

## CHAPTER 8895

### DEPARTMENT OF TRANSPORTATION

### PORT DEVELOPMENT ASSISTANCE

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#### 8895.0100 DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 8895.0100 to 8895.1100 have the meanings given them in this part.

Subp. 2. **Assistance agreement.** "Assistance agreement" means a formal agreement between the commissioner and an eligible applicant for port assistance improvement funds.

Subp. 3. **Commercial navigation facility.** "Commercial navigation facility" means ports or individual docks and terminals, supporting equipment, structures, and transportation facilities used by vessels transporting passengers or commodities, by vessels under construction or repair, or by commercial fishing vessels. The term does not include facilities used on a regular basis by recreational or sport fishing vessels.

Subp. 4. **Commercial vessel.** "Commercial vessel" means a vessel used for transporting passengers or property, but does not include a vessel used primarily for recreation, sport, or sport fishing.

Subp. 5. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Department of Transportation.

Subp. 6. **Disposal facility.** "Disposal facility" means a containment facility, a diked or undiked disposal site, or a transfer site for future beneficial reuse of dredged material.

Subp. 7. **Disposal facility costs.** "Disposal facility costs" means costs of acquisition or construction of a disposal facility.

Subp. 8. **Dock.** "Dock" means any structure on a shoreline or near shoreline development used in mooring vessels or transferring people or cargo to or from vessels.

Subp. 9. **Dredging.** "Dredging" means excavating harbor sediment or bottom materials, including mobilizing or operating equipment for excavating and transporting dredged material to a disposal facility and for placing the dredged material in the disposal facility.

Subp. 10. **Dredged material disposal.** "Dredged material disposal" means the placing of dredged material in a disposal facility.

Subp. 11. **Eligible applicant.** "Eligible applicant" means a person, company, political subdivision, or port authority that owns a commercial navigation facility.

Subp. 12. **Final engineering costs.** "Final engineering costs" means engineering costs that occur after the application for port assistance improvement funds has been completed. These costs may include, but are not limited to, the cost of final plans and specifications for the project.

Subp. 13. **Maintenance dredging.** "Maintenance dredging" means dredging an area previously dredged to a specific depth, which is not necessary for a new service.

Subp. 14. **Mn/DOT.** "Mn/DOT" means the Minnesota Department of Transportation.

Subp. 15. **Navigation system.** "Navigation system" means the commercially navigable reaches of the Mississippi, Minnesota, and St. Croix rivers; the commercial harbors on Minnesota's Lake Superior shoreline; and the commercial navigation facilities on those waterways.

Subp. 16. **Port.** "Port" means an area along one of Minnesota's navigable waterways that supports at least one terminal that takes on or discharges cargo or passengers.

Subp. 17. **Program.** “Program” means the port development assistance program established in Minnesota Statutes, section 457A.02.

Subp. 18. **Terminal.** “Terminal” means any structure and adjacent land area used in the actual operations or support of the transfer of commodities or passengers to or from vessels.

**Statutory Authority:** *MS s 457A.05*

**History:** *17 SR 570*

#### **8895.0200 PROGRAM PURPOSE AND ADMINISTRATION.**

Subpart 1. **Purpose.** The purpose of the port development assistance program and parts 8895.0100 to 8895.1100 is to expedite, retain, or generally improve the movement of commodities and passengers on the commercial navigation system and enhance the commercial vessel construction and repair industry in Minnesota by providing state funds in a revolving account that may be used in establishing contracts between the state and eligible applicants for port development assistance.

Subp. 2. **Commissioner to administer.** The commissioner shall administer the port development assistance program to advance the purposes of subdivision 1. In administering the program, the commissioner may:

- A. make grants and loans to eligible applicants;
- B. make assistance agreements with recipients of grants and loans; and
- C. adopt rules authorized by Minnesota Statutes, section 457A.05.

