

1 Department of Trade and Economic Development

2

3 Adopted Permanent Rules Relating to Tourism Loan Program

4

5 Rules as Adopted

6 4308.0010 PURPOSE OF TOURISM LOAN PROGRAM.

7 The purpose of the tourism loan program of the department
8 is to provide loans or to participate in loans to
9 tourism-related businesses in Minnesota for upgrading and
10 improvement of facilities. The program will provide both direct
11 loans and participation loans in cooperation with local
12 financial institutions. The state will share credit risks with
13 the financial institutions and provide for lower interest rates
14 than are otherwise available.

15 4308.0020 DEFINITIONS.

16 Subpart 1. **Scope.** The following terms used in parts
17 4308.0010 to 4308.0110 have the meanings given them.

18 Subp. 2. **Commissioner.** "Commissioner" means the
19 commissioner of the Department of Trade and Economic Development
20 or persons delegated to act in the commissioner's behalf.

21 Subp. 3. **Community development application.** "Community
22 development application" means the official consolidated
23 development application form as developed by the department to
24 be used to apply for funding assistance from various community
25 assistance programs administered by the Community Development
26 Division.

27 Subp. 4. **Community Development Division.** "Community
28 Development Division" means the Community Development Division
29 of the Department of Trade and Economic Development. The
30 Community Development Division has been designated by the
31 commissioner to receive applications, administer the program,
32 review applications, and approve loans.

33 Subp. 5. **Department.** "Department" means the Department of
34 Trade and Economic Development.

35 Subp. 6. **Eligible borrower.** "Eligible borrower" means a

1 sole proprietorship, partnership, corporation, or other person
2 engaged in, and determined by the Community Development Division
3 to constitute, a tourism-related business or other entity that
4 is defined by the standard industrial classification codes of
5 7011 and 7033 in Code of Federal Regulations, title 13, section
6 121.2. A person to whom a loan has been made under parts
7 4308.0010 to 4308.0110 must maintain the standard industrial
8 classification code through the term of the loan. A borrower is
9 not eligible to receive another loan under the tourism loan
10 program for three years from approval of the earlier loan to
11 approval of the next loan.

12 Subp. 7. Eligible project. "Eligible project" means a
13 project proposed by an eligible borrower that meets the
14 requirements of parts 4308.0010 to 4308.0110.

15 Subp. 8. Financial institution. "Financial institution"
16 means a bank, trust company, mortgage company, credit union,
17 mortgage banker, national banking association, savings bank,
18 savings association, savings and loan association, building and
19 loan association, insurance company, financial organization
20 dealing in commercial credit or venture capital, or a lender
21 certified by the secretary of Housing and Urban Development or
22 by the secretary of Veterans Affairs, or approved or certified
23 by the administrator of the Farmers Home Administration or any
24 other financial lending institution, whether organized under
25 federal law or the laws of any state of the United States, and
26 whether located within or without this state.

27 Subp. 9. Local unit of government. "Local unit of
28 government" means a county, city, township, or Indian tribe or
29 band recognized by the federal government.

30 Subp. 10. Real property. "Real property" means property
31 consisting of land and all appurtenances, such as buildings and
32 other immovable articles, including improvements made to or upon
33 land and buildings.

34 Subp. 11. Participation loan. "Participation loan" means
35 a loan made under a contract with a financial institution in
36 which the department purchases a share of a financial

1 institution's loan to an eligible borrower.

2 Subp. 12. Tourism revolving loan program or program.

3 "Tourism revolving loan program" or "program" means the tourism
4 loan program created in Minnesota Statutes, section 116J.617.

5 4308.0030 ELIGIBILITY OF PROJECT FOR TOURISM LOANS.

6 A direct loan or a participation loan must be to an
7 eligible borrower for an eligible cost in an eligible project.
8 The maximum state contribution for either kind of loan may not
9 be for more than 50 percent of the total cost of the project
10 loan, with a maximum state loan of \$50,000 for any one project.

11 Proposed eligible projects of \$10,000 or greater require a
12 participation loan. Proposed eligible projects of under \$10,000
13 may receive a direct loan. The Community Development Division
14 may require a participation loan in lieu of a direct loan if it
15 determines that such action would further the purposes of the
16 tourism revolving loan program.

