ENVIRONMENTAL QUALITY

CHAPTER 85

ALTERNATIVE ENERGY REVOLVING LOAN PROGRAM

Subchapter 1

Alternative Energy Revolving Loan Program

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Subchapter 1

Alternative Energy Revolving Loan Program

17.85.101 POLICY AND PURPOSE OF RULES (1) Title 75, chapter 25, part 1, MCA, establishes a revolving loan program administered by the department for the purpose of increasing the number of alternative energy systems installed in Montana that generate energy for the use, either off-grid or grid-connected, of the entities listed in Title 75, chapter 25, part 1, MCA. This subchapter provides criteria and guidelines to aid the department in implementing the law, defines eligibility criteria, identifies the processes and procedures for disbursing loans, and prescribes the terms and conditions for making loans, including repayment schedules and interest. (History: 75-25-102, MCA; IMP, 75-25-102, MCA; NEW, 2003 MAR p. 233, Eff. 2/14/03; AMD, 2006 MAR p. 3075, Eff. 12/22/06.)

Rule 17.85.102 reserved

17.85.103 DEFINITIONS Unless the context requires otherwise, as used in this subchapter:

(1) "Act" means the alternative energy revolving loan statutes set out in Title 75, chapter 25, part 1, MCA.

(2) "Alternative energy system" has the same meaning as in 15-32-102, MCA.

(3) "Capital investment" has the same meaning as in Title 15, chapter 32, part 1, MCA.

(4) "Capital investments for energy conservation purposes when done in conjunction with an alternative energy system" means a capital investment that is used for an energy conservation purpose that is in the same structure as, and is constructed, installed, or otherwise put in service as part of, or at about the same time as, an alternative energy system to reduce the size of energy system needed.

(5) "Customer-generator" has the same meaning as in 69-8-103, MCA.

(6) "Department" means the Montana Department of Environmental Quality established by 2-15-3501, MCA.

(7) "Geothermal system" means a system that transfers energy either from the ground, by way of a closed loop, or from ground water, by way of an open loop, for the purpose of heating or cooling a building or for a commercial or industrial process.

(8) "Low emission wood or biomass combustion device" is a device that meets the standards:

(a) in 15-32-102, MCA; or

(b) adopted by a local air pollution control program established under 75-2-301, MCA.

(9) "Net metering" has the same meaning as in 69-8-103, MCA.

(10) "Net metering system" has the same meaning as in 69-8-103, MCA.

(11) "Nonprofit organization" means a corporation in good standing that is organized under the Montana Nonprofit Corporation Act, Title 35, chapter 2, MCA, or under an equivalent law of another state if that corporation has registered to do business in Montana.

(12) "Recognized nonfossil forms of energy generation" has the same meaning as in 15-32-102, MCA.

(13) "Residence" means any single- or multi-family, primary, or secondary dwelling place.

(14) "Return on investment" is a calculated simple payback for a system based on the installed cost of components, the current value of energy produced when the system goes into service, and the estimated useful life of the equipment.

(15) "Small business" means one that:

(a) is independently owned and operated;

(b) is not dominant in its field of operation; and

(c) employs 100 or fewer individuals. (History: 75-25-102, MCA; IMP, 75-25-102, MCA; NEW, 2003 MAR p. 233, Eff. 2/14/03; AMD, 2007 MAR p. 34, Eff. 12/22/06; AMD, 2013 MAR p. 670, Eff. 4/26/13.)

17.85.104 PROGRAM ADMINISTRATION (1) The department may enter into a contract with, and compensate, a third party to perform any of the duties necessary to fulfill the purposes of this subchapter including, but not limited to:

(a) technically review, evaluate, and approve applications;

(b) execute loan agreements;

(c) secure and service loans;

(d) collect loan payments; and

(e) conduct collections for defaulted loans.

(2) The department, or a third party performing services under a contract entered into pursuant to this rule, may charge an applicant or borrower usual and customary fees including, but not limited to:

(a) application fees;

(b) loan origination fees;

(c) delinquency fees; and

(d) costs of collection. (History: 75-25-102, MCA; IMP, 75-25-102, MCA; NEW, 2007 MAR p. 34, Eff. 12/22/06.)

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17.85.105 ELIGIBLE PROJECTS (1) The department shall fund alternative energy projects and capital investments for energy conservation purposes when done in conjunction with an alternative energy system that the department determines will best promote the use of alternative energy sources and distributed generation, as set forth in the state's Energy Policy Act (90-4-1001, MCA).

(2) To be eligible for funding, a project must be:

(a) located within Montana;

(b) technically appropriate for Montana's climate; and

(c) the construction or installation of an alternative energy system that generates energy through a proven methodology for the sole use of the customer-generator or for net metering, or for capital investments for energy conservation purposes when done in conjunction with an alternative energy system in a structure owned or leased by an entity listed in Title 75, chapter 25, part 1, MCA, as an eligible recipient of a loan.

