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SALUS POPULI SUPREMA LEX ESTO

*"The welfare of the people shall be the supreme law."*



ROBIN CARNAHAN  
SECRETARY OF STATE

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**SECRETARY OF STATE**

**ROBIN CARNAHAN**

Administrative Rules Division

James C. Kirkpatrick State Information Center  
600 W. Main  
Jefferson City, MO 65101  
(573) 751-4015

DIRECTOR

WAYLENE W. HILES

•

EDITORS

CURTIS W. TREAT

SALLY L. REID

ASSOCIATE EDITOR

SARAH JORGENSON

•

PUBLICATION TECHNICIAN

JACQUELINE D. WHITE

•

ADMINISTRATIVE ASSISTANT

LAUREN A. BAUMAN

•

SPECIALIST

ADAM T. SANDBERG

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Documents will be accepted for filing on all regular workdays from 8:00 a.m. until 5:00 p.m. We encourage early filings to facilitate the timely publication of the *Missouri Register*. Orders of Rulemaking appearing in the *Missouri Register* will be published in the *Code of State Regulations* and become effective as listed in the chart above. Advance notice of large volume filings will facilitate their timely publication. We reserve the right to change the schedule due to special circumstances. Please check the latest publication to verify that no changes have been made in this schedule. To review the entire year's schedule, please check out the website at <http://www.sos.mo.gov/adrules/pubsched.asp>

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**RULES**—Cite material in the *Missouri Register* by volume and page number, for example, Vol. 28, *Missouri Register*, page 27. The approved short form of citation is 28 MoReg 27.

The rules are codified in the *Code of State Regulations* in this system—

Title	Code of State Regulations	Division	Chapter	Rule
1	CSR	10-	1.	010
Department		Agency, Division	General area regulated	Specific area regulated

They are properly cited by using the full citation, i.e., 1 CSR 10-1.010.

Each department of state government is assigned a title. Each agency or division within the department is assigned a division number. The agency then groups its rules into general subject matter areas called chapters and specific areas called rules. Within a rule, the first breakdown is called a section and is designated as (1). Subsection is (A) with further breakdown into paragraph 1., subparagraph A., part (I), subpart (a), item I. and subitem a.

**RSMo**—The most recent version of the statute containing the section number and the date.

**R**ules appearing under this heading are filed under the authority granted by section 536.025, RSMo 2000. An emergency rule may be adopted by an agency if the agency finds that an immediate danger to the public health, safety, or welfare, or a compelling governmental interest requires emergency action; follows procedures best calculated to assure fairness to all interested persons and parties under the circumstances; follows procedures which comply with the protections extended by the *Missouri* and the *United States Constitutions*; limits the scope of such rule to the circumstances creating an emergency and requiring emergency procedure, and at the time of or prior to the adoption of such rule files with the secretary of state the text of the rule together with the specific facts, reasons, and findings which support its conclusion that there is an immediate danger to the public health, safety, or welfare which can be met only through the adoption of such rule and its reasons for concluding that the procedure employed is fair to all interested persons and parties under the circumstances.

**R**ules filed as emergency rules may be effective not less than ten (10) days after filing or at such later date as may be specified in the rule and may be terminated at any time by the state agency by filing an order with the secretary of state fixing the date of such termination, which order shall be published by the secretary of state in the *Missouri Register* as soon as practicable.

**A**ll emergency rules must state the period during which they are in effect, and in no case can they be in effect more than one hundred eighty (180) calendar days or thirty (30) legislative days, whichever period is longer. Emergency rules are not renewable, although an agency may at any time adopt an identical rule under the normal rulemaking procedures.

## Title 10—DEPARTMENT OF NATURAL RESOURCES Division 140—Division of Energy Chapter 2—Energy Set-Aside Fund

### EMERGENCY AMENDMENT

**10 CSR 140-2.010 Definitions.** The division is adding new sections (2), (9), (17), (39), and (40) and amending and renumbering the remaining sections.

