

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1000

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 1-11-84
DATE FOR REVIEW 1-20-84
DATE DUE 1-25-84

Adopted w/a hearing _____
Adopted w/o hearing ✓
Temporary rule _____

Approved 1-23-84 mjc Disapproved _____ Returned to Agency 1-23-84

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State 1-23-84 Revisor approved 1.11.84 disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed See SR

✓ Order Adopting 1.9.83 Date

✓ Notice of Intent to Solicit Outside Opinion S.R. 9.12.83

✓ Order for rulemaking
N/A date of Hearing

✓ Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency includes "small biz" notice

✓ Affidavit of Mailing Notice or rulemaking
11.30.83 At least 30 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
12.5.83 At least 30/~~20~~ days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

✓ Chief Hearing Examiner's Report(s)
_____ Approving H.E.'s Report
_____ Approving agency action

_____ Agency's Findings of Fact

N/A LCRAR Report or agency Affidavit

✓ Certificate of Board's Resolution Adopting Rules

N/A Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness includes "small biz" statement

N/A Petition for Adoption of a Rule

N/A Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

N/A Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

SF-00006-02

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT OF AGRICULTURE

TO : Judith Wehrwein
Administration - Finance Division
Office of the Attorney General

DATE: 1/11/84

RECEIVED
JAN 14 1984
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

FROM : Gerald Heil, Director GFH
Planning Division

PHONE: 296-1486

SUBJECT: Review of Rules Governing Financial Assistance for Pre-Export Credit Needs of Minnesota Exporters (3 MCAR SS 1.0090-1.0100)

The Department of Agriculture adopted the above-mentioned rules without a public hearing pursuant to Minnesota Statutes sections 14.21-14.28 (1982). Enclosed with this memorandum are the documents which are required by 1 MCAR SS 1.203 to be submitted to the Attorney General for review prior to final approval of the rules. A list of the documents is attached for your convenience.

The Department fulfilled the requirements of Laws of Minnesota 1983, chapter 188, subdivision 4 by notifying small businesses of the expected impact of the rules. Such notice was given both in the Notice to Solicit Outside Opinion and in the Notice of Intent to Adopt Rules Without Public Hearing. The requirements of subdivision 2 are dealt with in the Statement of Need and Reasonableness.

No written comments were received following the publication of either the Notice to Solicit Outside Opinion or the Rules as Proposed. The Department did not receive any requests for a public hearing, nor did any person request to be notified when these documents were submitted to the Attorney General. The Rules as Adopted do not differ from the Rules as Proposed.

If you have questions, please contact me.

GH:dw

Attachment

cc: Jim Nichols, Commissioner
Rollin Dennistoun, Ph.D., Deputy Commissioner
William Dietrich, Assistant Commissioner
Duc Q. Lam, Director, Minnesota Export Finance Authority
Sue Halverson, Special Assistant Attorney General
Craig Lindeke, Office of Revisor of Statutes

DEPARTMENT OF AGRICULTURE
Rules Governing Financial
Assistance for Pre-Export
Credit Needs of Minnesota
Exporters

Planning Division
January 11, 1984

ATTACHED DOCUMENTS

I. Rules as Adopted (original and three copies).

II. Order Adopting Rules (two copies).

III. Certificate of Board's Resolution Adopting Rules (one copy).

IV. Notice to Solicit Outside Opinion (one copy).

V. Order for Notice of Intent to Adopt (one copy).

VI. Certificate of Board's Authorizing Resolution (one copy).

VII. Notice of Intent to Adopt Rules Without a Public Hearing (one copy).

VIII. Affidavit of Mailing (one copy).

IX. Certificate of Mailing (one copy).

X. Rules as Proposed (one copy).

XI. Statement of Need and Reasonableness (one copy).

XII. Statement of Compliance (one copy).

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO DUC LAM, DIRECTOR MINNESOTA EXPORT FINANCE AUTHORITY
Attn: SUE HALVERSON, Special Assistant

DATE: 01/23/84

FROM : MARTY J. CASSERLY MJC

PHONE: 296-4692

SUBJECT: In the Matter of The Proposed Rules of the Department of Agriculture Governing Financial Assistance forPre-Export Credit Needs of Minnesota Exporters (3 MCAR 1.0090-1.0100)

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register. This must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

If you have any questions in this regard, please contact me.

Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

MJC/ap

AG copy

Department of Agriculture

Minnesota Export Finance Authority

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

Rules as Adopted

3 MCAR S 1.0090 Scope.

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

3 MCAR S 1.0091 Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 MCAR S 1.0093 Content of application.

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

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

3 MCAR S 1.0094 Application procedure.

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

B. Initial review by executive director.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I. Reporting requirements.

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

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

OK

3 MCAR S 1.0096 Criteria for approval of financial assistance.

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

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

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

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

OK exec director see .0094 C.

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

by the buyer and coverage of foreign risks;

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

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

4. credit history and financial condition of the applicant;

5. financial projections;

6. ability of management.

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

3 MCAR S 1.0097 Loan administration.

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

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

3 MCAR S 1.0098 Quorum of the board.

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

3 MCAR S 1.0099 Agency meetings.

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

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

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

3 MCAR S 1.0100 Public appearances at board meetings.

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

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

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

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JAN 23 1984
4:04 p.m.
Joan Anderson
Secretary of State

APPROVED AS TO FORM AND LEGALITY
January 23 1984
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY Martha J Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Rules of the Department of Agriculture Governing Financial Assistance for Pre-Export Credit Needs of Minnesota Exporters (3 MCAR §§ 1.0090-1.0100)

ORDER ADOPTING RULES

Notice of the Commissioner's intent to adopt the above-entitled rules without a public hearing was published in the State Register on December 5, 1983, and was sent by United States mail to all persons on the list maintained by the department pursuant to Minnesota Statutes, section 14.22 on November 30, 1983. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than seven written requests for a public hearing within the 30 day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED that these rules identified as the Rules Governing Financial Assistance for Pre-Export Credit Needs of Minnesota Exporters are adopted this 9th day of January, 1984, pursuant to authority vested in the Board of the Minnesota Export Finance Authority by Laws of Minnesota 1983, chapter 289, section 8.

