

CHAPTER 7076
MINNESOTA POLLUTION CONTROL AGENCY
CLEAN WATER PARTNERSHIP FINANCIAL
ASSISTANCE

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7076.0100 PURPOSE.

This chapter provides for the administration of the state clean water partnership financial assistance program and the federal nonpoint source management program as provided by United States Code, title 33, section 1329. Parts 7076.0100 to 7076.0290 implement these programs by establishing the substantive criteria and procedural conditions under which the agency may award state matching grants and provide technical assistance for the development and implementation of nonpoint source projects, and also award low-interest loans from the state clean water revolving fund for the implementation of nonpoint source projects.

Statutory Authority: *MS s 103F.745; 115.10*

History: *13 SR 661; 20 SR 1245; L 2008 c 277 art 3 s 4*

7076.0110 DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 7076.0100 to 7076.0290 have the meanings given them in Minnesota Statutes, chapter 116, and rules adopted under that chapter and the meanings given them in this part. If terms defined in this part conflict with the definitions in Minnesota Statutes, chapter 116, and the rules adopted under that chapter, the definitions in this part govern.

Subp. 2. **Agency.** "Agency" means the Pollution Control Agency.

Subp. 3. **Best management practices.** "Best management practices" has the meaning given it in Minnesota Statutes, section 103F.711, subdivision 3.

Subp. 4. **Commissioner.** "Commissioner" means the commissioner of the Pollution Control Agency.

Subp. 4a. **Financial assistance.** "Financial assistance" means a resource investigation or project implementation grant, or a project implementation loan.

Subp. 5. [Repealed, 16 SR 584]

Subp. 5a. **Loan sponsor.** "Loan sponsor" means a local unit of government that enters into a loan contract with the agency. There may be more than one loan sponsor for a project.

Subp. 6. **Local share.** "Local share" means the contributions of a local unit of government to the eligible cost of a project, including the value of cash expenditures; project implementation loans used on eligible project implementation activities; and in kind contributions of labor, equipment, material, and real property used for and expended on eligible project activities.

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Subp. 7. **Local unit of government.** "Local unit of government" has the meaning given it in Minnesota Statutes, section 103F.711, subdivision 5.

Subp. 8. **Local water plan.** "Local water plan" means a comprehensive water plan authorized under Minnesota Statutes, chapter 103B; a surface water management plan required under Minnesota Statutes, section 103B.231; or an overall plan required under Minnesota Statutes, chapter 103D, that has been approved by the Board of Water and Soil Resources.

Subp. 9. **Nonpoint source.** "Nonpoint source" has the meaning given it in Minnesota Statutes, section 103F.711, subdivision 6.

Subp. 10. **Official controls.** "Official controls" has the meaning given it in Minnesota Statutes, section 103F.711, subdivision 7.

Subp. 11. [Repealed, 16 SR 584]

Subp. 12. **Project.** "Project" has the meaning given it in Minnesota Statutes, section 103F.711, subdivision 8.

Subp. 13. **Project area.** "Project area" means the area identified as hydrologically contributing to the water of concern for which the diagnostic study and implementation plan are prepared and implemented.

Subp. 14. [Repealed, 20 SR 1245]

Subp. 15. **Project coordination team.** "Project coordination team" means the public interagency group established in Minnesota Statutes, section 103F.761.

Subp. 16. [Repealed, 16 SR 584]

Subp. 17. [Repealed, 16 SR 584]

Subp. 18. **Project implementation.** "Project implementation" means the implementation of an approved diagnostic study and implementation plan, or their equivalent, that identify best management practices to be implemented.

Subp. 18a. **Project implementation continuation or project continuation.** "Project implementation continuation" or "project continuation" means an award of additional project implementation financial assistance to continue implementation activities identified in the implementation plan or work plan that were not funded or were partially funded by the initial project implementation financial assistance.

Subp. 19. **Project implementation grant.** "Project implementation grant" means a grant from the agency to the project sponsor for the implementation of a diagnostic study and implementation plan, or their equivalent, that identify best management practices to be implemented.

Subp. 19a. **Project implementation loan.** "Project implementation loan" means a loan from the agency to the loan sponsor for the implementation of a diagnostic study and implementation plan, or their equivalent, that identify best management practices to be implemented.

Subp. 19b. **Project implementation loan set rate.** "Project implementation loan set rate" means the interest rate designated by the Merrill Lynch 500 Municipal Bond Index, as published every Friday in the Wall Street Journal.

Subp. 19c. **Project implementation period.** "Project implementation period" means a three-year segment of project implementation, which may be extended an additional year upon written approval by the commissioner.

Subp. 20. **Project sponsor.** "Project sponsor" means the local unit of government that is responsible for development and implementation of the project and applies for financial assistance. For resource investigation, the project sponsor enters into the grant contract. For project implementation, the project sponsor shall be a party to all grant and loan contracts entered into by the agency to provide financial assistance.

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Subp. 20a. **Resource investigation.** "Resource investigation" means the preparation of a diagnostic study and implementation plan.

Subp. 20b. **Resource investigation grant.** "Resource investigation grant" means a grant from the agency to the project sponsor for the preparation of a diagnostic study and implementation plan.

Subp. 20c. **Second-tier borrower.** "Second-tier borrower" means a person who receives a second-tier loan from a loan sponsor.

Subp. 20d. **Second-tier loan.** "Second-tier loan" means a loan made by the loan sponsor, using project implementation loan funds, for implementation of project activities by a person other than the loan sponsor.

Subp. 20e. **State revolving fund.** "State revolving fund" means the state clean water revolving fund created by Minnesota Statutes, section 446A.07.

Subp. 21. **Water pollution.** "Water pollution" has the meaning given it in Minnesota Statutes, section 115.01, subdivision 13.

Subp. 22. **Waters of the state.** "Waters of the state" has the meaning given it in Minnesota Statutes, section 115.01, subdivision 22.

Subp. 23. **Water of concern.** "Water of concern" means the specific surface water or groundwater of the state which the project is focused on improving or protecting.

Subp. 24. **Work plan.** "Work plan" means a document prepared by a project sponsor that describes in detail the work activities to be undertaken by the sponsor to fulfill the requirements of Minnesota Statutes, sections 103F.701 to 103F.761, and of parts 7076.0100 to 7076.0290. A work plan is approved by the commissioner and includes the items required under part 7076.0230.

