

STATE OF MINNESOTA
Department of Energy and Economic Development

In The Matter Of The Proposed
Rules Governing Energy Financial
Assistance

Statement of Need
And Reasonableness

I. The Minnesota Energy and Economic Development Authority (Authority) presents herein facts and justifications establishing the need and reasonableness of its proposed rules governing Energy Financial Assistance.

8300.4010 SCOPE.

Parts 8300.4010 to 8300.4013 are general rules that apply to all applications for energy financial assistance made available by the authority under the act, the energy development loan program and the energy loan insurance program.

Parts 8300.4013 to 8300.4027 specify procedures and criteria for energy financial assistance from particular programs of the authority.

8300.4010 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 and 116M.10, subd. 7. 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 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 8300.4014 to 8300.4027. These are not rules or programs to regulate businesses, these are rules to help businesses as well as to promote energy development within the Minnesota.

8300.4011 DEFINITIONS.

Subpart 1. Statutory terms. The definitions in Minnesota Statutes, section 116M.03, part 8300.0100 and this part, apply to parts 8300.4010 to 8300.4027.

Subp. 2. Annual Total Benefits. "Annual total benefits" means B_t in subpart 8 that accrue to the applicant plus the annual monetary value of outputs expected to result from the undertaking of a qualified energy project that accrue to the public at large. Outputs must be estimated in dollars based upon the most recent credible evidence available including

scientific studies, economic studies, or other analysis. Outputs include the estimated value of new jobs produced; the monetary value of decreased levels of air, water, or other forms of pollution; or other avoided public costs.

Subp. 3. Annual Total Costs. "Annual total costs" means the annual repayments of interest plus principal for I in subpart 7, incurred by the applicant of the qualified energy project plus the annual incremental monetary costs incurred by the state through the use of appropriated money in any one or a combination of the funds administered by the authority, the economic recovery fund, or other appropriations made available to assist the qualified project by the legislature.

Subp. 4. Avoided Public Costs. "Avoided public costs" include the estimated dollar costs that could reasonably be expected to be incurred during the useful life of the qualified energy project by a unit of local, state, or federal government, if the project were not undertaken, but will be avoided if the project is financed. Avoided public costs include the costs of siting, designing, or constructing facilities of any type necessary to comply with environmental regulations; or the costs associated with unemployment compensation, welfare benefits, or other benefits that would otherwise be paid to existing workers who would be unemployed if the qualified energy project were not undertaken.

Subp. 5. Cost Effective. Except for qualified energy projects for conservation of energy, "cost effective" means that the present value of a project's benefits exceeds the present value of its costs over the life of the project. Only those costs and benefits which can be quantified in dollars may be included in determining whether a project is cost-effective. The discount rate used in determining present value shall include the time value and incremental carrying cost of money. For qualified energy projects for conservation of energy a project is cost-effective when it has a payback period of ten years or less and the payback period is less than the useful life of the project.

Subp. 6. Energy Financial Assistance. "Energy financial assistance" means loans, loan guarantees or insurance, to enter into or pay fees on insurance contracts, letters of credit, municipal bond insurance, surety bonds, or similar obligations and other agreements or contracts with financial institutions or providers of similar services and any other use of money from the energy development account and the energy loan insurance account as permitted by the act.

Subp. 7. Investment Cost. "Investment cost" means: I = the total amount of the loan obtained by the applicant required by the qualified energy project to generate annual net cost savings or net revenues equal to B_t in subp. 8. "I" is the present value of annual repayments of the interest plus principal discounted at the rate r in subp. 8, over the term of the loan for I.

Subp. 8. Present Value. "Present value" of the annual net cost savings or net revenues generated by the qualified energy project means:

$$L > \sum_{t=1}^{\infty} \frac{B_t}{(1+r)^t}$$

where B_t = annual net cost savings or net revenues realized by the applicant for each year t of the expected useful life of the qualified energy project. This represents annual cost savings or annual revenues net of annual operating costs excluding annual interest plus principal payments for the investment cost of the qualified energy project.

