

Example of rules

STATE OF MINNESOTA
OFFICE OF WASTE MANAGEMENT

In the Matter of the Proposed Rules
Governing the Recyclable Material
Market Development Grant and Loan
Programs, Minn. Rules, Parts 9210.0600
to 9210.0645

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

This Statement of Need and Reasonableness discusses proposed new rules governing a recyclable material market development grant and loan program. The Minnesota legislature established this program to encourage and facilitate the development of markets for recyclable materials. Minn. Stat. §115A.48, subd. 5 (2nd 1989 Supp.). The program is to be administered by the Minnesota Office of Waste Management (Office). Id.

The proposed rules establish procedures for the orderly administration of the grant and loan program. Specifically, the proposed rules identify projects and costs that may be funded through the program; establish application procedures and timetables; establish criteria for the review of projects and for the award of grants and loans; set limits on the amount of funds that can be awarded; and specify the content of grant and loan agreements.

The proposed rules are intended to fulfill the statutory directives of Minn. Stat. §115A.48, subd. 5 (2nd 1989 Supp.), and to further state environmental goals for solid waste management practices.

II. STATEMENT OF OFFICE'S STATUTORY AUTHORITY

The Office's statutory authority to adopt the rules is set forth in Minn. Stat.

§115A.48, subd. 5 (d), which provides:

(d) The office shall adopt rules for the [recyclable material market development] program.

Under this statute the Office has the necessary authority to adopt the proposed rules.

III. STATEMENT OF NEED

Minn. Stat. ch. 14 (1988) requires the Office to make an affirmative presentation of facts establishing the need for and reasonableness of the rules as proposed. In general terms, this means that the Office must set forth the reasons for its proposal, and the reasons must not be arbitrary and capricious. However, to the extent that need and reasonableness are separate, need has come to mean that a problem exists that requires administrative attention, and reasonableness means that the solution proposed by the Office is appropriate. The need for the proposed rules is discussed below.

The proposed rules are needed to make specific and clarify the eligibility criteria and procedural conditions under which the Office will award grants and loans pursuant to Minnesota Statutes §115A.48, subd. 5 (a). That section provides:

The office shall make grants and loans and shall provide technical assistance to persons for research and development or for the acquisition and betterment of projects that develop markets or end uses for recyclable materials. At least 50 percent of all funds appropriated under 1989 1st Special Session, Chapter 1, article 24 for market development efforts must be used to support county market development efforts. Grants to counties for market development must be made available to those counties that achieve significant land disposal abatement through use of source separation of recyclable materials.

As the Office interprets this statutory subdivision, there are three separate activities that may receive assistance from this grant and loan program:

1. research and development;
2. the acquisition and betterment of projects that develop markets or end uses; and
3. market development activities in counties that achieve significant land disposal abatement through source separation.

For each of these three activities, proposed rules are needed to clarify both the types of projects and the costs that qualify for state financial assistance.

The statute also specifies that at least 50 percent of the funds originally appropriated for the program be used to support county market development efforts. Proposed rules are needed to clarify the ways in which grants and loans will be awarded to support county market development efforts.

IV. STATEMENT OF REASONABLENESS

Minn. Stat. ch. 14 (1988) requires the Office to make an affirmative presentation of facts establishing the reasonableness of the proposed rules. Reasonableness is the opposite of arbitrariness or capriciousness. It means that there is a rational basis for the Office's proposed action. The reasonableness of the proposed rules is discussed below.

A. Reasonableness of the Rules as a Whole

Market development for recyclable materials can include a wide range of activities and participants. For example, a unit of government can improve the supply of recyclable materials by upgrading the quality of the materials and by cooperatively marketing the materials. Or, a unit of government can improve the demand for recyclable materials by purchasing recycled products. Or, a private company can improve the demand for recyclable materials by substituting recyclable materials for virgin materials in a manufacturing process. Or, a research institution can improve the demand for recyclable materials by developing manufacturing processes that utilize recyclable materials to produce other products.

Given this range of activities and participants, the Office believes that it can best promote state market development goals by managing this program in the following parts:

1. County Grant Program;
2. Capital Grant and Loan Program; and
3. Directed Research and Feasibility Study Grant Program.