(3) Projects designed to produce electricity for sale to third persons are not eligible for funding.

(4) An applicant must own or lease the real property where a project is proposed. For leased property, the applicant must submit the owner's permission for the project with the application. If the department determines that a lien on the real property is required, the department may not issue the loan unless each legal owner of the property signs the security agreement. (History: 75-25-102, MCA; IMP, 75-25-102, MCA; NEW, 2003 MAR p. 233, Eff. 2/14/03; AMD, 2006 MAR p. 3075, Eff. 12/22/06; AMD, 2013 MAR p. 670, Eff. 4/26/13.)

17.85.106 ELIGIBLE APPLICANTS (1) Unless specifically excluded in (2), the department may consider an application from a person listed in 75-25-101, MCA, for a loan to fund a project under the Act and these rules.

(2) The department may not consider an application for a loan from the following person or that person's immediate family:

(a) a department employee whose duties are directly related to energy conservation or alternative energy; and

(b) a department contractor actively working on energy conservation or alternative energy projects at the time of application. (History: 75-25-102, MCA; IMP, 75-25-102, MCA; NEW, 2003 MAR p. 233, Eff. 2/14/03; AMD, 2013 MAR p. 670, Eff. 4/26/13.)

17.85.107 SIZE OF AWARDS (1) The maximum amount of money that the department may lend for a single project or applicant is the amount set in Title 75, chapter 25, part 1, MCA. (History: 75-25-102, MCA; IMP, 75-25-102, MCA; NEW, 2003 MAR p. 233, Eff. 2/14/03; AMD, 2006 MAR p. 3075, Eff. 12/22/06.)

Rules 17.85.108 and 17.85.109 reserved

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17.85.110 APPLICATION PROCEDURE (1) An applicant shall submit to the department an application on forms prescribed and made available by the department. An applicant shall provide additional copies upon request of the department or its contractor.

(2) An applicant shall submit itemized costs for equipment and installation and any additional or supplemental material as requested by the department.

(3) The department may require a new application and fee if the applicant makes substantial revisions to the application.

(4) The department may accept applications at any time. The department shall evaluate applications for funding each time funds are available, up to one year from the date of application filing. An applicant may resubmit a proposal following the one-year evaluation period. (History: 75-25-102, MCA; IMP, 75-25-102, MCA; NEW, 2003 MAR p. 233, Eff. 2/14/03; AMD, 2006 MAR p. 3075, Eff. 12/22/06; AMD, 2013 MAR p. 670, Eff. 4/26/13.)

17.85.111 APPLICATION EVALUATION PROCEDURE (1) The department shall review each application for completeness and program eligibility. The department shall notify an applicant of a deficiency or ineligible project within 30 days after receiving an application and allow an applicant to correct a deficiency.

(2) For each loan application that meets the eligibility criteria in ARM 17.85.105 and 17.85.106, the department shall evaluate the application independently of other applications and determine whether the application meets the following technical criteria:

(a) equipment must be proven reliable and be commercially available;

(b) equipment and installation must meet all applicable certifications and standards, such as local building codes and utility interconnection requirements; and

(c) systems must use an alternative energy source.

(3) The department, or a third party designated by the department, shall evaluate whether an applicant whose application met the criteria in (2) meets the financial criteria in (4). If the evaluation is performed by a third party, that party shall advise the department whether to approve or deny credit.

(4) The evaluation must be consistent with the standard practices of financial institutions and must consider for each loan requested:

(a) the type, size, risk, repayment period, and complexity;

(b) the financial capacity of the borrower to repay; and

(c) any other factor the department believes is necessary to meet the loss ratio required in Title 75, chapter 25, part 1, MCA.

(5) When the loan fund reaches a point where there are applications for more money than is available, the department shall prioritize applications based on the following criteria, which are not necessarily listed in the order of priority:

(a) the amount of energy produced;

(b) the diversity of technology in the portfolio;

(c) the return on investment;

(d) the use of a process, a system, or equipment generally available in Montana;

(e) the geographical diversity of the project portfolio;

(f) the diversity of borrowers in the project portfolio; and

(g) any other criterion the department deems appropriate at the time the action is taken.

(6) The department shall post the ranking of the criteria listed in (5) on the loan program web site and refer to the web site on printed program materials when it becomes necessary to prioritize the award of available funds.

(7) If the department approves an application pursuant to these rules, the department shall indicate its decision to issue a loan by authorizing loan documents. (History: 75-25-102, MCA; IMP, 75-25-102, MCA; NEW, 2003 MAR p. 233, Eff. 2/14/03; AMD, 2006 MAR p. 3075, Eff. 12/22/06; AMD, 2013 MAR p. 670, Eff. 4/26/13.)