Statutory Authority: *MS s 103F.745; 115.10*

History: *13 SR 661; 16 SR 584; 20 SR 1245; L 2008 c 277 art 3 s 4*

7076.0120 AVAILABLE ASSISTANCE.

Subpart 1. **Grants.** There are two types of grants available for nonpoint source projects: (1) resource investigation grants, and (2) project implementation grants. The grants are for a maximum of 50 percent of the eligible cost of the project.

Subp. 1a. **Loans.** Loans are available for project implementation. Loans may cover up to 100 percent of the eligible costs of the project or may be used to finance the local share of a project implementation grant. Loans and grants will be awarded, within the limits of available appropriations, to those applicants having the highest priority as determined by the project ranking.

Subp. 2. **Technical assistance.** The agency may provide technical assistance to local units of government in order to ensure efficient and effective development and implementation of projects. Technical assistance must be given to local units of government that receive financial assistance, within the limits of available resources.

Statutory Authority: *MS s 103F.745; 115.10*

History: *13 SR 661; 16 SR 584; 20 SR 1245*

7076.0130 ELIGIBILITY CRITERIA.

Subpart 1. **Grant-eligible applicants.** Only local units of government are eligible to apply for grants and receive technical assistance. A local unit of government is eligible to apply for grants and request technical assistance if it has the following:

A. the authority to coordinate and enter into contracts with local, state, and federal agencies and private organizations for the purpose of carrying out a project;

B. the authority to generate cash revenues and in kind contributions for the local share of a project;

C. the authority to adopt and enforce official controls; and

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D. an approved local water plan that addresses the water of concern.

Subp. 1a. **Loan-eligible applicants.** Only local units of government that meet the requirements of subpart 1 are eligible to apply for loans and receive technical assistance. A local unit of government is eligible to receive a loan if it has the following:

- A. the ability to pledge its full faith and credit to ensure repayment of a project implementation loan;
- B. the authority to generate cash revenues for the repayment of a loan; and
- C. the authority to enter into a loan agreement with the agency.

If the local unit of government submitting the application does not meet the criteria in items A to C, it must submit a resolution from at least one local unit of government that does meet the criteria stating that the loan-eligible local unit of government resolves to participate in the project as a loan sponsor.

Subp. 2. **Eligible costs.** Project costs are eligible for financial assistance if they are reasonable, necessary, and allocable to the project. Costs associated with resource investigation are eligible for grant funds only. Both grants and loans may be awarded for the costs of project implementation. The dredging of harbors, lakes, ditches, constructed wetlands, and existing sedimentation basins; sewage treatment system upgrades when part of an approved project implementation; and the use of ferric chloride, aluminum sulfate, or other chemicals to precipitate phosphorus are eligible for loan funds but are not eligible for grant funds. In addition, costs related to any of the following activities are eligible for financial assistance:

- A. water quality monitoring, water resource and project area data and information collection, data and information analysis and assessment, and related tasks;
- B. fiscal and management activities including report preparation;
- C. selection, design, layout, and installation of best management practices consistent with section 319 or 320 of the federal Clean Water Act, as amended;
- D. development, review, and inspection of procedures for the installation, operation, and maintenance of best management practices;
- E. the costs of implementation of best management practices for animal feedlot operations if the best management practice installation is not related to a criminal enforcement action or a civil enforcement action involving financial penalties;
- F. development and implementation of public education materials and activities;
- G. development and implementation of official controls;
- H. acquisition of easements and property; and
- I. other activities determined by the agency or established by federal regulation to be necessary to carry out the project.

Subp. 3. **Ineligible costs.** Ineligible costs include any costs that are not related to the activities in subpart 2. Costs identified under subpart 2 are ineligible if the related project activities are started before the grant or loan contract has been signed by the commissioner of management and budget. Costs identified under subpart 2 that are related to a resource investigation project are ineligible for loan funds. In addition, the following costs are ineligible for financial assistance whether or not they relate to the activities in subpart 2:

- A. installation of best management practices before the financial assistance award;
- B. operation and maintenance of best management practices;
- C. activities regulated by the Petroleum Tank Release Cleanup Act, Minnesota Statutes, chapter 115C; the Environmental Compensation and Liability Act, Minnesota Statutes, chapter 115B; the Chemical Liability Act, Minnesota Statutes, chapter 18D; the Comprehensive Environmental Response, Compensation, and Liability Act, United States Code, title 42, sections 9601 to 9675; and the Resource Conservation and Recovery Act, United States Code, title 42, sections 6901 to 6991;

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D. activities regulated by the national pollutant discharge elimination system permit program, parts 7001.1000 to 7001.1100, except that the following are eligible costs:

(1) the costs of outreach, technical assistance, and education activities concerning animal waste management, and the costs of best management practices for animal feedlot operations are eligible if the implementation activities are part of an eligible watershed or groundwater project and if the best management practice installation is not related to a criminal enforcement action or a civil enforcement action involving financial penalties; and

(2) the costs of outreach, technical assistance, implementation of source control and runoff control best management practices, and education activities related to stormwater control;

E. activities regulated by a condition of a solid waste or hazardous waste permit or the agency solid waste rules, chapter 7035; or the agency hazardous waste rules, chapter 7045;

F. activities funded by state or federal grants or loans for publicly owned treatment works;

G. regulated practices to control spills of pesticides, fertilizer, petroleum, and related materials from bulk storage facilities;

H. regulated practices to manage toxic or hazardous materials;

I. commercial operations and industrial processes and land use and land management activities directly related to commercial operations and industrial processes including plant yards, access roads, drainage ponds, refuse piles, storage piles, and material product loading areas, excluding farming operations occurring on the farm itself;

J. active and inactive mining activities;

K. building and utility construction;

L. highway and road construction;

M. activities intended primarily for flood control; and

N. activities that violate local, state, and federal statutes, rules, and regulations.

Subp. 4. **Eligible local share for grant-funded projects.** Any grant- or loan-eligible project costs as described in subparts 2 and 3 that are not funded through a resource investigation or project implementation grant are eligible as local share. At least 30 percent of the project costs must be derived from nonstate and nonfederal sources. Project implementation loans are considered nonstate and nonfederal sources for the purposes of this subpart. Costs incurred by a land occupier for the installation of best management practices may be considered a part of the local share paid by the local unit of government provided the following conditions are met:

A. the primary purpose of the best management practices is for improvement and protection of water quality;

B. any structural best management practices must be designed for a minimum effective life of ten years;

C. any equipment purchased for operational best management practices must have a minimum effective life of ten years and be maintained or replaced by the land occupier during this period of time, or there must be a plan approved by the commissioner scheduling the phase-out of the operational best management practices;

D. the best management practices are a part of an approved implementation plan; and

E. there must be an operation and maintenance plan for the minimum effective life of the best management practices.

Statutory Authority: *MS s 103F.745; 115.10*

History: *13 SR 661; 16 SR 584; 20 SR 1245; L 2009 c 101 art 2 s 109*

7076.0140 CLEAN WATER PARTNERSHIP FINANCIAL ASSISTANCE 1494**7076.0140 NOTICE OF FINANCIAL ASSISTANCE AVAILABILITY.**

Subpart 1. **Notice.** The commissioner will publish in the State Register a notice that applications for resource investigation grants and project implementation grants and loans will be accepted whenever the commissioner determines that funds are available to award the financial assistance. The notice will contain a deadline for application submittal, which must be no less than 60 days from the date of publication.

Subp. 2. **Notification list.** The commissioner shall maintain a list of those local governmental bodies that wish to be notified of application periods. Any local governmental body that wishes to be placed on the list shall notify the commissioner by writing to the director of the water quality division. Whenever the commissioner publishes notice in the State Register, the commissioner shall mail notice of the application period to those local governmental bodies on the list.

Subp. 3. **Financial assistance application periods.** The commissioner may establish a financial assistance application period from time to time but there must be at least one application period each calendar year if funds are available.

Statutory Authority: *MS s 103F.745; 115.10*

History: *13 SR 661; 16 SR 584; 20 SR 1245*

7076.0150 FINANCIAL ASSISTANCE APPLICATION.

Subpart 1. **General requirements.** The financial assistance application must be submitted by the local unit of government that will be the project sponsor. The financial assistance application must be submitted in a timely fashion to be considered. The application must be submitted on a form provided by the agency and must contain the information required in the form and by this part.

Subp. 2. **Resource investigation grant.** An application for a resource investigation grant must contain the following information:

A. a resolution by the local unit of government that will be the project sponsor, authorizing the filing of the application and designating an official authorized to execute the grant application;

B. written documentation that the project sponsor has consulted with the local water planning authority, soil and water conservation districts, and watershed districts in the project area in preparing the grant application;

C. identification of local units of government, agencies, and organizations that will be involved in resource investigation;

D. letters of support from each participating local unit of government, agency, and organization which identify their technical role in resource investigation and their estimated contribution to the local share of resource investigation costs;

E. the amount of grant funding requested, based on estimated project costs;

F. a list identifying the amount, type, and source of the local share;

G. a project proposal that contains the following:

(1) preliminary goals and objectives;

(2) a list of existing reports and data concerning the quality of the water of concern and land use in the project area;

(3) a statement of existing water quality conditions and problems and the existing and desired uses of the water of concern;

(4) an identification and summary of activities that the grant would make possible;

(5) a preliminary schedule of project activities; and

(6) an estimated project budget; and

H. documents required by state or federal statutes, rules, and regulations.

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Subp. 3. **Project implementation financial assistance.** An application for project implementation financial assistance must contain the following information:

A. a resolution by the local unit of government that will be the project sponsor, authorizing the filing of the application and designating an official authorized to execute the application;

B. written documentation that the project sponsor has consulted with the local water planning authority, soil and water conservation districts, and watershed districts in the project area in preparing the application;

C. a diagnostic study and implementation plan approved under part 7076.0260, or an equivalent study and plan that addresses the requirements of a diagnostic study and implementation plan and that has been approved under part 7076.0260;

D. letters of support from each participating local unit of government, agency, and organization that identify their technical role in project implementation and their contribution, if any, to the local share of project implementation costs;

E. a detailed preliminary work plan and schedule for project implementation during the project implementation period;

F. a detailed budget for the project implementation period including the identification of the amount and type of financial assistance requested;

G. a list identifying the amount, type, and source of the local share, if any;

H. documents required by state or federal statutes, rules, and regulations;

I. for applicants requesting a loan:

(1) identification of the dedicated sources of revenue to be used for repayment of the project implementation loan from the agency; and

(2) a resolution from each local unit of government that will be a loan sponsor authorizing the filing of the application, stating the total project implementation loan amount requested, and stating the amount of the total loan that the loan sponsor is requesting which, when added to all other loan sponsor requests, must equal the total project implementation loan request; and

J. an opinion and supporting documentation from the project sponsor's attorney stating that the project sponsor and participating local units of government have the legal authority to conduct the project.

Statutory Authority: *MS s 103F.745; 115.10*

History: *13 SR 661; 16 SR 584; 20 SR 1245*

7076.0160 REJECTION OF FINANCIAL ASSISTANCE APPLICATION.

Subpart 1. **Grounds.** An application for financial assistance shall be rejected by the commissioner for the following reasons:

A. an ineligible applicant;

B. ineligible costs;

C. a late submittal; or

D. failure to comply with any requirement of statute or rule.

Subp. 2. **Procedure.** The commissioner shall review each financial assistance application within 30 days after the deadline for application submittal. The commissioner shall notify each rejected applicant of the rejection of its application and the reasons for the rejection.

Subp. 3. **Effect of rejection.** An applicant whose application is rejected must reapply in a subsequent application period to be considered for financial assistance.

Statutory Authority: *MS s 103F.745; 115.10*

History: *13 SR 661; 16 SR 584; 20 SR 1245*

7076.0170 PROJECT RANKING.

Subpart 1. **Process of ranking.** Upon completion of the commissioner's review of the applications for acceptability, the agency shall rank the acceptable applications in order of priority. Each project for which an acceptable application has been submitted must be awarded the number of priority points the project is entitled to under subparts 2 and 3. The project with the highest number of priority points will be given the highest priority. All projects will be given a ranking depending on the number of points awarded. The resource investigation grant applications must be ranked separately from the project implementation applications.

