

STATE OF MINNESOTA

In the Matter of the Proposed Adoption of the Rules of the Commissioner of the Department of Trade and Economic Development for the Department Governing:

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING AND CERTIFICATE OF MAILING LIST

Tourism Loan Program

STATE OF MINNESOTA)
)
COUNTY OF RAMSEY)

Debbie Paulsen, being duly sworn says:

I hereby certify that the list of persons and associates who have requested, pursuant to Minn. Stat. 14.14, Subd. 1a and 14.22 or 14.30, that their names be placed on the Minnesota Department of Trade and Economic Development rulemaking mailing list is accurate, complete, and current as of this 26th day of July, 1994.

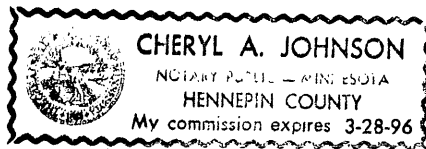
Debbie Paulsen
Name

EOP Operations Assist
Title

Subscribed and sworn to before me

this 26 day of July, 1994.

Cheryl A. Johnson
Notary Public



Mike Auger being duly sworn says:

That on the 26th day of July, 1994, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt Rules Without a Public Hearing by depositing in the State of Minnesota Central Mail System of United States Mail or in the United States mail a copy thereof, with postage prepaid, to all persons and associates on the aforementioned mailing list.