STATE OF MINNESOTA

DUC LAM
DIRECTOR
MINNESOTA EXPORT FINANCE AUTHORITY

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Agriculture
Minnesota Export Finance Authority

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing the Policies and Procedures of the Minnesota Export Finance Authority Relating to the Financing of Pre-Export Credit Needs of Minnesota Exporters

Notice is hereby given that the Minnesota Export Finance Authority (MEFA) is seeking information or opinions from sources outside the agency in preparing to promulgate proposed rules governing the policies and procedures of MEFA in providing loan guarantees, insurance, and other assistance to aid and facilitate the financing of pre-export credit needs of Minnesota exporters. The promulgation of these rules is authorized by Laws 1983, chapter 289, section 8. Among other things, the statute authorizes and empowers MEFA to insure, co-insure, and guarantee against commercial pre-export credit risks; charge premiums, interest, and fees; provide administrative, consultative, and technical services to assist in the financing of exports; and contract with federal agencies and private insurers to secure re-insurance for country and commercial risks for MEFA's insurance program. The powers of MEFA must be used exclusively to meet the pre-export credit needs of Minnesota exporters, defined to mean the period between formation of a sale and the actual shipment of goods. It is contemplated that the rules will specify eligibility criteria for loan guarantees and insurance, prescribe application procedures, define limits on loan guarantees or insurance, establish fee structures, and define policies for credit administration and participation by third parties. The rules may also include other provisions which the MEFA Board of Directors finds necessary.

The rules will have an impact on small businesses in that they will affect their access and eligibility for loan guarantees or insurance for pre-export credit needs through MEFA.

MEFA requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to:

Gerald Heil
Minnesota Department of Agriculture
90 West Plato Boulevard
St. Paul, Minnesota 55107

Oral statements and comment will be received during regular business hours over the telephone at (612) 296-1486, and in person at the above address.

All statements of information and comment shall be accepted until October 21, 1983. Any written material received by the MEFA shall become part of the record submitted to the Attorney General.

Sept. 1, 1983

Jim Nichols, Commissioner
Department of Agriculture for
William Dietrich, Chairman
Minnesota Export Finance Authority Board

Department of Agriculture
Agronomy Services Division

Notice of Special Local Need (SLN) Registration for Clean Crop Paraquat Plus

Pursuant to Minnesota Statutes, section 18A.23, and 3 MCAR § 1.0338 B., the Minnesota Department of Agriculture (MDA), on August 26, 1983, issued a Special Local Need (SLN) Registration for Clean Crop Paraquat Plus with EPA Reg. #239-2186-34704, manufactured by Platte Chemical Company, Fremont, NE.

The Commissioner of Agriculture, based upon information in the application, has deemed it in the public interest to issue such

DEPARTMENT OF AGRICULTURE

MINNESOTA EXPORT FINANCE AUTHORITY

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing the Policies and Procedures of the Minnesota Export Finance Authority Relating to the Financing of Pre-Export Credit Needs of Minnesota Exporters

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Sept 1, 1983

Jim Nichols

Jim Nichols, Commissioner
Department of Agriculture for
William Dietrich, Chairman
Minnesota Export Finance Authority Board

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Rules
of the Minnesota Export Finance Authority
Governing Financial Assistance for Pre-export
Credit Needs of Minnesota Exporters
(3 MCAR SS 1.0090-1.0100)

ORDER FOR NOTICE
OF INTENT TO ADOPT
RULES WITHOUT
PUBLIC HEARING

IT IS ORDERED this 14th day of November, 1983, that a Notice of Intent to Adopt Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the Minnesota Department of Agriculture for that purpose and be published in the State Register.

STATE OF MINNESOTA

Director
Minnesota Export Finance Authority

CERTIFICATE OF BOARD'S

AUTHORIZING RESOLUTION

I, William C. Dietrich, do hereby certify that I am a member and the chairman of the Board of the Minnesota Export Finance Authority, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Board of Minnesota Export Finance Authority duly and properly called and held on the 14th day of October, 1983, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, that Duc Lam, Executive Director of the Board of Minnesota Export Finance Authority, be and he hereby is granted the authority and directed to sign an Order of the Board directing that Notice be given of the Board's intent to adopt without a public hearing rules governing policies and procedures of the Minnesota Export Finance Authority's financial assistance program, to sign the Notice thereof, and to perform any and all acts incidental thereto. In the event a public hearing becomes necessary, he hereby is granted the authority and directed to call a hearing for the purpose of promulgating said rules as well as perform any and all acts incidental thereto, including but without being limited to signing an Order for Hearing and Notice of Hearing as well as acting as the Board's representative at all hearings."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 14th day of October, 1983.

WILLIAM C. DIETRICH
Chairman, Board of Directors
Minnesota Export Finance Authority

Attest:

Member, Board of Directors
Minnesota Export Finance Authority

Department of Agriculture

Minnesota Export Finance Authority

In the Matter of the Proposed Rules Governing Financial Assistance for Pre-Export Credit Needs of Minnesota Exporters (3 MCAR SS 1.0090-1.0100)

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the Minnesota Export Finance Authority proposes to adopt the above-entitled rules without a public hearing. The Board of the Minnesota Export Finance Authority has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, Sections 14.21-14.28 (1982).

Persons interested in these rules shall have 30 days to submit comment on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the department and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the department will proceed according to the provisions of Minnesota Statutes, Sections 14.11-14.20 (1982). If a public hearing is requested, identification of the particular objection, the suggested modifications to the proposed language, and the reasons or data relied on to support the suggested modifications is desired.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to: Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-1486.

Authority to adopt these rules is contained in Minnesota Statutes, Section 17.105. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available upon request from Mr. Heil.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as adopted, should submit a written statement of such request to Mr. Heil.

The Export Finance Authority is authorized by Minnesota Statutes Section 17.105 to aid and facilitate the financing of exports from Minnesota. The powers of the Finance Authority may be used exclusively to meet the credit needs of exporters from the formation of a sale until shipment of the goods. The Finance Authority is authorized to, among other things, provide insurance and loan guarantees.

The proposed rules are intended to implement the provisions of Minnesota Statutes Section 17.105 as authorized by that law.

The proposed rules, if adopted, would establish the policy and procedures for the granting of loan guarantees or insurance for exporters. The proposed rules include the requirements and procedures for application, the general terms and conditions of financial assistance, the criteria for approval of financial assistance, and requirements for loan administration.

The proposed rules will impact and benefit small business as defined in Laws of Minnesota 1983, chapter 188, section 1, because the financial assistance program is intended to benefit the smaller exporter or new-to-export business. The amount of financial assistance authorized for any one exporter is $250,000, which directs the benefits toward the smaller scale transactions of small business. The proposed rules establish streamlined, non-burdensome procedures and terms for financial assistance, to the extent consistent with the Finance Authority's duty to determine reasonable risk and sufficient likelihood of repayment.

Please be advised that Minnesota Statutes, Chapter 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes, Section 10A.01, subdivision 11 (Supp. 1979) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250.00, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250.00, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to

influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 40 State Office Building, St. Paul, MN 55155, (612) 296-5615.

One free copy of this Notice and the proposed rules are available and may be obtained by contacting Mr. Heil.

