



Rules of
Department of Natural Resources
Division 140—Division of Energy
Chapter 2—Energy Set-Aside Fund

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**Title 10—DEPARTMENT OF
NATURAL RESOURCES**

**Division 140—Division of Energy
Chapter 2—Energy Set-Aside Fund**

10 CSR 140-2.010 Definitions

PURPOSE: This rule provides definitions of special terms used in conjunction with the Energy Set-Aside Fund.

- (1) Active loan means, a loan from the department to a borrower with a loan agreement on file signed by both parties and a corresponding balance of funds to be distributed and/or repaid.
- (2) Agricultural entity means a farm, ranch, or corporation engaged in growing, harvesting, or handling of crops, natural fibers, fruits, vegetables, plants or trees or feeding or care of livestock, poultry, or fish.
- (3) Applicant means any school, hospital, small business, local government, or other energy-using sector or entity authorized by the department through administrative rule, which submits an application for loans or financial assistance to the department.
- (4) Application cycle means the period or periods of time each year, that the department shall accept and receive applications for financial assistance under the provisions of sections 640.651 to 640.686, RSMo.
- (5) Authority means the Environmental Improvement and Energy Resources Authority.
- (6) Authorized official means an individual authorized to obligate an organization or entity.
- (7) Borrower means a recipient of a loan or other financial assistance program funds subsequent to the execution of a loan or financial assistance documents with the department or other applicable parties, provided that a building owned by the state or an agency thereof, other than a state college or state university, shall not be eligible for loans or financial assistance pursuant to sections 640.651 to 640.686, RSMo.
- (8) Building means—
 (A) An existing structure; or
 (B) Proposed new construction; or
 (C) Any applicant-owned, group of closely situated structural units that are centrally metered or served by a central utility plant; or
 (D) An eligible portion of any of these that includes an energy-using system.
- (9) Business, industrial, and commercial entities mean corporations or other entities registered with the secretary of state to produce, manufacture, sell, or distribute goods or commodities; or to perform or deliver services.
- (10) Department means the Department of Natural Resources.
- (11) Director means the director of the Department of Natural Resources.
- (12) Division means the Department of Natural Resources' Division of Energy.
- (13) Energy conservation loan account means an account to be established on the books of a borrower for purposes of tracking the receipt and expenditure of the loan funds or financial assistance, and to be used to receive and remit energy cost savings for purposes of making payments on the loan or financial assistance.
- (14) Energy conservation measure (or ECM) means an installation in a building or replacement or modification to an energy-using system, that is primarily intended to maintain or reduce energy consumption and reduce energy costs, or allow the use of an alternative or renewable energy source.
- (15) Energy conservation project (or project) means the design, acquisition, installation, operation, and commissioning of one (1) or more energy conservation measures.
- (16) Energy-using sector or entity means an identified portion of the state's economy, which serves to provide structure to the allocation of loan funds.
- (17) Energy-using process or system means energy-using equipment or a group of interacting mechanical or electrical components that use energy.
- (18) Energy cost saving (or savings) means the value, in terms of dollars, that has or is estimated to accrue from energy bill reductions or avoided costs due to an energy conservation project.
- (19) Estimated simple payback means the estimated cost of a project divided by the estimated annual energy cost savings.
- (20) Event of default means an activity or inactivity that results in the borrower's failure to discharge a duty as prescribed in the loan agreement or other documents furnished in support of the loan agreement.
- (21) Facility means an energy-consuming process or system such as a building, group of buildings, outdoor lighting systems, water and wastewater systems, heating, ventilation, or air conditioning, manufacturing processes, or other systems as determined by the department.
- (22) Financial assistance means public or private funds reasonably available for loan or grant to a sector or entity desiring to implement an energy conservation project thereby facilitating the mission of the division.
- (23) Fund means the "Energy Set-Aside Program Fund" established in section 640.665, RSMo.
- (24) Hospital means a facility as defined in subsection 2. of section 197.020, RSMo, including any medical treatment or related facility controlled by a hospital board.
- (25) Hospital board means the board of directors having general control of the property and affairs of the hospital facility.
- (26) Incremental cost means the additional cost, as approved by the department, of new construction due to the addition, design, and installation of higher efficiency or renewable energy options compared to acceptable minimum efficiency, consistent with regional minimum design practices, traditional design practices, or local codes where applicable.
- (27) In-kind labor means the labor costs of an ECM that are performed by the borrower's employees and that may include wages, benefits, and other direct overhead costs as approved by the department.
- (28) Interest means accrued interest on loans charged by the department.
- (29) Late payment fee means a penalty to be charged by the department on loan payments past due.
- (30) Loan agreement means a document executed by and among the applicant(s), the department, and other funding source(s), if applicable, that details all terms and requirements under which the loan will be made and is to be repaid.
- (31) Local government means any county, city, or village; or any hospital district as such districts are defined in section 206.010, RSMo; or any sewer district as such districts



are defined in section 249.010, RSMo; or any water supply districts as such districts are defined in section 247.010, RSMo; or any ambulance district as such districts are defined in section 190.010, RSMo; or any subdistrict of a zoological park and museum districts as such districts are defined in section 184.352, RSMo.

