

STATE OF MINNESOTA
DEPARTMENT OF TRADE AND ECONOMIC DEVELOPMENT

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

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

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

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

II. STATEMENT OF COMMISSIONER'S STATUTORY AUTHORITY

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

116J.035 DUTIES AND POWERS OF COMMISSIONER; RULES

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

III. STATEMENT OF NEED

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

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

IV. STATEMENT OF REASONABLENESS

A. Reasonableness of the Rules as a Whole

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

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

B. Reasonableness of Individual Rules

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

Part 4308.0010 Purpose of the Tourism Loan Program

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

Part 4308.0020 Definitions

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

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

Part 4308.0030 Eligibility of Project for Tourism Loans

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

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

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

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

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

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

Part 4308.0040 Eligible Costs for Tourism Loans

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

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

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

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

Part 4308.0050 Interest Rate for Tourism Loans

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

Part 4308.0060 Term of Loan for Tourism Loans

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

Part 4308.0070 Security Requirements for Tourism Loans

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

Part 4308.0080 Application Process for Tourism Loans

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

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

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

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

Part 4308.0090 Procedure for Tourism Loan Evaluation and Approval

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

information needed to complete the application process.

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

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

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

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

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

Part 4308.0100 Loan Servicing

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

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

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

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

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

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

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

Part 4308.0110 Amortization Schedules

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

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

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

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

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

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

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

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

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

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

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

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

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

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

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

VI. AGRICULTURAL IMPACT.

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

