

1 Department of Agriculture  
2 Family Farm Security Program

3

4 Adopted Rules Governing the Administration of the Family Farm  
5 Security Program and Repeal of Existing Rules Governing  
6 Administration of the Family Farm Security Program (3 MCAR SS  
7 1.0543-1.0547)

8

9 Rules as Adopted

10 3 MCAR S 1.0548 Purpose and authority.

11 A. Purpose. It is the purpose of 3 MCAR SS 1.0548-1.0560 to  
12 carry out and administer the family farm security program  
13 established by Minnesota Statutes, chapter 41.

14 B. Authority. Rules 3 MCAR SS 1.0548-1.0560 are adopted  
15 pursuant to Minnesota Statutes, section 41.53, subdivision 2.

16 3 MCAR S 1.0549 Definitions.

17 A. Applicability. For the purposes of 3 MCAR SS  
18 1.0548-1.0560 the terms defined in this rule have the meanings  
19 given them.

20 B. Amortization schedule. "Amortization schedule" means the  
21 loan repayment schedule approved by the commissioner.

22 C. Applicant. "Applicant" means a natural person applying  
23 for a family farm security loan.

24 D. Balloon payment. "Balloon payment" means the final  
25 payment of an amortization schedule which is equal to or exceeds  
26 four times the amount of the immediately preceding payment.

27 E. Commissioner. "Commissioner" means the Commissioner of  
28 Agriculture or the commissioner's authorized representative.

29 F. Cooperating agency. "Cooperating agency" has the meaning  
30 given in Minnesota Statutes, section 41.52, subdivision 11.

31 G. Council. "Council" means the Family Farm Advisory  
32 Council.

33 H. Even payment. "Even payment" means the payment amount  
34 necessary at a given interest rate to fully amortize the loan  
35 over a given period of time.

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1 I. Farm business management course. "Farm business  
2 management course" means a course in farm record keeping, farm  
3 business management, or other related areas approved by the  
4 commissioner.

5 J. Farm land. "Farm land" has the meaning given in  
6 Minnesota Statutes, section 41.52, subdivision 6.

7 K. Fully amortize. "Fully amortize" means to insert terms  
8 or provisions in a loan which do not result in a balloon payment.

9 L. Guarantee. "Guarantee" means the "family farm loan  
10 guarantee" defined in Minnesota Statutes, section 41.52,  
11 subdivision 9.

12 M. Lender. "Lender" has the meaning given in Minnesota  
13 Statutes, section 41.52, subdivision 7.

14 N. Loan. "Loan" means "family farm security loan" as  
15 defined in Minnesota Statutes, section 41.52, subdivision 5.

16 O. Memorandum of understanding. "Memorandum of  
17 understanding" has the meaning given in Minnesota Statutes,  
18 section 41.52, subdivision 12.

19 P. Participant. "Participant" means an applicant who has  
20 received final approval for a guarantee which has been fully  
21 executed by the state.

22 Q. Payment adjustment. "Payment adjustment" has the meaning  
23 given in Minnesota Statutes, section 41.52, subdivision 10.

24 R. Program. "Program" means the family farm security  
25 program of the Department of Agriculture.

26 S. Seller-sponsored loan. "Seller-sponsored loan" has the  
27 meaning given in Minnesota Statutes, section 41.52, subdivision  
28 8.

29 T. State. "State" means the State of Minnesota.

30 U. Subordination. "Subordination" means that the  
31 commissioner agrees that the state's interest in a loan has a  
32 lower lien priority than the interest of another party.

33 3 MCAR S 1.0550 Eligibility.

34 A. Criteria. To be eligible for a guarantee, an applicant  
35 must meet the criteria listed in Minnesota Statutes, sections  
36 41.55 and 500.221, subd. 2 and those in this rule.

1 B. Net worth. The current net worth of the applicant,  
2 dependents, and spouse, as determined by generally accepted  
3 accounting principles, must not exceed the level set in  
4 Minnesota Statutes, section 41.55, clause (c).

5 C. Farm land. Applications will be accepted only for loans  
6 to acquire farm land.

7 D. Ownership. The applicant must be purchasing a 100  
8 percent interest in the farm land. The farm may be operated in  
9 partnership, but the applicant must own the farm land  
10 individually.

