reasonable because the transaction costs of smaller loans are proportionally too high to be economically feasible. The maximum size of a loan is whatever is permitted by the Act. This is reasonable since the maximum limit may change over time. Subpart 4 provides the equity requirements and subpart 5 discusses the maximum term of a small business development loan. Both subparts are reasonable because they are the parameters that the underwriters have deemed necessary in order to sell bonds. The terms set forth in these subparts will ensure sufficient collateral and competition to meet with market conditions to be able to fund the loans. Subpart 6 pertains to the interest rate of a loan. The rate is reasonable because it is determined by

the market rate of interest at the time the bonds are issued. Subpart 7 provides information about security requirements. The requirements are reasonable because they are in accordance with generally accepted commercial lending practices and prudent financial management to protect the Authority's interest in the financial assistance.

8300.3023 DEBT SERVICE RESERVE FUND FOR SMALL BUSINESS DEVELOPMENT LOAN PROGRAM

In conjunction with each amount of financial assistance it extends, the authority shall establish and fund a debt service reserve fund sufficient to cover approximately 12 months' debt service or such lesser amount to ensure the tax exempt status of interest on the bonds if such bonds are intended to be tax exempt. The reserve must be funded through the proceeds of the bonds to be issued and sold in conjunction with each particular amount of financial assistance extended. The interest earned on the debt service reserve fund must accrue to the benefit of the applicant except to the extent necessary to ensure the tax exempt status of the interest on the bonds if such bonds are intended to be tax exempt. This amount must be applied to offset the principal and interest payments on an annual basis or to redeem bonds prior to maturity provided the financial assistance is current.

8300.3023 DEBT SERVICE RESERVE FUND FOR SMALL BUSINESS DEVELOPMENT LOAN PROGRAM

The debt service reserve fund is needed in order to enhance the marketability of the bonds. It is reasonable to provide approximately 12 months' debt service because by the end of the time period the authority will have had enough time to undertake default proceedings against a delinquent borrower. At the same time, a period longer than 12 months would commit too

much of the economic development fund than is warranted in light of statistics available concerning Small Business Administration default rates on small business loans. At the end of fiscal 1984, the Minneapolis SBA office had 211 business loans and 33 disaster loans in liquidation status. SBA records show 160 liquidation cases were closed in fiscal 1984.

8300.3024 FINAL RESOLUTION FOR SMALL BUSINESS DEVELOPMENT LOAN PROGRAM

Subpart 1. Final resolution. After the authority passes a preliminary resolution, the authority may pass a final resolution that authorizes the issuance and sale of bonds to fund the financial assistance to the applicant, both as discussed in part 8300.3013, subpart 10. Whether the authority may pass the final resolution for an application under the program depends, in part, upon the following:

A. a determination that there are no adverse changes in the financial condition or key personnel of the applicant since the date of completion of the application;

B. market conditions;

C. availability of bond issuance authority; and

D. other conditions that the authority considers necessary in accordance with generally accepted commercial lending practices.

Subp. 2. Bond issuance. Upon passage of the final resolution, the authority shall commence to issue bonds in accordance with market conditions and other legal conditions that govern the issuance of its bonds and notes. This issuance must be in accordance with the contents of any insurance contracts, agreements with lenders providing letters of credit, or other forms of financial assistance and other terms and conditions necessary to effectuate bond sale.

Funds will not be disbursed at the loan closing until it has been determined by the commissioner that there are no adverse changes in the condition or key personnel of the business entity applying for the financial assistance in accordance with generally accepted commercial lending practices. After the bonds are issued and sold, there will be a loan closing at which the funds are transferred and documents are signed in accordance with the terms of the final resolution and the respective bond resolution.

8300.3024 FINAL RESOLUTION FOR SMALL BUSINESS DEVELOPMENT LOAN PROGRAM

The mechanism to fund financial assistance under this program is through revenue bonds. The procedures as discussed in part 8300.3013, subpart 10 indicate that a final resolution is necessary. It is reasonable to determine that there are no adverse changes in the applicant's financial condition and the other conditions set forth before passage of a final resolution, again before closing on a loan, and again before disbursing any funds. The purpose of these processes is to protect the interests of the authority.