There are no disadvantages to managing the program in these parts since, together, the parts reach essentially all facets of the recycling industry. Moreover, managing the program in these parts has a number of advantages. First, it encourages a variety of important segments of the recycling industry to engage in market development activities. Second, it addresses both the supply of and demand for recyclable materials. Third, it allows the Office to tailor program requirements, such as eligible applicants, in

a manner that best suits the type of activities to be promoted by the program.¹ Fourth, it is both administratively simpler and more equitable for the Office to evaluate against each other funding applications of similar type. If the program were not divided into parts, applicants serving different functions would compete against each other for limited grant and loan funds. In sum, the Office's decision to manage the program in three parts is reasonable because it promotes efficiency in managing the program, is fair, and implements the statutory mandate.

B. Reasonableness of Individual Rules

Part 9210.0600 DEFINITIONS

This part provides definitions necessary for the rule. Several of the terms defined in this part require definitions for clarity and consistency. Those terms are Director (Subpart 2); Office (Subpart 4); Project (Subpart 7); Recipient (Subpart 8); and Solid Waste (Subpart 12). The other terms defined in this part are substantive and have special significance as used. The reasonableness of the definitions of these terms is discussed below.

Subpart 3 defines highest end use. This term is used in the rules as part of the criteria for evaluating proposals. A project that involves the recycling of a recyclable material into its highest end use would be favored over a project that did not recycle a

¹ For instance, a governmental unit is not going to develop or acquire manufacturing capacity to utilize recyclable materials and should not be required to compete for grant funds with private applicants who will seek to develop such capacity.

material into its highest end use. The statute does not establish a definition for end use, but this concept is important to recycling because it promotes long-term reduction in solid waste generation. The definition established in the rules is reasonable because it articulates a simple standard commonly accepted in the recycling industry.

Subpart 5 defines post-consumer material. This term is used in the rules as part of the criteria for evaluating proposals. A project that uses post-consumer waste would be favored over one that did not use post-consumer waste. The statute does not establish a definition for post-consumer material, but this concept is important to recycling because it describes a subset of recyclable materials that are more difficult to recycle than pre-consumer material. The definition established in the rules is reasonable because it articulates a simple standard commonly accepted within the recycling community.

Subpart 6 defines pre-consumer material. This term is used in the rules as part of the criteria for evaluating proposals. A project that uses pre-consumer waste would not be favored over one that uses post-consumer waste. The statute does not establish a definition for pre-consumer material, but this concept is important to recycling because it describes a subset of recyclable materials that are readily recycled by industry and do not contribute significantly to the amount of solid waste that currently requires land disposal. The definition established in the rules is reasonable because it articulates a simple standard commonly accepted within the recycling community.

Subpart 9 defines recyclable materials. This term is used in the rules to provide a broad definition of those materials for which grants or loans may be obtained. The

definition established in the rules is reasonable because it articulates a simple standard that includes all materials that demonstrate potential to be recycled.

Subpart 10 defines recycled products. This term is used in the rules to describe products that are produced using recyclable materials as a source material. The definition established in the rules is reasonable because it articulates a simple standard that includes all materials that could be produced using recyclable materials.

Subpart 11 defines research institutions. This term is used in the rules to describe a subset of eligible applicants that may receive a different level of funding than other eligible applicants in the Directed Research and Feasibility Study Grant Program. The statute does not establish a definition for research institution, but this concept is important to recycling because it describes a group that is well-suited to implement projects that would be eligible for assistance under the Directed Research and Feasibility Study Grant Program. The definition established in the rules is reasonable because it articulates a simple standard that is consistent with common usage of the term.

Part 9210.0610 PURPOSE

This part of the rules describes both the short and long-term objectives of the program. This statement of objectives is intended to clarify the purpose of the grant and loan program. This clarification accurately describes the goals of the state's market development grant and loan program, is consistent with statutory directives and is therefore reasonable.

Part 9210.0620 APPLICATION PROCEDURES

Part 9210.0620 is intended to provide potential applicants with a clear and concise presentation of the application process for this program. To this end, part 9210.0620 is divided into six subparts that, together, establish the procedures for obtaining a grant or loan for recyclable material market development projects. These procedures create a Request for Proposal (RFP) process, a common process for providing financial assistance. Use of the RFP process is reasonable in that it allows the Office to adjust the grant and loan program to the availability of state funds as they are appropriated by the legislature.