STATE OF MINNESOTA

Date: 11-14-83

Director
Minnesota Export Finance Authority

In the Matter of Proposed Rules
of the Minnesota Export Finance Authority
Governing Financial Assistance for Pre-
Export Credit Needs of Minnesota Exporters
(3 MCAR SS 1.0090-1.0100)

AFFIDAVIT OF
MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Diane Windham, being first duly sworn, deposes and says:

That on the 30th day of November, 1983, at the City of St. Paul, County of Ramsey, State of Minnesota, he/she served the attached Notice of Intent to Adopt Rules Without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the Minnesota Department of Agriculture for the purpose of receiving notice of the proposed adoption of rules by this Department.

Diane Windham

Subscribed and sworn to before me
this 30th day of November, 1983.

Christine Canaday

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of Proposed Rules
of the Minnesota Export Finance Authority Governing
Financial Assistance for Pre-Export Credit Needs
of Minnesota Exporters
(3 MCAR SS 1.0090-1.0100)

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. § 14.14, subd. 1, that their names be placed on file with and maintained by the Minnesota Department of Agriculture for the purpose of receiving notice of the proposed adoption of rules by this Department is accurate and complete as of 9:00 a.m., this 30 day of November, 1983.

Harold J. Hall

PROPOSED RULES

Pursuant to Minn. Stat. of 1980, §§ 14.21, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules;

and

4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.13-14.20 which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 14.29, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Agriculture
Minnesota Export Finance Authority

Proposed Rules Governing Financial Assistance for Pre-Export Credit Needs of Minnesota Exporters (3 MCAR § 1.0090-1.0100)

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Export Finance Authority proposes to adopt the above-entitled rules without a public hearing. The Board of the Minnesota Export Finance Authority has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, Sections 14.21-14.28 (1982).

Persons interested in these rules shall have 30 days to submit comment on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the department and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the department will proceed according to the provisions of Minnesota Statutes, Sections 14.11-14.20 (1982). If a public hearing is requested, identification of the particular objection, the suggested modifications to the proposed language, and the reasons or data relied on to support the suggested modifications is desired.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to: Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-1486.

Authority to adopt these rules is contained in Minnesota Statutes, Section 17.105. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available upon request from Mr. Heil.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as adopted, should submit a written statement of such request to Mr. Heil.

The Export Finance Authority is authorized by Minnesota Statutes Section 17.105 to aid and facilitate the financing of exports from Minnesota. The powers of the Finance Authority may be used exclusively to meet the credit needs of exporters from the formation of a sale until shipment of the goods. The Finance Authority is authorized to, among other things, provide insurance and loan guarantees.

The proposed rules are intended to implement the provisions of Minnesota Statutes Section 17.105 as authorized by that law.

The proposed rules, if adopted, would establish the policy and procedures for the granting of loan guarantees or insurance for

exporters. The proposed rules include the requirements and procedures for application, the general terms and conditions of financial assistance, the criteria for approval of financial assistance, and requirements for loan administration.

The proposed rules will impact and benefit small business as defined in Laws of Minnesota 1983, chapter 188, section 1, because the financial assistance program is intended to benefit the smaller exporter or new-to-export business. The amount of financial assistance authorized for any one exporter is $250,000, which directs the benefits toward the smaller scale transactions of small business. The proposed rules establish streamlined, non-burdensome procedures and terms for financial assistance, to the extent consistent with the Finance Authority's duty to determine reasonable risk and sufficient likelihood of repayment.

Please be advised that Minnesota Statutes, Chapter 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes, Section 10A.01, subdivision 11 (Supp. 1979) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250.00, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250.00, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 40 State Office Building, St. Paul, MN 55155, (612) 296-5615.

One free copy of this Notice and the proposed rules are available and may be obtained by contacting Mr. Heil.

November 14, 1983

Duc Q. Lam, Director
Minnesota Export Finance Authority

Rules as Proposed (all new material)

3 MCAR § 1.0090 Scope.

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

3 MCAR § 1.0091 Definitions.

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

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

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

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

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

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

G. Exporter. "Exporter" means a business concern, incorporated or unincorporated, which sells, leases, or proposes to sell or lease Minnesota goods or services destined for shipment, resale, or use outside the United States.

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

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

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

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

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

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

3 MCAR § 1.0092 Availability of financial assistance from the MEFA.

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

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

3 MCAR § 1.0093 Content of application.

The executive director shall prepare application forms for use by exporters or lenders in seeking financial assistance. The application forms must set forth the information necessary for the determination of eligibility and must require, among other things, a description and history of the exporter, the experience of management, financial statements, income and expense projections for the export sale, a description of collateral and other security, purchase order and proposed terms of the export sale, foreign risk coverage, and a statement by the exporter or lender identifying alternative sources of financing which have been pursued and the reasons that financing is unavailable through those sources. The executive director may require additional information necessary to a determination of the exporter's eligibility for financial assistance and reasonably related to the criteria for approval in 3 MCAR § 1.0096.

3 MCAR § 1.0094 Application procedure.

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

B. Initial review by executive director.

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

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

C. Consideration of application. The board, or the executive director upon delegation of authority from the board, shall consider the application, taking into account the purposes of Laws of Minnesota 1983, chapter 289, sections 7 and 8 and the criteria and terms of 3 MCAR §§ 1.0095 and 1.0096.

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

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

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

3 MCAR § 1.0095 General terms and conditions of financial assistance.

A. Permissible use of financial assistance. When the MEFA grants financial assistance to meet the financing needs of an

exporter, the financial assistance is available from the time the exporter receives a purchase order until the exporter receives documents confirming shipment according to the terms of trade in the sales transaction. Credit needs eligible for financial assistance include costs and expenses related to the acquisition or production, financing, and shipment of the goods or services.

B. Minimum loan or credit guaranteed. The MEFA shall not provide financial assistance where the principal amount of the pre-export loan or credit needed is less than $25,000.

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

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

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

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

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

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

I. Reporting requirements.

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

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

3 MCAR § 1.0096 Criteria for approval of financial assistance.

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

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

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

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

1. evidence of the manner, means, and security of payment by the buyer and coverage of foreign risks;

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

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

4. credit history and financial condition of the applicant;

5. financial projections;

6. ability of management.

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

3 MCAR § 1.0097 Loan administration.

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

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

3 MCAR § 1.0098 Quorum of the board.

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

3 MCAR § 1.0099 Agency meetings.

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

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

3 MCAR § 1.0100 Public appearances at board meetings.

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

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

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

Department of Commerce

Proposed Adoption of Rules Relating to the Workers' Compensation Assigned Risk Plan

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Department of Commerce proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Commerce has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, section 14.21.

Persons interested in these rules shall have 30 days to submit comments. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change.

No public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, section 14.14, subd. 1.

Persons who wish to submit comments or a written request for a public hearing should submit them to Alberto Quintela, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101.

