
**Rules of
Department of Natural Resources
Division 140—Division of Energy
Chapter 5—Industrial Loan Program**

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Title 10—DEPARTMENT OF NATURAL RESOURCES

Division 140—Division of Energy Chapter 5—Industrial Loan Program

10 CSR 140-5.010 Definitions and General Provisions

PURPOSE: This rule establishes procedures to operate the Industrial Loan Program.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.

(1) Definitions. The following terms used in this rule shall mean:

(A) Applicant business or business—any business engaged in manufacturing listed in the standard industrial classification categories of 20—39 inclusive as listed by the United States Office of Management and Budget employing at least five (5) persons and not more than five hundred (500) persons;

(B) Application cycle—the period of time each year, as determined by the department, that the department shall accept and receive applications from businesses seeking loans under the provisions of sections 640.195—640.218, RSMo;

(C) Building—any occupied structure that is owned and operated by an applicant business and which includes a heating or cooling system, or both;

(D) Complex—two (2) or more buildings sharing an existing or proposed central heating/cooling or control system;

(E) Department—the Missouri Department of Natural Resources;

(F) Director—the director of the Missouri Department of Natural Resources;

(G) Energy conservation measure (ECM)—the installation of a device or modification to a building, complex or equipment to reduce energy consumption and energy cost or allow for the use of alternative or renewable energy resources;

(H) Energy savings—the average annual benefit (after taxes) from the implementation of an ECM, quantified in dollars, to include energy, operation, maintenance and any other measurable savings over the life of the measure;

(I) Equipment—any major energy using system or component thereof, owned and operated by an applicant business;

(J) Estimated loan simple payback—the loan request divided by the energy savings expressed in years;

(K) Event of default—an activity or inactivity which results in the applicant business' failure to discharge a duty as prescribed in the loan agreement or other documents furnished in support of the loan agreement;

(L) In-kind labor—the labor costs of an ECM which shall be performed by the applicant's business employees and may include wages, benefits and other associated overhead costs;

(M) Interest—accrued interest on loans charged by the department;

(N) Late payment fee—penalty to be charged by the department on loan payments past due;

(O) Loan agreement—a document executed by and among the business, the department and other funding source, if applicable, that details all terms and requirements under which the loan was made and is to be repaid;

(P) Loan amount—the amount, stated in dollars in the loan agreement, determined solely by the department as eligible project costs plus interest accrued that shall be repaid by the applicant business;

(Q) Payback score—a numeric value derived from the review of an application, calculated as prescribed by the department, which is used solely for purposes of ranking applications for the selection of loan recipients within the balance of loan funds available;

(R) Project—one (1) or more ECMs within a building, complex or equipment;

(S) Project cost—all costs determined by the department to be directly related to the implementation of a project which are eligible for reimbursement and are part of the loan amount;

(T) Promissory note—an instrument evidencing the promise of the business to repay a specified amount of money in accordance with the loan agreement;

(U) Revision—any change in an approved ECM which the department determines materially alters the specification from the technical assistance report; and

(V) Technical assistance report—a document, including forms or worksheets recognized by the department and the engineering profession, that clearly presents all the information needed by the department to evaluate energy savings from, and implementation cost of, one (1) or more particular ECMs or the potential for alternative fuel or renewable energy use.

(2) Applicant Business Eligibility.

(A) Any applicant business may apply for loan funds to perform ECMs pursuant to sections 640.195—640.218, RSMo providing

the following technical and financial criteria are met by the applicant:

1. The applicant business' proposed project must be located within the borders of Missouri and have a minimum of five (5) employees and no more than five hundred (500) employees at the location specified in the loan application;

2. The applicant business must be in compliance with all applicable federal, state or local laws, ordinances and rules;

3. The building, complex and equipment to which the ECM is being applied must have an expected current operational life greater than the loan repayment period as calculated by the department;

4. The building or complex to which the ECM is being applied must be owned and operated by the applicant business; or the applicant business must own and operate the equipment to which an ECM is being applied;

5. The building must not be primarily used as a residence for any owner or partners of the applicant business or be used as rental property;

6. The applicant business must not be receiving other funding offered by the Missouri Department of Natural Resources, Division of Energy, except as otherwise provided in this rule;

7. The applicant business may not have more than three (3) active loans with the Missouri Department of Natural Resources, Division of Energy and must not have any delinquent loan payments or late payment fees from previous loans;

8. The applicant business shall meet the minimum financial criteria set forth as Appendix B and incorporated by reference as part of this rule; and

9. A parent corporation may guarantee the loan of a subsidiary, in which case, the financials of the parent corporation shall accompany the loan application of the subsidiary, provided the parent corporation meets the financial requirements in this rule.

(3) Application Cycle(s) Notification. Application cycle(s) information, including cycle opening and closing dates, interest rates and allocation amounts shall be published in the "In Addition" section of the *Missouri Register*.

(4) ECMs Eligibility.

(A) All ECMs for which financial assistance is being sought must be identified in a technical assistance report of which the report format shall be provided by the department.

1. ECMs must have an estimated loan simple payback between six (6) months and five (5) years as calculated by the department.