11 E. Use and feasibility. The applicant must detail the  
12 intended agricultural uses of the land and substantiate the  
13 economic feasibility of the proposed farming operation. The farm  
14 land must be purchased for agricultural uses. -----  
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15 3 MCAR S.1.0551. Preliminary approval; notification and  
16 reconsideration.

17 A. Application. An applicant must apply for a guarantee on  
18 forms provided by the commissioner. The application must  
19 include, but is not limited to, the following:

- 20 1. a farm land appraisal;
- 21 2. a purchase agreement;
- 22 3. letters of commitment, if appropriate;
- 23 4. the financial information required in E.;
- 24 5. copies of any partnership agreements; and
- 25 6. a farm business management course registration form;

26 and

27 7. other information reasonably necessary to determine  
28 the likelihood of success of the applicant's proposed farming  
29 operation. -----  
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30 B. Farm land appraisal. An appraisal of the market value of  
31 the farm land to be guaranteed must be performed by a qualified  
32 appraiser and recorded on the form provided by the commissioner.  
33 The appraiser must sign the form. A letter stating the  
34 appraiser's qualifications and experience must be on file with  
35 the commissioner. The commissioner may require the applicant to  
36 obtain an additional independent appraisal when it is necessary

1 ~~to determine the current market value~~ from another appraiser  
 2 when comparable sales do not reasonably reflect the value of the  
 3 farm land stated in the original appraisal.  
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4 C. Purchase agreement. A binding purchase agreement between  
 5 the seller of the farm land and the applicant, containing all  
 6 terms agreed upon by the two parties, must be completed. The  
 7 terms must be in accordance with Minnesota Statutes, chapter 41  
 8 and 3 MCAR SS 1.0548-1.0560. The agreement must include a  
 9 statement that the sale of the farm land is contingent upon the  
 10 applicant's obtaining a guarantee from the commissioner. The  
 11 purchase price of the farm land cannot exceed the appraisal  
 12 value.

13 D. Letters of commitment. The following information must  
 14 accompany the application:

15 1. A letter of commitment for the financing, containing  
 16 all the terms and provisions of the loan and signed by the  
 17 lender, if any portion of the farm land purchase price is to be  
 18 financed through a lender other than the seller;

19 2. A letter of credit from a financial institution for  
 20 required operating credit for the first year of operation;

21 3. A written financing commitment, if financing is  
 22 necessary for the purchase of livestock and equipment; and

23 4. Written equipment use agreements signed by both the  
 24 applicant and the equipment owner, if equipment will be shared.

25 E. Financial information. The application must include the  
 26 following financial information:

27 1. a statement of the applicant's current net worth;

28 2. ~~at least two years'~~ statements of the applicant's past  
 29 earnings for the two years immediately prior to the year of  
 30 application, if available;  
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31 3. ~~at least two years'~~ statements of projected income and  
 32 expenses for the first two years of the proposed farm operation;  
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33 4. credit references; and

34 5. a statement of the applicant's parents' net worth and  
 35 the applicant's spouse's parents' net worth or other  
 36 documentation of the parents' ability or willingness to

1 financially assist the applicant.

2 ~~F. Privacy of information. Personal financial documents~~  
 3 ~~submitted in support of an application shall be treated as~~  
 4 ~~security information under Minnesota Statutes, section 15-1673~~  
 5 ~~and benefit data under Minnesota Statutes, section 15-783 and is~~  
 6 ~~considered to be private data pursuant to these sections.~~

7 ~~G. F. Review of applications. The commissioner shall~~  
 8 ~~consider and act upon an application for a guarantee, taking~~  
 9 ~~into account the recommendations of the council. In the event~~  
 10 ~~of a request for reconsideration of the commissioner's decision~~  
 11 ~~pursuant to J. I., the matter shall be reviewed at a regularly~~  
 12 ~~scheduled meeting of the council.~~

13 ~~H. G. Criteria for preliminary approval. The following~~  
 14 ~~criteria shall be considered by the commissioner in granting the~~  
 15 ~~preliminary approval for a guarantee:~~

- 16 1. the eligibility criteria set forth in 3 MCAR S 1.0550;
- 17 2. submission of a complete application and any  
 18 additional information requested by the commissioner;
- 19 3. the degree to which farming will be the applicant's  
 20 principal occupation;
- 21 4. the extent to which the applicant demonstrates  
 22 financial need for the guarantee to acquire farm land;
- 23 5. the existence of or provisions for financing-related  
 24 farm expenses other than real estate;
- 25 6. the economic feasibility of the loans as evidenced by  
 26 the applicant's present, past, and projected financial situation;
- 27 7. the applicant's credit rating;
- 28 8. an analysis of the applicant's debt-to-worth ratio and  
 29 other factors related to risk and profit potential; and
- 30 9. the likelihood of success of the applicant's proposed  
 31 farming operation, based on the criteria in 1.-8.