The RFP process is created in subpart 1, which states that funding rounds are initiated by the Director through publication of a notice in the STATE REGISTER. This notice will contain basic information of interest to persons who may wish to apply for a recyclable material market development grant or loan: (1) availability of grants and loans; (2) procedures for awarding grants and loans; and (3) deadline for submitting a proposal. Use of the STATE REGISTER to provide notice of the funding program is reasonable because the program is statewide and because the STATE REGISTER is the official publication for state notices.

Subpart 1 also states that the Director may use the STATE REGISTER notice to limit the types of projects that will be accepted during a funding round and to specify a maximum amount of funding available for each project. By limiting a funding round to specific types of projects, the Office will be able to react more effectively to changing market conditions and advancing technology. Accordingly, the Office will be able to

encourage development in markets of particular need at any given time. Further, by specifying the maximum amount of funding available, the Office will be able to adjust the grant and loan program to reflect changes in the availability of state funds. The ability to make these adjustments is reasonable in that it will allow the Office to manage the grant and loan program to suit, as best as possible, the recycling needs of the state within fiscal constraints. Moreover, by providing notice of these adjustments in the STATE REGISTER, potential applicants are fully apprised of the availability of funds for needed projects.

Subparts 2 through 5 identify the procedures the Director will use in evaluating applications. These procedures ensure that applications will receive equal and fair treatment. Further, they provide administrative certainty to the application process. Thus, the proposed procedures are reasonable. (Note: the criteria for evaluating applications are established later in the rules and are discussed later in this Statement of Need and Reasonableness.)

Subpart 6 provides that the Director will award grants and loans to those projects that the Director determines will be the most beneficial in facilitating the development of markets for recyclable material and recycled products. In making this determination, the Director will select those proposals that best satisfy the criteria set out for each of the three programs proposed in these rules. Because each criterion establishes a preference based on only a specific element or elements of a proposed project, the Director will balance those preferences to identify those projects that satisfy the criteria as a whole. This subpart also allows applicants that do not receive an

award to resubmit their proposals in response to a future notice from the Director, published in the STATE REGISTER. This is reasonable because, although a proposed project may be worthy, proposals will be selected for awards based on which projects best satisfy the evaluation criteria and, therefore, it may be surpassed by better proposals.

Subpart 7 specifies that the Director may decline awards to any or all of the applicants if the Director determines that the proposals would not provide sufficient assistance to the state in achieving its market development goals. The Office believes this subpart provides a safeguard to ensure that program funds are disbursed to satisfy the objectives of the program.

Subpart 8 provides that the Director shall solicit and consider the recommendations provided by the Market Development Coordinating Council established in Minn. Stat. §115A.12, subd. 11. The Office believes that use of this advisory council is consistent with statutory directives and will promote consistent and comprehensive evaluation of grant and loan applications.

Part 9210.0625 LIMITATIONS

This part sets out the limitations of the program. The rationale for each limitation is provided below.

Subpart 1 sets out the conditions under which the Director may award a grant or loan for less than the eligible amount requested by an applicant or less than the maximum award established in the notice under Part 9210.0620, subpart 1. Two

conditions are set out: (1) insufficient state resources to provide full assistance to all proposed grantees and (2) ability of an applicant to operate the project at a lesser award. These conditions are reasonable in that they allow projects to go forward while at the same time preserving limited state financial resources.

Subpart 2 provides that the Director will not disburse grant or loan funds until the Director has determined the total estimated cost of a project, ascertained that financing of the project is assured by the recipient, and received commitments from the recipient to implement the project. The Office believes this limitation will ensure that program funds will be used immediately and will prevent the funding of a project that may not be implemented because a recipient could not secure funding for project costs not financed through this program. This will ensure that the benefits to be obtained from the project through the use of government funds will be realized as quickly as possible.