L = expected useful life of the qualified energy project.

r = annual rate of interest charged to the applicant on the investment cost of the qualified energy project.

Subp. 9. Project. "Project" means that which is funded or secured or is proposed to be funded or secured by energy financial assistance.

8300.4011 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 definitions provide clarification for persons reading these rules. Minnesota Statutes 116M.11, Subd. 2b, requires the Authority to establish criteria for analyzing cost effectiveness. The definition of cost effectiveness from Minnesota Statutes 116M.03, subd. 27, is repeated for the convenience of applicants to the Authority for energy financial assistance. The definitions for terms as annual total benefits and total costs, avoided public costs, investment cost and present value are all generally accepted mathematical terms for use in economic and technical feasibility analysis.

8300.4012 PROCEDURES FOR ENERGY FINANCIAL ASSISTANCE APPLICATIONS.

Subpart 1. In General. To apply for energy financial 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 the owner, general partners, or an authorized officer of the applicant. The commissioner shall follow the procedures under part 8300.3013.

Subp. 2. Contents. An application must comply with part 8300.3011, subparts 2 and 3.

8300.4012 PROCEDURES FOR ENERGY 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 energy 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.

8300.4013 COLLATERAL REQUIREMENTS AND ADDITIONAL INFORMATION OR CERTIFICATIONS.

The authority shall require collateral and additional information or certifications in compliance with part 8300.3012.

8300.4013 COLLATERAL REQUIREMENTS AND ADDITIONAL INFORMATION OR CERTIFICATIONS.

It is necessary for the authority to protect its financial exposure pursuant to Minnesota Statutes, section 116M.07, subd. 2. 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 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, section 116M.06, 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, section 116M.

8300.4014 PROCEDURES FOR ENERGY FINANCIAL ASSISTANCE APPLICATIONS.

Processing of applications must comply with parts 8300.3012 and 8300.3013, subparts 1 to 7 and 9 to 11. The commissioner shall also review the application to determine if the project is technically feasible and cost effective.

8300.4014 PROCEDURES FOR APPLICATION PROCESSING.

Pursuant to Minnesota Statute 116J.10, subdivision h, 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 energy 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. This rule provides that the applicant shall follow procedures which generally apply to other Authority financial assistance programs. The following is a summary of those procedures as set forth in 8300.3013.

Subpart 1, is an overview of the deadline to submit a completed application in order for an application to be forwarded to the Authority, give 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 process 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 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 energy 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 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 reasonable for the Commissioner to have these powers and duties since he has the power to administer a statewide program for the Authority under Minnesota Statute 116J.10, subdivision h.

ENERGY DEVELOPMENT LOAN PROGRAM

8300.4015 PURPOSE.

The energy development loan program issues energy financial assistance in the form of energy loans funded by proceeds of the authority's revenue bonds that may be secured by a guarantee or insurance from the energy development account or energy loans made directly with money in the energy development account. Energy loans funded by proceeds of the authority's revenue bonds must be made in accordance with parts 8300.4010 to 8300.4017. Energy loans funded directly with money in the energy development account must be made in accordance with parts 8300.4010 to 8300.4016 and part 8300.4018.

8300.4015 PURPOSE.

Parts 8300.4014 to 8300.4018 pertain to the Energy Development Loan Program. Under Minnesota Statutes 116M.08, subdivision 4, and 116M.10, subd.7, 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 energy financial assistance in the form of energy loans funded by proceeds of the Authority's revenue bonds that may be secured by a guarantee or insurance from the energy development fund or energy loans made directly with funds in the energy development fund.

8300.4016 ELIGIBLE APPLICANTS FOR ENERGY DEVELOPMENT LOAN PROGRAM.

Any business as defined in the act is eligible to apply for an energy loan.

