STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING ADMINISTRATION OF THE FAMILY FARM SECURITY PROGRAM AND REPEAL OF EXISTING RULES GOVERNING ADMINISTRATION OF THE FAMILY FARM SECURITY PROGRAM (3 MCAR SS 1.0543-1.0547)

STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION

The subject of this rulemaking is the proposed adoption by the Minnesota Department of Agriculture of rules governing administration of the Family Farm Security Program and repeal of existing rules governing administration of the Family Farm Security Program. These rules are proposed for adoption pursuant to Minnesota Statutes section 41.53, subd. 2 which authorizes the Department to promulgate rules necessary for the efficient administration of the Family Farm Security Program.

Rulemaking on the proposed rules was authorized by the Department on July 2, 1982. Prior to the initiation of rulemaking, the Department found that the proposed adoption of the rules is noncontroversial in nature because while it is proposed that the current rules be repealed and these proposed rules be adopted, there is no repeal of any substantial part of any current rule. Rather, the proposed rules reorganize and amplify present provisions, incorporating legislative changes made since promulgation of the current rules in 1977 and also incorporating procedures developed by the Department through administrative experience with the program since it began in 1976.

Due to the non-controversial nature of the proposed rules, the Department directed that the rulemaking proceedings be conducted in accordance with the statutory provisions governing the adoption of non-controversial rules, Minnesota Statutes section 15.0412, subd. 4h (1981 Supp.). Accordingly, the rulemaking proceedings on the proposed rules are governed by that statute and no hearing will be conducted on the adoption of the rules unless, on or before August 18, 1982, seven or more persons submit to the Department a written request for such a hearing.

In accordance with the requirements of Minnesota Statutes section 15.0412, subd. 4h (1981 Supp.) this document, the Statement of Need and Reasonableness, was prepared and completed prior to the date that the proposed adoption of the rules was noticed in the State Register.

The discussion provided in this Statement is divided into the following parts:

Part II. General Overview

Part III. General Statement of Need and Reasonableness

Part IV. Need for and Reasonableness of Each of the Proposed Rules

II. GENERAL OVERVIEW

A. History of the Family Farm Security Program

In order to understand the need for and reasonableness of these proposed rules, it will be useful to have a general understanding of the purpose and history of the Family Farm Security Program. In 1976, the Minnesota legislature enacted the Family Farm Security Act which gave authority to the Commissioner of Agriculture to aid farmers in obtaining credit for the acquisition of farm land. The Act enables the Commissioner to guarantee 90 percent of the loans made for acquisition of farm land and to pay four

percent of the annual interest on these loans to lenders who make the loans. "Lenders" include both traditional farm real estate financial institutions as well as current owners acting both as sellers of the farm land and financiers of the loan for purchase of the farm land. A Family Farm Advisory Council makes recommendations to the Commissioner as to the likelihood of success of proposed farming operations and acts in conjunction with the Commissioner in setting policies and direction for the program based on Minnesota Statutes, chapter 41 and as reflected in these proposed rules. The Advisory Council, in accordance with Minnesota Statutes section 41.54, subd. 1, is composed of the following seven members: two officers from a commercial lending institution, one dairy farmer, one livestock farmer, one cash grain farmer, one officer from a farm credit association and one agricultural economist.

In order to apply for a Family Farm Security Program loan, the applicant must meet the eligibility criteria outlined in Minnesota Statutes section 41.55 and those set forth in these proposed rules. The applicant must also submit certain documents to the Commissioner, which indicate a firm commitment and interest in obtaining a family farm security loan guarantee. Upon obtaining a preliminary approval from the Commissioner, the applicant must submit additional materials and final approval follows completion of all additional procedures including execution of the state's guarantee documents. Principal benefits of the program are the 90 percent guarantee on loans made by lenders participating in the program and participant eligibility for the payment adjustment which is a 4% interest payment by the state to lenders. Further eligibility criteria, pursuant to statute and these rules, govern this payment adjustment, with one major limiting factor being the requirement that the participant's net worth not exceed $135,000, as currently defined in

Minnesota Statutes, section 41.57, subd. 3. More detailed procedures for these and other parts of the program are contained in these proposed rules.

The first applicant was approved for a family farm security loan guarantee in March, 1977. In the subsequent five years, the program has grown considerably. As of July 1, 1982, there were 345 farmers participating in the program, located in 67 Minnesota counties. These participants own 55,709 acres of farm land, with approximately $60.7 million of the purchase price of this land guaranteed under the program.

B. Format of the Proposed Rules

The proposed rules are set forth in the following manner: purpose and authority; definitions; eligibility; application, preliminary approval, notification and reconsideration; final approval and guarantee; payment adjustment; recipient of payment adjustment; reimbursement of payment adjustment; default of participant; waiver of default; termination of guarantee; loan servicing; and Commissioner's right to information.

III. GENERAL STATEMENT OF NEED AND REASONABLENESS OF THE PROPOSED RULES

The Department has determined that it is timely to revise the rules of the Family Farm Security Program for three reasons. The first is that several legislative amendments have been made to the enabling statute since 1976. The second reason for proposing these rules stems from the need to incorporate into the rules practices which have evolved during the five years of the Department's administrative experience with the program. Such practices have evolved from research done into similar programs in different states; assessments of

procedures and prudent lending practices used by financial institutions such as rural banks, the Farmers Home Administration, and the Federal Land Bank; decisions made by the Commissioner and program administrator based on the recommendations of the Family Farm Advisory Council; and increasing familiarity with the normal practices and legal procedures involved in real estate transactions. The third reason for proposing these rules is to reorganize the language and provisions of the current rules in order to provide clarity in the procedures and to provide a better chronology in the procedures, for example, placing the rule regarding eligibility for the program in the proposed rules in contrast with the current rules where their order is reversed.

In general, these proposed rules are also reasonable for two principal reasons. The first is that it is reasonable for the Department to follow the directive of Minnesota Statutes section 41.53, subd. 2 and provide rules for the efficient administration of the program. During the previous five years of the program, the Department has become increasingly familiar with normal practices in the areas of real estate transactions and real estate financing, and it is reasonable to organize all that information both for the purposes of the Department's administration and also for clarity and ease of understanding for participants seeking to enter the program and also for sellers and lenders participating in the program. The procedures proposed in the rules are reasonable either because they are similar to normal procedures in real estate or financial transactions, or, where they are procedures unique to the Family Farm Security Program, they have been appraised and accepted by the Family Farm Advisory Council and have been proven over time in the Department's administrative experience with the program.

IV. SPECIFIC STATEMENT OF NEED AND REASONABLENESS FOR EACH OF THE PROPOSED RULES

The need for and reasonableness of each of the proposed rules follows. The discussion of the need and reasonableness of the proposed rules has been divided into the following four categories due to the extent of amplification to the current rules which is provided: technical additions to material in current rules; amplification of material in current rules; all new material; and material from current rules not included in proposed rules.

