

1 Department of Agriculture  
2 Minnesota Export Finance Authority

3  
4 Adopted Rules Governing Financial Assistance for Pre-Export  
5 Credit Needs of Minnesota Exporters (3 MCAR S 1.0090-1.0100)

6  
7 Rules as Adopted

8 3 MCAR S 1.0090 Scope.

9 Rules 3 MCAR SS 1.0090-1.0100 are made pursuant to Laws of  
10 Minnesota 1983, chapter 289, section 8, to implement and  
11 establish criteria for the facilitation of export financing by  
12 the Minnesota Export Finance Authority.

13 3 MCAR S 1.0091 Definitions.

14 A. Scope. For the purposes of 3 MCAR SS 1.0090-1.0100, the  
15 terms defined in this rule have the meanings given them.

16 B. Affiliate. Concerns are "affiliates" of each other when  
17 one concern directly or indirectly controls or has the power to  
18 control the other, or a third party controls or has the power to  
19 control both concerns.

20 C. Board. "Board" means the board of directors of the MEFA  
21 appointed by the governor, and the commissioner of agriculture  
22 or his designee as chairman of the board.

23 D. Control. "Control" may exist through management,  
24 contracting, or stock ownership. "Control" exists through stock  
25 ownership if a party has the power to control more than 50  
26 percent of the voting stock. "Control" exists through  
27 management if the officers, directors, employees, or principal  
28 stockholders of one concern serve as a working majority of the  
29 board of directors or officers of another concern.

30 E. Executive director. "Executive director" means the  
31 executive director of the MEFA designated by the commissioner of  
32 agriculture.

33 F. Eximbank. "Eximbank" means the Export-Import Bank of the  
34 United States.

35 G. Exporter. "Exporter" means a business concern,

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1 incorporated or unincorporated, which sells, leases, or proposes  
2 to sell or lease Minnesota goods or services destined for  
3 shipment, resale, or use outside the United States.

4 H. Financial assistance. "Financial assistance" means  
5 insurance, co-insurance, or guarantees for loans or credits  
6 extended to an exporter for pre-export credit needs, but does  
7 not include coverage of foreign political or commercial risk.

8 I. MEFA. "MEFA" means the Minnesota Export Finance  
9 Authority created by Laws of Minnesota 1983, chapter 289,  
10 section 8.

11 J. Minnesota goods or services. "Minnesota goods or  
12 services" means goods or services manufactured, processed, or  
13 originated in Minnesota or which contain substantial  
14 Minnesota-source components, labor, or intellectual property.

15 K. Pre-export. "Pre-export" means that period of time  
16 between the exporter's receipt of a purchase order and the  
17 exporter's receipt of documents confirming shipment according to  
18 the terms of trade.

19 L. SBA. "SBA" means the United States Small Business  
20 Administration.

21 3 MCAR S 1.0092 Availability of financial assistance from the  
22 MEFA.

23 A. Purpose. Financial assistance is available from the MEFA  
24 to facilitate the pre-export credit needs of exporters where  
25 credit or loans would otherwise not be made and where there is  
26 sufficient likelihood of repayment. The MEFA may not assume  
27 foreign risks in connection with financial assistance.

28 B. Forms of financial assistance. The MEFA may insure,  
29 co-insure, and guarantee loans or credit extended to exporters  
30 by financial institutions.

31 3 MCAR S 1.0093 Content of application.

32 The executive director shall prepare application forms for  
33 use by exporters or lenders in seeking financial assistance.  
34 The application forms must set forth the information necessary  
35 for the determination of eligibility and must require, among

1 other things, a description and history of the exporter, the  
2 experience of management, financial statements, income and  
3 expense projections for the export sale, a description of  
4 collateral and other security, purchase order and proposed terms  
5 of the export sale, foreign risk coverage, and a statement by  
6 the exporter or lender identifying alternative sources of  
7 financing which have been pursued and the reasons that financing  
8 is unavailable through those sources. The executive director  
9 may require additional information necessary to a determination  
10 of the exporter's eligibility for financial assistance and  
11 reasonably related to the criteria for approval in 3 MCAR S  
12 1.0096.

13 3 MCAR S 1.0094 Application procedure.

14 A. Application forms. The MEFA shall provide application  
15 forms for use by exporters or lenders seeking financial  
16 assistance. The completed application forms with all required  
17 exhibits and attachments must be submitted to the executive  
18 director.

19 B. Initial review by executive director.

20 1. Review for completeness. The executive director shall  
21 review the application for completeness and notify the applicant  
22 of any additional information required. When all required  
23 information has been received, the board, or the executive  
24 director upon delegation by the board, shall consider the  
25 application.

