

Under this heading will appear the text of proposed rules and changes. The notice of proposed rulemaking is required to contain an explanation of any new rule or any change in an existing rule and the reasons therefor. This is set out in the Purpose section with each rule. Also required is a citation to the legal authority to make rules. This appears following the text of the rule, after the word "Authority."

Entirely new rules are printed without any special symbology under the heading of the proposed rule. If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission. Rules which are proposed to be amended will have new matter printed in boldface type and matter to be deleted placed in brackets.

An important function of the *Missouri Register* is to solicit and encourage public participation in the rule-making process. The law provides that for every proposed rule, amendment or rescission there must be a notice that anyone may comment on the proposed action. This comment may take different forms.

If an agency is required by statute to hold a public hearing before making any new rules, then a Notice of Public Hearing will appear following the text of the rule. Hearing dates must be at least thirty (30) days after publication of the notice in the *Missouri Register*. If no hearing is planned or required, the agency must give a Notice to Submit Comments. This allows anyone to file statements in support of or in opposition to the proposed action with the agency within a specified time, no less than thirty (30) days after publication of the notice in the *Missouri Register*.

An agency may hold a public hearing on a rule even though not required by law to hold one. If an agency allows comments to be received following the hearing date, the close of comments date will be used as the beginning day in the ninety (90)-day-count necessary for the filing of the order of rulemaking.

If an agency decides to hold a public hearing after planning not to, it must withdraw the earlier notice and file a new notice of proposed rulemaking and schedule a hearing for a date not less than thirty (30) days from the date of publication of the new notice.

Proposed Amendment Text Reminder:

**Boldface text indicates new matter.**

*[Bracketed text indicates matter being deleted.]*

**Title 9—DEPARTMENT OF MENTAL HEALTH  
Division 10—Director, Department of Mental Health  
Chapter 5—General Program Procedures**

**PROPOSED AMENDMENT**

**9 CSR 10-5.200 Report of Complaints of Abuse, [and] Neglect and Misuse of Funds/Property.** The department proposes to revise the title of the rule and to amend the purpose and sections (1)–(3) and (6)–(12) of this rule.

*PURPOSE: This amendment adds provisions for the misuse of funds/property; revises the definitions of class II neglect, physical abuse, sexual abuse, verbal abuse; replaces the phrase "client or resident" with the word "consumer"; adds definition of the word consumer; changes the reporting requirements to law enforcement;*

*changes all meeting and appeal dates to be consistent from calendar to working days; changes the title of hearing officer to hearings administrator; changes the reference of the Division of Aging to the Division of Senior Services; changes the offer of meeting and appeal letters to be sent to the alleged perpetrator and copying provider; instead of sending separate letters to each; clarifies the disqualification regarding verbal abuse and class II neglect; clarifies due process for a charge; adds the reference of the statutory authority for the Disqualification Registry.*

*PURPOSE: This rule prescribes procedures for reporting and investigating complaints of abuse [and], neglect and misuse of funds/property in a residential facility, day program or specialized service that is licensed, certified or funded by the [department] Department of Mental Health (department) as required by sections 630.135, 630.168, 630.655 and 630.710, RSMo. The rule also sets forth due process procedures for persons who have been accused of abuse, neglect and misuse of [client] funds/property.*

(1) The following words and terms, as used in this rule, mean:

(A) Class I neglect, failure of an employee to provide reasonable and necessary services to maintain the physical and mental health of any [client or resident] **consumer** when that failure presents either imminent danger to the health, safety or welfare of a [client or resident] **consumer**, or a substantial probability that death or physical injury would result;

(B) Class II neglect, failure of an employee to provide reasonable or necessary services to a [client or resident] **consumer** according to the individualized treatment or habilitation plan, if feasible, or according to acceptable standards of care. **This includes action or behavior which may cause psychological harm to a consumer due to intimidating, causing fear or otherwise creating undue anxiety;**

(C) **Consumer, individual (client, resident, patient) receiving services from any program or facility contracted, licensed, certified or funded by the department;**

*[(C)]* (D) Misuse of [client] funds/property, the misappropriation or conversion of a [client's or resident's] **consumer's** funds or property for another person's benefit;

*[(D)]* (E) Physical abuse—

1. Purposefully beating, striking, wounding or injuring any [client or resident] **consumer**; or

2. In any manner whatsoever mistreating or maltreating a [client or resident] **consumer** in a brutal or inhumane manner. Physical abuse includes handling a [client or resident] **consumer** with any more force than is reasonable [or apparently necessary] for a [client's or resident's] **consumer's** proper control, treatment or management;

*[(E)]* (F) Sexual abuse, any touching, directly or through clothing, of [the genitals, buttocks or breasts of a client or resident] a **consumer** for sexual purpose or in a sexual manner. [Sexual purpose means for the arousing or gratifying of anyone's sexual desires. This definition includes—] **This includes but is not limited to:**

