**01-001 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY**

**Chapter 34: RULES FOR OPERATION OF DAIRY IMPROVEMENT FUND**

**Summary:** This chapter establishes rules governing the expenditure of funds available in accordance with Title 7 M.R.S., section 2910-B, Title 10 M.R.S., section 1023-P and Title 8 M.R.S., section 1036, subsection 2-A, paragraph M.

**Section I. Objectives**

The Dairy Improvement Fund (DIF) is a revolving loan program intended to assist dairy farmers in making capital improvements to maintain and enhance the viability of their farms and to pay the administrative costs of handling loan applications and servicing and administering the fund and loans made from the fund.

A. DIF will operate in accordance with the following principal objectives:

1. Provide financial support for sound business propositions;

2. Offer funds at reasonable rates and terms;

3. Encourage private sector participation;

**Section II. Definitions**

A. **Dairy enterprise**: The term "dairy enterprise" shall mean a person, persons or business, located in Maine, and engaged in the commercial production of cow milk or cow milk products.

B. **Borrower**: The term "borrower" shall mean the applicant and any related or affiliated individual or entity which shares assets, such as land, machinery and equipment or other property, with the applicant in connection with the applicant's dairy enterprise.

C. **New and Innovative**: The term "new and innovative," shall mean a method, process, machine or structure not previously developed, or if previously developed, not commonly utilized for the support of dairy agricultural production in Maine.

D. **Private Funds**: The term "private funds" shall mean equity in the form of cash and/or property of the applicant, including cash from loans subordinated to the DIF loan secured by assets not related to the project, or the value of services to be contributed to the project by the applicant, as determined and to be approved in advance by the Department.

E. **Processing**: The term "processing" shall mean changing the form of a dairy product through the application of labor or materials or both.

F. **Project**: The term "project" shall mean the use to which the loan proceeds are to be put, as approved by the Commissioner.

**Section III. Loan Program**

A. **Description and Purpose**

The Loan Program is designed to help finance eligible projects, to be undertaken by applicants engaged in a dairy enterprise.

B. **Eligible Uses of Loan Proceeds**

1. Funds may be used for the design, construction or improvement of milking parlors, cow barns and structures, silos, grain bins, feed sheds, or for the construction or renovation of buildings, or equipment, located in the State of Maine and used in connection with a dairy enterprise.

This includes, but is not limited to:

a. the purchase of new dairy production or processing equipment, or

b. the expansion of an existing dairy enterprise; purchase and remodeling of existing buildings; building construction, additions or renovations; leasehold improvements; purchase and installation of machinery and equipment (both traditional, and new and innovative).

2. Funds may be used for implementation of design, construction or improvement of approved equipment and building purchases.

C. **Ineligible Uses of Loan Proceeds**

Proceeds may not be used for working capital unrelated to project implementation, or to finance or refinance projects commenced, costs incurred, or expenses paid prior to the date of the submission of a completed application (and such costs and expenses shall not be considered eligible project costs for determining the matching financing or private funds requirements). However, such requirement may be waived for good cause, as determined by the Commissioner in his or her discretion, upon written request for a waiver made at the time of the submission of a letter requesting eligibility determination. Any waiver, to be effective, must be in writing. If a waiver is granted, the Commissioner, in his or her discretion, shall determine which costs incurred or expenses paid prior to the written request for the waiver may be reimbursable to the owner from loan proceeds for costs incurred or expenses paid prior to the written request for the waiver and if any such costs and expenses may be considered eligible project costs for determining the matching financing or private funds requirements.

D. **Special Provisions Applicable to Loans for Construction, Renovation, Additions and Remodeling**

1. Costs of construction may be an eligible use of loan proceeds, as set forth above, and proceeds of DIF loans may be used to close out financing related to the construction of projects. However, for DIF loans involving construction, the Borrower must comply with the then current construction lending procedures developed by the Department, which may include requirements for preconstruction budgets, interim invoices and lien waivers, project inspections, limits on numbers or amounts of disbursements, and other relevant terms and conditions.

2. The project shall be considered complete when the Commissioner receives official acknowledgement of project completion from applicant or other construction lending sources, stating that the construction completion is verified.

E. **Loan Rates, Terms, Amounts, and Fees**

1. The interest rate charged shall be a fixed rate of 1%.

2. The loan term shall not exceed 30 years and shall reflect the useful life of the assets being financed.

3. DIF loan proceeds may be used to fund not more than 75% of total project costs, where the total project cost exceeds $100,000, and may be used to fund no more than 90% of total project costs where the total project cost is $100,000 or less.

4. No DIF loan may be approved unless the applicant has demonstrated a commitment of private funds of at least 10% of the total eligible project costs, except that, in the case of cooperative projects by two or more dairy enterprises, such demonstrated commitment of private funds shall total at least 10% of the total project cost.

