

Chapter DOD 10

EXPORT LOAN CERTIFICATION

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Note: Chapter DOD 10 as it existed on February 28, 1989 was repealed and a new chapter DOD 10 was created effective March 1, 1989.

DOD 10.01 Purpose. The purpose of this chapter is to establish a procedure for the administration of pilot export development loans as provided by ss. 560.07 (10) and 560.165, Stats., and funded under s. 20.143 (1), (fz), and (gm), Stats.

History: Cr. Register, February, 1989, No. 398, eff. 3-1-89.

DOD 10.02 Definitions. In this chapter:

(1) "Affiliate" means a corporation directly or indirectly controlled by a small business, a corporation which directly indirectly controls a small business, or a corporation directly or indirectly controlled by third party which also controls a small business.

(2) "Committee" means the export development loan advisory committee, established under s. DOD 10.03.

(3) "Department" means the department of development.

(4) "Export property" means products manufactured by firms located in this state but sold outside the United States, or services provided by firms located within this state which are rendered outside the United States.

(5) "Financing is unavailable from any other source on reasonably equivalent terms" means:

(a) Financing has been declined by the financial institution from which an applicant regularly obtains funds: or

(b) The maturity, rate, amount of available financing or related requirements such as collateral, equity, closing costs, service charges and repayment schedules offered by such institution, or any of these terms in combination, are materially less favorable to the borrower than the financing available from the pilot export development loan program.

(6) "Foreign business office" means a permanent site outside the United States where production or sales activities are performed by employees of a small business.

(7) "Foreign trade mission" means a visit to a foreign country to promote trade by establishing commercial contacts.

(8) "Foreign trade show" means an exhibition held outside the United States to display and promote products or services available to an industry or profession.

(9) "Loan" means a pilot export development loan.

(10) "Prime rate" means the base interest rate on corporate loans at large U.S. money center commercial banks.

(11) "Principal owner" means any person owning 25% or more of the value of a small business.

(12) "Public funds" means any grants or loans received from any state, federal or local government department or agency.

(13) "Royalty" means a share of future profits from, or an interest in, a product or process.

(14) "Sales agent or distributor" means an independent representative or merchant under contract with a small business to market, sell or service the export property.

(15) "Small business" means a business operating in this state which, together with all its affiliates and subsidiaries and its parent company, had gross annual sales of \$25,000,000 or less in the calendar or fiscal year preceding the year in which it applies for a loan.

(16) "United States" includes Puerto Rico and possessions of the United States.

History: Cr. Register, February, 1989, No. 398, eff. 3-1-89.

DOD 10.03 Export development loan advisory committee. There is created an export development loan advisory committee whose purpose is to assist and advise the department on awarding export development loans to small business applicants. The committee shall consist of 7 members appointed by the department secretary for staggered 3 year terms. The members shall be experienced in export trade or export management with at least one member each from the export, financial and legal professions.

History: Cr. Register, February, 1989, No. 398, eff. 3-1-89.

DOD 10.04 Eligibility. (1) Small businesses which produce export property are eligible to apply for loans.

(2) Small businesses which purchase export property for resale, including export trading companies, export management companies or other export agents or merchants, are not eligible to apply for loans.

(3) Small business described in sub. (2) may prepare and submit applications for loans on behalf of small businesses described in sub. (1).

History: Cr. Register, February, 1989, No. 398, eff. 3-1-89.

DOD 10.05 Loan purposes (1) Loan funds shall be used for the following purposes:

(a) Obtaining technical information about exporting unavailable from the department or other state, federal or local agency.

(b) Performing foreign market research.

(c) Preparing a detailed export development plan.

(d) Producing foreign language literature and advertising, or adapting domestic literature and advertising for use in foreign markets.

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(e) Locating and establishing sales agents or distributors in foreign countries.

(f) Paying costs of legal consultation relating to exports, including analysis of import or export restrictions, or the drafting or reviewing of general agency or sales contracts.