*PURPOSE:* This amendment adds definitions for five (5) new terms used in 10 CSR 140-2.020 and amends several definitions to accommodate expansion of the scope of energy-using sectors to which loans may be offered, reflect statutory revisions, or clarify rules as needed.

*EMERGENCY STATEMENT:* The Department of Natural Resources, Division of Energy, finds that this emergency amendment is necessary to preserve a compelling governmental interest in protecting against the loss of \$4.5 million or more of federal funding from the American Recovery and Reinvestment Act of 2009 (ARRA) for an agricultural loan program, which would otherwise be subject to withdrawal and reallocation by Congress or the U.S. Department of Energy and thus not available to benefit the citizens of Missouri.

The department has been working diligently to develop and implement funding opportunities in diverse areas for energy efficiency improvement projects and renewable energy analysis and development for the benefit of Missouri citizens, communities, and businesses through grant and loan programs. Obligation of \$4.5 million in

ARRA funds to revolving loans for agricultural energy efficiency projects allows Missouri to benefit from these funds now and for many years to come as loan funds are repaid and then re-committed to new, additional energy efficiency projects. The \$4.5 million would be deposited into the department's existing Energy Set-Aside Fund, which was established by statute in 1995 specifically to provide loan financing for energy efficiency and renewable energy projects.

This emergency amendment is necessary for the department to provide low interest loans for energy-efficiency projects to the agricultural sector of the economy on an expedited basis and to other energy-using sectors in a timely manner under ARRA deadlines. The department has developed and is ready to implement an agricultural loan cycle in October 2010, which will likely be followed in early 2011 by a second loan cycle targeted to one (1) or more of the new energy sectors defined in this section. The scope of the current rules in this chapter regarding Public Sector Eligibility permits loans only to governmental entities and schools, but the Energy Set-Aside statute and the current rule both contemplate coverage for other energy-using sectors (reference section 640.651(1), RSMo). This amendment includes definitions for agricultural, business, industry and commercial entities, residential units, and schools, which will facilitate future loan cycles to be targeted to one (1) or more of these types of entities.

Pursuant to guidance issued February 3, 2010, by the U.S. Department of Energy in State Energy Program Notice 10-005, all State Energy Program funds must be expended by April 30, 2012. In order to expend the \$4.5 million in loan funds, the Department of Natural Resources must expand the sectors of eligible borrowers beyond the current sectors served by the Energy Set-Aside Fund, design and schedule a loan cycle, publicize the availability of loans to prospective applicants, evaluate applications, award loan agreements, monitor completion of projects by loan recipients, and disburse loan payments to recipients before April 30, 2012. The first step toward timely completion of these efforts is emergency amendment of the existing loan rules to allow agricultural entities, along with additional sectors, to apply for loan financing in accord with the department's program design for the use of State Energy Program ARRA dollars.

Some grant programs offered by the department were undersubscribed and funds had to be de-obligated. Also, some subgrantees have been unable to follow through on qualified projects, and those funds have been de-obligated and could not be re-obligated in a timely manner because of the length of the grant proposal process. The use of revolving loans is an eligible means to obligate these remaining funds. In order to avoid the loss of this valuable funding source to improve the energy efficiency of Missouri buildings, the department has allocated \$4.5 million in remaining ARRA funds to an existing revolving loan fund, the Energy Set-Aside Fund, but the current rules implementing that revolving loan fund are limited to governmental entities and schools. To maximize the benefit of ARRA funds available for energy efficiency measures, the department proposes to expand the scope of eligible entities through this emergency amendment to include agricultural, industrial, business, commercial, and residential entities.

