

ARTICLE 12:22

AGRIBUSINESS BONDING AND LENDING PROGRAMS

Chapter

- 12:22:01 General provisions.
- 12:22:02 Value added agribusiness relending program, Repealed.
- 12:22:03 Value-added agriculture subfund, Repealed.

CHAPTER 12:22:01

GENERAL PROVISIONS

Section

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12:22:01:01. Definitions. Terms defined in SDCL ~~1-16E-3~~ 1-16B-1 have the same meaning when used in this article. In addition, terms used in this article mean:

~~— (1) "Authority," the Value Added Finance Authority created under SDCL chapter 1-16E;~~

~~(2)~~(1) "Bond purchaser," any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity, that purchases an authority bond under the agribusiness bonding program;

~~(3)~~(2) "Commissioner," the commissioner of the Governor's Office of Economic Development;

(3) "Eligible applicant." a ~~profit~~ for-profit or nonprofit agricultural or business enterprise ~~as defined in SDCL 1-16E-3, including an individual, partnership, corporation, joint venture, association, limited liability company, or cooperative;~~

~~— (4) "Executive director," the executive director of the Value Added Finance Authority;~~

~~(5) "Intent resolution," a nonbinding resolution of intent by the authority to issue bonds to finance a proposed project;~~

~~(6)~~(4) "Program," the agribusiness bonding program;

~~(7)~~(5) "Project," a description of the intended use of the loan proceeds; and

~~(8)(6)~~ "Qualified ~~purposes~~ purpose," any land, buildings or other improvements, or any real or personal property, debt service reserve fund, capitalized interest, and any cost relating to the foregoing.

Source: 23 SDR 161, effective April 7, 1997.

General Authority: SDCL ~~1-16E-24~~ 1-16B-70.

Law Implemented: SDCL ~~1-16E-7, 1-16E-24~~ 1-16B-1, 1-16B-56, 1-16B-57.

12:22:01:02. Contents of application. An applicant for an agribusiness bonding program loan must apply for the loan on a form provided by the authority. The application must include the following:

- (1) The applicant's name, and mailing address;
- (2) A description of the anticipated use of loan proceeds;
- (3) The amount of the loan requested; and
- (4) The applicant's down payment, if any.

An application is complete when all documents and information needed to approve a loan are submitted.

Source: 23 SDR 161, effective April 7, 1997.

General Authority: SDCL ~~1-16E-24~~ 1-16B-70.

Law Implemented: SDCL ~~1-16E-7, 1-16E-24~~ 1-16B-56, 1-16B-57, 1-16B-58(1).

12:22:01:03. Procedure for informal settlements in contested cases.~~Unless precluded by statute, a dispute over rules of the authority that might otherwise result in contested case proceedings may be settled by an informal settlement negotiated by the executive director. The settlement is subject to ratification by the authority board and by the parties contesting the rule in question. The settlement shall be expressed in a written stipulation representing an informed mutual consent~~ Repealed.

Source: 23 SDR 161, effective April 7, 1997.

General Authority: ~~SDCL 1-16E-24.~~

Law Implemented: ~~SDCL 1-16E-7, 1-16E-24.~~

12:22:01:04. Eligibility. To be eligible for assistance under this chapter, the project must be located in South Dakota at the time the bond is issued to finance the loan and the eligible applicant must agree to pay all fees associated with receiving an authority bond.

Source: 23 SDR 161, effective April 7, 1997.

General Authority: SDCL ~~1-16E-24~~ 1-16B-70.

Law Implemented: SDCL ~~1-16E-7, 1-16E-24~~ 1-16B-56, 1-16B-57, 1-16B-58(1).

12:22:01:05. Ineligible uses of loan proceeds. The agribusiness bonding program may not be used to finance working capital or inventory.

Source: 23 SDR 161, effective April 7, 1997.

General Authority: SDCL ~~1-16E-24~~ 1-16B-70.

Law Implemented: SDCL ~~1-16E-7, 1-16E-24~~ 1-16B-56, 1-16B-57, 1-16B-58(1).

12:22:01:06. Loan requirements. The following are requirements for a loan under the agribusiness bonding program:

(1) The authority may take security for a loan in the form of a promissory note, security agreement, mortgage, or similar agreement;

(2) A loan may not be assumed; and any interest in land, improvements, or depreciable property may not be leased, sold, exchanged, used as a trade-in, used on an equipment-for-hire basis, or otherwise conveyed without the prior written consent of the authority. The authority may not consent to an assumption of its loan or the conveyance of property subject to its mortgage or security agreement unless the purchaser of the property is an eligible applicant for an authority loan; and

(3) The eligible applicant, bond purchaser, or lender must pay the following fees to the authority:

(a) ~~Application fee~~ With the submission of an application, a nonrefundable fee of ~~\$200~~ two hundred dollars;

(b) ~~Issuance fee~~ as of the date of issuance of the bonds, On the date of bond issuance, a fee equal to ~~1/8 of 1~~ one-eighth of one percent of the bond amount with a ~~\$500~~ five-hundred-dollar minimum;

(c) ~~Assumption fee—~~if If the loan is assumed, on the date of assumption, a fee equal to ~~1/16 of 1~~ one-sixteenth of one percent of the outstanding bond balance with a ~~\$300~~ three-hundred-dollar minimum;

(d) ~~Bond allocation fee—on~~ On the date of bond issuance, a fee equal to ~~1/8 of 1~~ one-eighth of one percent of the bond amount; and

(e) ~~Legal counsel fee—on~~ On the date of bond issuance ~~of the bond~~, the fees and expenses of bond counsel and the authority's special counsel.

Source: 23 SDR 161, effective April 7, 1997.

General Authority: SDCL ~~1-16E-24~~ 1-16B-70.

Law Implemented: SDCL ~~1-16E-7, 1-16E-7(18)~~ 1-16B-56, 1-16B-57, 1-16B-58(1).

12:22:01:07. Availability of books and records. Bond purchasers or their agents shall maintain books and records setting forth payments received and disbursements made ~~pursuant to~~ on all authority loans. The books and records must be available for examination by the authority or its agent.

Source: 23 SDR 161, effective April 7, 1997.