2. An applicant business with any portion of an ECM completed, purchased, in progress or initiated in any manner as determined by the department, prior to application with the department, is ineligible to receive loan funds for that portion of the ECM.

3. Useful life of proposed ECMs must exceed ECM estimated loan simple payback.

(B) The department shall make the final determination if a proposed ECM is eligible to receive funding.

(C) ECMs that will modify a building envelope, lighting, heating or cooling system will only be eligible to buildings owned, operated and occupied by an applicant.

(D) ECMs that will modify or replace equipment, that is not part of the building as recognized by industry standards, shall be eligible to receive funding provided that the equipment is owned and operated by the business.

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

(F) In-kind labor costs shall be eligible as loan project costs and shall be included in the calculation of the payback score of an ECM.

(G) Renewable or alternate fuel utilization may be considered as an ECM and shall be evaluated on the economic benefit of the measure.

(H) The department may consider the cost of the technical assistance report as part of the project costs, provided, the cost of the report does not exceed an amount greater than ten percent (10%) of the loan request.

(5) Application.

(A) Application for loan funds shall be made on a department-approved application form. A technical assistance report must accompany the application or be on file with the department. Application may be made for a building, complex or equipment.

(B) Each application must be completed, signed, dated and accompanied by the three (3) most recent and consecutive years of year-ending financial statements of the business to include balance sheets, statement of profit and loss, a current statement of change in financial position, accompanying notes or other financial information as required by the department to determine the ability of the business to repay the requested loan.

1. Sole-proprietors, partnerships, and company principals with a twenty percent (20%) interest or greater in closely held or private corporations shall submit signed current personal financial statements as defined in subsection (5)(B) of this rule. The three (3) years of company financials shall be prepared by an independent accountant and certified as true and accurate copies by the

authorized official designated as such in the loan application.

2. Public corporations may submit their corporate financial statements as defined in subsection (5)(B) of this rule and shall submit the most recent annual corporate report.

(C) The applicant business shall authorize the department to request credit information from Credit Bureaus, or other holders of credit information, as deemed needed by the department to determine the financial strength and stability of the business.

(D) Information submitted to or obtained by the department shall be considered energy information and shall be considered confidential pursuant to section 640.155, RSMo.

(E) Incomplete applications will not be considered by the department.

(6) Selection.

(A) Eligible applications shall be given a payback score for selection for funding under the criteria set forth under Appendix A and incorporated by reference as part of this rule.

(B) The energy savings per ECM shall be calculated using recognized engineering methods. The energy portion of the total energy savings must be at least fifty percent (50%) or greater to be considered for funding. Alternate or renewable fuel conversions shall be exempted from this fifty percent (50%) energy savings requirement and evaluated on economic payback only.

(C) The applicant business 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 performed by the department or the department's designee.

(D) All applications for loans shall be approved or disapproved within ninety (90) days of the application deadline 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.

(E) The ECMs approved for funding by the department shall be identified on form MO 780-1394, which bears the name Approved Measure List.

(7) Funding.

(A) An applicant business approved for a loan by the department will be required to execute a loan agreement substantially in the form of Appendix C, which loan agreement shall identify the buildings or equipment which will be modified, the approved measures, loan amount and loan terms. The loan agreement will be effective upon execution by the business, the department director and other applicable parties, if any.

1. All equipment and material purchased with loan funds shall be subject to a security interest attachment or a deed of trust, when applicable, in the name of the department and repossession, disposition or other legal action may be implemented by the department in the event of default by the business under the loan agreement.

2. Payments to a business under the loan agreement may be withheld if the business is in noncompliance with department rules or otherwise in default under the loan agreement.

3. The business may be required to submit to the department a tax clearance letter from the Missouri Department of Revenue and the Missouri Division of Employment Security prior to any disbursement of funds under the loan agreement.

(B) The department shall charge interest on loans under the provisions of section 640.203, RSMo. Interest rates shall be established at the beginning of each application cycle and remain fixed for the length of the loan agreement.

(C) A business shall receive no more than one hundred fifty thousand dollars (\$150,000) of the total loan funds, established pursuant to sections 640.195—640.218, RSMo, allocated within a state fiscal year.

(D) The department shall not authorize a loan estimated to be less than fifteen thousand dollars (\$15,000).

(E) Loans may not be increased to cover cost overruns without the express written consent of the department director or designee.

(8) Extensions.

(A) Prior to the anticipated completion date of the ECM installations or modifications as set forth in the loan agreement, the business may request in writing, additional time to complete an ECM. Extensions may be granted at the department's discretion. An amendment to the loan agreement shall be executed by the parties to the agreement if the department approves the request for extension.

(B) The department may not authorize ECM cost reimbursement on any loan agreement with a lapsed completion date.

(9) Transfer of Funds. A business with multiple loan agreements shall not be allowed to transfer funds between projects.

(10) Revisions. All revisions to ECMs must be approved by the department director or designee prior to implementation. The department's Industrial Loan Program should be contacted if there is any question as to what changes constitute a revision.

(11) Loan Repayment.