8300.4016 ELIGIBLE APPLICANTS FOR ENERGY DEVELOPMENT LOAN PROGRAM.

It is reasonable to tell readers of these rules what the eligibility criteria is for the program.

8300.4017 ELIGIBLE LOANS FOR ENERGY DEVELOPMENT LOAN PROGRAM.

Subpart 1. In General. The authority shall make energy loans to applicants in compliance with the act and parts 8300.0100 to 8300.3013 and 8300.4010 to 8300.4018.

Subp. 2. Purpose Of Loan. An energy 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 where applicable, 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 account.

Working capital loans are not eligible for energy financial assistance under the energy development loan program. However, energy loans for certain finished equipment inventory that constitute qualified energy projects that are funded out of the energy development account or the proceeds of revenue bonds issued by the authority to the extent permitted under federal tax law are permitted.

Subp. 3. Equity Requirements. The maximum loan percentage of authorized project cost is 80 percent for equipment and 90 percent for other authorized costs. Instead of an equity contribution, the authority may accept adequate security, collateral, or guarantees sufficient to insure the repayment of the financial assistance. The authority may accept letters of credit or other credit enhancements as part of the equity contribution by the applicant.

Subp. 4. Maximum Term. The maximum term of an energy loan may not exceed the average useful life of the real property, or 80 percent of the useful life of equipment or machinery or 31 years, whichever is less.

Subp. 5. Security Requirements. Energy financial assistance, for real property, equipment, or other authorized expenditures, must be secured with the best available security or guaranty as required by either insurers or other providers of collateral or security of the bonds other than the authority, or as required by the authority in accordance with generally accepted commercial lending practices.

Subp. 6. Findings Of Public Purpose. The authority shall review and consider approval of an application for an energy loan on the basis of effectuating the purposes of the act, including determinations regarding the following:

A. that the qualified energy project and its development is economically advantageous to the state, that the provision to meet increased demand upon public facilities as a result of the qualified energy project is reasonably assured and any feedstock availability, resource base, or energy sources necessary to support the successful operation of the qualified energy project is adequate;

B. that the qualified energy project will tend to facilitate a reliable supply of energy to Minnesota's households, business establishments, or municipalities, tend to diminish Minnesota's dependence on imported energy sources, or serve some other energy related public purpose;

C. that the qualified energy project satisfies the priorities and criteria of the act;

D. that other things being equal in the event that there are more otherwise eligible applications submitted to the authority than there is funding available to assist, the energy loan allows greater leverage of the energy development account than other competing applications;

E. that the borrower is a business under the act;

F. that the project will be economically feasible in that the borrower reasonably can be expected to maintain a sound financial condition and to retire the principal and pay the interest on the loan anticipated to be made, in accordance with the terms of the agreement;

G. with respect to a resource recovery project, the project will be cost-effective in accordance with part 8300.4011, subpart 5.

8300.4017 ELIGIBLE LOANS FOR ENERGY DEVELOPMENT LOAN PROGRAM.

It is reasonable to outline what types of expenditures qualify for energy financial assistance under this program.

Subpart 1, is an overview of the program that states that eligible loans are energy loans which comply with the Act and the rules of the program.

Subpart 2, 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 and federal legislation governing industrial development bonds and the types of energy financial assistance allowable under the Act.

Subpart 3, provides the equity requirements.

Subpart 4, discusses the maximum term of an energy development loan. Both subparts 3 and 4 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 5, 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.

Subpart 6, provides the reader with information concerning public purpose guidelines. Pursuant to Minnesota Statutes 116M.03, 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.

8300.4018 ENERGY LOANS FUNDED BY BONDS.

Subpart 1. In General. If the authority intends to fund an energy loan by issuing revenue bonds, it must do so in conformance with part 8300.4013, and this part. The income from bonds issued by the authority for energy loans will be either subject to or exempt from taxation by the federal government. If the income from the bonds is to be subject to taxation by the federal government, the preliminary resolution must acknowledge that the bonds will be subject to applicable federal taxes.

