

Title 6: Economic Development

Part 3: Energy

Part 3 Chapter 1: Mississippi Energy Investment Loan Program

Rule 1.1 Purpose. The Mississippi Energy Investment Program (“Energy Investment Program”), administered by the Mississippi Development Authority (“MDA”) is designed for making loans to qualified borrowers (the “Borrower”) to promote development and demonstration of efficient, environmentally acceptable and commercially feasible technologies, techniques and processes while effectively utilizing the state’s existing alternative and conventional energy resources to foster economic and social growth. Funding for the loans to the Borrower is derived from the appropriated funds which were a part of the Petroleum Violation Escrow Fund, M.D.L. 378 Oil Overcharge funds. The Energy Investment Program was enacted pursuant to Section 57-39-43, Miss. Code of 1972, as amended, and In Re: The Department of Energy Stripper Well Exemption Litigation, United States District Court, Kansas, M.D.L. No. 378, 1986 (jointly the “Act”).

Source: Miss. Code Ann. § 57-39-43 (Rev. 2008)

Rule 1.2 Eligibility. In order to obtain assistance under the Energy Investment Program, the applicant must be declared financially sound and capable of repaying the loan and must meet one of the following criteria:

- A. Corporation;
- B. Partnership;
- C. Hospital (Public and private “non-profit”);
- D. Institutions of higher learning;
- E. Community Colleges;
- F. Schools (public or private);
- G. Local Government entities;
- H. Sole Proprietors

Source: Miss. Code Ann. § 57-39-43 (Rev. 2008)

Rule 1.3 Eligible Projects. Eligible projects include retrofits and energy design process developments. The improvement must promote the development and demonstration of efficient, environmentally acceptable and commercially feasible technology and processes, and must also utilize Mississippi’s existing energy resources, public utilities and/or developing resources to foster economic growth. In order for a project to be eligible to receive such assistance, the project must qualify pursuant to the two (2) phase eligibility requirements provided below:

- A. Phase 1 Structural Eligibility: The structure, which is to be the target for the installation of energy efficiency measures will be financed with the proceeds of a loan, shall be considered eligible only if it is an existing structure that is at least one (1) year old, owned, occupied and used by the Borrower and, **is not**:
 - (i). Classified as condemned or scheduled for demolition; or,
 - (ii). Leased or rented by the applicant from another party unless the landlord has

- given the tenant written permission to proceed with the installation; or,
 - (iii). Encumbered by a real estate transaction or purchase option; or,
 - (iv). Included on the National Register of Historic Landmarks and Sites maintained by the U.S. Secretary of the interior or , if included, has received approval of the Mississippi Department of History and Archives to perform the work; or,
 - (v). Encumbered by subordinated mortgages, mechanics, or materialmen's, and/or any other types of liens that would prevent MDA from obtaining a security interest.
- B. Phase 2 Eligible Retrofit Measures: Loans will be made available only for the purchase and installation of energy conservation measures that have been identified and recommended by an energy technical analysis. The combined simple payback of all the energy conservation measures being installed cannot exceed ten (10) years. The Energy Analysis can be performed by MDA, utility companies or a qualified engineer. Only projects recommended by the Energy Analysis will be considered for funding. An energy conservation measure is one that is primarily intended to reduce energy consumption or allow the use of an alternative energy source. Loans cannot be used to finance projects that were completed prior to, or in the process of being installed, at the time of an application. Neither may a loan be used to finance "cosmetic" or rehabilitative improvements unless energy savings are justifiable.
- C. Categories Eligible for Funding. Two categories of energy efficiency projects are eligible for funding. The categories are defined as Retrofit Projects and Energy Efficient Processes.
- D. Retrofit Projects. Eligible energy conservation measures include, but are not limited to, the following:
- (i). insulation;
 - (ii). storm windows and doors, multi-glazed and other specially treated windows and door systems;
 - (iii). automatic energy control systems/energy management systems;
 - (iv). equipment to operate variable steam, hydraulic, and ventilating systems;
 - (v). solar heating and cooling systems, and electric generating systems;
 - (vi). furnace or utility plant and distribution system modifications to include burners, furnaces, boilers, and ignition systems;
 - (vii). caulking and weather-stripping;
 - (viii.) lighting fixtures and lamps;
 - (ix). energy recovering systems;
 - (x). cogeneration systems;
 - (xi). Renewable energy systems;
 - (xii) Heating and cooling systems; and/or
 - (xiii). other measures that can be shown to save energy or reduce energy demand.
- E. Energy Efficient Process. This category includes the implementation of equipment that enhances the efficiency of any industrial process by reducing energy consumption or allowing for the use of alternative energy sources. Examples of such projects include:
- (i). kilns;
 - (ii). boilers – natural gas or wood;
 - (iii). billet ovens;
 - (iv). optimizing saws;
 - (v). refrigeration systems;

(vi). Variable steam and hydraulic equipment

Source: Miss. Code Ann. § 57-39-43 (Rev. 2008)

Rule 1.4 General Loan Terms. The maximum amount, which may be loaned from the Energy Investment Program to finance any one (1) project, Five Hundred Thousand Dollars (\$500,000). The fixed rate of interest which shall be set at the time the application is approved, will be two percent (2.0%) below the New York Prime Rate with a term not to exceed ten (10) years. The term and the repayment schedule will be established by MDA.

Source: Miss. Code Ann. § 57-39-43 (Rev. 2008)

Rule 1.5 Liens and Collateral. Each loan will be secured by a lien of such type that provides adequate security for MDA to recover its investment in case of default on the loan. Liens may be in the form of personal guarantees, liens on the equipment, measures installed or security interest in other assets or a combination of the afore-mentioned. Personal guarantees of all principles owning 20% or more of the business is required. It should be noted MDA will require a one percent (1%) good faith deposit on projects involving real estate pledged as collateral. In the case of projects for local government entities and public schools, MDA will require a pledge and assignment of tax revenues collected by such entity.

