

CHAPTER 1501

DEPARTMENT OF AGRICULTURE

EXPORT FINANCING

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1501.0100 DEFINITIONS.

Subpart 1. Scope. For the purposes of this chapter, the terms defined in this part have the meanings given them.

Subp. 2. 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.

Subp. 3. 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.

Subp. 4. 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.

Subp. 5. Executive director. "Executive director" means the executive director of the MEFA designated by the commissioner of agriculture.

Subp. 6. Eximbank. "Eximbank" means the Export-Import Bank of the United States.

Subp. 7. 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.

Subp. 8. Financial assistance. "Financial assistance" means insurance, coinsurance, 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.

Subp. 9. MEFA. "MEFA" means the Minnesota Export Finance Authority created by Minnesota Statutes, section 17.104

Subp. 10. 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.

Subp. 11. 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.

Subp. 12. SBA. "SBA" means the United States Small Business Administration.

Statutory Authority: *MS s 17.105*

History: *8 SR 1858*

1501.0200 PURPOSE; STATUTORY AUTHORITY.

Parts in this chapter are made pursuant to Minnesota Statutes, section 17.104, to implement and establish criteria for the facilitation of export financing by the Minnesota Export Finance Authority

Statutory Authority: *MS s 17.105*

History: *8 SR 1858*

1501.0300 AVAILABILITY OF FINANCIAL ASSISTANCE FROM THE MEFA.

Subpart 1. **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.

Subp 2. **Forms of financial assistance.** The MEFA may insure, co-insure, and guarantee loans or credit extended to exporters by financial institutions.

Statutory Authority: *MS s 17.105*

History: *8 SR 1858*

1501.0400 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 part 1501.0700.

Statutory Authority: *MS s 17.105*

History: *8 SR 1858*

1501.0500 APPLICATION PROCEDURE.

Subpart 1. **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.

Subp. 2. **Initial review by executive director.** 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.

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.

Subp. 3. **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 Minnesota Statutes, sections 17.103 and 17.104 and the criteria and terms of parts 1501.0600 and 1501.0700.

Subp. 4. **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.

Subp. 5. **Denial of application.** If the application is disapproved, the executive director shall notify the applicant in writing of the reasons for denial.

Subp. 6. **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.

Statutory Authority: *MS s 17.105*

History: *8 SR 1858*

1501.0600 GENERAL TERMS AND CONDITIONS OF FINANCIAL ASSISTANCE.

Subpart 1. **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.

Subp. 2. **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.

Subp. 3. **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.

Subp. 4. **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.

Subp. 5. **Maturity.** The maturity of a loan guaranteed or insured by the MEFA may not exceed 12 months.

Subp. 6. **Security.** Loans must be secured by collateral of a type, amount, and value which, considered with the other criteria described in part 1501.0700, subpart 2, affords reasonable assurance of repayment.

Subp. 7. **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.

Subp. 8. **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 part 1501.0700, subpart 2. 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.

Subp. 9 Reporting requirements. 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.

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 Minnesota Statutes, sections 17.103 and 17.104, this chapter, or the terms of the sale transaction, loan agreements, or the MEFA guarantee.

Statutory Authority: *MS s 17.105*

History: *8 SR 1858*

1501.0700 CRITERIA FOR APPROVAL OF FINANCIAL ASSISTANCE.

Subpart 1 Need for financial assistance. Financial assistance will be approved by the MEFA for export credit that would not otherwise be made.

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.

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.

Subp. 2 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:

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

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

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

D. credit history and financial condition of the applicant;

E. financial projections; and

F. ability of management.

Subp. 3. 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.

Statutory Authority: *MS s 17.105*

History: *8 SR 1858*

1501.0800 LOAN ADMINISTRATION.

Subpart 1. **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.

Subp. 2. **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.

Statutory Authority: *MS s 17.105*

History: 8 SR 1858

1501.0900 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.

Statutory Authority: *MS s 17.105*

History: 8 SR 1858

1501.1000 AGENCY MEETINGS.

Subpart 1 **Regular meetings.** The date and place of regular meetings will be posted at the offices of the Minnesota Trade Office in Saint Paul, Minnesota, at least five days prior to the meeting.

Subp. 2. **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 Saint 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.

Statutory Authority: *MS s 17.105*

History: 8 SR 1858

1501.1100 PUBLIC APPEARANCES AT BOARD MEETINGS.

Subpart 1 **Applicable procedures.** The procedures in subparts 2 and 3 govern appearances by members of the public at meetings of the board.

Subp. 2. **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.

Subp. 3 **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.

Statutory Authority: *MS s 17.105*

History: 8 SR 1858