1. **Kissing;**

2. **Touching of the genitals, buttocks or breasts;**

*[1.]* 3. Causing a [resident or client] **consumer** to touch the employee for sexual purposes;

*[2.]* 4. Promoting or observing for sexual purpose any activity or performance involving [clients or residents] **consumers** including any play, motion picture, photography, dance, or other visual or written representation; or

*[3.]* 5. Failing to **intervene or attempt to** stop or prevent inappropriate sexual activity or performance between [clients or residents] **consumers**; and

*[(F)]* (G) Verbal abuse, [referring to a client or resident in the client's or resident's presence with] **using** profanity or

**speaking** in a demeaning, nontherapeutic, undignified, threatening or derogatory manner **in a consumer's presence.**

(2) This section applies to any employee, *resident or client* or **consumer** of any residential facility, day program or specialized service, as defined under section 630.005, RSMo. Facilities, programs and services that are operated by the *[Department of Mental Health]* **department** are regulated by the department's operating regulations and are not included in this definition.

(A) Any such employee who has reasonable cause to believe that a *[resident or client]* **consumer** has been subjected to physical abuse, sexual abuse, **misuse of funds/property**, *[C]* class I neglect, *[C]* class II neglect or verbal abuse while under the care of a residential facility, day program or specialized service that is licensed, certified or funded by the department shall immediately make a verbal or written complaint.

(C) The head of the facility, day program or specialized service shall forward the complaint to—

1. The Division of Family Services if the alleged victim is under the age of eighteen (18); or

2. The Division of *[Aging]* **Senior Services** if the alleged victim is a resident or client of a facility licensed by the Division of *[Aging]* **Senior Services** or receiving services from an entity under contract with the Division of *[Aging]* **Senior Services.**

(3) The head of the facility, day program or specialized service that is licensed, certified or funded by the department shall immediately report to the local law enforcement official any alleged or suspected—

(A) Sexual abuse; or

(B) *[Abuse or neglect which results in physical injury.]* **Abuse, neglect or misuse of funds/property which may result in a criminal charge.**

(6) Within ten (10) *[calendar]* **working** days of receiving the final report from the board of inquiry, local investigator or central investigative unit, the head of the supervising facility or department designee shall send to the *[provider and]* alleged perpetrator a summary of the allegations and findings which are the basis for the alleged abuse/neglect/**misuse of funds or property; the provider will be copied.** The summary shall comply with the constraints regarding confidentiality contained in section 630.167, RSMo and shall be sent by **regular and certified** mail.

(A) The *[provider and/or]* alleged perpetrator may meet with the head of the supervising facility or department designee, submit comments or present evidence; **the provider may be present and present comments or evidence in support of the alleged perpetrator.** If the *[provider or]* alleged perpetrator wishes to have this meeting, s/he must notify the head of the supervising facility or department designee within ten (10) *[calendar]* **working** days of receiving the summary.

(B) This meeting shall take place within ten (10) *[calendar]* **working** days of notification, unless the parties mutually agree upon an extension.

(C) Within ten (10) *[calendar]* **working** days of the meeting, **or if no request for a meeting is received within ten (10) working days of the alleged perpetrator's receipt of the summary,** the head of the supervising facility or department designee shall *[Sustain or deny the allegations]* **make a final determination** as to whether abuse/neglect/**misuse of funds or property** took place. The *[provider and]* perpetrator shall be notified of this decision by **regular and certified** mail; **the provider will be copied.**

(D) The letter shall advise the *[provider and]* perpetrator that they have ten (10) *[calendar]* **working** days **following receipt of the letter** to contact the department's *[hearing officer]* **hearings administrator** if they wish to appeal a finding of abuse, *[or]* neglect or **misuse of funds/property.**

(F) **The department's effort to notify the alleged perpetrator at his/her last known address by regular and certified mail**

**shall serve as proper notice. The alleged perpetrator's refusal to receive certified mail does not limit the department's ability to make a final determination.**

(7) If an appeal is requested, the *[hearing officer]* **hearings administrator** shall schedule the hearing to take place within thirty (30) *[calendar]* **working** days of the request, but may delay the hearing for good cause shown. At the hearing, the head of the supervising facility or designee, or other department designee shall present evidence supporting its findings of abuse, neglect, **misuse of funds/property**, or *[both]* **all.** The provider or perpetrator may submit comments or present evidence to show why the decision of the head of the supervising facility or department designee should be modified or overruled. The *[hearing officer]* **hearings administrator** may obtain additional information from department employees as s/he deems necessary.

