

## CHAPTER 8300 SMALL BUSINESS FINANCE AGENCY RULES FOR LOANS

**NOTE:** Under Laws of Minnesota 1983, chapter 289, section 58, this chapter of Minnesota Rules shall be administered by the Energy and Economic Development Authority.

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**8300.0100 DEFINITIONS.**

Subpart 1. **Statutory definitions.** The terms defined in Minnesota Statutes 1980, section 362.50 have the same meanings when used in these rules as ascribed to them in the act.

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

Subp. 3. **Commissioner.** "Commissioner" means the commissioner of economic development.

Subp. 4. **Executive director.** "Executive director" means the executive director of the agency designated by the commissioner.

Subp. 5. **Members.** "Members" means the commissioner and those persons appointed to the agency pursuant to Minnesota Statutes 1980, section 362.51, subdivision 8.

**Statutory Authority:** *MS s 116J.91*

**8300.0200 SCOPE.**

These rules are made pursuant to Minnesota Statutes 1980, section 362.53, subdivision 4 to implement and make specific the provisions of the act and relate to the providing of pollution control loans and business loans.

**Statutory Authority:** *MS s 116J.91*

### AUTHORITY PROCEDURES

**8300.0300 REGULAR MEETINGS.**

Regular meetings of the agency shall be held on the third Wednesday of each month at 3:00 p.m. at the offices of the agency in St. Paul, Minnesota, unless another place of meeting is designated by resolution. In the event such date shall fall on a legal holiday, the regular meeting shall be held the next succeeding business day.

**Statutory Authority:** *MS s 116J.91*

**8300.0400 SPECIAL MEETINGS.**

Special meetings of the agency may be called upon reasonable notice to all members by the chairperson or by a majority of the existing members of the agency, for the purpose of transacting any business designated in the notice, and shall be held at the business offices of the agency in St. Paul, Minnesota, unless another place of meeting is designated by resolution. At any such special meeting, no business shall be considered other than as designated in the notice; provided, however, that if all of the members of the agency are present at such special meeting, this limitation shall not apply.

**Statutory Authority:** *MS s 116J.91*

**8300.0500 PUBLIC APPEARANCES AT MEETINGS OF MEMBERS.**

The following procedures shall govern public appearances at meetings of the members:

A. With respect to regular meetings, the executive director shall complete the agenda for meetings of the members not less than five nor more than seven days prior to the date of any such meeting.

B. With respect to regular meetings, any person who desires to appear and address the members shall make a written request to the executive director, with a copy to the chairperson, at least ten days prior to the date of the meeting, setting forth the nature of the matter about which such person wishes to appear.

C. With respect to regular or special meetings, any person who desires to appear and address the members with respect to any matter enumerated on the agenda shall make a written request to the executive director, with a copy to the chairperson, at least 24 hours before the meeting.

D. Any member may at any time request that a person be permitted to appear and address the members at any regular or special meeting. All such requests shall be placed on the agenda for review by the members at the meeting. A majority vote of the members present shall be required in order to grant any such request to address the members.

**Statutory Authority:** *MS s 116J.91*

**8300.0600 MISREPRESENTATION OF APPLICATION INFORMATION.**

The agency may forthwith reject any application, whether or not previously approved, may revoke any preliminary or final resolution prior to sale of the bonds approved thereby, or may refuse to close any loan in the event that any information provided to the agency by the owner contains a material misrepresentation or omission. Each applicant shall have an affirmative duty and obligation to update and correct all information provided to the agency.

**Statutory Authority:** *MS s 116J.91*

**8300.0700 SEVERABILITY.**

If any provision of these rules or the application thereof to any business or person or circumstance is held to be invalid, such invalidity shall not affect any other provision or application of any other part of this rule or any other rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule and the various applications thereof are declared to be severable.

**Statutory Authority:** *MS s 116J.91*

## POLLUTION CONTROL LOANS

### **8300.1000 UNIFORM POLLUTION CONTROL LOAN APPLICATION FORMS.**

The executive director shall prepare uniform loan application forms for use by the public setting forth the information necessary for the determination of probable eligibility for a pollution control loan guaranteed or to be guaranteed as a full faith and credit obligation of the United States, by the United States Small Business Administration, or by another agency or instrumentality of the United States to which the same or similar power may be granted. All forms shall be submitted to the members for their review at a regular or special meeting and shall become effective only upon the approving vote of the members.