Subp. 2. 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.

Subp. 3. Debt Service Reserve Account. In conjunction with each amount of financial assistance it extends, the authority shall establish and fund a debt service reserve account sufficient to cover approximately 12 month's debt service or such lesser amount to insure tax exempt status of interest on the bonds if the 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 account must accrue to the benefit of the applicant except to the extent necessary to insure tax exempt status of interest on the bonds if the 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 that the financial assistance is current. Instead of a debt service reserve account the authority shall accept other adequate security or guarantees to ensure repayment of the bonds in accordance with generally accepted commercial lending practices.

Subp. 4. Final Resolution. After the authority passes a preliminary resolution, it may pass a final resolution that authorizes the issuance and sale of bonds to fund the financial assistance to the applicant, as discussed in part 8300.4013, subp. 9. The final resolution for an application under the program depends, in part, upon a determination that there are no adverse changes in the condition of the applicant in accordance with generally accepted commercial lending practices that the authority deems necessary.

Subp. 5. Issuance Of Bonds. Upon passage of the final resolution, the authority shall commence to issue bonds in accordance with market conditions and the other legal conditions that govern the issuance of its bonds. 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 a bond sale. Money will not be disbursed at the

loan closing until it has been determined that there are no adverse changes in the condition of the applicant in accordance with generally accepted commercial lending practices. After the bonds are issued and sold, there will be a loan closing where the money is transferred and documents are signed in accordance with the terms of the final resolution and the respective documents.

8300.4018 ENERGY LOANS FUNDED BY BONDS.

It is reasonable to outline the additional conditions required to issue bonds under this program.

Subpart 1, is an overview of the program that states that the Authority must comply with the rules of the program in order to issue bonds and that the issued bonds may be either taxable or non-taxable.

Subpart 2, pertains to the interest rate of the loan. The rate is reasonable because it is determined by the market rate of interest at the time the bonds are issued.

Subpart 3, the debt service account 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 energy development fund than is warranted in light of statistics available concerning Small Business Administration default rates on business loans.

Subpart 4 and Subpart 5, the mechanism to fund financial assistance through 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.

8300.4019 ENERGY LOANS FUNDED DIRECTLY FROM MONEY IN THE ENERGY DEVELOPMENT ACCOUNT.

Subpart 1. In General. The authority may make energy loans funded directly from money in the energy development account only after it has made the following determinations:

- A. that the qualified energy project achieves the public purposes listed in part 8300.4016, subp. 6;
- B. that no other sources of financing including bonds issued by the authority are available to the project in sufficient quantities or at interest rates which will not render the project economically infeasible.

Subp. 2. Maximum Loan Amount. The principal amount of energy loans made directly with money in the energy development account must not exceed \$500,000.

Subp. 3. Equity Requirements. The maximum loan percentage of authorized project costs is 70 percent for equipment and 80 percent for other authorized costs as listed in part 8300.4016, subp. 2. The authority may accept letters of credit or other credit enhancements as part of the equity contribution by the applicant.

Subp. 4. Interest Rate. The interest rate must not exceed the interest rate for a full-faith-and-credit obligation of the United States Government of comparable maturity, nor be lower than five percent per annum, nor be lower than the percentage rate necessary to establish a debt service coverage ratio of 1.3 to 1, whichever of the latter two conditions is greater.

Subp. 5. Servicing Of Direct Energy Loans. The commissioner shall establish an amortization schedule and shall monitor the scheduled payments. The commissioner shall also monitor the terms and conditions of the loan contract.

Subp. 6. Restructure Of Debt. The commissioner may restructure the energy loan at the request of the applicant or upon his or her own initiative if it is determined that the restructuring will increase the probability that the energy loan will be repaid to the state. If the applicant requests the loan restructure, the commissioner shall charge the applicant a fee in the amount of one-half percent of the outstanding principal balance of the energy loan.