**Statutory Authority:** *MS s 457A.05*

**History:** *17 SR 570*

#### **8895.0300 ELIGIBLE PROJECTS.**

Subpart 1. **Description.** To be eligible for the program, a project must benefit Minnesota’s shippers and receivers by improving or developing a commercial navigation facility or its components. Eligible projects include dock and terminal repair, capital improvement to a commercial navigation facility, supporting equipment directly related to loading or off-loading cargo to or from a vessel, disposal facility construction or repair, and dredging to open a new commercial navigation facility.

Subp. 2. **Location.** Eligible projects must be located on Minnesota’s Lake Superior shoreline or on the shoreline of Minnesota’s commercially navigable portions of the Mississippi, Minnesota, and St. Croix rivers where vessels take on or discharge commercial cargo or passengers; where commercial freight, passenger, or military vessels are built or repaired; where vehicle- or passenger-carrying ferry service operates; or where commercial fishing vessels unload fish or are headquartered.

**Statutory Authority:** *MS s 457A.05*

**History:** *17 SR 570*

#### **8895.0400 COST ELIGIBILITY.**

Subpart 1. **Eligible costs.** The types and amounts of costs eligible for state assistance must be negotiated in developing an assistance agreement. Eligible costs include final engineering costs, capital improvements to a commercial navigation facility, construction costs and dredging costs to open a new commercial navigation facility, and other costs agreed to by the commissioner and the applicant.

Subp. 2. **Costs not eligible.** The following costs are not eligible for reimbursement under the program:

- A. an applicant’s administration costs, insurance costs, and legal costs to obtain a general assistance award;
- B. the costs of acquiring permits or preparing environmental documents, feasibility studies, conceptual project designs, or design revisions;
- C. the interest on money borrowed by the applicant or interest charged to the applicant for late payment of project costs;

D. the costs related to the routine maintenance, repair, or operation of a commercial navigation facility; and

E. the costs of maintenance dredging to maintain an existing channel.

**Statutory Authority:** *MS s 457A.05*

**History:** *17 SR 570*

#### **8895.0500 PROJECT SELECTION, MINIMUM QUALIFICATIONS, AND RANKING.**

Subpart 1. **Project selection.** The commissioner shall consider the following factors in selecting projects for funding through the program:

A. economic considerations, including determinations of:

(1) whether the projected additional revenue generated by the improvement project will be sufficient to recover its costs;

(2) the overall economic impact of the project as determined by a benefit–cost analysis;

(3) the potential loss of local income, taxes, or jobs if the project is not completed;

(4) added costs to shippers, receivers, and the local or regional economy if failure to complete the project causes significant delay or stoppage of vessel movement; and

(5) the added costs of full replacement of a facility over the costs of responding to an improvement need if the project is implemented; and

B. safety considerations, including determinations of:

(1) improvements in vessel or cargo–handling safety at the facilities;

(2) improvements in working condition safety in dock cargo–handling and storage areas; and

(3) improvements that enhance the movement of cargo or passengers at navigation facilities.

Subp. 2. **Project funding; minimum requirements.** A project does not qualify for program funding if:

A. the project is inconsistent with criteria in parts 8895.0100 to 8895.1100;

B. the application is incomplete or inaccurate; or

C. the proposed project is incompatible with applicable harbor development or local comprehensive plans.

Subp. 3. **Project ranking.** The commissioner shall establish timetables for the ranking of projects. The ranking of projects determines the priority in which funding will be considered.

Subp. 4. **Criteria for ranking projects.** The commissioner shall consider the following criteria to determine project ranking:

A. ability of the project to expedite, retain, or generally improve the movement of passengers or cargo;

B. ability of the project to enhance the commercial vessel construction and repair industry;

C. ability of the project to promote identifiable economic development in and around the port and harbor;

D. ability of the project to produce a regional or community benefit independent of an individual facility; and

E. ability to repay a loan on the basis of the benefit–cost analysis.

Subp. 5. **Application may be resubmitted.** If the commissioner determines that an application is not eligible for ranking or is not ranked high enough for funding selection, that application may be resubmitted for the next funding cycle.