An early effective date is required because funds must be expended by the ARRA deadline of April 30, 2012, and the loan application, review, award, and construction of projects for which loans are issued cannot be accomplished by this deadline under the prescribed timelines for the regular administrative rulemaking process. The first area targeted is agriculture, and a loan program has been designed to begin in October 2010, well before a regular rulemaking process could be completed. A second loan cycle planned for early 2011 may be targeted to agricultural entities or other energy-using sectors which are defined pursuant to this emergency amendment. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended by the

*Missouri and United States Constitutions. The Division of Energy believes this emergency amendment is fair to all interested persons and parties under the circumstances. A proposed amendment covering this same material is published in this issue of the Missouri Register. This emergency amendment was filed September 30, 2010, becomes effective October 10, 2010, and expires April 7, 2011.*

**(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.**

**[(2)](3) Applicant means[, a person or persons who submits an application on behalf of an eligible organization to the department for financial assistance] 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.**

**[(3)](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.**

**[(4)](5) Authority means[, the [Department of Natural Resources'] Environmental Improvement and Energy Resources Authority.**

**[(5)](6) Authorized official means[, an individual authorized to obligate an organization or entity.**

**[(6)](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.**

**[(7)](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.**

**[(8)](10) Department means[, the Department of Natural Resources.**

**[(9)](11) Director means[, the [D]director of the Department of Natural Resources.**

**[(10)](12) Division means[, the Department of Natural Resources' Division of Energy.**

**[(11)](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.**

**[(12)](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.

**[(13)](15) Energy conservation project (or project) means[, the design, acquisition, installation, operation, and commissioning of one (1) or more energy conservation measures.**

**[(14)](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 [(see also Eligible Sectors 10 CSR 140-2.030)].**

**(17) Energy-using process or system means energy-using equipment or a group of interacting mechanical or electrical components that use energy.**

**[(15)](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.**

**[(16)](19) Estimated simple payback means[, the estimated cost of a project divided by the estimated annual energy cost savings.**

**[(17)](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.**

**[(18)](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.**

**[(19)](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.**

**[(20)](23) Fund means[, the "Energy Set-Aside Program Fund" established in section 640.665, RSMo.**

**[(21)](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.**

**[(22)](25) Hospital board means[, the board of directors having general control of the property and affairs of the hospital facility.**

**[(23)](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.**

**[(24)](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.**

**[(25)](28) Interest means[, accrued interest on loans charged by the department.**

**[(26)](29) Late payment fee means[, a penalty to be charged by the department on loan payments past due.**

**[(27)](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.

**[(28)](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.

**[(29)](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.

**[(30)](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; *and* 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.**

**[(31)](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.

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

**[(33)](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.

**[(34)](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.**

**[(35)](38)** Repayment period means, unless otherwise 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.**

**[(36)](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.

**[(37)](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.

**[(38)](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. [1997] 2009. Original rule filed April 2, 1988, effective Sept. 1, 1988. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Sept. 30, 2010, effective Oct. 10, 2010, expires April 7, 2011. A proposed amendment covering this same material is published in this issue of the Missouri Register.*

## Title 10—DEPARTMENT OF NATURAL RESOURCES Division 140—Division of Energy Chapter 2—Energy Set-Aside Fund

### EMERGENCY AMENDMENT

**10 CSR 140-2.020 General Provisions.** The division is amending the purpose, subsections (1)(A), (4)(A), (4)(C), (5)(A), (6)(C), and (6)(D), and sections (2) and (11). The division is also deleting subsection (5)(D).

*PURPOSE: This amendment addresses and expands the scope of energy-using sectors and entities to which loans may be offered in loan cycles as designated and announced by the department, provides additional detail as to the method the department will utilize to administer the Energy Set-Aside Fund, reflects statutory revisions, or clarifies rules as needed.*

*EMERGENCY STATEMENT: The Department of Natural Resources, Division of Energy, finds that this emergency amendment is necessary to preserve a compelling governmental interest in protecting against the loss of \$4.5 million or more of federal funding from the American Recovery and Reinvestment Act of 2009 (ARRA) for an agricultural loan program, which would otherwise be subject to withdrawal and reallocation by Congress or the U.S. Department of Energy and thus not available to benefit the citizens of Missouri.*