8300.4019 ENERGY LOANS FUNDED DIRECTLY FROM MONEY IN THE ENERGY DEVELOPMENT ACCOUNT

It is reasonable to outline the additional conditions required to fund energy loans directly from money in the energy development fund under this program.

Subpart 1, is an overview of the program that states that eligible loans are energy loans which comply with the Act and the rules of the program as well as be unable to locate any other source of financing which would be economically feasible. This is reasonable as the Act does not intend that energy financial assistance be in competition with financial institutions.

Subpart 2, describes the size of eligible loans. It is reasonable as the maximum limit may change over time.

Subpart 3, provides the equity requirements. It is reasonable for the Authority to require an equity contribution to ensure sufficient collateral in accordance with generally accepted commercial lending practices.

Subpart 4, describes the interest rate. It is necessary to tell readers of the rules what they can expect in terms of interest rates. An interest rate that is equal to a full faith and credit obligation of the United States Government of comparable maturity or never lower than five percent 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 energy development within the state and helps to fulfill the purposes of the Act.

Subpart 5, It is necessary for thr reader to know about the servicing of a loan. It is reasonable for the Commissioner to monitor a loan contract and repayment schedule because of the Commissioner's power under Laws of Minnesota 1984, chapter 289, section 5, subdivision h, to administer a statewide program of the Authority.

Subpart 6, describes the restructuring of debt. It is reasonable for the Commissioner to have the power to restructure a loan to increase the probility that the financial assistance will be repaid to the state. It is also reasonable for the Commissioner to collect a fee if the applicant requests that the loan be restructured because of the staff time involved in the process.

ENERGY LOAN INSURANCE PROGRAM

8300.4020 SCOPE.

Parts 8300.0100 to 8300.0600; and 8300.4019 to 8300.4027 apply to applications for energy financial assistance from the energy loan insurance account made available by the authority under Minnesota Statutes, section 116J.924. Unless otherwise specified, parts 8300.4010 to 8300.4013 do not apply to energy financial assistance provided by the authority under parts 8300.4019 to 8300.4027.

8300.4020 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, for all applicants who apply for financial assistance through this program as operated by the Authority. In addition to the standardized procedures, program-specific rules are referenced so that applicants 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.

8300.4021 DEFINITIONS.

Subpart 1. Statutory Terms. The definitions in Minnesota Statutes, section 116J.88, parts 8300.0100 and 8300.4011 and this part, apply to parts 8300.4019 to 8300.4027.

Subp. 2. Borrower. "Borrower" means a business that submits or has submitted an application for an energy loan to a lender for a qualified energy project.

Subp. 3. Claim. "Claim" means a claim for reimbursement to the authority by a participating lender.

Subp. 4. Default. "Default" means the failure of the borrower to make a scheduled payment of principal and interest within 60 days of the date the payment is due, or, the breach by the borrower for more than 60 days after mailing of written notice of breach to the borrower by the lender of any material covenant in the note, loan agreement, or in any instrument securing the loan, or the determination that an adverse change has occurred in the borrower's ability to repay the insured loan.

Subp. 5. Energy Loan Insurance. "Energy loan insurance" means the direct insuring by the authority of an energy loan made by a lender under Minnesota Statutes, section 116J.924.

Subp. 6. Lender. "Lender" means either a participating lender or a financial institution that intends to submit an application to the authority to be a participating lender. For purposes of parts 8300.4031, lender is not restricted to financial institutions participating in a loans-to-lender program.

Subp. 7. Participating Lender. "Participating lender" means a financial institution that has been designated by the authority to participate in the energy loan insurance program.

Subp. 8. Participating Lender's Agreement. "Participating lender's agreement" means the agreement in the form prescribed by the commissioner under which a financial institution is designated as a participating lender.

8300.4021 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.