General Authority: SDCL ~~1-16E-24~~ 1-16B-70.

Law Implemented: SDCL ~~1-16E-7, 1-16E-24~~ 1-16B-56, 1-16B-57, 1-16B-58(1).

12:22:01:08. Application procedures. The eligible applicant ~~must~~ shall obtain an application from the authority and submit the completed application, along with the ~~required~~ application fee described in subsection 12:22:01:06(3)(a), to the authority. The authority's legal counsel shall review the application to determine if the project qualifies. The authority staff shall review the application to determine if program requirements are met. If the project qualifies and program requirements are met, the staff ~~shall~~ must forward the application to the authority board of directors. The board shall consider the application at its monthly meeting. If the project meets the authority's requirements, the board ~~shall~~ must consider the adoption of ~~an intent resolution~~ a nonbinding resolution of intent by the authority to issue bonds to finance the project. ~~An intent~~ Such a resolution is not final approval and does not bind the authority to issue bonds.

_____The applicant shall contact a financial institution or an underwriter and make arrangements for the structuring and purchase of the tax-exempt bonds. When the terms of the financing are known, the authority's bond counsel shall draft the necessary documentation for the financing. ~~An~~ No bond may be issued until the Governor makes any allocation from the state volume cap that may be required ~~from the Governor for a bond issued which constitutes~~ issuing a private activity bond.

Source: 23 SDR 161, effective April 7, 1997.

General Authority: SDCL ~~1-16E-24~~ 1-16B-70.

Law Implemented: SDCL ~~1-16E-7, 1-16E-24~~ 1-16B-56, 1-16B-57, 1-16B-58(1).

Cross-Reference: Public hearing -- Approval of bond issuance, § 12:22:01:09.

12:22:01:09. Public hearing -- Approval of bond issuance. The authority may not issue a bond for the purpose of financing a project for a specific eligible applicant unless, before its issuance, the authority has conducted a public hearing conforming to the applicable requirements of 26 U.S.C. § 147(f)(2)(B) ~~of the United States Internal Revenue Code of 1986 as amended to July 1, 1995 (December 31, 2024).~~ Upon receipt of a completed application, the ~~executive director~~ commissioner shall set a date, time, and place for the hearing. The ~~executive director~~ commissioner shall publish notice of hearing at least ~~14~~ fourteen days before the date of the hearing in a newspaper of general circulation available to residents in the county where the project is located. The notice ~~shall~~ must include the date, time, and place of the hearing, the name of the eligible applicant, and a general description of the project, ~~and the right of individuals to request a local hearing.~~ The hearing shall be held at the location stated in the notice unless, by the time scheduled for the hearing, the authority receives a written request that a local hearing be held.

If a local hearing is requested, the authority may cancel the previously scheduled hearing. The ~~executive director~~ commissioner shall set a date, time, and place for a local hearing and publish notice of the hearing in the local area as provided in this section. The date, time, and place for the local hearing must be reasonably convenient to persons affected by the project. Public hearings may be conducted by ~~a staff member, a board member of the authority, an appointee,~~ or employee of the authority, or another qualified hearing officer. The commissioner shall provide a means by which an interested party may participate electronically.

The authority may not issue a bond for the purpose of financing a project by a specific eligible applicant unless, before the issuance, the Governor or another elected official of the state

who is designated by the Governor approves the issuance of the bond. Following the public hearing, the authority shall send to the Governor's office, or to the office of the designated official, a statement describing each bond or series of bonds ~~which~~ that it proposes to issue, along with a summary of the public comments received.

Following approval of the loan by the authority and upon completion of a public hearing and approval of the bond issuance by the Governor or another designated state official, the authority shall issue a bond, to be purchased by the bond purchaser, in the amount and fitting the terms of the loan to the eligible applicant. The principal and interest on the bond is a limited obligation payable solely out of the revenues derived from the loan to the eligible applicant or the project financed with the proceeds of the loan and the underlying collateral or other security furnished by or on behalf of the eligible applicant. The principal and interest on the bond does not constitute an indebtedness of the authority or a charge against its general credit or general fund.

Source: 23 SDR 161, effective April 7, 1997.

General Authority: SDCL ~~1-16E-24~~ 1-16B-70.

Law Implemented: SDCL ~~1-16E-7, 1-16E-24~~ 1-16B-56, 1-16B-57, 1-16B-58(1).

12:22:01:10. Priority of applications. The authority shall process applications on a first-come, first-served basis, based on the receipt of a complete application.

Source: 23 SDR 161, effective April 7, 1997.

General Authority: SDCL ~~1-16E-24~~ 1-16B-70.

Law Implemented: SDCL ~~1-16E-7, 1-16E-24~~ 1-16B-56, 1-16B-57, 1-16B-58(1).

12:22:01:11. Procedures following bond issuance. Following disbursement of the bond proceeds, the authority may require the bond purchaser or the bond purchaser's agent and the eligible applicant to certify to the authority that the proceeds were used by a qualified eligible applicant for a qualified purpose.

Source: 23 SDR 161, effective April 7, 1997.

General Authority: SDCL ~~1-16E-24~~ 1-16B-70.

Law Implemented: SDCL ~~1-16E-7, 1-16E-24~~ 1-16B-56, 1-16B-57, 1-16B-58(1), 1-16B-73.

12:22:01:12. Assignment of loans. A bond purchaser may assign a loan in whole or in part. Servicing of the loan may also be assigned.

Source: 23 SDR 161, effective April 7, 1997.

General Authority: SDCL ~~1-16E-24~~ 1-16B-70.

Law Implemented: SDCL ~~1-16E-7, 1-16E-24~~ 1-16B-57, 1-16B-58.

12:22:01:13. Right to audit. The authority may audit the records of ~~the~~ a bond purchaser ~~purchaser or their~~ the bond purchaser's agents, and the eligible applicant, relating to any loan or bond governed by this chapter, to ensure that bond proceeds were used for a qualified purpose.

Source: 23 SDR 161, effective April 7, 1997.

General Authority: SDCL ~~1-16E-24~~ 1-16B-70.

Law Implemented: SDCL ~~1-16E-7, 1-16E-24~~ 1-16B-56, 1-16B-57, 1-16B-73.