*The department has been working diligently to develop and implement funding opportunities in diverse areas for energy efficiency improvement projects and renewable energy analysis and development for the benefit of Missouri citizens, communities, and businesses through grant and loan programs. Obligation of \$4.5 million in ARRA funds to revolving loans for agricultural energy efficiency projects allows Missouri to benefit from these funds now and for many years to come as loan funds are repaid and then re-committed to new, additional energy efficiency projects. The \$4.5 million would be deposited into the department's existing Energy Set-Aside Fund, which was established by statute in 1995 specifically to provide loan financing for energy efficiency and renewable energy projects.*

*This emergency amendment is necessary for the department to provide low interest loans for energy-efficiency projects to the agricultural sector of the economy on an expedited basis and to other energy-using sectors in a timely manner under ARRA deadlines. The department has developed and is ready to implement an agricultural*

loan cycle in October 2010, which will likely be followed in early 2011 by a second loan cycle targeted to one (1) or more of the newly-defined energy-using sectors under the expanded scope of this emergency amendment. The scope of the current rules in this chapter permit loans only to governmental entities and schools, but the Energy Set-Aside statute and the current rules both contemplate coverage for other energy-using sectors (reference section 640.651(1), RSMo).

Pursuant to guidance issued February 3, 2010, by the U.S. Department of Energy in State Energy Program Notice 10-005, all State Energy Program funds must be expended by April 30, 2012. In order to expend the \$4.5 million in loan funds, the Department of Natural Resources must expand the sectors of eligible borrowers beyond the current sectors served by the Energy Set-Aside Fund, design and schedule a loan cycle, publicize the availability of loans to prospective applicants, evaluate applications, award loan agreements, monitor completion of projects by loan recipients, and disburse loan payments to recipients before April 30, 2012. The first step toward timely completion of these efforts is emergency amendment of the existing loan rules to allow agricultural entities, along with additional sectors, to apply for loan financing in accord with the department's program design for the use of State Energy Program ARRA dollars.

This emergency amendment is necessary to preserve a compelling governmental interest by expediting the drawdown and use of these ARRA dollars so as to protect them from withdrawal by Congress or the U.S. Department of Energy and potential re-allocation to other states.

Some grant programs offered by the department were undersubscribed and funds had to be de-obligated. Also, some subgrantees have been unable to follow through on qualified projects, and those funds have been de-obligated and could not be re-obligated in a timely manner because of the length of the grant proposal process. The use of revolving loans is an eligible means to obligate these remaining funds. In order to avoid the loss of this valuable funding source to improve the energy efficiency of Missouri buildings, the department has allocated \$4.5 million in remaining ARRA funds to an existing revolving loan fund, the Energy Set-Aside Fund, but the current rules implementing that revolving loan fund are limited to governmental entities and schools. To maximize the benefit of ARRA funds available for energy efficiency measures, the department proposes to expand the scope of eligible entities through this emergency amendment to include agricultural, industrial, business, commercial, and residential entities.

An early effective date is required because funds must be expended by the ARRA deadline of April 30, 2012, and the loan application, review, award, and construction of projects for which loans are issued cannot be accomplished by this deadline under the prescribed timelines for the regular administrative rulemaking process. The first area targeted is agriculture, and a loan program has been designed to begin in October 2010, well before a regular rulemaking process could be completed. The second loan cycle planned for early 2011, which will be targeted to agricultural entities or other energy-using sectors under the expanded scope permitted by this emergency amendment, will also need to be undertaken before a regular rulemaking could be processed. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. A proposed amendment covering this same material is published in this issue of the Missouri Register. This emergency amendment was filed September 30, 2010, becomes effective October 10, 2010, and expires April 7, 2011.

**PURPOSE:** This rule [establishes the authority of the department to administer] describes the method that will be utilized for administering the Energy Set-Aside Fund.

(1) Eligibility.

(A) Energy-using sectors or entities[, authorized by administrative rules under 10 CSR 140-2.030] 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; [and]

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 [amounts] of total dollars available for loans in each designated applicant sector, and interest rates will be published periodically [as appropriate] 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, P./O./ Box 176, Jefferson City, MO 65102.

(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 [licensed] 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, P./O./ Box 176, Jefferson City, MO 65102.

