

CHAPTER 1654

DEPARTMENT OF AGRICULTURE

ETHANOL PRODUCTION FACILITY LOAN PROGRAM

1654.0010 ESTABLISHMENT OF PROGRAM;
PROGRAM RULES.
1654.0020 DEFINITIONS.
1654.0030 ASSISTANCE APPLICATIONS.
1654.0040 COLLATERAL REQUIREMENTS AND
ADDITIONAL INFORMATION OR
CERTIFICATIONS.

1654.0050 APPLICATION PROCESSING.
1654.0060 FUNDING OF FINANCIAL
ASSISTANCE BY BONDS.
1654.0070 AUTHORITY PARTICIPATION.

1654.0010 ESTABLISHMENT OF PROGRAM; PROGRAM RULES.

Subpart 1. **Establishment of program.** The authority, by its Resolution No. 93-07 has established an ethanol production facility loan program to provide financial assistance for ethanol production facilities.

Subp. 2. **Authority and purpose.** These rules are adopted by the authority pursuant to Minnesota Statutes, section 41B.07, to define and provide for the administration of the program.

Subp. 3. **Application.** These rules apply to all applications for and loans made and bonds issued pursuant to the program, the use of loan and bond proceeds, and all eligible borrowers and lenders participating in the program.

Statutory Authority: *MS s 41B.07*

History: *18 SR 774*

1654.0020 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part apply to parts 1654.0010 to 1654.0070.

Subp. 2. **Applicant.** "Applicant" means an individual, corporation, limited liability company, cooperative, partnership, or joint venture who submits a completed application for assistance under the program to the authority.

Subp. 3. **Application.** "Application" means an application for financial assistance under the program in the form prescribed by the authority or its executive director.

Subp. 4. **Authority.** "Authority" means the Rural Finance Authority established by Minnesota Statutes, section 41B.025, acting through its board or its duly authorized officers.

Subp. 5. **Board.** "Board" means the Rural Finance Authority Board as established in Minnesota Statutes, section 41B.025.

Subp. 6. **Ethanol production facility.** "Ethanol production facility" means a facility as defined in Minnesota Statutes, section 41A.09, subdivision 2, paragraph (a).

Subp. 7. **Executive director.** "Executive director" means the executive director of the authority, or any other officer authorized to act on behalf of the authority's board or its executive director.

Subp. 8. **Program.** "Program" means the authority's ethanol production facility loan program.

Statutory Authority: *MS s 41B.07*

History: *18 SR 774*

1654.0030 ASSISTANCE APPLICATIONS.

Subpart 1. **In general.** To apply for assistance from the authority under the program, an applicant must submit a completed application which is dated and signed by an owner, general partner, or an authorized officer of the applicant.

Subp. 2. **Contents.** An application must contain at a minimum the following information:

A. a funding request indicating the desired financial assistance from the program, collateral offered for the financial assistance requested, capitalization of the project, use of funds, and future financing needs;

B. project cost summary;

C. financial statements of the applicant, including a balance sheet, an operating statement, a statement of the sources and uses of funds, and footnotes to the statements, if available, for the following time periods:

(1) financial statements for the previous three financial years, or such shorter period of time during which the applicant has conducted business. If unaudited, the statements must be verified by an authorized financial officer of the applicant;

(2) a balance sheet dated as of not more than 90 days before the date the application was submitted and if unaudited, compiled by a certified public accountant;

(3) federal tax returns filed by the applicant for the previous three financial years, or such shorter period of time during which the applicant has conducted business; and

(4) a proforma balance sheet and income statement for the 60 months following the financial assistance closing that shows the financial position of the applicant and includes the proposed financing;

D. a complete business plan for the applicant, complying with subpart 3;

E. signed personal financial statements dated as of the date of the application for any person who owns 20 percent or more interest in the applicant;

F. a resolution of support or other comparable preliminary approval from the local government unit with respect to the project to be financed;

G. an authorization which will allow the authority to disseminate all or any part of the loan application package supplied by the applicant to any outside sources which the authority deems necessary in order to process, review, and analyze the application;

H. certification that the applicant will not discriminate in employment in a manner contrary to applicable federal, state, or local laws, regulations, rulings and decisions; and

I. a statement of all permits, licenses, and other similar authorizations which must be obtained in order to construct and operate the proposed facility and evidence that the applicant will be able to obtain such items.

