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**For Department of State Use Only**

Sequence Number: 02-20-D  
 Rule ID(s): 4641  
 File Date: 02/22/2010  
 Effective Date: 07/29/2010

# Proposed Rule(s) Filing Form

*Proposed rules are submitted pursuant to T.C.A. §4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.*

**Agency/Board/Commission:** Economic and Community Development  
**Division:** Energy  
**Contact Person:** Stephanie Tisdale, ECD General Counsel  
**Address:** 312 Rosa L. Parks Ave., 11<sup>th</sup> floor, Nashville, TN  
**Zip:** 37243  
**Phone:** 615-253-2006  
**Email:** [Stephanie.tisdale@tn.gov](mailto:Stephanie.tisdale@tn.gov)

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables. Please enter only ONE Rule Number/RuleTitle per row)**

Chapter Number	Chapter Title
0500-03-03	Energy Conservation Grants Program for Institutional Buildings
Rule Number	Rule Title
0500-03-03-.01	Purpose
0500-03-03-.02	Definitions
0500-03-03-.03	Institutional Eligibility
0500-03-03-.04	Application and Ranking Procedures
0500-03-03-.05	Energy Auditors
0500-03-03-.06	Technical Assistance Analysts
0500-03-03-.07	Matching Funds Requirements
0500-03-03-.08	Solar Retrofit
0500-03-03-.09	Monitoring of Grantees

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Chapter 0500-03-03 Energy Conservation Grants Program for Institutional Buildings

Copy of present rules under this chapter attached.

<b>Chapter Number</b>	<b>Chapter Title</b>
0500-3-3	Energy Conservation Grants Program for Institutional Buildings
<b>Rule Number</b>	<b>Rule Title</b>
0500-3-3-.06	Technical Assistance Analysts
<b>Chapter Number</b>	<b>Chapter Title</b>
0500-3-3	Energy Conservation Grants Program for Institutional Buildings
<b>Rule Number</b>	<b>Rule Title</b>
0500-3-3-.07	Matching Funds Requirements
<b>Chapter Number</b>	<b>Chapter Title</b>
0500-3-3	Energy Conservation Grants Program for Institutional Buildings
<b>Rule Number</b>	<b>Rule Title</b>
0500-3-3-.08	Solar Retrofit
<b>Chapter Number</b>	<b>Chapter Title</b>
0500-3-3	Energy Conservation Grants Program for Institutional Buildings
<b>Rule Number</b>	<b>Rule Title</b>
0500-3-3-.09	Monitoring of Grantees

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Chapter 0500-3-3 Energy Conservation Grants Program for Institutional Buildings

Copy of present rules under this chapter attached.

Repeal

Chapter 0500-3-3 includes rules and guidelines for the Energy Conservation Grants Program for Institutional Buildings. The purpose of this program was to provide financial assistance for energy conservation in schools, hospitals and buildings used by local governments and public care institutions. Authorization for this program came under Title III of the National Energy Conservation Policy Act (NECPA) and was transferred to ECD from the Tennessee Energy Authority in 1983. This program was terminated by the United States Department of Energy around 1996.

Authority: T.C.A. § 4-3-702 (c).

\* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
N/A					

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Department of Economic and Community Development on 9/9/2009 (date as mm/dd/yyyy), and is in compliance with the provisions of TCA 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 9/9/09

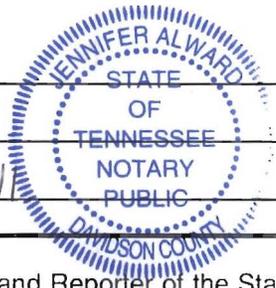
Signature: [Handwritten Signature]

Name of Officer: Matthew Kisber  
Commissioner, Dept. of Economic and Community  
Title of Officer: Development

Subscribed and sworn to before me on: Sept. 9, 2009

Notary Public Signature: Jennifer Alward

My commission expires on: March, 7, 2011



All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

*REC Cooper*

Robert E. Cooper, Jr.  
Attorney General and Reporter

2-14-10

Date

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Filed with the Department of State on: 2/22/10

Effective on: 2/29/10

*Tre Hargett*

Tre Hargett  
Secretary of State

**Regulatory Flexibility Addendum**

Pursuant to § T.C.A. 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

N/A

**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to TCA 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

Chapter 0500-3-3 of the Rules of the Department of Economic and Community Development contains the guidelines and criteria for the Energy Conservation Grants Program for Institutional Buildings. The purpose of this program was to provide financial assistance for the conservation of energy in private non-profit or public schools, hospitals, and in buildings used by local governments and public care institutions. The original rule was

filed in 1979. In July 1983, the program was transferred from the Tennessee Energy Authority. This program was terminated by the United State Department of Energy in 1996.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

This program was authorized by federal law, specifically Title III of the National Energy Conservation Policy (NECPA), Public Law 95-619, 92 Stat. 3206. T.C.A. § § 4-3-702 (c) and 4-3-708 (4) also provide authority for promulgation of these rules.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Repeal of these rules would not directly affect any parties, since the United States Department of Energy discontinued this program in 1996.

- (D)** Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

We are unaware of any attorney general opinions or judicial rulings made that directly relates to this rule.