(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.

(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 [eight (8) years] **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 *[does not exceed eight (8) times the estimated energy savings indicated in the TAR or TAR equivalent]* 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.

*[(D) The department shall determine whether a proposed ECM is eligible to receive funding in compliance with Chapter 621, RSMo.]*

(6) Selection.

(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.

(11) Remedies to Default. The department director may seek remedies to default or event of default available under section/s/ 640.660.4, *[and]* 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. [1997] 2009. Original rule filed July 6, 1998, effective Feb. 28, 1999. Emergency amendment filed Sept. 30, 2010, effective Oct. 10, 2010, expires April 7, 2011. A proposed amendment covering this same material is published in this issue of the Missouri Register.*

## Title 10—DEPARTMENT OF NATURAL RESOURCES Division 140—Division of Energy Chapter 2—Energy Set-Aside Fund

### EMERGENCY RESCISSION

**10 CSR 140-2.030 Public Sector Eligibility.** This rule limited eligibility to apply for Energy Set-Aside Fund loans to certain public sector institutions.

*PURPOSE: This rule is being rescinded because the scope of eligible energy-using sectors is being addressed in changes to 10 CSR 140-2.020.*

*EMERGENCY STATEMENT: This emergency rescission is necessary because the division has determined it will be more effective to include eligibility terms in 10 CSR 140-2.020 rather than to modify section 10 CSR 140-2.030 as the method to expand the scope of eligible energy-using sectors for Energy Set-Aside Fund loans. This rescission is necessary as part of the division's revisions to the Energy Set-Aside Fund to effectively utilize \$4.5 million or more of federal funding from the American Recovery and Reinvestment Act of 2009 (ARRA) for the benefit of Missouri agricultural producers, and protect these funds against possible withdrawal and reallocation by Congress or the U.S. Department of Energy and thus not be available to benefit the citizens of Missouri. An early effective date is required for this rescission because funds must be expended by the ARRA deadline of April 30, 2012, and the loan application, review, award, and construction of projects for which loans are issued cannot be accomplished by this deadline under the prescribed timelines for the regular administrative rulemaking process. The first area targeted is agriculture, and a loan program has been designed to begin in October 2010, well before a regular rulemaking process could be*

*completed. The scope of this emergency rescission is limited to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. A proposed rescission covering this same material is published in this issue of the Missouri Register. This emergency rescission was filed September 30, 2010, becomes effective October 10, 2010, and expires April 7, 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, expires April 7, 2011. A proposed rescission covering this same material is published in this issue of the Missouri Register.*

## Title 13—DEPARTMENT OF SOCIAL SERVICES Division 70—MO HealthNet Division Chapter 15—Hospital Program

### EMERGENCY AMENDMENT

**13 CSR 70-15.160 Prospective Outpatient Hospital Services Reimbursement Methodology.** The division is amending section (1).

*PURPOSE: This amendment provides for a change in MO HealthNet reimbursement of Medicare Part B and Medicare Advantage/Part C outpatient hospital crossover claims, except claims submitted by public hospitals operated by the Department of Mental Health, effective for payment dates beginning October 1, 2010, with dates of service on or after January 1, 2010.*