(32) Loan amount means the amount, stated in dollars in the loan agreement, determined by the department as eligible costs plus interest accrued that shall be repaid by the borrower.

(33) Not-for-profit organization means any corporation, trust, association, cooperative, or other organization which is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; is not organized primarily for profit; uses its net proceeds to maintain, improve, and/or expand its operations; is tax exempt under the *Internal Revenue Code*; and is registered and in good standing with the secretary of state.

(34) Payback score means a numeric value derived from the review of an application, calculated as prescribed by the department, that may include, but shall not be limited to, an estimated simple payback or life-cycle costing method of economic analysis and used for purposes of ranking applications for the selection of loan and financial assistance recipients within the balance of program funds available.

(35) Predicted baselines means estimated annual energy costs of a proposed energy-using system which incorporates acceptable minimum efficiency.

(36) Project cost means all costs determined by the department to be directly related to the implementation of an energy conservation project, including initial installation in a new building, that shall include the incremental cost of higher-efficiency energy-using systems or renewable energy options either of which may be compared to a predicted baseline of energy consumption.

(37) Project revision means any change in an approved ECM that the department determines materially alters the specification from a Technical Assistance Report or Technical Assistance Report equivalent filed with the applicant's original application to the department.

(38) Repayment period means, unless other-

wise negotiated as required under section 640.660, RSMo, the period in years required to repay a loan or financial assistance as determined by the project's estimated simple payback or life-cycle costing analysis, and rounded to the next year where the estimated simple payback or life-cycle costing analysis is a fraction of a year.

(39) Residential unit means a freestanding, single-family home that serves as a primary place of residence or a unit in a multi-unit building providing complete, permanent provisions for living and sleeping that serves as a primary place of residence for the occupants.

(40) School is defined in section 640.651, RSMo.

(41) Technical Assistance Report (or TAR) means a specialized engineering report, subject to approval by the department, that identifies and specifies the quantity of energy savings and related energy cost savings that are likely to result from the implementation of one (1) or more energy conservation or renewable energy measures.

(42) Technical Assistance Report equivalent (or TAR equivalent) means an abbreviated Technical Assistance Report, subject to approval by the department, to identify measures that have been proven cost-effective over time and do not require a more comprehensive analysis.

(43) Unobligated balance means that amount in the fund that has not been dedicated to any projects at the end of each state fiscal year.

AUTHORITY: sections 640.651–640.686, RSMo 2000 and RSMo Supp. 2010. Original rule filed April 2, 1988, effective Sept. 1, 1988. Amended: Filed Aug. 3, 1989, effective Dec. 1, 1989. Amended: Filed June 26, 1992, effective Feb. 26, 1993. Rescinded and readopted: Filed July 6, 1998, effective Feb. 28, 1999. Emergency amendment filed Sept. 30, 2010, effective Oct. 10, 2010, expired April 7, 2011. Amended: Filed Oct. 1, 2010, effective March 30, 2011.*

**Original authority see Missouri Revised Statutes 2000 and Missouri Revised Statutes Cumulative Supplement-2010.*

10 CSR 140-2.020 General Provisions

PURPOSE: This rule describes the method that will be utilized for administering the Energy Set-Aside Fund.

(1) Eligibility.

(A) Energy-using sectors or entities as defined in 10 CSR 140-2.010 and as designated and announced by the department in accord with 10 CSR 140-2.020(2) are eligible to submit an application for loan funds or financial assistance to implement an energy project pursuant to section 640.651(1), RSMo, providing the following criteria are met by the applicant:

1. The applicant's proposed project must be located within the borders of Missouri;

2. The applicant must own and operate the building, facility, or system associated with the proposed project unless otherwise agreed to by the department;

3. The building, facility, or system proposed to receive Energy Conservation Measures (ECMs) must have a useful life and an expected operational life greater than the loan repayment period as determined by the department;

4. The applicant must not be in default or have a pending event of default;

5. The applicant must have no outstanding or known unresolved actions for violations of applicable federal, state, or local laws, ordinances, and rules; and

6. The applicant must not be an electric or natural gas utility.

(2) Application Cycle(s) Information. Application cycle(s) information including cycle opening and closing dates, information designating eligible applicant sectors for each application cycle, allocation of total dollars available for loans in each designated applicant sector, and interest rates will be published periodically by the department in the "In Addition" section of the *Missouri Register* and through other public information methods. Information relating to selection criteria and other relevant information or guidance is available by contacting the Division of Energy's Energy Set-Aside Fund, Program Clerk, PO Box 176, Jefferson City, MO 65102.