- (E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

This rule change (repeal) would not have any effect on state or local government revenues or expenditures.

- (F)** Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Ryan Gooch, Director of Energy Policy and Lamont Price, ECD Internal Auditor have limited knowledge of this rule.

- (G)** Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Ryan Gooch, Director of Energy Policy and Lamont Price, ECD Internal Auditor

- (H)** Office address and telephone number of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Ryan Gooch, 312 Rosa L. Parks Ave., 9<sup>th</sup> floor, 615-741-1924; Lamont Price, 312 Rosa Parks Ave., 11<sup>th</sup> floor, Nashville, TN 37243; 615-253-1760

- (I)** Any additional information relevant to the rule proposed for continuation that the committee requests.

N/A

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

**CHAPTER 0500-3-3  
ENERGY CONSERVATION GRANTS  
PROGRAM FOR INSTITUTIONAL BUILDINGS**

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0500-3-3-.05 Energy Auditors	

**0500-3-3-.01 PURPOSE.** The Energy Conservation Grants Program for Institutional Buildings is authorized by Title III of the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3206 and regulations promulgated pursuant thereto. The purpose of this program is to provide financial assistance for the conservation of energy in private non-profit or public schools, hospitals, and in buildings used by local governments and public care institutions. Participation in the program is voluntary. There are several phases of the program. As established elsewhere in these regulations, an institution must complete each phase in order to become eligible for the next phase. The sequence of the program is as follows:

- (1) preliminary energy audit phase.
- (2) energy audit phase.
- (3) energy use evaluation (may be completed in lieu of PEA & EA).
- (4) technical assistance phase.
- (5) energy conservation measure phase.

Financial assistance is available for phases 2, 4, & 5

This chapter establishes the Regulations which each institution must follow in order to participate in this program

*Authority: T.C.A. §§4-3-708(4) and 4-3-702(c). Administrative History: Original rule filed October 31, 1979; effective December 15, 1979. Transferred from the Tennessee Energy Authority on July 1, 1983. Amendment filed December 10, 1985; effective March 17, 1986.*

**0500-3-3-.02 DEFINITIONS. THE FOLLOWING DEFINITIONS SHALL APPLY TO THESE REGULATIONS:**

- (1) "Energy Division"- The Energy Division of the Department of Economic and Community Development.
- (2) "BTU"- British Thermal Unit.
- (3) "Energy audit"- A survey of a building that is conducted in accordance with the requirements of this subpart which-
  - (a) Identifies the type, size, energy use level and the major energy using systems;

(Rule 0500-3-3-.02, continued)

- (b) Determines appropriate energy conservation maintenance and operating procedures; and
  - (c) Indicates the need, if any, for the acquisition and installation of energy conservation measures, including solar energy and other renewable resource measures.
- (4) "Energy auditor"- A person who conducts an energy audit. All energy audits performed with grants must be performed by an energy auditor who is certified by the Energy Division.
- (5) "Energy conservation maintenance and operating procedure"- Modification in the maintenance and operating procedures of a building, and any installations therein, which are designed to reduce energy consumption in such buildings and which require no significant expenditure of funds.
- (6) "Energy conservation measure"- An installation or modification of an installation in a building which is primarily intended to reduce energy consumption or allow the use of an alternative energy source.
- (7) "Energy Use Evaluation"-- A survey of a building that is conducted in accordance with the requirements of this subpart which combines the information in the Preliminary Energy Audit (PEA) and the Energy Audit (EA).
- (8) "Energy Use Index"- Ratio of energy conservation potential to energy consumption rate.
- (9) "Hospital"- A public or non-profit institution which is a general hospital, tuberculosis hospital, or any other type of hospital, other than a hospital furnishing primarily domiciliary care; and is duly authorized to provide hospital services under the laws of Tennessee.
- (10) "PEA"- A preliminary energy audit which is a determination of the energy consumption characteristics of a building, including the size, type, rate of energy consumption and major energy-using systems of such building.
- (11) "Public care institutions"- A public or non-profit institution which owns-
- (a) A facility for long-term care, rehabilitation facility, or public health center; as described in §1633 of the Public Health Service Act (42 U.S.C. 300s-3; 88 Stat. 2270);
  - (b) A residential child care center, which is an institution, other than a foster home, operated by a public or non-profit institution and is primarily intended to provide full-time residential care with an average length of stay of at least 30 days for at least 10 minor persons who are in the care of such institutions as a result of a finding of abandonment or neglect or of being persons in need of treatment or supervision.
- (12) "Public or non-profit institutions"- An institution owned and operated by
- (a) Tennessee, a political subdivision of Tennessee or an agency or instrumentality of either;
  - (b) A school or hospital which is exempt from income tax under §501(c)(3) of the Internal Revenue Code of 1954; or
  - (c) A unit of local government or a public care institution which is exempt from income tax under §501(c)(4) of the Internal Revenue Code of 1954.
- (13) "School"- A public or non-profit institution which
- (a) Provides, and is legally authorized to provide, elementary education or secondary education or both, on a day or residential basis;

(Rule 0500-3-3-.02, continued)

