

CHAPTER 7606
DEPARTMENT OF COMMERCE
ENERGY CONSERVATION FINANCING

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7606.0010 AUTHORITY AND PURPOSE.

Subpart 1. **Authority.** Minnesota Statutes, section 216C.09, paragraph (a), clause (13), requires the commissioner of the Department of Commerce to adopt rules for the purpose of dispensing loans, grants, or other financial aid from money received from litigation or settlement of alleged violations of federal petroleum-pricing regulations made available to the department for that purpose.

Subp. 2. **Purpose.** The purpose of parts 7606.0020 to 7606.0080 is to establish application procedures for financing participation, to set criteria for review and approval of financing participation applications, and to set criteria for financing participation agreements.

Statutory Authority: *MS s 216C.09*

History: *13 SR 2762; 31 SR 1605*

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 the state of Minnesota, 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 financing 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 Commerce.

Subp. 5. **Conservation measure.** "Conservation measure" means an installation or modification of an installation to a building or stationary energy-using system 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. 5a. **Energy benchmark.** "Energy benchmark" means:

A. for public buildings, the energy efficiency benchmark required under Laws 2002, chapter 398; or

B. for buildings outside of the scope of item A, the energy efficiency benchmark derived by either:

(1) the procedures used to comply with Laws 2002, chapter 398; or

(2) the Portfolio Manager tool of the Energy Star Program of the United States Environmental Protection Agency and the United States Department of Energy.

Subp. 6. **Hospital.** "Hospital" means a facility licensed under Minnesota Statutes, sections 144.50 to 144.56.

Subp. 7. [Repealed, 31 SR 1605]

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 financing participation application.

Subp. 10. **School.** "School" means a public 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; L 1995 c 202 art 1 s 25; L 2001 1Sp4 art 6 s 1; 31 SR 1605*

7606.0030 FINANCING ELIGIBILITY CRITERIA.

Subpart 1. **In general.** The commissioner shall approve applications from applicants and participate in financing from financing providers 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 financing participation.

Subp. 2. **Eligibility.** Funds are available to participate in financing from financing providers to applicants for:

A. a conservation measure not previously approved under this program, unless the measure has exceeded its normal useful life;

B. cost overruns for a previously approved conservation measure in progress, or previously unidentified but related work necessary for successfully implementing 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.** Financing participation must not be approved for buildings with a remaining useful life less than or equal to the payback of the conservation measure proposed. Financing participation must 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.

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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; 31 SR 1605*

7606.0040 FINANCING PARTICIPATION LIMITS.

The commissioner will participate in financing from a financing provider to an applicant up to a maximum of 50 percent of the financing principal or \$500,000, whichever is less. While the commissioner may participate in more than one financing agreement per applicant, the total outstanding participation balance under this program for any one applicant may not exceed \$500,000.

Statutory Authority: *MS s 216C.09*

History: *13 SR 2762; 15 SR 2223; 31 SR 1605*

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, telephone number, and e-mail address;
- 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 districts affected by the application;
- G. a summary description of each proposed conservation measure, including its estimated cost, financing amount proposed, estimated annual energy cost savings, estimated annual fuel and electric savings, estimated payback, and 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 financing;
 - (2) guarantees that the applicant will use all financing 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 financing must also contain:

- A. fuel and electric consumption data and the energy benchmark for the most recently completed calendar or fiscal year, 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 and how energy savings will be measured, on a form prescribed by the commissioner.

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 financing funds will meet all Minnesota Building Code requirements;

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 financing 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; 31 SR 1605*

7606.0060 APPLICATION REVIEW.

Subpart 1. **Administrative review.** The commissioner shall examine a financing 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 financing for the remaining measures.

Statutory Authority: *MS s 216C.09*

History: *13 SR 2762; 31 SR 1605*

7606.0070 FINANCING PROVIDER.

To be eligible to sell financing participation to the commissioner, an officer of a financing provider must sign a participation agreement provided by the commissioner. The commissioner shall not participate in any financing made by a financing provider before the execution of a participation agreement. The agreement shall set terms and conditions under which financing 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 financing provider and the commissioner to conform to the following conditions:

A. The financing provider will enter into a financing agreement with the applicant. The financing 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 financing; and

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

B. The financing provider shall make no provision to subordinate any financing collateral to other liens against such property without prior written approval from the commissioner.

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

D. All collateral must be prorated between the financing provider and the commissioner.

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

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

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

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

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

J. The portion of the financing participated in by the commissioner must have an amortization term not exceeding five years.

K. The financing provider agrees not to make any amendments to the financing agreement after financing closing without prior written approval of the commissioner.

L. The financing provider agrees to make no waivers of default without prior written approval of the commissioner.

M. The commissioner may review all financial data associated with the execution and servicing of the financing made by the financing provider.

N. Before a declaration of default, any and all payments received by the financing provider must first be credited to interest due and the remainder credited to the principal balance. A pro rata distribution of interest and principal must be forwarded to the commissioner based on the commissioner's percentage of participation.

O. During an event of default for which a declaration of default has been declared, any and all payments received by the financing provider must first be used to pay the reasonable expenses related to the collection of, or attempts to collect, money owed under the financing. After payment of these amounts, any and all payments received by the financing provider must 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.

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

Statutory Authority: *MS s 216C.09*

History: *13 SR 2762; 31 SR 1605*

7606.0080 REPORTS AND MONITORING.

Subpart 1. **In general.** An applicant that receives financing 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 most recent calendar or fiscal year. 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 financing participation application as approved, and if the applicant cannot justify to the commissioner its lack of progress, the financing 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 financing 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 reports.** 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. Within one year of the completion of the project the applicant shall submit to the commissioner, on a form provided by the commissioner, a report of the measured energy savings from the energy conservation measures installed.

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, including the energy benchmark for the 12-month period ending June 30, due each October 31 for the duration of the financing contract period, or for a minimum of three years after project completion if the financing is paid in less than three years, unless the commissioner cancels this requirement before the end of the financing contract period.

Statutory Authority: *MS s 216C.09*

History: *13 SR 2762; 31 SR 1605*