Part 9210.0630 GRANT AGREEMENT

This part sets out the basic terms of the agreement that a grant or loan recipient will need to sign to receive funding from the Office. Identifying these terms by rule is reasonable because it provides advance notice to potential grant or loan applicants of the conditions of a grant or loan award. The rationale for each condition specified by the rules is provided below.

Item A states that the grant or loan proposal submitted to the Director under 9210.0620, subpart 2 will be incorporated into the grant or loan agreement. This

incorporation contractually obligates a recipient to develop and implement the project described in the proposal and thereby establishes criteria against which the Director may evaluate progress of the grantee.

Item B specifies that the grant or loan agreement will state that no further program funding will be available for cost overruns. This safeguard is necessary to ensure effective administration of the program given limited state funds.

Item C specifies that a recipient must provide written reports to the Director. Written reports will allow the Director to assess the performance of a recipient and, where applicable, transfer knowledge and experience gained from a project to other members of the recycling community. Thus, this requirement is reasonable because it will assist the Director in attaining state market development goals.

Item D provides that the Director specify the interest rate and repayment obligations for a loan recipient. This provision will assist a recipient in planning for the repayment of a loan, and will assist the Director in future administration of the program.

Item E provides that the Director may rescind a grant and require a recipient to repay the grant in full if the Director determines that, due to the bad faith of the recipient, a project has not been developed and implemented in accordance with the terms and conditions of the grant agreement. By ensuring that funded projects are implemented properly, this provision will assist the Director in administering the grant program and preserving state funds. Item F establishes a parallel provision for the loan program and is reasonable for the same reasons as Item E.

Item G provides that the Director may cease making further disbursements of grant or loan funds and may recover unspent funds that have been disbursed if the Director determines that, for reasons other than bad faith, a project has not been developed and implemented in accordance with the terms and conditions of the grant or loan agreement and amendment to the agreement is not justified. This provision is a companion to Item E, which addresses repayment of a grant where there has been bad faith. Like Item E, Item G will assist the Director in administering the grant program and preserving state funds by assuring that funded projects are implemented properly. Unlike Item E, however, Item G does not require repayment where the failure of the project is due to causes other than bad faith. The Office believes that it is reasonable to establish different financial repercussions for project failures due to bad faith and those due to other causes that do not reflect on the intentions of the applicant.

Item H states that the grant or loan agreement must require a recipient to perform and complete project activities in accordance with the work schedule in the proposal submitted to the Director and incorporated into the grant or loan agreement. This provision will ensure that a recipient implements a project in timely manner upon receipt of a grant or loan award. Thus, this provision will assure that the state obtains the benefits hoped to be achieved by the grant or loan.

Item I provides that a recipient must maintain detailed records of all expenditures related to the grant or loan agreement. This provision will ensure that program resources received by a recipient are used to finance only project costs. Accordingly, this provision is reasonable because it secures the proper use of state funds.

Item J provides that the Director and a recipient establish other conditions or terms needed to implement the grant or loan agreement. This provision is intended to make clear that the grant or loan agreement will also contain other conditions needed to ensure orderly administration of the grant or loan.

Part 9210.0635 COUNTY GRANT PROGRAM

This part applies only to the County Grant Program. It is divided into seven subparts which, together, establish the substantive conditions and criteria under which the Office will provide grants directly to counties for specific market development projects. These seven subparts are: (1) scope; (2) eligible applicants; (3) eligible projects; (4) eligible costs; (5) maximum grant; (6) proposal; and (7) evaluation of proposals. The first subpart (scope) is self-evident and requires no further explanation. Subparts 2 through 7 are discussed below.

Subpart 2 identifies eligible applicants as each county that has submitted a plan under Minn. Stat. §115A.551, subdivision 6 (2nd 1989 Supp.), as an amendment to its approved comprehensive solid waste management plan or solid waste master plan. Counties are required by Minn. Stat. §115A.551, subd. 6, to develop a plan for implementing recycling efforts and mechanisms for providing financial incentives to solid waste generators for waste reduction and source separation. This requirement follows from the legislative position that government solid waste management efforts will benefit from thoughtful planning of programs to address present and future waste needs of the community. The Office believes it is reasonable to incorporate this

legislative position into the grant and loan program in order to assure consistency with community recycling plans.