Subp. 2. **Priority points for resource investigation grant applications.** The agency and the project coordination team must use the following criteria to determine the number of priority points to be awarded in the evaluation of each resource investigation grant application. Each project shall receive a whole number from zero to ten under each of the following criteria, depending on how well the project satisfies the criteria. The number of points awarded under each of the five criteria assigned by the agency and the project coordination team must be added together to determine the project's total point value. This total number must be used to determine the project's overall ranking and priority.

A. The criteria for the agency are as follows:

(1) the extent to which the proposed project demonstrates a high potential for project success based on the project organization and management structure and a broad coalition of community support and involvement within the project area;

(2) the extent to which the project proposal identifies preliminary goals and objectives, the existing and desired uses of the water of concern, and the perceived water quality problem or threat;

(3) the extent to which the water of concern is identified as a priority water in the local water plan;

(4) the extent to which the water of concern in the proposed project is of state and regional significance and priority; and

(5) the likelihood of water quality protection or improvement of the water of concern identified in the proposed project.

B. The criteria for the project coordination team are as follows:

(1) the extent to which the proposed project demonstrates a high potential for project success based on broad-based community support and involvement within the project area;

(2) the extent to which the proposed project includes coordination and co-operation of federal, state, and local agencies and units of government for water quality protection or improvement;

(3) the extent to which the water of concern in the proposed project is of state and regional significance and priority;

(4) the extent to which the proposed project complements the existing efforts of local, state, and federal programs; and

(5) the likelihood that the proposed project will serve as a demonstration for water quality protection or improvement and provide useful information for the geographic area.

Subp. 3. **Priority points for project implementation financial assistance applications.** The agency and the project coordination team must use the following criteria to determine the number of priority points to be awarded in the evaluation of each project implementation application. Each project shall receive a whole number from zero to ten under each of the following criteria, depending on how well the project satisfies the criteria. The number of points under each of the five criteria assigned by the agency and the project

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coordination team must be added together to determine the project's total point value. This total number must be used to determine the project's overall ranking and priority.

A. The agency criteria are as follows:

(1) the extent to which the proposed project demonstrates a high potential for project success based on the level of definition of the work plan for project goals and objectives, work activities, budget, and project organization and management structure;

(2) the extent to which the water of concern in the proposed project is of state and regional significance and priority;

(3) the extent to which the proposed project implementation activities are technically feasible and will result in water quality protection or improvement;

(4) the extent to which the proposed project maximizes water quality protection or improvement relative to the cost of project implementation; and

(5) the extent to which the proposed project demonstrates a high potential for project success based on broad-based community support and involvement within the project area and the project sponsor's and cooperator's local capability, organization, and authority to carry out the identified activities.

B. The project coordination team criteria are as follows:

(1) the extent to which the proposed project employs technically feasible best management practices to meet the proposed water quality goals and objectives, and the likelihood of adoption of the best management practices by the community in the project area;

(2) the extent to which the proposed project includes coordination and cooperation of federal, state, and local agencies and units of government for water quality protection or improvement;

(3) the extent to which the water of concern in the proposed project is of state and regional significance and priority;

(4) the extent to which the proposed project indicates a commitment to official controls, programs, and activities that are a long-term commitment to water quality protection or improvement; and

(5) the likelihood that the proposed project will serve as a demonstration of water quality protection or improvement and provide useful information for the geographic area.

Subp. 4. **Project coordination team.** The project coordination team has 60 days from the close of the application period to assign points to each project seeking financial assistance. In the event that the project coordination team fails to assign points to all projects with accepted applications, the projects must be ranked without considering any points under the category for the project coordination team.

Statutory Authority: *MS s 103F.745; 115.10*

History: *13 SR 661; 16 SR 584; 20 SR 1245*

7076.0180 ALLOCATION OF FUNDING.

Subpart 1. **Continuation of project implementation.** Each year, the agency shall determine how much of the available funding will be set aside to meet that year's anticipated requests for project implementation continuations. If the agency subsequently determines that the amount set aside for project continuations is more than is required for that year, the agency may reallocate this money to other resource investigation and project implementation projects or carry over the money to another application period.

Subp. 2. **Grant fund allocation.** Within 90 days following the close of an application period, the agency shall determine how much of the remaining funds, after setting aside funds for project implementation continuations, will be made available for resource investigation and project implementation grant awards. In deciding how much money to

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make available for new grant awards, the agency shall consider the necessity to have money available for subsequent grant periods, the necessity to have money available for anticipated project continuations in the next year, and other factors relating to the agency's ability to ensure that money will be available for upcoming projects. If the agency is appropriated grant funding for special purposes, that funding can be set aside for a designated use.

Subp. 3. **Resource investigation; project implementation split of available grant funds.** Within 90 days following the close of an application period, the agency shall determine how much of the funding available for new grants in that application period will be available for resource investigation and project implementation grants. In determining the allocation of funds between resource investigation and project implementation grants, the agency shall consider:

- A. the availability and conditions for use of federal funds;
- B. the phasing in and continuity of projects in the program; and
- C. the availability of loan funds for project implementation.

If the money intended for resource investigation or project implementation grants, or both, is not awarded during a grant period, the agency may reallocate the funds to the other kind of grant or to a subsequent grant period.

Subp. 4. **Loan fund allocation.** Within 90 days following the close of an application period, the agency shall determine how much of the remaining loan funding, after setting aside funds for project implementation continuations, will be made available for project implementation loan awards. In deciding how much money to make available for new loan awards, the agency shall consider the necessity to have money available for subsequent loan periods and other factors relating to the agency's ability to ensure that money will be available for upcoming projects.

Statutory Authority: *MS s 103F.745; 115.10*

History: *13 SR 661; 16 SR 584; 20 SR 1245*

7076.0190 SELECTION OF PROJECTS FOR AWARD.

Subpart 1. **Ranking.** The agency shall complete its ranking of all projects for which an acceptable application has been submitted within 90 days of the close of the application period. The agency shall rank resource investigation separately from implementation projects.

Subp. 2. **Projects funded.** The agency shall offer financial assistance to the highest priority resource investigation and project implementation applications within the limits of available funds established under part 7076.0180. A project that receives less than 50 percent of the available points will not be considered for award of funds.

Subp. 3. **Agency decision.** All decisions of the agency in ranking projects and awarding financial assistance must be made at a regular or special board meeting.

Subp. 4. **Timing.** The agency shall make its decision on fund allocation, project ranking, and projects to which financial assistance will be awarded within 90 days following the close of the application period. After the decision is made, an applicant may request a written justification of the priority points awarded the application by the agency.

