# **94-457 FINANCE AUTHORITY OF MAINE**

**Chapter 317: NUTRIENT MANAGEMENT LOAN PROGRAM**

**Summary**: This rule establishes the procedures, standards and fees applicable to Borrowers applying for loans from the Authority's Program of direct loans for the finance of the purchase of equipment and construction of facilities that will help reduce non-point source pollution from farm and agricultural operations in accordance with Chapter 565 of the Rules of the Department of Agriculture, Food and Rural Resources, from a portion of the Clean Water State Revolving Fund, administered by the Maine Municipal Bond Bank and the Maine Department of Environmental Protection.

**SECTION 1. DEFINITIONS**

A. **Reference to terms defined elsewhere**. Terms used in this rule which are not defined herein shall have the meaning ascribed to them in Chapter 565 of the Rules of the Department of Agriculture, Food and Rural Resources, or if not there defined, in Title VII of the Federal Water Pollution Control Act, 33 U.S.C. §1251 *et seq*., and finally, if not there defined, in the Finance Authority of Maine Act, 10 M.R.S.A. Section 961 *et seq*., unless clearly specified otherwise or unless the context clearly indicates otherwise.

B. **Defined Terms**

1) "Borrower" means a person or entity that meets the eligibility requirements set forth in Section 3 of this rule, and includes a prospective Borrower where the context requires. If the Borrower is a real estate holding company or is a subsidiary or affiliate of or is related to an entity with 50% or more common ownership, "Borrower" shall include the parent, affiliated or related entity when determining eligibility.

2) “Chief Executive Officer” means the Chief Executive Officer of the Authority or someone acting under the supervisory control of the Chief Executive Officer.

3) "Commissioner" means the Commissioner of the Department, or a person acting under the supervisory control of the Commissioner of the Department.

4) “Department” shall mean the State of Maine Department of Agriculture, Food and Rural Resources.

5) "Program" means the Nutrient Management Loan Program.

6) "Project" means the purchase of equipment and/or construction of facilities in connection with the following agricultural non-point source abatement projects undertaken in the State:

a) Heavy Use Area Protection – Natural Resources Conservation Service (NRCS) Code 561

b) Roof Runoff Structure – NRCS Code 558

c) Filter Strip - NRCS Code 393

d) Vegetated Treatment Area – NRCS Code 635

e) Diversion – NRCS Code 362

f) Grassed Waterway – NRCS Code 412

g) Water and Sediment Control Basin – NRCS Code 638

h) Critical Area Planting – NRCS Code 342

i) Composting Facility – NRCS Code 317

j) Irrigation Reservoir – NRCS Code 436 – only if improving or maintaining water quality

k) Irrigation System, Micro Irrigation – NRCS Code 441

l) Irrigation System, Sprinkler – NRCS Code 442- only if moving to a more efficient irrigation system

m) Pumping Plant – NRCS Code 533 – only if used to supply livestock fenced from stream and riparian buffer or for low volume irrigation

n) Irrigation Pipeline – NRCS Code 430 – only if improving or maintaining water quality

o) Structure for Water Control – NRCS Code 587

p) Anaerobic Digester, Controlled Temperature – NRCS Code 366

q) Waste Storage Facility – NRCS Code 313

r) Waste Transfer – NRCS Code 634

s) Waste Treatment – NRCS Code 629

t) Other water quality projects similar in nature or purpose to those listed above, provided prior approval is obtained from the MEDEP

7) "State" means the State of Maine.

**SECTION 2. PROGRAM IMPLEMENTATION AND ASSISTANCE PROVIDED**

The Program shall be administered by and is delegated to the Chief Executive Officer. The Program may provide financial assistance in the form of a direct loan in the amount actually necessary to complete a Project, up to a maximum of $450,000, to an eligible Borrower on such terms and conditions as the Authority may require or approve. Assistance under this Program may be combined, to the extent possible, with assistance under other Department or Authority programs, provided however, that funds from the Clean Water State Revolving Fund may not be commingled with other funds.