For the sake of brevity, the complete content of each of the rules will not appear here, but rather the number of each rule will be provided for reference.

A. Technical Additions to Material in the Current Rules

In this section, four proposed rules are discussed which contain essentially the same material as in the current rules with only minor technical additions.

3 MCAR S 1.0548

This proposed rule sets forth the purpose of these rules governing administration of the Family Farm Security Program and the authority by which the Commissioner proposes the adoption of these rules. This statement of purpose and authority appears in the current rule, 3 MCAR S 1.0543 A., but is presented here in the format currently prescribed by the Office of the Revisor of Statutes.

3 MCAR S 1.0550

This proposed rule sets forth the eligibility requirements which an applicant must meet in order to apply for approval into the Family Farm Security Program. The material in the current rule, 3 MCAR S 1.0543 C. 1.-7., is basically a repetition of the eligibility requirements outlined in Minnesota Statutes section 41.55, clauses (a)-(e). Thus the material was reorganized in the proposed rule as 3 MCAR S 1.0550 A., pursuant to the rule drafting procedures of the Office of the Revisor of Statutes requiring the minimization of duplication of statutory language, pursuant to Minnesota Statutes section 648.50, subd. 6.

There are, however, five substantive technical additions in this proposed rule. The first is the inclusion of the reference in proposed rule 3 MCAR S 1.0550 A. to Minnesota Statutes section 500.221, subd. 2 (1981 Supp.) which permits permanent resident aliens, as defined in Minnesota Statutes section 500.221, subds. 1 and 1a (1981 Supp.), to acquire farm land in Minnesota but restricts acquisition of farm land by others. It is necessary and reasonable to include permanent resident aliens as eligible to apply for participation in the Family Farm Security Program since Minnesota Statutes section 500.221, subd. 2 (1981 Supp.) does not restrict such persons from acquiring farm land in Minnesota. Such applicants would have to meet other eligibility criteria and follow other procedures as set forth in proposed rules 3 MCAR SS 1.0548-1.0560 in order to be approved for and fully participate in the program. But it is a reasonable provision not to exclude from eligibility for the program a permanent resident alien who is not restricted elsewhere in the statutes from acquiring farm land in Minnesota.

The second technical amendment to the material in the current rule occurs in proposed rule 3 MCAR S 1.0550 B. When the current rules were promulgated in 1977, the statutorily defined limit on net worth as a criterion for eligibility was $50,000 as stated in the current rule, 3 MCAR S 1.0543 C. 4. In 1979 the legislature increased this ceiling to $75,000, which was never reflected in the rules. Thus, it is necessary to update this specific provision. Rather than include the new figure for the net worth limit, however, it is reasonable to reference the section of Minnesota Statutes

where the net worth limitation appears so that the rule will be consistent with the figure set by the legislature, whether the figure increases, decreases or remains the same.

The third substantive addition in this proposed rule is the clarification in 3 MCAR S 1.0550 C. that applications will be accepted only for the acquisition of farm land. This clarification is necessary because the Department has had inquiries regarding the availability of loan guarantees to make improvements such as construction of buildings on farm land already owned. The provision is reasonable because the intent of the program is to assist farmers in obtaining credit for the acquisition of farm land (Minnesota Statutes section 41.52, subds. 5-6) rather than for improvements on the farm land.

The fourth substantive addition to this proposed rule is contained in 3 MCAR S 1.0550 D. This requirement appears neither in the statute nor in the current rule, but it is a necessary requirement because of the manner in which the state's guarantee operates in response to participant default under Minnesota Statutes section 41.56, subd. 3 and proposed rule 3 MCAR S 1.0556. In cases where the state must exercise its guarantee and pay 90 percent of the sums payable to the lender or seller, as defined in proposed rule 3 MCAR S 1.0552 E., it is necessary that the state then be sole holder of the fee title to the farm land so that it might be able to comply with the directive contained in Minnesota Statutes section 41.56, subd. 4 to sell the defaulted property. If the participant in the Family Farm Security Program were permitted to acquire less than 100 percent interest in the farm land, the state would have to negotiate the sale of the property it acquired by default with the remaining partner-owner of the property. The partner may not be interested in selling the property, and the state would be in the position of part landowner of farm land. It is the interpretation of the Department that this would be a situation that the legislature did not intend when it enacted the enabling statute. To protect the interest of the state and be consistent with the legislative intent, then, it is also a reasonable provision to require applicants to purchase 100 percent interest in the farm land.

The last substantive addition to this proposed rule appears in the second half of 3 MCAR S 1.0550 E. The first part of that provision appears in the current rules under 3 MCAR S 1.0543 C. 6. The requirement in the second part, that the applicant substantiate the economic feasibility of the proposed farming operation, is a necessary provision because the state must be reasonably certain that the guarantee will be provided for an operation with a good likelihood of success. This provision is reasonable because it is also fair to the applicant who is presumably similarly interested in the success of the proposed farming operation. The provision is an amplification of the authority granted the Commissioner under Minnesota Statutes section 41.55, clause (e) to provide standards for the credit worthiness of applicants.

3 MCAR S 1.0554

This proposed rule sets forth the procedure for interest payment adjustments to be made on behalf of the participant to the appropriate recipient. The first part of this proposed rule is contained in the current rule, at 3 MCAR S 1.0544 A. 2. and 3 MCAR S 1.0544 A. 2. a., which requires the lender to

annually bill the Commissioner for payment adjustments due and which also requires the Commissioner to pay the payment adjustment to the lender. It is the second part of this proposed rule which contains the substantive technical addition that the state may pay the payment adjustment to the participant who submits proof that a full installment payment was made. This is a necessary provision because the Department's administrative experience has shown that lenders grant the family farm security loan to participants who have received preliminary approval for the program in accordance with proposed rule 3 MCAR S 1.0551. The period of time between this preliminary approval and final approval, as outlined in proposed rule 3 MCAR S 1.0552, may take an additional 6-12 months, during which time a payment on the loan may be required. If the participant makes this full payment on the loan, including both the payment on the principal balance and the full interest payment due, then it is necessary that the state be able to pay the 4 percent payment adjustment directly to the participant who entered into the loan agreement with preliminary approval for participation in the program, since this 4 percent payment adjustment is a benefit of participation in the program. Except in the rare cases where an applicant withdraws an application, every applicant to date who has received preliminary approval also receives final approval for the program. It is reasonable that approved participants in the program should receive a benefit due them from the program, whether directly or indirectly as when paid to the lender.

