

Subpart C. LOANS

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CHAPTER 71. MACHINERY AND EQUIPMENT

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Subchapter A. MACHINERY AND EQUIPMENT LOAN FUND

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Authority

The provisions of this Chapter 71 issued under section 6 of the Machinery and Equipment Loan Fund Act (73 P. S. § 399.6), unless otherwise noted.

Source

The provisions of this Subchapter A adopted August 2, 1991, effective August 3, 1991, 21 Pa.B. 3403; renumbered from 13 Pa. Code Chapter 5, May 16, 1997, effective May 17, 1997, 27 Pa.B. 2415. Immediately preceding text appears at serial pages (161455) to (161460).

§ 71.1. Purpose of program.

(a) The Machinery and Equipment Loan Fund (MELF) is designed to stimulate the growth of, and to assist in the retention of, Pennsylvania businesses by providing low-interest financing for machinery and equipment to businesses unable to fully finance their projects with equity, bank financing or other private and public sources.

(b) The goal of MELF is to increase the competitiveness, productivity and value of Pennsylvania's businesses, in conjunction with other State and local financing programs and other economic development programs.

§ 71.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—The Machinery and Equipment Loan Fund Act (73 P. S. §§ 399.31—399.40).

Agricultural processes—Processing or warehouse and terminal operations related to agricultural endeavors or related businesses supporting the development of agriculture. The term does not include service, mercantile, commercial or retail operations.

Eligible business—A for-profit corporation, partnership or proprietorship which is involved in industrial processes, mining, manufacturing or other industrial sectors.

Industrial operations—Processing and warehouse and terminal operations. The term does not include service, mercantile, commercial or retail operations.

MELF—The Machinery and Equipment Loan Fund.

Machinery and equipment—Machinery and equipment belonging to or to be acquired by an eligible business which is directly related to the manufacturing or industrial process of that business.

Manufacturing operations—The giving of new shapes, new qualities or new combinations to matter by the application of skill and labor.

Mining operations—Engaging directly in mining operations.

Program—The Machinery and Equipment Loan Fund Program.

Project—The acquisition, installation or upgrade of machinery and equipment by an eligible business at a site located within this Commonwealth.

§ 71.3. Eligible business.

(a) An eligible business shall be involved in industrial processes, mining, manufacturing or other industrial sectors that include the following types of activities:

- (1) Manufacturing operations.
- (2) Industrial operations.
- (3) Agricultural processes.
- (4) Mining operations.

(b) Service, mercantile, commercial or retail operations which indirectly aid mining operations are not eligible.

Cross References

This section cited in 12 Pa. Code § 71.5 (relating to machinery and equipment).

§ 71.4. Loans.

(a) The Department will provide loans to eligible businesses for eligible projects in accordance with the terms and conditions of the act and this chapter.

(b) Interest rates will be set by the Secretary and will become effective when the Secretary prescribes. In setting interest rates, the Secretary will consider the current and longer term unemployment levels of the region of this Commonwealth within which the project is located, as well as market interest rates, Program funding, and the need to keep the Commonwealth and its businesses competitive. Interest rates established will be published annually as a notice in the *Pennsylvania Bulletin*.

(c) The maximum loan term will be for the lesser of 10 years or the useful life of the machinery or equipment acquired. In individual cases, the Secretary may provide for a lesser term for reasons based on principles of economic development financing.

(d) The maximum loan amount is \$500,000 or 50% of the eligible cost of the project, whichever is less.

(e) A project shall create or retain one full-time equivalent job for each \$25,000 of loan proceeds received within 3 years after disbursement of loan proceeds. A full-time equivalent job is 1,950 hours of employment per year.

§ 71.5. Machinery and equipment.

(a) Machinery and equipment to be acquired with loan funds shall be purchased by the eligible business or by an affiliate thereof outright, through a lease/purchase option or through an installment sale option.

(b) Machinery and equipment to be upgraded with loan funds shall be owned by the eligible business or by an affiliate thereof.

(c) When machinery and equipment is owned or to be purchased by an affiliate of an eligible business, the affiliate shall be involved in industrial processes, mining, manufacturing or other industrial sectors as described in § 71.3 (relating to eligible business).