**Statutory Authority:** *MS s 457A.05*

**History:** *17 SR 570*

**8895.0600 TYPES OF ASSISTANCE PROJECTS; ELIGIBILITY; FUNDING.**

Subpart 1. **Schedule for filing applications.** The commissioner shall establish annually a deadline for filing applications for assistance under the program. This schedule will be published in the State Register. Upon request to the commissioner, schedules will be sent by mail to interested parties.

Subp. 2. **Types of assistance; eligibility.** The commissioner shall determine under items A and B the type of assistance for which a project will be eligible.

A. To be eligible to qualify for a loan, a project must satisfy one or both of the following conditions:

(1) the project expedites, retains, or generally improves the movement of commodities or passengers on the commercial navigation system; or

(2) the project enhances the commercial vessel construction and repair industry in Minnesota.

B. To qualify for a grant or a combination of both a grant and loan, the project must satisfy at least one of the conditions in item A, does not produce an increase in revenue that could be used to finance the project, and either:

(1) promotes identifiable economic development in and around ports and harbors in the state; or

(2) produces a regional or community benefit independent of an individual facility.

C. The interest rate and other terms, including security and repayments of loans, must be negotiated by the parties and must be included in the assistance agreement.

Subp. 3. **Commitment of funds.** Program funds may be committed to an eligible applicant only after a project assistance agreement is negotiated and signed by the commissioner and the applicant.

Subp. 4. **Final funding restrictions.** The commissioner shall not make final decisions on funding a proposed project in whole or in part until:

A. all legally required permits are obtained;

B. non-state-matching funds are formally committed; and

C. the project applicant is in compliance with the program agreement.

Subp. 5. **Rescinding project funding.** The commissioner shall rescind funding if the eligible applicant withdraws its application or is unable to enter into a project assistance agreement that in the commissioner's determination satisfies parts 8895.0100 to 8895.1100 and protects the state's investment.

Subp. 6. **Assigning rescinded funds.** When a project's funding is rescinded, in whole or in part, the commissioner may fund the next highest ranked, nonfunded project on the current project priority list.

Subp. 7. **Repaying loans.** A loan recipient shall repay the funds loaned by the commissioner according to the negotiated project assistance agreement. Payments must be made on a set schedule. The maximum repayment schedule must not exceed 15 years.

**Statutory Authority:** *MS s 457A.05*

**History:** *17 SR 570*

**8895.0700 STATE PARTICIPATION, LIMITATIONS.**

Subpart 1. **State participation, limitations.** The state's share of project costs must not exceed 50 percent of the nonfederal share of the eligible costs to be incurred by the applicant for the project.

Subp. 2. **No continuing funding responsibility.** The commissioner shall not assume a continuing funding responsibility for any commercial navigation facility project.

Subp. 3. **Fund matching.** Port improvement assistance funding must not be used as a required match with other state funds, regardless of source.

**Statutory Authority:** *MS s 457A.05*

**History:** *17 SR 570*

**8895.0800 APPLICATION PROCESS.**

Subpart 1. **Application submittal.** An application by an eligible applicant for program funds must be submitted to the commissioner and comply with subpart 2.

Subp. 2. **Information requirements.** An application must include, at a minimum, the following information:

- A. a formal request for assistance;
- B. the names of the eligible applicant's representatives who are authorized to sign forms or claims and who shall act as the applicant's contact persons for the project;
- C. the name of the organization, group, or person who will accept responsibility for operating and maintaining the proposed project after completion;
- D. documentation that the proposed project is consistent with the harbor development plan or with the comprehensive plan of the local government if plans have been adopted, along with a copy of those plans attached to the application;
- E. documentation of the source of the required matching funds in the amount specified in the assistance agreement;
- F. a financial statement, including a credit history;
- G. a description of the project that, at a minimum, must include:
  - (1) a detailed description of the work to be performed including schematic plans, drawings, and sounding reports;
  - (2) a description of the means by which the work is to be performed;
  - (3) a statement of justification and reasons for undertaking the project;
  - (4) a map, sketch, or other depiction of the project site and its surrounding area including all transportation access facilities;
  - (5) a statement of current ownership of the project site and facilities and of the ownership proposed upon completion of the project;
  - (6) a proposed time schedule for performing major project tasks; and
  - (7) an operating plan as required, when requested by the commissioner; and
- H. a full discussion of anticipated economic impacts, including:
  - (1) a detailed estimate of project costs, indicating the eligible applicant's cost share, amount of state funding requested, other sources or potential sources of funds, and a full description of timetables and conditions affecting funds other than funds already budgeted by the applicant;
  - (2) an estimate of project development costs, which may include, but is not limited to, the value of existing land and facilities, the cost of additional site development, and the cost of storage or transfer facilities;
  - (3) an estimate of the applicant's annual revenues from the project if completed, or of revenues lost if the project is not completed, and an estimate of the annual costs necessary to maintain the project property;
  - (4) an estimate of the dollar value to the local economy directly attributable to the proposed project, or of lost dollar value to the local economy if the project is not completed, including a detailed description of the assumptions and the bases for those assumptions;
  - (5) a list of commodities and a disclosure of the tonnage of waterborne commerce using the project property and expected to use the project property if the project is completed;
  - (6) a list of permits necessary for the project to proceed and, if the permits have not been obtained, a description of the actions taken or to be taken to obtain the permits;
  - (7) copies of required environmental documents; and
  - (8) how the applicant plans to repay a loan.

**Statutory Authority:** *MS s 457A.05*

**History:** *17 SR 570*

**8895.0900 ASSISTANCE AGREEMENT, FORMAL IMPLEMENTATION.**

Port development assistance projects must be formally implemented through assistance agreements between the commissioner and the eligible applicant. If the eligible applicant is

unable or unwilling to enter into an assistance agreement with the commissioner in the calendar year for which the applicant's project is approved, the applicant may submit another application for the project before the commissioner will again consider it for funding in a subsequent funding period.

**Statutory Authority:** *MS s 457A.05*

**History:** *17 SR 570*

#### **8895.1000 ASSISTANCE AGREEMENT, REQUIRED PROVISIONS.**

Subpart 1. **Maximum funds.** The maximum amount of assistance funds agreed to by the commissioner must be stated in the assistance agreement for the project.

Subp. 2. **Liability; insurance.** The assistance agreement must require an assistance recipient to save and hold the commissioner and Mn/DOT harmless from and against all liability, damage, loss, claims, demands, and actions of any nature that may be related to the project. The assistance recipient shall provide, at its own expense, a comprehensive general liability insurance policy, with per-occurrence limits to be determined by the commissioner.

Subp. 3. **Bonds.** The assistance agreement must require an assistance recipient to provide evidence of performance and payment bonds for the full amount of construction contracts let by the applicant in connection with the project.

Subp. 4. **Records; audit.** The assistance agreement must require an assistance recipient to maintain project-related books and records according to Mn/DOT specifications contained in the agreement and make the records available to the commissioner for audit purposes. In addition, assistance recipients shall make periodic progress reports to the commissioner. The content and timing of these reports must be as specified in the grant or loan agreement.

Subp. 5. **Inspection.** The assistance agreement must require an assistance recipient to permit the commissioner to inspect projects or request applicants to provide independent inspection at any time.

Subp. 6. **Criteria for repaying funds.** The commissioner shall notify a recipient of program grants or loans that the recipient is required to repay, if:

A. the project for which the assistance funds are awarded is not completed in accordance with all terms of the assistance agreement, including required completion dates; or

B. a commercial navigation facility for which funds were awarded is converted during the time established in the agreement to a use inconsistent with the purposes of the program or inconsistent with the terms of the agreement or is converted during that period to a use not approved in writing by the commissioner.

**Statutory Authority:** *MS s 457A.05*

**History:** *17 SR 570*

#### **8895.1100 VARIANCE FROM AGREEMENT PROVISIONS.**

The commissioner shall grant variances for some of the criteria of this chapter in certain cases if the majority of the criteria of this chapter are satisfied and a showing is made that demonstrable hardship to the community or the region would develop without completion of the project.

**Statutory Authority:** *MS s 457A.05*

**History:** *17 SR 570*