(3) Equity. Equity in distribution and access to loan funds, among and within sectors or entities will be addressed periodically. Equity will be assessed by analyzing factors including, but not limited to, applicant's access to other capital, interest rates, entity or sector demand, loan fund balance, public/private partnership potential and emergency needs. Equity will be assured by managing factors including, but not limited to, eligibility, fund allocation, interest rates and other variables among sectors or entities.

**(4) Application.**

(A) Application for loan funds may be submitted for the purpose of implementing an energy conservation project. A Technical Assistance Report (TAR) signed and sealed by a Missouri registered professional engineer or a TAR equivalent must accompany the application or be on file with the department. The application and TAR or TAR equivalent shall be in a form required by the department which the department may revise from time-to-time. A copy of the application form and TAR or TAR equivalent format may be obtained from the Division of Energy's Energy Set-Aside Fund, Program Clerk, PO Box 176, Jefferson City, MO 65102.

(B) Each application must be completed, signed by an authorized official, dated and accompanied by designated information requested by the department to determine the feasibility of the project and the financial risk of the proposed loan transaction.

(C) The department may request additional information as needed to determine the feasibility of the project, the projected energy savings from the project, and the financial risk of the proposed loan transaction. All applications for loans shall be approved or disapproved within ninety (90) days of receipt of application by the department's Division of Energy or within ninety (90) days of the application cycle in the event of a competitive cycle or stand approved as submitted; provided that only complete applications, as determined by the department in its sole discretion, shall be deemed received by the department and eligible for loans. Applications which are not on the approved form or which do not provide all information required will be considered incomplete and may be rejected.

(D) Applications received after a designated cycle closing date will not be considered for that cycle. Any late applications will be held for consideration during subsequent eligible application cycles.

(E) Information submitted to or obtained by the department that meets requirements of section 640.155, RSMo shall be considered confidential.

(5) ECM Eligibility.

(A) All ECMs for which financial assistance is being sought must be identified in a TAR or TAR equivalent.

1. A project comprised of one (1) or more ECMs must have a payback score, as determined by the department, of at least six (6) months and no more than ten (10) years or eighty percent (80%) of the expected useful life of the ECMs when the expected useful life exceeds ten (10) years. The expected

useful life shall not exceed twenty (20) years. At the department's discretion, an energy conservation loan may be approved that couples an energy conservation project with an applicant's capital improvement project provided the loan amount from the department complies with the limitations described earlier in this paragraph.

2. The department may determine that an applicant with any portion of an ECM completed, purchased, in progress, or initiated in any manner prior to loan award is ineligible to receive loan funds for that ECM. Eligible project costs are limited to those specified in the loan agreement or associated documents.

3. The expected useful life of a proposed ECM must exceed the ECM's estimated simple payback.

(B) All costs, including in-kind labor costs performed after loan application that are associated with the installation of an ECM may be eligible as project costs. The loan agreement or associated documents will specify the portion of the project in the application that is eligible for reimbursement.

(C) ECMs previously funded by the department are not eligible for additional funding.

(6) Selection.

(A) Applications for loans shall be approved, disapproved or approved in part or otherwise acted upon by the department director or his/her designee pursuant to section 640.653.3, RSMo.

(B) The applicant must be an acceptable credit risk as determined by the department and capable of repaying the requested loan amount based on a financial risk analysis that may be performed by the department or the department's designee.

(C) In the event there is competition for funds, eligible applications shall be given a payback score for selection for funding using criteria set forth in the application cycle notification and in compliance with section 640.653, RSMo.

(D) The ECM costs and energy savings shall be computed using engineering and calculation methods prescribed by the department.

(E) Approved ECMs are determined solely by the department and shall be identified to the borrower in the loan agreement or associated documents.

(7) Loan Execution.

(A) An applicant approved for a loan will be required to execute a loan agreement in a form provided by the department that shall identify the buildings, facility, system or

equipment associated with the implementation of the project, the approved ECMs, loan amount and loan terms and conditions. A copy of the loan agreement format required by the department is available from the Division of Energy's Energy Set-Aside Fund, Program Clerk, P.O. Box 176, Jefferson City, MO 65102.

(B) The department shall charge interest on loans under the provisions of section 640.660.1, RSMo. Interest rates shall be established at the beginning of each application cycle and remain fixed for the length of the loan agreement.

(C) The department will not execute a loan for less than five thousand dollars (\$5,000).

(8) Borrower Responsibilities.