3 MCAR S 1.0560

This proposed rule contains the same material in essentially the same language as in the current rule, 3 MCAR S 1.0547. One technical addition regarding compliance is the specific reference in the proposed rules to the enabling statute, Minnesota Statutes chapter 41 and the proposed rules, 3 MCAR SS 1.0548-1.0560 rather than the general reference to "law and rules" in the current rule. Another difference between the rule as proposed and the current rule lies in the phrase stating that the Commissioner may request information from the lender "or the participant" at any time. "Applicant" in the current rule is changed to "participant" in the proposed rules to reflect the actual status of the individual once accepted into the program. An error exists, however, in the current 3 MCAR S 1.0547 phrase which is stated "... the lender <u>on</u> the applicant". This is a typographical error in the MCAR printed version as is apparent from reviewing the actual rule as adopted in 1977. (See Attachments A and B.) Thus, the rule as proposed in 3 MCAR S 1.0560 is not a substantive difference requiring information from the participant formerly provided by the lender, but is only a correction of a typographical error printed in the current rule 3 MCAR S 1.0547, but never actually adopted.

B. Amplification of Material in Current Rules

In this section, six proposed rules are discussed which contain language amplifying material in the current rules. The same general procedures from the current rules are retained and more specific and detailed procedures, based on the Department's administrative experience, are provided in the proposed rules. The material from the current rules is also reorganized in the proposed rules to provide more clarity as to the actual chronological order of procedures to be followed.

3 MCAR S 1.0551

This proposed rule sets forth the procedures to be followed by the applicant in applying to the program and to be followed by the Commissioner in reviewing applications and granting preliminary approval. The proposed rule contains several substantive amplifications of procedures outlined in the current rules.

The first substantive amplification occurs in proposed rule 3 MCAR S 1.0551 A. which lists all the material to be contained in an application for participation in the program. New language in 3 MCAR S 1.0551 A. 1.-6. is provided to clarify for readers and users of the rules the documents which comprise an application. The introduction to this part of the proposed rule contains one major difference regarding which party supplies the forms for application to the program. The current rules state that the lender shall provide the forms for the application procedure since at the beginning of the program when the rules were first promulgated in 1977, lenders rather than the Commissioner had loan applications available. The proposed rule states that forms will now be provided by the Commissioner. Since the Commissioner reserves the right to require information under proposed rule 3 MCAR S 1.0560 it is reasonable that the Commissioner also provide pertinent forms. Minnesota Statutes section 41.57, subd. 1 states only that the Commissioner must approve the forms to be used. Thus, it is not inconsistent with the statute for the Commissioner to provide as well as approve the forms for application.

The second substantive amplification in this proposed rule is stated in 3 MCAR S 1.0551 B. The current rule, 3 MCAR S 1.0543 B. 2., contains material which appears in this part of the proposed rule, except that there is no statement in the proposed rule similar to 3 MCAR S 1.0543 B. 2. b. and c. regarding who is to pay for the appraisal. Since it is reasonable that the person seeking approval should provide all the information required for application, it is reasonable that the applicant should also pay for the required documentation. Yet the proposed rule permits the applicant flexibility in arranging payment for an appraisal. This part of the proposed rule also states that a letter of the appraiser's qualifications be on file with the Commissioner. It is necessary to have such a letter so that the Department can be reasonably certain of the true value of the farm land for which the loan and guarantee are sought. It is reasonable, however, that such a letter be on file rather than accompanying each application in order to eliminate any paperwork burden on appraisers who are regularly involved in this type of assessment for the Family Farm Security Program. These appraisal procedures are proposed pursuant to Minnesota Statutes section 41.57, subd. 1.

The third substantive amplification in this proposed rule is stated in 3 MCAR S 1.0551 C. This entire part of this proposed rule is new language except for the last sentence which appears both in Minnesota Statutes section 41.57, subd. 1 and current rule 3 MCAR S 1.0543 B. 2. d. It is necessary that a purchase agreement be included among the documents required for application to the Family Farm Security Program because it is a principal component in any financing arrangement made by financial institutions in cases of real estate transactions. Purchase agreements are thus normally required where any real estate transactions are contemplated. It is reasonable that any purchase agreement made for purposes of securing a family farm security loan guarantee be made in accordance with the provisions of these proposed rules 3 MCAR SS 1.0548-1.0560 and in accordance with the statute since these will govern the applicant's approval into the program. The requirement of a statement in the purchase agreement that the sale of the farm land be contingent upon approval of the applicant for a guarantee is necessary in order to fulfill the purpose of the program. The purpose of the Family Farm Security Program is to provide credit to farmers whose net worth and other relevant financial factors are such that the farmers most likely are not able to get credit for farm land acquisition elsewhere. The contingency clause is essentially a statement of the applicant's need for the benefits of the program, i.e., the guarantee, in order to acquire farm land. Were it not included, it would appear that the applicant does have access to other sources of credit to finance the acquisition because the sale of the farm land would proceed even without the guarantee from the state. It is a reasonable provision that this contingency clause be included in order to be consistent with the legislative intent of the program and in order not to provide unfair advantage to applicants who might well have access to other sources of credit for financing farm land acquisition.

The fourth substantive amplification in this proposed rule is contained in 3 MCAR S 1.0551 D., which requires the applicant to submit the listed letters of commitment where they are appropriate. While the language is new, it only provides an elaboration of the current rule, 3 MCAR S 1.0543 F. 7., which requires arrangements for financing necessary equipment and operating costs. The proposed rule clarifies what should be contained in this documentation if it is required in cases where livestock or equipment will be purchased or where equipment will be shared. Documentation regarding the financing of any portion of the farm land sale not financed by the seller is necessary in order for the Commissioner to be reasonably certain that the entire purchase price of the farm land will be financed. The requirement that arrangements for the first year's operating credit also be made is necessary because administrative experience as well as experience in the general farming community has shown that the first year of operation for a beginning farmer is often the most difficult. All of these provisions are reasonable ones because it is in the best interests of the state and the participant that the proposed farming operation be successful, and both administrative experience as well as experience from the farm and financial communities have shown that the areas addressed in these letters of commitment are potential problem areas for all farmers. Thus it is reasonable to address possible problem areas in order to mitigate undesirable outcomes for the farm operation where possible.

