

1 Minnesota Energy and Economic Development Authority  
2  
3 Adopted Permanent Rules Relating to Technology Product  
4 Investment Program  
5  
6 Rules as Adopted

7 8300.4101 DEFINITIONS.

8 Subpart 1. Scope. For the purpose of parts 8300.4102 to  
9 8300.4112, the following terms have the meanings given them.

10 Subp. 2. Product rights. "Product rights" means a product  
11 to which the rights have been acquired by the authority through  
12 purchase, lease, license, or loan default.

13 Subp. 3. Conceptual product. "Conceptual product" means  
14 an idea based upon a mental impression or general notion that  
15 can be documented in a technology-related product design or plan.

16 Subp. 4. Courseware. "Courseware" means specialized  
17 software for the delivery of education and training.

18 Subp. 5. Default. "Default" means the failure of the loan  
19 recipient to repay the principal and interest, to make royalty  
20 payments in accordance with the security agreement, or the  
21 breach by the loan recipient for more than ten days after  
22 mailing written notice of breach by the commissioner of any  
23 material covenant in the note, loan agreement, or in any  
24 instrument securing the loan which the commissioner determines  
25 constitutes an adverse change in the loan recipient's ability to  
26 repay the product loan. For purposes of these parts, a loan is  
27 considered in default if the principal and interest repayments  
28 and royalty payments are not received by the authority within  
29 ten days after the day specified in the security agreement.

30 Subp. 6. Derivative product. "Derivative product" means a  
31 product that contains or uses part of a previous product.

32 Subp. 7. Education. "Education" means the deliberate  
33 process of developing knowledge, mind, and character of an  
34 individual.

35 Subp. 8. Product. "Product" means something produced by a

1 business and that exists in a usable form. Product includes,  
2 but is not limited to, a technology-related product, a  
3 conceptual product, or a prototype product, and all technical  
4 and user documentation, drawings, prototypes, models, test  
5 results, and source codes associated with the product.

6 Subp. 9. **Product loan.** "Product loan" means a loan made  
7 to a business for the development and for marketing of a product.

8 Subp. 10. **Prototype product.** "Prototype product" means a  
9 working model that approximates the function of a final  
10 technology-related product.

11 Subp. 11. **Royalty.** "Royalty" means the proceeds paid to  
12 the authority in connection with the loan agreement or in  
13 connection with product rights. Payments can be based on but  
14 not limited to a percent of sales of the product or a specific  
15 dollar amount for each unit of the product sold.

16 Subp. 12. **Software.** "Software" means a set of statements  
17 or instructions to be used directly or indirectly in a computer  
18 in order to bring about a certain result, in any form of  
19 material object in which such statements or instructions may be  
20 fixed, by any method now known or hereafter developed,  
21 regardless of whether the statements or instructions are capable  
22 of being perceived by or communicated to humans. Software  
23 includes courseware.

24 Subp. 13. **Technology-related product.** "Technology-related  
25 product" means a product that results from a method or process  
26 for handling a specific technical problem. Technology-related  
27 product includes computer software and computer hardware  
28 products.

29 Subp. 14. **Training.** "Training" means the process which  
30 instructs so as to make a person proficient or qualified.

31 8300.4102 TECHNOLOGY PRODUCT LOAN PROGRAM.

32 Subpart 1. **Purpose.** The authority shall make technology  
33 product loans to eligible applicants in compliance with  
34 Minnesota Statutes, chapter 116M in order to help create or  
35 retain jobs for the state. The authority shall also consider

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1 the value of the product to promote the public good of the  
2 state, especially in education and training. Loans may be made  
3 to eligible applicants for the development and marketing of  
4 technology-related products that exist as completed products,  
5 prototypes, or as conceptual products.

6 Subp. 2. Use of loan proceeds. The loan must be made to  
7 provide financial assistance for the development and marketing  
8 of a technology-related product. Proceeds of the loan may be  
9 used to pay the costs of computer and other technology-related  
10 equipment, and for working capital.

11 Subp. 3. Size of loan. The principal amount of any  
12 product loan issued by the authority may not exceed \$250,000 for  
13 technology-related equipment and for working capital for any one  
14 product, provided, however, the authority may make an additional  
15 loan not to exceed \$100,000 for the same product if the  
16 applicant can demonstrate that the additional loan is necessary  
17 to develop and market the product as described in the loan  
18 agreement or to modify the development and marketing plans if  
19 the authority determines that such modifications are necessary.  
20 Proceeds of the loan must be issued to the eligible applicant in  
21 accordance with an approved plan and timetable. The plan must  
22 establish significant events in the development and marketing  
23 activities of the product which, when determined by the  
24 authority to be complete, shall serve as an indicator to release  
25 subsequent loan proceeds in accordance with the plan and  
26 timetable.