- (b) 1. Provides, and is legally authorized to provide, a program of education beyond secondary education, on a day or residential basis;
  - 2. Admits as students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate;
  - 3. Is accredited by a nationally recognized accrediting agency or association; and
  - 4. Provides an educational program for which it awards a bachelor's degree or higher degree or provides not less than two-year program which is acceptable for full credit toward such a degree at any institution which meets the preceding requirements and which provides such a program;
  - (c) Provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and which meets the provisions cited in subdivisions 1., 2., and 3. of subparagraph (b) above, or
  - (d) Is a local education agency.
- (14) "Technical assistance" - A detailed building analysis, performed by a licensed engineer or architect, which recommends the implementation of specific energy conservation measures.
- (15) "Units of local government" -The government of a county, municipality, which is a unit of general purpose government below the State, determined on the basis of the same principles as are used by the Bureau of the Census for general statistical purposes; the recognized governing body of an Indian tribe which governing body performs substantial governmental functions; libraries owned by any of the foregoing; and public libraries which serve all residents of a political subdivision below the State level, such as a community, district or region, free of charge and which derives at least 40 percent of their operating funds from tax revenues of a taxing Authority below the State level.

*Authority.* T. C.A. §§4-3-708(4) and 4-3-702(c). *Administrative History:* Original rule filed October 31, 1979; effective December 15, 1979. Transferred from the Tennessee Energy Authority on July 1, 1983. Amendment filed December 10, 1985; effective March 17, 1986.

**0500-3-3-.03 INSTITUTIONAL ELIGIBILITY.**

- (1) Energy Audit Grant- Any public or non-profit school or hospital, unit of local government or public care institution, which has completed and submitted a PEA to the Energy Division is eligible to apply for an Energy Audit Grant.
- (2) Technical Assistance Grant- Any public or non-profit school or hospital, unit of local government or public care institution, which has completed and submitted an Energy Audit or Energy Use Evaluation to the Energy Division is eligible to apply for a Technical Assistance Grant.
- (3) Energy Conservation Measure Grant- Any public or non-profit school or hospital which has completed and submitted a Technical Assistance Analysis to the Energy Division is eligible to apply for an Energy Conservation Measure Grant.

*Authority:* T.C.A. §§4-3-708(4) and 4-3-702(c). *Administrative History:* Original rule filed October 31, 1979; effective December 15, 1979. Transferred from the Tennessee Energy Authority on July 1, 1983. Amendment filed December 10, 1985, effective March 17, 1986

**0500-3-3.04 APPLICATION AND RANKING PROCEDURES.** PARTICIPATION IN THIS PROGRAM IS AS FOLLOWS:

- (1) Energy Audit Grants - Each institution must submit a completed PEA to the Energy Division.
  - (a) The Energy Division will send each institution, which submits a completed PEA, an application for an Energy Audit Grant.
  - (b) The Energy Division will rank all applications in descending order of priority. An energy audit grant application must specify which certified energy auditor will perform the energy audit. Only energy auditors who have been certified by the Energy Division will be allowed to perform grant funded energy audits.
  - (c) The ranking will be based upon the BTU/square foot/year consumption rate of a building derived from the preliminary energy audit data. Energy audit grants will be disbursed by the Energy Division based upon the priority ranking, until all grant funds for this phase of the program are expended.
  
- (2) Technical Assistance Grant - Each institution which completes an Energy Audit and/or Energy Use Evaluation may apply for a Technical Assistance Grant.
  - (a) The Energy Division will send each institution, which submits a completed Energy Audit and/or Energy Use Evaluation, an application for a Technical Assistance Grant. These applications are to be submitted to the Energy Division.
    1. Technical assistance grants are discretionary and will be awarded directly by the U.S. Department of Energy to each institution which is selected. The final decision as to which institutions are selected for these grants will be made by the U.S. Department of Energy.
    2. In the event the Energy Division receives technical assistance grant funds which cannot be awarded directly by the U.S. Department of Energy, the Energy Division will disburse such funds as state awarded technical assistance grants to eligible institutions based upon the same requirements as would apply to federally disbursed funds.
  - (b) Upon expiration of a technical assistance grant application submittal deadline, which is established by the Energy Division, the Energy Division will rank all applications in descending order of priority.
  - (c) The ranking of applications will be based upon an Energy Use Index derived from the data contained in the completed Energy Audit or Energy Conservation Measure potential contained in the Energy Use Evaluation. The Energy Division will recommend to the U.S. Department of Energy which institutions should be granted funds, based upon an institution's position in the ranking. Grants will be made to as many institutions as the amount of grant funds allocated allows.
  
- (3) Energy Conservation Measure Grants - Any school or hospital which has completed a technical assistance analysis may apply for an energy conservation grant.
  - (a) The Energy Division will send each school or hospital, which submits a complete technical assistance analysis, an application for an energy conservation measure grant. These applications are to be submitted to the Energy Division.
    1. Energy conservation measure grants are discretionary and will be awarded directly by the U.S. Department of Energy to each institution which is selected. The final decision as to

(Rule 0500-3-3-.04, continued)

which institutions are selected for these grants will be made by the U.S. Department of Energy.

