

1 Department of Commerce  
2 Adopted Permanent Rules Relating to Institutional Energy  
3 Conservation Financing

4 7606.0010 AUTHORITY AND PURPOSE.

5 Subpart 1. Authority. Minnesota Statutes, section  
6 216C.09, paragraph (a), clause (13), requires the commissioner  
7 of the Department of Commerce to adopt rules for the purpose of  
8 dispensing loans, grants, or other financial aid from money  
9 received from litigation or settlement of alleged violations of  
10 federal petroleum-pricing regulations made available to the  
11 department for that purpose.

12 Subp. 2. Purpose. The purpose of parts 7606.0020 to  
13 7606.0080 is to establish application procedures for financing  
14 participation, to set criteria for review and approval of  
15 financing participation applications, and to set criteria for  
16 financing participation agreements.

17 7606.0020 DEFINITIONS.

18 Subpart 1. Scope. For the purposes of parts 7606.0010 to  
19 7606.0080, the following terms have the meanings given them.

20 Subp. 2. Applicant. "Applicant" means the state of  
21 Minnesota<sup>7</sup>, a statutory or home rule charter city, county, or  
22 town<sup>7</sup>, or a school or hospital as defined in this part, located  
23 in Minnesota, or joint power entity consisting of these units,  
24 that is making application for financing participation under  
25 this program.

26 [For text of subps 3 and 4, see M.R.]

1 Subp. 5. Conservation measure. "Conservation measure"  
2 means an installation or modification of an installation to a  
3 building or stationary energy-using system that is primarily  
4 intended to reduce energy consumption or allow the use of an  
5 alternative energy source including solar, wind, peat, wood, and  
6 agricultural residue.

7 Subp. 5a. Energy benchmark. "Energy benchmark" means:

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

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

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

14 (2) the Portfolio Manager tool of the Energy Star  
15 program of the United States Environmental Protection Agency and  
16 the United States Department of Energy.

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

19 Subp. 7. [See repealer.]

20 [For text of subp 8, see M.R.]

21 Subp. 9. Project. "Project" means all proposed work in a  
22 financing participation application.

23 Subp. 10. School. "School" means a public or a private  
24 institution:

25 [For text of items A to C, see M.R.]

26 7606.0030 FINANCING ELIGIBILITY CRITERIA.

27 Subpart 1. In general. The commissioner shall approve

1 applications from applicants and participate in financing from  
2 financing providers to applicants in compliance with parts  
3 7606.0010 to 7606.0080 for conservation measures that have a  
4 payback of ten years or less. The commissioner shall not  
5 approve any application for which funds are not available to  
6 purchase financing participation.

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

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

12 B. cost overruns for a previously approved  
13 conservation measure in progress, or previously unidentified but  
14 related work necessary for successfully implementing a  
15 previously approved conservation measure, provided the  
16 conservation measure as amended continues to meet the  
17 requirements of parts 7606.0010 to 7606.0080.

18 [For text of subp 3, see M.R.]

19 Subp. 4. Useful life. Financing participation must not be  
20 approved for buildings with a remaining useful life less than or  
21 equal to the payback of the conservation measure proposed.

22 Financing participation must not be approved for a conservation  
23 measure if the payback of the conservation measure proposed is  
24 greater than or equal to the useful life of the measure.

25 [For text of subp 5, see M.R.]

26 7606.0040 FINANCING PARTICIPATION LIMITS.

27 The commissioner will participate in financing from a

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

7 7606.0050 APPLICATION CONTENTS.

8 [For text of subpart 1, see M.R.]

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

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

13 B. a contact person's name, title, telephone number,  
14 and e-mail address;

15 [For text of items C to E, see M.R.]

16 F. the state legislative districts affected by the  
17 application;

18 G. a summary description of each proposed  
19 conservation measure, including its estimated cost, financing  
20 amount proposed, estimated annual energy cost savings, estimated  
21 annual fuel and electric savings, estimated payback, and  
22 estimated dates the conservation measure will be started and  
23 completed; and

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

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

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

4 (3) assures that it will comply with parts  
5 7606.0010 to 7606.0080.

6 Subp. 3. **Technical support materials.** All applications  
7 for financing must also contain:

8 A. fuel and electric consumption data and the energy  
9 benchmark for the most recently completed calendar or fiscal  
10 year, for each building in the application;

11 [For text of item B, see M.R.]

12 C. an engineering analysis sufficient to determine  
13 the technical feasibility and payback of each proposed  
14 conservation measure and how energy savings will be measured, on  
15 a form prescribed by the commissioner.