Subp. 3. Business plan. As part of the application, the applicant shall also submit to the authority a comprehensive business plan. The business plan must include, but is not limited to, the following:

A. a management summary of the plan including:

(1) name of the business;

(2) business location and plan description;

(3) the management team and its expertise and experience;

(4) summary of financial projections;

(5) amount of financial assistance requested;

(6) sources and amounts of funds to capitalize the proposed project; and

(7) business goals;

B. a description of the applicant including the following:

(1) date and state of incorporation, date and state of formation of partnership or joint venture, or date and state of formation of sole proprietorship;

(2) history of the applicant; and

(3) principals and the roles they played in the evolution of the company;

C. a market analysis including:

(1) description of the current industry status and industry trends;

(2) effects of major social, economic, technological, or regulatory trends on the industry;

(3) description of the total market, principal market participants, and their performance; and

(4) discussion of the target market and competition;

D. a description of the marketing strategy including:

(1) overall strategy;

- (2) pricing policy;
- (3) sales and channels and terms;
- (4) method of selling and distributing product;
- (5) estimated sales and market share; and
- (6) advertising, public relations, and promotion;
- E. the management plan including:
 - (1) form of business organization;
 - (2) board of directors composition, if applicable;
 - (3) officers organization chart and responsibilities; and
 - (4) resumes of key personnel;
- F. an operating plan including:
 - (1) schedule of upcoming work for the next two years;
 - (2) facilities plan or planned capital improvements for the next three years;
 - (3) manufacturing processes; and
 - (4) staffing plan (number of employees);
- G. a schedule indicating the completion dates for realizing the significant aspects of the business plan; and
- H. a discussion of the risks and problems inherent to the business plan, including the negative factors and plans to minimize the impact of those factors.

Statutory Authority: *MS s 41B.07*

History: *18 SR 774*

1654.0040 COLLATERAL REQUIREMENTS AND ADDITIONAL INFORMATION OR CERTIFICATIONS.

Subpart 1. Collateral requirements. When providing financial assistance, the authority may require collateral as it considers necessary in accordance with generally accepted commercial lending practices to protect the interests of the authority. The collateral may take one or more of the following forms:

- A. mortgage on real property;
- B. security interest in personal property;
- C. guarantees or other assurances of repayment of applicant, affiliates of the applicant, shareholders or partners who have 20 percent or more ownership in the applicant, or other interested parties with respect thereto;
- D. bond insurance or other credit enhancements;
- E. assignments of leases or rents on property of equipment, or of contracts and other assets of the applicant;
- F. letters of credit;
- G. escrow account; and
- H. any other form of collateral that the authority deems necessary and appropriate.

Subp. 2. Additional information or certifications. The following additional information, as applicable, is required by the authority before providing financial assistance, as well as any other information or item that the authority in its sole discretion considers advisable for prudent financial management of the authority's financial assistance:

- A. a lease agreement on property or equipment;
- B. a listing of property, including serial numbers for machinery and equipment, that will serve as collateral for the financial assistance;
- C. certification of insurance for workers' compensation and employer's liability;
- D. a statement provided by the Internal Revenue Service of tax clearance;
- E. an appraisal of collateral offered to the authority for the financial assistance; and
- F. a certificate of the insurers of collateral that insurance is in force and effect. Prior to expiration of any insurance policy, the applicant shall furnish the authority with evidence that the policy has been renewed, replaced, or is no longer required.

Statutory Authority: *MS s 41B.07*

History: *18 SR 774*

1654.0050 APPLICATION PROCESSING.**Subpart 1. Fees.**

A. The applicant shall submit to the authority with the application a check payable to the Department of Agriculture in the amount of \$2,000 as an application fee. The fee is not refundable.