2. In the event the Energy Division receives energy conservation grant funds which cannot be awarded directly by the U.S. Department of Energy, the Energy Division will disburse such funds as state awarded energy conservation measure grants to eligible institutions based upon the priority ranking, until all such funds are expended, under the same requirements as would apply to federally disbursed funds.
- (b) Upon expiration of an energy conservation grant application submittal deadline, which is established by the Energy Division, the Energy Division will rank all applications in descending order of priority.
  - (c) The ranking of applications will be based upon the following five criteria in descending order of priority: average simple payback of the proposed measure, type of fuel to which conversion is proposed, type of energy to be saved, climate, and quality of the technical assistance analysis. The Energy Division will recommend to the U.S. Department of Energy which institutions should be granted funds based upon an institution's position in the ranking. Grants will be made to as many institutions as the amount of grant funds allocated allows.

*Authority: T. C.A. §§4-3- 708 (4) and 4-3- 702 (c). Administrative History: Original rule filed October 31, 1979; effective December 15, 1979. Amendment filed April 30, 1982; effective July 29, 1982. Amendment filed May 27, 1983; effective August 15, 1983. Transferred from the Tennessee Energy Authority on July 1, 1983. Amendment filed December 10, 1985, effective March 17, 1986.*

#### **0500-3-3-.05 ENERGY AUDITORS.**

- (1) Eligibility - Any person living in Tennessee may be certified by the Energy Division to perform energy audits.
- (2) Training - Every energy auditor must attend an energy auditor training session held by the Energy Division. There will be no admission, certification or attendance fee for these sessions. There will be two types of training sessions.
  - (a) Professionals - This category consists of professional engineers or architects who are registered in Tennessee and anyone living in Tennessee who has received either an engineering or an architecture degree. The training sessions for these persons will last one day. At the end of the sessions, each attendee will receive a certification number from the Energy Division.
  - (b) Non-professionals - This category is open to all persons living in Tennessee. The training sessions for this category will last two days. At the end of these sessions, each attendee will receive a certification number from the Energy Division.
- (3) Reports - Certified energy auditors will be required to list their name and certification number on each energy audit report which is submitted to the Energy Division.
- (4) Suspension or withdrawal of Certification - The Energy Division may suspend or withdraw certification of an energy auditor, in accordance with the Uniform Administrative Procedures Act governing contested cases, upon a finding by the Energy Division that an energy auditor has failed to substantially perform an energy audit in accordance with the standards established by the energy auditor training sessions conducted by the Energy Division.

(Rule 0500-3-3-.05, continued)

*Authority:* T.C.A. §§4-3-708 (4) and 4-3-702 (c). *Administrative History:* Original rule filed October 31, 1979; effective December 15, 1979. Amendment filed April 30, 1982, effective July 29, 1982. Transferred from the Tennessee Energy Authority on July 1, 1983. Amendment filed December 10, 1985; effective March 17, 1986.

**0500-3-3-.06 TECHNICAL ASSISTANCE ANALYSTS.**

- (1) In order to qualify as a Technical Assistance Analyst one must:
  - (a) be licensed as a professional engineer or architect by the Tennessee Board of Architectural and Engineering Examiners; and
  - (b) be free from financial interests which may conflict with the proper performance of technical analyses of building shell and mechanical systems. This provision is intended to exclude those individuals having a financial interest in the products or equipment acquired and installed under an energy conservation measure grant. This requirement does not preclude technical assistance analysts from performing detailed design or inspection services under the energy conservation measure phase of these programs.

*Authority:* T.C.A. §§4-3-708 (4) and 4-3-702 (c). *Administrative History:* Original rule filed October 31, 1979; effective December 15, 1979. Transferred from the Tennessee Energy Authority on July 1, 1983. Amendment filed December 10, 1985; effective March 17, 1986.

**0500-3-3-.07 MATCHING FUNDS REQUIREMENTS.**

- (1) Institutions are required to match federal funds, as represented by the grant, with non-federal funds. No federal program funds may be used as match funds, except as approved by the U.S. Department of Energy.
- (2) Up to ten percent of the total grant funds available for technical assistance and energy conservation grants will be available for "severe hardship" applicants. An applicant claiming severe hardship status must furnish the Energy Division with such needed information as is required by the Energy Division to make a determination as to the hardship status of an applicant.

*Authority:* T.C.A. §§4-3-708 (4) and 4-3-702 (c). *Administrative History:* Original rule filed October 31, 1979; effective December 15, 1979. Transferred from the Tennessee Energy Authority on July 1, 1983. Amendment filed December 10, 1985; effective March 17, 1986.

**0500-3-3-.08 SOLAR RETROFIT.**

- (1) The Energy Division requires that all energy audits include specific building site and structural characteristics relevant to a consideration of the possibility of solar retrofit. At a minimum such information must include climatic factors and roof characteristics.
- (2) The Energy Division requires that all technical assistance analyses contain the specific information necessary to evaluate the potential for solar retrofit of domestic hot water systems.

*Authority:* T.C.A. §§4-3-708 (4) and 4-3-702 (c). *Administrative History:* Original rule filed October 31, 1979; effective December 15, 1979. Transferred from the Tennessee Energy Authority on July 1, 1983. Amendment filed December 10, 1985; effective March 17, 1986.

