

1 Department of Public Service

2

3 Adopted Permanent Rules Relating to Institutional Energy Loans

4

5 Rules as Adopted

6 7605.0010 PURPOSE.

7 The purpose of parts 7605.0020 to 7605.0080 is to establish
8 application procedures for loan participation, to set criteria
9 for review and approval of loan participation applications, and
10 to set criteria for loan participation agreements.

11 7605.0020 DEFINITIONS.

12 Subpart 1. **Scope.** For the purposes of parts 7605.0010 to
13 7605.0080, the following terms have the meanings given them.

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

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

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

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

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

30 Subp. 7. **Lender.** "Lender" means a bank, trust company,
31 mortgage company, credit union, mortgage banker, national
32 banking association, savings bank, savings association, savings
33 and loan association, building and loan association, insurance
34 company, securities broker-dealer, financial organizations
35 relating to commercial credit or venture capital, or a lender

1 certified by the secretary of Housing and Urban Development or
2 by the administrator of the United States Department of Veterans
3 Affairs, or approved or certified by the administrator of the
4 Farmers Home Administration or any other financial or lending
5 institution, whether organized under federal law or the laws of
6 any state of the United States, and whether located in or out of
7 Minnesota, which issues a loan to an applicant to implement
8 energy conservation measures. For participation in loans to
9 applicants eligible for funds under Minnesota Statutes, section
10 216C.37, lender also means the Minnesota Department of Finance.

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

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

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

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

22 B. that:

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

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

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

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

36 C. that provides not less than a one-year program of

1 training to prepare students for gainful employment in a
2 recognized occupation and which meets the provisions in item B,
3 subitems (1) to (3).

4 7605.0030 LOAN ELIGIBILITY CRITERIA.

5 Subpart 1. In general. The commissioner shall approve
6 applications from applicants and participate in loans from
7 lenders to applicants in compliance with parts 7605.0010 to
8 7605.0080 for conservation measures that have a payback of ten
9 years or less. The commissioner shall not approve any
10 application for which funds are not available to purchase a loan
11 participation.

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

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

16 B. cost overruns for a previously approved
17 conservation measure in progress, or previously unidentified but
18 related work which is necessary for successful implementation of
19 a previously approved conservation measure, provided the
20 conservation measure as amended continues to meet the
21 requirements of parts 7605.0010 to 7605.0080.

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

27 Subp. 4. Useful life. Loan participation ~~may~~ shall not be
28 approved for buildings with a remaining useful life less than or
29 equal to the payback of the conservation measure proposed. Loan
30 participation ~~may~~ shall not be approved for a conservation
31 measure if the payback of the conservation measure proposed is
32 greater than or equal to the useful life of the measure.

33 Subp. 5. New construction. Only conservation measures for
34 existing buildings are eligible. New construction is eligible
35 only if it is necessary for successful implementation of a

1 conservation measure for an existing building.

2 7605.0040 LOAN PARTICIPATION LIMITS.

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

9 7605.0050 APPLICATION CONTENTS.

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

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

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

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

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

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

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

27 F. the state legislative district affected by the
28 application;

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

35 H. a resolution of the governing body of the

1 applicant that:

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

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

6 (3) assures that it will comply with parts
7 7605.0010 to 7605.0080.

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

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

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

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

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

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

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

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

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

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

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

9 7605.0060 APPLICATION REVIEW.

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

17 Subp. 2. Technical review. The commissioner shall examine
18 the technical support materials included in an application to
19 verify that the proposed conservation measures are analyzed with
20 adequate details of existing conditions and proposed
21 modifications or additions, that the appropriate calculation
22 procedures are used, that the proposed conservation measures are
23 eligible, and that the proposed conservation measures are
24 technically feasible and meet the requirements of parts
25 7605.0010 to 7605.0080.

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

35 7605.0070 LENDER.

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

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

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

17 (2) a resolution of the applicant's governing
18 body guaranteeing that it will use all loan funds solely for the
19 eligible costs of the proposed project, and assuring that it has
20 and will comply with parts 7605.0010 to 7605.0080.

21 B. The lender shall make no provision to subordinate
22 any loan collateral to other liens against such property without
23 prior written approval from the commissioner.

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

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

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

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

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

36 H. The lender shall not sell or transfer the loan or

1 any portion of it without prior written approval of the
2 commissioner.

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

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

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

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

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

22 N. The commissioner may review ~~upon-request~~ all
23 financial data associated with the execution and servicing of
24 the loan made by the lender.

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

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

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

7 7605.0080 REPORTS AND MONITORING.

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

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

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

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

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

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