**SECTION 3. ELIGIBILITY**

A. To be eligible for financial assistance under the Program, a Borrower must demonstrate to the Department, and the Department must certify to the Authority, that:

1) the Project is eligible;

2) the Borrower is not a Concentrated Animal Feeding Operation (CAFO) under EPA regulations;

3) the Project has been designed or approved by a licensed engineer or qualified member of the Natural Resources Conservation Service (NRCS), if it relates to manure or milk house waste containment facilities, or by a qualified member of the NRCS, personnel of the Department or other qualified professional, as to other projects, and in all cases meets NRCS technical specifications;

4) the design, location and installation of all facilities to be financed is compliant with applicable State and local codes and regulations, and if a point source solution is a necessary part of the Project, the State Environmental Review Process;

5) any equipment purchased pursuant to the Program is proposed to be located and used only in the State and any facilities constructed with Program funds are for agricultural Borrowers whose primary place of business is within the State.

6) the Project has been completed in accordance with approved design and specifications.

B. To be eligible for financial assistance under the Program a Borrower must also demonstrate to the Authority each of the following:

1) A reasonable likelihood that the Borrower will be able to repay the loan.

2) Any financial assistance will be used only for an eligible Project.

C. In accordance with Section 4, below, a Borrower shall submit an application prior to commencement of the Project. A Borrower may obtain a direct loan for a project, which has already been completed only if the Borrower provides satisfactory evidence of compliance with each of the following criteria:

1) The Project was completed no more than twelve months previous to the date the complete application is received by the Authority.

2) The loan is made to the same individual or entity, who operated the Project at the time the Project was undertaken.

3) The loan will assist in maintaining a viable business.

D. The terms of a loan made under this section shall be set in accordance with Section 6 hereof.

**SECTION 4. APPLICATION PROCEDURE AND CONTENT**

Each Borrower shall submit a Program application, and evidence that a copy has been delivered to the Commissioner, on such forms and with such attachments as the Authority may require consistent with the purposes of the Program and this Rule. The Authority will review each application for completeness and eligibility. Applications which are not substantially complete may be deemed not received until completed. The Authority shall determine when an application is received, which determination shall be final. An application shall contain, at a minimum, such general information identifying and describing the Borrower, the proposed Project, and the proposed financing of the Project as specified in the application form and as otherwise requested by the Authority.

**SECTION 5. CRITERIA AND CONSIDERATIONS**

A. No application will be approved unless the Commissioner has certified to the Authority that Project for which the loan is sought is an eligible Project.

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

C. No application will be approved unless the applicant demonstrates to the Authority the existence of a viable source of repayment for the loan, including, without limitation, the ability to repay the loan from cash flow from operations, liquidation of collateral, or other sources.

D. The Authority shall rely upon information provided to it by the Department regarding whether a Project is eligible.

**SECTION 6. TERMS AND CONDITIONS; PREMIUMS, FEES AND OTHER CHARGES**

A. Periodic payments of principal, together with interest at the annual rate of 2%, shall be established in accordance with a Borrower's individual needs. In all cases the first principal payment shall be required to be made within one year of Project completion, except loans under §3(C), in which case the first principal payment shall be required to be made within 1 (one) year of loan closing.

B. Direct loans shall not exceed terms of 20 (twenty) years or the useful life of the assets financed, whichever is less.

C. Additional requirements and covenants of each loan may be established by the Authority, provided that each Borrower shall at a minimum be required to maintain and repair collateral, maintain adequate insurance covering public liability, hazard, and flood insurance if Borrower is located in a flood plain, and comply with all applicable federal, State and local laws, regulations, ordinances and orders.

D. The Borrower shall pay a loan origination fee to the Authority equal to 2% of the loan amount at closing and shall be responsible for the Authority's out of pocket costs and expenses of closing, administering and collecting the loan. CLOSING COSTS, BUT NOT LOAN ORIGINATION OR LOAN ADMINSTRATION FEES, MAY BE FINANCED. Commencing on the first anniversary date of the date of the loan and annually on the same date thereafter, the Borrower shall pay to the Authority an annual loan administration fee in an amount equal to 1% of the outstanding principal balance of the loan remaining due on each such anniversary date.