**0500-3-3-.09 MONITORING OF GRANTEES.**

- (1) The Energy Division will conduct monitoring activities on at least five percent of the grantees under this program. Semi-annual progress and financial reports are required to be submitted to the Energy Division by every grantee. Any discrepancies identified through review of these reports will be investigated by onsite inspections, including financial audits of records relating to any grant under this program. The Energy Division will report any evidence of malfeasance, nonfeasance or criminal misuse of grant funds to the U.S. Department of Energy and the State Attorney General. All grantees will be required to keep all records of financial expenditure and milestone progress for a period of three years after completion of the work for which the grant was made. Each grantee will be required to submit to the Energy Division a final report not later than three months after completion of the work for which the grant was made.
  - (a) After completion of the funded work, energy conservation measure grantees must submit annual consumption reports to the Energy Division for a period of three years. These reports will consist of:
    - 1.. Year 1 - Energy consumption for the 12-month period prior to implementation and consumption for the 12-month period following implementation.
    2. Year 2 - Energy consumption for second year after implementation.
    3. Year 3 - Energy consumption for third year after implementation.
- (2) Energy Audit Grantees - The Energy Division will conduct verification energy audits upon a randomly selected sample of energy audit grantees to ensure that energy audit grantees are performing energy audits in accordance with the terms of the executed grant contracts. Energy audit grantees must also submit complete energy audit reports to the Energy Division upon completion of the work for which the grant was made.
- (3) Technical Assistance Grantees- Each final report for a Technical Assistance Grant will include at least the following items:
  - (a) The technical assistance report.
  - (b) A financial disclosure statement of the total funds expended for the project and appropriate documentation of the funds expended. This statement must be signed by an authorized agent of the grantee.
  - (c) A report of the accomplishment of planned milestones including time schedules. If work progress is found to have significantly deviated from the milestone plan, the exceptions should be noted and an explanation of the reason for deviation from the plan should be given.
  - (d) A statement signed by an authorized agent of the grantee certifying that the work for which the grant was made was actually performed.
  - (e) A recommended plan to implement energy conservation maintenance and operating procedures, and plans to acquire and install energy conservation measures.
- (4) Energy Conservation Measure Grantees - Each final report for an Energy Conservation Measure Grant will include at least the following items:
  - (a) A listing and description of energy conservation measures acquired and installed.

(Rule 0500-3-3-.09, continued)

- (b) A financial disclosure statement of the total funds expended for the project accompanied by appropriate documentation of the funds expended signed by the authorized agent of the grantee. This statement must also list a final projected simple payback period for each building specifying and utilizing the actual costs for each measure and all the measures, taken as a whole. The simple payback period will be calculated by dividing the cost of a measure by the estimated annual cost saving accruing from the implementation of the measure.
- (c) A report of the accomplishment of planned milestones including time schedules. If work progress is found to have significantly deviated from the milestone plan, the exceptions should be noted and an explanation of the reason for deviation from the plan should be given.
- (d) A statement, that the completed modifications (materials, equipment, and installation) conform to the technical assistance program and the approved grant application, signed by the authorized agent of the grantee.

*Authority: T.C.A. §§4-3-708 (4) and 4-3-702 (c). Administrative History: Original rule filed October 31, 1979; effective December 15, 1979. Repeal and new rule filed April 30, 1982; effective July 29, 1982. Transferred from the Tennessee Energy Authority on July 1, 1983. Amendment filed December 10, 1985; effective March 17, 1986.*

OF

RULES

THE DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT

ENERGY DIVISION

CHAPTER 0500-3-3

ENERGY CONSERVATION GRANTS

PROGRAM FOR INSTITUTIONAL BUILDINGS

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 0500-3-3-04 Application and Ranking Procedure 0500-3-3-09 Monitoring of Grantees  
 0500-3-3-05 Energy Auditors

0500-3-3-01 PURPOSE. The Energy Conservation Grants Program for Institutional Buildings is

authorized by

Title III of the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3206 and regulations promulgated pursuant thereto. The purpose of this program is to provide financial assistance for the

conservation of energy in private non-profit or public schools, hospitals, and in buildings used by local

governments

and public care institutions. Participation in the program is voluntary. There are several phases of the

Program. As

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(1) preliminary energy audit phase;

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(5) energy conservation measure phase.

Financial assistance is available for phases 2, 4, & 5

This chapter establishes the Regulations which each institution must follow in order to participate in this

program

Authority: T.C.A. §§ 4-3-708(4) and 4-3-702(e). Administrative History: Original rule filed October 31,

1979;

effective December 15, 1979. Transferred from the Tennessee Energy Authority on July 1, 1983.

Amendment filed

December 10, 1985; effective March 17, 1986.

0500-3-3-02 DEFINITIONS. THE FOLLOWING DEFINITIONS SHALL APPLY TO THESE

REGULATIONS:

(1) "Energy Division" The Energy Division of the Department of Economic and Community

Development;

(2) "BTU" British Thermal Unit;

(3) "Energy audit" A survey of a building that is conducted in accordance with the requirements of this

subpart which

(a) identifies the type, size, energy use level and the major energy using systems;

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(b) Determines appropriate energy conservation maintenance and operating procedures; and

(c) Indicates the need, if any, for the acquisition and installation of energy conservation

measures, including solar energy and other renewable resource measures;

(4) "Energy auditor" A person who conducts an energy audit. All energy audits performed with grants

must be performed by an energy auditor who is certified by the Energy Division.