32 ~~I. H. Notification. After each review of an application for~~  
 33 ~~a guarantee, the commissioner shall provide written notification~~  
 34 ~~of the determination. If the application is approved, the~~  
 35 ~~commissioner shall notify the applicant and the lender. If the~~  
 36 ~~application is not approved, the commissioner shall notify the~~

1 applicant and specify the reasons for disapproval.

2 J- I. Reconsideration of decision. An applicant who wishes  
3 the commissioner to reconsider the decision may request, within  
4 90 days of the notification of nonapproval, that the application  
5 be reconsidered. The applicant may present to the council, in  
6 writing or in person, any additional facts relevant to the  
7 reasons given for nonapproval of the application.

8 3 MCAR S 1.0552 Final approval.

9 A. Closing.

10 1. Upon receiving notice of preliminary approval for a  
11 guarantee, the applicant shall proceed in accordance with  
12 instructions provided by the commissioner for obtaining final  
13 approval for the guarantee.

14 2. All actions required of the applicant and lender to  
15 prepare for the state's execution of guarantee documents,  
16 including submission of a preliminary title opinion and  
17 execution of all relevant statements or declarations required  
18 for loan transactions by federal or state law, regulation, or  
19 rule, ~~should normally~~ must be completed within 120 days of  
20 receipt of the notice; ~~unless an extension is granted. An~~  
21 extension for a reasonable period of time shall be granted under  
22 the following conditions related to either the farm land being  
23 guaranteed under the program or assets of the applicant  
24 essential to completing the farm land purchase:

25 a. where title defects cannot reasonably be cured  
26 within a time frame which permits compliance with the 120 day  
27 deadline;

28 b. where title encumbrances cannot be released or  
29 satisfied within a time frame which permits compliance with the  
30 120 day deadline; or

31 c. where other matters beyond the control of the  
32 applicant reasonably unforeseen prevent compliance with the 120  
33 day deadline.

34 3. The commissioner may request and examine copies of  
35 other security agreements or loan documents or other records  
36 which relate to the applicant's farm land purchase in order to

1 determine all liens and encumbrances on the property.

2 B. Closing documents; seller-sponsored loan. If the loan to  
3 be guaranteed is seller-sponsored, the applicant and seller must  
4 execute a contract for deed or purchase money real estate  
5 mortgage and all additional instruments required to protect the  
6 interests of the applicant, the seller, and the state in  
7 accordance with the terms and conditions upon which the  
8 preliminary approval for the guarantee was granted.

9 C. Closing documents; lender-sponsored loan. If the loan to  
10 be guaranteed is lender-sponsored, the applicant and lender must  
11 execute a mortgage and note or an assignment of contract for  
12 deed and any additional instruments. The lender shall take  
13 other actions consistent with prudent lending practices required  
14 to protect the interests of the applicant, the lender, and the  
15 state.

16 D. Closing documents; releases. The seller must obtain a  
17 release or satisfaction of any underlying mortgages, liens, or  
18 encumbrances that exceed 90 percent of the balance of the loan  
19 to be guaranteed.

20 E. Guarantee. When the closing documents are properly  
21 executed, the commissioner shall enter into an agreement with  
22 the participant and the lender providing that in the event of  
23 default by the participant of any of the terms of the contract  
24 for deed, mortgage and note, or assignment of contract for deed,  
25 the state shall pay the lender 90 percent of the sums due and  
26 payable under those terms. Sums due and payable include the  
27 principal balance outstanding, accrued interest up to the date  
28 on which the state performs under the guarantee, real estate  
29 taxes paid by the lender, and any other expenses incurred by the  
30 lender for maintenance and protection of the property during the  
31 default period which are determined by the commissioner to be  
32 reasonable and prudent.

33 F. Recording. After the loan is closed, the appropriate  
34 instruments shall be recorded. The applicant shall furnish the  
35 commissioner with copies of the recorded instruments.