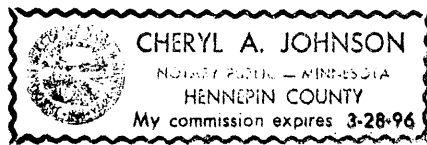
Mike Auger
Name

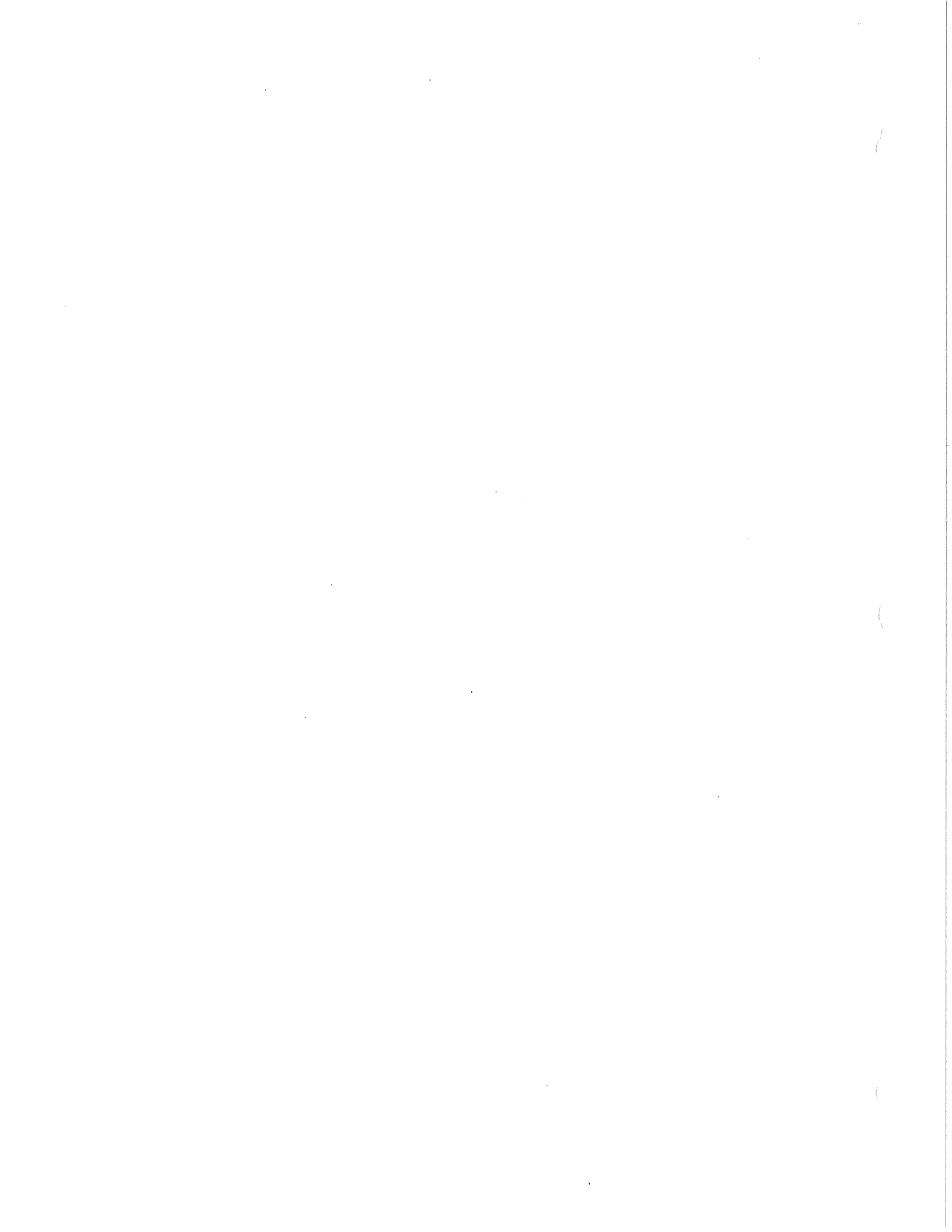
Community Development Supervisor
Title

Subscribed and sworn to before me

this 26 day of July, 1994.

Cheryl A. Johnson
Notary Public





MINNESOTA DEPARTMENT OF
TRADE AND ECONOMIC DEVELOPMENT

500 Metro Square
121 7th Place East
Saint Paul, Minnesota 55101-2146 USA



July 25, 1994

Dear Interested Person,

Find enclosed a copy of the Proposed Amended Rules Relating to the Tourism Loan Program.

You are receiving this Notice because you have requested to be on our list of Interested Persons. You will continue to receive copies of legal notices published in the State Register until you notify us that you no longer want to be on the list.

If you would prefer to be dropped from the list, please write or call:

Debbie Paulsen
Information Analysis and Evaluation
Department of Trade and Economic Development
500 Metro Square
121 7th Place East
St Paul, Mn. 55101-2146
(612) 297-2338

Sincerely,

Bob Ahlin
Portfolio Mgr
(612) 296-6858



An Equal Opportunity Employer

State of Minnesota

Department of Trade and Economic Development
Business and Community Development Division
Proposed Amended Rules relating to the Tourism Loan Program

DUAL NOTICE:

Notice Of Intent To Adopt Rules Without A Public Hearing Unless
25 Or More Persons Request A Hearing, And

Notice Of Hearing If 25 Or More Requests For Hearing Are Received

Introduction. The Department of Trade and Economic Development intends to adopt permanent rules without a public hearing following the procedures set forth in the Administrative Procedures Act, Minnesota Statutes, sections 14.22 to 14.28. If, however, 25 or more persons submit a written request for a hearing on the rule within 30 days or by **August 31, 1994**, a public hearing will be held on **September 12, 1994**. The Hearing will be held at 9:00 a.m. in Conference Room F1, 500 Metro Square, 121 7th Place East, St. Paul, Minnesota. To find out if a rule will be adopted without a hearing or if the hearing will be held, you should contact the agency contact person after **August 31, 1994**, and before **September 12, 1994**.

Agency Contact Person. Comments or questions on the rule and written requests for a public hearing on the rule must be submitted to:

Bob Ahlin
Department of Trade and Economic Development
500 Metro Square
121 7th Place East
St Paul, Mn. 55101-2146
Voice Phone, 612-296-6858
Fax, 612-296-5287

Subject of Rule and Statutory Authority. The proposed rule is about the Tourism Loan Program. The statutory authority to adopt the rules is Minnesota Statutes, section 116J.035. A copy of the rule is published in the State Register. The amended rule defines what a loan guarantee is, it defines what a tourism loan is, and it defines what a septic system loan is. Minnesota Statutes, section 446A.07, authorizes the Public Facilities Authority (PFA) to establish a state water pollution control revolving fund (SRF) and outlines what the funds can be used for. The 1994 legislature authorized payments to the Tourism Loan Fund. The effect of this and these amendments is that the Tourism Loan Program will have additional money available to loan. This additional money however can only be used to replace or upgrade septic systems. **A free copy of the rule is available upon request from the agency contact person.**