Source: Miss. Code Ann. § 57-39-43 (Rev. 2008)

Rule 1.6 Borrower Application Process. The application to be submitted by a Borrower must include:

- A. The purpose of the proposed loan including a list of eligible items and the cost of each;
- B. The estimated cost of the total project with a detailed breakdown of all public and private sources of funding;
- C. The time schedule for implementation and completion of the project, evidencing an expeditious completion of the project;
- D. Submit company balance sheets, income statements and statements of cash flow for
- E. the previous three (3) fiscal years and current statements dated within ninety (90) days
- F. of application;
- G. Detailed project description, including pictures.
- H. For local government entities and public schools:
 - (i). Certified proof of publication of the Resolution of Intention of the government entity to apply for an Energy Investment Program loan. The Resolution must be published once a week for at least four (4) consecutive weeks in a newspaper having general circulation in the county;
 - (ii). Upon receiving the results of the publication of the Resolution of Intention, the government entity will need to provide MDA with an execution Resolution of No Protest;
 - (iii). Opinion of counsel from the public schools and/or local government entity addressing the authority to borrow under the Energy Investment Program and to pledge a tax base as collateral for such loan; and

(iv). Most recent audited financial statements

I. Two (2) copies of the application must be submitted to MDA. As part of the application process,

MDA will perform a technical analysis. A technical analysis evaluates the ability of the Borrower to conserve energy or to improve the efficiency of a process through the installation of energy saving measures or the use of an alternative energy source. The technical analysis must clearly explain the measures to be undertaken and detail the energy savings and other revenue benefits attributable to the project. MDA will evaluate the application to determine if the project meets the program criteria and what terms and conditions the loan shall bear.

Source: Miss. Code Ann. § 57-39-43 (Rev. 2008)

Rule 1.7 Loan Closing. Based upon the terms and conditions established by MDA, MDA will prepare all security and loan documents, including but not limited to, the Loan Agreement and Promissory Note, (collectively “Loan Documents”). Prior to disbursement of any funds, all Loan Documents must be fully executed. At the time of the closing, the Borrower will be responsible for providing to MDA a one percent (1%) closing/servicing fee and the cost of Energy Analysis. The Cost of the Energy Analysis for the borrower will be capped at \$3,500. Additional cost, if applicable, will be the responsibility of MDA. The Borrower will also be responsible for paying for all costs associated with the closing of the loan, including searches and filing fees.

Source: Miss. Code Ann. § 57-39-43 (Rev. 2008)

Rule 1.8 Reimbursement Process. The MDA will release loan funds on a reimbursement or services rendered basis for approved eligible costs of the project as incurred. The Borrower shall certify to MDA that the expenses were incurred and were in accordance with the project as approved by MDA. Funds will be released periodically upon receipt of supporting documentations from the Borrower based upon a schedule established by MDA.

Source: Miss. Code Ann. § 57-39-43 (Rev. 2008)

Rule 1.9 Audit. Loans made under the Energy Investment Program are subject to audit by the State Department of Audit.

Source: Miss. Code Ann. § 57-39-43 (Rev. 2008)

Rule 1.10 Waiver. These guidelines may be amended by MDA at anytime. MDA, in its discretion, may temporarily waive any requirement of the guidelines to the extent that the result of such waiver is to promote the public purpose of the Act and is not prohibited by State Law.

Source: Miss. Code Ann. § 57-39-43 (Rev. 2008)

Rule 1.11 Inquiries and Applications. Program inquiries and applications should be directed to the following mailing address:

- A. Mississippi Development Authority
Mississippi Energy Investment Program

Energy and Natural Resources Division
Post Office Box 849
Jackson, Mississippi 39205-0849
Telephone: (601) 359-6000
Fax: (601) 359-6642
Website: www.mississippi.org

Source: Miss. Code Ann. § 57-39-43 (Rev. 2008)

Chapter 2: Mississippi Alternative Fuel School Bus and Municipal Motor Vehicle Loan Fund

Rule 2.1 Overview and Purpose. The Mississippi Alternative Fuel School Bus and Municipal Motor Vehicle Revolving Loan Fund, administered by the Mississippi Development Authority (“MDA”) is designed to assist public school districts and municipalities in paying initial costs incurred for the purchase of alternative fuel school buses and motor vehicles, the conversion of school buses and motor vehicles to utilize alternative fuels and the purchase of alternative fuel system equipment and facilities.

Source: House Bill 1685, 2013 Regular Session.

Rule 2.2 Program Requirements. In order to obtain assistance under the Mississippi Alternative Fuel School Bus and Municipal Motor Vehicle Revolving Loan Fund, the applicant must be declared financially sound and capable of repaying the loan and must be one of the following entities:

- A. Public School District (K-12)
- B. Municipality

Source: House Bill 1685, Section 1, 2013 Regular Session.

Rule 2.3 Equipment and Technology. Equipment and technology eligible for projects through the loan program are restricted to the following stipulations:

- A. Alternative fuel gases, per Regular Session 2013 HB 1685 are:
 - i. propane gas;
 - ii. compressed natural gas; and
 - iii. liquefied natural gas.
- B. Original Equipment Manufactured Alternative Fuel Vehicles (AFVs) must be new, dedicated or bi-fuel, on-road school bus or motor vehicle. Motor vehicles include light-to heavy-duty weights.
- C. After-Market Retrofits are limited to gasoline or diesel powered school buses or motor vehicles for bi-fuel or dedicated fuel conversion. Retrofits must be new vehicle systems and must be EPA certified. Documentation must be submitted with application.
- D. Refueling Infrastructure projects can include new dispensing facilities, or additional equipment or upgrades and improvements to existing AFV refueling sites:
 - i. Tanks, pumps, hoses, injectors, electronic controls and related supplies, materials, parts and components for the storage of alternative fuels;

- ii. Facility upgrades or building modifications that are necessary to accommodate alternative fuels for fleet garages and other maintenance/service centers;
 - iii. Projects may be proposed that include multiple fuel types; and
 - iv. Eligible infrastructure costs must be limited to the development of the refueling capability and related service/support for alternative fuel and/or advance technology vehicles.
- E. Refueling system purchased through the loan program must be installed at a governmental entity location for nonpublic use per Regular Session 2013 HB 1685.

Source: House Bill 1685, 2013 Regular Session.