Subp. 5. **Reapplication.** An applicant whose application is not awarded financial assistance must reapply in a subsequent application period to be considered for financial assistance.

Statutory Authority: *MS s 103F.745; 115.10*

History: *13 SR 661; 16 SR 584; 20 SR 1245*

7076.0200 CONTINUATION OF PROJECT IMPLEMENTATION.

Subpart 1. **Eligibility.** A project sponsor who has been awarded project implementation financial assistance is eligible for a project implementation continuation to continue

the project after the expiration of the initial financial assistance award. Project continuation financial assistance is only available for the continuation of implementation activities outlined in the project implementation work plan developed according to part 7076.0230, as amended and approved by the commissioner, or the implementation plan developed according to part 7076.0250, as amended and approved by the commissioner. The project continuation may be for up to three years, with a possible one-year extension upon written approval by the commissioner. A project sponsor is eligible for one project continuation on a particular implementation project. If the project sponsor wishes to receive additional financial assistance beyond the one project continuation, a new application must be submitted during the application period and the project must be ranked.

Subp. 2. **Request.** The commissioner shall solicit requests for project continuations in May of each year that funds are available for project implementation continuations. A project sponsor who seeks a project implementation continuation shall submit a request for the continuation in the June prior to the date that the activities funded through the initial project implementation financial assistance award will be completed and additional funds will be required to continue project implementation. The request must be submitted on a form provided by the commissioner. A project sponsor who fails to submit a request for a project continuation in the June prior to the date that the funds are required forfeits the right to a continuation. That project sponsor may apply in a subsequent application period to continue the project and compete with other applicants for project implementation financial assistance.

Subp. 3. **Approval.** Subject to the availability of funds, the agency shall approve all or part of the project sponsor's request for a project implementation continuation if it meets the following conditions:

- A. the project sponsor has satisfied the terms and conditions of the grant or loan to date;
- B. the project sponsor has identified the source of the local share of funds necessary for the project continuation, if applicable; and
- C. the request specifies the activities to be funded through the project continuation, and these activities are outlined in the implementation plan or project implementation work plan, as amended and approved by the commissioner.

Statutory Authority: *MS s 103F.745; 115.10*

History: *13 SR 661; 16 SR 584; 20 SR 1245*

7076.0210 GRANT CONDITIONS.

Subpart 1. **Amount.** A grant may be made for a maximum of 50 percent of the eligible cost of resource investigation or project implementation. When awarding grants, the agency may award the project all or part of the grant request identified in the application.

Subp. 2. [Repealed, 20 SR 1245]

Subp. 3. **Grant contract.** The project sponsor must enter into a grant contract with the agency to receive grant funds. The grant contract may be amended upon agreement of the agency and the project sponsor and execution by all the parties that signed the original contract, or their successors in office. Grant increase amendments shall be subject to the availability of funds. The grant contract period for a resource investigation grant shall be for up to three years, with a possible one-year extension upon approval by the commissioner. The grant contract period for a project implementation grant shall be equal to the project implementation period and may be extended upon agency approval of a project continuation request according to part 7076.0200. The grant contract must:

- A. establish the terms and conditions of the grant;
- B. provide that the project sponsor may enter into subcontracts, under terms and conditions specified by the agency, to complete the work specified in the contract;
- C. provide that cost overruns are the sole responsibility of the project sponsor;

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D. require that the project sponsor submit periodic progress reports and a final report to the commissioner in a format and schedule prescribed by the commissioner; and

E. incorporate terms and conditions required by federal or state statutes, rules, and regulations.

Subp. 4. **Records.** The project sponsor shall maintain all records relating to the receipt and expenditure of grant funds for at least three years from the date of termination of the grant contract. Records relating to the installation, operation, and maintenance of best management practices shall be maintained for three years beyond the design or useful life, whichever is longer.

Subp. 5. **Audit.** The project sponsor must agree that the books, records, documents, and accounting procedures and practices of the project sponsor relevant to this program may be examined at any reasonable time and location by the commissioner or the commissioner's designee, legislative auditor, or state auditor.

Subp. 6. [Repealed, 20 SR 1245]

Subp. 7. [Repealed, 20 SR 1245]

Subp. 8. [Repealed, 20 SR 1245]

Subp. 9. [Repealed, 20 SR 1245]

Subp. 10. **Eligible costs.** No grant funds shall be provided to the project sponsor for grant eligible project activities started before the grant contract period or continuing after the end of the contract period.

Statutory Authority: *MS s 103F.745; 115.10*

History: *13 SR 661; 16 SR 584; 20 SR 1245*

7076.0215 LOAN CONDITIONS.

Subpart 1. **Amount.** A loan may be made for up to 100 percent of the eligible cost of project implementation, or for all or part of the local share of a project implementation grant. When awarding loans, the agency may award the project all or part of the loan request identified in the application.

Subp. 2. **Interest rate.** The interest rate of the project implementation loan must be at or below the project implementation loan set rate. The commissioner shall determine the project implementation loan interest rate for each application cycle based on current market conditions, the project implementation loan set rate, and the need to maintain the fiscal integrity of the state revolving fund.

Subp. 3. **Second-tier loans.** A loan sponsor awarded a loan by the agency may use the funds it receives to provide loans to second-tier borrowers. The loan sponsor must provide the information and assurances required in the loan contract as described in subpart 5.

Subp. 4. **Repayment.** Repayment of loan funds received must begin not more than one year after the end of the project implementation period, and the loan must be fully amortized not later than 20 years after the end of the project implementation period. Loan repayments must be remitted to the agency at least annually, according to a schedule set forth in the loan contract.

Subp. 5. **Loan contract.** To receive loan funds, the project sponsor and one or more loan sponsors must enter into a loan contract with the agency. A loan contract may be amended upon agreement of the agency, the project sponsor, and the loan sponsor and executed by all parties that signed the original contract, or their successors in office. Loan increase amendments are subject to the availability of funds. All loan contracts must:

A. establish the terms and conditions of the loan;

B. require the loan sponsor to undertake an irrevocable obligation and secure the project implementation loan with its full faith and credit, and include an opinion from a bond counsel attorney stating that the loan sponsor has the authority to pledge its full faith and credit;

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- C. establish default provisions;
- D. establish the roles and responsibilities of the project sponsor and any loan sponsors in regards to the coordination and management of the project;
- E. provide that any subcontracts entered into by the project sponsor or loan sponsors to complete the work specified in the loan contract must include the terms and conditions specified by the agency;
- F. require that the project sponsor submit periodic progress reports and a final report to the commissioner in a format and schedule prescribed by the commissioner;
- G. establish the guidelines for and management of a second-tier loan program, if any;
- H. provide that the agency is not responsible for cost overruns; and
- I. incorporate terms and conditions required by federal or state statutes, rules, and regulations.

