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CHAPTER 7606 DEPARTMENT OF PUBLIC SERVICE ENERGY DIVISION INSTITUTIONAL ENERGY LOANS

NOTE: These rules were originally numbered as parts 7605.0010 to 7605.0080, see the notice of adoption at 13 State Register, page 2762. That chapter already contained rules that were unrelated, therefore these rules are being renumbered editorially as parts 7606.0010 to 7606.0080.

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7606.0010 PURPOSE.

The purpose of parts 7606.0020 to 7606.0080 is to establish application procedures for loan participation, to set criteria for review and approval of loan participation applications, and to set criteria for loan participation agreements.

Statutory Authority: *MS s 216C.09*

History: *13 SR 2762*

7606.0020 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 7606.0010 to 7606.0080, the following terms have the meanings given them.

Subp. 2. **Applicant.** "Applicant" means a statutory or home rule charter city, county, or town, or a school or hospital as defined in this part, located in Minnesota, or joint power entity consisting of these units, that is making application for loan participation under this program.

Subp. 3. **Building.** "Building" means any separate structure owned and operated by an applicant.

Subp. 4. **Commissioner.** "Commissioner" means the commissioner of the Department of Public Service.

Subp. 5. **Conservation measure.** "Conservation measure" means an installation or modification of an installation to a building that is primarily intended to reduce energy consumption or allow the use of an alternative energy source including solar, wind, peat, wood, and agricultural residue.

Subp. 6. **Hospital.** "Hospital" means a facility licensed under Minnesota Statutes, sections 144.50 to 144.55.

Subp. 7. **Lender.** "Lender" means a bank, trust company, mortgage company, credit union, mortgage banker, national banking association, savings bank, savings association, savings and loan association, building and loan association, insurance company, securities broker-dealer, financial organizations relating to commercial credit or venture capital, or a lender certified by the secretary of Housing and Urban Development or by the administrator of the United States Department of Veterans Affairs, or approved or certified by the administrator of the Farmers Home Administration or any other financial or lending institution, whether organized under federal law or the laws of any state of the United States, and whether located in or out of Minnesota, which issues a loan to an applicant to implement energy conservation measures. For participation in loans to applicants eligible for funds under Minnesota Statutes, section 216C.37, lender also means the Minnesota Department of Finance.

Subp. 8. **Payback.** "Payback" means the simple payback that is equal to the sum of the design, acquisition, and installation costs of a conservation measure divided by the estimated first year energy cost savings attributable to that measure.

Subp. 9. **Project.** "Project" means all proposed work in a loan participation application.

Subp. 10. **School.** "School" means a public school district or a private institution:

A. that provides, and is legally authorized to provide, elementary education or secondary education or both on a day or residential basis;

B. that:

(1) provides, and is legally authorized to provide, a program of education beyond secondary education on a day or residential basis;

(2) admits as students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate;

(3) is accredited by a nationally recognized accrediting agency or association; and

(4) provides an educational program for which it awards a bachelor's degree or higher degree or provides not less than a two-year program which is acceptable for full credit toward such a degree at any institution which meets the preceding requirements and which provides such a program; or

C. that provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and which meets the provisions in item B, subitems (1) to (3).

Statutory Authority: *MS s 216C.09*

History: *13 SR 2762*

7606.0030 LOAN ELIGIBILITY CRITERIA.

Subpart 1. **In general.** The commissioner shall approve applications from applicants and participate in loans from lenders to applicants in compliance with parts 7606.0010 to 7606.0080 for conservation measures that have a payback of ten years or less. The commissioner shall not approve any application for which funds are not available to purchase a loan participation.

Subp. 2. **Eligibility.** Funds are available to participate in loans from lenders to applicants for:

A. conservation measures which have not previously been approved under this program;

B. cost overruns for a previously approved conservation measure in progress, or previously unidentified but related work which is necessary for successful implementation of a previously approved conservation measure, provided the conservation measure as amended continues to meet the requirements of parts 7606.0010 to 7606.0080.

Subp. 3. **Prior approval required.** Except for the measures in subpart 2, item B, conservation measures for which acquisition or installation have been contracted for or begun before approval by the commissioner are ineligible. This prior approval requirement does not apply to design activities.

Subp. 4. **Useful life.** Loan participation shall not be approved for buildings with a remaining useful life less than or equal to the payback of the conservation measure proposed. Loan participation shall not be approved for a conservation measure if the payback of the conservation measure proposed is greater than or equal to the useful life of the measure.