(5) "Energy conservation maintenance and operating procedure" Modification in the maintenance and operating procedures of a building, and any installations therein, which are designed to reduce energy consumption in such buildings and which require no significant expenditure of funds.

(6) "Energy conservation measure" An installation or modification of an installation in a building which is primarily intended to reduce energy consumption or allow the use of an alternate energy source.

(7) "Energy Use Evaluation" A survey of a building that is conducted in accordance with the requirements of this subpart which combines the information in the Preliminary Energy Audit (PEA) and the Energy Audit (EA).

(8) "Energy Use Index" Ratio of energy conservation potential to energy consumption rate.

(9) "Hospital" A public or non-profit institution which is a general hospital, tuberculosis hospital, or any other type of hospital, other than a hospital furnishing primarily domiciliary care, and is duly authorized to provide hospital services under the laws of Tennessee.

(10) "PEA" A preliminary energy audit which is a determination of the energy consumption characteristics of a building, including the size, type, rate of energy consumption and major energy-using systems of such building.

(11) "Public care institutions" A public or non-profit institution which owns-

(a) A facility for long-term care, rehabilitation facility, or public health center, as described in §1633 of the Public Health Service Act (42 U.S.C. 3005-3; 88 Stat. 2270);

(b) A residential child care center, which is an institution, other than a foster home, operated by a public or non-profit institution and is primarily intended to provide full-time residential care with an average length of stay of at least 30 days for at least 10 minor persons who are in the care of such institutions as a result of a finding of abandonment or neglect or of being persons in need of treatment or supervision;

(12) "Public or non-profit institutions" An institution owned and operated by-

(a) Tennessee, a political subdivision of Tennessee or an agency or instrumentality of either;

(b) A school or hospital which is exempt from income tax under §501(c)(3) of the Internal Revenue Code of 1954; or

(c) A unit of local government or a public care institution which is exempt from income tax under §501(e)(4) of the Internal Revenue Code of 1954.

(13) "School" A public or non-profit institution which-

(a) Provides, and is legally authorized to provide, elementary education or secondary education or both, on a day or residential basis;

(b) -1. Provides, and is legally authorized to provide, a program of education beyond secondary education, on a day or residential basis;

2. Admits as students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate;

3. Is accredited by a nationally recognized accrediting agency or association, and

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

(c) Provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and which meets the provisions cited in subdivisions 1., 2., and 3. of subparagraph (b) above, or

(d) Is a local education agency.

(14) "Technical assistance" A detailed building analysis, performed by a licensed engineer or architect, which recommends the implementation of specific energy conservation measures.

(15) "Units of local government" The government of a county, municipality, which is a unit of general purpose government below the state, determined on the basis of the same principles as are used by the Bureau of the Census for general statistical purposes, the recognized governing body of an Indian tribe which governing body performs substantial governmental functions, libraries owned by any of the foregoing, and public libraries which serve all residents of a political subdivision below the State level;

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such as a community, district or region, free of charge and which derives at least 40 percent of their

operating funds from tax revenues of a taxing Authority below the State level.  
*Authority: T.C.A. §§ 4-3-708(4) and 4-3-702(e). Administrative History: Original rule filed October 31, 1979; effective December 15, 1979. Transferred from the Tennessee Energy Authority on July 1, 1983. Amendment filed December 10, 1985; effective March 17, 1986.*

(1) Energy Audit Grant—Any public or non-profit school or hospital, unit of local government or public care institution, which has completed and submitted a PEA to the Energy Division is eligible to apply for an Energy Audit Grant.

(2) Technical Assistance Grant—Any public or non-profit school or hospital, unit of local government or public care institution, which has completed and submitted an Energy Audit or Energy Use Evaluation to the Energy Division is eligible to apply for a Technical Assistance Grant.

(3) Energy Conservation Measure Grant—Any public or non-profit school or hospital which has completed and submitted a Technical Assistance Analysis to the Energy Division is eligible to apply for an Energy Conservation Measure Grant.  
*Authority: T.C.A. §§ 4-3-708(4) and 4-3-702(e). Administrative History: Original rule filed October 31, 1979; effective December 15, 1979. Transferred from the Tennessee Energy Authority on July 1, 1983. Amendment filed December 10, 1985; effective March 17, 1986.*

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0500-3-3-04 APPLICATION AND RANKING PROCEDURES. PARTICIPATION IN THIS PROGRAM IS AS FOLLOWS:

(1) Energy Audit Grants—Each institution must submit a completed PEA to the Energy Division. (a) The Energy Division will send each institution, which submits a completed PEA, an application for an Energy Audit Grant.

(b) The Energy Division will rank all applications in descending order of priority. An energy audit grant application must specify which certified energy auditor will perform the energy perform grant funded energy audits.