26 2. Consideration of alternative sources. If it appears  
27 to the executive director that financial assistance may be  
28 available to the applicant in whole or in part from the SBA or  
29 Eximbank or other sources, the executive director may direct the  
30 applicant to those sources. When it appears to the executive  
31 director that alternative sources have been appropriately  
32 pursued by the applicant, the board, or the executive director  
33 upon delegation by the board, shall consider the application for  
34 approval.

35 C. Consideration of application. The board, or the  
36 executive director upon delegation of authority from the board,

1 shall consider the application, taking into account the purposes  
2 of Laws of Minnesota 1983, chapter 289, sections 7 and 8 and the  
3 criteria and terms of 3 MCAR SS 1.0095 and 1.0096.

4 D. Approval of application. If the board, or the executive  
5 director upon delegation of authority from the board, approves  
6 the application, the executive director shall notify the  
7 applicant in writing setting forth the terms and conditions of  
8 the financial assistance approved. The executive director,  
9 together with the lender and any other private or governmental  
10 participants, shall prepare the written agreements and documents  
11 necessary to close the loan or finalize the credit, in  
12 accordance with the terms and conditions set forth in the notice  
13 of approval.

14 E. Denial of application. If the application is  
15 disapproved, the executive director shall notify the applicant  
16 in writing of the reasons for denial.

17 F. Misrepresentation by applicant. The MEFA may reject any  
18 application, may revoke any notice of approval, or may refuse to  
19 close any loan in the event that any information provided by the  
20 applicant contains a material misrepresentation or omission.  
21 Each applicant has an affirmative and continuing duty to update  
22 and correct all information provided to the MEFA or to the  
23 lender.

24 3 MCAR S 1.0095 General terms and conditions of financial  
25 assistance.

26 A. Permissible use of financial assistance. When the MEFA  
27 grants financial assistance to meet the financing needs of an  
28 exporter, the financial assistance is available from the time  
29 the exporter receives a purchase order until the exporter  
30 receives documents confirming shipment according to the terms of  
31 trade in the sales transaction. Credit needs eligible for  
32 financial assistance include costs and expenses related to the  
33 acquisition or production, financing, and shipment of the goods  
34 or services.

35 B. Minimum loan or credit guaranteed. The MEFA shall not  
36 provide financial assistance where the principal amount of the

1 pre-export loan or credit needed is less than \$25,000.

2 C. Maximum amount of financial assistance. The MEFA's net  
3 exposure for financial assistance to an exporter, including all  
4 its affiliates, may not, at any one time, exceed \$250,000.

5 D. Extent of participation. The MEFA may participate in  
6 loan or credit guarantees and insurance to the extent necessary  
7 and appropriate to facilitate the required financing. The MEFA  
8 may seek coparticipation in financial assistance from other  
9 private and governmental sources, including the SBA, Eximbank,  
10 Foreign Credit Insurance Association, and private insurers. In  
11 any event, the MEFA's maximum participation in loan guarantees  
12 or insurance may not exceed 90 percent of the principal amount  
13 of the loan, and the lender must remain at risk for at least ten  
14 percent of the principal amount.

15 E. Maturity. The maturity of a loan guaranteed or insured  
16 by the MEFA may not exceed 12 months.

17 F. Security. Loans must be secured by collateral of a type,  
18 amount, and value which, considered with the other criteria  
19 described in 3 MCAR S 1.0096 B., affords reasonable assurance of  
20 repayment.

21 G. Interest rates and fees. The lender may charge fees and  
22 a legal rate of interest on guaranteed loans, subject to the  
23 executive director's determination that the lender's fees and  
24 rate of interest are reasonable under the circumstances.

25 H. Fees. A guarantee fee of one to three percent of the  
26 principal balance guaranteed is payable by the lender to the  
27 MEFA. In determining the amount of the guarantee fee for a  
28 particular transaction, consideration must be given to the  
29 criteria set forth in 3 MCAR S 1.0096 B. The guarantee fee may  
30 be passed on to the exporter. The board may adjust the fee  
31 range from time to time so as to maintain adequate reserves in  
32 light of actual loss or earnings experience and to comply with  
33 any applicable treaties or law. In proposing and adopting fee  
34 range adjustments the board shall follow the procedures for  
35 amendment of rules prescribed in Minnesota Statutes, chapter 14.

36 I. Reporting requirements.

1           1. Reports by lender. The lender shall report in writing  
2 to the executive director as provided in the guarantee  
3 agreement. Reports must show the progress, repayment status,  
4 and principal balance, outstanding or undisbursed, for each loan  
5 guaranteed or insured by the MEFA.