36 G. Final title opinion. After the appropriate instruments

1 are recorded, the applicant shall furnish the commissioner with  
2 a final title opinion which recognizes the interests of all  
3 parties.

4 3 MCAR S 1.0553 Payment adjustment.

5 A. Amount and eligibility requirement. The state shall pay  
6 to the lender, according to the amortization schedule, an amount  
7 of money equal to four percent of the principal balance of the  
8 loan, provided that the conditions in B.-D. are met.

9 B. Loan terms and payments. The loan must either have a  
10 term of 20 years or less and require payments so that the loan  
11 is amortized with equal annual payments, including consideration  
12 of variable interest rates used by some lenders, or the loan  
13 must have a reasonable reduction of the principal balance with a  
14 balloon payment in ten years or less.

15 1. Extra days of interest may be included in calculating  
16 total interest for the first payment, provided that the total  
17 number of days used does not exceed an additional 50 percent of  
18 the normal payment period and does not cause a balloon payment  
19 for those loans on a fully amortized schedule.

20 2. Certain 20-year loans which have a specified interest  
21 only payment preceding the 20-year schedule of principal and  
22 interest payments will be accepted for the guarantee, but the  
23 state shall not participate in the interest-only payment.

24 3. A disaster clause may be included in provisions of a  
25 loan ~~to be eligible for a payment adjustment~~, provided that it  
26 does not cause repayment to extend beyond 20 years or cause a  
27 balloon payment for loans on a fully amortized schedule.

28 4. An extension ~~may~~ must be granted to the length of a  
29 loan that would require a balloon payment in ten years or less  
30 and the stated interest rate may be adjusted by consent of all  
31 parties to the loan including the state, the participant, and  
32 the lender, if the following conditions are met:

33 a. the participant and lender both sign a written  
34 request for extension;

35 b. the repayment provisions of the loan are based on a  
36 fully amortized schedule of 20 years or less; and

1 c. the extension is for the total remaining portion of  
2 the amortization schedule; and

3 d. the participant has complied with all terms of the  
4 loan guarantee and has submitted to the commissioner a net worth  
5 statement and a farm business management course registration  
6 form annually within the times set in 3 MCAR S 1.0553.

7 C. Net worth. The conditions in 1.-3. regarding net worth  
8 apply to all participants.

9 1. Before February 20 of each year, on forms provided by  
10 the commissioner, the participant must submit to the  
11 commissioner a statement of the participant's, dependents', and  
12 spouse's net worth as of December 31 of the year immediately  
13 preceding the filing date, except for the first year of  
14 participation. This statement is not required if the statement  
15 of net worth submitted with the original application is less  
16 than ten months old on the February 15 following the applicant's  
17 preliminary approval by the commissioner.

18 2. If the total net worth as determined by generally  
19 accepted accounting principles exceeds the limitation stated in  
20 Minnesota Statutes, section 41.57, subdivision 3, the  
21 participant shall not be eligible for a payment adjustment for  
22 the next 12 months commencing April 1. The commissioner shall  
23 notify the participant and the lender that the participant is  
24 responsible for all interest payments for that 12-month period  
25 of the loan.

26 3. The net worth statement used by the council to  
27 recommend preliminary approval shall prevail in matters of  
28 determining eligibility for the guarantee and the first year's  
29 payment adjustment.

30 D. Course registration. Before February 20 of each year,  
31 the participant must submit a farm business management course  
32 registration form.

33 E. Extension of deadline. The commissioner may will grant  
34 an extension of up to 30 days on the deadlines stated in C. and  
35 D. if the participant is not able to submit the net worth  
36 statement or the farm business management course registration

1 form on time due to other circumstances beyond the participant's  
 2 immediate control of the participant which were reasonably  
 3 unforeseen and which prevent meeting the deadlines stated in C.  
 4 and D.  
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5 3 MCAR S 1.0554 Recipient of payment adjustments. Payment  
 6 adjustments are made by the state directly to the lender, who  
 7 annually bills the commissioner for the amounts due for the  
 8 current loan year. Under circumstances where the participant  
 9 has paid a full installment, including the state's payment  
 10 adjustment, to the lender, the participant may request that the  
 11 payment adjustment be made to him by submitting proof to the  
 12 commissioner that the full installment was paid.

