

1 Department of Agriculture

2

3 Adopted Permanent Rules Relating to RFA Agricultural Improvement

4 Loans

5

6 Rules as Adopted

7

AGRICULTURAL IMPROVEMENT LOAN PROGRAM

8 1650.0601 APPLICABILITY AND PURPOSE.

9 Subpart 1. **Applicability.** Parts 1650.0601 to 1650.0651

10 establish the criteria and procedures to be used by the RFA in

11 administering the agricultural improvement loan program

12 authorized by Minnesota Statutes, section 41B.043.

13 Subp. 2. **Purpose.** The purpose of the agricultural

14 improvement loan program and for the issuance of bonds to

15 finance the program is to preserve and develop the state's

16 agricultural resources. This is accomplished by extending

17 credit on real estate security through the purchase of

18 participation interests in first priority mortgage farm real

19 estate loans.

20 1650.0611 DEFINITIONS.

21 Subpart 1. **Scope.** The definitions in this part apply to

22 parts 1650.0601 to 1650.0651.

23 Subp. 2. **Agricultural improvements.** "Agricultural

24 improvements" has the meaning given in Minnesota Statutes,

25 section 41B.02, subdivision 19.

26 Subp. 3. **Agricultural improvement loan program or program.**

27 "Agricultural improvement loan program" or "program" means the

28 program authorized by Minnesota Statutes, section 41B.043.

29 Subp. 4. **Agricultural land.** "Agricultural land" means

30 land suitable for use in farming.

31 Subp. 5. **Applicant.** "Applicant" means a potential

32 borrower who submits an application directly to the RFA for a

33 direct loan or through an eligible lender for a loan

34 participation.

35 Subp. 6. **Application.** "Application" means an application

1 for a loan under the agricultural improvement loan program in
2 the form provided by the RFA.

3 Subp. 7. **Assets.** "Assets" means all property, real or
4 personal, tangible or intangible, and all contract rights of
5 value that constitute assets, including cash crops or feed on
6 hand, livestock held for sale, breeding stock, receivable notes,
7 receivables, cash invested in growing crops, cash value of life
8 insurance, machinery and equipment, cars, trucks, farms and
9 other real estate including life estates and personal
10 residences, and the value of a beneficial interest in trusts.

11 Subp. 8. **Borrower.** "Borrower" means the person or persons
12 liable on a mortgage loan made under the program. A borrower
13 may also be a domestic family farm corporation as defined in
14 Minnesota Statutes, section 500.24.

15 Subp. 9. **Collateral.** "Collateral" means all assets
16 pledged as security for a borrower's obligation under a mortgage
17 loan made under the program, including all assets, guarantees,
18 money, letters of credit, or assignments of collateral or a
19 pledge for a loan on which the lender has a security interest or
20 lien.

21 Subp. 10. **Direct loan.** "Direct loan" means a loan
22 originated and serviced by the RFA without involvement of an
23 eligible lender.

24 Subp. 11. **Executive director.** "Executive director" means
25 the executive director of the RFA or any other officer
26 authorized to act on behalf of the board of the RFA or its
27 executive director.

28 Subp. 12. **Farming.** "Farming" means the cultivation or use
29 of land or land improvements, and personal property for the
30 production of agricultural crops, vegetables, fruit or other
31 horticultural crops, forest products, bees and apiary products,
32 livestock, dairy animals, dairy products, poultry or poultry
33 products, fur-bearing animals, aquaculture, hydroponics, exotic
34 species of plants or animals, or other products related to
35 agriculture. Farming also includes:

36 A. the use of wetlands, pasture, forest land,

1 wildlife, and homestead and other real property associated with
2 the agricultural use of land; and

3 B. the practices and facilities needed to conserve
4 soil and water, protect human and animal health, have a safe and
5 efficient operation, and meet local, state, and federal laws and
6 regulations relating to the operation of the farm.

7 Subp. 13. **Fixtures.** "Fixtures" means an article of
8 personal property that has been affixed or annexed to real
9 estate so that it is regarded as a part of the real property. A
10 thing is considered to be affixed or annexed to real estate if
11 it is attached to it by roots, imbedded in it, permanently
12 resting upon it, or permanently attached to it, as by means of
13 cement, plaster, nails, bolts, or screws.

14 Subp. 14. **Liabilities.** "Liabilities" means debts or other
15 obligations for which an applicant is responsible, including
16 accounts payable, notes or other indebtedness owed, taxes, rent,
17 amounts owed on real estate contracts or mortgages, judgments,
18 and accrued interest payable.

19 Subp. 15. **Mortgage loan or loan.** "Mortgage loan" or "loan"
20 means a direct loan from the RFA or loan participation under the
21 program that is secured by a first mortgage on real property.