*EMERGENCY STATEMENT: The Department of Social Services, MO HealthNet Division, finds that this emergency amendment is necessary to generate hospital program savings so that general revenue funds are available to pay for necessary hospital services. The MO HealthNet Division also finds an immediate danger to public health, safety, and/or welfare which require emergency actions. If this emergency amendment is not enacted, approximately eleven million two hundred thousand dollars (\$11.2 million) in SFY 11 and fourteen million nine hundred thousand dollars (\$14.9 million) annually thereafter of additional hospital program reductions would be necessary because of a lack of general revenue, which would cause significant cash flow shortages to hospitals, causing a financial strain on Missouri hospitals which service approximately eight hundred ninety thousand (890,000) Missourians eligible for the MO HealthNet program plus the uninsured. This financial strain, in turn, would result in an adverse impact on the health and welfare of MO HealthNet participants in need of hospital services. The MO HealthNet Division expects program savings of approximately eleven million two hundred thousand dollars (\$11.2 million) in SFY 11 and fourteen million nine hundred thousand dollars (\$14.9 million) annually thereafter to be generated by no longer automatically reimbursing the cost-sharing amount determined by Medicare for outpatient hospital services. MO HealthNet will now determine the Medicaid amount allowable for those services by limiting reimbursement to seventy-five percent (75%) of the allowable cost-sharing amount which is comparable to the fee-for-service amount that would be paid by MO HealthNet. The MO HealthNet Division expects a portion of the cost to the hospitals for nonpayment of the cost-sharing amount for Medicare Part B to be recovered through Medicare's bad debt reimbursement policies as set forth in 42 CFR 413.89 and the Medicare Provider Reimbursement Manual. Allowable bad debts for critical access hospitals are eligible to be reimbursed at one hundred percent (100%) and all other hospitals are eligible to be reimbursed at seventy percent (70%). Bad debts associated with services paid under a reasonable charge-based methodology (such as ambulance services) or a fee schedule (such as therapies or lab) are not reimbursable. The bad debts associated with nonpayment of the cost-sharing amount for Medicare Part C claims*

related to *Qualified Medicare Beneficiary (QMB)* or *QMB plus participants* are not eligible for reimbursement from Medicare; however, based on an analysis of hospital outpatient crossover claim expenditures for SFY 2010 the Medicare Part C crossover claims only represent eleven ten-thousandths percent (0.0011%) of the total outpatient hospital crossover claims or approximately seven hundred fifty-eight dollars (\$758). Hospitals will be responsible for properly reporting the allowable bad debt relating to the cost-sharing amount for Medicare Part B not paid by the MO HealthNet Division on their Medicare cost report to receive Medicare reimbursement. If they do not properly report the allowable bad debt on the Medicare cost report, the hospitals may not receive reimbursement from Medicare. During the initial year of implementation, hospitals may experience a delay of approximately eighteen (18) months in receiving the reimbursement from Medicare for the allowable bad debt, depending on cost reporting deadlines and the facility's fiscal year end. After the initial implementation period, the increased cost of the bad debts will be reflected in the Medicare Administrative Contractor bi-weekly interim payments for allowable Medicare bad debts in accordance with the *Medicare Provider Reimbursement Manual* section 2405.2 and 42 CFR 412.116. A proposed amendment which covers the same material is published in this issue of the *Missouri Register*. This emergency amendment limits its scope to the circumstances creating the emergency and complies with the protections extended by the *Missouri and United States Constitutions*. The MO HealthNet Division believes this emergency amendment to be fair to all interested parties under the circumstances and has discussed the proposed change with the hospital industry association and industry leaders. This emergency amendment was filed September 21, 2010, becomes effective October 1, 2010, and expires March 29, 2011.

(1) Prospective Outpatient Hospital Services Reimbursement Percentage for Hospitals Located Within Missouri.

(C) Outpatient Hospital Services Reimbursement Limited by Rule.

1. Effective for dates of service September 1, 1985, and annually updated, certain clinical diagnostic laboratory procedures will be reimbursed from a Medicaid fee schedule which shall not exceed a national fee limitation.

2. Services of hospital-based physicians and certified registered nurse anesthetists shall be billed on an HCFA-1500 professional claim form which is incorporated by reference as part of this rule, and reimbursed from a Medicaid fee schedule or the billed charge, if less.

3. Outpatient hospital services provided for those recipients having available Medicare benefits shall be reimbursed by Medicaid to the extent of the deductible and coinsurance as imposed under Title XVIII.

