

**RULES
OF
THE DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT
ENERGY DIVISION**

**CHAPTER 0500-3-4
SMALL BUSINESS ENERGY LOAN PROGRAM**

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0500-3-4-.01 AUTHORITY. Pursuant to the provisions of T.C.A. 4-3-702(c), the Commissioner of the Department of Economic and Community Development may promulgate rules and regulations necessary for the operation of any programs of any of the divisions of the department.

Authority: T.C.A. 4-3-702(c). **Administrative History:** Original rule filed June 19, 1987; effective September 28, 1987.

0500-3-4-.02 PURPOSE AND SCOPE. The purpose of this program is to provide low interest loans to small businesses, units of county and local governments and other eligible organizations throughout the State of Tennessee to facilitate in the identification, installation, and incorporation of energy efficiency measures onto, or into, existing facilities, processes, and/or operations located in the State of Tennessee.

This chapter sets forth the rules for the submission, acceptance, review, and approval of applications for financial assistance under this program.

Authority: T.C.A. 4-3-702 (c) and 4-3-710 (1) and (8). **Administrative History:** Original rule filed June 19, 1987; effective September 28, 1987.

0500-3-4-.03 DEFINITIONS. The following definitions shall apply to these rules:

- (1) "Applicant"- Any individual, domestic Tennessee company or unit of county or local government applying for assistance under this program.
- (2) "Approved Applicant"- Any applicant who has submitted an application for financial assistance and has been approved according to the approval criteria published by the Energy Division of the Department of Economic and Community Development.
- (3) "ECD or E & CD"- The Department of Economic and Community Development.
- (4) "Eligible Applicant"- Any applicant that has met the applicant eligibility criteria published by the Energy Division of the Department of Economic and Community Development.
- (5) "Eligible Structure"- Any structure that has met the structural eligibility criteria published by the Energy Division of the Department of Economic and Community Development.
- (6) "Energy Division"- The Energy Division of the Department of Economic and Community Development.

(Rule 0500-3-4-.03, continued)

- (7) “Energy Efficiency Measure”- The installation of a new energy system or a modification to an existing energy system, plant process, operation, or structure which is primarily intended to reduce energy consumption or allow the use of an alternative energy source.
- (8) “Residential End Use”- Any structure that is used for personal residential occupancy.
- (9) “Targeted Structure”- The structure onto which the identified energy efficiency measures will be affixed or which houses the applicant’s existing plant processes, operations, or energy systems which will undergo an energy efficiency modification with proceeds of a loan under this program.
- (10) “TVA”- The Tennessee Valley Authority.

Authority: T.C.A. 4-3-702 (c) and 4-3-710 (1) and (8). **Administrative History:** Original rule filed June 19, 1987; effective September 28, 1987. Amendment filed November 27, 1991; effective February 26, 1992. Amendments filed May 17, 2006; effective September 28, 2006.

0500-3-4-.04 MAXIMUM LOAN AMOUNT.

The maximum loan amount available per applicant under this program shall be Three Hundred Thousand Dollars (\$300,000.00).

Authority: T.C.A. 4-3-702(c), 4-5-202, and 4-3-710(1) and (8). **Administrative History:** Original rule filed June 19, 1987; effective September 28, 1987. Repeal and new rule filed September 30, 2005; effective January 27, 2006.

0500-3-4-.05 REPAYMENT PERIOD.

All loans approved and accepted under this program shall be paid back monthly within seven (7) years from the date that begins sixty (60) days after the date of loan closing.

Authority: T.C.A. 4-3-702 (c) and 4-3-710 (1) and (8). **Administrative History:** Original rule filed June 19, 1987; effective September 28, 1987. Repeal and new rule filed May 17, 2006; effective September 28, 2006.

0500-3-4-.06 EARLY PAYOFF OF LOAN. There shall be no penalty assessed to the borrower for the early payoff of a loan under this program.

Authority: T.C.A. 4-3-702 (c) and 4-3-710 (1) and (8). **Administrative History:** Original rule filed June 19, 1987; effective September 28, 1987.

0500-3-4-.07 ELIGIBILITY. In order to be approved for financial assistance under this program, both the applicant and the targeted structure must be deemed eligible according to criteria published by the Energy Division of the Department of Economic and Community Development.