The fifth substantive amplification in this proposed rule is contained in 3 MCAR S 1.0551 E. regarding financial information the applicant must provide. This part of this proposed rule contains mostly new language intended to clarify what is required of the applicant. The first piece of financial information required, the statement of net worth, is necessary so that the Commissioner may determine one of the major conditions of eligibility: whether the applicant has a lower net worth than the limitation set under Minnesota Statutes section 41.55, clause (c). The second and third items regarding past earnings and projected income and expenses for the farm operation are necessary so that the Commissioner may get a clear picture of the financial position of the applicant in order to determine the likelihood of the applicant's success in farming. Credit references are necessary so that the Commissioner can determine the applicant's credit worthiness pursuant to Minnesota Statutes section 41.55, clause (e). These are all reasonable requirements because they have been determined as necessary by the Family Farm Advisory Council in order to determine the likelihood of the applicant's success, the applicant's access to sources of operating credit as discussed at 3 MCAR S 1.0551 D. above, and in order to determine the income producing potential of the farm land as directed by Minnesota Statutes section 41.57, subd. 1. The requirement in this part of the proposed rule that the applicant must submit a statement of the families' ability or willingness to provide financial assistance to the applicant is included in the current rules at 3 MCAR S 1.0543 C. 5. It is necessary that such information be provided so that the Commissioner might determine the true need of the applicant for the loan guarantee. It is also a reasonable provision because if applicants are able to have family financial assistance, the additional assistance of the Family Farm Security Program would provide them unfair economic advantage.

The sixth substantial amplification in this proposed rule is contained in 3 MCAR S 1.0551 F. regarding the privacy of the information supplied by the applicant. It is necessary that the information provided be handled respectfully because it reveals a great deal about the economic situation of the applicant which the applicant would not wish to have distributed indiscriminately. Since the enabling statute did not include any particular data privacy provision, however, it is reasonable to state the intent of the Department with respect to the data so that the applicant is assured of its proper use. The information will be classified as security data because its distribution could jeopardize the possessions of applicants, and as benefit data because the applicant is in part applying for homeownership under a program administered by a state department when applying for a family farm security loan.

The material contained in part 3 MCAR S 1.0551 G. of this proposed rule is essentially the same material which is contained in the current rules at 3 MCAR S 1.0543 G. and 3 MCAR S 1.0543 E. The provisions are necessary to clarify for applicants the review procedures to be employed once the application is submitted to the Commissioner. The provisions are also reasonable because they require the Commissioner's use of the Family Farm Advisory Council as envisioned by Minnesota Statutes section 41.54, subd. 4 (c), and outline a fair procedure for reconsideration of applications in response to Minnesota Statutes section 41.56, subd. 1 which permits applicants to reapply.

The material contained in part 3 MCAR S 1.0551 H. of this proposed rule contains essentially the same material which is contained in the current rule at 3 MCAR S 1.0543 F. These criteria are necessary so that each application will be reviewed in the same objective manner by the Commissioner and the Family Farm Advisory Council, and are reasonable because they were initially developed by the Commissioner in consultation with the Family Farm Advisory Council and have proved reliable indicators in the Department's administrative experience with them. Further, they are reasonable because they include the eligibility requirements in proposed rule 3 MCAR S 1.0550 and are closely related to the application information required of the applicant under proposed rule 3 MCAR S 1.0551 parts A.-E. and thus are not arbitrary criteria on which to base approval.

The material contained in part 3 MCAR S 1.0551 I. of this proposed rule regarding the Commissioner's responsibility to notify the applicant of the determination regarding the application for the guarantee is essentially the same as in the current rule at 3 MCAR S 1.0543 G. It is necessary and reasonable that the Commissioner appraise the applicant of the results of the Commissioner's and the Council's review of the application because it is a fair response after the applicant has spent considerable time in collecting and providing the materials required to make the application. This part of the rule also contains the requirement that the Commissioner specifically note the reasons for nonapproval. This entire part of the proposed rule is consistent with Minnesota Statutes section 41.56, subd. 1.

The provisions contained in part 3 MCAR S 1.0551 J. of this proposed rule are exactly the same as those contained in the current rule at 3 MCAR S 1.0543 E. regarding reconsideration of the Commissioner's nonapproval of a loan guarantee application. What is different is the change in language from determination of "ineligibility" to determination of "nonapproval" in order to clarify for readers and users of the rule that applicants may be eligible to apply for a guarantee but they are not therefore automatically approved for one. It is necessary and reasonable that this part of this proposed rule be retained from the current rule in order to provide a procedure for the possible reapplication envisioned in Minnesota Statutes section 41.56, subd. 1.

3 MCAR S 1.0552

This proposed rule sets forth the procedures to be followed by the applicant who has already received preliminary approval for the program in order to receive final approval for the program. The provisions in this rule are a substantial amplification of provisions in the current rule at 3 MCAR S 1.0544 B.

The material in the first part of this proposed rule, 3 MCAR S 1.0552 A., is substantially the same as appeared in the current rule except for the addition of the requirement of a preliminary title opinion and a limitation on the period during which applicant and lender must prepare for the closing, within 120 days. A preliminary title opinion is a necessary requirement because it would reveal any underlying encumbrances on the property such as tax or other liens, judgements, etc. The program requires that all encumbrances on the

property be less than 90 percent of the loan for acquisition of the property, as noted in part 3 MCAR S 1.0552 D. of this proposed rule. It is reasonable to require satisfaction of these encumbrances in excess of 90 percent of the guaranteed loan so that the participant may receive clear title to the property at the end of the loan period. It is also a reasonable provision for the protection of the state, since in the event of participant default and the lender's choice to have the state pay the guaranteed 90 percent, the state similarly would be able to gain clear title to the property because the lender would be able to satisfy the underlying encumbrances. The second new provision in this part of this proposed rule, the requirement that the applicant complete and submit all documents required for the closing within 120 days of the receipt of notice of preliminary approval, is necessary because the material is needed in order to complete the guarantee agreement. It is a reasonable time frame because administrative experience has shown that most applicants are able to complete the required documents within a couple of months, thus this is a generous time period.

The second and third substantive amplifications in this proposed rule appear in parts 3 MCAR S 1.0552 B. and C. regarding documents required in the event of either type of loan arrangement permitted by the program: seller-sponsored loans or lender-sponsored loans. These provisions are necessary because they clarify for readers and users of the rules the closing documents that are required. Seller-sponsored loans in particular have grown in importance in the program since it began in 1977. The provisions are reasonable because they reference documents normally required by financial institutions such as the Farmers Home Administration and the Federal Land Bank in real estate financing.

The provision contained in part 3 MCAR S 1.0552 D. of this proposed rule is all new language, but it has already been explained earlier in the second paragraph of the discussion on this proposed rule.

The provisions in part 3 MCAR S 1.0552 E. of the proposed rule exist both in Minnesota Statutes section 41.52, subd. 9 and in the current rules at 3 MCAR S 1.0544 A. 1. The second half of this part of the proposed rule, however, regarding the definition of the sums due and payable is new language. Such definition of what is to be paid under the guarantee is necessary to clarify for readers and users of the rules the amounts to be paid. The sums included, payments on the principal balance and accrued interest, are reasonable because they are the components of the loan and their payment meets the intent of the program. Payment of 90 percent of the real estate taxes and other maintenance expenses during the default period is reasonable because it protects the interest of the state in that sale of the property will then yield an appropriate amount and protects the property for the purchaser.