22 Subp. 16. **Net worth.** "Net worth" means the total value of
23 an applicant's assets and the assets of the applicant's spouse
24 and dependents, less the liabilities of the same parties.

25 Subp. 17. **Real estate.** "Real estate" means land and
26 anything permanently affixed to the land, such as buildings,
27 fences, and things attached to the buildings, such as light
28 fixtures, plumbing, and heating fixtures, or other items that
29 would be personal property if not attached.

30 Subp. 18. **RFA.** "RFA" means the Rural Finance Authority
31 established by Minnesota Statutes, section 41B.025.

32 1650.0621 DIRECT LOANS.

33 Subpart 1. **Borrower eligibility.** To receive a direct loan
34 under the agricultural improvement loan program, an applicant
35 must meet the criteria in items A to G.

1 A. The applicant must be a resident of Minnesota or a
2 domestic family farm corporation as defined in Minnesota
3 Statutes, section 500.24, subdivision 2.

4 B. At least one of the applicants must be the
5 principal operator of the farm upon which the agricultural
6 improvements will be located.

7 C. At least one of the applicants must be actively
8 engaged in farming.

9 D. The applicant must show the ability to repay the
10 loan.

11 E. The applicant must show an inability to make the
12 proposed improvements without the availability of financing
13 under parts 1650.0601 to 1650.0651.

14 F. The applicant's total net worth must not exceed
15 the total net worth established for the basic beginning farmer
16 loan participation program.

17 G. The applicant must not be a current or previous
18 participant in the RFA Restructure II Program.

19 **Subp. 2. Application and procedures.**

20 A. An applicant shall complete an application form
21 provided by the RFA and submit it to the RFA along with other
22 information required by the RFA. Financial statements must be
23 dated within 90 days of the application.

24 B. A personal history letter may be submitted with
25 the application to explain the type of project for which funds
26 will be used, the applicant's background, and the type of
27 farming unit.

28 C. The applicant must submit with the application the
29 nonrefundable application fee as established in Minnesota
30 Statutes, section 41B.043, subdivision 3. The loan origination
31 fee as established in Minnesota Statutes, section 41B.043,
32 subdivision 3, must be submitted by the applicant at the closing
33 of the loan. The loan origination fee and other loan closing
34 expenses may be financed with proceeds of the loan. The
35 applicant must also pay all other out-of-pocket costs required
36 to complete the closing of the loan, such as filing fees,

1 mortgage registration, taxes, and appraisal fees. The RFA shall
2 pay its own legal fees.

3 D. The maximum term of a loan is ten years. The
4 applicant must agree on the loan terms such as interest rate,
5 length of loan, repayment schedule, and prepayment options. The
6 maximum loan amount is \$35,000 and the loan may not have a
7 balloon.

8 E. The collateral securing the loan must have a value
9 of at least 150 percent of the loan.

10 F. The applicant shall not begin acquisition or
11 construction of any part of the agricultural improvements before
12 the RFA approves the application. If the application is
13 approved, upon notice to and approval by the RFA, the applicant
14 may move forward with acquisition or construction of the
15 agricultural improvements. A lender may provide interim
16 financing for the agricultural improvements until the closing of
17 the loan. The principal of the interim financing must be paid
18 with the proceeds of the loan.

19 G. If a change occurs in the information provided by
20 the applicant to the RFA, the applicant shall immediately update
21 and correct that information. Misrepresentation in the
22 application or failure to update any required information is
23 grounds to reject an application, revoke a notice of approval,
24 or refuse to close the loan.

25 Subp. 3. RFA review, notice, appeal.

26 A. The RFA shall accept or reject applications within
27 45 working days of their receipt. If the documentation is not
28 sufficient to make a determination, the RFA may request
29 additional information to establish creditworthiness and
30 eligibility of the applicant.

31 B. The RFA shall accept an application if:

32 (1) the applicant meets all eligibility criteria;

33 (2) the proposed agricultural improvements meet
34 specifications set by statute and rule;

35 (3) the applicant demonstrates an ability to
36 repay the mortgage loan and other obligations, based on the

1 financial information submitted with the application; and
2 (4) the RFA has sufficient funds available to
3 make the loan.

4 C. The RFA shall promptly notify the applicant in
5 writing whether or not the application is approved. If the
6 application is rejected, the notice must state the reasons. For
7 accepted applications, the notice shall delineate any conditions
8 related to the acceptance of the application.

9 D. If the application is rejected, the applicant may
10 petition the executive director for reconsideration. The
11 petition must be in writing and must be sent within 15 working
12 days of the RFA's mailing of its notice of rejection. The
13 petition must state the grounds for the appeal and may include
14 additional relevant information. Within 15 working days of
15 receiving the petition, the executive director shall send a
16 written response to the petitioner upholding or reversing the
17 original decision and giving reasons for the decision.