(g) Developing or modifying export property to meet foreign market demands. Such costs may include fees for translating labels or instructions, packaging modifications, or revising engineering specifications for differences in electrical or other standards.

(h) Any other activity which the department deems appropriate and which is not prohibited.

(2) Loan funds may not be expended for the following purposes:

(a) Costs of attending foreign trade shows or participating in foreign trade missions.

(b) Direct costs of manufacturing or distributing products or services.

(c) Employee compensation, including fringe benefits.

(d) Costs of collecting delinquent accounts.

(e) Costs of preparing audited financial statements.

(f) Costs of entertainment.

(g) Costs incurred prior to submission of the application materials described in s. DOD 10.07.

(h) Capital expenditures, including costs of furniture, or costs associated with the establishment of a foreign business office, or both.

(i) Any activity funded with public funds other than the loan.

History: Cr. Register, February, 1989, No. 398, eff. 3-1-89.

DOD 10.06 Matching requirements. (1) A small business receiving a loan shall match a minimum of 50% of the loan funds. Match expenditures may be in the form of cash payments or the provision of services by employees.

(2) (a) Match expenditures may include payments or services for any activity described in s. DOD 10.05 (1) without regard to the limitation imposed by s. DOD 10.05 (2) (a).

(b) Matching expenditures may include funds expended or services performed in preparing the application materials described in s. DOD 10.07 without regard to the limitation imposed by s. DOD 10.05 (2) (g).

(3) Matching expenditures may not include any funds expended from grants received from any source.

(4) The value of employee services shall be determined as a pro-rata portion of the salary paid without regard to additional indirect costs, such as fringe benefits.

(5) Adequate accounting for employe services and cash payments shall be provided at the department's request.

History: Cr. Register, February, 1989, No. 398, eff. 3-1-89.

DOD 10.07 Application content. Applications shall be submitted to be the department. Each application shall contain all of the following:

(1) A description of the business, which shall include all of the following:

- (a) Organizational structure, identifying all affiliated companies.
- (b) Names and addresses of all officers and of all principal owners of the small business, with the percentage of ownership of each.
- (c) All product lines and production sites.
- (d) Current export activities, if any.

(2) A general description of the proposed export property, which shall include all of the following:

- (a) Proportion of product value manufactured or produced directly by the applicant small business.
- (b) Proportion of product value due to manufacturing or production processes performed in Wisconsin.
- (c) Description of United States market and sales.

(3) A preliminary export marketing plan prepared for the 2 year period beginning with the date of application which shall include all of the following:

- (a) Description of targeted foreign market(s).
 - (b) Product modification required, if any.
 - (c) Distribution and promotion strategies.
 - (d) Description of competing products or services.
 - (e) Projected sales volume and associated expenses.
- (4) An itemized budget of the disbursement of loans and matching funds.

(5) A schedule of the amount and term of the requested loan.

(6) A schedule of all public funds which have been received or requested for export-related activities over the term of the loan.

(7) A statement from the financial institution from which the small business regularly obtains financing that funds are unavailable, or unavailable on reasonably equivalent terms, and the reasons they are unavailable, signed by an authorized officer of the institution.

(8) A statement that at least 50% of the value of the export property will be produced in this state or, if a service is to be exported, that at least 50% of the services will be performed by residents of this state.

(9) A statement as to why the activities to be funded by the loan are not likely to occur without benefit of the loan. /

(10) A statement that the applicant will maintain its operation in this state for at least 5 years after completing all activities funded by the loan.

(11) A description of the potential benefits to the economy of this state, through an increase in sales or the development of new jobs, or both, which are likely to result from use of the loan proceeds.

(12) A plan for the annual evaluation and report on the effectiveness of the activities supported by the loan.

(13) (a) The most recent financial statements of the small business and affiliated companies, including 2 year comparative balance sheet and income statement, certified by an independent certified public accountant as fairly representing the financial condition of the small business.

(b) The small business may request that the department waive the requirement of par. (a) by submitting a statement that financial statements are not regularly certified. In such circumstances, unaudited financial statements or federal income tax returns, or both, shall be submitted as required by the department.