POLLUTION CONTROL FINANCIAL ASSISTANCE

8300.3025 POLLUTION CONTROL FINANCIAL ASSISTANCE.

An applicant for pollution control financial assistance shall submit to the commissioner an application form approved by the commissioner and shall comply with parts 8300.3011 to 8300.3013. The application processing and evaluation shall be in accordance with the act and parts 8300.3011 to 8300.3013, 8300.3025, and 8300.3026.

8300.3026 ACCEPTANCE OF POLLUTION CONTROL FINANCIAL ASSISTANCE APPLICATIONS.

In determining whether to accept applications for pollution control financial

parts 8300.3011 to 8300.3013 and 8300.3030 to 8300.3034. Under the act, Minnesota Statutes, section 472.11, subdivision 8, the local unit of government must pass and file a resolution in support for the project that stipulates the project's economic benefits to the local community.

8300.3030 PURPOSE OF MINNESOTA FUND LOANS.

Purpose of Minnesota Loan Funds, Parts 8300.3030 to 8300.3034 pertain to Minnesota Fund Loans under Minnesota Statutes, §116M.08, subdivision 4, by which the Authority can adopt rules. These program-specific rules outline the parameters and requirements unique to this program. The program issues loans for fixed-asset financing for new and existing business.

8300.3031 ELIGIBILITY OF PROJECT FOR MINNESOTA FUND LOANS.

An applicant for financial assistance from the Minnesota Fund established under Laws of Minnesota 1984, chapter 583, section 12, shall submit to the commissioner an application form approved by the authority. The amount applied for cannot exceed 20 percent of the eligible project costs. The applicant shall provide the commissioner with written verification that an amount at least equal to ten percent of the eligible project costs has been or will be committed by the applicant or loan development agency to the project. The applicant shall provide the commissioner with a written commitment from the lender who provides the 70 percent financing. The project must meet the requirements of the act, Minnesota Statutes, chapter 427, as now in effect and as amended from time to time and parts 8300.3010 to 8300.3014 and 8300.3030 to 8300.3035. If the money to be loaned is from a source other than the Minnesota Fund, then the eligibility criteria required by the source will be imposed.

8300.3031 ELIGIBILITY OF PROJECT FOR MINNESOTA FUND LOANS

The eligibility requirements are needed to inform readers of the rules concerning funding under the program. The parameters are reasonable because under Minn. Stat. 472.11 (1984), the participation of the authority is 20% of the project costs coupled with a minimum equity requirement of 10% ensures the collateral behind a project and provides the incentive for an outside lender to participate in the financing of a project. It is possible that money is available from other sources than state appropriated to make fixed-asset loans. For example from time to time grants are available from the U.S. Economic Development Administration When that is the case it is reasonable that the project also comply with any additional eligibility criteria required by the funding source.

8300.3032 ELIGIBLE PROJECT COSTS FOR MINNESOTA FUND LOANS

Eligible project costs for financing by the authority include land or building acquisition, site preparation, building construction or improvement, and architectural engineering costs, equipment, and machinery.

8300.3032 ELIGIBLE PROJECT COSTS FOR MINNESOTA FUND LOANS

Minn. Stat. ch. 472 does not authorize working capital financing, accordingly, It is necessary and reasonable to define for the readers of these rules what is specifically meant by fixed-asset financing as permitted under the program. The financing of land, building, equipment and their related costs are reasonable fixed assets. All of the assets listed should provide adequate collateral for our participation and for an outside lender's participation in the project financing.

8300.3033 INTEREST RATE FOR MINNESOTA FUND LOANS

The interest rate of financial assistance from the Minnesota Fund is three percentage points below a full faith and credit obligation of the United States government of comparable maturity, and of five working days before closing or the authority shall set interest rates at a negotiated rate after reviewing market rates and comparable sources of financing available to the applicant at the time the financial assistance is extended.