The final parts of this proposed rule, 3 MCAR S 1.0552 F. and G., regarding the requirements for the applicant to have the appropriate instruments recorded and to have a final title opinion prepared, contain all new language. The recording is necessary so that the interests of all parties to the loan and guarantee are reflected on the title and the final title opinion will show both satisfaction of underlying encumbrances in excess of 90 percent of the guaranteed loan and the recording of all parties' interests. They are reasonable procedures employed in most real estate transactions.

3 MCAR S 1.0553

This proposed rule sets forth the requirements for terms of the loan, net worth and the farm business management course that must be met so that the interest payment adjustment may be made. It contains several substantive amplifications of the material in the current rules at 3 MCAR S 1.0544 A. 2., primarily regarding the terms of the family farm security loan.

The introductory parts of this proposed rule contained in 3 MCAR S 1.0553 A. and B. regarding eligibility for payment of the 4 percent payment adjustment to the lender and the 10 or 20 year terms of the loan are consistent with Minnesota Statutes section 41.57, subd. 2, except for the provision regarding variable interest rates used by some lenders which the statute does not address. It is necessary and reasonable to include the provision regarding variable interest rates in order not to discriminate against applicants who may have this type of financing available to them. Despite this variable interest rate, however, the loan must continue to meet the specifications of Minnesota Statutes chapter 41 and these proposed rules.

The material contained in sub-parts 1.-4. of part 3 MCAR S 1.0553 B. is all new material. The provision in B. 1. regarding extra days of interest beyond the normal payment period is a necessary provision because the terms of loans may include options on the relationship between when interest begins to accrue and the due date of the first payment. At times this initial payment may extend longer than the time period of the payments required in the loan repayment terms, which is a normal lending practice. It is reasonable to have flexibility in the rule, then, in order to accommodate this normal lending practice. At the same time, it is reasonable to place the 50 percent limitation on the extra days interest permitted to protect the state from having to pay an excessive interest payment adjustment and protect the participant from making interest only payments but not reducing the principal balance on the loan and thus building equity. It is also necessary and reasonable to set the limitation on balloon payments to meet the requirements of Minnesota Statutes section 41.57, subd. 2.

Sub-part B. 2. of the proposed rule 3 MCAR S 1.0553 regarding interest only payment is new material. It is a necessary provision because in the case of seller-sponsored loans where sellers are also the lenders, the sellers may have a mortgage with the Federal Land Bank and the repayment terms of that loan coincide with the payments that the participant is making on the loan guaranteed by the Family Farm Security Program. A normal lending practice of the Federal Land Bank is to allow for an interest only payment the first year. It is necessary that the state not participate in this interest only payment because participants are not building equity in the farm land and the purpose of the program to assist them in acquiring farm land is thus frustrated. This provision is reasonable because it is flexible in recognizing the practice of this type of payment and permitting such loans to be guaranteed, and also reasonable in protecting the participants' interest in building equity.

Sub-part B. 3. of this proposed rule 3 MCAR S 1.0553 regarding disaster clauses in family farm security loans is also new language. It is a necessary provision because of natural hazards such as weather problems or crop pests that occur in farming. It is reasonable to provide flexibility so that farmers will not experience undue financial hardship because of

disasters. At the same time it is necessary and reasonable to state the limitation on loan terms in order that they remain consistent with Minnesota Statutes section 41.57, subd. 2.

Sub-part B. 4. of this proposed rule 3 MCAR S 1.0553 regarding extensions of the terms of the loans is also new material. This is a necessary provision for participants who originally opted for the 10 year loan term as permitted by the statute to extend the term of their loan to the 20 year period if the listed conditions are met. This provision is reasonable because it permits participants to be flexible at the end of their 10 year loan term should the required balloon payment and the responsibility to reimburse the state for the payment adjustment pursuant to 3 MCAR S 1.0555 A. mean an undue financial hardship for the participant. Permitting the refinancing of the loan for up to 20 years is within the statutory limits for the loan term in Minnesota Statutes section 41.57, subd. 2.

The material contained in part 3 MCAR S 1.0553 C. of this proposed rule regarding the statement of net worth required of participants is basically the same as the provisions in the current rule at 3 MCAR S 1.0544 A. 2. b. except for three changes. The first change is in the date that the annual statement of net worth is due from December 15 to February 20. This is a necessary change because it coincides with the dates farmers normally close their annual operating records and when they compute their taxes. It is also reasonable to provide flexibility in the date so that farmers do not have the paperwork burden of preparing two sets of documents within a few months - one for tax purposes and the second for the Family Farm Security Program. Minnesota Statutes section 41.57, subd. 3 requires only that a statement of net worth be provided by the participant but is silent on any particular date. The second change in this part of this proposed rule is in the statement of the figure for the upper limitation on net worth. In the current rules at 3 MCAR S 1.0544 A. 2. b., a net worth of $100,000 eliminates the participant from eligibility to receive the 4 percent payment adjustment. Since the current rules were promulgated in 1977, the legislature has increased this upper limit, thus it is necessary to change the figure in this proposed rule. It is reasonable, however, to reference Minnesota Statutes section 41.57, subd. 3 rather than citing another specific figure for reasons similar to those offered for the change in the lower net worth limitation at 3 MCAR S 1.0550, part B. Such a reference will keep the rule current with the statute should the legislature increase, decrease or retain the current figure. The third substantive change in the net worth provisions in this rule lie in 3 MCAR S 1.0553 C. 3., which clarified that the net worth statement to be used by the program in granting the first year's payment adjustment to be paid shall be the one used to grant the participant preliminary approval. This is a necessary provision because, as discussed earlier in this document at proposed rule 3 MCAR S 1.0554, the period between preliminary approval and final approval may take 6-12 months. During this length of time it is possible that a participant would have submitted a second net worth statement, notwithstanding part 3 MCAR S 1.0553 C. 1. of this proposed rule. Thus it is necessary to clarify which statement of net worth will be used to judge eligibility for the payment adjustment, and it is reasonable to clarify the matter so that participants do not experience undue financial difficulty because of misunderstandings.

The requirement in part 3 MCAR S 1.0553 D. of this proposed rule regarding continued participation in a farm business management course appeared in the current rule at 3 MCAR S 1.0543 C. 3., but it is stated in this proposed rule to clarify that such registration is required not only to obtain the guarantee initially but also to receive the payment adjustment annually; thus the provision is consistent with Minnesota Statutes section 41.55, clause (b). The due date for the form is reasonable because it is the same date as required for submission of the net worth statement and it is thus more convenient for the participant to prepare all materials for submission to the program simultaneously.