**Statutory Authority:** *MS s 116J.91*

### **8300.1100 ACCEPTANCE OF APPLICATIONS.**

In determining whether to accept applications for pollution control loans, the members shall examine the following facts:

- A. the probable eligibility of the pollution control loan for a federal guarantee;
- B. the nature of the pollution control facilities to be financed with the loan;
- C. the location of the proposed facilities;
- D. the availability of bonding authority under the act;
- E. the extent to which the loan will assist and encourage the establishment, maintenance, and growth of small business in Minnesota and reduce to a manageable level the cost of the control of pollution and disposal of waste resulting from the operations of small business.

**Statutory Authority:** *MS s 116J.91*

### **8300.1200 AUTHORIZATION OF LOANS.**

No pollution control loan shall be made until the members of the agency have received and reviewed the recommendation of the executive director relating to the loan, and until the members have adopted a resolution approving the loan, which resolution shall include, at a minimum:

- A. a determination that the loan has been approved for a federal guarantee, as a full faith and credit obligation of the United States, by the United States Small Business Administration, or by another agency or instrumentality of the United States to which the same or similar power may be granted; and
- B. a statement that the obligation of the agency to make such loans is contingent on the ability of the agency to sell its bonds or bond anticipation notes, on terms which the members of the agency, in their sole discretion, deem acceptable.

**Statutory Authority:** *MS s 116J.91*

## BUSINESS LOANS

### **8300.1500 OVERVIEW OF PROCEDURE FOR APPROVAL OF BUSINESS LOANS.**

**Subpart 1. Owner's duty.** To be eligible for a business loan, an owner shall make an application for a business loan pursuant to parts 8300.1600 to 8300.1900 on approved application forms of the agency.

**Subp. 2. Executive director's duty.** The executive director shall process the application in accordance with the procedures and limitations set out in parts 8300.1600 to 8300.1900. The criteria the executive director shall use in approving an application for processing are set out in parts 8300.1600 to 8300.1900.

Subp. 3. **Agency's duties.** Upon the determination by the executive director that the business loan requested meets the eligibility requirements of parts 8300.1600 to 8300.1900, the agency shall determine pursuant to parts 8300.2100 and 8300.2200 if the agency intends to fund the requested business loan subject to final authorization by the agency.

Subp. 4. **Resolution to approve loan.** Upon the determination by the agency that the loan requested pursuant to an application which has been accepted for processing can and should be funded, the agency shall adopt a resolution approving such loan, which resolution shall include a provision that the obligation of the agency to make the loan is contingent on the ability of the agency to sell its bonds on terms which the agency, in its sole discretion, deems acceptable. In addition, any such resolution may contain such other provisions and conditions as the agency, in its sole discretion, deems advisable.

**Statutory Authority:** *MS s 116J.91*

### **8300.1600 APPLICATION PROCEDURES.**

Subpart 1. **Submission of application.** The owner shall submit to the agency copies of the completed application upon the forms provided by the agency.

Subp. 2. **Incomplete applications.** Application shall be deemed to have been made upon receipt by the agency of a completed application with all required documentation and exhibits, together with the required fee specified in the application forms. In the event that an incomplete application is received, the executive director shall notify the applicant specifying the deficiencies. The applicant shall have 60 days from the date of the executive director's notification to complete such application. If the application is not completed within 60 days, the application shall be deemed to be rejected and the applicant must reapply to be further considered. In the event the executive director is able to determine from the information submitted on an incomplete application that the applicant is not an owner or the proceeds of the requested business loan are intended to finance expenditures not permitted under the act, the executive director shall so notify the applicant.

Subp. 3. **Review by executive director.** Upon receiving a completed application, the executive director shall review the application and shall make a determination as to whether the applicant is an owner as defined in the act or the proceeds of the requested business loan are intended to finance expenditures permitted under the act.

**Statutory Authority:** *MS s 116J.91*

### **8300.1700 CAPITAL EXPENDITURES ELIGIBLE FOR FUNDING.**

Costs eligible for funding are the capital expenditures set forth in the act, including the following:

- A. land and/or building acquisition costs;
- B. site preparation;
- C. construction costs;
- D. engineering costs;
- E. equipment and/or machinery;
- F. bond issuance costs;
- G. underwriting or placement fees;
- H. initial trustee's fee;
- I. initial fee of guarantor or insuror, if applicable;
- J. Small Business Administration processing and administration fee, if applicable;
- K. Minnesota Small Business Finance Agency fee;

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- L. certain contingency costs;
- M. interest costs during construction; and
- N. legal fees, including those of agency's bond counsel.