(c) The department may require submission of personal financial statements of principal owner.

(14) Such other information as the department may require.

History: Cr. Register, February, 1989, No. 398, eff. 3-1-89.

DOD 10.08 Evaluation criteria. (1) Relying upon information in the application, supplemented as needed from other sources, the department shall determine the following before extending a loan:

(a) That the product to be exported using loan funds has the potential for a high sales volume in specific foreign markets.

(b) That the activity to be funded by the loan will retain or increase employment in this state.

(c) That the activity to be funded is not likely to occur without the loan.

(d) That financing is unavailable from any other source on reasonably equivalent terms.

(e) That the small business will maintain its operation in this state for at least 5 years after completing all activities funded by the loan.

(2) The department shall consider the following before extending a loan:

(a) The financial soundness of the small business.

(b) Whether the small business has previously exported any product or service.

(c) The extent to which the project is likely to contribute to the growth of the small business.

(d) The ability of the small business to expand export sales beyond the funded export property to other products, lines or services.

(e) The ratio of state dollars requested to the private dollars committed to the activity.

(f) The ratio of the proposed loan to total public funds received or requested by the small businesses for export-related activities.

History: Cr. Register, February, 1989, No. 398, eff. 3-1-89.

DOD 10.09 Loan structure. (1) All loans shall be evidenced by a contract signed by the secretary of the department and the chief executive officer or principal owner of the small business, or their authorized representatives.

(2) Loans shall be repaid within 3 years after signing of the loan contract specified in sub. (1).

(3) (a) Principal and interest on loans of 6 months or less shall be repaid in a single installment at the end of the loan period.

(b) Principal and interest on loans of more than 6 months shall be repaid in quarterly installments due on the last day of March, June, September and December beginning with the first full quarter for which the loan is outstanding.

(4) Interest on loans shall be calculated at the prime rate plus 2 percentage points on the date on which the loan is approved by the department.

(5) The department may require loans be secured by real, personal and intangible property of the small business or its principal owner.

(6) The department may require royalty payments in lieu of interest and principal payments in circumstances where repayment of the loan from general funds of the small business is uncertain. Total royalty payments shall not exceed the principal of the loan plus an amount computed under sub. (4) for the period of the loan.

History: Cr. Register, February, 1989, No. 398, eff. 3-1-89.

DOD 10.10 Acceleration or discharge of loans. (1) Loans may be paid in full without penalty at any time during the loan period.

(2) Complete repayment of loan principal and accrued interest shall be made within one month after an applicant terminates its operations in this state.

(3) Any funds received by the small business which remain unexpended after 2 years from the date of signing of the contract specified in s. DOD 10.09 (1) shall be repaid, with accrued interest, within one month of that date.

(4) The department may discharge the loan in full or in part under the following circumstances:

(a) Fire, flood or other catastrophic event destroys, or substantially destroys, the small business' production, manufacturing or marketing facilities used for the export property, to the extent that such loss is not covered by insurance.

(b) Other circumstances which, in the opinion of the department, were both unforeseen and reasonably unforeseeable and, if no relief were offered, would substantially impair the small business' stability.

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(c) Requests for discharge of debt are to be submitted to the department.

History: Cr. Register, February, 1989, No. 398, eff. 3-1-89.

DOD 10.11 Coordination with other programs. The department shall notify the department of agriculture, trade and consumer protection or other appropriate agencies or departments of loans extended under this program.

History: Cr. Register, February, 1989, No. 398, eff. 3-1-89.

DOD 10.12 Administration. (1) A small business receiving a loan shall report to the department on the status of export activities with each loan payment made.

(2) The department shall do all of the following:

- (a) Promote the program in accordance with s. 560.07 (10), Stats.
- (b) Provide application and reporting forms to small businesses.
- (c) Inform the governor and standing committees on economic development of the legislature of the status of the program.

History: Cr. Register, February, 1989, No. 398, eff. 3-1-89.