Rule 2.4 Eligible Projects. Funds may be used to cover 100% of incremental cost to purchase an alternative fuel vehicle, to convert a conventional vehicle to accept alternative fuels, and to purchase alternative fuel system equipment and facilities. If requesting funding for any *one* project below, the applicant must show the complementary project has already been completed or funded, or provide the plans for such, with certification acceptable to MDA.

Source: House Bill 1685, 2013 Regular Session.

Rule 2.5 New OEM Purchases. Incremental cost shall be calculated based on the difference between the cost of the AFV and the cost of a comparable conventional model, verified by manufacturer estimate, after all other applicable manufacturer and cash equivalent incentives are applied. Those AFVs with no conventional model must be compared to a model of same manufacturer with similar specifications. This conventional model must be verified by the manufacturer.

Source: House Bill 1685, 2013 Regular Session.

Rule 2.6 Repower/Recharge/Retrofits/Conversions. For vehicle conversions, the incremental cost shall be based on the cost of the new fuel system plus installation and labor after all other applicable rebates and cash equivalent incentives are applied. Vehicle retrofits are limited to EPA compliant vehicle systems. Funds are not available for non-fuel system upgrades such as transmissions and exhaust systems. Eligible projects include retrofits and energy design process developments.

Source: House Bill 1685, 2013 Regular Session.

Rule 2.7 Alternative Fuel System Equipment and Facilities. The incremental cost of fueling system property shall be based on the cost of the new fuel system plus construction and installation after all other applicable rebates and cash equivalent incentives are applied.

Rule 2.8 Applications. The application to be submitted by a borrower must include:

- A. The purpose of the proposed loan including a list of eligible items and the cost of each;
- B. Detailed project description, including pictures for facility projects;
- C. The estimated cost of the total project with a detailed breakdown of all public and private

sources of funding;

- D. The time schedule for implementation and completion of the project, evidencing an expeditious completion of the project;
- E. Certified proof of publication of the Resolution of Intention of the Applicant to apply for a loan. The Resolution must be published once a week for at least four (4) consecutive weeks in a newspaper having general circulation in the county;
- F. Upon receiving the results from publishing the Resolution of Intention, the Applicant must provide MDA with an execution Resolution of No Protest;
- G. Opinion of counsel from the public schools and/or local Applicant addressing the authority to borrow under the Loan Program and to pledge a tax base as collateral for such loan; and
- H. Most recent audited financial statements.
- I. Two (2) copies of the application must be submitted to MDA.

Source: House Bill 1685, 2013 Regular Session.

Rule 2.9 Competitive Stipulations. Because funds are limited, applications will be accepted quarterly until allotted funds are expended or the 2017 bond sale deadline. To ensure funds are distributed effectively, applications will first receive an initial eligibility review, and then will be reviewed by a selection committee. This committee will score and rank the applications using the following factors:

- A. Project Evaluation and Team Experience -- 25 points
 - i. Project staff demonstrated ability to successfully complete project and history of successfully meeting deadlines;
 - ii. The degree to which the project concept demonstrates a sound methodology and approach that ensures all alternative fuel vehicles can be fueled by the alternative fuel;
 - iii. A schedule is in place to complete the work proposed;
 - iv. A policy will be in place to ensure drivers use the designated alternative fuel 75% of the time;
 - v. The degree to which the application consists of eligible activities; and
 - vi. The composition, qualifications and experience of the project team, including previous execution of similar projects.
- B. Rule 2.10 Economic Impact -- 25 points
 - i. Demonstrates how project will impact or involve community;
 - ii. The project will involve 10 or more vehicles; and
 - iii. Demonstrates an opportunity for other fleets to expand its alternative fuel use.
- C. Environmental Benefit Points -- 30 Points
 - i. Demonstrates a reduction in environmental emissions: Nitrogen oxide, Carbon Monoxide and other GHGs.
 - a. 15-45%
 - b. 45-79%
 - c. 80-100%
 - ii. Demonstrates a significant amount of petroleum consumption that will be avoided.

- a. 25%
- b. 50%
- c. 75% or more

D. Financial Analysis Points -- 20 Points

- i. The cost-effectiveness of the project;
- ii. The submission of a feasible, justified project budget, broken down by category;
- iii. The project's ability to obtain a positive return on investment over the lifetime of the project;
- iv. Product warranties; and
- v. Driver training.

E. Project Leveraging – 25 Points

- i. Although matching is not required, extra points will be awarded to those projects that document leverage contributions in the total project cost. Cost share commitments to the total project from the applicant will be rated on a sliding scale basis as shown below:

Amount Leveraged	Possible Points
10% to 24%	5
25% to 49%	10
50% or greater	25

- F. All requested changes and variances from the original application should be made in writing and will be reviewed by MDA on a case-by-case basis.

Source: House Bill 1685, 2013 Regular Session.

Rule 2.10 General Loan Terms. Below are the maximum amounts which may be loaned from the Mississippi Alternative Fuel School Bus and Municipal Motor Vehicle Revolving Loan Fund to finance any one (*I*) project. Because loan periods differ, two (2) separate loans will be required for purchase of vehicles or retrofits and refueling infrastructure. The term and the repayment schedule will be established by MDA. The fixed rate of interest shall be zero percent (0.0%).

A. Refueling Infrastructure:

Five Hundred Thousand Dollars (\$500,000); a term not to exceed fifteen (15) years.

B. Vehicle Purchases and Retrofits:

Three Hundred Thousand Dollars (\$300,000); a term not to exceed seven (7) years.

Source: House Bill 1685, 2013 Regular Session.

Rule 2.11 Penalties. In the event of a default on the loan, the municipality or school district shall be prohibited from participating in future loan programs or from receiving future loan proceeds administered by MDA until such time as the default is remedied and/or brought current.

Source: House Bill 1685, 2013 Regular Session.

Rule 2.12 Default. The following event shall be considered default whenever used in these guidelines and shall mean the following: Failure by borrower to pay or cause to be paid when due, any loan payment required under the *General Loan Terms* and the loan agreement, and such failure continues for twelve consecutive (12) months.

Source: House Bill 1685, 2013 Regular Session.