The material in part 3 MCAR S 1.0553 E. of this proposed rule regarding the extension of deadlines for submission of the required net worth statement and farm management course registration form is all new language. It is a necessary provision because administrative experience has shown that there are times when participants have good reasons for not being able to meet the specified deadlines. It is reasonable to provide the Commissioner with the capacity to be flexible in this regard so as not to cause financial hardship for participants who might be ineligible for the substantial benefit of the payment adjustment because of missed deadlines.

3 MCAR S 1.0555

This proposed rule sets forth the procedures to be followed by the participant in reimbursing the Commissioner for sums paid in interest payment adjustments on behalf of the participant and also sets forth provisions for renewal of this payment adjustment benefit. The substance of this material appears in the current rules at 3 MCAR S 1.0544 A. 2. c. but there are some changes and amplifications.

In part 3 MCAR S 1.0555 A. of this proposed rule, the time period for reimbursement is changed from the "90 days" of the current rule to "within 12 months". This is a necessary and reasonable change because it permits more flexibility to participants who often have to arrange financing in order to be able to repay the sums owed to the state. It is a reasonable provision also because it is consistent with Minnesota Statutes section 41.57, subd. 2 which requires reimbursement sometime within the year following cessation of this benefit but does not designate a specific repayment date.

The material in part 3 MCAR S 1.0555 B. of this proposed rule regarding the reimbursement obligation as lien is exactly the same language which appears in the current rule at 3 MCAR S 1.0544 A. 2. c. and at 3 MCAR S 1.0544 A. 2. c. (2). It is a necessary and reasonable provision because it is consistent with Minnesota Statutes section 41.57, subd. 2.

The material in part 3 MCAR S 1.0555 C. of this proposed rule regarding renewals of the payment adjustment contains some amplification of the material which appears in the current rule. In sub-part C. 1. of this part of the proposed rule, the provision for granting renewal of the benefit is consistent with the statute, but the criteria upon which the Commissioner may grant the renewal is new language. It is necessary to have such criteria for granting renewal because the renewal would provide an additional 10 years worth of financial benefits to the participant and the Commissioner's decision should rest upon some basis. The criteria for renewal are reasonable because they are directly related to certain performance on the

part of the participant during the initial 10 year benefit period, i.e., submission of the net worth statement and farm business management course registration forms annually and in a timely manner. Since the program has not yet existed for 10 years, it is difficult to know if these two criteria are at present sufficient ones on which the Commissioner should grant renewal. Yet, they are reasonable because these criteria for renewal are directly related to requirements for continued eligibility for the payment adjustment. Different criteria may be developed once the Department is beyond the first 10-year period in administering the program, but at present, these criteria are proposed as reasonable. The proposed rules do not include a specified period during which the participant may petition for a renewal as in the current rule. This is a necessary and reasonable change because repayment schedules may call for monthly, quarterly, semi-annual or annual payments, and 30 days may be insufficient time in which to process a renewal. Thus, the flexibility is proposed so there is no undue financial hardship for the participant.

The material in sub-part 3 MCAR S 1.0555 C. 2. of this proposed rule is exactly the same as in the current rule at 3 MCAR S 1.0544 A. 2. c. (2) except that the time period for reimbursement of the payment adjustment is extended from the 90 day period of the current rule to the 12 month period of the proposed rule. This extension is still within the one year limit of Minnesota Statutes section 41.57, subd. 2, but permits the participant greater flexibility in arranging financing for reimbursement of the payment adjustment.

The material in sub-part 3 MCAR S 1.0555 C. 3. of this proposed rule regarding the timing of reimbursement for the payment adjustment when several loans are under one guarantee is all new language. It is a necessary provision because it clarifies the point at which reimbursement should occur, that is, when the latest maturing loan in fact matures. This is a reasonable provision because the participant often has to make arrangements to finance the reimbursement owed the state and it is difficult to make such financing arrangements with loans still outstanding, even though the loans are under the guarantee of the program. Further, it is difficult for participants to arrange financing more than once for the same reason of reimbursing the state for payment adjustments received. Thus, it is reasonable to allow participants the flexibility of reimbursing the state for the sums owed on all loans under the guarantee at the time of the latest maturing loan.

The material in part 3 MCAR S 1.0555 D. of this proposed rule regarding the requirement that the participant reimburse the Commissioner for sums owed the state upon sale or conveyance of the farm land is new language in the rules but is consistent with Minnesota Statutes section 41.59, subd. 1. The exception to immediate reimbursement of the payment adjustment provided for in this part of this proposed rule, the case of a new owner approved in his own right for a guarantee, will be discussed below at proposed rule 3 MCAR S 1.0559.

The material in part 3 MCAR S 1.0555 E. of this proposed rule regarding late payment of the reimbursement obligation is all new language. This provision is necessary to prompt participants to reimburse the state within the time period specified. It is a reasonable provision because participants should be aware that this obligation to repay is a major responsibility not to be taken lightly. The provision is reasonable because it provides the

Commissioner with the capacity to charge interest on what is owing but limits this capacity by citing law which would govern the rate of interest and noting that the assessment period is to be only for the period of delinquency. This practice is analogous to normal farm financing practices of commercial banks, savings and loan associations and the Federal Land Bank when payments are due and not forthcoming.

3 MCAR S 1.0556

This proposed rule sets forth the conditions and consequences of participant default in the program, including sale of any land acquired by the state due to such default. While the first part of this proposed rule is the same as the material in the current rule at 3 MCAR S 1.0545 A. 1.-3., the second part of this proposed rule regarding consequences of default is all new language provided to efficiently administer instances of participant default under Minnesota Statutes 41.56, subd. 3.

Sub-parts B. 1. a. and b. of this proposed rule are necessary to clarify the options that sellers and lenders have in the event of participant default. In the case of the lender's option to exercise the guarantee under proposed 3 MCAR S 1.0556 B., it is necessary and reasonable that the state require that any amounts received from sale of the property above the 90 percent guaranteed by the state go toward satisfying the outstanding balance of the state's lien for reimbursement of the payment adjustment, since the general condition under which lenders enter into this program is that they will be guaranteed 90 percent of the sums payable under proposed rule 3 MCAR S 1.0552 E. but not necessarily more.

Sub-part 3 MCAR S 1.0556 B. 1. c. regarding the failure of the lender to notify the Commissioner of participant default within the time limit prescribed by Minnesota Statutes section 41.56, subd. 3 is all new language. The provision is necessary to clarify the actions the Commissioner will take with respect to lenders who fail to provide proper notification. The provisions regarding the payment of the guarantee and the maximum amount of interest to be paid by the state to the lender are reasonable because they limit the amounts which the state would have to pay to lenders. In the event that a lender would delay in notifying the Commissioner, there might be a significant financial advantage to the lender because interest and delinquent interest would continue to accumulate, and the lender might expect to collect 90 percent of all these sums from the state. Thus it is a reasonable provision to limit the amount to be paid to lenders lest there be unfair economic advantage for certain lenders.