8300.3033 INTEREST RATE FOR MINNESOTA FUND LOANS

It is necessary to tell readers of the rules and what they can expect in terms of interest rates. An interest rate that is three percentage points below a full faith and credit obligation of the United States Government of comparable maturity, and of five working days from closing, is reasonable because the program provides a credit product which is not currently available through the market place. The program fills a void that helps promote economic development in the state and helps to fulfill the purposes of the Act.

8300.3034 TERM OF FINANCIAL ASSISTANCE FOR MINNESOTA FUND LOANS

The maximum term of financial assistance from the Minnesota Fund is 20 years. The term of financial assistance will not exceed the maximum useful life of the project financed.

The commissioner may restructure the financial assistance at the request of the applicant or upon his or her own initiative if the commissioner determines that restructuring the financial assistance will increase the probability that the financial assistance will be repaid to the state.

If the applicant requests the commissioner to restructure the financial

assistance and the financial assistance is restructured, the commissioner shall charge the applicant a fee in the amount of one-half percent on the outstanding principal amount of the financial assistance.

8300.3034 TERM OF FINANCIAL ASSISTANCE FOR MINNESOTA FUND LOANS

The indication of the term of a loan issued under the program is necessary in order to inform readers of these rules about the terms. The maximum term of 20 years or the useful life of the project financed, whichever is shorter is reasonable because long-term financing is not available for fixed assets; in the market place; therefore, the authority's program is not in competition with other lenders in the market place. In addition, the long-term financing provides further incentive for an outside lender to participate in financing projects.

SPECIAL ASSISTANCE PROGRAM

8300.3039 PURPOSE OF SPECIAL ASSISTANCE.

The special assistance program provides financial assistance to businesses that are designated as being in need of special assistance.

8300.3039 PURPOSE OF SPECIAL ASSISTANCE

Parts 8300.3040 to 8300.3043 pertain to the Special Assistance Program. These program-specific rules are necessary in order to implement the program as created by Laws of Minnesota 1984, chapter 583, §14, subdivisions 5a to 5c. It is also within the Authority's power to promulgate rules for its programs under Minnesota Statutes, §116M.08, subdivision 4.

8300.3040 PUBLIC PURPOSE.

To qualify for special assistance, an applicant shall submit an application on a form to be prepared by the commissioner. In addition, an applicant shall certify in writing that the special assistance will be used for the public purposes provided in Minnesota Statutes, section 116M.07, subdivision 11, paragraph (b).

8300.3040 PUBLIC PURPOSE OF SPECIAL ASSISTANCE

It is necessary for a program applicant to be designated as being in need of special assistance under Section 116, §14, subdivision 5b. It is reasonable to cite the legislation pertaining to the Special Assistance designation since Minnesota Statutes, Chapter 14 requires that statutory language not be duplicated in rules.

8300.3042 FORM OF SPECIAL ASSISTANCE

If an applicant requests special assistance in a form similar to that of the Small Business Development Loan Program, the applicant shall comply with parts 8300.3011 to 8300.3024 and 8300.3039 to 8300.3042, except the applicant need not comply with the requirement in part 8300.3022, subpart 3, and the application will be processed under parts 8300.3013 and 8300.3024.

If an applicant requests special assistance in a form other than that of the Small Business Development Loan Program, the applicant shall comply with parts 8300.3011 to 8300.3013 and 8300.3039 to 8300.3042, and the application evaluation will be performed in accordance with parts 8300.3013 and 8300.3039 to 8300.3042.

8300.3042 FORM OF SPECIAL ASSISTANCE

It is necessary to inform readers of these rules of the program-specific criteria. If financial assistance under this program is provided by a form similar to that of the Small Business Development Loan Program, it is reasonable that the applicant meet the eligibility and underwriting criteria of that program except for the small business eligibility requirement as well as the size of the loan requirement. If financial assistance is in a form other than that provided under the Small Business Development Loan Program, then it is reasonable that the applicant and project meet another set of eligibility criteria.