(c) The ranking will be based upon the BTU/square foot/year consumption rate of a building derived from the preliminary energy audit data. Energy audit grants will be disbursed by the Energy Division based upon the priority ranking, until all grant funds for this phase of the program are expended.

(2) Technical Assistance Grant—Each institution which completes an Energy Audit and/or Energy Use Evaluation may apply for a Technical Assistance Grant.

(a) The Energy Division will send each institution, which submits a completed Energy Audit and/or Energy Use Evaluation, an application for a Technical Assistance Grant. These applications are to be submitted to the Energy Division.

1. Technical assistance grants are discretionary and will be awarded directly by the U.S. Department of Energy to each institution which is selected. The final decision as to Energy: In the event the Energy Division receives technical assistance grant funds which cannot be awarded directly by the U.S. Department of Energy, the Energy Division will disburse such funds as state awarded technical assistance grants to eligible institutions based upon the same requirements as would apply to federally disbursed funds.

(b) Upon expiration of a technical assistance grant application submital deadline, which is established by the Energy Division, the Energy Division will rank all applications in descending order of priority.

(c) The ranking of applications will be based upon an Energy Use Index derived from the data contained in the completed Energy Audit or Energy Conservation Measure potential contained in the Energy Use Evaluation. The Energy Division will recommend to the U.S. Department of Energy which institutions should be granted funds, based upon an institution's position in the ranking. Grants will be made to as many institutions as the amount of grant

funds allocated allows:

(3) Energy Conservation Measure Grants—Any school or hospital which has completed a technical assistance analysis may apply for an energy conservation grant.

(a) The Energy Division will send each school or hospital, which submits a complete technical assistance analysis, an application for an energy conservation measure grant. These applications are to be submitted to the Energy Division.

1. Energy conservation measure grants are discretionary and will be awarded directly by the U.S. Department of Energy to each institution which is selected. The final decision as to ENERGY CONSERVATION GRANTS CHAPTER 0500-3-3

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which institutions are selected for these grants will be made by the U.S. Department of Energy.

2. In the event the Energy Division receives energy conservation grant funds which cannot be awarded directly by the U.S. Department of Energy, the Energy Division will disburse such funds as state awarded energy conservation measure grants to eligible institutions based upon the priority ranking, until all such funds are expended, under the same requirements as would apply to federally disbursed funds:

(b) Upon expiration of an energy conservation grant application submitted deadline, which is established by the Energy Division, the Energy Division will rank all applications in descending order of priority.

(c) The ranking of applications will be based upon the following five criteria in descending order of priority: average payback of the proposed measure, type of fuel to which conversion is proposed, type of energy to be saved, climate, and quality of the technical assistance analysis. The Energy Division will recommend to the U.S. Department of Energy which institutions should be granted funds based upon an institution's position in the ranking. Grants will be made to as many institutions as the amount of grant funds allocated allows.

*Authority: T.C.A. §§ 4-3-708 (4) and 4-3-702 (e), Administrative History: Original rule filed October 31, 1979; effective December 15, 1979; amendment filed April 30, 1982; effective July 29, 1982; amendment filed May 27, 1983; effective August 15, 1983. Transferred from the Tennessee Energy Authority on July 1, 1983. Amendment filed December 10, 1985; effective March 17, 1986.*

0500-3-3-.05 ENERGY AUDITORS.

(1) Eligibility—Any person living in Tennessee may be certified by the Energy Division to perform energy audits:

(2) Training—Every energy auditor must attend an energy auditor training session held by the Energy Division. There will be no admission, certification or attendance fee for these sessions. There will be two types of training sessions:

(a) Professionals—This category consists of professional engineers or architects who are registered in Tennessee and anyone living in Tennessee who has received either an engineering or an architecture degree. The training sessions for these persons will last one day. At the end of the sessions, each attendee will receive a certification number from the Energy Division.

(b) Non-professionals—This category is open to all persons living in Tennessee. The training sessions for this category will last two days. At the end of these sessions, each attendee will receive a certification number from the Energy Division.

(3) Reports—Certified energy auditors will be required to list their name and certification number on each energy audit report which is submitted to the Energy Division.

(4) Suspension or withdrawal of Certification—The Energy Division may suspend or withdraw certification of an energy auditor, in accordance with the Uniform Administrative Procedures Act governing contested cases, upon a finding by the Energy Division that an energy auditor has failed to substantially perform an energy audit in accordance with the standards established by the energy auditor training sessions conducted by the Energy Division.

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*Authority:* T.C.A. §§ 4-3-708 (4) and 4-3-702 (c). *Administrative History:* Original rule filed October 31,

1979;

effective December 15, 1979. Amendment filed April 30, 1982; effective July 29, 1982. Transferred from

the

Tennessee Energy Authority on July 1, 1983. Amendment filed December 10, 1985; effective March 17,

1986.

#### 0500-3-3-06 TECHNICAL ASSISTANCE ANALYSTS.

(1) In order to qualify as a Technical Assistance Analyst one must:

- (a) be licensed as a professional engineer or architect by the Tennessee Board of Architectural and Engineering Examiners; and

(b) be free from financial interests which may conflict with the proper performance of technical

analyses of building shell and mechanical systems. This provision is intended to exclude those

individuals having a financial interest in the products or equipment acquired and installed

under an energy conservation measure grant. This requirement does not preclude technical

assistance analysts from performing detailed design or inspection services under the energy

conservation measure phase of these programs.