27 Subp. 4. Maximum term. The maximum term of the loan may  
28 not exceed four years.

29 Subp. 5. Interest rate. The interest rate of a loan is  
30 five percentage hundred basis points below a full faith and  
31 credit obligation of the United States government of comparable  
32 maturity, as of five working days before closing, or as  
33 determined by the authority at the time of approval based upon  
34 its assessment of current interest rate conditions, provided  
35 that in no event shall the interest rate be lower than three  
36 percent.

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1       Subp. 6. **Security requirements.** In addition to security  
2 interests in collateral as specified in part 8300.3012, the  
3 authority shall require a security interest in the product in  
4 the form of a royalty on the product and, in case of default,  
5 full rights to the product, including all patents, copyrights,  
6 mask work, trade secrets, trademarks, service marks, and any  
7 other intellectual property rights. The royalty payment must be  
8 based upon net receipts of the product not to exceed 25 percent  
9 and must be set forth in a security agreement that shall be  
10 entered into at the same time the loan is made. Royalty  
11 payments must be made to the authority in accordance with the  
12 schedule appearing in the security agreement.

13       The security agreement must set forth the terms and  
14 conditions applicable to all derivatives of the product, and  
15 must bind all future assignees of the product. The amount of  
16 royalty paid to the authority shall be set forth in the security  
17 agreement. Royalty terms provided in the security agreement may  
18 not extend more than seven years from the date of the loan  
19 agreement unless the authority and the eligible applicant agree  
20 to an extension. The maximum amount of royalty paid to the  
21 authority shall not exceed three times the amount of the loan  
22 principal. The security agreement must contain a provision for  
23 assignment of all product rights, including copyrights and  
24 patents to the authority upon default of the loan.

25       Subp. 7. **Loan servicing.** The commissioner shall be the  
26 authority's authorized agent for purposes of administration of  
27 the loan including approval of required documentation prior to  
28 disbursement, the determination of a default, and the exercise  
29 of remedies upon default. The commissioner shall monitor the  
30 repayment of the principal and interest as provided in the  
31 amortization schedule. The commissioner may restructure the  
32 loan at the request of the borrower or upon his or her own  
33 initiative if the commissioner determines that restructuring the  
34 loan will increase the probability that the loan will be repaid  
35 to the state.

36       If the borrower requests the commissioner to restructure

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1 the loan, the commissioner shall charge the borrower a fee in  
2 the amount of one-half percent on the outstanding principal  
3 amount of the loan.

4 Subp. 8. Loan payments; royalties. Loan payments must be  
5 made as provided in the amortization schedule. The first  
6 principal payment is due 12 months after issuance of the final  
7 proceeds of the loan.

8 The authority, in its sole discretion, may accept royalty  
9 payments in lieu of loan payments if it appears that this  
10 arrangement will increase the probability that the loan will be  
11 repaid. The amount of royalty paid in lieu of loan payments may  
12 not reduce the total amount of royalty due.

13 8300.4103 ELIGIBLE LOAN APPLICANTS.

14 A person, partnership, firm, or corporation engaged in and  
15 determined by the authority to constitute a small business as  
16 defined in the regulations of the United States Small Business  
17 Administration, Code of Federal Regulations, title 13, part 121,  
18 standard industrial code (SIC) 7372, is considered an eligible  
19 small business or an eligible applicant for a technology product  
20 loan.

21 8300.4104 FINANCING ELIGIBLE SMALL BUSINESSES AND TARGETED SMALL  
22 BUSINESSES.

23 The authority may use funds available for product loans to  
24 help finance eligible small businesses. Two-thirds of these  
25 available funds must be allocated to help finance targeted small  
26 businesses.

27 The authority shall make a determination as to the use of  
28 funds four months prior to the close of its fiscal year. At  
29 that time the authority may reallocate its remaining funds  
30 between the categories of eligible small businesses and targeted  
31 small businesses if it determines that by doing so participation  
32 in the program may increase.

33 8300.4105 LOAN DEFAULT.

34 If the commissioner determines the loan to be in default,

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1 the commissioner may take such actions provided in law or in  
2 equity to protect its interests. Upon default, the commissioner  
3 shall notify the loan recipient in writing of the default and  
4 give the loan recipient 60 days to re-establish the good  
5 standing of the loan. During this time period the commissioner  
6 may permit the borrower to sell or reassign the product rights  
7 or licenses, prepare derivative products, or undertake other  
8 measures that will increase the probability that remaining loan  
9 payments will be made. If the loan remains in default at the  
10 end of the initial 60-day time period, the commissioner may  
11 extend the time period for an additional 60 days if the loan  
12 recipient can demonstrate that the additional period of time is  
13 necessary to re-establish the good standing of the loan. If the  
14 loan remains in default at the end of the initial 60-day time  
15 period and any granted extension, all product rights as provided  
16 in the security agreement transfer automatically to the  
17 authority. The loan recipient shall also provide to the  
18 commissioner, if requested, all relevant materials including  
19 technical and user documentation, drawings, prototypes, models,  
20 test results, and source codes associated with the product.