Subp. 6. **Records.** The project sponsor and any loan sponsors must maintain all records relating to the receipt and expenditure of loan funds for at least three years from the date of termination of the loan contract, according to the responsibilities identified in the loan contract. Records relating to the installation, operation, and maintenance of best management practices must be maintained for three years beyond the loan contract, or the design or useful life, whichever is longer.

Subp. 7. **Audit.** The project sponsor and any loan sponsors must obtain audits in accordance with the Single Audit Act of 1984, United States Code, title 31, section 7501-7, and federal Environmental Protection Agency regulations, including Code of Federal Regulations, title 40, section 31.26, as applicable. All books, records, documents, and accounting procedures and practices of the project sponsor and any loan sponsors relevant to this program may be examined at any reasonable time and location by the commissioner or commissioner's designee, the legislative auditor, the state auditor, or the Environmental Protection Agency.

Subp. 8. **Eligible costs.** No loan funds shall be provided to the loan sponsor for loan-eligible project activities started before the project implementation period established in the loan contract, or continuing after the end of the project implementation period established in the loan contract.

Statutory Authority: *MS s 103F.745*

History: *20 SR 1245*

7076.0220 [Repealed, 20 SR 1245]

7076.0225 PROJECT REPORTING REQUIREMENTS.

Subpart 1. **Annual progress report.** The project sponsor must submit an annual progress report to the commissioner by February 1 of each year of the resource investigation or project implementation period. The report must include the following information:

- A. a discussion of work progress relative to the schedule, and difficulties encountered meeting the schedule during the year;
- B. a discussion of the project findings appropriate to the work conducted during the year;
- C. a report of expenditures in the year and those anticipated during the upcoming year;
- D. a discussion and summary analysis of monitoring data and a discussion of the changes in water quality that appear to have resulted from the protective and restorative activities implemented during the year;
- E. water quality monitoring data collected during the year in the format required by the agency;

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F. an assessment of the monitoring and modeling plan component of the work plan and any necessary revisions; and

G. for project implementation, a listing of the specific best management practices implemented and their locations.

Subp. 2. **Semiannual update.** During each year of the resource investigation grant or project implementation period, the project sponsor must prepare for semiannual submittal or presentation to the commissioner an update of project activities and project expenditures.

Subp. 3. **Work plan.** The project sponsor, in cooperation with agency staff, must prepare a work plan according to part 7076.0230 and submit it to the commissioner.

Subp. 4. **Diagnostic study and implementation plan.** The project sponsor for a resource investigation grant shall submit to the commissioner before the final grant payment is made a diagnostic study and implementation plan that meets the requirements of parts 7076.0240 and 7076.0250.

Subp. 5. **Project implementation final report.** Upon completion of project implementation, the project sponsor must submit to the commissioner a final report that contains the following:

A. a summary of the activities completed during the project implementation period, and difficulties encountered during project implementation;

B. a summary of any implementation activities listed in the work plan that were not completed during project implementation, and an explanation of why they were not completed;

C. an evaluation of the monitoring data collected during project implementation, including a discussion of pollutant load reductions and changes in the water quality of the water of concern;

D. an electronic summary of all data collected during the implementation monitoring phase for storage in the Environmental Protection Agency STORET data bank;

E. a discussion of land use changes in the watershed that have resulted from project implementation;

F. an evaluation of the effectiveness of the public participation and education plans for the project;

G. recommendations for future implementation activities in the project area; and

H. a final financial report containing a detailed summary of project expenditures that are correlated to the elements and tasks of the work plan developed according to part 7076.0230.

Statutory Authority: *MS s 103F.745*

History: *20 SR 1245*

7076.0230 WORK PLAN.

Subpart 1. **Requirements.** The work plan required to be submitted to the commissioner, in a format specified by the commissioner, as a condition of the financial assistance must include the requirements in item A for resource investigation grants and the requirements in item B for project implementation financial assistance.

A. For resource investigation grants, the work plan must be developed in cooperation with agency staff after the grant is awarded, and must include the following:

(1) a description of the water of concern, the project area, the existing and desired resource uses, and the economic significance of the water of concern;

(2) a summary and evaluation of existing water quality and land use information;

(3) a description of existing and suspected or potential water quality problems;

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(4) a description of specified goals for project results, for water quality characterization and quantitative analysis research and assessment, and for citizen education;

(5) an outline that identifies specific tasks to be completed during the project, including the tasks needed to fulfill the requirements under parts 7076.0240 and 7076.0250, the individuals responsible for the tasks, and the dates for task initiation and completion;

(6) a public participation plan for the project;

(7) a monitoring and modeling plan as described in subpart 1a;

(8) detailed source and expenditure budgets;

(9) a list identifying the technical assistance the project sponsor needs from agency staff; and

(10) a resolution from each participating local unit of government, agency, and organization that specifically identifies their technical role in the project and their contribution to the local share of the project costs.

B. For project implementation financial assistance, the sponsor shall prepare and submit a detailed work plan that includes any necessary revisions to the approved implementation plan and the following:

(1) a revised activity schedule for implementation activities;

(2) a revised implementation budget;

(3) a quality assurance plan for construction activities;

(4) a best management practice operation and maintenance plan;

(5) a monitoring and modeling plan as required in subpart 1a that has been revised to evaluate the effectiveness of best management practices and the improvement of water quality;

(6) a public participation plan for the project;

(7) permits and authorities for implementation activities;

(8) a list identifying the technical assistance the project sponsor needs from agency staff; and

(9) a resolution from each participating local unit of government, agency, and organization that specifically identifies their technical role in the project and their contribution, if any, to the local share of the project costs.