(A) Pursuant to the loan agreement, all loan payments (principal and interest) shall be made in semiannual payments on dates established by the promissory note until the loan agreement is retired.

(B) Any payment over fifteen (15) days past due shall be subject to a late payment fee penalty pursuant to the terms in the loan agreement.

(C) A loan may be prepaid at any time without penalty pursuant to the terms of the loan agreement.

(12) **Loan Renegotiation.** The department may renegotiate with the business, the terms of the loan agreement, should the semiannual payments exceed the annual energy cost savings. The business shall provide the necessary information to document that actual energy savings are less than were estimated pursuant to the technical assistance report, which provided the basis for the amount of the semiannual payment established by the loan agreement.

(13) **Loan Recipient Responsibilities.**

(A) The business 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 termination or longer in event of audit of any questions or at department request.

(B) All approved ECMs are considered by the department as construction projects. The business shall comply with all loan agreement terms and applicable federal, state and local laws and corresponding rules, including without limiting the generality, those covering design, acquisition and installation of approved ECMs.

(C) The business shall maintain any funded ECM in proper working order for the length of the loan and assure employees are provided appropriate training to maintain the ECM.

(D) The business shall comply with the department's reporting requirements pursuant to the loan agreement. The department shall develop the format, develop forms for data collection, and provide assistance, as needed, to assure compliance of this subsection.

(E) Within thirty (30) days after the completion of the project, the business shall submit to the department a final report in the format stated in the loan agreement.

(F) The business shall provide all information to the department and execute all documentation necessary to provide the department with a lien or security interest in and to all equipment and real property involved in the project to assure the loan payback in full. Documentation of all these liens and security

interests shall be set forth in the loan agreement and associated documents.

(14) **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 applicant business shall allow entry to its property by persons authorized by the department, during reasonable hours of business on demand, to carry out the department's monitoring responsibilities.

(B) The department may collect information from a business prior to the project being completed.

(C) The business shall retain all records related to the loan and funded project for a period of three (3) years after loan has been paid in full and retired. The department reserves the right to examine any such loan records.

(15) **Events of Default.**

(A) For purposes of administrating the Industrial Loan Program, an event of default under the loan agreement shall include, but not be limited to, the following:

1. A failure by the business 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 business in the performance of any term, covenant or agreement contained in the Loan Agreement;

4. The business becomes 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 business or a substantial portion of the business' assets, or to effect a plan or other arrangement with creditors; or an adjudication of bankruptcy against the business; or an involuntary assignment by the business for the benefit of creditors;

5. The filing of an involuntary petition against the business under any bankruptcy, insolvency or similar law or seeking the reorganization of or the appointment of any receiver, trustee or liquidator for the business, or of a substantial part of the property of the business, 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 business 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 business for the payment of an amount that materially affects

the financial stability of the business or that may adversely affect any assets given as security for the business' 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 that judgment is affirmed on appeal, provided that execution of the judgment was effectively stayed pending the appeal;

7. A business found in noncompliance with department rules and failing to take appropriate action to resolve the noncompliance to the satisfaction of the department.

(B) The business shall give the department written notice of any event which may constitute an event of default within fifteen (15) days of the occurrence of that event.

(C) The director shall determine when, and if, an event of default has been committed by the business. Having determined an event of default has occurred, the director shall notify the business in writing, and provide for a reasonable period of time, not to exceed fourteen (14) days, to correct the default and return to compliance with all terms and conditions of the loan agreement.

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

(16) **Forms.**

(A) The following forms shall be required in various stages of the loan application and project completion:

1. MO 780-0819, Industrial Business Loan Application;

2. MO 780-1394, Approved Measure List;

3. MO 780-1395, Reimbursement Requests, Industrial Business;

4. MO 780-1391, Reimbursement;

5. MO 780-1398, Annual Energy Savings Report;

6. MO 780-1396, Final Report; and

7. MO 780-1392, Fuel Use Summary.

(B) The following worksheets will be provided to assist the applicant business in providing the information needed for the department to evaluate the effectiveness of the proposed ECMs:

1. MO 780-1393, Cost Estimate Summary;

2. MO 780-1402, Cash Flow Worksheet;

3. MO 780-1399, ECM Life Cycle Cost Worksheet;

4. MO 780-1400, ECM Life Cycle Cost Summary;

5. MO 780-1403, ECM Cost Estimate; and

6. MO 780-1404, ECM Cash Flow Change Worksheet.



(17) Ranking Score. For information purposes only, the formula for the ranking score is described in Appendix A and incorporated by reference as part of this rule.

(18) Minimum Financial Criteria. The minimum financial criteria which is an integral part of the rule concerning eligibility appears here under the designation Appendix B and incorporated by reference as part of this rule.

*Auth: sections 640.195, 640.200, 640.203, 640.205, 640.207, 640.210, 640.212, 640.215 and 640.218, RSMo (Cum. Supp. 1991). *Emergency rule filed Aug. 3, 1993, effective Aug. 13, 1993, expired Dec. 10, 1993. Emergency rule filed Dec. 3, 1993, effective Dec. 13, 1993, expired April 11, 1994. Original rule filed Aug. 3, 1993, effective April 9, 1994.*

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