Sub-part 3 MCAR S 1.0556 B. 1. d. regarding disposition of the guarantee when one loan among several under the guarantee is delinquent is all new language. It is a necessary provision to clarify for readers and users of the rules the procedure to be followed if such a situation occurs. Further, since it is necessary for the state to be able to obtain fee title in the event that the guarantee is exercised pursuant to Minnesota Statutes section 41.56, subd. 3, all loans under a single guarantee must be considered to be in default if one is in default. This provision regarding clear access to the title is consistent with 3 MCAR S 1.0556 C. regarding sale of the defaulted property.

Part 3 MCAR S 1.0556 B. 2. of this proposed rule regarding the consequences of participant default for failure to maintain the farm land in active agricultural production is all new language. This is a necessary provision in the rule to clarify for participants the consequences of this type of default as defined under Minnesota Statutes section 41.59, subd. 1, and provides for the efficient disposition of such cases of default. The consequences are reasonable because they terminate the payment adjustment and guarantee which are principal benefits of the program and require immediate reimbursement of the state's payment adjustment. These types of procedures appear in others of these proposed rules. The termination of the guarantee for this infraction of the statute and these proposed rules is analogous to terminations pursuant to proposed 3 MCAR S 1.0558; the cessation of payment adjustments is also a consequence of the participant's failure to submit annual net worth statements and farm business management course registration forms as required under proposed rule 3 MCAR S 1.0553; and the immediate reimbursement of payment adjustments to the Commissioner is required under proposed rule 3 MCAR S 1.0555 D. Thus, these consequences are not arbitrary; they are consistent with consequences listed elsewhere in these proposed rules. They are all consequences of this particular case of participant default because of the serious nature of this reason for default. The principal purpose of the Family Farm Security Program is to help family farmers remain in agricultural production, so the failure to farm is directly contrary to the intent of the program and is a situation requiring these serious consequences.

Part 3 MCAR S 1.0556 C. of this proposed rule regarding the sale of defaulted farm land is all new language. The provisions are proposed pursuant to Minnesota Statutes section 41.56, subd. 4, and are necessary to clarify definitions and procedures to be used by the Commissioner, in addition to the provisions of the statute, in selling defaulted property. The provision regarding the Commissioner's right to reject any bid submitted on the farm land to be sold is necessary in order to get a fair price in keeping with the value of the property upon its sale. The administrative experience of the Department has shown that it is possible for potential buyers to collaborate to bid artifically low on such property. The provision is also reasonable because it permits the Commissioner to sell the land so as to regain a reasonable percentage of the amount paid out under the family farm security guarantee and thus protect the interest of the state in the matter. It is further necessary and reasonable to provide definitions for "date of sale" and "proceeds" because the Department's administrative experience has shown that these terms must be clarified for the efficient administration of these sales because the terms are not defined in the statute and misunderstandings have occurred.

3 MCAR S 1.0557

This rule sets forth the provisions governing instances in which participants may be granted a waiver of default, and substantially amplifies the material in the current rule at 3 MCAR S 1.0545 A. 3. a.-c. by clarifying procedures in event of three possible reasons for granting the waiver and by clarifying

provisions for denial and expiration of the waivers. The rule is proposed pursuant to Minnesota Statutes section 41.59, subd. 1.

The provision regarding the waiver for public service is necessary and reasonable because people in many different occupational groups have opportunities to take leaves of absence from their place of employment for public service, and to restrict farmers from such opportunities would unfairly discriminate against this occupational category. At the same time, it is reasonable to require these participants to conform to the requirements of notifying the Commissioner, continuing to submit annual financial statements and making full installment payments on the loan, so that the Commissioner might be able to monitor the impact this waiver has on the participant's financial picture and to thus protect the state's interest in having the operation remain financially sound during the waiver period.

Part 3 MCAR S 1.0557 C. of this proposed rule regarding the waiver for financial difficulty is necessary because administrative experience of the Department has shown that taking a job off the farm is frequently necessary for farmers in the current economic situation. The provision gives the participant the opportunity to improve the cash-flow in order to remain in agricultural production, which is the principal purpose of this program. At the same time that it is reasonable to permit farmers this flexibility, it is necessary and reasonable to require these participants to inform the Commissioner, to submit semi-annual financial statements so that the Commissioner can closely monitor the financial picture of the participant, and to continue enrollment in the farm business management course so that management principles learned might help to ease the cash flow difficulty.

Part 3 MCAR S 1.0557 D. of this proposed rule regarding waiver for physical difficulty or other circumstances beyond the participant's control is contained in the current rule at 3 MCAR S 1.0545 A. 3. b., except for the provisions regarding required documentation. It is necessary and reasonable to require such documentation so that the Commissioner is aware of the physical difficulty or other circumstance and can monitor the financial situation of the participant. These provisions are reasonable to protect the interests of both the participant and the state in maintaining a successful farming operation.

Part 3 MCAR S 1.0557 E. of this proposed rule regarding the denial of waiver is exactly the same provision as in the current rule at 3 MCAR S 1.0545 A. 3. c., while the provision regarding expiration in 3 MCAR S 1.0557 E. is all new language. It is necessary to include this expiration provision because the current rules contain no outer limitation on the time period of a waiver, thus it is necessary to clarify the procedure for participants and readers of the rule. Further, two years is a reasonable time frame in which to render public service, settle cash-flow difficulties or cope with physical difficulty or extenuating circumstance. It is a generous time period in relation to the lapsed time of one year which would normally prompt default under the statute, and setting a limit on the time away from farming is reasonable to fulfill the purpose of the program which is to keep farmers in agricultural production.

C. All New Material

In this section, three proposed rules are discussed which contain all new material.

3 MCAR S 1.0549

The definitions in this proposed rule are necessary to clarify the meanings of the terms used in this rule. There are three different types of definitions provided. The first type of definition is reasonable because terms are defined by reference to Minnesota Statutes section 41.52 (including 1981 Supp.), or have definitions similar to those in that section. These terms are: applicant, Commissioner, cooperating agency, council, farm land, guarantee, lender, loan, memorandum of understanding, payment adjustment and seller-sponsored loan. The second type of definition is reasonable because the terms are drawn from normal financial and real estate transactions. These terms are: balloon payment, even payment, fully amortize, and subordination. The third type of definition is reasonable because the terms more specifically define areas uniquely associated with the Family Farm Security Program, and have developed over the last five years of the Department's experience in administering the program. These terms are: amortization schedule, farm business management course, participant, program and state.