- (1) Applicants for financial assistance must meet all of the following four criteria:
 - (a) Be classified as either a small business of less than 300 employees or less than \$3.5 million in annual gross sales or receipts or a unit of county or local government utilizing the loan to improve the energy efficiency of an existing building that the applicant owns, occupies or uses for a business, industrial or commercial purpose.
 - (b) Own, occupy or use the targeted structure in its operations; and,
 - (c) Be declared financially sound and capable of repaying the monies borrowed according to criteria published by the Energy Division.

(Rule 0500-3-4-.07, continued)

- (2) A structure that is to be the target for the installation of energy efficiency measures that will be financed with the proceeds of a loan under this program shall be considered an eligible structure only if it is an existing structure, at least one (1) year old, that is located within the territorial boundaries of the State of Tennessee and, is not:
- (a) Classified as condemned or scheduled for demolition; or,
 - (b) Leased or rented by the applicant from another party unless the landlord has given the tenant written permission to proceed with the installation; or,
 - (c) Encumbered by a real estate sale, purchase, option, or trade agreement that is scheduled to take place prior to the maturity of the loan unless either:
 - 1. The current occupant/debtor agrees to retire the outstanding balance of the loan before closing the agreement; or,
 - 2. The new occupant agrees to retire the outstanding indebtedness according to the terms and conditions of the originally executed loan agreement; or,
 - (d) Included on the National Register of Historic Landmarks and Sites maintained by the U.S. Secretary of the Interior or, if included, has the approval, in writing, of the Historical Society to perform the work; or,
 - (e) Located in a wetland or special flood hazard area as designated by the Federal emergency Management Agency; or,
 - (f) Encumbered by subordinate mortgages, mechanics', or materialmen's, and/or any other types of liens which would prevent the Energy Division from obtaining a security interest which is junior to no more than one security interest as collateral for a loan under the program or in an amount that would cloud the Energy Division's collateral or jeopardize the Division's ability to collect on the unpaid balance of a loan in the event of a default.

Authority: T.C.A. 4-3-700(c), 4-3-702(c), 4-3-708(2), 4-3-709(2), and 4-3-710 (1) and (8). **Administrative History:** Original rule filed June 19, 1987; effective September 28, 1987. Amendment filed November 27, 1991; effective February 26, 1992. Amendments filed September 30, 2005; effective January 27, 2006. Amendment filed May 17, 2006; effective September 28, 2006.

0500-3-4-.08 ENERGY AUDIT REQUIRED. An Energy Audit, conducted by either an architect or engineer licensed to do business in the State of Tennessee, the Tennessee Valley Authority or other energy utility or an architect or engineer on the faculty or staff of a Tennessee college or university and in a format published by the Energy Division of the Department of Economic and Community Development shall be a prerequisite for application review under this program.

Authority: T.C.A. 4-3-702 (c) and 4-3-710 (1) and (8). **Administrative History:** Original rule filed June 19, 1987; effective September 28, 1987. Amendment filed November 27, 1991; effective February 26, 1992.

0500-3-4-.09 ELIGIBLE MEASURES.

Loans shall be made available only for the purchase and installation of one or more energy efficiency, renewable energy and/or clean energy technology measures on projects that have been identified as having either a simple economic payback of ten (10) years or less or a positive net present value.

Authority: T.C.A. 4-3-702 (c) and 4-3-710 (1) and (8). **Administrative History:** Original rule filed June 19, 1987; effective September 28, 1987. Repeal and new rule filed May 17, 2006; effective September 28, 2006.

0500-3-4-10 RETROACTIVE ASSISTANCE PROHIBITED. The proceeds of all loans received under this program shall be used solely for the purpose of installing new energy efficiency measures and shall not be used to finance energy efficiency projects that were either completed, or in progress, prior to the date of the application for assistance.

Authority: T.C.A. 4-3-702 (c) and 4-3-710 (1) and (8). **Administrative History:** Original rule filed June 19, 1987; effective September 28, 1987.

0500-3-4-11 APPLICATION PACKAGE REQUIRED. In order to be considered for financial assistance under this program, an applicant must submit an approved Application Package to the Energy Division of the Department of Economic and Community Development.

Authority: T.C.A. 4-3-702 (c) and 4-3-710 (1) and (8). **Administrative History:** Original rule filed June 19, 1987; effective September 28, 1987.

