

CHAPTER 1652
RURAL FINANCE AUTHORITY
AGRICULTURAL BUSINESS ENTERPRISE LOANS

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1652.0010 ESTABLISHMENT OF PROGRAM; PROGRAM RULES.

Subpart 1. **Establishment of program.** The authority, by its Resolution No. 92-06, has established an agricultural business enterprise loan program, comprising the issuance of bonds to finance loans to be made to a small business, as defined in Minnesota Statutes, section 41C.02, subdivision 2.

Subp. 2. **Authority and purpose.** Parts 1652.0010 to 1652.0080 are adopted by the authority pursuant to Minnesota Statutes, section 41C.13, to define and provide for the administration of the program.

Subp. 3. **Application.** Parts 1652.0010 to 1652.0080 apply to all applications for and loans made and bonds issued pursuant to the program, the use of loan proceeds, all loan applicants, and all eligible borrowers and lenders participating in the program.

Statutory Authority: *MS s 41C.13*

History: *17 SR 2323*

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1652.0020 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part apply to parts 1652.0010 to 1652.0080.

Subp. 2. **Act.** "Act" means the Minnesota Agricultural Development Act, Minnesota Statutes, chapter 41C.

Subp. 3. **Agricultural business activity.** "Agricultural business activity" means the general processing of agricultural products and the manufacturing, assembly, or fabrication of agriculture-related equipment.

Subp. 4. **Applicant.** "Applicant" means a small business who submits a completed application for a loan under the program to the authority.

Subp. 5. **Application.** "Application" means an application for a loan under the program in the form prescribed by the authority or its executive director.

Subp. 6. **Authority.** "Authority" means the Minnesota Rural Finance Authority established by Minnesota Statutes, section 41B.025, acting through its board or its duly authorized officers.

Subp. 7. **Bond.** "Bond" means a special, limited obligation revenue bond issued by the authority to an eligible lender to finance a loan to an eligible borrower for an eligible purpose pursuant to a loan agreement between the eligible lender and the authority.

Subp. 8. **Borrower.** "Borrower" means an eligible borrower who has received a loan under the program.

Subp. 9. **Code.** "Code" means the Internal Revenue Code of 1986, as amended, and all rules, regulations, and revenue procedures issued under it.

Subp. 10. **Depreciable agricultural business property.** "Depreciable agricultural business property" means property of a character that is subject to the allowance for depreciation under the code and that is to be owned and used by an eligible borrower in an agricultural business enterprise.

Subp. 11. **Eligible borrower.** "Eligible borrower" means a small business, as defined in Minnesota Statutes, section 645.445, subdivision 2, that:

- A. will engage in an agricultural business enterprise;
- B. will be the "principal user" of the property financed under the code, and will materially and substantially participate in the operation of the business of which the property is a part; and
- C. has not received other similar tax-exempt financing from the authority in an amount which, together with the current loan, exceeds \$250,000.

Subp. 12. **Eligible lender.** "Eligible lender" means a bank, credit union, savings association, insurance company, or other financial institution authorized to do business in Minnesota, or an individual.

Subp. 13. **Eligible purpose.** "Eligible purpose" means the acquisition or improvement of real or personal property for use in new or expanded operations of an agricultural business enterprise located or to be located in a Minnesota community with a population of 5,000 or less.

Subp. 14. **Executive director.** "Executive director" means the authority's executive director or any other officer duly authorized to act on behalf of the authority's board or its executive director.

Subp. 15. **Improvements.** "Improvements" means items that, when complete, become part of the real or personal property used in an agricultural business enterprise.

Subp. 16. **Lender.** "Lender" means an eligible lender who has purchased a bond under the program.

Subp. 17. **Loan.** "Loan" means the loan of the proceeds of a bond to an eligible borrower for an eligible purpose pursuant to a loan agreement between the authority and the eligible borrower.

Subp. 18. **Principal user.** "Principal user" means a person who is a principal owner, a principal lessee, a principal output purchaser, or an "other" principal user as defined in the code.

Subp. 19. **Program.** "Program" means the agricultural business enterprise loan program established by the authority.