Rule 2.13 Delinquent Notice Process. Each loan agreement shall provide for (i) monthly payments, (ii) semi-annual payments, or (iii) other periodic payments. Invoices will be sent to the entity with an active loan, based upon the payment schedule. Payments are due on the first day of the month in which payments are scheduled to be made. Failure to submit timely payments may result in the following procedures:

- A. 30 days delinquent- The entity will receive a formal letter from MDA stating the minimum amount due to return the loan to good standing, the collection process with the office of the State Auditor and terms of the loan agreement.
- B. 60 days delinquent, MDA may issue the same letter with the new minimum amount due.
- C. 90 days delinquent, MDA may issue the same letter with the latest minimum due.
- D. 120 days delinquent- The entity will receive a formal warning letter from MDA allotting 30 days to bring the loan payments up to date before the entity is turned over to the state auditor.
- E. 180 days delinquent- MDA may request the State Auditor to audit the receipts and expenditures of the loan (Section 57-1-303(5)). If the State Auditor finds that the entity is in arrears in payments, the entity shall be denied eligibility in all future loan financing programs with MDA until such time as the entity is again current in its loan payments.

Source: House Bill 1685, 2013 Regular Session.

Rule 2.14 Loan Closing. Based upon the terms and conditions established by MDA, MDA will prepare all loan documents, including but not limited to, the Loan Agreement and Promissory Note, (collectively “Loan Documents”). Prior to disbursement of any funds, all Loan Documents must be fully executed.

Source: House Bill 1685, 2013 Regular Session.

Rule 2.15 Fees. At the time of the closing, the borrower will be responsible for providing to MDA a one percent (1%) origination fee. The Applicant will also be responsible for paying for all costs associated with the closing of the loan.

Source: House Bill 1685, 2013 Regular Session.

Rule 2.16 Reimbursement Process. MDA will release loan funds on a reimbursement or services rendered basis for approved eligible costs of the project as incurred. The borrower shall certify to MDA that the expenses were incurred and were in accordance with the project as approved by MDA. Funds will be released periodically upon receipt of supporting documentations from the borrower based upon a schedule established by MDA.

Source: House Bill 1685, 2013 Regular Session.

Rule 2.17 Audit. Loans made under the Revolving Loan Fund are subject to audit by the Mississippi Office of the State Auditor. Additionally, MDA will monitor all projects to ensure compliance with the original application submitted.

Source: House Bill 1685, 2013 Regular Session.

Rule 2.18 Waiver. These guidelines may be amended by MDA at anytime. MDA, in its discretion, may temporarily waive any requirement of the guidelines to the extent that the result of such waiver is to promote the public purpose of the Act and is not prohibited by State Law.

Source: House Bill 1685, 2013 Regular Session.

Rule 2.19 Additional Information. Program inquiries and application should be directed to:

Mailing Address:

Mississippi Development Authority
Energy and Natural Resources Division
P. O. Box 849
Jackson, Mississippi 39205-0849
Telephone: (601) 359-3449
Fax: (601) 359-6642
www.mississippi.org

Delivery Address:

E. T. Woolfolk State Office Building,
MDA – Energy and Natural Resources Division, 6th Floor
501 North West Street
Jackson, Mississippi 39201

Source: House Bill 1685, 2013 Regular Session.

Chapter 3: Energy Infrastructure Revolving Loan Program

Rule 3.1 Purpose. The Mississippi Energy Infrastructure Revolving Loan Program (EIRLP), administered by the Mississippi Development Authority (“MDA”) is designed for making loans to counties and incorporated municipalities to finance energy infrastructure projects to promote

economic growth in the State of Mississippi. Funding for the loan program is derived from the issuance of state bonds. The State Legislature authorizes the Energy Infrastructure Revolving Loan Program during the 2013 regular session. See SB 2564, Regular Session 2013; Miss. Code Ann. §57-40-1 through 57-40-7 (1972, as amended).

Miss. Code Ann. § 57-40-1 et. seq. (1972, as amended).

Rule 3.2 Eligible Applicants. The application for assistance must be submitted by the governing authority of the county or an incorporated municipality.

Rule 3.3 Eligible Projects. Loans may be made to assist counties and municipalities in developing economic development projects that include a facility constructed after July 1, 2012, with a capital investment from private sources of not less than Fifty Million Dollars (\$50,000,000.00). Energy Infrastructure is defined as, but not limited to:

- A. Electrical power network, including generation plants, electrical grid, substations, and local distribution; and
- B. Natural gas pipelines, storage and distribution terminals, as well as the local distribution network.
- C. Projects that are eligible for assistance must meet the below-listed criteria.
 - i. Constructing, repairing or improving infrastructure related to a project, including, but not limited to, making a contribution in aid of construction to an energy-providing utility or cooperative for its constructing, repairing, improving and owning such infrastructure; and
 - ii. Site preparation, related to a project on property owned by a county or municipality; and
 - iii. Site preparation on property owned by the enterprise owning or operating a project.

Miss. Code Ann. § 57-40-1 et. seq. (1972, as amended).

Rule 3.4 Project Requirements.

- A. The Applicant must be an incorporated municipality or a county;
- B. The Applicant must follow all state procurement and purchase laws. If an applicant has not advertised for bids within 120 days after receiving loan approval, the state will have the option to recall the funds;
- C. If two separate local units of government jointly fund a project, the Applicants must have an inter-local agreement with the Attorney General's approval;
- D. The Applicant's certified public accountant, auditor, or fiscal officer must verify on official letterhead that the financials reflect the applicant's ability to repay the loan. The verification must include the source of repayment;
- E. The Applicant's certified public accountant, auditor, or fiscal officer must furnish to MDA the most current annual audit and the latest financial summary reflecting any additional long-term debt or any changes in their financial position since the last annual audit was prepared;
- F. The Applicant must give public notice, as required. (All applicants must use the attached Public Notice and it must have been published within the last six months prior to

- submittal of the loan application);
- G. Once the publication process is complete, a certified copy of the Applicant's minutes must be submitted to MDA showing their decision to proceed with the loan;
 - H. The Applicant must fulfill the requirements of the standard application, which must be submitted to MDA for review and acceptance;
 - I. The Applicant must provide documentation verifying other funding sources, *if applicable*;
 - J. Prior to the execution of a loan agreement, relevant parties to the project shall enter into an agreement, in a manner acceptable to MDA that stipulates the terms of the energy infrastructure investment and responsibilities among parties. Agreement can be defined as an MOU or similar acceptable document;
 - K. Commitment Letter from private sources, *if applicable*;
 - L. The project must meet all applicable local, state, and federal requirements, including obtaining any required Mississippi Public Service Commission's approval prior to loan agreement being signed.