(8) The decision of the *[hearing officer]* **hearings administrator** shall be the final decision of the department. The *[hearing officer]* **hearings administrator** shall notify the *[provider,]* perpetrator, and the head of the supervising facility or department designee by certified mail of the decision within fourteen (14) *[calendar]* **working** days of the appeal hearing; **the provider will be copied.**

(9) The opportunities described in sections (6), (7) and (8) of this rule regarding a meeting with the head of the supervising facility and an appeal before the department's *[hearing officer]* **hearings administrator** apply also to providers and alleged perpetrators in an investigation of misuse of *[client]* funds/property.

(10) An *[provider or]* alleged perpetrator does not forfeit his/her right to an appeal with the department's *[hearing officer]* **hearings administrator** when s/he declines to meet with the head of the supervising facility under subsections (6)(A) and (B) of this rule.

(11) If the department substantiates that a person has perpetrated physical abuse, sexual abuse, *[C]* class I neglect, or *[conversion of client's property and/or funds for his/her own use or the facility's use]* **misuse of funds/property**, the perpetrator shall not be **employed by the department, nor** be licensed, employed *[n]* or provide services by contract or agreement at a residential facility, day program or specialized service that is licensed, certified or funded by the department. **The perpetrator's name shall be placed on the department Disqualification Registry pursuant to section 630.170, RSMo.**

(12) If the department substantiates that a person has perpetrated *[verbal abuse or Class II neglect two (2) or more times in]* **two (2) counts of verbal abuse, or two (2) counts of class II neglect, or one (1) count of verbal abuse and one (1) count of class II neglect, within** a twelve (12)-month period, the perpetrator shall not be **employed by the department, nor** be licensed, employed *[,]* or provide services by contract or agreement at a residential facility, day program or specialized service that is licensed, certified or funded by the department. **The perpetrator's name shall be placed on the department Disqualification Registry pursuant to section 630.170, RSMo.**

*AUTHORITY: sections 630.050, 630.165, 630.167, 630.168 [and RSMo Supp. 1997 and] 630.135, 630.655 and 630.705, RSMo [1994] 2000 and 630.170, RSMo Supp. 2001. Original rule filed Oct. 29, 1998, effective May 30, 1999. Emergency amendment filed March 29, 2002, effective May 2, 2003, expires Jan. 1, 2002. Amended: Filed March 29, 2002.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment by writing to Scott Giovanetti, Investigations Program Director, Department of Mental Health, PO Box 687, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

**Title 9—DEPARTMENT OF MENTAL HEALTH  
Division 30—Certification Standards  
Chapter 3—Alcohol and Drug Abuse Programs**

**PROPOSED AMENDMENT**

**9 CSR 30-3.032 Certification of Alcohol and Drug Abuse Programs.** The department proposes to amend subsections (1)(A), (1)(B), (3)(B), (4)(C), remove paragraph (3)(B)1. and renumber paragraphs (3)(B)2., (3)(B)3. and (3)(B)4. accordingly.

*PURPOSE: This amendment will remove from the rule the terms "recovery maintenance and methadone treatment" as they are no longer used. It also clarifies the intent of (1)(B), which was to insure that all specialized programs for adolescents and women and children are certified as a CSTAR program, and removes paragraph (3)(B)1., because the rule referenced has been rescinded.*

(1) Types of Programs. Certification is available for the following types of alcohol and drug abuse programs and services:

(A) Recovery programs including—

1. Detoxification in accordance with a designated level of care. Levels of care include social setting, modified medical, or medical;

2. Outpatient treatment in accordance with designated levels of care. Levels of care include community-based primary treatment, intensive outpatient rehabilitation, **and** supported recovery [*and recovery maintenance*];

3. [*Methadone treatment*] **Opioid treatment**;

4. Compulsive gambling treatment;

5. Residential treatment;

6. Institutional corrections; and

7. Comprehensive substance treatment and rehabilitation (CSTAR);

(B) Recovery Programs for Specialized Populations. [*Where applicable, a recovery program shall be further designated and certified as a specialized program for the treatment and rehabilitation of—*] **A specialized program for the treatment and rehabilitation of adolescents or women and children must be certified as a CSTAR program.**

[*1. Adolescents; or*

*2. Women and children;*]

(3) Other Rules and Standards. In addition to standards for specific programs and services, the organization must comply with other applicable requirements.

(B) The following Certification Standards for Alcohol and Drug Abuse Programs must be met, unless otherwise stipulated in standards for specific programs and services:

[*1. 9 CSR 30-3.012 Definitions;*

[*2.*] **1. 9 CSR 30-3.022 Transition to Enhanced Standards of Care;**

[*3.*] **2. 9 CSR 30-3.100 Service Delivery Process and Documentation; and**

[*4.*] **3. 9 CSR 30-3.110 Service Definitions and Staff Qualifications for Service Delivery.**

(4) Approval of Programs and Sites by the Department, When Required. For those services funded by the department or provided through a service network authorized by the department, the department shall have authority to determine and approve each proposed program and/or site prior to the actual delivery of services, including the geographic location, plan of service delivery, and facility.