Comments. You have until 4:30 p.m. on August 31, 1994 to submit written comment in support of or opposition to the

proposed rule or any part of the proposed rule. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comments should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Request for a Hearing. In addition to submitting the comments, you may also request a hearing to be held on the rule. Your request for a public hearing must be in writing and must be received by the agency contact person by 4:30 p.m. on August 31, 1994. Your written request for a public hearing must include your name, address, and telephone number. You are encouraged to identify the portion of the proposed rule which caused your request, the reason for the request, and any changes you want to the proposed rule. If 25 or more persons submit a written request for a hearing, a public hearing will be held unless a sufficient number withdraw their requests in writing.

Modifications. The proposed rule may be modified, either as a result of public comment or as a result of the rule hearing process. Modifications must not result in a substantial change in the proposed rule as printed in the State Register and must be supported by data and views submitted to the agency or presented at the hearing. If the proposed rule affects you in any way, you are encouraged to participate in the rule making process.

Cancellation of Hearing. The hearing scheduled for **September 12, 1994** will be canceled if the agency does not receive requests from 25 or more persons that a hearing be held on the rule. If you requested a public hearing, the agency will notify you before the scheduled hearing whether or not the hearing will be held. You may also call the Bob Ahlin at 612-296-6858 after August 31, 1994 to find out whether a hearing will be held.

Notice of Hearing. If 25 or more persons submit written requests for a public hearing on the rule, a hearing will be held following the procedures in Minnesota Statutes, sections 14.14 to 14.20 and will continue, if necessary, at additional times and places as determined during the hearing by the administrative law judge. The administrative law judge assigned to conduct the hearing is **Allen C. Giles**. The judge can be reached at the Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Mn. 55401, **612-349-2549**.

Hearing Procedure. If a hearing is held, you and all interested or affected persons including representatives or associations or other interested groups, will have an opportunity to participate. You may present your views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should relate to the proposed rule. You may also mail written material to the administrative law judge to be recorded in the hearing record for five working days after the public hearing ends. This five day

comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the administrative law judge at the hearing. Comments received during this period will be available for review at the Office of Administrative Hearings. You and the agency may respond in writing within five business days after the submission period ends to any new information submitted. All written materials and responses submitted to the administrative law judge must be received at the Office of Administrative Hearings no later than 4:30 p.m. on the due date. No additional evidence may be submitted during the five day period. This rule hearing procedure is governed by Minnesota Rules, parts 1400.0200 to 1400.1200 and Minnesota Statutes, sections 14.14 to 14.20. Questions about procedure may be directed to the administrative law judge.

Statement of Need and Reasonableness. A statement of need and reasonableness is now available from the agency and the contact person. This statement describes the need for and the reasonableness of each provision of the proposed rule. It also includes a summary of all the evidence and argument which the agency anticipates presenting at the hearing, if one is held. The statement may also be reviewed and copies obtained at the cost of reproduction from the Office of Administrative Hearings.

Small Business Considerations. In preparing these rules, the Department of Trade and Economic Development has considered the requirements of Minnesota Statutes, section 14.115, in regard to the impact of the proposed rules on small business. The adoption of the rules may affect small businesses that provide tourist accommodations and apply for a loan under the Tourism Loan Program. The Department of Trade and Economic Development believes that affected small businesses can only benefit by increased availability of loan funds and a decreased rate of interest for septic system upgrade or replacement which the rules will allow. The Department's evaluation of the applicability of the methods contained in Minnesota Statutes, section 14.115, subdivision 2, for reducing the impact of the proposed rules is addressed further in the Statement of Need And Reasonableness.

Expenditure of Public Money by Local Public Bodies. The rule does not require the expenditure of public money by local public bodies.

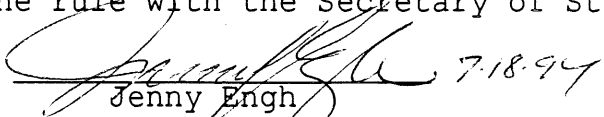
Impact on Agricultural Lands. The rule does not have an impact on agricultural land.