Subp. 5. **New construction.** Only conservation measures for existing buildings are eligible. New construction is eligible only if it is necessary for successful implementation of a conservation measure for an existing building.

Statutory Authority: *MS s 216C.09*

History: *13 SR 2762*

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7606.0040 LOAN PARTICIPATION LIMITS.

The commissioner will participate in a loan from a lender to an applicant up to a maximum of 50 percent of the loan principal or \$200,000, whichever is less. While the commissioner may participate in more than one loan to an applicant, the total participation under this program for any one applicant may not exceed \$200,000.

Statutory Authority: *MS s 216C.09*

History: *13 SR 2762*

7606.0050 APPLICATION CONTENTS.

Subpart 1. In general. An applicant shall submit a complete application to the commissioner on a form provided by the commissioner. An application must be signed in ink by an authorized official of the applicant, must include the authorized official's title, and must be dated.

Subp. 2. Contents. An application must contain, at a minimum:

A. the name and complete mailing address, including county, of the applicant;

B. a contact person's name, title, and telephone number;

C. a list of buildings included in the application and the dollar amount requested per building;

D. the name, address, and total floor area in square footage of each building;

E. the original construction date and addition construction dates of each building;

F. the state legislative district affected by the application;

G. a summary description of each proposed conservation measure, including its estimated cost, loan amount proposed, estimated annual energy cost savings, estimated annual fuel and electric savings, estimated payback, and the estimated dates the conservation measure will be started and completed; and

H. a resolution of the governing body of the applicant that:

(1) designates and authorizes a representative to enter into and sign contracts associated with the loan;

(2) guarantees that the applicant will use all loan funds solely for the approved conservation measures; and

(3) assures that it will comply with parts 7606.0010 to 7606.0080.

Subp. 3. Technical support materials. All applications for loan participation funds must also contain:

A. fuel and electric consumption data for the most recent completed annual period July 1 to June 30, for each building in the application;

B. a description of the current condition of the building and the building component, equipment, or system to be improved, and a description of each proposed conservation measure;

C. an engineering analysis sufficient to determine the technical feasibility and payback of each proposed conservation measure, on a form prescribed by the commissioner. An engineering analysis for a conservation measure estimated to cost more than \$25,000 must be performed by a mechanical engineer, electrical engineer, or architect registered in Minnesota.

Subp. 4. Assurances. An applicant must also submit assurances that:

A. it has provided for the proper and efficient operation and maintenance of the proposed conservation measures;

B. the work performed with loan funds will meet all Minnesota building code requirements;

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C. it has provided funds to pay any portion of the project cost not eligible for program funds, specifically identifying the source of those funds;

D. it has met requirements for voter approval, if applicable; and

E. it is able to accept and repay the proposed loan without exceeding applicable debt and levy limits.

Subp. 5. Incomplete applications. If an incomplete application is received, the commissioner shall notify the applicant of specific deficiencies in the application. The applicant has 30 days from the date of the commissioner's notification to complete the application. If the application is not completed and received by the commissioner within 30 days, the application is considered withdrawn. To be further considered, the applicant must reapply.

Statutory Authority: *MS s 216C.09*

History: *13 SR 2762*

7606.0060 APPLICATION REVIEW.

Subpart 1. Administrative review. The commissioner shall examine a loan participation application to verify that the applicant is eligible, that the required forms are included and correctly completed, that the estimated start and completion dates are reasonable, that the required assurances and resolution are included, and that the application is properly signed and dated.

Subp. 2. Technical review. The commissioner shall examine the technical support materials included in an application to verify that the proposed conservation measures are analyzed with adequate details of existing conditions and proposed modifications or additions, that the appropriate calculation procedures are used, that the proposed conservation measures are eligible, and that the proposed conservation measures are technically feasible and meet the requirements of parts 7606.0010 to 7606.0080.

Subp. 3. Rejection and resubmission. The commissioner may accept, reject, or modify an application as necessary based on the application review. The commissioner shall notify an applicant of the cause for modification or rejection of an application and the options available to correct the application for resubmission. If some of the conservation measures in an application are accepted as submitted, the applicant may choose to withdraw the rejected measures and accept a loan for the remaining measures.