(C) All [*methadone*] **opioid** treatment programs shall meet the program and/or site approval requirements of this rule, as well as the requirements specified under 9 CSR 30-3.132.

*AUTHORITY: sections 302.540, RSMo Supp. 2001, 630.050, 630.655 and 631.102, RSMo 2000. Original rule filed Feb. 28, 2001, effective Oct. 30, 2001. Amended: Filed March 8, 2002.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment by writing to Dewey Price, Mental Health Manager, Division of Alcohol and Drug Abuse, Department of Mental Health, PO Box 687, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

**Title 9—DEPARTMENT OF MENTAL HEALTH  
Division 30—Certification Standards  
Chapter 3—Alcohol and Drug Abuse Programs**

**PROPOSED AMENDMENT**

**9 CSR 30-3.132 Opioid Treatment Program.** The department proposes to amend subsections (8)(B)–(F), (12)(D) and add sections (15) and (16).

*PURPOSE: This amendment makes the language in the rule consistent with federal guidelines on Opioid Treatment Programs.*

(8) Phases of Treatment. The program shall utilize six (6) structured phases of treatment and rehabilitation to indicate client progress and to establish requirements regarding client attendance and service participation. The requirements listed below for each phase are minimum requirements and the frequency and extent of treatment and rehabilitation services shall be adjusted, based on individual client needs.

(B) Phase II is designated for clients who have been admitted more than [*three (3) months*] **ninety (90) days**, but less than [*one (1) year*] **two hundred seventy (270) days** and who have successfully met Phase I criteria.

1. During the **first ninety (90) days** of Phase II, the program may issue no more than two (2) take-home doses of methadone at a time [*and no more than a total of four (4) take-home doses in a week*].

2. The client shall participate in at least two (2) hours of counseling per month during the first three (3) months of Phase II, with at least one (1) of the hours being individual counseling.

3. [*The*] **During the second ninety (90) days of phase II**, the client shall participate in at least one (1) hour of individual counseling per month, [*during the remainder of Phase II, or until the client achieves three (3)-day take-home medication status, whichever is longer*] **and the program may issue no more than three (3) take-home doses of methadone plus closed and holiday days.**

4. The treatment plan shall be reviewed and updated at least every three (3) months during Phase II.

(C) Phase III is designated for clients who have been admitted [more than one (1) year, but less than two (2) years] **more than nine (9) months but less than one (1) year** and who have successfully met progressive Phase II criteria.

1. During Phase III, the program may issue no more than [three (3) take-home doses at a time and no more than a total of five (5) take-home doses in a week] **six (6) take-home doses of methadone plus closed and holiday days**.

2. The client shall participate in at least one (1) hour of individual counseling per month during Phase III [or until the client achieves six (6)-day take-home medication status, whichever is longer].

3. The treatment plan shall be reviewed and updated at least every six (6) months during Phase III, or more frequently if circumstances warrant.

(D) Phase IV is designated for clients who have been admitted more than [two (2) years] **one (1) year but less than two (2) years** and who have successfully met progressive Phase III criteria.

1. During Phase IV, the program may issue [six (6)-day] **two (2) week take-home doses [at a time] plus closed and holiday days**.

2. The client shall participate in at least one (1) hour of individual counseling per month during this phase.

3. The treatment plan shall be reviewed and updated at least every six (6) months during this phase.

(E) [Phase V is designated for clients who voluntarily seek medically supervised withdrawal and abstinence from all drugs, including methadone as prescribed. A client may enter this phase at any time in the treatment and rehabilitation process.] **Phase V is designated for clients who have been admitted for more than two (2) years.**

1. During Phase V, the program may issue [thirteen (13)-day take-home doses at a time.] **one (1) month maximum take-home doses.**

2. [The counselor determines the frequency of counseling sessions with input from the client. At the onset of Phase V, the client may require an increased level of counseling and other support services.] **The client shall participate in at least one (1) hour of individual counseling per month during this phase.**

3. The treatment plan shall be reviewed and updated at least every six (6) months during this phase.

(F) [Phase VI is designated for clients who have been admitted more than three (3) years and who have successfully met progressive Phase V criteria.] **Phase VI is designated for clients who voluntarily seek medically supervised withdrawal and abstinence from all drugs, including methadone as prescribed. A client may enter this phase at any time in the treatment and rehabilitation process.**

1. During Phase VI, [the program may issue twenty-seven (27)-day take-home doses at a time.] **the medical director determines take-home doses based on stability.**

2. [The client shall participate in at least one (1) hour of counseling per month during this phase.] **During Phase VI, the counselor determines the frequency of counseling sessions with input from the client. At the onset of Phase V, the client may require an increased level of counseling and other support services.**

3. [The treatment plan shall be reviewed and updated at least every six (6) months during this phase.] **The counselor and patient develop an after care plan prior to the successful completion of treatment.**

(12) Urine Drug Testing. The program shall use urinalysis testing as a performance measure and as a clinical tool for the purpose of diagnosis and treatment planning.