CHAPTER 12:22:02

VALUE ADDED AGRIBUSINESS RELENDING PROGRAM

(Repealed)

Section

12:22:02:01	Definitions, <u>Repealed</u> .
12:22:02:02	Eligibility requirements, <u>Repealed</u> .
12:22:02:03	Application requirements, <u>Repealed</u> .
12:22:02:04	Loan amounts, <u>Repealed</u> .
12:22:02:05	Equity contribution, <u>Repealed</u> .
12:22:02:06	Permissible uses of loan proceeds, <u>Repealed</u> .
12:22:02:07	Impermissible uses of loan proceeds, <u>Repealed</u> .
12:22:02:08	Factors for action by VAFA, <u>Repealed</u> .
12:22:02:09	Action by VAFA on applications, <u>Repealed</u> .
12:22:02:10	Reservation of right to make loan, <u>Repealed</u> .
12:22:02:11	Acceptance by applicant -- Time restrictions, <u>Repealed</u> .
12:22:02:12	Review of financial status, <u>Repealed</u> .
12:22:02:13	Loan agreement, <u>Repealed</u> .
12:22:02:14	Maturity and interest rate, <u>Repealed</u> .
12:22:02:15	Reporting requirements for borrower, <u>Repealed</u> .
12:22:02:16	Inspection of project by VAFA -- Retention of records, <u>Repealed</u> .
12:22:02:17	Default on loan agreement, <u>Repealed</u> .

12:22:02:18 Interim financing, Repealed.

12:22:02:01. Definitions.~~Terms used in this chapter mean:~~

~~—— (1) "Agency," the Rural Business Development Program office in the South Dakota state office of the United States Department of Agriculture, or its successor;~~

~~—— (2) "Agricultural production," the cultivation, production, growing, raising, feeding, housing, breeding, hatching, or managing of crops, plants, animals, or birds, either for fiber, food for human consumption, or livestock feed;~~

~~—— (3) "Applicant," a natural person, partnership, limited liability partnership, joint venture, corporation, limited liability company, or other entity that has completed a VAARP application for a loan from the VAARP fund;~~

~~—— (4) "Board," the board of directors of the South Dakota Value Added Finance Authority;~~

~~—— (5) "Borrower," an applicant who has been awarded a loan from the VAARP fund;~~

~~—— (6) "Equity," capital that has no guaranteed or mandatory return which must be paid out in any event, has no definite timetable for repayment of the capital investment, and may not be withdrawn at the contributor's option without the permission of the superior debt holders;~~

~~—— (7) "Federal discount rate," the discount rate established by the United States Federal Reserve Board of Governors;~~

~~—— (8) "IRP," the Intermediary Relending Program revolving loan fund created through an Intermediary Relending Program loan from the United States Department of Agriculture;~~

~~—— (9) "Preliminary design stage," that portion of the project associated with market research studies identifying the project scope and need, compilation of the business plan, written initial cost estimates, written site options and description, and the commitment of the regulated lender;~~

~~—— (10) "Prime rate," the New York prime rate of interest, as published in the "Money" section of the Wall Street Journal;~~

~~—— (11) "Rural area," all territory in South Dakota that meets the United States Department of Agriculture's definition of a rural area;~~

~~—— (12) "Total project costs," the direct costs associated with the purchase of land, necessary site development and improvements, construction or acquisition and remodeling of buildings and works necessary to the operation and protection of the project, purchase and installation of machinery and equipment, fees for services, approved in-kind contributions, and adequate financing of working capital;~~

~~—— (13) "VAARP," the value-added agribusiness relending program; and~~

~~—— (14) "VAFA," the South Dakota Value Added Finance Authority Repealed.~~

Source: 28 SDR 44, effective October 2, 2001; 42 SDR 14, effective August 10, 2015.

~~— **General Authority:** SDCL 1-16E-24.~~

~~— **Law Implemented:** SDCL 1-16E-8.~~

12:22:02:02. Eligibility requirements. ~~To be eligible for a loan under this chapter, an applicant must satisfy the following requirements:~~

~~—— (1) Applicants may be individuals, public or private organizations, or other legal entities with the necessary power and authority to incur the debt and carry out the purpose of the loan;~~

~~—— (2) The project must be located in a rural area;~~

~~—— (3) The project must directly or indirectly benefit South Dakota farmers or ranchers;~~

~~—— (4) The applicant must be unable to finance the project from its own resources or through commercial credit or other federal, state, or local programs upon reasonable rates and terms; and~~

~~—— (5) No individual applicant or the principal officers or directors of an applicant other than an individual, nor the immediate family of any such individual, officer, or director, may hold any legal or financial interest or influence in the VAFA. Neither the VAFA nor its principal officers nor their immediate family may hold any legal or financial interest or influence in the applicant~~

Repealed.

Source: 28 SDR 44, effective October 2, 2001.

~~—— **General Authority:** SDCL 1-16E-24.~~

~~—— **Law Implemented:** SDCL 1-16E-8.~~

12:22:02:03. Application requirements. ~~Application forms shall be provided by the VAFA and must be completed and signed before an application is presented to the board~~ Repealed.

Source: 28 SDR 44, effective October 2, 2001.

General Authority: ~~SDCL 1-16E-24.~~

~~— **Law Implemented:** SDCL 1-16E-8.~~

12:22:02:04. Loan amounts. ~~The total of all loans to any borrower may not exceed the lesser of:~~

~~—— (1) \$250,000; or~~

~~—— (2) Seventy five percent of the total project cost.~~

~~—— No more than 25 percent of the VAARP loan fund may be used for loans that exceed \$150,000~~ Repealed.

Source: 28 SDR 44, effective October 2, 2001; 42 SDR 14, effective August 10, 2015.

~~—— **General Authority:** SDCL 1-16E-24.~~

~~—— **Law Implemented:** SDCL 1-16E-8.~~

12:22:02:05. Equity contribution. ~~An applicant must provide an equity contribution of a minimum of ten percent of the total project cost. In-kind contributions and completed work may be applied toward the equity contribution and total project cost if, in the judgment of the VAFA and the agency, such in-kind contributions and work completed contribute sufficiently to the current project. The equity requirement may be waived by a two-thirds vote of the VAFA, with the approval of the agency.~~ Repealed.