Lobbyist Registration. Minnesota Statutes, chapter 10A requires each lobbyist to register with the Ethical Practices Board. Questions regarding this requirement may be directed to the Ethical Practices Board, First Floor, Centennial Office, 658 Cedar Street, St. Paul, Mn. 55155. Telephone number 612-296-5148.

Adoption Procedure in No Hearing. If no hearing is required, after the end of the comment period the agency may adopt the rule. The rule and supporting documents will then be submitted to the attorney general for review as to legality and form to the extent that form relates to legality. You may request to be notified of the date the rule is submitted to the attorney general or be notified of the attorney general's decision on the rule. If you want to be so notified, or wish to receive a copy of the adopted rule, submit your request to the agency contact person listed above.

Adoption Procedure After the Hearing. If the hearing is held, after the close of the hearing record, the administrative law judge will issue a report on the proposed rule. You may request to be notified of the date on which the administrative law judge's report will be available, after which date the agency may not take any final action on the rule for a period of five working days. If you want to be notified about the report, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the administrative law judge. You may also request notification of the date on which the rule is adopted and filed with the Secretary of State. The Agency's notice of adoption must be mailed on the same day that the rule is filed. If you want to be notified of the adoption, you may so indicate at the hearing or send a request in writing to the agency contact person at any time prior to the filing of the rule with the Secretary of State.

July 15, 1994

 7-18-94
Jenny Engh
Deputy Commissioner
Business & Community Development
Department of Trade and Economic
Development

**STATE OF MINNESOTA
DEPARTMENT OF TRADE AND ECONOMIC DEVELOPMENT
BUSINESS AND COMMUNITY DEVELOPMENT DIVISION**

STATEMENT OF NEED AND REASONABLENESS

**In The Matter Of The Proposed Rules
Of The Department of Trade And Economic Development
Relating To Amending The Rules Governing The
TOURISM LOAN PROGRAM**

GENERAL STATEMENT

The need to amend the rules governing the tourism loan program is two fold. First, the program's enabling legislation was revised allowing the program to make loan guarantees. Second, the Legislature has authorized the Public Facilities Authority to make payments from the Water Pollution Control Revolving Fund (hereafter referred to as the "SRF") to the Tourism Loan Program. The SRF funds must be used exclusively for upgrading or replacing septic systems.

STATUTORY AUTHORITY

Minnesota Statutes, section 116J.617 establishes the Tourism Loan Program.

Minnesota Statutes, section 446A.07, authorizes the Public Facilities Authority (PFA) to establish a state water pollution control revolving fund, outlines the uses of the SRF, and authorizes payments to the Tourism Loan Fund.

The Commissioner has general rule-making authority under Minnesota Statutes, section 116J.035 , subdivision 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.

SMALL BUSINESS CONSIDERATIONS

Minnesota Statutes, section 14.115, requires the Department of Trade and Economic Development to consider the effect on small businesses when it adopts rules. The rules will affect small businesses as defined by the Statute. The Department of Trade and Economic Development, Business and Community Development Division, has considered each of the following methods for reducing the impact on small businesses:

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

The proposed rules will have no effect on compliance or reporting requirements.

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

The proposed rules will have no effect on schedules, deadlines, or reporting requirements.

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

For participation loans, the primary method of disbursement from the revolving loan fund, the proposed rule continues to allow small businesses 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. The proposed rules will also allow the reduced interest rate for septic system loans to be passed along to the small business without the business having to make a separate application to access those funds.

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

The Business and Community Development Division has incorporated into this proposed rule the methods specified in Minnesota Statute, section 14.115, subdivision 2, to the extent feasible given the statutory objectives of the Tourism Loan Program legislation.

The Business and Community Development Division has provided an opportunity for small businesses to participate in the rule-making process by soliciting input from the Minnesota Resort Association, the Congress of Minnesota Resorts, the Minnesota Motel Association, the Minnesota Campground Association, all of whose members are small businesses which are potentially affected

by the rule. Virtually 100% of the small businesses affected are members of one or more of these associations.

DEPARTMENTAL CHARGES IMPOSED BY THE RULES

Minnesota Statutes, section 16A.1285, does not apply because the rules are exempted in subdivision 4. The only charges involved in the rule is the interest rate charged on the loan to individuals or businesses.