18 E. After appeal to the executive director, a
19 petitioner may appeal the executive director's decision directly
20 to the RFA board by written notice to the executive director
21 within 15 working days of the executive director's mailing of
22 its notice of rejection. The decision of the board is final.

23 **Subp. 4. Loan administration, enforcement, inspection.**

24 A. The RFA shall perform all tasks and functions
25 customarily performed in administering the loans with the degree
26 of care and diligence usually maintained by agricultural real
27 estate lenders. The RFA has custody and control of all loan
28 documents.

29 B. The RFA shall manage, administer, and enforce the
30 loan, including, without limitation, the right to accelerate the
31 loan on default and to foreclose or otherwise enforce remedies
32 against the borrower.

33 C. At any time during the term of a loan, the RFA or
34 the state legislative auditor may inspect the collateral during
35 normal business hours.

1 1650.0661 LOAN PARTICIPATION.

2 Subpart 1. Borrower eligibility. To be eligible for
3 assistance through a loan participation under the agricultural
4 improvement loan program, an applicant must meet the criteria in
5 items A to F.

6 A. The applicant must be a resident of Minnesota or a
7 domestic family farm corporation as defined in Minnesota
8 Statutes, section 500.24, subdivision 2.

9 B. At least one of the applicants must be the
10 principal operator of the farm upon which the agricultural
11 improvement will be located.

12 C. At least one of the applicants must be actively
13 engaged in farming.

14 D. The applicant must show the ability to repay the
15 loan.

16 E. The applicant's total net worth must not exceed
17 the total net worth established for the basic beginning farmer
18 loan participation program.

19 F. The applicant must not be a current or previous
20 participant in the RFA Restructure II Program.

21 Subp. 2. Lender eligibility.

22 A. A bank, credit union, or savings association
23 chartered by the state or federal government, a subdivision of
24 the Farm Credit System (Agri Bank), the Federal Deposit
25 Insurance Corporation, or an insurance company, fund, or other
26 financial institution doing business as an agricultural lender
27 in Minnesota may apply to the RFA for certification as an
28 approved lender.

29 B. Upon a lender's demonstration of its ability to
30 originate and service agricultural real estate loans, the RFA
31 shall designate the lender as an approved lender for purposes of
32 RFA programs.

33 C. Before offering mortgage loans to the RFA for
34 participation, each approved lender must enter into an RFA
35 master participation agreement. The agreement must specify the
36 relationship between the parties and the terms and conditions of

1 mortgage loans to be made by the lender under the agricultural
2 improvement loan program and offered to the RFA for
3 participation.

4 Subp. 3. Application process and offer of participation.

5 A. All applications under the program must be in
6 forms provided by the RFA. A lender and an applicant must
7 jointly complete and sign an application and prepare all
8 supporting documents identified in the application. Financial
9 statements must be dated within 120 days of the application.

10 B. The applicant shall not begin acquisition or
11 construction of any part of the agricultural improvements before
12 RFA approval of the application. Upon notice to the lender of
13 approval by the RFA, the applicant may move forward with
14 acquisition or construction of the agricultural improvements.

15 C. The lender shall complete the initial review of
16 the proposal and determine the creditworthiness of the applicant
17 and the value of the collateral to be used to secure the loan.
18 If the lender agrees to make a mortgage loan to the applicant,
19 the lender and the applicant shall jointly prepare the
20 application and the required loan documents.

21 D. The lender, as the originator of the mortgage
22 loan, shall present the application and loan documents to the
23 RFA. Presentation of the documents constitutes an offer to sell
24 a participation interest in the loan.

25 E. The nonrefundable application fee as established
26 in Minnesota Statutes, section 41B.043, subdivision 3, must be
27 submitted with the application.

28 F. The loan must be for a maximum term of ten years.
29 The maximum participation is 45 percent of the loan principal or
30 \$100,000, whichever is less. The loan may have a balloon.

31 G. The RFA is restricted to participation in loans
32 that do not exceed 80 percent of the appraised value of the real
33 estate offered for collateral. Additional collateral may be
34 required based on the depreciability and saleability of the
35 collateral and creditworthiness of the applicant.

36 H. If a change occurs in the information provided by

1 the lender to the RFA, the lender shall immediately update and
2 correct that information. Misrepresentation in the application
3 or failure to update any required information is grounds to
4 reject an application, revoke a notice of approval, or refuse to
5 close the loan.

6 Subp. 4. RFA review, notice, appeal.

7 A. Within 30 business days after receipt of a
8 lender's offer, the RFA shall accept or reject the lender's
9 offer to participate in the loan. If the documentation is not
10 sufficient to make a determination, the RFA may request
11 additional information to establish creditworthiness and
12 eligibility of the applicant.