Miss. Code Ann. § 57-40-1 et. seq. (1972, as amended).

Rule 3.5 General Loan Terms. The terms of the loan will be determined on a case-by-case basis, but must be reasonable and shall not exceed twenty (20) years. The loan amount allowed will be determined by the Applicant's ability to repay the loan within acceptable terms. The loan amount cannot exceed one hundred percent (100%) of eligible costs as established by MDA.

Miss. Code Ann. § 57-40-1 et. seq. (1972, as amended).

Rule 3.6 Additional Loan Terms. MDA may require county, municipal or private participation or funding from other sources, or otherwise limit the percentage of costs covered by loans from the revolving loan fund. MDA may establish a maximum amount for any loan. Loan repayments shall be deposited into the revolving loan fund. The fixed rate of interest will be three percent (3%). The rate of interest on all loan funds is calculated according to the actuarial method. Each loan agreement shall provide for (i) monthly payments, (ii) semiannual payments, or (iii) other periodic payments.

Miss. Code Ann. § 57-40-1 et. seq. (1972, as amended).

Rule 3.7 Expenditure of Loan Funds. The Applicant will be required to expend all loan funds within two (2) years from the date of loan approval, unless a waiver is granted upon good cause shown.

Miss. Code Ann. § 57-40-1 et. seq. (1972, as amended).

Rule 3.8 Liens. A county that receives a loan from the revolving fund shall pledge for repayment of the loan any part of the homestead exemption annual tax loss reimbursement to which it may be entitled under Section 27-33-77. An incorporated municipality that receives a loan from the revolving fund shall pledge for repayment of the loan any part of the sales tax revenue distribution to which it may be entitled under Section 27-65-75.

Miss. Code Ann. § 57-40-1 et. seq. (1972, as amended).

Rule 3.9 Loan Application. The application to be submitted by an applicant must include:

- A. A detailed description of the project and narrative explaining how the specific improvements will affect economic development and/or job creation in the area, together with supporting documentation, to include a detailed map showing the location of the proposed project. Maps must explicitly correspond to the proposed scope of activities within the project. Applications must include a general vicinity map and a project specific map, including before and after pictures.
- B. Engineering Cost Estimates: Include a general cost estimate. Cost estimate must be submitted by an engineer or architect on their letterhead as a signed and stamped original. A limited amount of funds may be used for engineering/architectural cost. The amount of these professional services will be limited to an amount not to exceed 10% of the loan award amount.
- C. The estimated cost of the total project with a detailed breakdown of all public and private sources of funding.
- D. The time schedule for implementation and completion of the project, evidencing an expeditious completion of the project.
- E. Submit company balance sheets, income statements and statements of cash flow for the previous three (3) fiscal years and current statements dated within ninety (90) days of application or a letter of credit, from a federally insured financial institution.
- F. A statement of willingness to comply with non-discrimination and equal employment opportunity requirements.
- G. Signed Source and Use of Funds Disclosure Form.
- H. No approved applicant will be allowed to use excess funds to pay for the project costs that vary from the original project description.
- I. All requested changes and variances from the original application should be made in writing and will be reviewed by MDA on a case by case basis.
- J. Submit a complete Budget Sheet.

Miss. Code Ann. § 57-40-1 et. seq. (1972, as amended).

Rule 3.10 Application Format. Two (2) copies of the application must be submitted to MDA. Complete applications must be submitted with **BOTTOM TABBED DIVIDERS IN BETWEEN EACH ATTACHMENT**. All documentation should have original signatures. MDA will evaluate the application to determine if the project meets program criteria.

Miss. Code Ann. § 57-40-1 et. seq. (1972, as amended).

Rule 3.11 Application Process. Any local entity seeking funding should contact an MDA Global Division or Existing Industry & Business Division's project manager. After the initial evaluation determines the project meets MDA standards, they will contact the Energy and Natural Resources (ENR) Division to discuss the project. Then upon request, the local entity should send the following information to ENR:

- A. Project Proposal

- B. Engineering cost estimate
- C. Budget page

Miss. Code Ann. § 57-40-1 et. seq. (1972, as amended).

Rule 3.12 Loan Closing. Based upon the terms and conditions established by MDA, MDA will prepare all security and loan documents, including but not limited to, the Loan Agreement and Promissory Note, (collectively “Loan Documents”). Prior to disbursement of any funds, all Loan Documents must be fully executed. The loan documents will be executed between the local entity and MDA. All funds will flow through the local entity.

Miss. Code Ann. § 57-40-1 et. seq. (1972, as amended).

Rule 3.13 Reimbursement Process. MDA will release loan funds on a reimbursement or services rendered basis for approved eligible costs of the project as incurred. The applicant shall certify to MDA that the expenses were incurred and were in accordance with the project as approved by MDA. Funds will be released periodically upon receipt of supporting documentations from the applicant based upon a schedule established by MDA.

- A. Local entities will have three (3) years from the date of the agreement to request reimbursement for funds. Failure to implement and complete the project may result in the agreement being voided and funds de-obligated.

Miss. Code Ann. § 57-40-1 et. seq. (1972, as amended).

Rule 3.14 Site Visits. MDA staff will make periodic site visits throughout the project. MDA staff will give at least one week notice of any upcoming site visit.

Miss. Code Ann. § 57-40-1 et. seq. (1972, as amended).

Rule 3.15 Audit. Loans made under the Energy Infrastructure Revolving Loan Program are subject to audit by the Mississippi Office of the State Auditor. Additionally, MDA will also monitor all projects to ensure compliance with the original application submitted.