Subdivision 4, Rule-making, says in part that "...all charges...must be established...; except that agencies may establish or adjust individual charges when: (1) charges for goods and services are provided for the direct and primary use of a private individual, business, or similar other entity;

FISCAL IMPACT

Minnesota Statutes, section 14.11, subdivision 1, does not apply because the adoption of these rules will not result in additional spending by local public bodies in excess of \$100,000 per year for the first two years following the adoption of the rules.

AGRICULTURAL LAND IMPACT

Minnesota Statutes, section 14.11, subdivision 2, does not apply because adoption of these rules will not have an impact on agricultural lands.

RULE-BY-RULE ANALYSIS

Part 4308.0010 PURPOSE OF THE TOURISM LOAN PROGRAM

The addition of ",or loan guarantees" is needed in this part because of changes in Minnesota Statute 116J.617 which authorizes the program to make loan guarantees.

Part 4308.0020 DEFINITIONS

Subparagraph 6. Eligible Borrower.

The addition of "except that if the loan is a Septic System Loan, the 3 year waiting period will be waived." is necessary to insure that SRF funds will be made available for emergency situations to all otherwise eligible applicants. This is a reasonable change in that the funds being made available are not coming from the Tourism Loan Account and therefore are not subject to that legislation. The applicable legislation is Minnesota Statute 446A.07 which has no limiting time period requirements.

Subparagraph 12. Tourism Loan.

The revision of the definition of "Tourism Loan" is needed to differentiate it from a Septic System Loan. The major difference is the source of funds. A definition is a reasonable solution to make that distinction clear.

Subparagraph 13. Guaranteed Loan.

The addition of this paragraph is needed to define what a guaranteed loan is, now that the legislature allows the Tourism Loan Program to make guarantees.

Subparagraph 14. Septic System Loan.

The addition of this definition is needed to differentiate a septic system loan made on the basis of monies received from the Public Facilities Authority's water pollution control revolving fund from a Tourism Loan that can also be used to upgrade or replace septic systems. A septic system loan is a new class of loan now available as a result of the legislature's amendment of Minnesota Statute 446A.07, Subds. 8 and 9 (1994). The definition is a reasonable solution to make that distinction clear.

Subparagraph 15. SRF.

The addition of this definition is needed to acknowledge the acronym which is used elsewhere in the Rules. The SRF is the source of funds for Septic System Loans.

Part 4308.0030 ELIGIBILITY OF PROJECT FOR LOANS.

The deletion of "TOURISM" from the title is needed because another class of loan, septic system loan, has been added to the Rules. The eligibility for both classes of loan are the same.

The deletion of "direct", and "or participation loan", and "either kind of", and "tourism revolving" is needed to make the sentences easier to read. The deleted words add nothing to the meaning of the sentences, since the word "loan" covers all classes, including the new septic system loans.

Part 4308.0040 ELIGIBLE COSTS FOR LOANS

The deletion of "TOURISM" from the title is needed because another class of loan, septic system loan, has been added to the Rules.

Subpart 1. Eligible costs.

The addition of "F. Septic systems." is to make clear that septic systems are considered eligible costs for either class of loan, septic system loan and tourism loan.

Part 4308.0050 INTEREST RATE FOR LOANS.

The deletion of "TOURISM" from the title is needed because another class of loan, septic system loan, has been added to the Rules. This part sets the interest rate for both classes of loan.

The addition of "The interest rate for septic system loans shall be fixed at two percent (2%) per annum." is needed to establish an interest rate for septic system loans. The Federal monies to be granted (via the Public Facilities Authority) for septic system loans are to be used as provided in Title VI of the Federal Water Pollution Control Act, which is in essence for controlling or reducing pollution. To encourage septic system repair or replacement, the septic system loan rate needs to be a low rate. This low rate has been set at a rate sufficient to pay the one percent (1%) servicing fee that the program pays to the bank and also to provide one percent (1%) for a loan loss reserve. The servicing fee is provided for in the Loan Administration Contract (Part II, subp. A.1.) which is signed by the state and the financial institution. The loan loss reserve has been set at one percent (1%) as the lowest possible fiscally responsible amount necessary to cover defaults. A loan loss reserve is necessary because the loan funds will eventually have to be repaid to the PFA when the program is terminated. The PFA is charged with maintaining the SRF in perpetuity. The only way that can be done is to make sure that SRF loans are repaid. The Tourism Loan Program is only borrowing the money from the PFA.

