

1 Department of Transportation

2

3 Adopted Permanent Rules Relating to the Port Development

4 Assistance Program

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6 Rules as Adopted

7 8895.0100 DEFINITIONS.

8 Subpart 1. **Scope.** The terms used in parts 8895.0100 to
9 8895.1100 have the meanings given them in this part.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 Subp. 17. **Program.** "Program" means the port development
31 assistance program established in Minnesota Statutes, section
32 457A.02.

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

1 8895.0200 PROGRAM PURPOSE AND ADMINISTRATION.

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

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

14 A. make grants and loans to eligible applicants;

15 B. make assistance agreements with recipients of
16 grants and loans; and

17 C. adopt rules authorized by Minnesota Statutes,
18 section 457A.05.

19 8895.0300 ELIGIBLE PROJECTS.

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

29 Subp. 2. Location. Eligible projects must be located on
30 Minnesota's Lake Superior shoreline or on the shoreline of
31 Minnesota's commercially navigable portions of the Mississippi,
32 Minnesota, and St. Croix rivers where vessels take on or
33 discharge commercial cargo or passengers; where commercial
34 freight, passenger, or military vessels are built or repaired;
35 where vehicle- or passenger-carrying ferry service operates; or

1 where commercial fishing vessels unload fish or are
2 headquartered.

3 8895.0400 COST ELIGIBILITY.

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

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

13 A. an applicant's administration costs, insurance
14 costs, and legal costs to obtain a general assistance award;

15 B. the costs of acquiring permits or preparing
16 environmental documents, feasibility studies, conceptual project
17 designs, or design revisions;

18 C. the interest on money borrowed by the applicant or
19 interest charged to the applicant for late payment of project
20 costs;

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

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

25 8895.0500 PROJECT SELECTION, MINIMUM QUALIFICATIONS, AND RANKING.

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

29 A. economic considerations, including determinations
30 of:

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

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

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

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

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

9 B. safety considerations, including determinations of:

10 (1) improvements in vessel or cargo-handling
11 safety at the facilities;

12 (2) improvements in working condition safety in
13 dock cargo-handling and storage areas; and

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

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

18 A. the project is inconsistent with criteria in parts
19 8895.0100 to 8895.1100;

20 B. the application is incomplete or inaccurate; or

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

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

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

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

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

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

36 D. ability of the project to produce a regional or

1 community benefit independent of an individual facility; and

2 E. ability to repay a loan on the basis of the
3 benefit-cost analysis.

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

8 8895.0600 TYPES OF ASSISTANCE PROJECTS; ELIGIBILITY; FUNDING.

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

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

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

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

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

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

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

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

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

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

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

- 8 A. all legally required permits are obtained;
- 9 B. non-state-matching funds are formally committed;
- 10 and

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

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

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

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

27 8895.0700 STATE PARTICIPATION, LIMITATIONS.

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

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

35 Subp. 3. **Fund matching.** Port improvement assistance

1 funding must not be used as a required match with other state
2 funds, regardless of source.

3 8895.0800 APPLICATION PROCESS.

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

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

9 A. a formal request for assistance;

10 B. the names of the eligible applicant's
11 representatives who are authorized to sign forms or claims and
12 who shall act as the applicant's contact persons for the
13 project;

14 C. the name of the organization, group, or person who
15 will accept responsibility for operating and maintaining the
16 proposed project after completion;

17 D. documentation that the proposed project is
18 consistent with the harbor development plan or with the
19 comprehensive plan of the local government if plans have been
20 adopted, along with a copy of those plans attached to the
21 application;

22 E. documentation of the source of the required
23 matching funds in the amount specified in the assistance
24 agreement;

25 F. a financial statement, including a credit history;

26 G. a description of the project that, at a minimum,
27 must include:

28 (1) a detailed description of the work to be
29 performed including schematic plans, drawings, and sounding
30 reports;

31 (2) a description of the means by which the work
32 is to be performed;

33 (3) a statement of justification and reasons for
34 undertaking the project;

35 (4) a map, sketch, or other depiction of the

1 project site and its surrounding area including all
2 transportation access facilities;

3 (5) a statement of current ownership of the
4 project site and facilities and of the ownership proposed upon
5 completion of the project;

6 (6) a proposed time schedule for performing major
7 project tasks; and

8 (7) an operating plan as required, when requested
9 by the commissioner; and

10 H. a full discussion of anticipated economic impacts,
11 including:

12 (1) a detailed estimate of project costs,
13 indicating the eligible applicant's cost share, amount of state
14 funding requested, other sources or potential sources of funds,
15 and a full description of timetables and conditions affecting
16 funds other than funds already budgeted by the applicant;

17 (2) an estimate of project development costs,
18 which may include, but is not limited to, the value of existing
19 land and facilities, the cost of additional site development,
20 and the cost of storage or transfer facilities;

21 (3) an estimate of the applicant's annual
22 revenues from the project if completed, or of revenues lost if
23 the project is not completed, and an estimate of the annual
24 costs necessary to maintain the project property;

25 (4) an estimate of the dollar value to the local
26 economy directly attributable to the proposed project, or of
27 lost dollar value to the local economy if the project is not
28 completed, including a detailed description of the assumptions
29 and the bases for those assumptions;

30 (5) a list of commodities and a disclosure of the
31 tonnage of waterborne commerce using the project property and
32 expected to use the project property if the project is
33 completed;

34 (6) a list of permits necessary for the project
35 to proceed and, if the permits have not been obtained, a
36 description of the actions taken or to be taken to obtain the

1 permits;

2 (7) copies of required environmental documents;

3 and

4 (8) how the applicant plans to repay a loan.

5 8895.0900 ASSISTANCE AGREEMENT, FORMAL IMPLEMENTATION.

6 Port development assistance projects must be formally
7 implemented through assistance agreements between the
8 commissioner and the eligible applicant. If the eligible
9 applicant is unable or unwilling to enter into an assistance
10 agreement with the commissioner in the calendar year for which
11 the applicant's project is approved, the applicant may submit
12 another application for the project before the commissioner will
13 again consider it for funding in a subsequent funding period.

14 8895.1000 ASSISTANCE AGREEMENT, REQUIRED PROVISIONS.

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

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

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

30 Subp. 4. **Records; audit.** The assistance agreement must
31 require an assistance recipient to maintain project-related
32 books and records according to Mn/DOT specifications contained
33 in the agreement and make the records available to the
34 commissioner for audit purposes. In addition, assistance
35 recipients shall make periodic progress reports to the

1 commissioner. The content and timing of these reports must be
2 as specified in the grant or loan agreement.

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

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

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

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

19 8895.1100 VARIANCE FROM AGREEMENT PROVISIONS.

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