5. The maximum principal amount of any one DIF loan to any applicant may not exceed $250,000.

6. One percent of the DIF loan amount shall be paid to the Department at closing as an administrative fee on any loan exceeding $100,000.

7. The applicant is responsible for all legal expenses and any other out-of-pocket expenses of the Department related to the Borrower's project, and the DIF loan.

8. Payments for the DIF loan shall begin no later than 24 months following the loan closing of the project. Payments received in advance of this will not be penalized. Interest begins accruing at date of closing, but is not due until such time as repayment begins.

F. **Eligible Applicants**

1. Any individual or organization engaged in a dairy enterprise.

2. For applications requesting more than $100,000, an eligibility committee appointed by the Commissioner will recommend determination of eligibility to the Department. Members of the Eligibility Committee will serve until replaced. The eligibility committee will consist of representation from the following industry sectors:

a. Representative from the Bureau of Agriculture, Food and Rural Resources

b. Representative from University of Maine/University of Maine Cooperative Extension

c. Representative of the US Department of Agriculture

d. Representative of a lending institution that finances agricultural loans

e. Representative of a general farm organization

G. **Required Contents (Loan Applications)**

1. For loans for tractor or field equipment purchases only, regardless of size, loan applications shall contain the following:

a. identification of the proposed amount of the loan, repayment term and description of the collateral;

b. if applicable, copies of letters of commitment to the applicant from other sources of financing;

c. information detailing the nature of the applicant's business, and the exact uses of all funds used for the project;

d. historical business financial statements for the previous year, for the applicant and any and all guarantors, including balance sheets and profit and loss statements. Income tax returns may be substituted for profit and loss statements. The balance sheet must list current balances, rates, payments, maturities and security of all business debts;

e. pro forma profit and loss statement for the first year after loan closing;

f. production history for the previous year and a business or marketing plan for at least the year in which application is made;

2. For loans (other than for tractors or field equipment purchases) under $50,000, loan applications shall contain the following:

a. identification of the proposed amount of the loan, repayment term and description of the collateral;

b. if applicable, copies of letters of commitment to the applicant from other sources of financing;

c. information detailing the nature of the applicant's business, and the exact uses of all funds used for the project;

d. historical business financial statements for the previous year, for the applicant and any and all guarantors, including balance sheets and profit and loss statements. Income tax returns may be substituted for profit and loss statements. The balance sheet must list current balances, rates, payments, maturities and security of all business debts;

e. pro forma profit and loss statement for the first year after loan closing;

f. production history for the previous year and a business or marketing plan for at least the year in which application is made;

3. For loans (other than for tractors or field equipment purchases) over $50,000, loan applications shall contain the following:

a. identification of the proposed amount of the loan, repayment term and description of the collateral;

b. if applicable, copies of letters of commitment to the applicant from other sources of financing;

c. information detailing the nature of the applicant's business, and the exact uses of all funds used for the project;

d. historical business financial statements for the previous three years, for the applicant and any and all guarantors, including balance sheets and profit and loss statements. Income tax returns may be substituted for profit and loss statements. The balance sheet must list current balances, rates, payments, maturities and security of all business debts;

e. pro forma profit and loss statement for the first year after loan closing;

f. production history for the previous three years and a business or marketing plan for at least the year in which application is made;

g. preliminary plans and specifications, and estimates of project costs from contractors and suppliers.

4. **Supplemental Information or Materials**

The Commissioner may require appraisals of collateral, credit reports, copies of leases or purchase agreements, or any other information or certifications, including reports from experts, from the borrower, other lenders or other parties deemed to be necessary for thorough review of the application.

H. **Criteria and Considerations (Loan Applications)**

1. No application will be approved unless the Commissioner determines that the application is complete and that information sufficient to make an informed decision on the application has been received.

2. No application will be approved unless the Commissioner determines that there is a reasonable prospect that the applicant will repay the loan according to its terms.

3. In reviewing loan applications, the Commissioner will consider the following:

a. the economic feasibility of the business as evidenced by the applicant's present and past financial position and the reasonableness of the proposal and financial projections for the future;

b. whether the applicant and guarantors have satisfactory credit histories and adequate and relevant management experience;

c. whether the applicant has sufficient capital and other resources to conduct business as planned;

d. the adequacy of the security offered for the loan;

e. the extent to which the risk of financial loss is shared by others;

f. the technical feasibility of the project.

I. **Loan Assumptions**

1. **Eligibility**

DIF loans may be assumed provided the assuming party demonstrates:

a. that it is an eligible dairy enterprise under the DIF program, including but not limited to meeting all applicable credit and other requirements of this rule, and the business, facility or property being acquired in connection with the assumption will continue to be operated or used for the purpose for which the loan was initially granted, or for other eligible purposes approved, in advance, by the Commissioner; and

b. without the assumption, the assumption applicant would not be able to acquire the business, facility or property; and,

c. the total purchase price for the business, facility, or property does not exceed the fair market value of such business, facility, or property.