CERTIFICATE OF BOARD'S

RESOLUTION ADOPTING RULES

I, William C. Dietrich, do hereby certify that I am a member and the Chairman of the Board of the Minnesota Export Finance Authority, a Board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution at a meeting of the Board of the Minnesota Export Finance Committee, duly and properly called and held on the Ninth day of January, 1984, that a quorum was present at said meeting, that a majority of those present voted for the resolution, and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, that the rules relating to financial assistance for pre-export credit needs of Minnesota exporters be and they hereby are approved and adopted, pursuant to authority vested in us by Laws of Minnesota 1983, Chapter 289, § 8, and that Duc Lam, the Executive Director of the Board of the Minnesota Export Finance Authority, be and hereby is authorized to sign an order adopting these rules and further is authorized to perform the necessary acts to provide that these rules shall have the force and effect of law."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 9th day of January, 1984.

WILLIAM C. DIETRICH
Chairman, Board of Directors
Minnesota Export Finance Authority

Attest by a Member,
Board of Directors
Minnesota Export Finance Authority

Department of Agriculture

Minnesota Export Finance Authority

In the Matter of the Proposed Rules Governing Financial Assistance for Pre-Export Credit Needs of Minnesota Exporters (3 MCAR §§ 1.0090-1.0100)

Statement of Need and Reasonableness

I. GENERAL NEED AND AUTHORITY FOR RULES.

The Minnesota Export Finance Authority (hereafter "MEFA" or "agency") was created to aid and facilitate the financing of exports from this state. Laws of Minnesota 1983, chapter 289, section 8 [Minn. Stat. § 17.105, subd. 3 (10)] empowers the agency to adopt rules necessary to carry out its responsibilities; and Minn. Stat. § 14.06 (1982) provides for adoption of rules setting forth the nature and requirements of all agency procedures to the extent that those procedures directly affect the rights available to the public. These proposed rules set forth policies and procedures governing the operation of the agency and the nature and requirements for the agency's program of financial assistance available to exporters.

It is both necessary and reasonable that the agency adopt rules governing the administration of its export credit assistance program for the following reasons:

1. The proposed rules provide exporters and lenders, who are potential beneficiaries of the program, with information and notice of the following:

a. The nature of financial assistance available;

b. Procedures to follow in applying for such assistance;

c. The criteria and policy which the agency will follow in reviewing applications;

d. The terms of financial assistance and loan administration.

2. The proposed rules define procedures and criteria for decisionmaking by the director and the Board of directors of the agency so as to avoid arbitrary or inconsistent decisions.

3. The proposed rules delineate the respective functions and responsibilities of the Board and the director.

The proposed rules are modelled on the rules of state and federal agencies which operate similar types of business assistance programs. Therefore, they are reasonable in light of the experience of other governmental entities. Further, the proposed rules are reasonable because they are derived from the substantial experience and expertise of the agency's Board and director, who have drawn upon their respective backgrounds in areas of international banking, law, insurance, and export marketing in promulgating the proposed rules.

II. OVERVIEW OF EXPORT FINANCE AUTHORITY AND THE FINANCIAL ASSISTANCE PROGRAM.

The purpose of the agency is defined in Laws of Minnesota 1983, chapter 289, section 7 [Minn. Stat. § 17.105, subd. 1] to aid and facilitate the financing of exports from this state. The nature of the agency's financial assistance program is defined in Laws of Minnesota 1983, chapter 289, section 8 [Minn. Stat. § 17.105, subd. 3 (1)] which authorizes the agency to "insure, co-insure, and guarantee against commercial pre-export credit risks."

The organizational structure of the agency is also defined by statute. A six-member Board of directors, knowledgeable in international finance, exporting or international law, is to be appointed by the Governor, with the Commissioner of Agriculture serving as chairman of the Board. [Minn. Stat. § 17.105, subd. 2.] As presently constituted, there are three Board members from the international banking community, two attorney members specializing in the practice of international law, and a Board member from that segment of the insurance industry which insures against foreign risk. The Commissioner of Agriculture has designated the Assistant Commissioner of Agriculture who directs the Minnesota Trade Office and serves as the Governor's Special Trade Representative to act as chairman of the Board. Thus, the Board is composed of highly qualified and experienced members from professions and businesses related to the operation of the export assistance program.

Further, as provided by statute, the Commissioner of Agriculture has employed a director for the agency. The director has extensive experience in both international banking and export marketing. Thus, the administrator of the agency, as well as the policy-formulating Board, bring to the program the necessary expertise to make its operation successful.

To support the loan guarantees and insurance for pre-export credits authorized by the statute, the legislature has appropriated $2,000,000 to a working capital account. The agency may leverage this account four times, so that its total net liability at any one time may reach $8,000,000. Laws of Minnesota 1983, chapter 289, section 8. [Minn. Stat. § 17.105, subd. 6.]

MEFA is statutorily authorized to perform functions necessary to its primary purpose of providing insurance or guarantees for pre-export credits, including the power to enter into contracts, acquire and hold real and personal property and pledge appropriate collateral, the power to charge interest and fees, and the general power to perform all necessary and appropriate functions related to the agency's duties.

There are certain limitations on the agency's authorities. Laws of Minnesota 1983, chapter 289, section 8 [Minn. Stat. § 17.105, subd. 1] requires that the agency's powers be used exclusively to meet the pre-export credit needs of Minnesota exporters. The agency may not provide to any one person insurance or guarantees in excess of $250,000. [Minn. Stat. § 17.105, subd. 7.] And the statutory policy is to provide assistance for export credits that would otherwise

not be made and that represent a reasonable risk and have a sufficient likelihood of repayment. [Minn. Stat. § 17.105, subd. 7 (2).]

Other than the foregoing limitations, the statute prescribes no eligibility requirements.

III. IMPACT UPON SMALL BUSINESS.

The agency's authorizing legislation gives no express directive that the powers of the agency be used for "small business" purposes, as that term is defined in Laws of Minnesota 1983, chapter 188, section 1. However, the small business focus of the program is inherent in the statutory limitation that the agency not provide assistance to any one person in excess of $250,000. This limitation clearly directs the program toward smaller scale transactions which are typical of smaller businesses or new-to-export businesses.

Because the entire program is directed at the pre-export credit needs of smaller businesses, no special provisions or exceptions are enumerated in the proposed rules for small businesses. Rather, all of the proposed rules are formulated to accommodate the needs, capabilities and circumstances of small businesses.

In considering the methods prescribed in Laws of Minnesota 1983, chapter 188, section 1, for reducing impact on small businesses, it should be noted that the proposed rules do not establish a regulatory compliance or reporting program with mandatory application to a particular small business sector. Rather, the rules prescribe policy and procedures for the operation of a benefit program, and the decision whether or not to participate in the program is voluntary. Thus, in one sense, the impact of the rules on small businesses is within their own control. A small business exporter can choose to participate

in the financial assistance program or not, and that decision can be made for each individual export transaction.