13 3 MCAR S 1.0555 Reimbursement of payment adjustments.

14 A. Time; generally. The participant shall reimburse the  
 15 state within 12 months after the tenth anniversary of the date  
 16 of the loan for all sums paid as payment adjustments by the  
 17 state on the participant's behalf.

18 B. Reimbursement obligation as lien. The reimbursement  
 19 obligation shall be a lien against the property and be  
 20 subordinate to the real estate mortgage or contract for deed.

21 C. Renewals and reimbursement.

22 1. The participant may petition the commissioner for up  
 23 to a ten-year renewal of the payment adjustment which the  
 24 commissioner shall grant if the participant has complied with  
 25 all terms of the loan guarantee and has submitted to the  
 26 commissioner a net worth statement and a farm business  
 27 management course registration form annually within the time  
 28 frames prescribed in 3 MCAR S 1.0553.

29 2. If the payment adjustment is renewed for an additional  
 30 period of years, within 12 months after the final payment date  
 31 of the mortgage or contract for deed, the participant shall  
 32 reimburse the state for all payment adjustments paid on the  
 33 participant's behalf.

34 3. If the participant has more than one loan approved  
 35 under a single guarantee, disposition of the renewal request on

1 the latest maturing loan governs when reimbursement of the  
2 payment adjustment will be made on all the loans included under  
3 that guarantee.

4 D. Reimbursement upon sale or conveyance. Except as  
5 provided in 3 MCAR S 1.0559 C., a participant who sells or  
6 conveys the farm land for which a guarantee was approved shall  
7 immediately retire the entire debt owed the state for payment  
8 adjustments paid on the participant's behalf.

9 E. Interest; late payment. If the participant does not  
10 reimburse the state within the required time period, the  
11 commissioner may charge the maximum interest provided by law on  
12 the outstanding debt for the period of delinquency.

13 3 MCAR S 1.0556 Default of participant.

14 A. Conditions. A participant is in default if one or more  
15 of the following conditions exist:

16 1. the participant does not pay the principal or interest  
17 payment on the date due;

18 2. the participant breaches a material obligation in the  
19 note, loan agreement, or any instrument securing the loan, and  
20 the lender determines that this breach constitutes an adverse  
21 change in the participant's ability to repay the guaranteed  
22 loan; or

23 3. the participant fails to personally maintain the farm  
24 land in active agricultural production for longer than one year.

25 B. Consequences.

26 1. If the participant is in default for reasons given in  
27 A.1. or A.2., the lender, the participant, and the commissioner  
28 may take any steps reasonable to assure fulfillment of the loan  
29 obligation. If the matter is not resolved, the lender or seller  
30 and the commissioner shall take action according to the  
31 following procedures, dependent on who sponsored the loan.

32 a. Under a contract for deed, the seller has two  
33 options which may be pursued.

34 (1) The seller may proceed according to the contract  
35 law in Minnesota Statutes, section 559.21 to cancel the  
36 contract. In this event, the seller shall forward to the

1 commissioner all sums owed the state and regain real estate  
2 interest in the property.

3 (2) The seller may exercise the state's guarantee  
4 pursuant to Minnesota Statutes, section 41.56, subdivision 3.

5 b. A lender may use statutory foreclosure proceedings  
6 in lieu of exercising the guarantee provisions of Minnesota  
7 Statutes, chapter 41 provided that the following conditions are  
8 met:

9 (1) The lender pledges to take all reasonable and  
10 prudent steps to protect and maintain the farm land and to  
11 obtain the highest possible net proceeds from the subsequent  
12 sale of the property; and

13 (2) The lender agrees that any money from the  
14 foreclosure sale in excess of 90 percent of the balance of the  
15 loan, plus 90 percent of the accrued interest calculated to the  
16 end of the 180-day default period, plus 90 percent of reasonable  
17 costs incurred during the foreclosure period will first be  
18 applied toward the satisfaction of the outstanding balance of  
19 the state's lien for reimbursement of the payment adjustment  
20 prior to any other disbursements, settlements, or satisfactions.

21 c. If the lender fails to notify the commissioner in  
22 writing within 180 days of the initial default of the  
23 participant, the state shall exercise its guarantee based on the  
24 principal balance of the loan at the time of notification of the  
25 default according to the amortization schedule of the loan.  
26 Maximum accrued interest to be paid by the state, calculated on  
27 the principal balance at the time of notification of default,  
28 may not exceed 180 days beyond the normal payment period.