Subp. 20. **Related person.** "Related person" means a spouse, a lineal descendent, a brother or sister, or a partnership or corporation owned, directly or indirectly, more than 50 percent by the borrower or one or more of the persons listed in this subpart.

Statutory Authority: *MS s 41C.13*

History: *17 SR 2323; L 1995 c 202 art 1 s 25*

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1652.0030 BORROWER ELIGIBILITY.

Subpart 1. **Eligibility.** To be eligible for a loan under the program an applicant must be an eligible borrower.

Subp. 2. **Certification.** An applicant must certify to the authority in each loan application that the applicant understands and meets the definition of eligible borrower for the program.

Statutory Authority: *MS s 41C.13*

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1652.0040 OPERATION OF PROGRAM.**Subpart 1. Loan transactions and security.**

A. The authority shall make loans to eligible borrowers for eligible purposes pursuant to a loan agreement between the authority as lender and the eligible borrower as borrower. The loans must be evidenced by promissory notes payable to the authority or its assigns, and except as provided in item E must be unsecured.

B. A loan may not be made if it violates any of the restrictions in subitems (1) to (6).

(1) The amount of a loan, together with the amount of any similar loan made to the same borrower or a related person or entity, may not exceed \$250,000.

(2) Ninety-five percent of the loan proceeds must be expended for an eligible purpose, and not more than two percent of the loan proceeds may be used to pay loan transaction costs.

(3) The maturity of a loan or portion of a loan made to finance improvements or depreciable property to be used in an agricultural business enterprise may not exceed 120 percent of the useful life of the improvements or property under the code.

(4) Not more than five percent of the loan proceeds may be used to refinance existing indebtedness, or to finance the purchase or improvement of a residence or working capital or inventory. Use of loan proceeds for reimbursement of costs incurred before adoption by the authority of a preliminary resolution approving a loan and the issuance of a bond to fund it as described in part 1652.0060 or money borrowed to pay such costs constitutes use of loan proceeds for working capital or refinancing.

(5) All loan proceeds must be expended within six months of the loan closing or the first date on which loan proceeds are disbursed, whichever is later, or all proceeds must be expended within 18 months of the loan closing or the first date on which loan proceeds are disbursed, whichever is later, in which event the borrower must furnish to the authority all information as to the investment of loan proceeds and any money required to be rebated to the United States under section 148 of the code.

(6) Loan proceeds may not be used to finance the purchase of land, improvements, or depreciable property from a related person or entity.

C. The authority shall issue a bond to provide money to fund each loan. The authority has no other money available for this purpose. The bond must be issued to the eligible lender who has agreed with the eligible borrower to finance the eligible borrower's loan by jointly submitting a loan application in accordance with part 1652.0050. The bond must be issued in fully registered form pursuant to a loan agreement between the lender and the authority.

D. The bond must be a special, limited obligation of the authority payable solely from loan payments payable by the eligible borrower under the borrower's loan agreement and the promissory note evidencing the loan, which will be assigned to the lender and pledged to the payment of the principal of and interest on the bond, without recourse to the authority. The bond must not be a general obligation of the authority, the state of Minnesota, or any department, agency, or political subdivision of the state, and the full faith and credit of the authority, the state, or any department, agency, or political subdivision of the state must not be pledged for its payment.

E. A bond may be additionally secured by a mortgage on or security interest in the property financed or other property provided by the borrower, or by personal guaranties made by the borrower or another individual. All agreements and documents providing or evidencing such additional security must be entered into between the borrower or another individual and the lender. The authority may not be a party to the agreement or document and may not be responsible in any way with respect to the authorization, execution, effectiveness, or adequacy of the additional security.

Subp. 2. **Loan evaluation.** The lender must determine and evaluate the eligible borrower's financial condition, net worth, and ability to repay the loan of the bond proceeds to be made by the authority, and the lender is solely responsible for that determination. The authority may not make any independent evaluation of any of these matters, but must rely upon certifications provided to it by the applicant and the lender as part of an application.

Subp. 3. **Loan terms.** The payment terms of each loan and the bond that will be issued to fund the loan must be identical and, subject to the applicable provisions of state and federal law or the code, must be established by the eligible borrower and the lender.