17.85.112 ENVIRONMENTAL REVIEW AND COMPLIANCE WITH APPLICABLE STATE LAW (1) Prior to issuing a loan under ARM 17.85.111, the department shall review each application to determine if a categorical exclusion from environmental review, as defined in ARM 17.4.603, applies. A categorical exclusion may apply if the requirements of (3) through (5) are met. If the department determines that a categorical exclusion does not apply, the department shall conduct a review under ARM Title 17, chapter 4, subchapter 6, to determine if loan issuance may result in significant effects to the quality of the human environment.

(2) The proposed project or activity must comply with applicable statutory and regulatory requirements protecting the quality of resources such as air, water, land, fish, wildlife, and recreational opportunities.

(3) Except as provided in (4), the granting of a loan under this subchapter is categorically excluded from the requirement in Title 75, chapter 1, part 2, MCA, to conduct an environmental review if the loan is for any of the following projects:

(a) solar electricity/photovoltaic (solar/PV):

(i) an appropriately sized system or unit on an existing rooftop; or

(ii) a 60 kilowatt (kW) or less system installed on the ground;

(b) wind turbine - a system of 20 kilowatts (kW) or less;

(c) solar thermal - a system appropriately sized for residences or small non-residential buildings;

(d) solar thermal hot water - appropriately sized for residences or small non-residential buildings;

(e) geothermal - a closed loop ground source heat pump system, with a capacity of ten tons or less, that uses either a horizontal or vertical ground loop;

(f) biomass thermal - a system that:

(i) has a capacity of three million British thermal units (MMBTUs) or less per hour;

(ii) meets the standards set in 15-32-102, MCA; or

(iii) meets the standards adopted by the local air pollution control program having jurisdiction where the system is to be installed.

(4) A categorical exclusion may not be applied to the granting of a loan for a project under (3) if:

(a) the department has received information indicating that public controversy exists over the project's potential effects on the quality of the human environment; or

(b) the project might affect:

(i) a sensitive environmental or cultural area; or

(ii) an endangered or threatened species or critical habitat for that species.

(5) The department shall document its decision to apply a categorical exclusion by referencing the application, providing a brief description of the proposed action, describing how the action meets a criterion for a categorical exclusion in (1), and documenting that the project does not fall under a criterion in (4).

(6) The department may, to assist in planning or decision making, prepare an environmental assessment on a project that is categorically excluded under this rule. (History: 75-25-102, MCA; IMP, 75-25-102, MCA; NEW, 2003 MAR p. 233, Eff. 2/14/03; AMD, 2013 MAR p. 670, Eff. 4/26/13.)

17.85.113 APPLICATIONS AND RESULTS PUBLIC (1) Applications and information submitted to the department pursuant to this subchapter may be made public, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure. The department may publish lists of projects, including applicant names, locations, technologies, and amounts loaned. The department shall keep personal information needed for financial evaluation in a secure location. (History: 75-25-102, MCA; IMP, 75-25-102, MCA; NEW, 2003 MAR p. 233, Eff. 2/14/03; AMD, 2013 MAR p. 670, Eff. 4/26/13.)

17.85.114 LOAN TERMS AND CONDITIONS (1) The repayment period of a loan may be agreed upon by the borrower and the department, but may not exceed the period set forth in Title 75, chapter 25, part 1, MCA.

(2) A borrower shall use the money obtained from a loan made under the Act and these rules only for the purposes described in the loan application. A borrower shall implement a loan project within the time specified in the loan documents unless the department grants a written extension.

(3) The department may not issue a loan unless the department or its contractor determines that the borrower has the capacity to repay the loan.

(4) The department shall set the loan interest rate annually in January after evaluating:

(a) current commercial interest rates for similar loans;

(b) administrative costs of the program, including processing and evaluation costs;

(c) loan delinquency and default rates;

(d) the legislature's requirements for a low interest rate and that the rate be at least one percent; and

(e) any other factor the department determines appropriate. (History: 75-25-102, MCA; IMP, 75-25-102, MCA; NEW, 2003 MAR p. 233, Eff. 2/14/03; AMD, 2006 MAR p. 3075, Eff. 12/22/06; AMD, 2013 MAR p. 670, Eff. 4/26/13.)

17.85.115 REPORTS AND ACCOUNTING (1) During the construction/installation phase of the loan project, the department may require the loan recipient to provide oral or written progress reports.

(2) Upon completion of construction or installation, a loan recipient shall provide the department with documentation that the project was installed as indicated in the loan application. Documentation must include a photograph of the completed installation and any additional information requested by the department.

(3) The department may conduct site visits to verify installations and the loan recipient shall allow the department access at reasonable times for this purpose.

(4) Loan recipients shall maintain records, documents, and other information relating to the loan project and shall maintain records sufficient to account for all funds received and expended pursuant to their loan. All records, reports, and other documents that relate to the project are subject to audit by the office of the legislative auditor, the department, and where required by law, the legislative fiscal analyst. (History: 75-25-102, MCA; IMP, 75-25-102, MCA; NEW, 2003 MAR p. 233, Eff. 2/14/03; AMD, 2013 MAR p. 670, Eff. 4/26/13.)

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