Source: 28 SDR 44, effective October 2, 2001.

General Authority: ~~SDCL 1-16E-24.~~

Law Implemented: ~~SDCL 1-16E-8.~~

12:22:02:06. Permissible uses of loan proceeds.~~VAAAP loan proceeds must be used for community development projects, establishment of new businesses, expansion of existing businesses, creation of employment opportunities or saving existing jobs, and add value to South Dakota agricultural commodities through further processing or marketing. Such uses may include:~~

~~—— (1) Business and industrial acquisitions if the loan will keep the business from closing, prevent the loss of employment opportunities, or provide expanded job opportunities;~~

~~—— (2) Business construction, conversion, enlargement, repair, modernization, or development;~~

~~—— (3) Purchase or leasing of land, and the development thereof, including easements, rights-of-way, or buildings;~~

~~—— (4) Purchase of equipment, leasehold improvements, machinery, or supplies;~~

~~—— (5) Pollution control or abatement;~~

~~—— (6) Transportation services;~~

~~—— (7) Start-up operating costs and working capital;~~

~~—— (8) Interest during the period before the project becomes operational, but not to exceed three years;~~

~~—— (9) Feasibility studies;~~

~~—— (10) Debt refinancing, under the following conditions:~~

~~—— (a) The VAFA shall make a complete review to determine whether the loan will restructure debts on a schedule that will allow the borrower to operate successfully and pay off the loan;~~

~~———— (b) Refinancing loans are allowed only if VAFA determines that the project is viable and refinancing is necessary to create new or save existing jobs or create or continue a needed service; and~~

~~———— (c) On any request for refinancing of existing secured loans, the VAFA will require, at a minimum, the previously held collateral as security for the loans and may not pay off a creditor in excess of the value of the collateral;~~

~~———— (11) Revolving lines of credit, if:~~

~~———— (a) No more than 25 percent of VAARP loan fund may be committed to or in use for revolving lines of credit at any time;~~

~~———— (b) All borrowers receiving revolving lines of credit are required to reduce the outstanding balance of the revolving line of credit to zero at least once on or before each anniversary of the making of the loan;~~

~~———— (c) No revolving line of credit loan exceeds the limits established in § 12:22:02:04;~~

~~———— (d) All revolving line of credit loans have a specific final due date, not to exceed a term of two years; and~~

————(e) The VAFA receives the agency's written authorization to use the IRP revolving fund for revolving lines of credit Repealed.

Source: 28 SDR 44, effective October 2, 2001.

General Authority: ~~SDCL 1-16E-24.~~

Law Implemented: ~~SDCL 1-16E-8.~~

12:22:02:07. Impermissible uses of loan proceeds. ~~The borrower may not use the proceeds for any of the following purposes:~~

~~—— (1) Assistance in excess of what is needed to accomplish the purpose of the project;~~

~~—— (2) Distribution of payment to the owner, partners, shareholders, or beneficiaries of the borrower or members of their families if such persons will retain any portion of their equity in the borrower;~~

~~—— (3) Charitable institutions that would not have revenue from sales or fees to support the operation and repay the loan, churches, organizations affiliated with or sponsored by churches, and fraternal organizations;~~

~~—— (4) A loan to an applicant which has an application pending with or loan outstanding from another intermediary involving an IRP revolving fund if the IRP revolving fund loans would exceed the limits established in § 12:22:02:04;~~

~~—— (5) Agricultural production;~~

~~—— (6) The transfer of ownership unless the loan will keep the business from closing, or prevent the loss of employment opportunities in the area, or provide expanded job opportunities;~~

~~—— (7) Community antenna television services or facilities;~~

~~—— (8) Any illegal activity;~~

~~—— (9) Any project that is in violation of either a federal, state, or local environmental protection law or regulation or an enforceable land use restriction unless the assistance given will result in curing or removing the violation;~~

~~—— (10) Lending and investment institutions and insurance companies; or~~

~~—— (11) Golf courses, race tracks, or gambling facilities Repealed.~~

Source: 28 SDR 44, effective October 2, 2001.

General Authority: ~~SDCL 1-16E-24.~~

Law Implemented: ~~SDCL 1-16E-8.~~

12:22:02:08. Factors for action by VAFA. ~~The VAFA, in making a decision on an application, may, in addition to other factors necessary to make a sound loan decision, consider the following:~~

~~—— (1) Program impact factors:~~

~~—— (a) Population of the community where the project is to be located;~~

~~—— (b) Amount of agricultural products used;~~

~~—— (c) Number of jobs created for low-income persons and displaced farm families;~~

~~—— (d) Amount of loan requested;~~

~~—— (e) Net economic effect of increasing or stabilizing the economy on the community, area, and state;~~

~~—— (f) Competitive effect on existing businesses;~~

~~—— (g) Support of the public entities of the community and area;~~

~~—— (h) The amount of the owner's equity contributed to the project;~~

~~—— (i) The effect of the project on the environment, health, and safety of the people in the community and state;~~

~~—— (j) Compatibility with economic development plans of the area and state;~~

~~—— (k) Potential for creating quality jobs and growth of those jobs;~~

~~—— (l) Payroll pay structure; and~~

~~—— (m) Employee benefit package;~~

~~—— (2) Business feasibility factors;~~

- ~~_____ (a) The potential success of the business;~~
- ~~_____ (b) The character, experience, management record, and background of the applicant;~~
- ~~_____ (c) The capacity of the applicant to repay the loan. In determining the capacity of the applicant, the VAFA shall consider the following:~~
 - ~~_____ (i) The amount of the loan;~~
 - ~~_____ (ii) The economic feasibility of the project and product;~~
 - ~~_____ (iii) The ability of the applicant to service the debt from cash flow of operations, capital, or collateral;~~
 - ~~_____ (iv) The review of financial status of the project, business plan, and applicant;~~
 - ~~_____ (v) The satisfaction of engineering standards, legal requirements, and environmental regulations; and~~
 - ~~_____ (vi) The availability of necessary public utilities;~~
- ~~_____ (d) The total capitalization of the project, which includes all capitalization subordinated to VAARP;~~
- ~~_____ (e) The terms and conditions of the loan and their compatibility with the needs of the business and VAARP; and~~
- ~~_____ (f) The availability of sufficient unencumbered collateral to secure the interests of VAARP~~ Repealed.