(A) The borrower shall retain the technical assistance report, loan documents and all internal records directly related to the loan and project from the date the loan is executed to three (3) years after the loan agreement is retired or longer in the event of open audit findings or ongoing litigation. Upon receipt of a reasonable request, borrower will provide a copy of relevant records to the department. The borrower shall provide the requested records no later than ten (10) working days after receipt of request as evidenced by certified mail receipt.

(B) The borrower shall comply with all loan agreement terms and applicable federal, state and local laws, rules and regulations, including but not limited to, those governing the design, acquisition and installation of approved ECMs.

(C) The borrower shall comply with the department's reporting requirements pursuant to the loan agreement.

(D) Within thirty (30) days after the completion of the project, the borrower shall submit to the department a project final cost report. A form is available from the Division of Energy's Energy Set-Aside Fund, Program Clerk, P.O. Box 176, Jefferson City, MO 65102.

(9) Monitoring.

(A) The department or its designee may perform on-site monitoring, and audit or inspect records relating to any loan from the date of loan approval to date of loan retirement. The borrower shall allow entry to its property by persons authorized by the department, during normal business hours, to carry out the department's monitoring responsibilities.

(B) The department may request information from a borrower as needed for review and evaluation of an energy conservation project. The borrower shall, upon receipt of



request, provide the requested information to the department within ten (10) working days.

(10) Events of Default.

(A) For purposes of administering the Energy Set-Aside Fund, an event of default shall include, but not be limited to, the following:

1. A failure by the borrower to make a timely payment on the loan;

2. Any material inaccuracy in any representation or warranty contained in, or made in connection with the execution and delivery of the loan agreement or in any other documents furnished in support of the loan agreement;

3. Any failure by the borrower in the performance of any term, covenant, or agreement contained in the loan agreement;

4. A finding that the borrower is insolvent, fails to pay its debts as they mature, or voluntarily files a petition seeking reorganization, the appointment of a receiver or trustee, or liquidation of the borrower or of a substantial portion of the borrower's assets, or to effect a plan or other arrangement with creditors; or an adjudication of bankruptcy against the borrower; or an involuntary assignment by the borrower for the benefit of creditors;

5. The filing of an involuntary petition against the borrower under any bankruptcy, insolvency or similar law or seeking the reorganization of or the appointment of any receiver, trustee or liquidator for the borrower, or of a substantial part of the property of the borrower, which is not dismissed within thirty (30) days, or the issuance of a writ or warrant of attachment or similar process against a substantial part of the property of the borrower which is not released or bonded within thirty (30) days of issue;

6. The rendering of any final judgment by a court of law against the borrower for the payment of an amount that materially affects the financial stability of the borrower or that may adversely affect any assets given as security for the borrower's obligations under the promissory note executed in accordance with the loan agreement that is not covered by liability insurance, and is not discharged within thirty (30) days of the date the judgment is rendered; or, the date such judgment is affirmed on appeal, provided that execution of the judgment was effectively stayed pending the appeal;

7. A finding that the borrower is in non-compliance with department rules and regulations and a failure to take appropriate action to resolve the noncompliance to the satisfaction of the department.

(B) The borrower shall give the department

written notice of any event which may constitute an event of default within fifteen (15) days of the occurrence of such event.

(C) The director shall determine when, and if, an event of default has been committed by the borrower. Having determined an event of default has occurred, the director shall notify the borrower in writing, and provide for a reasonable period of time, not to exceed fifteen (15) days, to correct the default and return to compliance with all terms and conditions of the loan agreement unless otherwise provided by law.

(D) Should the borrower fail to correct the default and return to compliance in a timely manner to the satisfaction of the department; the director may declare the loan, accrued interest, late penalties and other moneys duly owed by the borrower, immediately due and payable in full.

(11) Remedies to Default. The department director may seek remedies to default or event of default available under section 640.660.4, 640.660.5, or 640.672, RSMo, and may exercise any right under law for a remedy to default.

AUTHORITY: sections 640.651–640.686, RSMo 2000 and RSMo Supp. 2010. Original rule filed July 6, 1998, effective Feb. 28, 1999. Emergency amendment filed Sept. 30, 2010, effective Oct. 10, 2010, expired April 7, 2011. Amended: Filed Oct. 1, 2010, effective March 30, 2011.*

**Original authority see Missouri Revised Statutes 2000 and Missouri Revised Statutes Cumulative Supplement-2010.*

10 CSR 140-2.030 Public Sector Eligibility
(Rescinded March 30, 2011)

AUTHORITY: sections 640.651–640.686, RSMo Supp. 1997. Original rule filed July 6, 1998, effective Feb. 28, 1999. Emergency rescission filed Sept. 30, 2010, effective Oct. 10, 2010, expired April 7, 2011. Rescinded: Filed Oct. 1, 2010, effective March 30, 2011.