Subp. 4. **Loan documents.** Except as provided in subpart 1 with respect to certain loan security agreements, all loan and bond transactions must be evidenced by use of the authority's standard loan documents. The documentation must include loan agreements, a promissory note, a bond, various closing certificates, legal opinions, and other documents the authority requires.

Subp. 5. **Tax exemption.**

A. The authority shall try to issue each bond as a "qualified small issue bond" within the meaning of section 144(a) of the code. Interest payable on a qualified small issue bond is not includable in gross income of the recipient for federal income tax purposes, or in net income of individuals, estates, or trusts for Minnesota income tax purposes. At the loan closing, the authority shall furnish to the lender an opinion of an attorney or firm of attorneys nationally recognized as bond counsel as to the validity of the bond and the tax-exempt nature of the interest payable on the bond, addressed to the lender. The form of that opinion is available upon request to the authority by any eligible lender joining in a loan application.

B. The lender may not rely upon information provided by the authority as to state and federal tax warranties or covenants made by the authority in the loan documents, but may rely on the legal opinion.

C. The lender is responsible to determine the applicability and effect of other state and federal laws on the lender's income, deductions, or tax status for state and federal tax purposes as a result of the purchase of a bond.

Subp. 6. **Use of bond proceeds; certification.** Bond proceeds may not be used for a purpose other than an eligible purpose or by a person other than an eligible borrower. Following disbursement of the bond proceeds, the lender and borrower may be required to certify to the authority that the proceeds were used for an eligible purpose by an eligible borrower, and evidencing compliance with subpart 1, item B.

Subp. 7. **Assignment of bond.** A lender may assign a bond in whole or in part to any person, but the lender is responsible for compliance with all state and federal laws applicable to the assignment. Servicing of the loan may also be assigned, but must at all times be with an eligible lender. The authority must be notified in writing prior to assignment of servicing of a loan.

Subp. 8. **Assumption of loans, substitution of collateral, and transfer of property.** Loans may not be assumed without the prior approval of the authority, and then only if the purchaser of the property is an eligible borrower. The benefits of the loan made at the tax-exempt rate from the proceeds of an authority bond must remain with an eligible borrower, and no other person or entity to whom property is traded or otherwise transferred may obtain the benefits of the authority loan.

Statutory Authority: *MS s 41C.13*

History: *17 SR 2323*

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1652.0050 APPLICATION PROCEDURES.

Subpart 1. Application.

A. An applicant and an eligible lender who wish to request the authority to make a loan to the applicant and issue a bond to the lender to fund the loan must jointly complete, sign, and submit to the authority an application, and prepare and submit to the authority all supporting documents identified in the application.

B. The lender shall present these documents to the authority. Presentation of the documents constitutes an offer to purchase a bond to fund the loan.

C. Lenders shall use their own forms of financial statement and other forms considered necessary to document the eligibility of the applicant. Financial statements must be dated as of a date not more than 15 days before the date on which the application is submitted to the authority.

Subp. 2. **Application fee.** The applicant shall provide to the eligible lender for submission to the authority with the application, a check payable to the Minnesota Department of Agriculture in an amount established by the authority under Minnesota Statutes, section 41C.12, as an application fee. The fee is not refundable.

Subp. 3. **Volume cap allocation charge.** The applicant shall also provide to the eligible lender for submission to the authority with the application, a check payable to the Minnesota Department of Agriculture in the amount determined under Minnesota Statutes, section 474A.03, as a volume cap allocation fee. If the application is approved and the authority makes application for a volume cap allocation as described in part 1652.0060, subpart 2, the check must be endorsed to the commissioner of management and budget in payment of the application fee imposed by Minnesota Statutes, chapter 474A. If the application is rejected, the volume cap allocation fee must be returned to the applicant.

Subp. 4. **Authority review.** The executive director shall review the information provided and accept or reject the application. If the information provided is not sufficient to make a determination, the executive director shall request additional information from the lender and applicant. The executive director's review must include, but is not limited to, whether the loan complies with the act and parts 1652.0010 to 1652.0080. The authority shall notify the lender whether the application has been approved or rejected. If the application is not approved, a written notice must state the reasons for disapproval.