8300.4022 APPLICATIONS FOR ENERGY LOANS SUBMITTED TO FINANCIAL INSTITUTIONS.

Subpart 1. Contents Of Energy Loan Applications. To apply for an energy loan under the energy loan insurance program, a borrower shall submit an application for an energy loan to a lender. The application must be completed, dated, and signed by an owner, general partner, or an authorized corporate officer and include the fee as required under part 8300.4012, subpart 1. The application must contain the information required under part 8300.3013.

Subp. 2. Fees. Lenders may require borrowers to pay application fees, origination fees, or commitment fees, only if these fees are normally required of the lender's other customers, and only if these fees do not exceed the usual and customary charges for similar loans to the lender's other customers. Any and all fees must be reported to the commissioner.

8300.4022 APPLICATIONS FOR ENERGY LOANS SUBMITTED TO FINANCIAL INSTITUTIONS.

This section provides an overview of the application procedures in general, some detail about the minimum contents of an application, a description of a required business plan to be included as part of an application, and authorization of borrower application fees payable to the lender. The purpose of this section is to tell applicants and potential applicants what is expected from them in order to complete an application for energy financial assistance and what fees may be required. It is reasonable to inform the reader about the type of information required of all applicants in order to apply to the Authority for energy 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 or technical feasibility or eligibility of the applicant or the project.

8300.4023 SUBMISSION OF APPLICATIONS FOR ENERGY LOAN INSURANCE.

Subpart 1. Contents Of Applications By Lenders. Applications for energy loan insurance must be submitted by a lender to the commissioner on forms prescribed by the commissioner that must include the name of the lender, the name of the borrower, the total project cost, the amount and percentage of the insurance requested, the term of the loan, the interest rate, an amortization schedule, and other terms and conditions of the lender. The application must be completed, dated and signed by a duly authorized officer of the lender. In addition, the following information must be submitted:

- A. a copy of the entire energy loan application submitted by the borrower to the lender;
- B. a certification and supporting documentation that the lender has determined the project to be economically feasible in accordance with generally accepted commercial lending practices;
- C. a signed letter of conditional commitment from the lender to make the energy loan subject to obtaining an energy loan insurance commitment from the authority;
- D. a statement of need from the lender which specifies reasons why the loan will not be made without energy loan insurance;
- E. an appraisal of collateral showing total retail value;
- F. a statement of informed consent signed by an authorized officer of the lender regarding the use and dissemination of the private data as provided in Minnesota Statutes, section 13.05, subdivision 4, paragraph (d);
- G. a participating lender's agreement on a form provided by the commissioner in accordance with part 8300.4023 and signed by an authorized officer of the lender if the lender has not been previously designated a participating lender by the authority;

Subp. 2. Review By Commissioner. Upon receipt of the application for insurance, the commissioner shall review the application in accordance with the procedures set forth in part 8300.3012, except subpart 8, and part 8300.4013.

Subp. 3. Rejection Of Application. If the application is found to be incomplete, or the project is ineligible, technically or economically unfeasible, or is not cost-effective, upon review by the commissioner, the commissioner shall notify both the borrower and lender following the applicable procedures as prescribed in part 8300.3012, subpart 5. If the application is rejected for reasons other than ineligibility, or completeness, the procedures as set forth in 8300.3012, subp. 3, shall be followed. Upon submission of a rejected application by the lender or borrower, the authority shall evaluate the application at its board meeting in accordance with part 8300.4013.

Subp. 4. Authority Evaluation Procedure. The authority shall review and consider approval of all submitted applications on the basis of effectuating the purposes of the act, as set forth in part 8300.4016, subp. 6.

If the authority approves or disapproves of the submitted application, it shall follow the procedures as set forth in part 8300.3012.

Subp. 5. 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.