Subpart 2 also allows a county to apply for assistance on behalf of another person. This is consistent with other Office grant programs. See, e.g., Minn. Rules Part 9210.0420, subpart 1. Further, it is reasonable because it allows each county to pursue activities and involve persons in ways that best satisfy the county's individual market development needs.

Subpart 3 identifies projects that are eligible for assistance under the County Grant Program. This definition is intended to be quite broad in order to encourage potential applicants to develop a diverse range of market development projects. The Office believes such a broad definition encourages the creative development of recycling markets and therefore is reasonable.

Subpart 4 identifies costs that are eligible for assistance under the County Grant Program. Specifically, subpart 4 states that eligible costs are limited to 25 percent of the capital costs of the project and 75 percent of other project costs. The 25 percent limitation on capital costs was established by the legislature in Minn. Stat. §115A.48, subd. 5 (c) (2nd 1989 Supp.). While that statute does not establish a specific limit on the amount of assistance that can be provided for noncapital costs, it is the experience of the Office that requiring funding recipients to share in the cost of a project serves as a benchmark for determining the seriousness of the applicant and the potential success of the project. The Office believes that a state funding level of 75 percent of the noncapital costs of a project is reasonable in that it both assures sufficient state funds to

provide meaningful financial assistance to counties and establishes a financial incentive for the recipient to successfully complete the project.

Subpart 5 specifies the maximum grant. Specifically, subpart 5 states that the maximum grant award is \$100,000 unless the notice provided by the Director under part 9210.0620, subpart 1 establishes a lesser maximum grant. Establishing a grant ceiling for all projects is necessary to effectively administer program resources. The Office believes that a \$100,000 maximum is a reasonable level of financial assistance for the types of projects that counties (as compared to private organizations) are likely to develop under this program.

Subpart 6 describes the information that an applicant must include in a proposal under this program. This is the minimum amount of information needed to ensure that the Director can make an informed evaluation of the proposals under subpart 7. The rationale for each specific category of information is provided below.

Subpart 6 (A) requires the names, qualifications, and addresses of an applicant and other project participants, including other counties. This information is needed so that the Director may contact each applicant, assess the ability of project participants to operate a project, and may assess the potential for other counties to participate in a proposed project.

Subpart 6 (B) requires a description of a proposed project, including specified information. This information is needed and reasonable to allow the Director to determine, among other things, the eligibility of a proposed project; the feasibility of a proposed project; the applicant's ability and intention to implement the project in a

timely manner; the consistency of the proposed project with state market development priorities; and the extent to which the proposed project will benefit the market development efforts of more than one county. Each of these factors will be considered by the Director in deciding which projects to fund. (See discussion regarding subpart 7, below.)

Subpart 6 (C) requires information demonstrating that a proposed project will comply with applicable regulations, including a list of permits required for a project. This information is needed and reasonable because it allows the Director to assess whether a proposed project will conform with applicable legal requirements.

Subpart 6 (D) requires an itemized description of project costs. This information is needed to determine whether estimated costs realistically match the scope of a proposed project and whether the eligible costs identified by an applicant are within the range of eligible costs described in subpart 3 of this part.

Subpart 6 (E) requires an itemized description of project financing. This information is needed to determine whether an applicant has secured financing for all project costs that would not be paid for with grant funds.

Subpart 6 (F) requires information demonstrating, where applicable, the technical feasibility of a proposed project, including preliminary design and engineering costs. This Office anticipates that, for the most part, counties are unlikely to submit proposals involving engineering concerns unless they are applying on behalf of another person. In any event, this requirement will assure that only projects that are technically feasible will receive state funding.

Subpart 6 (G) requires information demonstrating, where applicable, how the county will secure the supply of and demand for recyclable materials and recycled products. This information, like that required by subpart 6 (F), is reasonable in that it will allow the Director to eliminate projects that are not technically feasible because they are not assured an adequate supply of or demand for materials needed to sustain the project.

Subpart 6 (H) also requires that each county participating in the project adopt a resolution demonstrating its commitment to the project. This requirement is a reasonable means of assuring that the county intends to go forward with the project if it is awarded state funds.