(d) An eligible business may place an order for machinery and equipment, or may place a security deposit on machinery and equipment, prior to receiving approval of its loan application from the Department. Machinery and equipment to be financed with loan funds may not be installed or upgraded prior to the Department's approval of the loan.

§ 71.6. Application.

(a) An eligible business shall apply for a loan by submitting an application and supporting documentation to the Department on forms prescribed by the Department.

(b) The eligible business shall update information in its application to the Department if conditions change or to the extent that the information originally

provided becomes inaccurate or misleading. Failure to update information may render an application ineligible or result in a withdrawal of a loan made.

(c) After 12 months following disbursement of MELF loan proceeds, the recipient of a MELF loan may reapply to the Department for another MELF loan for a new project.

(d) The Department will make every attempt to review and act upon a MELF loan application within 30 working days following receipt of a completed loan application. The failure of the Department to take action within this time does not constitute either approval or disapproval of an application.

§ 71.7. Condition of eligibility.

In addition to the criteria in section 5(c) of the act (73 P. S. § 399.35(c)), an eligible business shall also demonstrate a contribution of equity to the project commensurate with the size and financial capabilities of the business.

§ 71.8. Application evaluation.

In addition to the factors in the act for application evaluation, the Department will also review factors pertaining to business evaluation, project criteria and public benefit criteria, as follows:

(1) *Business evaluation.* The historical performance of an eligible business will be evaluated to assess its ability to repay the MELF loan. This evaluation may include:

- (i) Financial performance of the business.
- (ii) Financial performance of the owners.
- (iii) Market performance.
- (iv) Management ability.

(2) *Project criteria.* The merits of the proposed use of loan proceeds and other project funds will be assessed to determine the ability of the eligible business to repay the loan. This evaluation may include a review of:

- (i) Projected sales and revenues.
- (ii) Projected financial statements.
- (iii) Value of the assets and collateral.
- (iv) Changes in market strategy or management strategy, or both.

(3) *Public benefit criteria.* This analysis will include factors such as the following:

- (i) The total full-time equivalent number of jobs to be created or retained, or both, as a result of the project.
- (ii) The number of jobs to be created or retained, or both, for each MELF dollar invested.
- (iii) The private investment to be leveraged as a result of the MELF investment.
- (iv) The increase in productivity.

(v) The strategic importance to the Commonwealth of the industry or firm being assisted and the area being served.

§ 71.9. Conditions of lending.

(a) If a loan is approved by the Department, the eligible business shall comply with the following conditions of lending:

(1) Interest on the loan principal will accrue as of the date of disbursement of loan proceeds.

(2) Loans will be evidenced by a note and will be secured, at a minimum, by a lien on the machinery and equipment acquired or upgraded with MELF loan proceeds and by other collateral as determined by the Department to be necessary to adequately secure the loan.

(b) The Department may impose other conditions of lending it deems reasonable or necessary under the circumstances for each individual loan, based on generally recognized principles of economic development financing.

§ 71.10. Penalty.

(a) If an eligible business that has received a loan fails to create or retain the requisite number of full-time jobs within 3 years after the date of disbursement of MELF loan proceeds, the Secretary will impose a penalty equal to an increase in the interest rate on the loan to 2% greater than the prime interest rate. The penalty will apply for the remainder of the loan term. The penalty may be waived by the Secretary if the Secretary finds that failure to create or retain the requisite number of full-time jobs is due to circumstances beyond the control of the eligible business.

(b) For purposes of this section, the prime interest rate shall be the highest rate known or declared to be prime by banking institutions located within this Commonwealth with assets in excess of \$3 billion as of the first day after the termination of the 3-year period following loan disbursement.

§ 71.11. Inspection by Department.

An eligible business which applies for or receives a loan under the program will permit authorized employees of the Department or the Commonwealth to inspect the plant, books and records of that business during regular business hours, upon the reasonable request of the Department. The inspection will be limited to aspects of the plant, books and records directly relating to an application for a loan and repayment thereof.

§ 71.12. Implementation of program.