8300.4023 SUBMISSION OF APPLICATIONS FOR ENERGY LOAN INSURANCE.

This section provides an overview of the application procedures and the minimum application content requirements. The purpose of this section is to inform the lender and potential lenders what is expected from them in order to complete an application for energy financial assistance. It is reasonable to inform the reader about the type of information and documentation required of all lenders in order to apply for energy financial assistance. It is also reasonable to inform the reader 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 discusses the contents of an application for energy financial assistance in order for the application to be forwarded to the authority. Subpart 2 describes the review steps 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 and the standards used for comparative purposes to evaluate an application for economic feasibility. Subpart 3 provides the reader of these rules with procedures and the associated time frame for the handling of incomplete applications or applications which are rejected on the grounds of technical or economic feasibility. Subpart 4 provides the reader 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 5 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 reasonable for the Commissioner to have these powers and duties since he has the power to administer a statewide program for the Authority under Minnesota Statute 116J.10, subdivision h.

8300.4024 PARTICIPATING LENDER.

Subpart 1. Eligibility. In order to be eligible to receive energy loan insurance, a participating lender's agreement provided by the commissioner must be signed by an authorized officer of the lender. The agreement shall set forth the terms and conditions under which an energy loan is to be made and specifies procedures to be followed in the event of default by the borrower. In the event that the lender fails to comply in good faith with the provisions of the agreement and the lender's failure causes substantial harm to the authority, the authority may withdraw its insurance on the affected loans, remove the lender from the program without refunding any fees paid by the lender, or do both. The agreement must require the lender and the authority to conform to the following conditions:

A. The insured portion of any approved loan shall not exceed \$2,500,000 and the maximum term of any loan shall not exceed the average useful life of the improvement or 21 years, whichever is less.

B. The authority shall insure no more than 90 percent of an approved loan.

C. The lender shall make no provision to accelerate loan payments due to default or any other reason, without prior written approval from the commissioner.

D. The lender shall make no provision to subordinate any loan collateral to other liens against such property, without prior written approval from the commissioner.

E. The lender shall not acquire and preferential collateral, surety, or insurance to protect its uninsured interest in a loan.

F. Collateral must be obtained for the full amount of the loan and must be prorated between the lender and the authority.

G. The lender shall require the borrower to adequately insure, maintain, and repair all collateral.

H. The authority shall not be liable for delinquency charges or late fees, assessed against the borrower by the lender.

I. The lender shall review and approve qualified energy projects in accordance with generally accepted commercial lending practices.

J. The lender shall be responsible for servicing all loans it makes for qualified energy projects either directly or by contracting with a servicing agent.

K. The lender shall not sell or transfer any loan insured by the authority without prior approval from the commissioner.

L. The lender, for the term of the insured loan shall promptly notify the commissioner of any loan payments that are overdue. In addition, the lender must submit an annual loan performance report to the commissioner on a form provided by the commissioner.

M. The aggregate principal amount of loans insured by the authority may not at any time exceed ten times the amount of current reserves in the insurance account.

N. The authority shall not insure any loan that either carries an interest rate in excess of three points above the lender's prime rate or base rate for variable rate loans or more than three points above the interest rate of a full-faith-and-credit obligation of the United States government with a comparable maturity for a fixed rate loan.

O. The lender agrees not to make any amendments to the loan agreement after loan closing without the prior written approval of the authority.

P. The lender agrees to make no waivers of default without prior written approval from the authority.

Q. The authority shall not insure energy loans made by the lender prior to the execution of the Participating Lender's Agreement, and the lender shall not disburse funds for an insured loan under this program without prior approval from the authority.

Subp. 2. Designation Of Participating Lender. To designate a lender as a participating lender, the authority must pass a resolution designating the lender as a participating lender and authorizing the commissioner on behalf of the authority to execute the agreement which has been signed by an authorized officer of the lender.

8300.4024 PARTICIPATING LENDER.

This section provides the reader with a detailed description of the loan agreement conditions and the eligibility requirements to become a participating lender. The purpose of this section is to tell applicants and potential applicants what is expected from them in order to become an approved participating lender by the Authority. It is reasonable for the

Authority to require a participating lender to conform to certain conditions in order to protect its interests in the financial assistance.