4. Effective for payment dates beginning October 1, 2010, reimbursement of Medicare/Medicaid crossover claims (crossover claims) for Medicare Part B and Medicare Advantage Part C outpatient hospital services with dates of service on or after January 1, 2010, except for public hospitals operated by the Department of Mental Health (DMH), shall be determined as follows:

A. Crossover claims for Medicare Part B outpatient hospital services in which Medicare was the primary payer and the MO HealthNet Division (MHD) is the payer of last resort for cost sharing (i.e., coinsurance, copay, and/or deductibles) must meet the following criteria to be eligible for MHD reimbursement:

(I) The crossover claim must be related to Medicare Part B outpatient hospital services that were provided to MO HealthNet participants also having Medicare Part B coverage; and

(II) The crossover claim must contain approved outpatient hospital services which MHD is billed for cost sharing; and

(III) The Other Payer paid amount field on the claim must contain the actual amount paid by Medicare. The MO HealthNet provider is responsible for accurate and valid reporting of crossover claims submitted to MHD for payment regard-

less of how the claim is submitted. Providers submitting crossover claims for Medicare Part B outpatient hospital services to MHD must be able to provide documentation that supports the information on the claim upon request. The documentation must match the information on the Medicare Part B plan's remittance advice. Any amounts paid by MHD that are determined to be based on inaccurate data will be subject to recoupment;

B. Crossover claims for Medicare Advantage/Part C (Medicare Advantage) outpatient hospital services in which a Medicare Advantage plan was the primary payer and MHD is the payer of last resort for cost sharing (i.e., coinsurance, copay, and/or deductibles) must meet the following criteria to be eligible for MHD reimbursement:

(I) The crossover claim must be related to Medicare Advantage outpatient hospital services that were provided to MO HealthNet participants who also are either a Qualified Medicare Beneficiary (QMB Only) or Qualified Medicare Beneficiary Plus (QMB Plus); and

(II) The crossover claim must be submitted as a Medicare UB-04 Part C Professional Crossover claim through the MHD online Internet billing system; and

(III) The crossover claim must contain approved outpatient hospital services which MHD is billed for cost sharing; and

(IV) The Other Payer paid amount field on the claim must contain the actual amount paid by the Medicare Advantage plan. The MO HealthNet provider is responsible for accurate and valid reporting of crossover claims submitted to MHD for payment. Providers submitting crossover claims for Medicare Advantage outpatient hospital services to MHD must be able to provide documentation that supports the information on the claim upon request. The documentation must match the information on the Medicare Advantage Plan's remittance advice. Any amounts paid by MHD that are determined to be based on inaccurate data will be subject to recoupment;

C. MHD reimbursement for approved outpatient hospital services. MHD will reimburse seventy-five percent (75%) of the allowable cost-sharing amount; and

D. MHD will continue to reimburse one hundred percent (100%) of the allowable cost-sharing amounts for outpatient services provided by public hospitals operated by DMH as set forth above in paragraph (1)(C)3.

*AUTHORITY: section 208.010, SB 1007, Second Regular Session, Ninety-fifth General Assembly, 2010 and sections 208.152, 208.153, [208.162 and] 208.201, [RSMo 2000] and 208.471, RSMo Supp. [2004] 2009. Emergency rule filed June 20, 2002, effective July 1, 2002, expired Feb. 27, 2003. Original rule filed June 14, 2002, effective Jan. 30, 2003. Amended: Filed May 3, 2004, effective Oct. 30, 2004. Amended: Filed June 15, 2005, effective Dec. 30, 2005. Emergency amendment filed Sept. 21, 2010, effective Oct. 1, 2010, expires March 29, 2011. A proposed amendment which covers the same material is published in this issue of the Missouri Register.*

The Secretary of State shall publish all executive orders beginning January 1, 2003, pursuant to section 536.035.2, RSMo Supp. 2009.

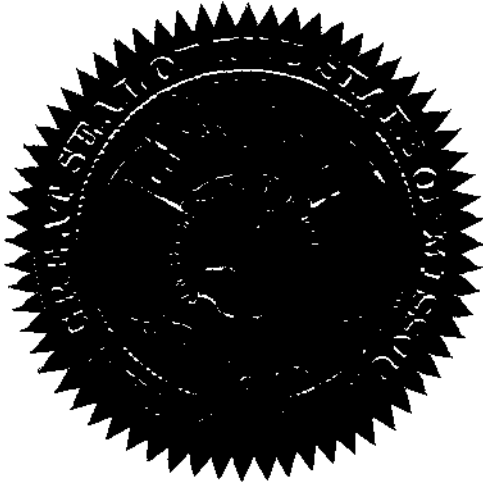
## EXECUTIVE ORDER 10-26


WHEREAS, Section 105.454(5), RSMo, requires the Governor to designate those members of his staff who have supervisory authority over each department, division or agency of the state government.

