

AGRICULTURAL PROCESSING REVENUE BOND

CHAPTER 1

Section 1. Purpose.

(a) These rules are adopted in order to implement W.S. 9-12-109 (b), which allows the Wyoming Business Council to issue revenue bonds as specified for agriculture processing projects; specifying that municipal, county, and joint powers board industrial development projects and purposes include agricultural and agricultural-related projects. The rules provide for a method of application, review and recommendation, limiting bond eligibility, and hearing process.

(b) Language in this chapter applies to all chapters in this program unless otherwise specified.

Section 2. Authority. Authority for the promulgation of these rules is granted in W.S. 9-12-109.

Section 3. Definitions.

(a) “Applicant” means all existing or proposed businesses applying for a bond allocation;

(b) “Board of Directors” means the Board of Directors of the Council;

(c) “Bond Counsel” means an attorney or a firm of attorneys with expertise in bonding of projects;

(d) “Borrower” means the business which applies for, commits to, and is responsible for repayment of funds provided under this program;

(e) “Business” means any existing enterprise, incorporated in the state, which employs people within the state, provides services within the state, uses resources within the state, or otherwise adds economic value to goods, services, or resources within the state, and includes farm and ranch operations;

(f) “Cash or cash equivalent” means liquid assets including savings, checking and money market accounts, CDs, stocks, bonds, or cash value life insurance or similar assets. Equity in real estate holdings and other fixed assets is not to be considered liquid assets;

(g) “Commercial Lender” means commercial institutions that loan money, including banks, credit unions, mutual savings banks, savings and loan associations, stock savings banks, or trust companies;

(h) “Council” means the Wyoming Business Council;

- (i) “Council staff” means the staff of the Wyoming Business Council;
- (j) “Financial records” means an applicant’s financial statements, balance sheets, income statements, tax returns, or any other financial records deemed necessary for review;
- (k) “Land development loan” means an extension of credit for the purpose of improving unimproved real property prior to the erection of structures. The improvement of unimproved real property may include the laying or placement of sewers, water pipes, utility cables, streets, and other infrastructure necessary for future development.
- (l) “Issuing Authority” means the state agency responsible for issuing the bond allocation;
- (m) “Owner” means an individual/entity possessing an interest in the applicant’s business, at or more than twenty percent (20%) or a guaranteeing entity;
- (n) “Parent Company” means an entity possessing an interest in the applicant’s business, at or more than ten percent (10%) or a guaranteeing entity;
- (o) “Project” means any land, building, pollution control facility or other improvement and all necessary and appurtenant real and personal properties, whether or not in existence, suitable for manufacturing, industrial, commercial or business enterprises, for manufacturing, processing or assembling agricultural or agricultural-related products.
- (p) “Recipient” means a proposed or existing enterprise that has been awarded funds under the Agricultural Processing Revenue Bond Program;
- (q) “Renovation” means construction or reconstruction-type work on a building including: façade, roof, exterior wall assembly, foundation, windows, doors, cornice treatment, awnings and canopies;
- (r) “Servicing agent” means the qualified entity contracted by the Council to service the loans in the portfolio and to provide administrative services for the program;
- (s) “State Loan and Investment Board” means the approving body of a proposed bond issuance comprised of the State of Wyoming’s Governor, Secretary of State, Auditor, Treasurer, and Superintendent of Public Instruction.

Section 4. Eligible Applicants. Any existing or proposed business entity is eligible. All applications shall be reviewed by Council Staff and a recommendation shall be made to the Board of Directors, with final approval by the State Loan and Investment Board, as defined by legislation. The Council shall not consider incomplete applications.

Section 5. Default Application Information.

(a) All applications for bond issuances shall be submitted on the required forms. Applications will be accepted at any time and scheduled for staff review and recommendation by the Board of Directors, and final approval by the State Loan and Investment Board on a first-come, first-served basis;

(b) One (1) copy of the application shall be submitted electronically via email or physically to the Council offices located at:

Wyoming Business Council
214 West 15th Street
Cheyenne, WY 82002

(c) Every application for the proposed project shall include, unless waived by the Council:

(i) The name, title and address of the person to whom notices should be sent and from whom information can be obtained;

(ii) Five (5) years of financial statements (of the existing business and parent company, if applicable, receiving the bond issuance), plus current financial statements;

(iii) Pro-forma financial projections (income statement, balance sheet, and statement of cash flows) of the existing or proposed business, and parent company, if applicable, receiving the bond issuance for three (3) years;

(iv) A certificate of incorporation of the existing or proposed business receiving the bond issuance;

(v) A certificate of good standing from the Wyoming Secretary of State's office;

