

Regulations of Connecticut State Agencies

TITLE 32. Commerce and Economic and Community Development

Agency

Department of Economic Development

Subject

Exporters Revolving Loan Fund

Inclusive Sections

§§ 32-162-1—32-162-8

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Exporters Revolving Loan Fund

Sec. 32-162-1. Definitions

“Authority” means the Connecticut Development Authority.

“Affiliate” means a business concern which directly controls or is controlled by another business concern, or a third party which controls both business concerns.

“Commissioner” means the Commissioner of Economic Development.

“Connecticut Content” means that part of the total value of exported goods which contains or represents Connecticut source components, labor or intellectual property.

“Control” means, for the purpose of these regulations, either (a) the ownership by a party of more than fifty percent (50%) of the assets, partnership interests or total combined voting power of all classes of stock entitled to vote of another party or (b) if the stockholders individually holding ten percent (10%) or more, owners, partners, officers, directors or employees of one party constitute a majority of the ownership, partnership interests or Board of Directors of another party.

“Department” means the Department of Economic Development.

“Distressed Municipality” shall be construed as defined in subsection (b) of section 32-9p of the general statutes.

“Eligible Connecticut Based Manufacturer” means a manufacturer organized under the laws of Connecticut or having its principal place of business in Connecticut, and having, together with all of its affiliates, gross annual sales of less than twenty-five million dollars or, in the case of any other manufacturer which is new-to-export or new-to-market, fifty million dollars.

“Export” means the sale or lease of goods destined for use outside the United States.

“Export Contract,” for the purpose of these regulations, shall mean a contract for the exportation of goods, including, without limitation, confirmed purchase orders.

“Export Receivable” means any money due to an eligible Connecticut based manufacturer for merchandise sold or leased or services performed under an export contract.

“Manufacturer” means any person or entity engaged in manufacturing, processing or assembling raw materials or manufactured products, including the wholesale distribution of such products, or in the significant servicing, overhauling or rebuilding of such products.

“Net Commercial Exposure” means, for the purpose of these regulations, the total risk incurred with respect to an export contract less any portion of such risk insured or guaranteed by domestic United States insurers of foreign credit or transactions.

“New-to-Export” means a concern having gross annual sales of less than ten thousand dollars from export in each of its previous two fiscal years prior to approval of a guarantee or direct loan hereunder.

“New-to-Market” means a concern having gross annual sales of less than ten thousand dollars from export to a particular foreign country in each of its previous two fiscal years prior to approval of a guarantee or direct loan hereunder.

“Pre-Export” means the cost and expenses related to the acquisition or production, financing and shipment of exported goods, which are being exported under contract.

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“Post-Export” means the financing of sale or lease of exported goods after shipment from the United States.

“United States” means the states, the District of Columbia, Puerto Rico and the possessions of the United States.

(Effective May 22, 1987)

Sec. 32-162-2. Eligibility

To be eligible for a loan or loan guarantee:

(1) The borrower must be an Eligible Connecticut Based Manufacturer.
(2) The goods or services being financed must have a Connecticut Content of at least fifty-one percent (51%).

(3) The aggregate principal amount of all loans and loan guarantees issued for any one borrower, together with its affiliates, may not exceed in any twelve consecutive months:

(A) \$250,000; or

(B) in the case of a borrower located in a Distressed Municipality, \$350,000.

(4) With respect to a loan, the sole purpose of the loan must be to finance export receivables.

(5) With respect to a loan guarantee:

(A) The loan to be guaranteed must be made to the borrower by a financial institution, other than the Authority or other governmental body, which is eligible to do business in Connecticut and considered by the Commissioner and Authority to 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 Authority upon default.

(B) The loan to be guaranteed shall be made only for the purpose of Pre-Export or Post-Export financing.