Source: 28 SDR 44, effective October 2, 2001.

~~General Authority:~~ SDCL 1-16E-24.

~~Law Implemented:~~ SDCL 1-16E-8.

12:22:02:09. Action by VAFA on applications. ~~Within 60 days after the VAFA receives a completed application, the VAFA shall either approve the application as submitted, approve the application with conditions, or disapprove the application. The VAFA may extend the time for consideration of an application for up to 50 additional days by advising the applicant of the extension in writing or by telephone.~~ Repealed.

Source: 28 SDR 44, effective October 2, 2001.

General Authority: ~~SDCL 1-16E-24.~~

Law Implemented: ~~SDCL 1-16E-8.~~

12:22:02:10. Reservation of right to make loan. ~~If the VAFA approves the loan application, the application shall then be sent to the agency for approval. Except as provided in this section, no loan agreement may be made unless approved by the agency. If the agency rejects a loan application, the VAFA may approve the loan from VAFA funds that are not subject to an agreement between the VAFA and the agency if the loan otherwise complies with this chapter~~
Repealed.

Source: 28 SDR 44, effective October 2, 2001.

General Authority: ~~SDCL 1-16E-24.~~

Law Implemented: ~~SDCL 1-16E-8.~~

12:22:02:11. Acceptance by applicant -- Time restrictions. ~~Within six months after the official loan approval by the VAFA and the agency, the applicant must accept the approval in writing or the approval may be withdrawn at the discretion of the VAFA. Within six months after written acceptance, the applicant must begin the project. Final disbursement of the loan proceeds must be made within one year after approval by the VAFA, unless the VAFA pursuant to prior written consent extends the time. The request for extension must be submitted at a regularly scheduled meeting before the expiration of the six month period. The VAFA shall decide the length of the extension period.~~ Repealed.

Source: 28 SDR 44, effective October 2, 2001.

General Authority: SDCL 1-16E-24.

Law Implemented: SDCL 1-16E-8.

12:22:02:12. Review of financial status. ~~After the VAFA and the agency approve the loan but before the loan agreement is entered into, the VAFA may conduct an overall review of the applicant's financial status. This review may include an analysis of all assets and liabilities and an analysis of the ability of the applicant to honor the loan commitments. If the applicant's financial condition has materially changed since the approval of the loan, the VAFA may disapprove the loan or modify the terms of the loan~~ Repealed.

Source: 28 SDR 44, effective October 2, 2001.

General Authority: ~~SDCL 1-16E-24.~~

Law Implemented: ~~SDCL 1-16E-8.~~

12:22:02:13. Loan agreement. ~~After the application is approved by the VAFA and the agency, and after the financial status of the applicant is reviewed, the VAFA shall execute a loan agreement with the borrower. The loan agreement shall contain the rights and responsibilities of the parties and the terms and conditions of the loan. Any requirements for loan security shall be included in the loan agreement. Loans may be secured or unsecured. Secured loans may be secured by liens on the interest of the borrower in real or personal property, tangible or intangible property, easements, rights of way, water rights, leasehold interest used in connection with the project, and any other assets of the borrower considered necessary by the VAFA to adequately collateralize the loan~~ Repealed.

Source: 28 SDR 44, effective October 2, 2001.

General Authority: ~~SDCL 1-16E-24.~~

Law Implemented: ~~SDCL 1-16E-8.~~

12:22:02:14. Maturity and interest rate.~~In no event may the maturity of the loan be more than 10 years, nor may regular payments be amortized over more than 20 years. The VAFA shall match the term with the useful life of the collateral securing the loan. The interest rate shall be fixed for the term of the loan. The interest rate may not exceed the prime rate and may not be less than the federal discount rate, as published on the date of approval. The borrower is responsible for arranging other financing, if necessary, when the note comes due. If the borrower is unable to obtain financing, the borrower may apply before the loan due date for an extension of the loan by the VAFA at an interest rate and for a time period to be set by the VAFA.~~Repealed.

Source: 28 SDR 44, effective October 2, 2001.

General Authority: SDCL 1-16E-24.

Law Implemented: SDCL 1-16E-8.

12:22:02:15. Reporting requirements for borrower. ~~The borrower shall submit to the VAFA annually a report containing the following information:~~

- ~~—— (1) An employment report;~~
- ~~—— (2) The amount of agricultural products used in the business and the amount of the product that is exported from the state;~~
- ~~—— (3) The number of jobs for low income persons and displaced farm families;~~
- ~~—— (4) Financial statements in a form acceptable to the VAFA as specified in the loan authorization document; and~~
- ~~—— (5) Other information as requested by the VAFA. The VAFA may require that the financial statements be compiled, reviewed, or audited by an independent accountant at the expense of the borrower.~~ Repealed.

Source: 28 SDR 44, effective October 2, 2001.

General Authority: ~~SDCL 1-16E-24.~~

Law Implemented: ~~SDCL 1-16E-8.~~

12:22:02:16. Inspection of project by VAFA -- Retention of records. ~~During the term of the loan, the VAFA may inspect construction, inspect the operation of the project, and request the borrower to provide accounting records, payments, and invoices to ensure compliance with the terms of the loan agreement. The borrower shall retain accounting and tax records for the term of the loan or for a period of three years, whichever is longer. The VAFA may contract for project monitoring and servicing during the planning, construction, and operation of the business and project~~ Repealed.

Source: 28 SDR 44, effective October 2, 2001.