3 MCAR S 1.0558

This proposed rule sets forth the three conditions and consequences under which the guarantee on the family farm security loan will be terminated by the Commissioner. The first and third conditions regarding the lender's alteration or violation of any of the terms of the loan or guarantee are necessary and reasonable grounds for termination of the guarantee since such documents are legally binding and entered into with full knowledge of all parties at the time of execution of the guarantee. It is reasonable for the Commissioner to expect that the lender will abide by provisions in such documents.

The provision in sub-part 3 MCAR S 1.0558 A. 2. of this proposed rule regarding the transfer or assignment of the loan is included for the smooth administration of Minnesota Statutes section 41.58, subd. 2 which requires the lender to notify the Commissioner of such transfer or assignment. It is reasonable to allow the lender the flexibility of transferring or assigning the family farm security loan so that the lender is able to manage the financial affairs of his business in the most appropriate way, provided that the interests of the state are protected.

Part 3 MCAR S 1.0558 B. of this proposed rule regarding termination of the guarantee is necessary to clarify for lenders the consequences of particular actions. It is a reasonable provision because it is consistent with Minnesota Statutes section 41.56, subd. 5 which indicates that guarantees will not be honored where fraud or material misrepresentation

by the lender occurs. The provision regarding continued payment to the participant in the event of such lender actions is a necessary and reasonable one because it is not the intent of the rule to create financial hardship for the participant in cases where the guarantee is terminated, therefore participants should still be able to receive the benefits of the program they applied for in good faith if they had no knowledge of the lender's actions.

3 MCAR S 1.0559

This proposed rule sets forth four major provisions for servicing the family farm security loan once the guarantee agreements are entered into.

Part 3 MCAR S 1.0559 A. of this proposed rule regarding partial release of the state's lien for reimbursement of the payment adjustment is a necessary provision because administrative experience of the Department has shown that such release is sometimes necessary for the participant to be able to best manage his financial affairs. At the same time that it is reasonable to permit this flexibility for the participant, it is reasonable to place some restriction on this type of transaction, so as to protect the interests of the state. The first restriction is reasonable because it is the purpose of the program to assist farmers in maintaining agricultural production, thus it is important that such release of a portion of the property not jeopardize the participant's ability to continue in the program. It is necessary that the second restriction regarding all parties' interests in the matter be included because all were involved in the original agreements, so it also is reasonable that they be apprised of changes. In the particular case where the participant wants to sell the released portion of the property, it is necessary that the Commissioner be able to stipulate that the proceeds from the sale be used as a special principal payment on the loans under the guarantee since in the administrative experience of the Department such a sale generally occurs because the participant is in some financial difficulty. It is reasonable for the proceeds to be used to reduce the principal balance on the loans and thus protect the state from possible financial loss under the guarantee and from the financial burden of continuing to pay payment adjustments on a higher principal balance.

Part 3 MCAR S 1.0559 B. regarding reamortization of the loan is a necessary and reasonable provision because it permits the participant to take advantage of the flexibility in the possible length of loans, 10-20 years, envisioned in Minnesota Statutes section 41.57, subd. 2 and these proposed rules, at 3 MCAR S 1.0553 B. Administrative experience has shown that though a participant may make a sizeable principal payment, his financial circumstances may be such that he may not be able to continue making payments called for in the loan agreement. Thus, the reamortization may occur, but must still meet the requirements of the program. It is reasonable because it could save the state the expense of having to perform under the guarantee if the participant went into default for not being ablt to make the payments called for in the original amortization schedule.

Part 3 MCAR S 1.0559 C. of this proposed rule regarding the new owner guarantee clarifies that the former guarantee may not be assumed by the new owner, and sets forth conditions under which the debt owed the Commissioner may be assumed by the new owner. It is necessary that the new owner of the property not be able to assume the old guarantee, since the new owner should

apply and be approved for the program in his own right pursuant to law and these proposed rules. At the same time it is reasonable to permit the new owner to assume the indebtedness owed the state if the conditions listed are met since it may be in the state's best interest to allow the payment adjustment to be repaid by the new owner and save the state the expense of exercising the guarantee, and foreclosing on the original owner and reselling the farm. These situations would be very carefully reviewed by the Family Farm Advisory Council.

Part 3 MCAR S 1.0559 D. of this proposed rule regarding subordination of the state's lien for reimbursement of the payment adjustment is a necessary provision because it may be in the best interests of the state to permit this subordination. There are instances where participants may need to refinance one of the loans under the guarantee, and the policy of their lending institution may be such that the institution must have the first lien for such a loan. The Federal Land Bank has this policy with respect to liens. In such a case where it would benefit the state and the participant to permit the subordination, for example, to refinance an entire loan to accommodate building a new barn after a fire, it is reasonable to permit this type of loan servicing.

D. Material From Current Rules Not Included in Proposed Rules

While it is proposed that the current rules, 3 MCAR S 1.0543-1.0547 be repealed and these proposed rules be adopted, as stated throughout this document, almost all of the repealed material is incorporated in these proposed rules. There are, however, three minor points from the current rules which are not included in the proposed rules.

In the current rules, the role of the lender under 3 MCAR S 1.0543 B. and B. 1. with respect to providing forms, reviewing the loan application, and in submitting material to the Commissioner is very prominent. At the beginning of the program, this role was very important since the state had no experience in administering the program and most lenders were bankers who had forms available. As seller-sponsored loans have grown in importance in the program, now accounting for a large portion of the family farm security loans, it is reasonable for the applicant to find out from the program what is required, since the applicant is seeking the program's benefits, and inform the seller who is also lender in this case. Thus, in the proposed rules, responsibility for providing application materials to the Commissioner rests more appropriately with the applicant who is, at the same time, able to get assistance from program staff. Because of the Department's administrative experience with the program over the last five years and the increased importance of seller-sponsored loans, this is a method satisfactory to all parties. Similarly, the role of the lender in current rule 3 MCAR S 1.0544 B. has not been incorporated in as great detail in proposed rule 3 MCAR S 1.0552 A. Again, the responsibility of the applicant in the proposed rule is more clearly defined as a result of the Department's experience with the program and the growing importance of seller-sponsored loans. It is reasonable that applicants, lenders and sellers who are lenders know what is expected of them.

The second minor change is in the repeal of the four month time frame during which the Department may review and act upon the application for a loan as stated in current rule 3 MCAR S 1.0543 G. This is a necessary change because administrative experience has shown that it is frequently not possible for the applicant to gather all materials for submission to the Commissioner within that time frame. It is reasonable, therefore, that the time frame be repealed in order not to jeopardize the chances of the applicant to be approved for a loan guarantee. It is the practice of the Family Farm Advisory Council and the Commissioner to review loan applications as soon as all materials are available.

The third minor change is in the statement of the frequency of the Family Farm Advisory Council meetings from the "monthly" in current rule 3 MCAR S 1.0543 G. to the "regularly scheduled" language of proposed rule 3 MCAR S 1.0551 G.