Miss. Code Ann. § 57-40-1 et. seq. (1972, as amended).

Rule 3.16 Penalties. An Applicant which fails to meet repayment obligations shall cause all or part of its sales tax allocation and/or homestead exemption reimbursement to be withheld and may be subject to other penalties pursuant to Miss. Code Ann. § 57-1-303(4)).

Rule 3.17 Delinquent Notice Process. Each loan agreement shall provide for monthly payments, semi-annual payments, or other periodic payments. Invoices will be sent to communities with an active loan based upon the payment schedule. Payments are due on the first day of the month in which payments are scheduled to be made. Failure to submit timely payments may result in the following procedures:

- A. If a community is 30 days delinquent, MDA may issue a letter stating the catch-up amount, terms of their loan agreement and explain the process for turning

- collection over to the State Auditor.
- B. If a community is 60 days delinquent, MDA may issue the same letter with the new catch-up amount.
 - C. If a community is 90 days delinquent, MDA may issue the same letter with the new catch-up amount.
 - D. If a community is 120 days delinquent, MDA may issue a letter stating in 30 days if catch-up payment amount has not been received, then MDA will turn the community over to the state auditor.
 - E. If a community is 180 days delinquent, MDA may request the State Auditor to audit the receipts and expenditures of the loan (Section 57-1-303(5)). If the State Auditor finds that the county or municipality is in arrears in payments, he shall immediately notify the Executive Director of the Department of Finance and Administration who shall withhold all future payments to the county of homestead exemption reimbursements under Section 27-33-77 and all sums allocated to the county or the municipality under Section 27-65-75 until such time as the county or the municipality is again current in its loan payments as certified by the Mississippi Development Authority.

Miss. Code Ann. § 57-40-1 et. seq. (1972, as amended).

Rule 3.18 Waiver. These guidelines may be amended by MDA at any time. MDA, in its discretion, may temporarily waive any requirement of the guidelines to the extent that the result of such waiver is to promote the public purpose of the Act and is not prohibited by State Law.

Miss. Code Ann. § 57-40-1 et. seq. (1972, as amended).

Rule 3.19 Authority. The Energy Infrastructure Revolving Loan Program is authorized under Miss. Code Ann. § 57-40-1 et. seq. (1972, as amended).

Part 3 Chapter 4: Energy Savings Performance Contracting Policies and Procedures

Rule 4.1 Purpose. Mississippi Development Authority (MDA) promulgates the following policy and procedures in accordance with Section 31-7-14 of the Mississippi Code of 1972, as amended, to provide for the approval of “energy saving performance contracts” (ESPC) and “shared savings contracts” between public entities and Energy Service Companies (ESCO) wherein energy savings and related cost savings are guaranteed over a period of time not to exceed 20 years by the performance contractors.

Source: Miss. Code Ann. §31-7-14 (Supp. 2015).

Rule 4.2 Responsibility. MDA-Energy and Natural Resources Division (MDA-ENRD)’s role in evaluating “energy saving performance contracts” and “shared savings contracts” under Section 31-7-14 (4) (b) is to ensure that entities can rely upon projected and guaranteed energy savings and related cost savings. Consequently, these policies and procedures for “energy saving performance contracts” and “shared savings contracts” are developed in order for MDA-ENRD to make determinations that contracts conform to the law.

Source: Miss. Code Ann. §31-7-14 (Supp. 2015).

Rule 4.3 Contracts within MDA's Purview. Contracts authorized in Section 31-7-14 (4) (b) differ from "energy services contracts" authorized in Section 31-7-14 (1) (b) that do not require MDA-ENRD involvement and do not require energy or cost savings to be guaranteed. Projects where there are minimal scientifically quantifiable and measurable energy savings, i.e., MDA-ENRD's expertise is not required, may be pursued under this Section 31-7-14 (1) (b) as "Energy Services Contract."

Rule 4.4 General Contract Construction. MDA-ENRD will construe proposed contracts submitted pursuant to 31-7-14(6) so that economic benefits to the entity may be maximized.

Source: Miss. Code Ann. §31-7-14 (Supp. 2015).

Rule 4.5 Energy Savings or Shared Savings Contracts. Any state agency or local governing authority (entity), as defined in Section 31-7-1 subparagraphs (a) and (b) respectively of the Mississippi Code of 1972, as amended, may contract on a shared savings or energy saving performance contract basis for:

- (i) energy efficiency equipment;
- (i) services relating to the installation, operation or maintenance of equipment;
- (ii) improvements reasonably required to existing or new equipment and existing or new improvements and facilities; and
- (iii) alternative fuel motor vehicles including vehicles that have been converted to such and ancillary equipment related to or associated with the fueling of alternative fuel motor vehicles.

Source: Miss. Code Ann. §31-7-14 (Supp. 2015).

Rule 4.6 Multiple Contracts. Section 31-7-14 does not prohibit an entity from entering into a companion "energy services contract" at the same time it enters into an "energy savings performance contract" or "shared savings contract." Any such dual-purpose contract must clearly state its dual nature under the law and distinguish the guaranteed portion by including a separate scope of work for such contract as a specific addendum.

Source: Miss. Code Ann. §31-7-14 (Supp. 2015).

Rule 4.7 Energy Saving Performance Contract/Shared Savings Contract Defined. An "energy saving performance contract" or "shared savings contract" means an agreement to provide energy services which include, but are not limited to, the design, installation, financing and maintenance or management of the energy systems or equipment in order to improve its energy efficiency.

Source: Miss. Code Ann. §31-7-14 (Supp. 2015).

Rule 4.8 The total "energy saving performance contract" or "shared savings contract" may not have a payback period longer than 20 years. Individual Energy Conservation Measures (ECMs)

may have payback periods longer than 20 years; however, the combined payback for the ESPC must be less than or equal to 20 years. Per Section 31-7-14, Miss. Code, the **useful life** of each energy system or equipment shall meet or exceed the term of the contract to be considered an eligible measure. Eligible ECMs are any type of project or technology implemented to reduce the consumption of energy systems or equipment. ECMs should provide long-term operation cost reductions or significantly reduce energy and/or water consumed.