**Statutory Authority:** *MS s 116J.91*

**8300.1800 NOTIFICATION OF APPROVAL OR DISAPPROVAL OF APPLICATION.**

After approving or disapproving an application, the executive director shall notify the applicant of the determination and the treatment of the application as follows:

A. If the executive director determines that the applicant is an owner as defined in the act and that the costs specified in the application are eligible for funding, the application shall then be deemed accepted for processing and treated in accordance with the agency review provisions established in parts 8300.2100 and 8300.2200.

B. If the executive director determines that the applicant is not an owner as defined in the act, the application shall be rejected and not further considered.

C. If the executive director determines that any of the costs described in the application are not eligible for funding, the executive director shall note the deficiencies in the application and shall so notify the owner. The owner shall have 30 days from the date of the executive director's notification to amend the application. In the event the application is amended in a timely fashion to include only eligible costs, it shall be treated in accordance with the agency review provisions established in parts 8300.2100 and 8300.2200. If the application is not properly amended within 30 days, the application shall be deemed rejected and not further considered.

**Statutory Authority:** *MS s 116J.91*

**8300.1900 REVIEW OF REJECTED APPLICATION.**

In the event that an application is rejected for processing pursuant to part 8300.1800, item B or C, the applicant may, within 30 days after date of the notification by the executive director, request the executive director to submit the determination to the agency for review at the next regularly scheduled meeting of the agency for which the agenda has not been established. If the agency approves the application, the application shall be treated in accordance with parts 8300.2100 and 8300.2200.

**Statutory Authority:** *MS s 116J.91*

**8300.2000 UNIFORM BUSINESS LOAN APPLICATION FORMS.**

The executive director shall prepare uniform loan application forms for use by the public setting forth the information necessary for the determination of eligibility for a business loan pursuant to the act and these rules.

**Statutory Authority:** *MS s 116J.91*

**8300.2100 EVALUATION PROCEDURE.**

Applications approved for processing by the executive director shall be presented to the agency for approval or disapproval. If the agency disapproves the application, the executive director shall so notify the applicant. If the agency approves the business loan for funding it shall forthwith pass a preliminary resolution giving preliminary approval to the project to be financed from the loan proceeds and stating the name of the owner, a brief description of the project, and the amount of the loan. Such a resolution shall not obligate the agency to issue bonds or to fund any loan, but shall only constitute an expression of current intention of the agency to issue such bonds or to fund such a loan. The preliminary resolution may contain a time limit with respect to the

issuance of the bonds, may be revoked or amended by the agency at any time prior to the final resolution of the agency without liability to the agency, and may impose any conditions or requirements which the agency deems desirable. The executive director shall forthwith notify the applicant of the agency's approval and furnish the applicant a copy of the preliminary resolution.

**Statutory Authority:** *MS s 116J.91*

**8300.2200 FACTORS TO CONSIDER IN EVALUATION PROCEDURE.**

The agency shall review and consider approval of an application for a business loan, on the basis of effectuating the purposes of the act, including determinations regarding the following:

- A. that the applicant is an owner as defined in the act;
- B. that the small business reasonably can be expected to maintain a sound financial condition and to retire the principal and pay the interest on the loan made or guaranteed in accordance with the terms of the loan agreement;
- C. that the project is economically feasible with a reasonable expectation that the life of its economic feasibility will exceed the maturity of the loan;
- D. that the project will create or maintain a sufficient number and type of jobs to justify agency participation in its financing;
- E. that the project feasibility is sufficient to allow the agency to sell the bonds required for its financing;
- F. that the project and its development are economically advantageous to the state, that the provision to meet increased demand upon public facilities as a result of the project is reasonably assured, and that energy sources to support the successful operation of the project are adequate;
- G. that if the project shall have the effect of a transfer of employment from one area of this state to another the agency determines that the project is economically advantageous to the state or that the project is necessary to the continued operation of the business enterprise within the state; and
- H. that the project will assist in fulfilling the purposes of the act.

**Statutory Authority:** *MS s 116J.91*