Subp. 1a. **Monitoring and modeling plan.** A monitoring and modeling plan is a component of the work plan. For both resource investigation and project implementation, a monitoring and modeling plan must be developed in cooperation with agency staff. The monitoring and modeling plan must:

A. develop monitoring objectives based on project goals;

B. define the information needs for water quality and the methods that will be used to evaluate this information;

C. set the data requirements that are to be met for meaningful modeling and statistical analysis to be completed;

D. contain a list of predictive and diagnostic computer or statistically based models that are to be used for the project and a description and statistical definition of predictive and diagnostic uncertainties;

E. delineate and provide rationale for the selection of monitoring sites, frequency, parameters, and sampling protocols and explain the quality assurance and quality control procedures for data gathering;

F. identify laboratories, which must be certified by the Minnesota Department of Health, that will be doing analyses for the project, and include the following information:

(1) the specific analytical methods that the laboratories will use for the project;

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(2) an explanation of the laboratories' quality assurance and quality control procedures; and

(3) the certification number assigned by the Department of Health to prove the laboratories are fulfilling the requirements under chapter 4740;

G. integrate the watershed or aquifer recharge area assessment and water quality monitoring efforts; and

H. outline a plan to analyze monitoring and project area land use data and to use the data to assess the project area, water and pollutant loading, and alternative best management practices.

Subp. 2. **Review.** The commissioner will review the work plan and approve it or identify deficiencies in writing within 45 days of its receipt.

Subp. 3. [Repealed, 16 SR 584]

Statutory Authority: *MS s 103F.745; 115.10*

History: *13 SR 661; 16 SR 584; 20 SR 1245*

7076.0240 DIAGNOSTIC STUDY.

Subpart 1. **General requirements.** The diagnostic study required to be submitted by a project sponsor under part 7076.0225, subpart 4, must include:

A. a compilation of existing information and the results of water quality monitoring and modeling activities into a detailed description of the water of concern;

B. a detailed description of the project area developed from the information collected;

C. an analysis and assessment of the data and information collected as a requirement of subparts 2 and 3; and

D. the identification and documentation of the methods, procedures, predictive and diagnostic models, and other tools used to prepare and complete the diagnostic study.

Subp. 1a. [Repealed, 20 SR 1245]

Subp. 2. **Water of concern.** The diagnostic study must contain a detailed description of the water of concern that includes:

A. a summary of historical uses and changes resulting from water quality degradation;

B. a discussion of previous studies and other historic physical, chemical, and biological data;

C. biological, physical, and chemical monitoring data that provides a thorough characterization of the current water quality of the water of concern;

D. water quality data that describes the sources and magnitude of pollutants impacting the water of concern; and

E. other data as defined in the work plan that provides an understanding of the dynamics and interactions of the physical, chemical, and biological processes of the project area and the water of concern.

Subp. 3. **Project area.** The diagnostic study must contain a detailed description of the project area that includes:

A. a physical description of the project area including:

(1) project area maps, including soils maps where available;

(2) a map of the project area divided into subunits on a hydrologic basis including boundaries and flow directions for each subunit;

(3) a description of known geologic characteristics that may pose concerns relating to water quality; and

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(4) a description of waters of the state and public drainage ditches, including dams and control structures, that are located within the project area;

B. a description of existing and predicted future land uses, land cover, sources of pollution that may impact the water of concern, and resource uses including public, private, recreational, and other water uses;

C. hydrologic monitoring data that provides a thorough characterization of the surface and groundwater conditions in the project area that affect the quality of the water of concern; and

D. other data as defined in the work plan that provides an understanding of the dynamics and interactions between the project area and the quality of the water of concern.

Subp. 4. **Analysis and assessment.** The diagnostic study must contain an analysis and assessment of the data and information collected as a requirement of subparts 2 and 3 including the following:

A. the identification of existing and potential water quality problems as they relate to the water of concern;

B. a watershed or aquifer recharge area assessment that includes:

(1) an identification of the project area and its subunits defined on a hydrologic basis;

(2) an analysis of the current and predicted future land uses and management practices in the project area and their impact on the quality of the water of concern;

(3) an estimate of the pollutants coming from the subunits of the project area defined on a hydrologic basis and the identification of the target levels of pollutant reduction necessary to meet the project objectives and water quality goals; and

(4) the prioritization of the subunits of the project area defined on a hydrologic basis into priority management areas on which to focus implementation of best management practices;

C. the identification of specific water quality goals for the water of concern that includes, for lakes, an in-lake phosphorus goal defined relative to the ecoregion phosphorus criteria;

D. the identification of project objectives in terms of:

(1) specific water chemical, biological, and physical measurements;

(2) economic, recreational, and health factors; and

(3) project area characteristics and priority management areas.

Subp. 5. [Repealed, 16 SR 584]

Statutory Authority: *MS s 103F.745; 115.10*

History: *13 SR 661; 16 SR 584; 18 SR 614; 20 SR 1245*

7076.0250 IMPLEMENTATION PLAN.

The implementation plan required to be submitted by a project sponsor under part 7076.0225, subpart 4, must include:

A. a discussion of how the implementation plan will advance the water quality goals and objectives identified in the diagnostic study;

B. an analysis of the need for best management practices or categories of best management practices that will aid in the achievement of target levels of pollutant reduction in the areas identified as priority management areas, that considers:

(1) identification of best management practices or categories of practices;

(2) an estimate of costs for best management practice implementation;

(3) a schedule for implementation;

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(4) an estimate of engineering and other assistance needs, including best management practice design, and inspection of best management practice installation, operation, and maintenance;

(5) an estimate of pollutant reduction; and

(6) identification of the standards and criteria for best management practice design;

C. a water quality monitoring and evaluation plan identifying procedures and schedules for determining project progress and accomplishments, that considers:

(1) a monitoring and modeling plan that includes the chemical, physical, and biological parameters that will be measured to enable comparisons with goals and objectives established in the diagnostic study;

(2) a procedure to document and evaluate the implementation of best management practices; and

(3) a procedure to identify the effectiveness of implemented best management practices on water quality, and their impact on water resources in the project area;

D. a plan and schedule to implement an information and education program in the project area;

E. an identification of roles and responsibilities of the project sponsor, its representatives, and cooperating agencies in implementing the project;

F. a proposed schedule for project implementation or other planned project activities, segmented into three-year periods;

G. an estimated budget for project implementation or other planned project activities, segmented into three-year periods;