Source: Miss. Code Ann. §31-7-14 (Supp. 2015).

Rule 4.9 Guaranteed Savings. The energy savings plus related cost savings are guaranteed by the ESCO and must be used to repay the cost of the project. The guaranteed savings must be more than sufficient to pay the total costs of the project over the guarantee period. The terms of any shared savings or energy saving performance contract entered into must contain a guarantee of savings clause from the performance contractor.

Source: Miss. Code Ann. §31-7-14 (Supp. 2015).

Rule 4.10 Shared Savings Contract/Energy Saving Performance Contract Differences. A “shared savings contract” differs from an “energy saving performance contract” in that the ESCO and the entity each receive a pre-agreed percentage or dollar value of the energy cost savings over the life of the contract, rather than the contractor receiving a fee.

Source: Miss. Code Ann. §31-7-14 (Supp. 2015).

Rule 4.11 Contractual Terms.

(A) The terms of any performance contract or shared savings contract for efficiency services and equipment entered into under this section shall not exceed 20 years.

(B) All contracts must contain the following annual allocation dependency clause:

The continuation of this contract is contingent upon the appropriation of funds to fulfill the requirement of the contract by the Legislature or other budgeting authority. If the Legislature or other budgeting authority fails to appropriate sufficient monies to provide for the continuation of the contract, the contract shall terminate on the last day of the fiscal year for which appropriations were made. The termination shall be without penalty or expense to the entity of any kind whatsoever, except as to the portions of payments for which funds were appropriated.

(C) All contracts must contain a provision for termination of the contract for cause.

(D) All contracts must contain a provision for termination for convenience by the entity.

Source: Miss. Code Ann. §31-7-14 (Supp. 2015).

Rule 4.12 Program Requirements and Definitions.

- (A) “Eligible Energy Conservation Measures (ECMs)” are energy systems or equipment listed below:
- (i) heating, ventilation, and air conditioning systems;
 - (ii) lighting;
 - (iii) windows;
 - (iv) insulation;
 - (v) energy management controls;
 - (vi) life safety measures that provide long-term operating cost reductions;
 - (vii) building operation programs that reduce operating costs;
 - (viii) renewable energy systems and equipment;
 - (ix) water conservation systems and equipment, including accuracy and measurement of water distribution and/or consumption;
 - (x) facilities improvements or enhancements directly related to the above;
 - (xi) alternative fuel motor vehicles including vehicles that have been converted to such and ancillary equipment related to or associated with the fueling of alternative fuel vehicles; and
 - (xii) other equipment, services and improvements providing energy efficiency as determined by the division.
- (B) Energy Cost Savings: a reduction in the costs related to “Energy Services” or “Energy Efficient Services” as defined in Section 31-7-14 (1)(a)(iii) and 31-7-14 (1)(a)(vii) of the Mississippi Code of 1972, as amended. Energy Cost Savings are a reduction in the cost of energy, renewable energy, water and other natural resources conservation and must be verifiable. Energy cost savings are generally recurring savings - savings that occur year after year.
- (C) Allowable cost savings may also include savings from the elimination of future expenses and from the avoidance of future replacement expenditures as a result of new equipment installed or services performed.
- (D) Guaranteed energy savings plus verifiable guaranteed related cost savings achieved by the project shall be sufficient to cover all project costs, including annual maintenance and monitoring fees, guarantee fees, and contractor fees.
- (E) For “energy saving performance contracts” and for “shared savings contracts,” MDA-ENRD defines “energy savings plus related cost savings” as scientifically quantifiable and verified measurable savings from energy and/or water usage reductions plus cost savings from related operations and maintenance reductions and other cost-avoidance measures.
- (F) Energy Related Cost Savings: a reduction in expenses (other than energy cost savings) related to energy-consuming equipment, generally related to equipment operations, maintenance, renewal, replacement, repair expenses, or avoided capital costs. Energy related cost savings shall be verified to be considered part of the ESPC.

- i. Operation and Maintenance (O&M) Savings: a reduction in operation and maintenance costs associated with the equipment. Accompanying documentation, such as invoices of previous repair costs, must be submitted along with detailed calculations and descriptions. O&M savings should only be captured in the applicable years and during the lifetime of the particular equipment. Elimination of maintenance contracts is allowable if verifiable.
- ii. Capital Cost Avoidance (CCA): a cost reduction generated by avoiding planned future capital expenditures, either for equipment replacement or services performed. CCA on equipment that is being purchased and replaced through the ESPC rather than in the future is calculated by taking the difference between what it would have cost to implement the project in the future and the current costs of that equipment replacement under the ESPC. For additional CCA calculations, it is recommended that a Life Cycle Cost Assessment (LCCA) be used to monetize the non-energy benefits. USDOE (2005) defines life-cycle costs as "...the sum of present values of investment costs, capital costs, installation costs, energy costs, operating costs, maintenance costs, and disposal costs over the lifetime of the project, product, or measure." Cost avoidance can be captured as a one-time benefit or normalized over the term of the performance contract.
- iii. Material Savings: a reduction in costs associated with parts and materials purchased for existing energy-consuming systems. These are allowable as long as the initial values can be determined and verified.
- iv. Labor Savings: a reduction in personnel associated with the operations and maintenance of the energy-consuming system. It will not be considered by MDA-ENRD unless a job is eliminated and staff is released. Even if someone is assigned different responsibilities, that money is not eliminated from the budget and therefore not available as savings.

(G) Simple Payback Period (SPP): the length of time required to recover the costs of the ESPC investments through energy and related cost savings. The combined simple payback period shall not exceed 20 years, although an individual ECM can have a payback longer than 20 years. SPP is calculated by dividing the value of the initial investment by the projected annual energy cost savings. SPP is usually given in years and/or tenths of a year.