Subpart 1 describes the eligibility requirements and the terms and conditions to be included in the loan agreement.

Subpart 2 provides the reader with the procedures concerning the designation of a financial institution as a participating lender by the Authority.

8300.4025 PROCEDURES UPON DEFAULT.

The authority and lender shall follow the following procedures in the event of a loan default by the borrower:

A. The lender shall file with the commissioner, on forms provided by the commissioner, all claims for occurred losses within one year of the date of default.

B. The authority is liable for not more than the agreed percentage of the sum of the unpaid principal and the accrued interest to the date the claim is filed.

C. In the event of default and claims by the lender arising from such default, the lender shall pursue in good faith all legal rights it may have against the borrower.

D. The authority may cure a default by making payment due to the lender within 30 days of the date of the default. Any payments made by the authority must be repaid by the borrower or deducted from any claims submitted by the lender in connection with a default by the borrower for whom the payment was made by the authority.

E. If the borrower or the authority does not cure the default within 60 days, then the loan must be accelerated.

F. Upon nonpayment of the accelerated loan, the lender may file a claim with the authority. The collateral must then be liquidated by the lender.

G. The authority shall receive a prorated share of all liquidation proceeds. Upon receipt, the authority shall pay the claim of the lender.

8300.4025 PROCEDURES UPON DEFAULT.

It is reasonable to inform the reader, participating lender or potential participating lender of the procedures in the event of a loan default by the borrower. It is necessary for a participating lender to know of the default procedures so it may make prudent lending decisions affecting loan repayment, collateral requirements and equity requirements in accordance with generally accepted commercial lending practices and in full knowledge of the program specific default procedures. The purpose of this section is to tell the reader what is expected from them and the authority in the event of a default by a borrower.

8300.4026 APPLICATION AND CLAIM FORMS.

The commissioner must prepare application and claim forms for use by the lender and for the administration of the energy loan insurance program.

8300.4026 APPLICATION AND CLAIM FORMS.

This section provides the Commissioner the authority and responsibility to prepare or cause to be prepared all necessary documents for use by the participating lender or potential participating lender. This is necessary in order to provide standard documents for presentation and or review by the Authority or the Commissioner. It is reasonable for the Commissioner to have these powers and duties since he has the power to administer a statewide program for the Authority under Minnesota Statute 116J.10, subdivision h.

8300.4027 PRIOR COMMITMENT.

The authority may resolve to insure a loan prior to its execution or disbursement, if there is a firm commitment by the lender to make the loan upon the authority's resolution to insure the loan. If the lender fails to enter into a loan agreement with the borrower within 90 days of the authority's resolution, the authority may reaffirm the resolution for an additional 90 day period if there has not been an adverse change in the application or lender.

8300.4027 PRIOR COMMITMENT.

This section provides the reader with an understanding of when the authority may approve a resolution to insure a loan. It is necessary for the participating lender to be aware of that loan insurance may be approved prior to disbursement or execution of loan documents and under what conditions the approval may be made by the Authority. It is also necessary for the participating lender to be informed of the time limits under which a loan agreement must be entered into with the borrower in order to retain the loan insurance as approved by the Authority.

8300.4028 REPORTS.

During the term of the insured loan, the borrower shall make written reports to the commissioner on forms approved by the commissioner regarding the acquisition, construction, installation and operation of the qualified energy project on a schedule determined by the commissioner, but not less than annually.

The lender shall report to the commissioner any fees charged to the borrower for the energy loans within 30 days of the date on which the energy loan was closed.

8300.4028 REPORTS.

This section provides the reader with reporting requirements of the participating lender after loan insurance has been approved by the Authority. It is necessary for the Commissioner to be informed of the disbursement, project completion status, and financial status of the borrower in order to protect the interests of the Authority. It is reasonable for the Commissioner to monitor the status of a loan because of the Commissioner's power under the Laws of Minnesota 1984, chapter 289, section 5, subdivision h, to administer a statewide program of the Authority.