*Authority:* T.C.A. §§ 4-3-708 (4) and 4-3-702 (c). *Administrative History:* Original rule filed October 31,

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effective December 15, 1979. Transferred from the Tennessee Energy Authority on July 1, 1983.

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#### 0500-3-3-07 MATCHING FUNDS REQUIREMENTS.

(1) Institutions are required to match federal funds, as represented by the grant, with non-federal funds. No federal program funds may be used as match funds, except as approved by the U.S. Department of

Energy.

(2) Up to ten percent of the total grant funds available for technical assistance and energy conservation

grants will be available for "severe hardship" applicants. An applicant claiming severe hardship status

must furnish the Energy Division with such needed information as is required by the Energy Division

to make a determination as to the hardship status of an applicant.

*Authority:* T.C.A. §§ 4-3-708 (4) and 4-3-702 (c). *Administrative History:* Original rule filed October 31,

1979;

effective December 15, 1979. Transferred from the Tennessee Energy Authority on July 1, 1983.

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December 10, 1985; effective March 17, 1986.

#### 0500-3-3-08 SOLAR RETROFIT.

(1) The Energy Division requires that all energy audits include specific building site and structural

characteristics relevant to a consideration of the possibility of solar retrofit. At a minimum such

information must include climatic factors and roof characteristics.

(2) The Energy Division requires that all technical assistance analyses contain the specific information

necessary to evaluate the potential for solar retrofit of domestic hot water systems.

*Authority:* T.C.A. §§ 4-3-708 (4) and 4-3-702 (c). *Administrative History:* Original rule filed October 31,

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effective December 15, 1979. Transferred from the Tennessee Energy Authority on July 1, 1983.

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#### 0500-3-3-09 MONITORING OF GRANTEES.

(1) The Energy Division will conduct monitoring activities on at least five percent of the grantees under

this program. Semi-annual progress and financial reports are required to be submitted to the Energy

Division by every grantee. Any discrepancies identified through review of these reports will be

investigated by on-site inspections, including financial audits of records relating to any grant under this

program. The Energy Division will report any evidence of malfeasance, nonfeasance or criminal

misuse of grant funds to the U.S. Department of Energy and the State Attorney General. All grantees will be required to keep all records of financial expenditure and milestone progress for a period of three years after completion of the work for which the grant was made. Each grantee will be required to submit to the Energy Division a final report not later than three months after completion of the work for which the grant was made.

(a) After completion of the funded work, energy conservation measure grantees must submit annual consumption reports to the Energy Division for a period of three years. These reports will consist of:

1. Year 1—Energy consumption for the 12-month period prior to implementation and consumption for the 12-month period following implementation;
2. Year 2—Energy consumption for second year after implementation;
3. Year 3—Energy consumption for third year after implementation;

(2) Energy Audit Grantees—The Energy Division will conduct verification energy audits upon a randomly selected sample of energy audit grantees to ensure that energy audit grantees are performing energy audits in accordance with the terms of the executed grant contracts. Energy audit grantees must also submit complete energy audit reports to the Energy Division upon completion of the work for which the grant was made:

(3) Technical Assistance Grantees—Each final report for a Technical Assistance Grant will include at least the following items:

(a) The technical assistance report;

(b) A financial disclosure statement of the total funds expended for the project and appropriate documentation of the funds expended. This statement must be signed by an authorized agent of the grantee;

(c) A report of the accomplishment of planned milestones including time schedules. If work progress is found to have significantly deviated from the milestone plan, the exceptions should be noted and an explanation of the reason for deviation from the plan should be given;

(d) A statement signed by an authorized agent of the grantee certifying that the work for which the grant was made was actually performed;

(e) A recommended plan to implement energy conservation maintenance and operating procedures, and plans to acquire and install energy conservation measures;

(4) Energy Conservation Measure Grantees—Each final report for an Energy Conservation Measure Grant will include at least the following items:

(a) A listing and description of energy conservation measures acquired and installed;

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(b) A financial disclosure statement of the total funds expended for the project accompanied by appropriate documentation of the funds expended signed by the authorized agent of the grantee. This statement must also list a final projected simple payback period for each building specifying and utilizing the actual costs for each measure and all the measures, taken as a whole. The simple payback period will be calculated by dividing the cost of a measure by the estimated annual cost saving accruing from the implementation of the measure.

(c) A report of the accomplishment of planned milestones including time schedules. If work progress is found to have significantly deviated from the milestone plan, the exceptions should be noted and an explanation of the reason for deviation from the plan should be given;

(d) A statement, that the completed modifications (materials, equipment, and installation) conform to the technical assistance program and the approved grant application, signed by the authorized agent of the grantee;

*Authority: T.C.A. §§1-3-708 (4) and 1-3-702 (c). Administrative History: Original rule filed October 31, 1979; effective December 15, 1979. Recodified and new rule filed April 30, 1982; effective July 29, 1982. Transferred from the Tennessee Energy Authority on July 1, 1983. Amendment filed December 10, 1985; effective March 17, 1986.*