B. A loan origination fee equal to 1-1/2 percent of the amount of appropriated funds utilized to assist the applicant must be submitted by the applicant at time of closing on the assistance.

C. The applicant must also agree to pay all other out-of-pocket costs which are required to process, review, and analyze the application and complete the closing on the financial assistance.

D. When bonds are sold as part of the assistance, all costs of issuance of the bonds shall be paid from bond proceeds or funds of the applicant at the time of closing on the financial assistance.

Subp. 2. Completed applications. An application is complete when the authority receives the application fee and all required documentation and exhibits. If a completed application is received by the authority after an application period has expired, the application and application fee must be returned.

Subp. 3. Incomplete applications. If an incomplete application is received, the authority shall notify the applicant of specific deficiencies in the application. If the additional information necessary to complete the application is not received within an application period, the application is deemed to be rejected.

Subp. 4. Review of eligibility of project and applicant. The authority shall review all completed applications to determine if the project and the applicant are eligible and meet the requirements of Minnesota Statutes, section 41B.044, and these rules. If the project and applicant are eligible, the authority shall review the application for economic feasibility as provided in subpart 6.

Subp. 5. Ineligible project or applicant. The authority shall notify the applicant in writing if the applicant or the project is ineligible. If the application is not amended within the application period, the application must be rejected and will not receive any further consideration.

Upon receipt of an amended application, the authority shall review the amended application under subpart 4.

Subp. 6. Economic feasibility review.

A. The authority shall review the application in accordance with generally accepted commercial lending practices and may check personal references. The authority may utilize outside consultants and others knowledgeable in commercial lending and ethanol production in the review of applications submitted.

B. The review must include such factors as:

- (1) management expertise and experience;
- (2) viability of financial plan;
- (3) potential for repayment of financial assistance in a timely manner;
- (4) marketing plan and contracts for sale of product;
- (5) job creation and economic impact;
- (6) environmental consideration;
- (7) special circumstances impacting application;
- (8) sufficiency of collateral offered to authority for financial assistance; and
- (9) degree to which proposed project meets legislative intent to expand ethanol production within the state.

Subp. 7. Rejection of application based on economic feasibility. The authority shall notify the applicant in writing if the project is judged not to be economically feasible and the application is rejected.

If the application is rejected due to economic feasibility, the applicant may, within 30 days after written notification by the authority, request that the authority submit the rejected

application to the board for review at the next regularly scheduled meeting of the board for which the agenda has not been established.

If so submitted, the board must evaluate the application at its board meeting, in accordance with subpart 8.

Subp. 8. Board evaluation. The board shall review and consider approval of an application on the basis of effectuating the purposes of Minnesota Statutes, section 41B.044 and economic feasibility of the project. If the board disapproves the application, the authority shall so notify the applicant within five days of the board meeting. If the board approves the application, it shall pass a resolution giving approval to the project and stating the name of the project owner, a brief description of the project, the assistance to be provided and other provisions as the board in its discretion deems advisable. The amount of financial assistance approved by the board may be less than the amount requested by the applicant.

Throughout the application review and evaluation process, if neither the authority nor the board commits in writing to provide financial assistance to the applicant for the project described in the application, they shall have no liability to the applicant.

Statutory Authority: *MS s 41B.07*

History: *18 SR 774*

1654.0060 FUNDING OF FINANCIAL ASSISTANCE BY BONDS.

If the authority intends to fund the financial assistance by issuing bonds, the board shall first pass a preliminary resolution. The preliminary resolution must not obligate the authority to issue bonds or to fund the financial assistance, but must only constitute an expression of current intention of the authority to issue bonds or to fund the financial assistance. If the authority subsequently determines that there are no adverse changes in the financial conditions or key personnel of the applicant, market conditions, availability of bond issuance authority, and other conditions that the authority deems necessary and the authority decides in accordance with generally accepted commercial lending practices to make financial assistance available, the board shall pass a final resolution that authorizes the issuance and sale of bonds to extend financial assistance. The final resolution must specify the conditions under which bonds will be issued. The preliminary resolution may contain a time limit with respect to the issuance of the bonds, may be revoked or amended by the board at any time prior to the final resolution of the board without liability to the authority, and may impose any conditions or requirements that the board deems desirable. The executive director shall notify the applicant of the board's approval and provide the applicant with a copy of the resolution passed.