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

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

20 B. the work performed with financing funds will meet  
21 all Minnesota Building Code requirements;

22 [For text of items C and D, see M.R.]

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

25 [For text of subp 5, see M.R.]

26 7606.0060 APPLICATION REVIEW.

27 Subpart 1. **Administrative review.** The commissioner shall

1 examine a financing participation application to verify that the  
2 applicant is eligible, that the required forms are included and  
3 correctly completed, that the estimated start and completion  
4 dates are reasonable, that the required assurances and  
5 resolution are included, and that the application is properly  
6 signed and dated.

7 [For text of subp 2, see M.R.]

8 Subp. 3. Rejection and resubmission. The commissioner may  
9 accept, reject, or modify an application as necessary based on  
10 the application review. The commissioner shall notify an  
11 applicant of the cause for modification or rejection of an  
12 application and the options available to correct the application  
13 for resubmission. If some of the conservation measures in an  
14 application are accepted as submitted, the applicant may choose  
15 to withdraw the rejected measures and accept financing for the  
16 remaining measures.

17 7606.0070 FINANCING PROVIDER.

18 To be eligible to sell financing participation to the  
19 commissioner, an officer of a financing provider must sign a  
20 participation agreement provided by the commissioner. The  
21 commissioner shall not participate in any financing made by a  
22 financing provider before the execution of a participation  
23 agreement. The agreement shall set terms and conditions under  
24 which financing can be made, establish duties of the parties,  
25 and specify procedures to be followed in the event of default by  
26 the applicant. The agreement must require the financing  
27 provider and the commissioner to conform to the following

1 conditions:

2 A. The financing provider will enter into a financing  
3 agreement with the applicant. The financing agreement will  
4 include the following:

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

9 (2) a resolution of the applicant's governing  
10 body guaranteeing that it will use all financing funds solely  
11 for the eligible costs of the proposed project, and assuring  
12 that it has complied and will comply with parts 7606.0010 to  
13 7606.0080.

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

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

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

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

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

27 G. The financing provider is responsible for

1 servicing the financing either directly or by contracting with a  
2 servicing agent.

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

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

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

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

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

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

25 N. Before a declaration of default, any and all  
26 payments received by the financing provider must first be  
27 credited to interest due and the remainder credited to the



1 principal balance. A pro rata distribution of interest and  
2 principal must be forwarded to the commissioner based on the  
3 commissioner's percentage of participation.

4 O. During an event of default for which a declaration  
5 of default has been declared, any and all payments received by  
6 the financing provider must first be used to pay the reasonable  
7 expenses related to the collection of, or attempts to collect,  
8 money owed under the financing. After payment of these amounts,  
9 any and all payments received by the financing provider must  
10 first be credited to the principal balance due on a pro rata  
11 basis, and then be credited to interest due on a pro rata basis.

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

18 7606.0080 REPORTS AND MONITORING.

19 Subpart 1. In general. An applicant that receives  
20 financing in which the commissioner participates shall submit  
21 the reports listed in subparts 2 to 5.

22 Subp. 2. Annual project status report. The applicant  
23 shall submit to the commissioner, on a form provided by the  
24 commissioner, an annual project status report covering the most  
25 recent calendar or fiscal year. This report is due each July 31  
26 until the project is completed.

27 The project status report must indicate the progress of the

1 implementation of the project, problems encountered, the effect  
2 of the problems on the project, and the corrective action  
3 taken. If at any time the applicant fails to comply with the  
4 start or completion dates given in the financing participation  
5 application as approved, and if the applicant cannot justify to  
6 the commissioner its lack of progress, the financing may be  
7 declared in default.

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

15       Subp. 4. **Final reports.** Within 60 days of the completion  
16 of the project, the applicant shall submit to the commissioner,  
17 on a form provided by the commissioner, a final project status  
18 report and a financial status report that gives actual  
19 expenditures of the conservation measures implemented. Within  
20 one year of the completion of the project the applicant shall  
21 submit to the commissioner, on a form provided by the  
22 commissioner, a report of the measured energy savings from the  
23 energy conservation measures installed.

24       Subp. 5. **Annual energy report.** The applicant shall submit  
25 to the commissioner, on a form provided by the commissioner, an  
26 annual fuel and electric consumption report, including the  
27 energy benchmark for the 12-month period ending June 30, due

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1 each October 31 for the duration of the financing contract  
2 period, or for a minimum of three years after project completion  
3 if the financing is paid in less than three years, unless the  
4 commissioner cancels this requirement before the end of the  
5 financing contract period.

6 **REPEALER.** Minnesota Rules, part 7606.0020, subpart 7, is  
7 repealed.