Even though the concepts of "compliance or reporting requirements" and "design or operational standards" are not, stricly speaking, embodied in the proposed rules, the Board has addressed each method specified in chapter 188, section 1, to the extent applicable.

A. LESS STRINGENT COMPLIANCE OR REPORTING REQUIREMENTS

There are routine reporting requirements for small business exporters who receive financial assistance. For example, proposed 3 MCAR § 1.0095(I) requires the exporter to report immediately upon making shipment of the goods and to provide copies of documents which evidence shipment. It is necessary to require this documentation from the exporter, because those reports are uniquely within the exporter's control or possession and they evidence the event which terminates the agency's financial assistance.

While the application process is not, strictly speaking, a "reporting requirement," the Board has taken a less stringent approach to informational requirements in the application process than is typically used in similar federal programs. For example, the applicant is required to certify that he or she has sought alternative sources of financing and to state the reasons why financing is not available through the sources. However, the applicant need not obtain written verification or "reports" from those sources.

Because it is a benefit program, rather than a regulatory program, the rules have eligibility requirements rather than compliance

requirements. However, the Board has adopted the least stringent eligibility requirements consistent with the statutory authorizations of the program. For example, the definition of "exporter" in proposed 3 MCAR § 1.0091(G) defines beneficiaries of the program broadly, so that a small business need not take a particular form (e.g., corporation, partnership) or be involved in a particular line of business (e.g., manufacturing, processing). The eligibility requirements are inclusive rather than exclusive, thereby inuring to the benefit of smaller businesses.

B. SCHEDULES FOR COMPLIANCE OR REPORTING

As previously discussed, an exporter participating in the program must merely report and document that the goods have been shipped. Thus, the reporting schedule is determined by the export transaction, not the agency's rules.

C. SIMPLIFICATION OF COMPLIANCE OR REPORTING

Under proposed 3 MCAR § 1.0095(I) most of the reporting functions have been shifted to the small business exporter, since commercial lenders have experience and staff necessary to service loans.

Viewing the application process as a "reporting requirement," the Board has adopted a very simplified approach. Proposed 3 MCAR § 1.0093 provides that the executive director will make available application forms for use by exporters seeking financial assistance. The use of application forms will help small business applicants define the precise information necessary for credit evaluation and

will assist the applicant in organizing and presenting the application data in its most favorable light. The information required on the application is limited to that information necessary for the determination of eligibility and reasonably related to the criteria for approval in proposed 3 MCAR § 1.0096. Thus, both the structure and content of the application requirements are designed to simplify the process for small businesses.

The proposed rules also provide that if any necessary information is omitted by the applicant, the executive director will inform the applicant of the additional information required. Proposed 3 MCAR § 1.0094 (B)(1) thus affords the applicant an opportunity to cure any defects in the application.

Finally, the application process has been simplified because proposed 3 MCAR § 1.0091(J) defines "Minnesota goods or services" without the use of a rigid quantitative formula for measuring the amount or value of Minnesota-source components, labor, intellectual property, or value added. A rigid quantitative formula would require the small business exporter to document or attempt to measure the precise valuation of Minnesota content. This approach might create application difficulties and become an impediment to small business exporters. Thus, the Board did not adopt a rigid quantitative formula or measurement for Minnesota content.

D. PERFORMANCE, DESIGN OR OPERATIONAL STANDARDS

The proposed rules do not contain any design or operational standards; therefore, the Board did not consider the substitution of performance standards in lieu thereof.

E. EXEMPTION OF SMALL BUSINESS FROM RULE REQUIREMENTS

As previously discussed, the entire financial assistance program is aimed at small business exporters. Thus, all of the proposed rule requirements are promulgated with the capabilities and needs of smaller businesses in mind. Further, the requirements adopted in the rules are those minimal and necessary to fulfillment of the statutory requirements and standards. For example, there are only two criteria for approval of financial assistance in proposed 3 MCAR § 1.0096. First, the proposed rule considers the applicant's need for financial assistance, which is required by Minn. Stat. § 17.105, subd. 7 (2). The second criteria in the proposed rule relates to an assessment that the risk is reasonable and that the credit can and will be repaid according to its terms. Again, this determination is required by statute.

Because the rules adopt standards and requirements which are necessary and minimal in light of the statutory directive, further exemptions were neither appropriate nor authorized.

The Board also considered the financial impact on small businesses in structuring the program. Proposed 3 MCAR § 1.0095 (G) limits the fees and interest rates which may be charged by the lender to those reasonable under the circumstances. Additionally, the proposed range for the guarantee fee charged by the agency is competitive with similar governmental programs of financial assistance for exporters.

As an additional aid to small businesses, the agency will direct applicants to alternative sources of financial assistance, such as the U.S. Small Business Administration or the Export Import Bank of the United States, where alternative sources of assistance appear available. Proposed 3 MCAR § 1.0094 (B)(2).

IV. NEED AND REASONABLENESS OF EACH RULE PROVISION.

A. SCOPE

Proposed 3 MCAR § 1.0090 defines the scope of the proposed rules, citing authority for their promulgation and the statutory purpose of the agency. The need and reasonableness of this rule is self-evident.

B. DEFINITIONS

Proposed 3 MCAR § 1.0091 defines terms which have a distinct meaning when used within the context of the rules. The definitions do not repeat verbatim any statutory definitions; rather, they clarify and administratively interpret any statutorily defined terms.

The term "financial assistance" is used in the proposed rules as a short-hand description of the types of export credit assistance which the agency is authorized to provide, namely, insurance, co-insurance or guarantees for loans or credit extended to an exporter. It is necessary to define a short-hand term for the benefits of the finance program so as to make the proposed rules more readable. The definition incorporates the statutory limitation to pre-export credit needs and the exclusion of foreign risk coverage. The definition

is reasonable because it reflects the authorizations and limitations provided by statute.

The definition of "pre-export" in proposed 3 MCAR § 1.0091 (K) does not repeat the statutory language. Rather, the proposed rule clarifies the time period for which financial assistance is authorized. The statutory commencement with "formation of a sale" is clarified in the proposed rules as the "exporter's receipt of a purchase order." Likewise, the statutory termination upon "the actual shipment of goods" is clarified in the rules as the time when the exporter receives documents confirming shipment according to the terms of trade. It is necessary to make more specific the definition of "pre-export" because this statutory term is not one with customary meaning and use as an international term of trade. The proposed rule definition is reasonable because it comports with the statutory definition and because it defines the duration of financial assistance by events which are readily documented by the exporter's receipt of documents.