Statutory Authority: *MS s 216C.09*

History: *13 SR 2762*

7606.0070 LENDER.

To be eligible to sell a loan participation to the commissioner, an officer of a lender must sign a participation agreement provided by the commissioner. The commissioner shall not participate in any loan made by a lender before the execution of a participation agreement. The agreement shall set terms and conditions under which a loan can be made, establish duties of the parties, and specify procedures to be followed in the event of default by the applicant. The agreement must require the lender and the commissioner to conform to the following conditions:

A. The lender will enter into a loan agreement with the applicant. The loan agreement will include the following:

(1) an agreement that the commissioner may review upon request all relevant financial data of the applicant and may inspect any and all buildings, equipment, and systems associated with a loan; and

(2) a resolution of the applicant's governing body guaranteeing that it will use all loan funds solely for the eligible costs of the proposed project, and assuring that it has and will comply with parts 7606.0010 to 7606.0080.

B. The lender shall make no provision to subordinate any loan collateral

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to other liens against such property without prior written approval from the commissioner.

C. The lender shall not acquire any preferential collateral, surety, or insurance to protect its interest in the loan.

D. All collateral must be prorated between the lender and the commissioner.

E. The lender shall require the applicant to adequately insure, maintain, and repair all collateral.

F. The lender shall review and approve the loan application in accordance with generally accepted commercial lending practices.

G. The lender is responsible for servicing the loan either directly or by contracting with a servicing agent.

H. The lender shall not sell or transfer the loan or any portion of it without prior written approval of the commissioner.

I. The lender, for the term of the entire loan, shall promptly notify the commissioner of any loan payments that are one month overdue. The lender shall provide the commissioner with any and all past due notices at the same time they are sent to the applicant. In addition, the lender must submit an annual loan performance report to the commissioner on a form provided by the commissioner.

J. The portion of the loan not participated in by the commissioner shall not carry an interest rate in excess of three points above the lender's prime rate or base rate for variable or fixed rate loans.

K. The portion of the loan participated in by the commissioner shall have an amortization term not exceeding five years.

L. The lender agrees not to make any amendments to the loan agreement after loan closing without prior written approval of the commissioner.

M. The lender agrees to make no waivers of default without prior written approval of the commissioner.

N. The commissioner may review all financial data associated with the execution and servicing of the loan made by the lender.

O. Before a declaration of default, any and all payments received by the lender shall first be credited to interest due on a pro rata basis and then be credited to the principal balance due on a pro rata basis.

P. During an event of default for which a declaration of default has been declared, any and all payments received by the lender shall first be used to pay the reasonable expenses related to the collection of, or attempts to collect, money owed under the loan. After payment of these amounts, any and all payments received by the lender shall first be credited to the principal balance due on a pro rata basis, and then be credited to interest due on a pro rata basis.

Q. If the commissioner determines that an applicant has failed to comply with the start or completion dates given in the loan participation application as approved, and the applicant cannot reasonably justify its failure to comply, the lender shall, upon written request of the commissioner, declare the loan to be in default.

Statutory Authority: *MS s 216C.09*

History: *13 SR 2762*

7606.0080 REPORTS AND MONITORING.

Subpart 1. In general. An applicant that receives a loan in which the commissioner participates shall submit the reports listed in subparts 2 to 5.

Subp. 2. Annual project status report. The applicant shall submit to the commissioner, on a form provided by the commissioner, an annual project status report covering the period July 1 through June 30. This report is due each July 31 until the project is completed.

The project status report must indicate the progress of the implementation of the project, problems encountered, the effect of the problems on the project, and the corrective action taken. If at any time the applicant fails to comply with the start or completion dates given in the loan participation application as approved, and if the applicant cannot justify to the commissioner its lack of progress, the loan may be declared in default.

Subp. 3. Semiannual financial report. The applicant shall submit to the commissioner, on a form provided by the commissioner, a semiannual financial status report that indicates expenditures of loan funds through the last date of each report period. This report is due on July 31 for the period January 1 to June 30, and on January 31 for the period July 1 to December 31 until the project is completed.

Subp. 4. Final report. Within 60 days of the completion of the project, the applicant shall submit to the commissioner, on a form provided by the commissioner, a final project status report and a financial status report that gives actual expenditures of the conservation measures implemented.

Subp. 5. Annual energy report. The applicant shall submit to the commissioner, on a form provided by the commissioner, an annual fuel and electric consumption report due each October 31 for the duration of the loan contract period, or for a minimum of three years after project completion if the loan is paid in less than three years, unless the commissioner cancels this requirement before the end of the loan contract period.

Statutory Authority: *MS s 216C.09*

History: *13 SR 2762*