2. **Procedure**

Assumptions will be treated in the same manner as applications for DIF loans. An assumption applicant must file an application with the Department, with information required, and such additional information as may be required to demonstrate the applicant meets the additional requirements.

J. **Commitment or Rejection (Loan Applications)**

1. Upon approval of an application, the Commissioner will execute a letter of commitment setting forth the terms and conditions upon which the loan will be made.

2. No commitment shall become effective until the applicant has accepted the terms and conditions of the commitment letter.

3. In the event the application is rejected, the Commissioner will notify the applicant promptly of the reasons for the rejection.

K. **Collateral**

Repayment of a loan shall be secured by the following:

1. a mortgage or security interest in real estate, building and/or personal property of the business, subject only to such other encumbrances, including priority, junior or coordinate liens, as the Commissioner may approve;

2. such other collateral as the Commissioner may require, including without limitation, assignments or pledges of leases, contracts, stock certificates and other instruments, personal or corporate guarantees, insurance, letters of credit and surety bonds;

3. loans may, at the discretion of the Commissioner, be secured by collateral valued at less than the amount of the loan, provided that the applicant, its principals and any guarantors, are of good character and have good credit histories;

4. real estate or stationary machinery or equipment constituting a significant portion of collateral for repayment of a loan shall be located within the State. Mobile machinery or equipment, constituting a significant portion of collateral for repayment of a loan, shall be registered with, and taxed by, the State or municipal authorities. Other types of collateral constituting a significant portion of collateral for repayment of a loan shall be owned by, or provided for, the benefit of a person or business association with a place of business in the State.

L. **Loan Covenants**

The covenants and requirements of loans shall be established by the Commissioner in accordance with prudent lending practices. At minimum, the documents should ordinarily require the applicant to:

1. make periodic payments of principal and interest beginning 24 months after loan guarantee;

2. make any lease payments;

3. maintain adequate insurance on collateral, and maintain books and records on the business;

4. maintain and repair the collateral;

5. pay any taxes or governmental charges assessed against the collateral and comply with all applicable governmental laws and regulations;

6. keep the collateral free of liens and encumbrances except as may be expressly accepted by the Commissioner;

7. provide periodic financial reports;

8. repay advances necessary to protect the collateral and all expenses of protecting or enforcing the rights of the Department.

The Commissioner may require such additional covenants and requirements as may be necessary, prudent or desirable, including, but not limited to, crop or other applicable insurance, and reasonable environmental covenants. The applicant will be required to sign a loan agreement containing such covenants and adhere to the terms thereof.

M. **Loan Documentation**

The applicant will be required to sign such documentation as the Commissioner deems necessary to ensure that the applicant and any guarantors have binding, enforceable obligations to repay the loan and that the Department has such valid and enforceable mortgages, security interests and assignments as necessary to protect the interest of the Department.

N. **Default**

The Loan documentation will outline events and/or conditions, which create a default situation. Upon default, the Department may request that the Attorney General of the State of Maine or such attorneys approved by the Attorney General of the State of Maine take such action as may be prudent, including repossessing and liquidating or foreclosing on collateral.

**Section V. Administration**

A. Commissioner of the Department of Agriculture, Conservation and Forestry. The Commissioner shall:

1. provide overall supervision and policy oversight to the program;

2. make final decisions on participation by the DIF in loans;

3. assign employees of the Department of Agriculture, Conservation and Forestry and/or contract for services to advise and assist potential applicants in applying for funds and to work with other lenders in packaging loan proposals;

4. assign employees of the Department of Agriculture, Conservation and Forestry and/or contract for services to perform application review/loan analysis and recommend loan approval or rejection;

5. enter into agreements with the Finance Authority of Maine or other qualified individuals or organizations for services to include, but not limited to, financial record keeping, to facilitate collection of funds owed to the DIF, and to develop appropriate loan forms, to process loan applications, to underwrite loans, to close and service loans.

B. **Credit Committee**

1. **Purpose**

A Credit Committee shall be established for the special task of providing financial analysis of proposals seeking over $50,000 for funding through the Loan Program. The Credit Committee shall review all financial aspects of such proposal, as well as other information about each such project, and evaluate each project from a credit perspective. The Credit Committee will report its findings and recommendations on individual proposals directly to the Commissioner.

2. **Membership**

The Credit Committee shall consist of seven (7) members each of whom has commercial or agricultural lending experience, appointed by the Commissioner. The Credit Committee shall have membership, which is diverse, both geographically and agriculturally.

STATUTORY AUTHORITY:

 7 M.R.S. §2910-B; 10 M.R.S. §1023-P; 8 M.R.S. §1036 sub-§2-A ¶M

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