(Effective May 22, 1987)

Sec. 32-162-3. Application and agreement

(a) Application for a loan or loan guarantee shall be submitted on loan application forms prescribed by the Authority. No application shall be considered unless the exhibits required by such forms are furnished. The Borrower shall pay for all costs of processing applications for loans or guarantees to be made under this program, as the Commissioner determines are reasonable and necessary to pay such costs.

(b) Upon approval of an application by the Authority or, if the Authority so determines, by a Committee of the Authority consisting of the Chairman and either one other member of the Authority or its Executive Director, as specified in the determination, the Department, the borrower and, where applicable, the financial institution shall enter into a loan or guarantee agreement which shall set forth the terms and conditions required by these regulations and other terms and conditions applicable to the particular loan or guarantee, which may be set by the Authority or said Committee of the Authority.

(c) The loan or guarantee agreement shall be executed on forms provided by the

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Authority and shall be effective only upon execution by the Commissioner, the borrower and, where applicable, the financial institution.

(d) Such loan or guarantee agreement shall provide, without limitation, that the borrower and, where applicable, the financial institution agree:

(1) That the funds provided will be used solely in accordance with the eligibility requirements of Section 32-162-2 of these regulations;

(2) To provide the Authority with such financial and other reports as required from time to time;

(3) To notify the Authority promptly of any material adverse change in the financial condition or business prospects of the borrower;

(4) To represent and warrant that they have the power and authority to enter into the loan or guarantee agreement and to incur the obligations therein provided for, and that all documents and agreements executed and delivered in connection with the loan or guarantee will be valid and binding upon the borrower in accordance with their respective terms;

(5) To provide such security for the loan or guarantee as the Authority or the Committee or the Authority may require pursuant to sections 32-162-4 (a) or 32-162-5 (a) of these regulations and to execute and deliver all documents in connection therewith.

(6) The borrower shall be responsible for closing costs incurred by the Department in such amounts that the Commissioner from time to time determines to be reasonable and necessary.

(e) If, upon examination of the application, supporting information and results of any investigation, the Authority or the Committee of the Authority rejects such application, then the loan or guarantee may not be granted and the Authority shall cause the applicant to be notified that the application has been denied.

(Effective May 22, 1987)

Sec. 32-162-4. Loans

(a) A loan issued by the Authority may be secured or unsecured as the Authority or the Committee of the Authority determines to be appropriate in the particular circumstances. If the loan is to be secured, the Authority or said Committee of the Authority may require the borrower to provide the Department as security any or all of the following: real property, accounts, chattel paper, letters of credit, insurance documents, instruments, general intangibles, goods, equipment, inventory or other personal property, and may further require the borrower to have executed and delivered to the Department security agreements, financing statements, mortgages, pledges, assignments, subordinations, guarantees or other documents or evidences of security or delivery as and in the form required by the Authority or said Committee of the Authority.

(b) The loan shall be repaid by such method of payment of principal and interest as the Authority or the Committee of the Authority considers necessary and appropriate in the particular circumstances, but in no event shall the payments be scheduled to exceed 180

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days from the date of disbursement of the loan.

(Effective May 22, 1987)

Sec. 32-162-5. Loan guarantees

(a) The loan being guaranteed or the guarantee itself may be secured or unsecured as the Authority or the Committee of the Authority determines to be appropriate in the particular circumstances. If the loan being guaranteed or the guarantee itself is to be secured, the Authority or said Committee of the Authority may require the borrower to provide the Department or financial institution as security any or all of the following: real property, accounts, chattel paper, letters of credit, insurance documents, instruments, general intangibles, goods, equipment, inventory or other personal property, and may further require the borrower to have executed and delivered to the Department or financial institution security agreements, financing statements, mortgages, pledges, assignments, subordinations, guarantees or other documents or evidences of security or delivery as and in the form required by the Authority or said Committee of the Authority.

(b) The term of a loan guarantee shall not exceed five years from the date of the first disbursement.