Statutory Authority: *MS s 41B.07*

History: *18 SR 774*

1654.0070 AUTHORITY PARTICIPATION.

Subpart 1. Procedure. If the financial assistance is in the form of participation with a lender, the procedures in this section must be followed.

Subp. 2. Lender eligibility.

A. Any bank, credit union, or savings association chartered by the state or federal government, a subdivision of the farm credit system (Agri Bank), the Federal Deposit Insurance Corporation, or any insurance company, fund, or other financial institution doing business as an agricultural lender within the state may apply to the authority for certification as an approved lender.

B. Upon a lender's demonstration of its ability to originate and service commercial real estate and equipment loans, the authority shall designate them as an approved lender for purposes of the ethanol production facility loan program.

C. Before offering loans to the authority for participation, each approved lender must enter into a master participation agreement. The agreement shall specify the contractual relationship between the parties and terms and conditions of loans to be made by the lender under the ethanol production facility loan program and offered to the authority for participation.

Subp. 3. Loan closing, purchase of participation, and loan management.

A. Upon receiving notification of approval by the authority of a loan participation, the lender shall proceed to close the loan. The lender must record and cross-reference all

documents relating to the loan including the authority note and loan agreement. The lender must notify the authority that the loan is closed and recorded and submit copies of the recorded documents to the authority.

B. Within ten business days of receipt of written notice under item A, that the loan is closed and recorded, the authority shall pay the lender the authority's participation interest in the loan.

C. Within five working days after the receipt of finally collected funds, the lender shall complete and return a participation certificate as prescribed by the authority evidencing the authority's undivided pro rata interest in the ethanol production facility loan.

D. The lender shall manage the loan, including the authority participation interest, with the degree of care and diligence usually maintained by commercial real estate lenders. The lender shall have custody and control of all loan documents, except the original application, which shall be retained by the authority. The lender shall manage, administer, and enforce the loan documents in its own name and also on behalf of itself and the authority, including, without limitation, the right to foreclose or otherwise enforce remedies against the borrower.

E. The lender shall promptly notify the authority of occurrences that substantially affect the security, collection, or enforcement of any loan.

F. The lender shall obtain the prior written consent of the borrower and the authority before:

(1) making or consenting to a release, substitution, or exchange of collateral that reduces the aggregate value of the collateral;

(2) waiving a claim against the borrower or a guarantor, surety, or obligor in connection with the indebtedness; or

(3) modifying or waiving a term of the note or related instruments evidencing or securing the loan.

Subp. 4. Participation repurchase. An originating lender is under no obligation to repurchase any authority participation interest in an ethanol production facility loan except as provided in this section.

A. A lender may, at its option and upon written approval by the authority, repurchase the authority's participation interest at any time.

B. A lender must repurchase the authority's participation interest whenever the loan is refinanced.

C. A lender must repurchase the authority's participation interest if the lender has made misrepresentations or fails to perform its obligations under the participation agreement, has received written notice from the authority, and has not corrected the representation of performance under the notice.

D. Any repurchase shall be for the principal balance of the authority's participation plus accrued interest and any penalties or costs incurred by the authority to secure repurchase.

Subp. 5. Review of loan and collateral.

A. At any time during the term of an ethanol production facilities loan, the authority or the state legislative auditor may inspect the books, records, documents, and accounting practices of the lender relative to the loan to determine compliance with the terms and conditions of the loan and participation agreement. Any inspections shall be during the lenders normal business hours. The lender must allow the authority to copy any documents relating to the loan and the authority's participation.

B. The lender and the authority may physically inspect the collateral securing the loan upon notice to the borrower. Any inspections must be conducted at a reasonable time.

Statutory Authority: *MS s 41B.07*

History: *18 SR 774; L 1995 c 202 art 1 s 25*