General Authority: ~~SDCL 1-16E-24.~~

Law Implemented: ~~SDCL 1-16E-8.~~

12:22:02:17. Default on loan agreement. ~~If the borrower violates any of the terms of the loan agreement, the VAFA may place the borrower in default. Upon default, the VAFA may do one or more of the following:~~

~~—— (1) Declare immediately due and payable the entire principal amount then outstanding and the accrued interest;~~

~~—— (2) Take possession of or title to the project and its facilities; repair, maintain, operate, sell, lease, or otherwise dispose of the project and its facilities to another entity; and charge the account of the borrower for expenses for repair, maintenance, and operation of the project and other expenses necessary to cure the cause of the default;~~

~~—— (3) Take any other action considered appropriate by the VAFA to protect the interest of the VAFA and agency;~~

~~—— (4) Exercise any rights of a creditor under the South Dakota uniform commercial code or any other statute; and~~

~~—— (5) Enforce any remedies agreed to in the loan agreement executed between the borrower and the VAFA.~~ Repealed.

Source: 28 SDR 44, effective October 2, 2001.

General Authority: ~~SDCL 1-16E-24.~~

~~Law Implemented:~~ SDCL 1-16E-8.

12:22:02:18. Interim financing. ~~Interim financing is not refinancing of existing debt. The VAFA may require that the borrower use a commitment for a VAARP loan to secure interim financing from a regulated lender. The VAFA shall satisfy the interim financing loan in accordance with the terms of the interim financing loan agreement upon certification of completion of the project in accordance with the VAARP commitment~~ Repealed.

Source: 28 SDR 44, effective October 2, 2001.

General Authority: ~~SDCL 1-16E-24.~~

Law Implemented: ~~SDCL 1-16E-8.~~

CHAPTER 12:22:03

VALUE-ADDED AGRICULTURE SUBFUND

(Repealed)

Section

- 12:22:03:01 Definitions, Repealed.
- 12:22:03:02 Eligibility, Repealed.
- 12:22:03:03 Application requirements, Repealed.
- 12:22:03:04 Funding amount, Repealed.
- 12:22:03:05 Uses of funds, Repealed.
- 12:22:03:06 Factors for board action, Repealed.
- 12:22:03:07 Board action on applications, Repealed.
- 12:22:03:08 Acceptance and time restrictions of applicant, Repealed.
- 12:22:03:09 Review of financial status, Repealed.
- 12:22:03:10 Funding documents, Repealed.
- 12:22:03:11 Reporting, Repealed.
- 12:22:03:12 Inspection by the board and retention of records, Repealed.
- 12:22:03:13 Maturity and interest rate, Repealed.
- 12:22:03:14 Loan forgiveness, Repealed.
- 12:22:03:15 Default, Repealed.
- 12:22:03:16 Delegation of administrative functions, Repealed.
- 12:22:03:17 Official forms, Repealed.

12:22:03:18 Conflict of interest, Repealed.

12:22:03:19 Confidentiality, Repealed.

12:22:03:01. Definitions.~~Terms used in this chapter mean:~~

~~—— (1) "Applicant," any natural person or entity that has completed a VASF funding application;~~

~~—— (2) "Board," the Value Added Finance Authority;~~

~~—— (3) "Recipient," an applicant who has been awarded funds from the VASF;~~

~~—— (4) "GOED," the Governor's Office of Economic Development;~~

~~—— (5) "Project," the new business or expansion of an existing business, or any development activities that will encourage or enhance agricultural development, that is eligible for funds from the VASF;~~

~~—— (6) "Study," any feasibility study, including any associated business plan or marketing study, including any associated business plan; or land use study, including any associated business plan; to be conducted in connection with the project and funded from the VASF. The term, "study," does not include research and development study; or advertising, travel, salaries, consultant expense, or any other work associated with an equity drive;~~

~~—— (7) "VASF," the value added agriculture subfund of the rural rehabilitation fund created by SDCL 1-53-23;~~

~~—— (8) "VAFA," the Value Added Finance Authority established pursuant to SDCL 1-16E-4~~
Repealed.

Source: 40 SDR 109, effective December 9, 2013; SL 2019, ch 235, § 37 and 38, effective April 14, 2019.

~~**General Authority:** SDCL 1-53-34.~~

~~**Law Implemented:** SDCL 1-53-37.~~

12:22:03:02. Eligibility. ~~Any natural person or entity whose project meets at least one of the following criteria may apply for VASF funding:~~

~~—— (1) The food, feed, and fiber products and uses of the project use South Dakota agriculture products and add to the value of agricultural products; or~~

~~—— (2) The project will directly or indirectly benefit South Dakota farmers and ranchers or agriculture-related processing businesses, including providing access to new markets Repealed.~~

Source: 40 SDR 109, effective December 9, 2013; SL 2019, ch 235, § 37 and 38, effective April 14, 2019.

General Authority: ~~SDCL 1-53-34.~~

Law Implemented: ~~SDCL 1-53-37.~~

12:22:03:03. Application requirements. ~~Application forms shall be provided by GOED and must be completed and signed before being presented to VAFA. GOED shall screen all applications for completeness and eligibility upon receipt. No incomplete or ineligible applications may be presented to the board. The VAFA Board may charge an application fee to be determined annually on July 1. At a minimum the application must include:~~

~~—— (1) Applicant's name and address, including all owners, investors, consultants, and management of projects, including resumes and references;~~

~~—— (2) Articles of incorporation and bylaws or other legal documents or agreements that describe the legal operation or structure of the business or of an intent to form a legal entity upon the award of VASF funding;~~

~~—— (3) An executive summary, summarizing the essential elements of the project, including narrative and funding request;~~

~~—— (4) Project narrative and how it complies with the eligibility of the VASF, including a detailed budget of how all funds will be spent;~~

~~—— (5) Any other information as requested by the board in order to make a sound and prudent funding decision Repealed.~~

Source: 40 SDR 109, effective December 9, 2013; SL 2019, ch 235, § 37 and 38, effective April 14, 2019.

~~**General Authority:** SDCL 1-53-34.~~

~~**Law Implemented:** SDCL 1-53-37.~~

12:22:03:04. Funding amount. ~~Unless waived by a majority of the members of the board present and voting, pursuant to this chapter, may not exceed \$100,000 for any one project~~
Repealed.

Source: 40 SDR 109, effective December 9, 2013; SL 2019, ch 235, § 37 and 38, effective April 14, 2019.