0500-3-4-12 COMPLETION CERTIFICATE REQUIRED. Loan proceeds shall not be disbursed unless the Energy Division has received a fully executed Work Completion Certificate signed by an authorized agent for the Energy Division.

Authority: T.C.A. 4-3-702 (c) and 4-3-710 (1) and (8). **Administrative History:** Original rule filed June 19, 1987; effective September 28, 1987.

0500-3-4-13 CONFIDENTIALITY OF INFORMATION SUBMITTED. Tennessee Code Annotated 4-3-712(b) provides that the Energy Division shall maintain the confidentiality of all proprietary information it may acquire. Proprietary information is defined as:

“trade secrets and commercial or financial information which is used either directly or indirectly in the business of any person submitting information to the division under this program and which gives such person an advantage or an opportunity to obtain an advantage over competitors who do not know or use such information.”

This statute was enacted in 1983. Subsequently, the Tennessee General Assembly enacted Tennessee Code Annotated Section 10-7-504(a)(8). This section, which is a part of the Public Records Act, states that records of ECD pertaining to proprietary information of industrial and commercial enterprises shall not be subject to public review if such records are deemed by the Commissioner, after consultation with the Attorney General, to be of a confidential and sensitive nature. The Energy Division interprets its duty under these two statutes to be to maintain the confidentiality of all its records pertaining to proprietary information as defined in T.C.A. 4-3-712(b) by submitting any such records to the Commissioner for consideration and consultation with the Attorney General. The Energy Division will thereafter maintain any such records so deemed to be confidential in accordance with the Public Records Act, T.C.A. 10-7-501 et seq.

- (1) Definition. For the purpose of these regulations, “records pertaining to proprietary information” shall include any records submitted by Applicants or records compiled by the Energy Division which contain information pertaining to:
 - (a) the personal finances of any individual officer, director, general partner, limited partner, or shareholder of an Applicant;
 - (b) costs, income, profit margins, or salaries of employees of any Applicant;
 - (c) the identity of any supplier or customer of any Applicant or the magnitude of its business with the Applicant;
 - (d) trade secrets, manufacturing processes, actual or projected sales, market share, marketing strategy, or plans of marketing of any Applicant.

(Rule 0500-3-4-.13, continued)

- (2) **Conclusion By Commissioner.** The Commissioner of ECD shall make a written finding that certain types of records are deemed to contain confidential information and shall transmit such findings to the Attorney General for consideration. The types of information shall include, but shall not be limited to, the following records:
- (a) financial statements of an Applicant or any individual described in (1)(a) hereof;
 - (b) lists of customers or suppliers of any Applicant; and,
 - (c) any portion of any form submitted by an Applicant in which the Applicant is asked to provide information described in (1)(d) hereof.

Upon the conclusion by the Commissioner of ECD, after consultation with the Attorney General, that such records are confidential, any such records submitted by an Applicant shall be marked “confidential” and shall be maintained as confidential records in accordance with the Public Records Act, T.C.A. 10-7-501 et seq.

- (3) **Other Records.** The Energy Division shall submit any other records pertaining to proprietary information as defined in (1) hereof to the Commissioner of ECD for his or her determination as to whether such records should be exempt from public review pursuant to T.C.A. 10-7-504(a)(8). If the Commissioner of ECD concludes that such records should be exempt, the Commissioner shall make a written finding of such conclusion, stating the reasons for the conclusion. Such findings and such records shall be submitted to the Attorney General, who shall return a written statement regarding his or her conclusions and the reasons therefor to the Commissioner. Upon receiving such statement, the Commissioner shall state in writing that he or she deems such records to be of a confidential and sensitive nature within the meaning of T.C.A. 10-7-504(a)(8). Any records so deemed shall be marked “confidential” and maintained in accordance with the Public Records Act.

Authority: T.C.A. 4-3-702 (c), 4-3-710 (1) and (8), 4-3-712 (b), and 10-7-504 (a)(8). **Administrative History:** Original rule filed June 19, 1987; effective September 28, 1987.

0500-3-4-.14 REPEALED.

Authority: T.C.A. 4-3-702(c). **Administrative History:** Original rule filed June 19, 1987; effective September 28, 1987. Repeal filed September 30, 2005; effective January 27, 2006.