Part 4308.0060 TERM OF LOANS

The deletion of "TOURISM" from the title is needed because another class of loan, septic system loan, has been added to the Rules. This part sets the interest rate for both classes of loan.

The deletion of "direct loan or participation" is needed to make the sentence easier to read. The deleted words add nothing to the meaning of the sentence, since the word "loan" covers all classes including the new septic system loans.

The addition of "septic systems," in this sentence makes it clear that septic system loans will be eligible for a maximum term of 10 years. Minnesota Statute 116J.617 Subd. 4. states that "The maximum term of a loan made...(is)...ten years for land, building, or other real property." According to the Minnesota Pollution Control Agency, septic systems that are properly maintained have a useful life of at least 20 years so it is reasonable to include them in this category.

Part 4308.0070 SECURITY REQUIREMENTS FOR LOANS.

The deletion of "TOURISM" from the title is needed because another class of loan, septic system loan, has been added to the Rules. This part sets the security requirements for both classes of loans.

The addition of "and the state" is necessary because a participation loan is when the department purchases a share of a financial institution's loan to an eligible borrower. It is generally accepted that each of the participants have made an individual credit decision. In fact, the Loan Participation Certificate and Agreement (Part 5. ADDITIONAL TERMS Sub (g)), which the state and the financial institution enter into, stipulates that the "Participant acknowledges that it has, independently, and without reliance on the Lender and based on such documents and decisions regarding the collectability, validity and enforceability of the Note, the Collateral Documents and the collateral, has made and will continue to make its own appraisal of the Borrower's creditworthiness." Therefore it is reasonable that the collateral be acceptable to the State as well as the bank.

Part 4308.0080 APPLICATION PROCESS FOR LOANS.

The deletion of "TOURISM" from the title is needed because another class of loan, septic system loan, has been added to the Rules. This part describes the application process for both classes of loans.

Part 4308.0090 PROCEDURE FOR ~~TOURISM~~ LOAN EVALUATION AND APPROVAL

The Deletion of "TOURISM" from the title is needed because another class of loan, septic system loan, has been added to the Rules, and the word "loan" covers all classes including the new septic system loans.

Subparagraph 3. Approval.

The deletion of "direct loan or a participation" and "direct loan or participation" is needed to make the sentences easier to read. The deleted words add nothing to the meaning of the sentence, since the word "loan" covers all classes including the new septic system loans.

Subparagraph 4. Documentation required.

The addition of "(s)" on the end of "note" is required because most of the time, the participating financial institution needs to make a variable or floating interest rate loan while this loan program needs to make a fixed interest rate loan. Under this circumstance, it is not practical to blend the interest rate, as required in part 4308.0050 of these rules, into one document.

Instead, two separate notes carrying their respective interest rates and secured by the same collateral are made. This change simply reflects the practical and historical administration of the program.

The addition of "assignments, title opinion or title insurance, fire insurance, recorded UCC's" is necessary to expand upon what other documentation is needed to close a loan. These documents are generally needed to secure the collateral of the loan as required in Minnesota Statute 116J.617, Subd. 4.

PART 4308.120 REPORTS

The addition of this part is needed in case the loan program is required to make reports to the PFA or others. There is no requirement at the present time that any reports are needed, however, reporting requirements may change.

CONCLUSION

Based on the foregoing, the Department of Trade and Economic Development, Business and Community Development Division's proposed amendments to the rules are both necessary and reasonable.

_____ date

E. Peter Gillette, Jr.
Commissioner
Department of Trade and Economic
Development

BIBLIOGRAPHY

All of the following documents are available by writing the Department of Trade and Economic Development, 500 Metro Square, 121 7th Place East, St Paul, Mn. 55101-2146, or by calling **Bob Ahlin, 612-296-6858**.

Loan Administration Contract, Tourism Loan Program.

Loan Participation Certificate and Agreement, Tourism Loan Program.