29 d. When there is more than one loan under a single  
30 guarantee, all loans are considered to be in default if one is  
31 in default. The lenders concerned must then exercise their  
32 options in concert with each other and with the commissioner.

33 2. If a participant is in default under A.3. and has not  
34 received a waiver pursuant to 3 MCAR S 1.0557, the state shall  
35 cease its payment adjustments on the loan, all payment  
36 adjustments made on the participant's behalf will be due and

1 payable to the state within 12 months of the default date, the  
2 participant will no longer be considered active in the program,  
3 and the guarantee will no longer be in force or effect.

4 C. Sale of defaulted farm land. In the event of default,  
5 the commissioner shall sell the farm land involved pursuant to  
6 Minnesota Statutes, section 41.56, subdivision 4 and the  
7 following:

8 1. The commissioner has the right to reject any bid  
9 submitted on the farm land to be sold.

10 2. For the purposes of Minnesota Statutes, section 41.56,  
11 subdivision 4, the following definitions apply:

12 a. "Date of sale" means the date on which the state  
13 fully executed the purchase agreement.

14 b. "Proceeds" means the sale price less reasonable  
15 closing costs, including but not limited to, payment of taxes  
16 due, expenses for abstracting, custom field work completed, and  
17 other reasonable costs associated with the sale.

18 3 MCAR S 1.0557 Waiver of default.

19 A. Granting waiver. The commissioner may waive the default  
20 resulting from a participant's failure to personally continue  
21 agricultural production pursuant to 3 MCAR S 1.0556 A.3- The  
22 ~~waiver shall be granted~~ for the reasons and following the  
23 procedures in B.-D. If the waiver is granted, the participant  
24 shall continue to be eligible to receive the payment adjustment.

25 B. Waiver for public service. The participant may be  
26 granted a waiver if the participant has accepted a position of  
27 public service through a government agency, church, charitable  
28 organization, or similar organization, with the intent to serve  
29 for a limited period of time and then return to full-time  
30 farming, provided that:

31 1. the participant submits a written notice of intent to  
32 the commissioner within 60 days after accepting the position;

33 2. the participant continues to submit annual financial  
34 statements to the commissioner; and

35 3. the participant agrees to make the full loan  
36 installments, including the state's payment adjustment, due

1 during the waiver period.

2 C. Waiver for financial difficulty. The participant may be  
3 granted a waiver and remain eligible for the payment adjustment  
4 if the participant demonstrates to the commissioner, as  
5 evidenced by financial statements and discussions with lenders,  
6 that the participant is in financial difficulty and has taken a  
7 job off the farm with the intent of providing the cash flow  
8 needed to return to full-time production, provided that:

- 9 1. the participant submits a written notice of intent to
- 10 the commissioner within 60 days of taking an off-farm job;
- 11 2. the participant submits semiannual financial
- 12 statements to the commissioner; and
- 13 3. the participant continues enrollment in a farm
- 14 business management course.

15 D. Waiver for physical disability or extenuating  
16 circumstances. The participant may be granted a waiver and  
17 remain eligible for the payment adjustment if the participant  
18 demonstrates to the commissioner that the farm land was not  
19 personally farmed by the participant because of the  
20 participant's physical disability or other extenuating  
21 circumstances beyond the immediate control of the participant  
22 which were reasonably unforeseen and which prevent the  
23 -----  
24 participant from personally maintaining the farm land in  
25 -----  
26 agricultural production, provided that:

- 25 1. the participant submits documentation as to the
- 26 disability or other circumstances which prohibit continuation in
- 27 full-time farming; and
- 28 2. the participant submits semiannual financial
- 29 statements to the commissioner.

30 E. Denial of waiver. If the commissioner determines that  
31 the default should not be waived, the participant is entitled to  
32 a contested case hearing pursuant to Minnesota Statutes, chapter  
33 15 to review the commissioner's determination.

34 F. Expiration. If the participant does not return to  
35 full-time farming at the end of a two-year waiver period and  
36 does not provide convincing evidence that he will do so in the

1 near future, the commissioner shall inform the participant that  
2 he is in default.

3 3 MCAR S 1.0558 Termination of Guarantee.