Proposed 3 MCAR § 1.0091 (G) defines "exporter" with reference to the types of business organizations and activities to which the financial assistance program is directed. First, the proposed rule broadly defines the eligible organization as any business concern, incorporated or unincorporated. This approach is reasonable because it minimizes exclusions based on the form of business organization

or on business status or type, thereby giving the program an appropriately broad application. The proposed definition requires that the business concern be involved in the sale or lease of "Minnesota goods or services" for export, thereby incorporating the statutory purpose of facilitating exports "from this state." The proposed definition also clarifies that eligible export transactions may involve lease as well as sale, and services as well as goods. Finally, the proposed definition clarifies that an export sale or lease occurs when goods or services are destined for shipment, resale or use outside the United States, even if those goods or services first pass from the Minnesota business concern to a purchasing agent or export trading company located within the United States. The proposed definition of "exporter" is necessary to clarify the statutory focus on "Minnesota exporters"; and the proposed definition is reasonable because it defines the exporter eligible for financial assistance in broad and inclusive terms, consistent with the statutory policy of aiding and facilitating exports from this State.

"Minnesota goods or services" are defined in proposed 3 MCAR § 1.0091 (J) to aid in defining the statutory focus on "Minnesota" exporters and "exports from this State." See Laws of Minnesota 1983, chapter 289, section 8 [Minn. Stat. § 17.105, subds. 1 and 2.] The proposed definition clarifies that the program is designed to aid exports of goods or services which have substantial Minnesota content or Minnesota source. The proposed definition is reasonable because it does not employ a rigid quantitative formula in measuring the type and proportion of Minnesota content, labor or value-added

which will be required for an eligible export sale. Thus, the proposed rules avoids both administrative burdens for the agency and application difficulties which might be an impediment to small businesses.

The terms "affiliate" and "control" are defined in proposed 3 MCAR § 1.0091 (B) and (D) to define application of the liability limit of $250,000 "to any one person" contained in Laws of Minnesota 1983, chapter 289, section 8 [Minn. Stat. § 17.105, subd. 7 (1).] Proposed 3 MCAR § 1.0095 (C) clarifies that the limit applies to "an exporter, including all its affiliates." The proposed rules then define the term "affiliate" in terms of "control," which is also defined in the rules. The definitions are necessary because the statutory language imposing a limit per "person" does not precisely identify the individual, business entity or relationship under consideration. The proposed definitions are reasonable because they employ concepts of control and affiliation commonly used in defining business organizations and relationships.

The terms "Board", "executive director", "MEFA", and "SBA" are defined in proposed 3 MCAR § 1.0091 (C), (E), (I), and (L) for purposes of designating a short-hand terminology to afford greater readability to the rules when the terms are used in context. The necessity and reasonableness of these shorthand definitions are self-evident.

C. FINANCIAL ASSISTANCE AVAILABLE

Proposed 3 MCAR § 1.0092 describes the purpose and forms of financial assistance available from MEFA, providing an overview and description of the program to exporters and lenders who are

potential applicants and beneficiaries. The proposed rule is necessary and reasonable because it summarizes the authorizations, eligibility, and scope of financial assistance authorized by statute.

D. APPLICATION CONTENT

Proposed 3 MCAR § 1.0093 prescribes the required content of applications. The proposed rule requires the executive director to prepare application forms and prescribes application content and documentation. This proposed rule is necessary to inform potential applicants, in general terms, of the type of information which will be required for a determination of eligibility. The proposed rule is reasonable in several respects. First, by providing for application forms, rather than describing a laundry list of required information, the proposed rule establishes a structure and format to assist the applicant in identifying, organizing and presenting the necessary information in the most favorable light. Secondly, the proposed rule requires the minimum documentation necessary, consistent with the Board's statutory duty to provide financial assistance for export credits "that would not otherwise be made" and that are deemed "to represent a reasonable risk and have a sufficient likelihood of repayment." Laws of Minnesota 1983, chapter 289, section 8 [Minn. Stat. § 17.105, subd. 7 (2).] Proposed 3 MCAR § 1.0093 does not require third-party verification to document the unavailability of alternative sources of financial assistance. Rather, the proposed rule permits the applicant's own statement, thereby minimizing application burdens. The proposed rule is also reasonable because the information required with the application is that necessary for credit decision-making

and is reasonably related to the criteria for approval in proposed 3 MCAR § 1.0096.

E. APPLICATION PROCEDURE

Proposed 3 MCAR § 1.0094 describes in detail the application process and the respective roles of the applicant, executive director and Board. Proposed 3 MCAR § 1.0094 (A) explains that the application is to be submitted to the executive director; and proposed 3 MCAR § 1.0094 (B) requires initial review by the executive director, first for completeness and then for consideration of alternative sources. These proposed rules define necessary steps preliminary to consideration of the application by the Board. The proposed rules are reasonable because they provide for notice to the applicant if the application is incomplete, thereby affording the applicant opportunity to correct any deficiencies. Proposed 3 MCAR § 1.0094 (B)(2) implements the statutory policy to provide assistance for export credits "that would otherwise not be made" through the executive director's screening and referral to alternative sources, such as the SBA or Eximbank, as appropriate.

As proposed in 3 MCAR § 1.0094 (C) the application will be reviewed by the Board with consideration given to the purpose of the statute and the criteria and terms of proposed 3 MCAR §§ 1.0095 and 1.0096. This proposed rule is necessary to identify the specific factors which the Board will consider when reviewing an application. The proposed rule also provides for delegation of the approval authority to the executive director. Delegation of authority to the executive director may become necessary if the

volume of applications becomes too great for timely processing by the Board. The Board recognizes that an oft-cited difficulty with federal export assistance programs lies in processing delays. Export sales, particularly those involving smaller business transactions, must often be completed expeditiously if the exporter is to remain competitive in the world marketplace. Proposed 3 MCAR § 1.0094 (C) anticipates this need for rapid processing by providing for delegation of approval authority to the executive director in the event that administrative experience should so warrant. The proposed rule is reasonable because it clearly explains the factors to be considered in approving applications and because it flexibility defines the respective roles of the Board and the director so as to make them adaptable to actual experience. This flexibility and provision for speedy processing is consistent with the statutory policy and authority.

Proposed 3 MCAR §§ 1.0094 (D) and (E) provide for written notice to the applicant of the Board's decision, along with notice of the terms of financial assistance if granted, or alternatively the reasons for denial if not granted. The necessity and reasonableness of these provisions is self-evident.

Proposed 3 MCAR § 1.0094 (F) establishes alternatives available to MEFA in the event the application contains a material misrepresentation or omission. The proposed rule is necessary because the Board has streamlined and expedited the application process by relying upon the applicant as the primary or sole source of information. The proposed rules contemplate little, if any, third-party verification

of the information provided by the applicant. To maintain the integrity of the application process, the consequences of misrepresentation or omission must be significant. The proposed rule is reasonable because it is remedial rather than punitive. An applicant who supplies misleading information is placed in the position he/she would have been in had the application never been made, and no further penalties attach.

F. TERMS AND CONDITIONS

Proposed 3 MCAR § 1.0095 describes the general terms and conditions of financial assistance.