The simple payback formula is:

$$\text{Simple Payback} \\ \text{SPP (years)} = \frac{I}{\text{ES/year}}$$

Where,

- SPP = Simple payback period
- I = Initial investment
- ES/year = Projected annual energy savings at current prices

- (H) Useful Life: the length of time over which equipment can be depreciated. Per Section 31-7-14, Miss. Code, each energy system or equipment useful life shall meet or exceed the term of the contract to be considered an eligible measure.
- (I) MDA-ENRD will check to ensure warranty time periods has been captured correctly where applicable.
- (J) Verification of savings means MDA-ENRD shall verify all projected savings in an ESPC. Projected savings that are not quantified, measured and verified will not be considered as part of the ESPC. Supporting documentation, including detailed narratives and graphs/charts shall be submitted with each proposed project.

Source: Miss. Code Ann. §31-7-14 (Rev. 2015).

Rule 4.13 ESPC Issuance and Approval Process.

- (A) Any entity desiring to enter into a contract for energy efficiency equipment, services relating to the installation, operation or maintenance of equipment, or improvements reasonably required to existing or new equipment and existing or new improvements and facilities on a shared savings basis or performance contracting basis, shall issue a Request for Qualifications (RFQ) in the manner prescribed in Section 31-7-14 (1) (b) of the Mississippi Code of 1972, as amended. It is recommended that the entity use the RFQ template located in the MDA Energy Savings Performance Contracting Manual.
- (B) The entity shall notify the MDA-ENRD in writing in advance of its determination to issue an RFQ to develop an Energy Saving Performance Contract or a Shared Savings Contract project.
- (C) The entity may request, at its discretion, that the MDA-ENRD reviews its RFQ before it is published, but if not, the RFQ must be forwarded to MDA after it has been published.
- (D) Any entity intending to contract for a shared savings or energy saving performance contract for energy services must advertise once each week for two (2) consecutive weeks in a regular newspaper published in the county or municipality in which such entity is located. On the same date that the notice is submitted to the newspaper for publication, the agency or governing authority involved shall mail written notice to or provide electronic notification to the main office of the Mississippi Procurement Technical Assistance Program under the Mississippi Development Authority that contains the same information as that in the published notice.
- (E) The MDA-ENRD shall review each contract pursuant to code 31-7-14 (4) (b) and approve those it determines to be in compliance with the code, this policy, and these guidelines.
- (F) No energy saving performance contract or shared savings contract shall be valid until approved by the MDA-ENRD in writing.

- (G) The MDA-ENRD will not approve any energy saving performance contract or shared savings contract that does not generate verified quantifiable and measurable energy and/or operating costs savings as defined above.
- (H) Project documentation must be submitted to the MDA- ENRD for review and comment. The documents to be submitted include: 1) Technical Energy Analysis; 2) final contract, and 3) Measurement and Verification (M&V) Plan. If any of the above listed documents are not submitted together, MDA-ENRD will not accept the project and will send a letter to the governmental entity to inform them that the review process will not begin until all required documents are submitted.
- (I) Contracts submitted to MDA-ENRD shall be signed by both parties. Unsigned or partially signed contracts will be returned to the governmental entity. The governmental entity shall submit documentation of board or council approval of the submittal of the proposed project to MDA-ENRD for review with the project packet.
- (J) The use of a 3rd party engineer or engineering firm to specifically review M&V is a requirement for state agencies with energy savings performance contracts. Third party review is optional for other public entities, but it is highly recommended. The third party reviewer must be chosen by the entity without input from the ESCO. The 3rd party reviewer must be neutral and the review of M&V must be paid out of the savings, not paid by the ESCO or the governmental entity.
- (K) The Technical Energy Analysis must be signed and stamped by a professional engineer registered and licensed to practice in Mississippi.
- (L) The MDA-ENRD initial review process will begin and commence immediately upon receiving a complete set of documents in our office or via email. MDA-ENRD will send written correspondence to the governmental entity acknowledging receipt of review documents.
- (M) MDA-ENRD will attempt to complete review within forty-five (45) days of receipt of a complete package as outlined in (viii) above; however, this is heavily dependent on the responsiveness of the entity and ESCO to questions posed throughout the review process.
- (N) The entity will be provided in writing any questions and comments raised by the MDA-ENRD during its review process. The entity will be required to respond to these questions and comments in writing within ten (10) business days. Although it is the intent of MDA-ENRD to work with an entity to resolve any issues in a timely manner, if MDA-ENRD has not received a response from a review report after fourteen (14) business days, a decision on the remaining issues will be made based on the latest available data.

- (O) Direct communication (i.e., meetings, phone conferences, etc.) with the third party is acceptable – only with the governmental entities written consent and if it will be beneficial to clarify or resolve any issues that may arise during the resolution process.
- (P) Upon completion of the review process, the MDA-ENRD will issue a letter signed by the MDA-ENRD director, indicating approval or denial of the proposed project. The final contract shall be approved by MDA-ENRD, in accordance with 31-7-14 (4) (b) of the Mississippi Code of 1972, as amended.
- (Q) If a project is denied, a letter will be issued indicating the project failed to meet 31-7-14 of the Mississippi Code of 1972, as amended, and/or the policy and procedures as set forth in the Mississippi Performance Contracting Policy and Procedures Manual. A denial letter will end the review process of the proposed project. A governmental entity must restart the performance contracting project process (*see AppendixA-3*) if it is still interested in an ESPC.
- (R) Appeals Process: Entities will be given ample opportunity to provide explanations to questions from MDA-ENRD in an attempt to reach a favorable conclusion during the review process. A final determination will stand unless the entity can substantiate that MDA-ENRD did not follow 31-7-14 of the Mississippi Code of 1972, as amended, and/or the policy and procedures as set forth in the Mississippi Performance Contracting Policy and Procedures Manual. In the event that the entity believes MDA-ENRD failed to follow the Section 31-7-14 or the policies and procedures of this program, the entity will send a letter to the MDA executive director documenting its reasons that the law and/or policies were not followed. The MDA executive director, or his designee, will make a decision as to whether to re-open the review process or to affirm the decision by MDA-ENRD. The executive director, or his designee, can only reopen the review process if there is clear documented evidence that the law or policies were not followed.
- (S) Annual Energy Savings Reports are also required and must be submitted to the MDA-ENRD within 60 days of the date the reports are received by the entity. It is the responsibility of the ESCO to submit the annual reports to MDA-ENRD.

Source: Miss. Code Ann. §31-7-14 (Rev. 2015).