(D) A program with thirty percent (30%) or more of its client population having positive drug test results [i.e. dirty urines.] shall be placed on administrative review and the agency shall develop an action plan to bring its program into compliance with this performance expectation.

**(15) Emergency Medication. The medical director may, based on his/her reasonable judgment, grant emergency take-home doses of methadone based on emergency circumstances related to medical, criminal justice, family or employment. The circumstances and basis for the action must be documented in the client record and should address the concerns outlined in section (13). Take-home doses for in-state emergencies is limited to a maximum of three (3) doses and out-of-state is limited to a maximum of five (5) doses. Additional take-home doses must be authorized through the exception request process.**

**(16) Vacation Medication. The program medical director may, based on his/her reasonable judgment grant vacation take-home doses of methadone for up to two (2) weeks per calendar year. The circumstances and basis for the action must be documented in the client record and should address the concerns outlined in section (13). Additional take-home medication must be authorized through the exception request process.**

*AUTHORITY: sections 630.655 and 631.102, RSMo 2000. This rule originally filed as 9 CSR 30-3.610. Original rule filed May 13, 1983, effective Sept. 13, 1983. Rescinded and readopted: Filed May 3, 1994, effective Nov. 30, 1994. Amended: Filed July 29, 1997, effective Jan. 30, 1998. Moved to 9 CSR 30-3.132 and amended: Filed Feb. 28, 2001, effective Oct. 30, 2001. Amended: Filed March 8, 2002.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment by writing to Dewey Price, Mental Health Manager, Division of Alcohol and Drug Abuse, Department of Mental Health, PO Box 687, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

## **Title 9—DEPARTMENT OF MENTAL HEALTH Division 30—Certification Standards Chapter 3—Alcohol and Drug Abuse Programs**

### **PROPOSED AMENDMENT**

**9 CSR 30-3.206 SATOP Program Structure.** The department proposes to amend subsection (5)(F).

*PURPOSE: This amendment makes the rule less restrictive and increases the number of disciplines qualified to provide the mental health evaluation.*

(5) Referral Guidelines. The program must base the assessment screening recommendation for each person on the following referral guidelines:

(F) Persons with a serious mental illness should have their mental health treatment needs addressed before completing any SATOP recommendation. A mental health evaluation should be arranged for those clients identified with serious emotional or mental health problems during the SATOP assessment screening process. In order to promptly arrange the mental health evaluation, a SATOP

conducting assessment screenings must maintain a formal affiliation agreement with either a [certified community mental health center, state mental health facility, licensed psychiatrist, licensed psychologist, or licensed clinical social worker] **certified or accredited mental health program or a licensed mental health practitioner.** The client may resume SATOP participation upon stabilization of the problem as determined by the client's mental health provider.

**AUTHORITY:** sections 302.540, *RSMo Supp. 2001*, 577.001, 577.049, 577.520, 577.525, 630.050, [and] 630.053, 630.655 and 631.010, *RSMo 2000*. This rule originally filed as 9 CSR 30-3.760. Original rule filed Nov. 2, 1987, effective May 15, 1988. For intervening history, please consult the **Code of State Regulations**. Amended: Filed March 8, 2002.

**PUBLIC COST:** This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

**PRIVATE COST:** This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

**NOTICE TO SUBMIT COMMENTS:** Anyone may file a statement in support of or in opposition to this proposed amendment by writing to Dewey Price, Mental Health Manager, Division of Alcohol and Drug Abuse, Department of Mental Health, PO Box 687, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.

**Title 9—DEPARTMENT OF MENTAL HEALTH**  
**Division 45—Division of Mental Retardation and**  
**Developmental Disabilities**  
**Chapter 3—Care and Habilitation**

**PROPOSED RESCISSION**

**9 CSR 45-3.050 Admission and Treatment of Clients with Aggressive Behaviors.** This rule defined terms and established procedures for admission and treatment of clients with aggressive behaviors in facilities operated by the Division of Mental Retardation and Developmental Disabilities.

**PURPOSE:** This rule is being rescinded as it applies only to state operated facilities and will be replaced by a department operating regulation.

**AUTHORITY:** section 630.050, *RSMo 1994*. This rule was previously filed as 9 CSR 50-1.060. Original rule filed Sept. 1, 1993, effective Jan. 31, 1994. Amended: Filed May 25, 1995, effective Dec. 30, 1995. Rescinded: Filed March 11, 2002.

**PUBLIC COST:** This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

**PRIVATE COST:** This proposed rescission will not cost private entities more than five hundred dollars (\$500) in the aggregate.

