Montana Essential Freight and Rail Loan (MEFRL) Program Guidelines

The Montana Essential Freight Rail Loan (MEFRL) Program is a revolving loan fund administered by the Montana Department of Transportation (MDT) to encourage construction, reconstruction, or rehabilitation projects on branch line railroads and related facilities in the state. The primary focus of state involvement in rail planning is to ensure that Montana is served by an efficient freight rail network integrated into a multimodal transportation system. Many of Montana's largest industries, including agriculture, energy, and wood products, rely heavily on rail transportation. This program is implemented pursuant to Montana Code Annotated (MCA) 60-11-113 through 120 (known as the Montana Essential Freight Rail Act).

HISTORY

In 2008, after passage of the Rail Safety Improvement Act, the total sum of Local Rail Freight Assistance (LRFA) program funds were handed over to the states to be treated as state monies. The amount given to Montana at the time was $1,282,091.50. Even though the funds were now considered state funds, the monies were still required to be used in a manner which achieved the original objectives of the LRFA program, by making loans available for freight rail-related projects. Since the original dispensation of LRFA funds to states in 2008, there has not been any additional funding made available.

In 2005 the program was rebranded as the Montana Essential Freight and Rail Loan Program.

PROJECT & APPLICANT ELIGIBILITY

Eligible applicants include owners or operators of a railroad branch line pursuant to MCA 60-11-111(2) and 120(2). Port authorities may also qualify, provided they have been included in the state transportation planning process (MCA 60-11-120(3). In addition, all applicant types must derive revenue from the operation of the railroad in order to be eligible to apply. Projects must be integrally related to the freight railroad transportation system and demonstrate that improvements made with MEFRL funds will preserve and enhance cost-effective freight rail service to Montana communities and businesses.

Eligible projects, as identified in MCA 60-11-120, include the development, improvement, construction, purchase, maintenance, or rehabilitation of:

- Intermodal transportation facilities except as prohibited by federal law
- Branch lines or short lines
- Sidings
- Light density railroad lines
- Rolling stock
- Other eligibility considerations include, but are not limited to:

- No abandonment notice: Projects are ineligible if the Surface Transportation Board (STB) has determined that public convenience and necessity would allow abandonment or discontinuance of service on the related railroad.
- Scale limitations. The application must show that the subject railroad line carried between three and five million gross ton/miles, in the previous year.
- Applicant past performance. To ensure due diligence, when determining agencies eligible for loans, MDT will consider an applicant's past performance in MEFRL or other MDT program. For instance, if an applicant received a MEFRL loan through a previous solicitation and failed to comply with the terms of agreement (e.g., did not submit required reports or make payments on time), then the applicant may be disqualified from participation in the program. This will be at MDT's discretion. MDT must have reasonable assurance that loan awardees have the means to make loan payments and to comply with the terms of the agreement and all requests for information.
- Whether any liens, claims, or interest on real property, included in the project, are present.

RECIPIENT MATCHING FUNDS

Pursuant to MCA 60-11-120(5), rehabilitation projects require a minimum 30% match and new construction requires a minimum 50% match. The value of applicant-provided construction engineering costs, materials, and construction labor may be applied toward this match.

PROJECT SOLICITATION

Solicitation materials include, at a minimum, a cover letter and MEFRL frequently asked questions.

Advertising of a MEFRL solicitation will include MDT web updates and public outreach. Types of outreach may include, but is not limited to: email blasts, online announcements, and publications (Newsline). A program distribution list, including potential applicants, and relevant industries and agencies shall be maintained.

Since MEFRL has limited funding and is a revolving loan program, a solicitation will only occur when there is enough funding for project(s). At a minimum, this amount is recommended to be around $500,000. If there is not enough funding available, then multiple years may go by in between solicitations, until enough funds have been paid back into the program.

SELECTION AND REVIEW PROCESS

Preliminary applications, received during Step 1 process, are reviewed for eligibility and completeness. The review is based on eligibility requirements, outlined in MCA 60-11-120, including the benefits to Montana rail freight service project readiness, and any additional information which may be requested at time of application. Minimum application requirements include:

- A financial statement;
- Evidence of matching funds;
- An operating or business plan that demonstrates the applicant's ability to repay the funds; and
- Upon request of MDT, an independent feasibility study.

Applications will be reviewed by technical advisory committee (TAC) of subject matter experts, that may include a representative from the Legal, Engineering, Environmental, and Accounting Departments to determine project eligibility. The panel works to identify any additional information that is needed before a supplemental application request can be made to applicants. If additional information is required in order to determine eligibility, then MDT will send a letter or email to the applicant, outlining the requested information.

Once the preliminary application review is complete, qualifying projects move onto Step 2, a process where the completion of a full application is required. Full applications are a more extensive request for information on the proposed project. The full application packet includes a cover letter, application, and instructions for submittal. At a minimum, the packet requests the following information:

- Applicant information
- Environmental compliance information
- Detailed project information, including description, project location, project benefits, and timeline
- Detailed budget and project costs
- Proof and source of matching funds
- Stamped project engineering plans
- List of loan security assets and collateral
- Demonstrated feasibility and business plan
- Three most recent years of financial information, such as statements and balance sheets
- W-9

Full applications for projects are thoroughly reviewed, including but not limited to, a benefit-cost analysis, due-diligence financial review, matching funds assessment, and securities/collateral review.