8300.3043 EXPENDITURES ELIGIBLE FOR SPECIAL ASSISTANCE

Subpart 1. Eligible costs. Costs eligible for funding are the expenditures set forth in the act, including but not limited to the following:

- A. land and/or building acquisition costs;
- B. site preparation;
- C. construction costs;
- D. engineering costs;
- E. equipment and/or machinery;
- F. bond issuance costs;
- G. underwriting or placement fees;
- H. trustee's fee;
- I. fees of guarantor, fees or insurance contracts, letters of credit municipal bond insurance, and surety bonds;
- J. Small Business Administration processing and administration fee, if

applicable;

K. authority fee and administrative costs and expenses;

L. certain contingency costs;

M. interest costs during construction;

N. legal fees, including those of authority's bond counsel; and

O. short-term costs of conducting a small business or a business, if permitted by the act.

Subpart 2. Maximum term. The maximum term of financial assistance extended under special assistance may not exceed the average useful life of the project financed.

Subpart 3. Interest rate. The authority shall set interest rates at a negotiated rate after reviewing market rates and comparable sources of financing available to the applicant at the time the financial assistance is extended.

Subpart 4. Loan servicing. The commissioner shall monitor the payment of the principal and interest as set out in the amortization schedule. The commissioner shall also monitor the applicant's compliance with the terms and conditions of the loan contract.

The commissioner may restructure the loan at the request of the borrower or upon his or her own initiative if he or she determines that restructuring the loan will increase the probability that the loan will be repaid to the state.

If the applicant requests the commissioner to restructure the loan and the loan is restructured, the commissioner shall charge the applicant a fee in the amount of one-half percent on the outstanding principal amount of the loan.

8300.3043 EXPENDITURES ELIGIBLE FOR SPECIAL ASSISTANCE

It is necessary to tell the readers of the rules what financial assistance can be used for under this program. Subpart 1 contains the eligible costs

permitted under the program. It is reasonable that the eligible costs be all those items that are permitted to be financed under the Act, Minn. Stat. 116M.03 Sub. 11, Sub. 19, M.S. 116.Mo7 Sub. 11. Subpart 2 indicates the maximum term of financing under the program. It is reasonable that the term of the loan not exceed the average useful life of the project financed to ensure adequate collateral for the financial assistance. Subpart 3 describes the interest rate. It is reasonable that the authority negotiate an interest rate that takes market rates as well as other available comparable sources of financing to the applicant into account in order to fulfill the purposes of the Act. Subpart 4, Financial Assistance Monitoring, authorizes the the commissioner to perform the monitoring process which is reasonable because of the responsibilities granted the commissioner under Laws of Minnesota 1982, M.S. 116J.10 (E) chapter 289, §45, subdivision h. It is reasonable for the commissioner to have the ability to restructure the loan if the commissioner determines that the restructuring will increase the probability of loan repayment. It is reasonable for the applicant to pay a fee if the applicant requests that the loan be restructured because of the staff time involved in the process.

REPEALER. Minnesota Rules, parts 8300.1000 to 8300.1100, 8300.1200, 8300.1500, 8300.1600, 8300.1700, 8300.1800, 8300.1900, 8300.2000, 8300.2100, and 8300.2200, are repealed.

REPEALER. It is necessary to repeal portions of the currently existing rules governing the authority to avoid conflicts in meaning. It is reasonable to adopt these new rules over the existing rules because these rules provide more details about what is expected of the applicant, commissioner, and the

authority in order to obtain financial assistance under the programs of the authority.

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 Minnesota 1983, chapter 289 reorganizes the Small Business Finance Agency in the Minnesota Energy and Economic Development Authority. The authority manages several loan programs and is able to help qualified small businesses through the 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 a 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 programs are 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.