**NOTICE TO SUBMIT COMMENTS:** Anyone may file a statement in support of or in opposition to this proposed rescission with Kate McClain, Quality Enhancement Coordinator, Department of Mental Health, Division of Mental Health, Division of Mental Retardation and Developmental Disabilities, PO Box 687, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.

**Title 10—DEPARTMENT OF NATURAL RESOURCES**  
**Division 10—Air Conservation Commission**  
**Chapter 6—Air Quality Standards, Definitions,**  
**Sampling and Reference Methods and Air Pollution**  
**Control Regulations for the Entire State of Missouri**

**PROPOSED AMENDMENT**

**10 CSR 10-6.130 Controlling Emissions During Episodes of High Air Pollution Potential.** The commission proposes to amend section (1), add new section (2); renumber original section (2) to new section (3) and amend it to include original sections (2), (3), (4), (5), (6), (7), (8) and (9), and add new sections (4) and (5). If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency to replace the current rule in the Missouri State Implementation Plan.

**PURPOSE:** This amendment will update the obsolete *Pollution Standards Index (PSI)* to the new *Air Quality Index (AQI)*. The evidence supporting the need for this proposed rulemaking, per section 536.016, *RSMo*, is section 319 of the Clean Air Act, subsection 58.50 *Index Reporting of 40 CFR Part 58 Ambient Air Quality Surveillance and Appendix G to Part 58 Uniform Air Quality Index (AQI) and Daily Reporting*. This evidence is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address and phone number listed in the *Notice of Public Hearing at the end of this rule*.

(1) [General Provisions] **Applicability.**

(A) This rule shall apply to all emissions from any source or from any premises.

(B) The boundaries of the affected area shall be determined at the discretion of the director in accordance with the nature and magnitude of the pollutant concentrations and meteorological conditions that cause the alert.

(2) **Definitions.**

(A) **Air pollution alert**—The level of an air pollution episode known as an air pollution alert is that condition when the concentration of air contaminants reach the level at which the first stage control actions are to begin.

(B) **Air Stagnation Advisory**—A special bulletin issued by the National Weather Service entitled "Air Stagnation Advisory," which is used to warn air pollution control agencies that stagnant atmospheric conditions are expected which could cause increased concentrations of air contaminants near the ground.

(C) **Definitions of certain terms specified in this rule, other than those specified in this rule section, may be found in 10 CSR 10-6.020.**

(3) **General Provisions.**

[(2)] (A) **Air Pollution Alerts.**

[(A)] 1. Alert levels are stated in terms of the [Pollution Standards Index (PSI)] **Air Quality Index (AQI)** as defined in the [Code of Federal Regulations (1 40 CFR)] part 58, Appendix G, for sulfur dioxide (SO<sub>2</sub>), carbon monoxide (CO), ozone (O<sub>3</sub>), nitrogen dioxide (NO<sub>2</sub>) and Particulate Matter—10 Micron (PM<sub>10</sub>) and 2.5 Micron (PM<sub>2.5</sub>). Table A shows the relation of the [PSI] **AQI breakpoint values** to equivalent concentrations of air contaminants. All concentrations [are measured in micrograms per cubic meter (µg/m<sup>3</sup>) and] are averaged over the time period indicated.

[Table A—Concentration of Air Contaminants

Alert Type	PSI Value	PM <sub>10</sub> 24 hr.	SO <sub>2</sub> 24 hr.	CO 8 hr.	O <sub>3</sub> 1 hr.	NO <sub>2</sub> 1 hr.
Yellow	200	350	800	17,000	400	1130
Red	300	420	1600	34,000	800	2260
Emergency	400	500	2100	46,000	1000	3000

Table A									
BREAKPOINT FOR THE AQI									
AQI	Alert Category	Alert Color	Breakpoint Values						
			O <sub>3</sub> (ppm)	O <sub>3</sub> (ppm)	PM <sub>2.5</sub> (µg/m <sup>3</sup> )	PM <sub>10</sub> (µg/m <sup>3</sup> )	CO (ppm)	SO <sub>2</sub> (ppm)	NO <sub>2</sub> (ppm)
			8-hour	1-hour(i)	24-hr	24-hr	8-hr	24-hr	24-hr
0-50	Good	Green	0.000-0.064	-----	0.0-15.4	0-54	0.0-4.4	0.000-0.034	(2)
51-100	Moderate	Yellow	0.065-0.084	-----	15.5-40.4	55-154	4.5-9.4	0.035-0.144	(2)
101-150	Unhealthy for sensitive groups	Orange	0.085-0.104	0.125-0.164	40.5-65.4	155-254	9.5-12.4	0.145-0.224	(2)
151-200	Unhealthy	Red	0.105-0.124	0.165-0.204	65.5-150.4	255-354	12.5-15.4	0.225-0.304	(2)
201-300	Very Unhealthy	Purple	0.125-0.374	0.205-0.404	150.5-250.4	355-424	15.5-30.4	0.305-0.604	0.65-1.24
301-400	Hazardous	Maroon	(3)	0.405-0.504	250.5-350.4	425-504	30.5-40.4	0.605-0.804	1.25-1.64
401-500	Hazardous	Maroon	(3)	0.505-0.604	350.5-500.4	505-604	40.5-50.4	0.805-1.004	1.65-2.04