(c) The loan being guaranteed shall be repaid on an amortized schedule of payments or upon such other method of payment of principal and interest as the Authority or the Committee of the Authority considers necessary and appropriate in the particular circumstances.

(d) Issuance of the loan guarantee shall be made at the discretion of the Commissioner in accordance with the provisions of the loan agreement and the instructions of the Authority.

(e) Each loan guarantee shall apply only to an amount up to the lesser of:

(1) The principal balance of the loan being guaranteed, together with such interest thereon that does not exceed the lesser of the rate charged by the financial institution or one percent (1%) over the United States Treasury note rate comparable at the time of disbursement to the period of the loan guarantee; or

(2) Fifty percent (50%) of the Net Commercial Exposure with respect to the specific export contract.

(Effective May 22, 1987)

Sec. 32-162-6. Note

Each loan shall be evidenced by a promissory note which shall contain such provisions, clauses and covenants as the Authority, in its sole discretion, may require including, without limitation, provisions:

(1) Permitting the borrower to prepay the loan in whole or in part upon any interest payment date.

(2) Providing for the payment of interest at a rate not to exceed one percent (1%) above the interest paid by the State of Connecticut on the latest general obligation bonds issued prior to the date of approval of the loan.

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(3) Providing for the collection of a late charge, not to exceed two percent of any installment more than fifteen days in arrears. Late charges shall be separately charged to and collected from the borrower.

(4) That any misrepresentation, breach of warranty or other breach of any agreement or covenant contained in the loan agreement, the promissory note, or other documents signed by the borrower in connection with such loan shall be considered a default under such promissory note.

(5) That the failure of the borrower to make a payment of any installment of principal or interest due under the promissory note within thirty days from the due date shall constitute a default.

(6) That upon default, any and all sums owing by the borrower under the promissory note shall, at the sole discretion of the Commissioner, become immediately due and payable.

(7) That upon default interest on the promissory note shall automatically increase two percent per annum above the rate of the said note and shall apply not only after default, but after any judgment rendered upon said promissory note.

(8) Providing for payment of reasonable attorneys' fees and legal costs in the event the borrower shall default in the payment of the note.

(Effective May 22, 1987)

Sec. 32-162-7. Guarantee contract

Each loan guarantee issued shall be evidenced by a guarantee contract executed by the Commissioner, the borrower and the financial institution and shall contain such provisions, clauses and covenants as the Authority, in its sole discretion may require, including without limitation, provisions:

(1) Providing for a guarantee fee of either (A) up to six percent (6%) of the initial principal balance guaranteed or (B) up to six percent (6%) per year of the principal balance guaranteed from time to time;

(2) Conditions and procedures precedent to the honoring of the loan guarantee; (3) That the lender shall service the loan and receive all payment of principal and interest. In the event of default, the lender shall continue to service the loan if requested by the Authority to do so;

(4) That if the borrower fails to make any payment of principal or interest on the due date, the lender shall immediately notify the borrower of the payments due. If the borrower fails to cure the nonpayment within 30 days, the lender shall notify the Authority;

(5) Conditions under which the loan guarantee may be terminated by the Department including without limitation:

(A) Any misrepresentation or, with respect only to breaches by the financial institution, any breach of any agreement or covenant contained in the loan agreement or guarantee contract;

(B) Failure of the borrower or financial institution to pay guarantee fees when due;

(C) Any changes made without the prior written consent of the Department in the terms

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and conditions of, or security for, the loan being guaranteed;

(D) Failure by the financial institution to administer the loan being guaranteed in accordance with the guarantee agreement.

(Effective May 22, 1987)

Sec. 32-162-8. Disbursement

(a) Disbursement of the loan proceeds shall be made at the discretion of the Commissioner in accordance with the provisions of the commitment and the instructions of the Authority.

(b) Payments honoring guarantees shall be made in accordance with the terms and conditions of the Loan Agreement and Guarantee Contract.

(Effective May 22, 1987)