Other evaluation criteria, such as system connectivity benefits, economic benefits, and repayment period, may also be considered.

LOAN AGREEMENTS AND KEY REQUIRMENTS

Upon final project selection, projects will be submitted to the Transportation Commission for final approval of loan amounts. For approved loans, contracts will be drafted and once executed, payment will be in the form of a check or Automated Clearing House Bank (ACH) transfer, depending on the information provided in the recipient's W-9.

Agreements contain the terms and conditions of the loan, define the roles and responsibilities of MDT and the recipient, include a project scope, recipient reporting requirements, terms of nonperformance, and more.

Recipients are not allowed to begin implementation and construction of their projects until an executed agreement is in place. Project implementation must be consistent with what was proposed in the application and agreement. If there are significant deviations from the project scope, then recipients are required to submit a written request for approval of the changes, in advance, to the MEFRL program manager. Changes will be reviewed, be subject to MDT approval, and may require a contractual amendment to ensure consistency with the terms of the agreement.

The current interest rate for loans is zero percent, however recipients will be required to pay an administrative fee to MDT over the life of the loan. The administrative fee shall be a percentage of the principal loan amount, and its payment shall be included in the annual loan payments. Administrative fees help to cover the indirect costs incurred by MDT in implementing the MEFRL program. Rates and fees are disclosed in the loan agreements.

Recipients are required to pay prevailing wages (Davis-Bacon) and to provide evidence of matching expenditures.

Loans must be secured by fungible assets for the life of the agreement. The fungible assets cannot secure other concurrent loans or agreements. Improved facilities can be used as collateral but other collateral of equal or greater value may be proposed. Loan default may result in the forfeit of the security.

The term for the repayment of funds is ten years with annual payments being due by June 30th of each year. Payments are received either by electronic transfer or check. At the discretion of MDT, late payments may result in a penalty of 0.05% per day past the deadline. Under certain circumstances, recipients may make a request to MDT in order to defer two years of payments. The loan would still need to be paid back within ten years however the amount of the loan would be paid back over 8 annual installments instead of 10. A request for deferred payments must be approved by MDT, in advance.

Until the construction phase of the project is complete, quarterly reports are required to be submitted to the MEFRL program manager and annual reports are required after the completion of the project and are to be submitted through the remaining life of the loan. Annual reports are submitted with the annual loan payment and reflect the previous twelve months of activity.

Quarterly reports shall include total project expenditures incurred for the previous three months, the amount of expenditures paid through loan proceeds, and the amount of expenditures paid through matching funds. Annual reports provide an overview of the improvement(s) in relation to business activities and general project performance.

LOAN RECOMMENDATIONS AND APPROVALS

Successful projects will be presented to the Montana Transportation Commission for loan approval. The Transportation Commission makes the final determination of loan awards. Due to limited program funding, not all eligible projects may be recommended to the Transportation Commission for a loan, or a project may receive a loan for a smaller amount than originally requested.

ESTIMATED PROGRAM TIMELINE

Month 1	• MPC staff will conduct public outreach, including placing an ad in MDT's quarterly Newsline publication. • Update and finalize current distribution lists of interested parties and key stakeholders. • Prepare necessary documents for the direct solicitation. • Update the MEFRL webpage with the current MERFL FAQs, preliminary application, environmental checklist, and other essential information.
Month 2	• Solicitation opens to the public.

	• Letters of Solicitation are mailed out to those identified on the distribution list and are available online.
Month 4	• Deadline for submitting preliminary applications to MDT. • MDT program staff determine applicant and project eligibility and perform project review.
Month 6	• Supplemental applications are due for eligible projects.
Month 7	• Requests are made to peer agencies for input on eligible applications. Peer agencies include: ○ Governor's Office Chief Business Officer ○ Department of Commerce Director ○ Department of Agriculture Director
Month 8	Recommended projects are submitted to the Transportation Commission for loan approval.
Month 9	• For projects approved for loans, loan agreements are drafted. • Once agreements are executed, funds are dispersed to recipients.
Post Month 9	Agreement terms are for ten years from date of execution and during such time, quarterly and annual reports are submitted to MDT.

PROJECT INSPECTIONS AND AUDITS

MDT staff may conduct site inspections during and after the completion of project construction to ensure consistency with the approved project and with what is submitted in the recipient's reports and financial records.

During the life of the agreement, recipient's records, relating to the agreement must be available during normal business hours for inspection and review by MDT staff, the Montana Legislative Auditor, and the Legislative Fiscal Analyst.

If it is determined that a recipient is in default of a loan agreement, then the recipient has 45 days to take corrective action, once written notice has been given by MDT. If the issue, causing the default is not corrected in that time, then any remaining balance of the loan may be required to be paid in full within 45 days or it may result in forfeiture of the security.