- (1) Areas are generally required to report the AQI based on eight (8)-hour ozone values. However, there are a small number of areas where an AQI based on one (1)-hour ozone values would be more precautionary. In these cases, in addition to calculating the eight (8)-hour ozone index value, the one (1)-hour ozone index value may be calculated, and the maximum of the two (2) values reported.
- (2) NO<sub>2</sub> has no short-term National Ambient Air Quality Standard and can generate an AQI value only above two hundred (200).
- (3) Eight (8)-hour O<sub>3</sub> values do not define higher AQI values (greater than or equal to three hundred one (301). AQI values of three hundred one (301) or higher are calculated with one (1)-hour O<sub>3</sub> concentrations.

[(B)] 2. Alert types and levels of initiation.

A. Orange alert AQI value. Any one (1) of the contaminants listed in paragraph (3)(A)1. reaching a concentration which results in an AQI value of one hundred one to one hundred fifty (101-150) shall initiate the orange alert.

[1.] B. [Yellow] Red alert [PSI] AQI value. Any one (1) of the contaminants listed in [subsection (2)(A)] paragraph (3)(A)1. reaching a concentration which results in an [PSI] AQI value of [two] one hundred fifty-one [(200)] to two hundred (151-200) shall initiate the [yellow] red alert.

[2.] C. [Red] Purple alert [PSI] AQI value. Any one (1) of the contaminants listed in [subsection (2)(A)] paragraph (3)(A)1. reaching a concentration which results in an [PSI] AQI value of [three] two hundred one [(300)] to three hundred (201-300) shall initiate the [red] purple alert.

[3.] D. Maroon [E]mergency alert [PSI] AQI value. Any one (1) of the contaminants listed in [subsection (2)(A)] paragraph (3)(A)1. reaching a concentration which results in an [PSI] AQI value of [four] three hundred one [(400)] to five hundred (301-500) shall initiate the maroon emergency alert.

[(C)] The testing references for Missouri ambient air quality data are as specified in 10 CSR 10-6.040 Reference Methods.]

[(D)] 3. Declaration of alerts. An [yellow] orange alert, red alert, purple alert or maroon emergency alert may be declared on the basis of deteriorating air quality alone; an [a]Air [s]Stagnation [a]Advisory need not be in effect. The appropriate episode status should be declared by the director as ambient monitoring would indicate.

4. Termination of alerts. When, in the judgment of the director, meteorological conditions and pollutant concentrations warrant discontinuance of any alert condition, the director shall notify the technical staff, the chairman and members of the Missouri Air Conservation Commission that the alert has been discontinued and issue a public notice to that effect.

(B) Orange Alert.

1. Orange alert procedures shall be initiated by the director if the following conditions are met:

A. An Air Stagnation Advisory is in effect;

B. The orange alert AQI value is equaled or exceeded at any one (1) sampling station within the affected area, unless there is a current forecast of meteorological improvement within the next twenty-four (24) hours; and

C. Meteorological conditions are such that the pollutant concentrations can be expected to remain or reoccur at the previously mentioned levels during the next twenty-four (24) or more hours or increase unless control actions are taken.

2. The following are orange alert procedures. The general public shall be informed through the news media that an orange alert exists, the geographical area(s) where the alert is applicable, the emission and type of source(s) that initiated the alert and encourage those with respiratory ailments or heart conditions to take the most appropriate and expedient precautions.

[(3)] (C) [Yellow] Red Alert.

[(A)] 1. [Yellow] Red alert procedures shall be initiated by the director if the following conditions are met:

[1.] A. An [a]Air [s]Stagnation [a]Advisory is in effect;

[2.] B. The [yellow] red alert [PSI] AQI value is equal/[red]ed or exceeded at any one (1) sampling station within the affected area, unless there is a current forecast of meteorological improvement within the next twenty-four (24) hours; and

[3.] C. Meteorological conditions are [so] such that the pollutant concentrations can be expected to remain or reoccur at the previously mentioned levels during the next twenty-four (24) or more hours or increase unless control actions are taken.