Subpart 6 also provides that the Director may request additional information from an applicant if the Director determines that additional information is necessary to clarify and evaluate a proposal. This is reasonable because it allows the Director to obtain sufficient information to fully review and evaluate proposals using the criteria established in subpart 7.

Subpart 7 specifies the criteria that the Director will use to evaluate proposals. The rationale for each criterion is set out below.

Subpart 7 (A) requires the Director to determine that a proposed project is technically and economically feasible. This criterion is reasonable because it assures that state funds will only be used on projects having a high likelihood of success.

Subpart 7 (B) requires the Director to determine whether an applicant has the ability and intention to implement a proposed project upon the receipt of a grant

award. This criterion is reasonable in that it assures that the state will benefit, as soon as possible, from a project receiving state funding. Further, the criterion is reasonable because it favors projects that are further along in planning efforts. As discussed earlier, the state encourages comprehensive solid waste management planning, including recycling planning. See Minn. Stat., section 115A.42.

Subpart 7 (C) requires the Director to determine that a proposed project will comply with federal, state, and local regulations. This criterion is reasonable because it assures a coordinated, consistent governmental effort to address legal issues raised by market development activities.

Subpart 7 (D) requires the Director to determine the extent to which a proposed project is consistent with state market development priorities. These priorities may change with developments in technology and changes in the waste management needs of communities and the state as a whole. Using these priorities as a funding criterion will allow the Office to direct state funds to projects that best satisfy the current waste management needs of the state at any given time.

Subpart 7 (E) requires the Director to determine the extent to which a proposed project would benefit the market development efforts of more than one county. The Office believes that projects that address the needs of more than one county will provide greater benefit to the state as a whole. Consequently, it is reasonable to establish a criterion that favors proposed projects benefiting more than one county.

Subpart 7 (F) requires the Director to determine the extent to which an applicant has achieved significant land disposal abatement through source separation of recyclable

materials. This criterion was established by the legislature in Minn. Stat. §115A.48, subdivision 5 (a), and is reasonable because it favors counties that have made serious efforts to establish successful recycling programs.

Subpart 7 (G) requires the Director to determine the extent to which a proposed project represents the highest end use for each recyclable material. The term "highest end use" is defined in part 9210.0610 and refers to the remanufacture or transformation of a recyclable material into a product most similar to the product from which the recyclable material was derived. From a waste management standpoint, it is better to recycle a product into its highest end use rather than into some other product. The recycling of a material into its highest end use allows for a recycling circle to be established in which parts of a product are constantly returned to the manufacturing process to recreate a new product once the old one has become waste. As a result of this circle, at least some parts of the product do not become part of the waste stream. For this reason, it is reasonable for the Office to favor projects involving highest end use.

Subpart 7 (H) requires the Director to determine the extent to which a proposed project would use post-consumer material. This criterion favors proposed projects that use the maximum possible amount of post-consumer material and is consistent with the short-term objective of the program to maximize land disposal abatement.

Subpart 7 (I) requires the Director to determine the extent to which a proposed project would provide information transferable to other persons throughout the state. This criterion favors proposed projects that would address common obstacles to market

development activities and that would represent new strategies for facilitating market development. It is reasonable to establish this criterion because it will provide the most benefit to the state.

Part 9210.0640 CAPITAL GRANT AND LOAN PROGRAM²

This part applies only to projects that are proposed by private organizations and involve capital expenditures. This part is divided into eight subparts that, together, establish the substantive conditions and criteria under which the Office will provide financial assistance to private organizations for market development projects involving capital expenditures. These seven subparts are: (1) scope; (2) eligible applicants; (3) eligible projects; (4) eligible costs; (5) maximum grant; (6) maximum loan; (7) proposal; and (8) evaluation of proposals. The first subpart (scope) is self-evident and requires no further explanation. Subparts 2 through 8 are discussed below.

Subpart 2 identifies eligible applicants as private organizations, both profit and nonprofit. This limitation is reasonable because private organizations are best suited, in terms of resources and expertise, to undertake capital projects that create or expand manufacturing capacity to use recyclable materials.

² By these rules, the Office has established a loan program for capital expenditures of the private sector only. No parallel program exists for loans for county programs because of financial considerations. No parallel loan program exists for feasibility studies since the Office perceives feasibility studies to be "seed" money that will hopefully generate new ideas, but may not result in immediate revenue-generating markets able to repay the loan.