6           2. Reports by exporter. The exporter shall report to the  
7 executive director immediately upon making shipment of the goods  
8 and shall provide copies of documents evidencing shipment  
9 according to the terms of trade, such as the ocean bill of  
10 lading or air waybill. If requested by the executive director,  
11 the exporter shall submit other reports or documentation  
12 reasonably related to an assessment of the exporter's compliance  
13 with Laws of Minnesota 1983, chapter 289, sections 7 and 8, 3  
14 MCAR SS 1.0090-1.0100, or the terms of the sale transaction,  
15 loan agreements, or the MEFA guarantee.

16 3 MCAR S 1.0096 Criteria for approval of financial assistance.

17           A. Need for financial assistance. Financial assistance will  
18 be approved by the MEFA for export credit that would not  
19 otherwise be made.

20           1. Exporter's resources. The MEFA shall consider whether  
21 the desired financing appears available to the applicant on  
22 reasonable terms from its own resources, such as the applicant's  
23 bank or other lender, issuing of securities, disposal of assets  
24 at a fair price, or utilization of the personal credit or  
25 resources of owners or principal shareholders of the applicant.

26           2. Alternative sources of assistance. The MEFA shall  
27 also consider whether the requested financial assistance appears  
28 available, in whole or in part, through other governmental  
29 sources such as the SBA or Eximbank, and the MEFA may direct the  
30 applicant to these sources or seek coparticipation from these  
31 sources as available.

32           B. Reasonable risk. There must be reasonable assurance, in  
33 the judgment of the board, that the credit can and will be  
34 repaid according to its terms. In making this judgment the  
35 board shall consider the following:

36           1. evidence of the manner, means, and security of payment

1 by the buyer and coverage of foreign risks;

2 2. terms of the export sale and projected earnings from  
3 the transaction;

4 3. collateral and other sources of guarantee or insurance  
5 securing the loan or credit;

6 4. credit history and financial condition of the  
7 applicant;

8 5. financial projections;

9 6. ability of management.

10 C. Eligibility of lender. The financial institution must  
11 have a continuing ability to evaluate, perform, and service the  
12 loan or credit, to make reports as required by these rules, and  
13 to collect the loan if requested by the MEFA upon default.

14 3 MCAR S 1.0097 Loan administration.

15 A. Servicing. The lender shall service the loan and receive  
16 all payments of principal and interest. In the event of  
17 default, the lender shall continue to service the loan if  
18 requested by the MEFA to do so.

19 B. Notification of nonpayment. If the exporter fails to  
20 make any payment of principal or interest on the due date, the  
21 lender shall immediately notify the exporter of the payments  
22 due. If the exporter fails to cure the nonpayment within 30  
23 days, the lender shall notify the executive director.

24 3 MCAR S 1.0098 Quorum of the board.

25 A majority of the members of the board duly appointed and  
26 acting from time to time constitutes a quorum for the purpose of  
27 conducting business and exercising the powers of the MEFA, but a  
28 smaller number may adjourn from time to time until a quorum is  
29 obtained. When a quorum is in attendance, action may be taken  
30 by the board on a vote of the majority of the members present.

31 3 MCAR S 1.0099 Agency meetings.

32 A. Regular meetings. The date and place of regular meetings  
33 will be posted at the offices of the Minnesota Trade Office in  
34 St. Paul, Minnesota, at least five days prior to the meeting.

35 B. Special meetings. Special meetings of the board may be

1 called by the chairman or by a quorum of the board for the  
2 purpose of transacting any business designated in the notice.  
3 Special meetings must be held at the offices of the Minnesota  
4 Trade Office in St. Paul, Minnesota, unless another place of  
5 meeting is designated in the notice. At any special meeting no  
6 business may be considered other than as designated in the  
7 notice, unless all of the members of the board are present at  
8 the special meeting. Notices of special meetings must be posted  
9 at the offices of the Minnesota Trade Office.

10 3 MCAR S 1.0100 Public appearances at board meetings.

11 A. Applicable procedures. The procedures in B. and C.  
12 govern appearances by members of the public at meetings of the  
13 board.

14 B. Written request for appearance. Any person who desires  
15 to appear and address the board must submit a written request to  
16 the executive director no later than two days prior to the date  
17 of the meeting.

18 C. Vote of the board. The board shall consider any written  
19 requests for appearance upon the convening of the meeting. A  
20 majority vote of the board members present at the meeting is  
21 required to approve any request to address the meeting. The  
22 board may limit the time or impose other conditions on the  
23 appearance.