4 A. Conditions. The guarantee will remain in force and  
5 effect until maturity of the loan unless default occurs under 3  
6 MCAR S 1.0556 and no waiver is granted pursuant to 3 MCAR S  
7 1.0557 or any of the conditions in 1.-3. occur.

8 1. The lender consents to the change or alteration of any  
9 of the terms and provisions of the loan, or attempts to waive or  
10 waives any rights of the lender, the participant, the  
11 commissioner, or the state included in the loan, in a manner  
12 inconsistent with the terms of the loan as represented to and  
13 approved by the commissioner at the time of delivery of the  
14 guarantee, without the written consent and approval of the  
15 commissioner;

16 2. The lender fails to notify the commissioner in writing  
17 within 30 days of a transfer or assignment of the loan. The  
18 guarantee shall remain in force and effect if the commissioner  
19 is notified, provided that the purchaser of the loan assumes all  
20 duties and obligations of the original lender and agrees to  
21 comply with all the requirements of the laws and rules governing  
22 the program; or

23 3. The lender violates any terms, provisions, covenants,  
24 or conditions of any document or agreement to which the lender  
25 is a party for purposes of the guarantee.

26 B. Consequences. In the event that any of the conditions in  
27 A.1., A.2., or A.3. occur, where there is substantial evidence  
28 that the lender's actions were calculated to defraud the state  
29 or misrepresent conditions of the loan, the state may terminate  
30 its guarantee and immediately and forever be released from all  
31 claims and demands based on the guarantee. If it can be clearly  
32 ascertained that the participant had no knowledge of and did not  
33 collaborate with the lender's actions, the state may make the  
34 payment adjustment directly to the participant.

35 3 MCAR S 1.0559 Loan servicing.

1 A. Partial release. The commissioner may approve the  
2 release of a portion of the property purchased under a loan from  
3 the state's lien for reimbursement of the payment adjustment  
4 under the following conditions:

5 1. the participant requests the release and pledges that  
6 it will not adversely affect the participant's ability to  
7 continue in the program; and

8 2. all lenders included in the guarantee agree to release  
9 their interest in the property and agree to the commissioner's  
10 conditions for release from the state's lien for reimbursement  
11 of the payment adjustment.

12 If the release is requested because the participant wishes  
13 to sell a portion of the property, the commissioner may  
14 stipulate to what use the proceeds from that sale may be put.  
15 Ordinarily a certain portion of these proceeds will be used as a  
16 special principal payment on the loans included under the  
17 guarantee.

18 B. Reamortization. Reamortization of a loan will normally  
19 be considered permitted only in cases where the participant has  
20 made a sizeable, special principal payment and where  
21 reamortization is jointly requested in writing by the  
22 participant and the lender. The reamortization shall not extend  
23 the maturity date of the loan, except for those loans originally  
24 calling for a balloon payment which have been approved for an  
25 extension according to 3 MCAR S 1.0553 B.4.

26 C. New owner guarantee. If the participant sells the  
27 property for which a guarantee was issued, the purchaser may  
28 apply for a guarantee in his own right, but under no  
29 circumstances may the original loan guarantee be directly  
30 assumed by the purchaser. The purchaser may assume the former  
31 participant's responsibility for reimbursing the state for  
32 payment adjustments made if the following conditions are met:

33 1. the purchaser has obtained preliminary approval for a  
34 guarantee;

35 2. the council determines that permitting this assumption  
36 will be in the best interests of the state; and

1           3. the assumed indebtedness is not included in the  
2 guarantee for which the purchaser may receive final approval.

3           D. Subordination. The commissioner may approve a request  
4 for subordination of the state's lien for reimbursement of the  
5 payment adjustment if he determines this action is in the best  
6 interests of the state and the participant, or provisions for  
7 subordination are included in the memorandum of understanding  
8 with a cooperating agency.

9           3 MCAR S 1.0560 Commissioner's right to information. At any  
10 time during the existence of a loan, the commissioner may  
11 request information and documents from the lender or the  
12 participant to enable the commissioner to determine that all  
13 terms and conditions of any agreements made pursuant to  
14 Minnesota Statutes, chapter 41 or 3 MCAR SS 1.0548-1.0560 are in  
15 compliance with the statutes and rules.

16           Repealer. Rules 3 MCAR SS 1.0543; 1.0544; 1.0545; 1.0546; and  
17 1.0547 are repealed.