21 8300.4106 DISPOSITION OF ACQUIRED PRODUCTS.

22 Subpart 1. Sales. For product rights acquired under loan  
23 default, the authority may sell the acquired product and all  
24 intellectual property rights incident to in a commercially  
25 reasonable manner to any person or business.

26 Subp. 2. No product warranty. No warranty may be  
27 expressed or implied by the authority for products distributed  
28 under subpart 1. Product recipients shall assume all risk of  
29 use. The state, the authority, and its employees may not be  
30 held liable for any damages, including any lost profits, lost  
31 savings, or other incidental or consequential damages arising  
32 out of the use or inability to use the product.

33 8300.4107 CERTIFICATIONS.

34 For products financed by the authority, the eligible loan  
35 recipient shall agree to and execute a certification statement

1 acceptable in form and content to the commissioner. This  
2 statement must certify at least the following:

3 A. that the product is original;

4 B. that the product does not infringe upon  
5 copyrights, patents, mask work, trade secrets, trademarks,  
6 service marks, and any other intellectual product rights;

7 C. that the product will substantially perform the  
8 tasks it has represented in its documentation that it will  
9 perform;

10 D. that the loan recipient will hold the authority  
11 harmless.

12 8300.4108 DATA, PUBLIC AND PRIVATE.

13 An applicant shall execute an acknowledgement that data  
14 provided as part of the application or loan servicing process  
15 may be considered public data. If the eligible applicant  
16 considers any part of the data to be provided to the authority  
17 to be a trade secret, and if the authority agrees that the data  
18 is a trade secret as defined in the Minnesota Government Data  
19 Practices Act, Minnesota Statutes, chapter 13, then the  
20 authority shall enter into an agreement with the eligible  
21 applicant regarding the data.

22 8300.4109 CONTENT OF APPLICATION.

23 In addition to the data required by part 8300.3011, an  
24 applicant for the technology product investment program shall  
25 provide the following information:

26 A. specific product descriptions and comparison data  
27 to similar or related products, projected life cycle of the  
28 product, need for the product, pricing considerations, profit  
29 margins, and future product trends;

30 B. market research data including a description of  
31 the targeted audience that will use and purchase the product;  
32 how the product will be packaged, promoted, and sold, including  
33 pricing considerations;

34 C. a market plan describing primary strategies,  
35 distribution agreements, if any, and opportunities for leverage

1 with other products;

2 D. a product packaging, documentation, and  
3 manufacturing plan including projected cost of product and  
4 inventory levels;

5 E. product descriptions, sales, and profit data on  
6 other technology products under the control of the business;

7 F. projected financial performance of the proposed  
8 product including sales and profit projections and cash flow and  
9 return on investment analysis;

10 G. jobs maintained or created as a result of the  
11 loan; and

12 H. a description of how the product will serve the  
13 public good of the state, especially in education and training.

14 8300.4110 SUBMISSION AND EVALUATION CRITERIA.

15 Subpart 1. Evaluation criteria. The authority shall  
16 evaluate an application according to the standards and  
17 requirements in parts 8300.4101 to 8300.4112, the laws governing  
18 the program, and the following criteria:

19 A. the number of jobs created and maintained;

20 B. the ability of the product to attract private  
21 investment capital;

22 C. the projected financial success of the product;

23 D. the probability that royalty projections will be  
24 realized;

25 E. the projected return on investment to the state;

26 F. the degree to which the product serves the public  
27 good and reduces other state expenses; and

28 G. the degree to which the product can be expected to  
29 meet the needs of the marketplace.

30 Subp. 2. Use of consultants. The authority shall evaluate  
31 applications using the evaluation criteria. The commissioner  
32 may employ consultants as needed to extend the expertise of  
33 staff. The commissioner shall take steps that are reasonable to  
34 ensure that consultants are free from any conflicts of interests  
35 and that they use reasonable means to protect confidentiality of



1 data.

2 Subp. 3. Priority funding. The commissioner may make  
3 priority funding recommendations to the authority based on the  
4 evaluation of the applications.

5 8300.4111 INTELLECTUAL PROPERTY RIGHTS.

6 Copyrights, patents, mask work, trade secrets, trademarks,  
7 service marks, and any other intellectual property rights in the  
8 product shall remain with the business unless specifically  
9 transferred to the authority under a mutual agreement or through  
10 loan default.

11 8300.4112 DERIVATIVE PRODUCTS AND SUCCESSOR BUSINESSES.

12 All agreements made as part of the technology product  
13 investment program, including product loan and security  
14 agreements, must contain an appropriate clause to maintain and  
15 secure the authority's financial interests in derivative  
16 products and successor businesses.