Subp. 5. **Administrative reconsideration.** If a proposed application is not approved by the executive director, the applicant or the lender may petition the executive director for an administrative reconsideration. The petition must be in writing and must be sent within 15 business days of the date of the disapproval. The petition must state the petitioner's reasons for disagreeing with the disapproval and may include additional information relevant to the request for reconsideration. Within 15 business days of receiving the petition, the executive director shall send a written response to the petitioner upholding or reversing the original decision and giving the reasons for the decision.

Subp. 6. **Appeal.** A petitioner may appeal the executive director's reconsideration directly to the authority's board, by written notice to the executive director within 15 business days of receiving the executive director's reconsideration decision. The decision of the board is final.

Statutory Authority: *MS s 41C.13*

History: *17 SR 2323; L 2009 c 101 art 2 s 109*

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1652.0060 HEARING AND OTHER PROCEDURAL REQUIREMENTS.

Subpart 1. **Hearing and approval requirement.** Under section 147(f) of the code, in order to make the interest payable on a bond excludable from gross income for federal tax purposes, prior to the issuance of the bond, the authority or its designated representative must hold a public hearing on the issuance of the bond, and the issuance of the bond must be approved by an "applicable elected representative" of the state, which means, in this case, the governor or another elected official of the state designated by the governor. Notice of the hearing must be published at least 14 days before the hearing in a newspaper of general circulation in the state and where the property is being financed is or is to be located. The notice must set the date, time, place, and purpose of the hearing; the authority's intention to issue the bond; the maximum principal amount of the bond to be issued; the source of payment of the bond; the purpose for which the proceeds of the bond will be loaned to the borrower; the name of the borrower; and the location of the property being acquired with the proceeds of the loan or where it will be used.

Subp. 2. **Volume cap allocation requirement.** Under section 146 of the code, in order to make the interest payable on a bond excludable from gross income for federal tax purposes, the authority must obtain a volume cap allocation in an amount equal to the amount of the bond, pursuant to the state volume cap allocation law, Minnesota Statutes, chapter 474A. In order to obtain a volume cap allocation, the authority must submit an application for it to the state Department of Management and Budget together with a preliminary resolution of the authority approving the loan and the issuance of a bond to fund it, a statement of bond counsel that the proposed bond requires an allocation under Minnesota Statutes, chapter 474A, and a statement that the bond is a "qualified small issue bond" within the meaning of section 144 of the code. The authority has no control over whether a volume cap allocation will be received with respect to any volume cap application submitted by it.

Subp. 3. **Executive director authority.** If upon review of a loan application and all supporting documents and other information requested by the authority in connection with the application, the executive director or the program director determines that the application is in compliance with the program and parts 1652.0010 to 1652.0080, the executive director may:

A. cause a preliminary resolution approving the loan and the issuance of the bond requested by the application to be placed upon the agenda of the next meeting of the authority for consideration by it;

B. establish a date, time, and place of the public hearing required as described in subpart 1 and cause notice to be published, which date must be at least three business days after the meeting of the authority at which the preliminary resolution approving the loan and bond described in the notice will be considered by the authority;

C. conduct, or designate other members of the authority's staff to conduct, the public hearing;
and

D. following adoption of the preliminary resolution by the authority, make application for a volume cap allocation as described in subpart 2.

Subp. 4. **Preliminary resolution.** The authority shall consider the adoption of the preliminary resolution described in subpart 3 at its first meeting following approval of an application by the executive director or program director.

Subp. 5. **Public hearing.** Each public hearing must be held at the offices of the authority during regular business hours on regular business days. A person appearing at the hearing must be allowed to present views either orally or in writing. The person conducting the hearing shall make a written record of the hearing and all information or views presented at the hearing. The record must be maintained as part of the public records of the authority.

Subp. 6. **Public approval.** Following the public hearing, if no information is presented indicating that the loan to be made and the bond to be issued are not in accordance with the program and parts 1652.0010 to 1652.0080, the executive director shall cause to be prepared and sent to the governor's office, or the office of the elected official of the state designated by the governor, a statement describing each bond or series of bonds it proposes to issue, along with a summary of the public comments received at the hearing. Any information received at the hearing must be presented to the authority at its next meeting, at which the authority shall confirm or take further action on the application in question that may be indicated.