General Authority: ~~SDCL 1-53-34.~~

Law Implemented: ~~SDCL 1-53-37.~~

12:22:03:05. Uses of funds. ~~Funding must be for project specific requests including consultant contracts, attorney fees, down payment, strategic planning, supplies, and necessary services for studies or business planning, land use studies, and for other purposes not listed in this section as may be individually approved by the board. Funding may not be used to finance or refinance existing debt; for the purchase of land; for the construction, purchase, or installation of equipment; or for other fees, services, or costs related to the construction of the project. The board may commission studies and pay the entire cost of the study from VASF if it determines that doing so may avoid duplication of effort or will serve an unmet need. The cost to the VASF of a board-commissioned study may not exceed \$100,000~~ Repealed.

Source: 40 SDR 109, effective December 9, 2013; 42 SDR 177, effective June 29, 2016; SL 2019, ch 235, § 37 and 38, effective April 14, 2019.

General Authority: ~~SDCL 1-53-34.~~

Law Implemented: ~~SDCL 1-53-35, 1-53-37.~~

12:22:03:06. Factors for board action. ~~When making a decision on an application, the board may, in addition to other factors necessary to make a prudent funding decision, consider the following:~~

~~—— (1) The concept is new technology or a new application of existing technology with a reasonable assurance that the concept will work;~~

~~—— (2) Preliminary market and feasibility research has been conducted by the applicant or others, and there is a reasonable assurance of a potential market;~~

~~—— (3) The applicant has demonstrated the ability to manage the commercialization of the concept and has prepared a commercialization development plan;~~

~~—— (4) There are favorable recommendations for the project from local economic development groups, university-based technical specialists, or other qualified service providers;~~

~~—— (5) There are adequate references available to determine the applicant's, and any consultant's, qualifications and background;~~

~~—— (6) The applicant demonstrates a personal commitment to the project;~~

~~—— (7) The capacity of the applicant to repay a loan, if awarded, including the amount of the loan; the economic feasibility of the project and product; the ability of the applicant to service the~~

~~debt from cash flow of operations, capital, or collateral; the review of the financial status of the project, business plan, and applicant; the satisfaction of engineering, legal and environmental regulations; and the availability of necessary utilities;~~

~~—— (8) The amount, terms, and conditions of the loan, if awarded, and compatibility with the needs of the business and the VASF;~~

~~—— (9) There is an adequate and realistic budget projection;~~

~~—— (10) Compatibility with economic development plans of the area and state;~~

~~—— (11) The balance remaining in the VASF; and~~

~~—— (12) The project follows or will adhere to all environmental laws and regulations Repealed.~~

Source: 40 SDR 109, effective December 9, 2013; SL 2019, ch 235, § 37 and 38, effective April 14, 2019.

General Authority: ~~SDCL 1-53-37.~~

Law Implemented: ~~SDCL 1-53-37.~~

12:22:03:07. Board action on applications. ~~Within 45 days after GOED receives a completed application, the board shall approve the application as requested, disapprove the application for modification, approve the application contingent on realization of certain defined conditions, or disapprove the application. The board may extend the time for consideration of an application for up to 50 additional days by advising the applicant of the extension~~ Repealed.

Source: 40 SDR 109, effective December 9, 2013; SL 2019, ch 235, § 37 and 38, effective April 14, 2019.

General Authority: ~~SDCL 1-53-37.~~

Law Implemented: ~~SDCL 1-53-35, 1-53-37.~~

12:22:03:08. Acceptance and time restrictions of applicant.~~Within 60 days after official funding approval by the board, the applicant must accept the approval, including any conditions required by the board, in writing or the approval is void. Within six months after written acceptance, the applicant must commence the project. The official funding approval must lay out the disbursement and repayment terms, if any, of the approved funding~~ Repealed.

Source: 40 SDR 109, effective December 9, 2013; SL 2019, ch 235, § 37 and 38, effective April 14, 2019.

General Authority: ~~SDCL 1-53-37.~~

Law Implemented: ~~SDCL 1-53-37.~~

12:22:03:09. Review of financial status. ~~After the funding is approved but before the funding is disbursed, the board or GOED may conduct an overall review of the applicant's financial status. This review may include an analysis of all assets and liabilities and an analysis of the applicant's ability to repay the loan, if necessary, and comply with the official funding approval. The board may withdraw the commitment at any time if a material adverse change occurs~~
Repealed.

Source: 40 SDR 109, effective December 9, 2013; SL 2019, ch 235, § 37 and 38, effective April 14, 2019.

General Authority: ~~SDCL 1-53-37.~~

Law Implemented: ~~SDCL 1-53-37.~~

12:22:03:10. Funding documents. ~~After an application for funding is approved, the board, or their designee, shall execute a funding agreement with the recipient. The official funding agreement shall contain the rights and responsibilities of the parties and the terms and conditions of the funding. The requirements to secure funding shall be included in the agreement~~ Repealed.

Source: 40 SDR 109, effective December 9, 2013; SL 2019, ch 235, § 37 and 38, effective April 14, 2019.

~~General Authority:~~ ~~SDCL 1-53-37.~~

~~Law Implemented:~~ ~~SDCL 1-53-37.~~

12:22:03:11. Reporting. ~~The recipient shall submit to the board quarterly reports describing progress on the project, including compliance with the time line and budget contained in the application. Any material deviation from any condition imposed by the board or in the funding agreement may result in the withholding of further funding or the declaration of a default~~
Repealed.

Source: 40 SDR 109, effective December 9, 2013; SL 2019, ch 235, § 37 and 38, effective April 14, 2019.

General Authority: ~~SDCL 1-53-37.~~

Law Implemented: ~~SDCL 1-53-37.~~

12:22:03:12. Inspection by the board and retention of records. ~~All financial documents, books, receipts, orders, expenditures, electronic data, and accounting procedures and practices of the borrower are subject to examination by or for the board at any time for three years following the completion of the study or project or for the life of the loan, if applicable, whichever period is greater~~ Repealed.

Source: 40 SDR 109, effective December 9, 2013; SL 2019, ch 235, § 37 and 38, effective April 14, 2019.