The Department may further implement the program through the publication of statements of policy or the preparation and distribution of guidelines and applications.

Subchapter B. STATEMENT OF POLICY

- Sec.
71.101. Purpose of program.
71.102. Definitions.
71.103. Application evaluation.
71.104. Application process.
71.105. Effect.

Source

The provisions of this Subchapter B adopted April 27, 1990, effective April 28, 1990, 20 Pa.B. 2304; renumbered from 13 Pa. Code Chapter 6, May 16, 1997, effective May 17, 1997, 27 Pa.B. 2415. Immediately preceding text appears at serial pages (145855) to (145857).

§ 71.101. Purpose of program.

(a) The Machinery and Equipment Loan Fund (MELF) is designed to stimulate the growth of, and to assist in the retention of, mature Pennsylvania businesses by providing low-interest financing for machinery and equipment to businesses unable to fully finance their projects with equity, bank financing or other private and public sources.

(b) The goal of MELF is to increase the competitiveness, productivity and value of Pennsylvania's businesses, in conjunction with other State and local financing programs and other economic development programs.

§ 71.102. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—Machinery and Equipment Loan Fund Act (73 P. S. §§ 399.31—399.40).

Eligible business—A for-profit corporation, partnership or proprietorship which is involved in industrial processes, mining, manufacturing or other industrial sectors.

Machinery and equipment—Machinery and equipment belonging to or to be acquired by an eligible business which is directly related to the manufacturing or industrial process of that business.

Program—The Machinery and Equipment Loan Fund Program.

Project—The acquisition, installation or upgrade of machinery and equipment by an eligible business at a site located within this Commonwealth.

§ 71.103. Application evaluation.

In addition to the factors in the act for application evaluation, the Department will also review the following factors pertaining to business evaluation, project criteria and public benefit criteria:

(1) *Business evaluation.* The historical performance of an eligible business will be evaluated to assess its ability to repay the MELF loan. Specifically, this evaluation will include:

(i) *Financial performance of the business.* This involves an evaluation of 1 year pro forma projections and the prior 3-year financial performance, including an examination of income statements, balance sheets and cash flow statements. Start-up firms are required to submit 3-year pro forma projections.

(ii) *Financial performance of the owners.* This involves an evaluation of the current personal financial statement of the owners of the business.

(iii) *Market performance.* This involves an evaluation of the local and national market and the applicant's current and projected position or market share.

(iv) *Management ability.* This involves an evaluation of the experience and skills of the proprietor, partners or officers. This includes general business experience as well as specialized experiences in the particular industry.

(2) *Project criteria.* The merits of the proposed use of loan proceeds and other project funds will be assessed to determine the ability of the eligible business to repay the loan. Specifically, this evaluation will include:

(i) *Projected sales and revenues.* This involves an assessment of the validity and accuracy of the projections.

(ii) *Projected financial statements.* A thorough credit analysis will be performed using both historical and projected financial statements.

(iii) *Value of the assets and collateral.* Appraisals, when appropriate, will be required to assist the Department in evaluating its ability to secure the loan.

(iv) *Changes in market strategy or management strategy, or both.* Proposed significant changes in the business plan, market strategy or management team will be reviewed.

(3) *Public benefit criteria.*

(i) The total full-time equivalent number of jobs to be created or retained, or both, as a result of the project.

(ii) The number of jobs to be created or retained, or both, for each MELF dollar invested.

(iii) The private investment to be leveraged as a result of the MELF investment.

(iv) The increase in productivity.

(v) The strategic importance to the Commonwealth of the industry or firm being assisted and the area being served.

§ 71.104. Application process.

(a) An application can be obtained from the Department of Community and Economic Development, Private Capital Financing Office, Commonwealth Keystone Building, 4th Floor, Harrisburg, Pennsylvania 17120, (717) 787-6245.

(b) Applications will be reviewed in the order in which they are received by the Department.

§ 71.105. Effect.

This chapter is intended solely to provide guidance to the general public and program applicants and to interpret statutes and regulations. The chapter may be relied upon insofar as it binds the Department to follow a stated course of action. The Department may revise this statement prospectively.

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