Statutory Authority: *MS s 41C.13*

History: *17 SR 2323; L 2009 c 101 art 2 s 109*

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1652.0070 LOAN DOCUMENTS; CLOSING PROCEDURES.

Subpart 1. **Loan documents.** The executive director shall cause to be prepared and revised from time to time as necessary, standard forms of all loan documents and closing documents necessary to evidence a bond and related loan transaction, and shall provide the forms to all applicants and prospective lenders. All bond and loan transactions must be done on standard forms, with only insertions and changes necessary to accurately reflect the transaction in question or to assure compliance with the code.

Subp. 2. **Lender's responsibility.** The lender should use its own form of additional security documents (mortgage, security agreement, or guarantee) it believes are necessary and appropriate under the particular loan circumstances. These items must be referenced in the bond documents. Any additional requirements not specifically provided for in the bond documents, such as insurance coverage and amounts, must also be added. It is the lender's responsibility to ensure that any security documents that the lender requires in a transaction have been completed and signed, and that any financing statements have been filed, mortgages recorded, or any other necessary steps taken to protect the lender's interests. The authority makes no warranties or representations with respect to the effectiveness, validity, or priority of any liens or security interests, that a lender has, or believes it may have, with respect to a particular loan or bond.

Subp. 3. **Authority's responsibility.** The authority shall by resolution authorize all documents to be executed by it and is responsible for the preparation, execution, and delivery by the borrower and the authority of the authority's loan documents and closing documents; compliance with the procedures specified in part 1652.0060; the issuance of necessary legal opinions by the authority's bond counsel; the filing with the Internal Revenue Service of all reports and forms required to be filed in connection with the issuance of a bond; and the furnishing of fully executed copies of those items to the borrower and the lender.

Subp. 4. **Origination fee and closing costs.** At the loan closing, the applicant shall deliver to the authority a check payable to the Minnesota Department of Agriculture in an amount equal to 1.5 percent of the amount of the loan as an origination fee. The authority shall estimate and the borrower shall pay all closing costs at closing. Loan proceeds may be used to pay closing costs subject to the limitation established by the code which is described in part 1652.0040, subpart 1, item B, subitem (2).

Statutory Authority: *MS s 41C.13*

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1652.0080 GENERAL MATTERS.

Subpart 1. **Forms.** The executive director shall prepare and, as needed, revise and amend forms necessary for administration and implementation of the program. The number and type of forms must be sufficient to safeguard the interests of the authority. The authority shall annually assess the effectiveness of parts 1652.0010 to 1652.0080 and its administrative procedures, including all forms, and make any modifications which, in the judgment of the authority, are necessary or would facilitate efficient operation of the program.

Subp. 2. **Waivers.** The authority or the executive director may waive or vary particular provisions of parts 1652.0010 to 1652.0080 to conform to requirements of the code necessary to make the interest on any bond excludable from gross income of the recipient for federal tax purposes, or to avoid inequitable, harsh, or unforeseen results from the application of parts 1652.0010 to 1652.0080. No waiver may conflict with Minnesota Statutes, chapter 41C.

Subp. 3. **Right to audit.** The authority shall have the right to audit at any time the records of the lender and the borrower relating to a loan and bond to ensure that bond proceeds were used for an eligible purpose by an eligible borrower.

Subp. 4. **Data privacy.** Financial information, including credit reports, financial statements, and net worth calculations received by the authority regarding any loan and the name of each eligible borrower who is the recipient of a loan are private data under Minnesota Statutes, chapter 13, and section 41B.211, and may be disclosed only in accordance with Minnesota Statutes, chapter 13, and section 41B.211. The name of an eligible borrower, the proposed amount of any loan, the purpose of the loan, and the location of the property to be acquired with the loan proceeds or the location where it is to be used must be disclosed as provided in part 1652.0060 and as required by the code in order to make the interest payable on the bond issued to fund the loan excludable from gross income for federal tax purposes.

Statutory Authority: *MS s 41C.13*

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