(vi) By-laws of the borrower and parent company, if applicable, or a copy of the Borrower's operating agreement demonstrating borrowing authority of the existing or proposed business;

(vii) The business plan of the existing or proposed business;

(viii) An itemized list of the proposed collateral and collateral value;

(ix) A detailed proposal explaining how the bond proceeds will be utilized;

(x) Certification that the business will allow an examination of its books and records at the request of the Council;

(xi) Certification that the business will report jobs, wages, and capital expenses at the request of the Council;

- (xii) An identification of the issuing authority;
- (xiii) The date of adoption of the initial intent to apply for bond allocation;
- (xiv) The name and address of bond counsel and a letter from bond counsel confirming that it has been retained by the applicant for purposes of advising applicant with respect to the proposed project and any bond issuance;
- (xv) The amount of the general allocation pool the applicant is requesting;
- (xvi) A statement summarizing the benefit of the project to the state or local community, the impact of the project on other businesses in the state or local community and the ability of the project to meet the objectives set forth in W.S. 15-1-701 (b);
- (xvii) A proposed starting date and estimated completion date of construction of the project;
- (xviii) Information relating to the feasibility of the proposed project, showing that the project will generate revenues and cash flow sufficient to make payments to pay debt service on the bonds;
- (xix) The amount, source, type and terms and conditions of all capital that will be used for the project in addition to bond financing;
- (xx) Actions that have been taken in anticipation of the bond issue and the anticipated date of bond issuance;
- (xxi) An explanation of the impact on the project if the total allocation is not received; and
- (xxii) A statement of any significant risks to the project or the project's financing and any mitigating factors to those risks.

Section 6. Default Attachments to Application. A letter shall be attached from bond counsel for the issuing authority, with supporting citations to state law, the act, and any federal regulations, stating that the bonds are eligible for an allocation and that the issuing authority is authorized under the laws and constitution of the state to issue such bonds. The letter shall be signed by the attorney authoring the letter and shall explain the specific basis for bond counsel's opinion that the bonds qualify for an allocation from the state. If applicable, the letter shall also set forth and explain all calculations for funding the portion of the project that qualifies for an allocation, if the entire project does not qualify.

Section 7. Default Approval Process and Approval.

(a) Steps of process. The steps necessary to obtain approval of a bond allocation under the agricultural processing revenue bond program are as follows:

(i) The applicant shall first submit a completed application as referenced in Section 5(c) of this Chapter to Council staff for review.

(ii) After receiving a complete application, the council staff shall review the application for completeness. Once Council staff ascertain that the application is complete, council staff shall notify members of the State Loan and Investment Board immediately and provide one (1) copy of the completed application to each member of the State Loan and Investment Board.

(iii) Council staff shall structure the bond with initial pricing guidance. This practice will determine breakeven points in the proposed project, including, but not limited to, the bond term, yield rate, and collateral value. The initial pricing guidance does not indicate the final pricing structure and grading of the bond upon issuance in the secondary market.

(iv) Council staff shall present the proposed project to the Board of Directors at its next scheduled meeting. A special meeting of the Board of Directors may be called if necessary. The Board of Directors shall forward its recommendation to the State Loan and Investment Board at the next available meeting for its final approval, or rejection, of the bond allocation request.

(v) If the State Loan and Investment Board grants final approval of the allocation request, the project shall return to the Council to work with bond-rating agencies, investment banks, and other necessary parties to issue the bonds on the public market for investment.

Section 8. Attorney General Opinion. No bond allocation shall be made until the Attorney General's Office provides a written opinion certifying the legality of the issuance and all documents connected therewith.

Section 9. Post Bond Sale. Council staff shall maintain an annual report including, but not limited to, the project's projected job creation, wages, capital expenditures, financial analysis and trends, customer and supplier concentration(s).

Section 10. Confidentiality. Information and any other documentation submitted in support of a request for bond allocation pursuant to the agricultural processing revenue bond program, once submitted to a state agency or official, shall be governed by the Public Records Act, W.S. 16-4-201 through 205, as amended. Upon receipt of a request to disclose an application for a loan or loan guarantee or supporting information, the Council shall make a determination as to whether the information must be disclosed pursuant to that Act. The Council, before it makes said determination or discloses an applicant's information, shall inform the applicant of its determination. Should the applicant object to the disclosure of any record the Council has determined must be disclosed under the Act, the applicant shall justify its request to withhold records under the Act or any other authority to the Council in writing. In accordance

with the Act, the Council shall not disclose said information if disclosure is likely to result in the impairment of the government's future ability to obtain necessary information and/or result in substantial harm to the competitive position of the recipient that provided the information to the Council.