NOW THEREFORE, I, JEREMIAH W. (JAY) NIXON, GOVERNOR OF MISSOURI, by virtue of the authority vested in me by the Constitution and laws of the State of Missouri, do hereby designate the following members of my staff as having supervisory authority over the following departments, divisions or agencies:


Office of Administration	Doug Nelson
Department of Agriculture	Doug Nelson
Department of Conservation	Jeff Harris
Department of Corrections	Edward R. Ardini, Jr.
Department of Economic Development	Jeff Harris
Department of Elementary and Secondary Education	Mike Nietzel
Department of Health and Senior Services	Gail Vasterling
Department of Higher Education	Mike Nietzel
Department of Insurance, Financial Institutions and Professional Registration	Deborah Price
Department of Labor and Industrial Relations	Jeff Harris
Department of Mental Health	Gail Vasterling
Department of Natural Resources	Doug Nelson
Department of Public Safety	Edward R. Ardini, Jr.
Department of Revenue	Kristy Manning
Department of Social Services	Daniel Hall
Department of Transportation	Daniel Hall
Missouri Housing Development Commission	Rex Burlison
Boards Assigned to the Governor	Damion Trasada
Unassigned Boards and Commissions	Deborah Price

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 24th day of September, 2010.



  
\_\_\_\_\_  
Jeremiah W. (Jay) Nixon  
Governor

ATTEST:

  
\_\_\_\_\_  
Robin Carnahan  
Secretary of State

**EMERGENCY DECLARATION**

WHEREAS, the severe storms and heavy rains that occurred in the north central areas of the State of Missouri on September 21, 2010, and September 22, 2010, have resulted in flooding and the closure of state roads and bridges in such areas, including the counties of Grundy and Mercer; and

WHEREAS, the high stream flows and buildup of drift material from these storm events have resulted in the total loss of Pier # 3 for Bridge # L0340 on State Route A over the Weldon Fork of the Thompson River in Grundy County; and

WHEREAS, as a result of the loss of this bridge pier, the Missouri Department of Transportation has had to close the State Route A Bridge until necessary repairs or the complete replacement of the bridge are made to ensure the safety of the traveling public that would use such bridge; and

WHEREAS, the State Route A Bridge is a bridge that is eligible to receive federal aid highway funds; and

WHEREAS, State Route A is a vital north/south transportation link for the area and its closure will have a significant and negative impact to the businesses and individuals in the immediate area that use the State Route A Bridge; and


WHEREAS, such flooding conditions and the closure of the State Route A Bridge resulting from such flooding constitute an emergency as is contemplated by the terms of Sections 125 and 120(e) of Title 23, U.S.C.

NOW THEREFORE, I, JEREMIAH W. (JAY) NIXON, GOVERNOR OF THE STATE OF MISSOURI, by virtue of the authority vested in me by the Constitution and Laws of the State of Missouri, do hereby proclaim that an emergency exists concerning the damage and structural integrity of the State Route A bridge over the Weldon Fork of the Thompson River, which is a vital transportation link for this region of the state and a safety issue for the traveling public which uses such bridge; and

FURTHER, I direct that this Emergency Declaration shall become effective immediately upon signature and shall continue in effect until the repairs to, or replacement of, the State Route A Bridge have been made and the bridge is deemed safe for use by the traveling public.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 28th day of September, 2010.

  
\_\_\_\_\_  
Jeremiah W. (Jay) Nixon  
Governor

ATTEST:

  
\_\_\_\_\_  
Robin Carnahan  
Secretary of State