Subpart 3 identifies projects that are eligible for assistance under the capital grant and loan program. This definition is intended to be quite broad in order to encourage potential applicants to develop a diverse range of market development projects. The Office believes such a broad definition encourages the creative development of recycling markets and therefore is reasonable.

Subpart 4 identifies costs that are eligible for assistance under the capital grant and loan program. Specifically, subpart 4 states that eligible costs are limited to the capital costs of the project. Subpart 5 states that a project may receive a grant for up to 25 percent of the total eligible capital costs, or \$500,000, whichever is less. These two subparts reflect the legislature's decision to limit the state's funding of capital costs to 25 percent of the total eligible costs of a project. Further, these subparts are reasonable because they establish a significant maximum funding level for that portion of private sector projects (i.e., capital expenditures) that is likely to be costly and that, once paid, will allow the project to proceed without the need for further governmental funding.

Subpart 6 is a companion to subpart 5 and establishes the maximum loan amount that may be awarded to applicants under the program. Specifically, subpart 6 incorporates the legislature's decision, set forth in Minn. Stat. §115A.48, subd. 5 (b), to limit loan assistance to up to 50 percent of the total eligible capital costs of a project, or \$2,000,000, whichever is less. As with grant awards, the Director may specify in the notice issued under Part 9210.0620, subpart 1 a maximum loan award that is less than this statutory ceiling. The Office believes this is reasonable because it will allow the

Office to effectively administer the program under conditions in which limited funding is available.

Subpart 7 describes the information that an applicant must include in a proposal under this program. This is the minimum amount of information needed to ensure that the Director can make an informed evaluation of the proposals under subpart 8. The rationale for each specific category of information is provided below.

Subparts 7 (A) through (C) and (E) require essentially the same information as required for proposals in the county grant program. It is reasonable to require this information for the capital grant and loan program for the same reasons it is reasonable to require it for the county grant program.

Subpart 7 (D) requires a financial report for a proposed project, including a five-year business plan, an itemized description of project costs and financing, a credit history of the organization, and financial statements for the last three years. This information is needed and reasonable in that it allows the Director to determine whether a project is economically viable and to assess the financial capacity of an applicant to implement a project.

Subpart 7 (F) requires a market analysis for a proposed project, including information demonstrating that an applicant has secured the supply of and demand for recyclable materials and recycled products. This subpart is parallel to subpart 6 (G) of the county grant program and is reasonable for the same reasons as the county requirement. Further, it is reasonable to require the private sector to conduct a market

analysis as a condition to receiving capital assistance grants since that analysis will provide information on which the potential success of a project may be determined.

Subpart 7 also provides that the Director may request additional information from an applicant if the Director determines that additional information is necessary to clarify and evaluate a proposal. This is reasonable because it allows the Director to obtain sufficient information to fully review and evaluate proposals using the criteria established in subpart 8.

Subpart 8 establishes six criteria that the Director will use in determining which projects should be awarded state funds. These criteria are essentially the same as the criteria established in the county grant program. (The county grant program also includes three other criteria not applicable to the private sector.) These criteria are needed and reasonable for the same reasons as they are needed and reasonable in the county grant program. (See discussion, above, regarding subpart 7 of the county grant program.)

Part 9210.0645 DIRECTED RESEARCH AND FEASIBILITY STUDY GRANT PROGRAM

This part applies only to feasibility studies proposed by private organizations or research institutions. This part is divided into seven subparts that, together, establish the substantive conditions and criteria under which the Office will provide financial assistance to research institutions and private organizations for market development projects involving directed research and feasibility studies. These seven subparts are: (1) scope; (2) eligible applicants; (3) eligible projects; (4) eligible costs; (5) maximum

grant; (6) proposal; and (7) evaluation of proposals. The first subpart (scope) is self-evident and requires no further explanation. Subparts 2 through 8 are discussed below.

Subpart 2 identifies eligible applicants as research institutions and private organizations. This limitation is reasonable because research institutions and private organizations are well suited, in terms of resources and expertise, to undertake directed research and feasibility study projects that support market development for recyclable materials.