13 B. The RFA shall accept an application if:

14 (1) the applicant meets all eligibility criteria;

15 (2) the applicant demonstrates an ability to
16 repay the mortgage loan and other obligations based on the
17 financial information submitted with the application;

18 (3) the proposed agricultural improvements meet
19 specifications set by statute and rule; and

20 (4) the RFA has sufficient funds available to
21 purchase a participation in the loan.

22 C. The RFA shall promptly notify the lender in
23 writing whether or not the offer is accepted. If the offer is
24 not accepted, the notice must state the reasons.

25 D. If an offer is rejected, either the lender or the
26 applicant may petition for RFA reconsideration. The petition
27 must be in writing and must be sent within 30 days of the date
28 of the RFA notice. The petition must state the grounds for the
29 appeal, and may include additional relevant information. Within
30 15 working days of receiving the petition, the executive
31 director shall send a written response to the petitioner
32 upholding or reversing the original decision and giving the
33 reasons for the decision.

34 E. After administrative appeal, a petitioner may
35 appeal the executive director decision directly to the RFA board
36 by written notice to the director within 15 days of receiving

1 the director's reconsideration decision. The decision of the
2 board is final.

3 Subp. 5. Loan closing, purchase of participation, and loan
4 management.

5 A. Upon receiving notification of authority
6 acceptance, the lender shall close the mortgage loan. The
7 lender must record and cross-reference all documents relating to
8 the loan, including the RFA note and loan agreement. The lender
9 must notify the RFA that the loan is closed and recorded by
10 signing the lender certification section and returning the
11 original RFA application and copies of the recorded documents
12 and final title opinion to the RFA.

13 B. Within ten business days of receipt of written
14 notice under item A that the mortgage loan is closed and
15 recorded, the RFA shall initiate payment to the lender for the
16 RFA's participation interest in the loan.

17 C. Within five business days after the receipt of
18 finally collected funds, the lender shall complete and return a
19 participation certificate provided by the RFA witnessing the
20 RFA's undivided pro rata interest in the agricultural
21 improvement mortgage loan.

22 D. The lender shall manage the loan, including the
23 RFA participation interest, with the degree of care and
24 diligence usually maintained by agricultural real estate
25 lenders. The lender shall have custody and control of all loan
26 documents except the original application, which must be kept by
27 the RFA. The lender shall manage, administer, and enforce the
28 loan documents in the lender's own name and also on behalf of
29 itself and the RFA, including, without limitation, the right to
30 accelerate a mortgage loan on default and to foreclose or
31 otherwise enforce remedies against the borrower.

32 E. The lender shall promptly notify the RFA of
33 occurrences that substantially affect the security, collection,
34 or enforcement of a mortgage loan.

35 F. The lender shall obtain the prior written consent
36 of the borrower and the RFA before:

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

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

7 (3) modifying or waiving a term of the notes or
8 related instruments evidencing or securing the first mortgage
9 loan.

10 Subp. 6. Participation repurchase.

11 A. An originating lender is under no obligation to
12 repurchase RFA participation interest in an agricultural
13 improvement mortgage loan except as provided in this subpart.

14 B. A lender may, at its option and upon written
15 approval by the RFA, repurchase RFA participation interest at
16 any time.

17 C. A lender shall repurchase the RFA participation
18 interest when the first mortgage loan is paid in full or
19 refinanced.

20 D. A lender shall repurchase the RFA participation
21 interest if the lender has made misrepresentations or fails to
22 perform its obligations under the participation agreement, has
23 received written notice from the RFA, and has not corrected the
24 representation or performance under the notice.

25 E. A repurchase must be for the principal balance of
26 the RFA participation plus accrued interest and any penalties or
27 costs incurred by the RFA to secure repurchase.

28 Subp. 7. Review of loan and collateral.

29 A. At any time during the term of an agricultural
30 improvement mortgage loan, the RFA or the state legislative
31 auditor may inspect the books, records, documents, and
32 accounting practices of the lender relative to the loan to
33 determine compliance with the terms and conditions of the loan
34 and the participation agreement. An inspection must be made
35 during the lender's normal business hours. The lender shall
36 allow the RFA to copy any documents relating to the mortgage

1 loan and the RFA participation.

2 B. The lender and the RFA may physically inspect the
3 collateral securing the mortgage loan upon notice to the
4 borrower. An inspection must be conducted at a reasonable time.

5 REPEALER. Minnesota Rules, parts 1650.0600; 1650.0610;
6 1650.0620; 1650.0630; 1650.0640; 1650.0650; and 1650.0660, are
7 repealed.