17 4308.0040 ELIGIBLE COSTS FOR TOURISM LOANS.

18 Subpart 1. Eligible costs. Eligible costs for the
19 program include costs not prohibited by subpart 2 for:

20 A. building construction and improvement;

21 B. site preparation;

22 C. equipment;

23 D. other construction costs, such as construction of
24 facilities other than buildings, or costs that may be
25 capitalized as part of overall construction costs; and

26 E. fees that may be required by the department for
27 administration of the loan.

28 Subp. 2. Ineligible costs. Project-related costs incurred
29 more than 30 days before submission of a completed application
30 as required by the community development application process are
31 ineligible costs.

32 Subp. 3. Determination of eligible or ineligible costs.

33 The Community Development Division shall make the determination
34 of which proposed project costs are eligible or ineligible.

1 4308.0050 INTEREST RATE FOR TOURISM LOANS.

2 The interest rate on a direct loan or on the department's
3 portion of a participation loan shall be determined at the time
4 of closing by the department and shall be set at, or up to,
5 three percentage points below a full faith and credit obligation
6 of the United States government of comparable maturity,
7 calculated at the time of initial implementation of the program,
8 rounded to the nearest one-half percent, and revised as needed
9 on a semiannual basis. The interest rate on a participation
10 loan to the borrower shall be a blended rate of the bank's rate
11 and the state's rate in proportion to the respective rate of
12 participation.

13 4308.0060 TERM OF LOAN FOR TOURISM LOANS.

14 The maximum term of a direct loan or participation loan
15 must not exceed the useful life of the real property, or 80
16 percent of the useful life of the equipment or machinery, or the
17 following limits, whichever is less:

- 18 A. ten years for land, buildings, or other real
19 property;
20 B. five years for equipment or machinery; or
21 C. a weighted average of the limits under items A and
22 B for loans for a combination of real property and equipment or
23 machinery.

24 4308.0070 SECURITY REQUIREMENTS FOR TOURISM LOANS.

25 All loans must be secured by collateral. The financial
26 institution or the department shall take a security interest in
27 any collateral acceptable to the financial institution. The
28 personal guarantee of principal owners must also be given to the
29 financial institution or department before the loan is
30 approved. For purposes of this part, principal owners are those
31 having 20 percent or more ownership of tourism project.

32 4308.0080 APPLICATION PROCESS FOR TOURISM LOANS.

33 Subpart 1. General procedures. Applications for loans
34 under the program must be made by the borrower and, if

1 applicable, in coordination with a financial institution.
2 Written evidence of support for the proposed project by the
3 local unit of government within which it would be located must
4 accompany the application. Applications may be submitted year
5 round to the Community Development Division using the Community
6 Development Division's community development application.

7 Subp. 2. **First part of application.** The first part of the
8 community development application must include:

9 A. a description of the borrower, including the
10 borrower's standard industrial classification code;

11 B. a narrative summarizing the need for the proposed
12 tourism-related project; and

13 C. a project summary outlining the construction, site
14 preparation, equipment, or other activities or items to be
15 completed or acquired and the scope of the project.

16 Subp. 3. **Second part of application.** The second part of
17 the community development application must include:

18 A. an activities description and budget detailing the
19 specific estimated costs associated with each proposed activity
20 or acquisition;

21 B. a description of the proposed collateral;

22 C. supporting materials that are designed to verify
23 or support information presented in subparts 1 and 2 and in
24 items A and B including, if applicable, a copy of the financial
25 institution's file regarding the borrower's loan application and
26 a letter containing the financial institution's assessment of
27 the risks associated with the loan, and the creditworthiness of
28 the borrower;

29 D. a statement by the borrower, in the form provided
30 in Minnesota Statutes, section 13.05, subdivision 4, paragraph
31 (d), or a form similar to it if the borrower is a corporation,
32 consenting to the dissemination of private or nonpublic data
33 applicable to the loan; and

34 E. copies of building permits, conditional use
35 permits, resolutions, correspondence, and other documentation
36 that the proposed project has been reviewed and approved by the

1 appropriate local government officials.

2 Subp. 4. Additional information. The Community
3 Development Division may require additional information from the
4 applicant if it is necessary to clarify and evaluate the
5 application.

