

additional information as it is developed.

(9) Whenever the Bank determines during the course of an investigation that it is necessary to compel or induce the cooperation of an employee, the Bank shall first consult with the Department of Justice. The Department of Justice will coordinate with the Bank to determine the procedures the Bank may use to compel an employee's participation without foreclosing possible criminal proceedings.

(10) The Bank shall maintain records of all disclosures that have been reported or investigated.

(11) All employees shall cooperate fully with officials of the Bank or other agencies who are conducting investigations of unauthorized disclosures of classified information.

(12) Employees determined by the Bank to have knowingly participated in an unauthorized disclosure of classified information or who have refused to cooperate with an investigation of such a disclosure shall be denied further access to classified information and shall be subject to other appropriate administrative sanctions. Prior to taking action against an employee in connection with the unauthorized disclosure or classified information, the Bank shall consult with the Department of Justice, Criminal Division.

## PART 404—DISCLOSURE OF INFORMATION

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AUTHORITY: 5 U.S.C. 552; 12 U.S.C. 635; Freedom of Information Reform Act of 1986, Pub. L. 99-570; Debt Collection Act of 1982, Pub. L. 97-365.

SOURCE: 40 FR 7238, Feb. 19, 1975, unless otherwise noted.

### § 404.1 Purpose and policy.

(a) This part establishes policy and procedures governing public access to information contained in the files, documents, and records of the Export-Import Bank of the United States (Eximbank). In keeping with the spirit as well as the letter of Pub. L. 90-23, which codified and repealed Pub. L. 89-487, amending 5 U.S.C. 552, formerly section 30 of the Administrative Procedure Act, 60 Stat. 236, 5 U.S.C. 1002 (1964 Ed), and Pub. L. 93-502, further amending 5 U.S.C. 552, it reflects Eximbank policy that disclosure is the general rule rather than the exception. It is in addition a recognition that this policy in favor of disclosure extends in many instances to information technically exempt from disclosure under the law where such disclosure would not adversely affect some legitimate public or private interest intended to be protected by law, would not otherwise violate law or other authority, and would not impose an unreasonable burden upon Eximbank.

(b) This part is also a recognition that the soundness of many Eximbank programs, e.g. loans, guarantees and insurance, depends in large measure upon the reliability of commercial, technical, financial and business information relating to the affairs of applicants for Eximbank assistance. Since the release of such information would jeopardize the credit and competitive business position of an applicant it is essential that applicants be assured that confidential commercial or financial information which is submitted to Eximbank will not be disclosed to the public. By this assurance, applicants will be encouraged to make complete disclosure of material bearing upon an application.

### § 404.2 Scope.

This part applies to all files, documents, records, and information obtained or produced by officers and employees of Eximbank in the course of their official duties as well as all files, documents, records and other information in the custody or control of any Eximbank officer or employee. It does not purport to describe or set forth every file, document, record, or item of information which may or may not be

disclosed or to incorporate every exemption from disclosure provided by law. Material described is illustrative rather than exclusive.

**§ 404.3 Information and records available to the public and exempt from disclosure.**

(a) *General.* All Eximbank information and records in existence which are not exempt by law are available for public inspection and copying in the manner specified in § 404.4. In addition, certain materials technically qualifying for exemption from disclosure will be made available where disclosure would not adversely affect some legitimate public or private interest, would not otherwise violate law or other authority, and would not impose an unreasonable burden on Eximbank. Reasonable requests for material not in existence may also be honored where their tabulation or compilation will not unduly interfere with Eximbank activities, programs and operations. As provided in § 404.6, a fee will be charged for Eximbank's expenses incurred in searching for, duplicating, tabulating or compiling such information and records.

(b) Information and records which are available to the public.

The following kinds of records and information are available to the public in the manner specified in § 404.4:

(1) Names of recipients of loans, guarantees, insurance and other assistance,

(2) The kind and amount of assistance,

(3) The purpose of the approved assistance in general terms,

(4) The extent of outside participation, if any, and

(5) Statistical data on Eximbank programs.

(c) Information which is generally not available to the public. The following kinds of information are generally not available to the public:

(1) Information on declined, withdrawn, or cancelled applications for assistance,

(2) Trade secrets obtained from applicants for Eximbank assistance,

(3) Privileged or confidential commercial or financial information obtained from any person, including, for example, such information contained

in individual case files relating to such activities as loans, guarantees and insurance,

(4) Loan agreements, insurance policies and bank guarantee agreements relating to individual borrowers or foreign buyers receiving Eximbank assistance,

(5) Information concerning losses, delinquencies and defaults in individual cases, and

(6) Names of participating lending institutions and the terms of their participation without their consent.

(d) Minutes of the meetings of the Board of Directors. These are available for inspection and copying in Eximbank's Office of the Secretary in Room 933, 811 Vermont Avenue NW., Washington, DC 20571.

(e) Personnel and similar files. Exempt from disclosure are personnel, medical and other files containing private or personal information. The names, position titles, and duty stations of Eximbank employees are public information but their home addresses are not. The disclosure of private or personal information contained in other files, for example, in the files relating to members of Eximbank's Advisory Board and to applicants for Eximbank assistance, also would be exempt.

(f) *Eximbank staff directives and other instructions to staff.* All staff directives are considered public information except: (1) Those relating to audits and investigations, internal financial management and fiscal operations, and (2) portions of directives containing confidential standards and instructions, as, for example, instructions concerning processing loan, guarantee or insurance applications, negotiations or bargaining in connection with the disposition and liquidation of loans, and loan collateral held by Eximbank.

(g) *Litigation materials.* Copies of pleadings, motions, orders, transcripts of testimony, and documentary evidence introduced in pending or closed litigation are available once such items are a matter of public record.

(h) *Internal communications.* Inter-agency or intraagency communications not routinely available to a party to litigation with Eximbank are exempt from disclosure. These would include,