E. Any loan made pursuant to this Program may be assumed by a purchaser of the premises on which the Project is located, provided that the loan may only be assumed by a for-profit entity, which would be eligible for a loan on the same terms and conditions as the original Borrower. The eligibility of any such assuming entity shall be determined in the discretion of the Authority.

F. All Project work must be completed by or under the direction of a person approved by the Department (and, if required, licensed under applicable law), provided however that the Department, the Authority and each of their agents and employees shall have no liability, and do not and shall not make any representations or warranties (express or implied), with respect to any Project, including without limitation, liability for defective design, defective construction, inadequate financing to complete the Project or the Project’s fitness for any purpose. The Department shall require evidence and certification from the Borrower of compliance with these conditions, and provide the same to the Authority.

**SECTION 7. COLLATERAL**

A. Repayment of any loan pursuant to the Program shall be secured by such collateral as the Authority may require, including without limitation, a mortgage or security interest in real estate, buildings or personal property of the business entity, subject only to such other encumbrances as the Authority may approve, assignment or pledges of leases, and personal or corporate guarantees. Personal guarantees of the principals shall be required unless compelling reasons are presented justifying not requiring a guarantee.

B. Loans may, at the discretion of the Authority, be secured by collateral valued for collateral purposes at less than the amount of the loan, provided that other viable sources of repayment exist.

C. 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, including vessels, constituting a significant portion of collateral for repayment of the loan shall be registered with and taxed by the State or municipal authorities, if the State or municipal authorities register or tax machinery or equipment of a type similar to the collateral, and shall be stored or berthed in the State when not in use. The Borrower must covenant to locate and use the equipment purchased with loan proceeds only in the State for the life of the loan.

**SECTION 8. COMMITMENT; REJECTION**

A. Upon approval of a direct loan, a commitment will be issued by the Authority setting forth the terms and conditions upon which the loan will be extended.

B. In the event the Authority rejects any application, the Authority will promptly send the applicant notice containing reasons for the rejection.

**SECTION 9. APPEAL TO THE MEMBERS**

In the event that an application is rejected by the Chief Executive Officer, the applicant shall have the right to appeal the decision of the Chief Executive Officer to the members, provided that such appeal shall not affect processing of other applications received prior to the notice of appeal. Notice of the appeal, together with a statement of the reasons why the Chief Executive Officer's decision should be reversed or modified, shall be given to the Chief Executive Officer in writing within 20 days after the date the Chief Executive Officer mails the notice of rejection to the applicant. The appeal shall be heard at a meeting of the members. The applicant must be present to support the appeal. The appeal shall be based on the record before the Chief Executive Officer on the date of the rejection. The decision of the Chief Executive Officer shall be final unless the members determine that the rejection by the Chief Executive Officer was arbitrary, capricious or an abuse of discretion, in which event the members may overturn or modify the decision of the Chief Executive Officer and may direct the Chief Executive Officer to take further action with respect to the application. Priority of any application with respect to which the Chief Executive Officer's rejection has been overturned or modified shall be determined as of the date and time of receipt of the notice of appeal.

**SECTION 10. WAIVER OF RULE**

The Chief Executive Officer may waive any requirement of this rule, except to the extent that the requirement is mandated by the Act, other applicable law or by the terms imposed on the Clean Water State Revolving Fund by the Maine Municipal Bond Bank or Maine Department of Environmental Protection, in cases where the deviation from the rule is insubstantial and is not contrary to the purposes of the Program.

STATUTORY AUTHORITY: 10 M.R.S.A. §969-A(14)

EFFECTIVE DATE:

June 21, 1999 (EMERGENCY - expires September 18, 1999)

October 23, 1999

AMENDED:

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APAO WORD VERSION CONVERSION (IF NEEDED) AND ACCESSIBILITY CHECK: July 17, 2025