General Authority: ~~SDCL 1-53-37.~~

Law Implemented: ~~SDCL 1-53-37.~~

12:22:03:13. Maturity and interest rate. ~~If a loan is made, unless different terms are established upon the affirmative vote of two thirds of the members of the board present and voting, the maturity date of the VASF funding may not be more than five years from the date of the final disbursement of loan proceeds, with regular payments amortized over not more than ten years from the date of final disbursement of loan proceeds. The first payment is due one year from the date of the final disbursement of loan proceeds. The borrower may request an extension of the date of the first payment, but the extension may not act to extend the final maturity date.~~

~~—— The board shall establish the standard interest rate for VASF loans from time to time. The board may deviate from the standard interest rate based on the economic impact of the project, risk, and other prudent lending criteria. The board shall consider the following when establishing the standard interest rate:~~

~~—— (1) State and national market interest rates;~~

~~—— (2) State and national economic conditions;~~

~~—— (3) The solvency and balance of the VASF; and~~

~~—— (4) Other economic or business information necessary to fulfill the board mission and to develop and promote production agriculture and value-added agricultural products.~~

~~—— The borrower is responsible for arranging other financing when the VASF loan is due. If the borrower is unable to obtain financing, the borrower may apply for an extension of the loan by the board at an interest rate and term established by the board. The borrower must submit any~~

~~application for an extension by the monthly loan application deadline before the loan maturity date~~
Repealed.

Source: 40 SDR 109, effective December 9, 2013; SL 2019, ch 235, § 37 and 38, effective April 14, 2019.

General Authority: ~~SDCL 1-53-37.~~

Law Implemented: ~~SDCL 1-53-35, 1-53-37.~~

12:22:03:14. Loan forgiveness.~~Upon the recipient's written petition and a showing of good cause, the board may forgive all or part of a VASF loan upon terms and conditions established by the board. When determining whether to forgive all or any part of a VASF loan, the board shall consider the following:~~

- ~~—— (1) Whether the study deemed the project to be feasible;~~
- ~~—— (2) Whether the borrower has proceeded or intends to proceed with the project;~~
- ~~—— (3) Whether the borrower has acted in conformity with the terms of the loan agreement and applicable law, including this chapter; and~~
- ~~—— (4) Whether the borrower has acted in good faith in connection with the application, the project, the loan, and the decision not to proceed with the project.~~

~~—— A petition for loan forgiveness must be accompanied by the original and all copies of the study and related documents, including any related business plan. If the loan is forgiven in whole or in part, all right, title, and interest in the study, including the exclusive right to use the study and any business plan associated with the study, becomes the property of the board Repealed.~~

Source: 40 SDR 109, effective December 9, 2013; SL 2019, ch 235, § 37 and 38, effective April 14, 2019.

General Authority: ~~SDCL 1-53-37.~~

Law Implemented: ~~SDCL 1-53-35, 1-53-37.~~

12:22:03:15. Default. ~~If the borrower violates any of the terms of the funding agreement, the other loan documents, this chapter, or other applicable law, the board may declare the funding in default. Upon default, the board may do one or more of the following:~~

~~—— (1) Declare the entire principal amount then outstanding and interest accrued thereon immediately due and payable;~~

~~—— (2) Increase the interest rate to the default rate established in the loan documents;~~

~~—— (3) Take possession of the study or other collateral;~~

~~—— (4) Repair, maintain, and operate the collateral, or sell, lease, or otherwise dispose of the collateral to another person or entity; or~~

~~—— (5) Take any other action considered appropriate by the board to protect the interest of the board and the VASF Repealed.~~

Source: 40 SDR 109, effective December 9, 2013; SL 2019, ch 235, § 37 and 38, effective April 14, 2019.

General Authority: ~~SDCL 1-53-37.~~

Law Implemented: ~~SDCL 1-53-37.~~

12:22:03:16. Delegation of administrative functions. ~~The GOED shall perform the administrative functions of the creation, processing, and review of funding applications; the preparation and negotiation of agreements; the review of the financial status of an applicant; loan servicing; and other functions necessary to expedite and assist it in the performance of its duties. Notwithstanding any assurance, guarantee, communication, or representation made to the contrary, there is no commitment of the VASF without specific authorization by the board. Only the board may make an award from the VASF to an applicant~~ Repealed.

Source: 40 SDR 109, effective December 9, 2013; SL 2019, ch 235, § 37 and 38, effective April 14, 2019.

General Authority: ~~SDCL 1-53-37.~~

Law Implemented: ~~SDCL 1-53-35.~~

12:22:03:17. Official forms. ~~The board may from time to time establish official forms or documents, including a loan agreement, promissory note, mortgage, security agreement, employment agreement, and such other documents, certifications, and agreements as the board deems necessary and appropriate. GOED may consent on behalf of the board on a case-by-case basis to any nonsubstantive modification or to any modification necessary to conform the official forms to the terms of the funding as established by the board~~ Repealed.

Source: 40 SDR 109, effective December 9, 2013; SL 2019, ch 235, § 37 and 38, effective April 14, 2019.

General Authority: ~~SDCL 1-53-37.~~

Law Implemented: ~~SDCL 1-53-35.~~

12:22:03:18. Conflict of interest. ~~No member of the board or GOED staff may participate in or vote upon a decision of the board relating to an application or loan servicing action relating to a borrower in which that individual has a direct personal or financial interest~~ Repealed.

Source: 40 SDR 109, effective December 9, 2013; SL 2019, ch 235, § 37 and 38, effective April 14, 2019.

General Authority: ~~SDCL 1-53-37.~~

Law Implemented: ~~SDCL 1-53-35.~~

12:22:03:19. Confidentiality. ~~The board and GOED shall, to the extent it constitutes or contains trade secrets or commercial or financial information relating to the operations of an applicant or borrower, maintain as confidential any documents, materials, information, or data received or generated by the board or GOED in connection with a proposed or pending application for a VASF loan or an existing VASF loan. If requested by the applicant, the fact that an application has been proposed or is pending shall be maintained as confidential until such time as the application is presented to the board for approval.~~ Repealed.

Source: 40 SDR 109, effective December 9, 2013; SL 2019, ch 235, § 37 and 38, effective April 14, 2019.

General Authority: ~~SDCL 1-53-37.~~

Law Implemented: ~~SDCL 1-53-35.~~