6 4308.0090 PROCEDURE FOR TOURISM LOAN EVALUATION AND APPROVAL.

7 Subpart 1. Evaluation of eligibility. Upon receipt of the
8 first part of the community development application, the
9 Community Development Division shall make a determination
10 whether the borrower, project, and costs are eligible for
11 consideration. If it is determined that the borrower, project,
12 or costs are ineligible, the Community Development Division
13 shall notify the borrower and, if applicable, the financial
14 institution and suggest any modifications that would make the
15 application eligible for consideration. If it is determined
16 that the borrower, project, and costs are eligible, the
17 Community Development Division shall notify the borrower and, if
18 applicable, the financial institution and advise the borrower
19 and, if applicable, the financial institution of the additional
20 information required to complete the second part of the
21 community development application.

22 Subp. 2. Evaluation of the completed application. Upon
23 receipt of the completed community development application, the
24 Community Development Division shall evaluate the application
25 based on the following criteria:

26 A. the ability of the borrower to reasonably repay
27 the loan;

28 B. the extent to which the proposed project would
29 contribute to upgrading, expanding, and improving Minnesota's
30 tourism industry;

31 C. the degree to which the proposed project would
32 contribute to the economic viability of the tourism-related
33 facility operated by the borrower;

34 D. the degree to which the proposed project would
35 contribute to protection or enhancement of the local tax base;

1 E. demonstration of an overall positive economic
2 impact on the surrounding community; and

3 F. the degree to which the proposed project would
4 help retain lakeshore and other outdoor recreation and tourism
5 amenities for general use.

6 Subp. 3. **Approval.** The Community Development Division may
7 reject or disapprove an application for a direct loan or a
8 participation loan that does not provide sufficient
9 documentation or otherwise comply with part 4308.0010 to
10 4308.0110. If the Community Development Division approves an
11 application for a direct loan or participation loan, it shall
12 address a commitment letter to the financial institution and the
13 borrower. It shall also notify the financial institution and
14 the borrower of the amount of the loan and the amount of
15 interest charged on the department's portion of the loan.

16 Subp. 4. **Documentation required.** The state shall require
17 an executed promissory note, an executed participation
18 agreement, recorded mortgage, security agreements, personal
19 guarantees, and other documentation needed to close the loan.
20 The Community Development Division shall prepare a loan
21 agreement to be signed by the financial institution, the
22 borrower, and the state. The financial institution shall also
23 certify in the participation agreement that the interest rate
24 approved by the Community Development Division will be passed on
25 to the borrower.

26 4308.0100 LOAN SERVICING.

27 Subpart 1. **Collection responsibilities.** In cases where a
28 participation loan is approved, the financial institution shall
29 collect payments according to the payment schedule outlined in
30 the promissory note. The financial institution must remit to
31 the department its pro rata share of a payment within 15 days of
32 receipt. The financial institution may retain interest
33 collected as payment for duties performed by it under the
34 contract in the amount of one percent per annum of the
35 department's share of the loan.

1 Subp. 2. Loan default. The financial institution shall
2 notify the Community Development Division within 30 days after a
3 determination by the financial institution of a default. The
4 financial institution must pursue all reasonable means to
5 collect the defaulted loan from the borrower and must apply and
6 exhaust the loan security as necessary to effect payment of the
7 loan. The financial institution must remit to the department
8 its pro rata share of any amounts collected after subtracting
9 costs to collect upon the defaulted loan. In lieu of
10 foreclosure, either before or after declaring a default, the
11 financial institution and the Community Development Division may
12 agree to refinance or renegotiate the loan when doing so will
13 enhance the possibility of recovery of the debt.

14 4308.0110 AMORTIZATION SCHEDULES.

15 Loan payments shall be made according to an amortization
16 schedule established by the Community Development Division for
17 direct loans, or by the financial institution for department
18 participation loans. In the case of participation loans, the
19 Community Development Division shall review and approve the
20 proposed amortization schedule.

21 The financial institution shall allow loan payments to be
22 made on other than a monthly basis to meet the amortization
23 schedule established by the financial institution. A nonmonthly
24 payment schedule shall allow for seasonal payments, where income
25 is generated or primarily generated, because of seasonal
26 business.