Proposed 3 MCAR § 1.0095 (A) sets forth the duration and permissible uses of financial assistance to include costs and expenses related to the acquisition or production, financing and shipment of the exported goods or services. The proposed rule is necessary to clarify the scope of covered "pre-export credit needs" referenced in Laws of Minnesota 1983, chapter 289, section 8 [Minn. Stat. § 17.105, subd. 1.] The proposed rule is reasonable because it complies with and makes more precise the statutory coverage, while extending assistance to cover shipment according to the terms of trade in the particular export sale.

Proposed 3 MCAR § 1.0095 (B) sets a minimum limit on the loan or credit guaranteed at $25,000. The proposed minimum credit is necessary and reasonable because the costs to the agency of processing, documenting and servicing the export credit should not exceed the potential benefits to the State and the public from the increased exports facilitated by the financial assistance.

Proposed 3 MCAR § 1.0095 (C) sets a limit on the maximum amount of financial assistance at $250,000, following the statutory limitation of liability to any "one person" in Laws of Minnesota, chapter 289, section 8 [Minn. Stat. § 17.105, subd. 7 (1).] The proposed rule makes clear that a "person" for purposes of the limitation is an exporter, including all its affiliates. The proposed rule is necessary and reasonable because it clarifies the statutory limitation.

Proposed 3 MCAR § 1.0095 (D) defines the extent to which the agency will participate in guaranteeing or insuring an exporter's loan or credit needs. It is necessary that the lender remain at risk for at least 10 percent of the principal amount, as provided in the proposed rule, in order to assure that the lender has sufficient self-interest in evaluating, screening and servicing the loan. The required 10 percent retention is reasonable because it is customary in federal export assistance programs and similar commercial participation arrangements. Proposed 3 MCAR § 1.0095 (D) also provides that the agency will seek co-participation from other private and governmental sources, including the SBA, Eximbank, FCIA, and private insurers. This provision is necessary and reasonable to comply with Laws of Minnesota 1983, chapter 289, section 8 [Minn. Stat. § 17.105, subd. 7 (3)], which requires the agency to contract with such organizations to secure reinsurance.

Proposed 3 MCAR § 1.0095 (E) limits the maturity of a loan guaranteed or insured by the agency to 12 months. This proposed rule is necessary to define the extent of the agency's undertaking. A reasonably rapid turnover of guaranteed loans is necessary to

allow the agency to assist or accommodate numerous exporters with the limited reserve funds available. Twelve months is a reasonable time to meet pre-export credit requirements in light of the $250,000 limitation which directs assistance to relatively small transactions. An export sale of this magnitude should ordinarily be ready for shipment within 12 months of a receipt of a purchase order.

Proposed 3 MCAR § 1.0095 (F) requires that loans be secured by adequate collateral. Laws of Minnesota 1983, chapter 289, section 8 [Minn. Stat. § 17.105, subd. 7 (2)] establishes a policy of providing financial assistance for export credits that represent a reasonable risk and have a sufficient likelihood of repayment. Integral to this policy is the requirement of collateral and other forms of security to secure the loan and thereby underlie the risk assumed by the agency in making its guarantee. 3 MCAR § 1.0095 (F) is necessary to advise applicants of the elements of security which the Board will require in granting financial assistance, i.e. the type, amount and value of collateral, together with the other risk criteria contained in 3 MCAR § 1.0096 (B). This rule is reasonable because it does not impose a rigid valuation formula on the collateral, such as the Eximbank requirement that the value of collateral equal at least 110 percent of the principal amount of the loan. A mathematical formula or measurement of this type was rejected because it is difficult to administer both for the agency and the exporter or lender participating in the program. Mathematical formulas imply the existence of precise methods of measuring the value of collateral, an unfounded implication when collateral is likely to include work in process on working

capital loans. Because of measurement problems, these types of seemingly objective or quantifiable formulae are inherently subjective in nature and would be difficult for the applicant to document. Thus, the Board rejected a mathematical formula for assessing security in favor of a standard which identifies the specific elements of collateral and security which will be considered, thereby allowing the applicant and the Board some flexibility in determining the appropriate mix of collateral or security. The rule is reasonable because it is designed to realize the statutory requirement that the Board undertake "reasonable risk" where there is "a sufficient likelihood of repayment." Laws of Minnesota 1983, chapter 289, section 8. [Minn. Stat. § 17.105, subd. 7 (2).]

Proposed 3 MCAR § 1.0095 (G) authorizes the lender to charge fees and a legal rate of interest on guaranteed loans, subject to the executive director's determination that the fees and charges are reasonable under the circumstances. It is necessary to impose an overall limit on the aggregate charges which may be made by the lender. In similar loan guarantee programs which have prescribed a specific maximum rate of interest, lending institutions have sometimes circumvented the interest rate ceiling by charging lender's "fees" in addition to the permissible interest rate. Proposed 3 MCAR § 1.0095 (G) makes clear that the executive director will consider all of the lender's charges, taken together, in determining their reasonableness. This proposed rule is consistent with the overall statutory purpose of making financing readily available to exporters on reasonable terms.

Proposed 3 MCAR § 1.0095 (H) implements the authority granted in Laws of Minnesota 1983, chapter 289, section 8 [Minn. Stat. § 17.105, subd. 3 (6)] to charge premiums, interest and fees. The statute also provides that losses incurred by the agency shall be borne from its capital and reserves. [Minn. Stat. § 17.105, subd. 7 (4)]. Proposed 3 MCAR § 1.0095 (H) is therefore necessary to set the amount of fees which the agency will charge and to provide for adjustments in the fee structure as necessary to maintain adequate reserves. It is also necessary to provide for adjustment in the rules to comply with applicable treaty or law, because matters relating to export financing are subject to legal requirements of both federal and international law. The proposed rule is reasonable because the fee range compares favorably with the fees charged for similar federal programs. It is also reasonable because it provides flexibility in setting the fee within the minimum and maximum range for a particular transaction, and also defines the criteria which will affect that determination. The criteria defined for setting the fee are those which bear upon assessment of the risk of the loan, and are thus reasonably related to the purposes of the fee, i.e., maintaining integrity of the reserve account. Proposed 3 MCAR § 1.0095 (H) is procedurally reasonable in providing that the Board will follow the procedure for amendment of rules prescribed in Minnesota Statutes, chapter 14, in proposing and adopting fee range adjustments.