Subpart 3 identifies eligible projects as: the development of performance data on recycled products that are or could be manufactured in Minnesota; feasibility studies for the development of manufacturing capacity to use recyclable materials from Minnesota as a feedstock; and directed research on products that could be manufactured using recyclable materials from Minnesota as a feedstock or on manufacturing processes that could use recyclable materials from Minnesota as a feedstock. These projects describe studies that will provide information needed for the development of markets for recycled materials. Thus, the Office believes this categorization of eligible products is reasonable.

Subpart 4 identifies eligible costs. Eligible costs for research institutions are 100 percent of the project costs; eligible costs for private organizations are 50 percent of the project costs. The Office believes this funding allocation is reasonable because it encourages organizations to conduct feasibility studies, while reflecting the different financial needs and profit interests of potential grant applicants.

Subpart 5 specifies the maximum grant award, which is \$100,000 unless the notice provided by the Director under part 9210.0620, subpart 1 establishes a lesser amount. Establishing a grant ceiling for all projects is necessary to effectively administer program resources. The Office believes that a \$100,000 maximum is a reasonable level of financial assistance to complete research or feasibility studies likely to be proposed under this program.

Subpart 6 describes the information that an applicant must include in a proposal under this program. This is the minimum amount of information needed to ensure that the Director can make an informed evaluation of the proposals under subpart 7. The rationale for each specific category of information is provided below.

Subparts 6 (A) through (E) require essentially the same information as required for proposals in the county grant program and the capital grant and loan program. It is reasonable to require this information for the research and feasibility study program for the same reasons it is reasonable to require it for the other two programs.

Subpart 6 (B) (4) also requires a description or identification of persons that may benefit from the project and subpart 6 (C) requires information on the projected economic viability of the project. Both of these requirements are reasonable because they provide additional information that will allow the Director to determine whether the study is likely to result in information that will promote the development of recycling markets in the state.

Subpart 6 also provides that the Director may request additional information from an applicant if the Director determines that additional information is necessary to

clarify and evaluate a proposal. This is reasonable because it allows the Director to obtain sufficient information to fully review and evaluate proposals using the criteria established in subpart 7.

Subpart 7 establishes seven criteria that the Director will use in determining which projects should be awarded state funds. Six of these criteria are essentially the same as the criteria established in the capital assistance grant and loan program. These criteria are needed and reasonable for the same reasons as they are needed and reasonable in the capital assistance grant and loan program. (See discussion, above, regarding subpart 7 of the capital grant and loan grant program.) The seventh criterion, the extent to which the project provides information transferable to other organizations and the absence of available information in the proposed area of the study, is reasonable because it assures that state funds will be used to fund projects having the widest impact in the state, without being duplicative of previous efforts.

VI. SMALL BUSINESS CONSIDERATIONS

Minn. Stat. section 14.155 (1988) requires state agencies proposing rules that affect small businesses to consider the following methods for reducing the impact of the rules on small businesses:

(a) the establishment of less stringent compliance or reporting requirements for small businesses;

(b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

(c) the consolidation or simplification of compliance or reporting requirements for small businesses;

(d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and

(e) the exemption of small businesses from any or all requirements of the rule.

The statute requires agencies to incorporate into proposed rules any of the methods listed in subdivision 2 "that it finds to be feasible, unless doing so would be contrary to the statutory objectives that are the basis of the proposed rulemaking." Minn. Stat. §14.115, subd. 3 (1988).

The proposed rules establish the criteria and procedures by which the Office provides financial assistance for recyclable material market development projects. The requirements of Minn. Stat. §14.115 do not apply to these proposed rules because this program does not place any direct regulatory burden on small businesses. To the contrary, the proposed rules establish three programs to promote market development activities. Each of the three programs provide for the participation of small businesses, either directly or indirectly. In sum, the proposed rules do not limit the ability of small businesses to participate in the program.

VI. CONCLUSION

Based on the foregoing, Minn. Rules pts. 9210.0500 to 9210.0570, as proposed, are both needed and reasonable.

Dated: July 20, 1990

A handwritten signature in black ink that reads "Michael Robertson". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Michael Robertson
Director