H. a plan to maintain project goals and accomplishments and prevent further non-point source pollution; and

I. a list of any federal, state, or local permits and approvals required to complete the project.

Statutory Authority: *MS s 103F.745; 115.10*

History: *13 SR 661; 20 SR 1245*

7076.0260 DIAGNOSTIC STUDY AND IMPLEMENTATION PLAN APPROVAL.

Subpart 1. **Review and decision.** The commissioner shall review and approve or disapprove the diagnostic study and implementation plan within 90 days of their receipt. The commissioner shall approve the diagnostic study and implementation plan if the commissioner determines that:

A. the diagnostic study and implementation plan meet the requirements for a diagnostic study and implementation plan identified in parts 7076.0240 and 7076.0250;

B. the diagnostic study provides information in sufficient detail to technically define the water quality problems, sources of pollution, and project goals and objectives for water quality protection and improvement;

C. the implementation plan provides a technically feasible means to abate non-point sources of water pollution and achieve project objectives; and

D. the diagnostic study and implementation plan are consistent with state and federal statutes, rules, and regulations.

Subp. 2. **Reasons for disapproval.** If the diagnostic study and implementation plan are disapproved, the commissioner shall provide the project sponsor with a written statement of reasons for disapproval.

Subp. 3. **Resubmittal.** A disapproved diagnostic study and implementation plan must be revised by the project sponsor and resubmitted to the commissioner. Upon receipt of

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the revised diagnostic study and implementation plan, the commissioner shall review the revised diagnostic study and implementation plan in accordance with this part.

Statutory Authority: *MS s 103F.745; 115.10*

History: *13 SR 661; 20 SR 1245*

7076.0270 BEST MANAGEMENT PRACTICE EVALUATION.

In selecting best management practices for inclusion in an implementation plan, the project sponsor shall consider the following factors in evaluating the best management practices:

- A. whether the best management practice will achieve the desired project objectives;
- B. whether the best management practice implementation would create other water quality or environmental problems;
- C. the degree of nonpoint source control achieved for the amount of resources allocated for that control;
- D. whether a less costly best management practice could achieve a similar result;
- E. whether the best management practice is reasonably suited for the individual site or priority management area; and
- F. the likelihood of adoption of the best management practice.

Statutory Authority: *MS s 103F.745; 115.10*

History: *13 SR 661; 20 SR 1245*

7076.0280 GRANT PAYMENTS.

Subpart 1. **Initial payment.** After the commissioner of management and budget has signed the grant contract between the agency and the project sponsor, the agency shall provide to the project sponsor 25 percent of the grant award provided in the grant contract.

Subp. 2. **Second payment.** Upon written approval by the commissioner of the work plan required under part 7076.0225, subpart 3, the agency shall provide to the project sponsor 35 percent of the grant award provided in the grant contract. The cumulative assistance paid to the project sponsor shall equal 60 percent of the grant award.

Subp. 3. **Project review and budget adjustment.** Upon expenditure of 50 percent of total eligible project costs by the project sponsor, the project sponsor shall submit to the commissioner for review and approval a detailed summary of project expenditures and completed work activities. The commissioner shall review the summary to verify cost eligibility and acceptable completion of work plan activities and to compare actual expenditures with the approved project work plan budget.

Subp. 4. **Third payment.** After the requirements of subpart 3 have been met, the agency shall provide to the project sponsor up to 30 percent of the grant award. The payment shall be less than 30 percent of the grant award to compensate for the final payment withholding required under subpart 6.

Subp. 5. **Payment adjustment upon grant contract amendment.** When the total grant assistance amount authorized for a project is increased by a grant contract amendment, the agency shall pay the project sponsor the additional amount of grant assistance that the project sponsor is entitled to receive under subparts 1 to 4.

Subp. 6. **Final payment.** The agency shall withhold a minimum of ten percent of the grant award until the agency is satisfied that the project has been completed according to the terms of the grant contract and parts 7076.0100 to 7076.0290. More than ten percent of the grant award shall be withheld if the costs necessary to complete the project are less than those identified in the grant contract. Ten percent of the grant award shall be withheld if the costs necessary to complete the project are equal to or exceed the costs identified in the grant contract.

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Subp. 7. [Repealed, 20 SR 1245]

Statutory Authority: *MS s 103F.745; 115.10*

History: *13 SR 661; 16 SR 584; 20 SR 1245; L 2009 c 101 art 2 s 109*

7076.0285 LOAN PAYMENTS.

Subpart 1. **Payments.** Loan funds cannot be used for any project costs incurred before the loan contract is signed by the commissioner of management and budget. The project sponsor or loan sponsor must submit to the agency a certification of incurred costs in a format and schedule acceptable to the agency, which certifies that eligible costs have been incurred, but not necessarily paid, by the project sponsor or loan sponsor for work on the project. Upon receiving the certification, the agency must pay the project sponsor or loan sponsor if the sponsor is in compliance with the conditions of the loan contract and the requirements of parts 7076.0100 to 7076.0290.

Subp. 2. **Mid-project review and budget adjustment.** Upon expenditure of 50 percent of total eligible project costs, the project sponsor must submit to the commissioner for review and approval a detailed summary of project expenditures and completed work activities. The commissioner shall review the summary to verify cost eligibility and acceptable completion of work plan activities, to compare actual expenditures with the approved project work plan budget, and to verify that the terms of the loan contract are being met.

Subp. 3. **Final project review.** Upon completion of the project, the project sponsor must submit to the commissioner for review and approval a detailed summary of project expenditures and completed work activities. The commissioner shall review the summary to verify cost eligibility and acceptable completion of work plan activities, to compare actual expenditures with the approved project work plan budget, and to verify that the terms of the loan contract are being met. If the commissioner finds that loan funds were used for ineligible projects costs, those funds must be returned to the agency, along with any interest or fees, as outlined in the loan contract.

Statutory Authority: *MS s 103F.745*

History: *20 SR 1245; L 2009 c 101 art 2 s 109*

7076.0290 RESCISSION OF FINANCIAL ASSISTANCE.

The agency may rescind and seek repayment of a financial assistance award if the project is not being completed in accordance with the terms and conditions of the grant or loan contract, including time schedules.

Statutory Authority: *MS s 103F.745; 115.10*

History: *13 SR 661; 20 SR 1245*