Proposed 3 MCAR § 1.0095 (I) describes the reporting requirements which the agency will require upon granting financial assistance. It is necessary that the lender report to the agency because, as

provided in MCAR § 1.0097, the lender is responsible for servicing the loan. Because the agency is at risk for performance under the loan, it is necessary that the agency have updated information to measure and assess that risk and to take action to mitigate the risk if necessary. Reports are also necessary so that the agency does not exceed its authorized overall liability limitations nor the limitation on liability for any one exporter. The required lender reports are reasonable because the information is reasonably related to the purposes of the reporting requirement, i.e, monitoring the extent of liability and assessing the ongoing risk. The timing of reports will be tailored to the particular transaction as provided in the guarantee agreement; thus they will be subject to bargaining between the parties as suitable to the transaction. Reports by the exporter upon making shipment of the goods are required by proposed 3 MCAR § 1.0095 (I)(2). This is necessary because the exporter's receipt of shipment documents is the event which terminates the agency's liability under the guarantee. Since the exporter is uniquely positioned to control both the event of shipment and the documents evidencing that shipment, it is reasonable to require that these documents be reported and delivered to the agency.

Proposed 3 MCAR § 1.0095 (I)(2) also provides that the executive director may request other reports from the exporter if reasonably related to an assessment of the exporter's compliance with the statute, the rules or the terms of agreements. The necessity of this rule is self-evident. The approach taken in the proposed rule is reasonable because it requires a minimum of reports from

the exporter as a matter of course, while authorizing the director to request additional information as necessary to assess compliance with all applicable requirements.

G. CRITERIA FOR APPROVAL

Proposed 3 MCAR § 1.0096 sets forth the criteria for approval of financial assistance.

Proposed 3 MCAR § 1.0096 (A) reiterates the statutory policy that financial assistance will be provided for export credits that would not otherwise be made. The proposed rule then proceeds to define the alternatives which the agency will consider in making that determination. The proposed rule is necessary because the statute defines no criteria or standard for implementing the "financial need" policy. The proposed rule is reasonable because it first considers the exporter's own resources, focusing on the availability of financing on "reasonable terms." Thus, the agency does not demand that the exporter exhaust its own resources at any expense. The proposed rule also looks to other governmental sources of assistance, such as SBA or Eximbank. This is reasonable to avoid overlap and duplication in governmental programs and to assure that both eligible exporters and the agency take advantage of any applicable federal aid or support.

Proposed 3 MCAR § 1.0096 (B) is the heart of the approval process, requiring a determination of reasonable risk. This proposed rule is generally necessary because the statute specifically charges the Board with determining reasonable risk and sufficient likelihood of repayment. Laws of Minnesota 1983, chapter 289, section 8 [Minn.

Stat. § 17.105, Subd. 7 (2)]. Since the statute does not define the criteria to be considered, the rules must. The proposed rule is generally reasonable because each of the criteria is reasonably related to assessment of risk and assurance of repayment of the loan transaction.

Proposed 3 MCAR § 1.0096 (B)(1) considers the manner, means and security of payment by the buyer and coverage of foreign risks. These factors are related to a determination that a sale has been formed (the event commencing the availability of financial assistance) and to assurance that the exporter, and ultimately the lender, will be paid if the exporter performs shipment according to the terms of trade.

Proposed 3 MCAR § 1.0096 (B)(2) considers the terms of trade and projected earnings from the export sale, because the exporter's earnings from the sale must exceed costs, if the loan is ultimate to be repaid. Thus, this proposed consideration is necessary and reasonable to implement statutory requirements.

Proposed 3 MCAR § 1.0096 (B)(3) provides for evaluation of the collateral and other sources of security. These factors are related to the assessing of the agency's risk in guaranteeing the loan, because the agency will pay out under the guarantee to the extent that other collateral or security is inadequate to cover a default. Thus, these criteria are both necessary and reasonable.

The factors cited in proposed 3 MCAR § 1.0096 (B)(4), (5) and (6) are reasonable because they are factors which are customarily evaluated by private lending institutions and governmental agencies

in credit decisionmaking. Since the agency will be working with and through private lending institutions and other governmental agencies, it is necessary and reasonable that the agency give consideration to factors used by those parties.

Proposed 3 MCAR § 1.0096 (C) specifies the criteria for eligibility of the lender. This proposed rule is necessary because certain responsibilities are imposed on the lending institution as a condition of receiving the agency's guarantee. Thus, it is necessary to assess whether the lending institution has the capacity to perform these functions. The proposed rule is reasonable because it is based only upon factors relating to the lender's performance under the financial assistance program. Requirements are not based upon status of the lender, such as a federal or state charter or previous experience with international transactions. The proposed rule is designed to be inclusive, rather than exclusive, while assuring the minimum requirements necessary to successful operation of the program.

H. LOAN ADMINISTRATION

Proposed 3 MCAR § 1.0097 establishes the requirements for loan administration.

Proposed 3 MCAR § 1.0097 (A) requires the lender to service the loan and to continue service in the event of default if requested by the agency. This proposed rule is necessary because the agency does not have sufficient staff to service loans itself. Further, the requirement that the lender service the loan will act as an incentive to the lender to screen and evaluate loan arrangements

carefully. The proposed rule is reasonable because these servicing functions are typically performed by commercial lenders, who have both the staff and the expertise to provide adequate servicing.

Proposed 3 MCAR § 1.0097 (B) contains notification provisions which are necessary and reasonable because they afford the affected parties notice of problems or potential problems, thereby stimulating efforts to cure or mitigate those problems.

I. QUORUM

Proposed 3 MCAR § 1.0098 defines a quorum of the Board for the purpose of conducting business. The necessity and reasonableness of this proposed rule for the orderly operation of the Board is self-evident.

J. NOTICE OF MEETINGS

Proposed 3 MCAR § 1.0099 provides for notice of regular meetings and procedures for calling and noticing special meetings. It is necessary to establish the notice procedures to comply with the Open Meeting Law, Minn. Stat. § 471.705 (1982), and it is reasonable to post notice at the offices of the Minnesota Trade Office where the executive director and agency staff are officed.

K. PUBLIC APPEARANCES

Proposed 3 MCAR § 1.0100 governs public appearances at Board meetings. The proposed rule is necessary to assure the orderly conduct of Board meetings; and it is reasonable because it allows members of the public to address a Board meeting upon a majority vote of the Board.

V. CONCLUSION

For the reasons stated above, the Minnesota Export Finance Authority believes that each of the proposed rules is reasonable to effectively administer the financial assistance program provided in Laws of Minnesota 1983, chapter 289, sections 7 and 8. It is further believed that the proposed rules are reasonable and necessary to effectuate the purpose and intent of the statutory authorization.

Dated: 12-5-83

DUC LAM
Director
Minnesota Export Finance Authority

In the Matter of the Proposed
Rules of the Department of Agriculture
Governing Financial Assistance for
Pre-Export Credit Needs of
Minnesota Exporters (3 MCAR §§ 1.0090-1.0100)

STATEMENT OF
COMPLIANCE WITH
RULEMAKING PROCEDURES

I, (Special Assistant Attorney General) Sue Halverson, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

Sue Halverson

Special Assistant Attorney General

Date: January 9, 1984