[(B)] 2. The following are [yellow] red alert procedures:

[1.] A. All affected governmental control agencies shall be notified that [yellow] red alert conditions exist and that coordination of action is required;

[2.] B. All hospitals within the affected area shall be notified that [yellow] red alert conditions exist;

[3.] **C.** The frequency of air monitoring shall be increased at all sampling stations which are not continuous at intervals not exceeding one (1) hour, with continual hourly review at a central control location, if this equipment is available and it is deemed necessary by the director;

[4.] **D.** The general public shall be informed through the news media that a [yellow] **red** alert exists, the geographical area(s) where the alert is applicable, the emission and type of source(s) that initiated the alert, individual abatement actions which will help alleviate the problem, and encourage those with respiratory ailments or heart conditions to take the most appropriate and expedient precautions;

[5.] **E.** The director shall request very emphatically through the news media that all unnecessary use of automobiles be restricted and that all entertainment functions and facilities be closed; **and**

[6. *Facilities which are sources of air contaminant emissions and are required to file approved alert plans with the director for yellow alert conditions shall initiate the plans upon notification by the director (see section (7); and*

[7.] **F.** No open burning will be allowed anywhere within the affected area.

[(4)] **(D) [Red] Purple Alert.**

[(A)] **1.** [Red] **Purple** alert procedures shall be initiated by the director if the following conditions are met:

[1.] **A.** An [a]Air [s]Stagnation [a]Advisory is in effect; and

[2.] **B.** The [red] **purple** alert [PSI] **AQI** value is equal to or exceeded at any one (1) monitoring station within the affected area.

[(B)] **2.** The [red] **purple** alert also can be initiated if—

[1.] **A.** The [red] **purple** alert [PSI] **AQI** value is equal to or exceeded as the arithmetic mean for twelve (12) consecutive hours and an [a]Air [s]Stagnation [a]Advisory is in effect; or

[2.] **B.** The [yellow] **red** alert [PSI] **AQI** value is equal to or exceeded as the arithmetic mean for twenty-four (24) consecutive hours and a forecast of stagnation for the following twelve (12) hours is received.

[(C)] **3.** The following are [red] **purple** alert procedures:

[1.] **A.** All affected governmental control agencies shall be notified that [red] **purple** alert conditions exist and that coordination of action is required;

[2.] **B.** All hospitals within the affected area shall be notified that [red] **purple** alert conditions exist;

[3.] **C.** The frequency of air monitoring shall be increased, if necessary, at all sampling stations which are not continuous at intervals not exceeding one (1) hour with continual hourly review at a central control location, if this equipment is available and it is deemed necessary by the director;

[4.] **D.** The general public shall be informed through the news media that a [red] **purple** alert exists, the geographical area(s) where the alert is applicable, the emission and type of source(s) that initiate the alert, individual abatement actions which will help alleviate the problem and encourage those with respiratory ailments or heart conditions to take the most appropriate and expedient precautions;

[5.] **E.** Airlines operating within the [red] **purple** alert area shall be notified that those conditions exist and that a reduction of flights out of the airport may be required;

[6.] **F.** Nonlocal vehicular traffic may be diverted around the [red] **purple** alert area depending upon which pollutant(s) caused the alert;

[7.] **G.** Local vehicular traffic, through the news media, shall be told to avoid certain areas and emphatically told to restrict nonessential trips;

[8.] **H.** All incineration and open burning shall cease throughout the area; and

[9.] **I.** Facilities which are sources of air contaminant emissions and are required to file approved alert plans with the director for [red] **purple** alert conditions shall initiate these plans upon notification by the director (see [section (8)] **paragraph (3)(D)4. and paragraph (3)(D)5.**

**4. Purple alert plan objectives. AQI breakpoints from two hundred one to three hundred (201–300).**

**A. Air contaminant source. Electric power generating facilities—requirements for plan.**

(I) Reduction of emission by utilization of fuels having low ash and sulfur content. Soot blowing and boiler lancing to be allowed only during periods of high atmospheric turbulence (12:00 noon to 4:00 p.m.).

(II) Reduction of emissions by diverting electric power generation to facilities outside of area for which the alert is called.

**B. Air contaminant source. Process steam generating facilities—requirements for plan.**

(I) Reduction of emissions by utilization of fuels having low ash and sulfur content. Soot blowing and boiler lancing to be allowed only during periods of high atmospheric turbulence (12:00 noon to 4:00 p.m.).

(II) Reduction of steam load demands consistent with continuing the operation of the plant.

**C. Air contaminant source. Manufacturing industries of the following Standard Industrial Classification Manual (SIC) group designations: grain industries, group 20; paper and allied products industries, group 26; chemicals and allied products industries, group 28; petroleum refining and related industries, group 29; stone, glass, clay and concrete product industries, group 32; primary metal industries, group 33—requirements for plan.**

(I) Curtailing, postponing or deferring production and allied operations. Stopping all trade waste disposal practices which emit particles, gases, vapors or malodorous substances including incineration.

(II) Reducing heat load demands for processing to a minimum.

**D. Air contaminant source. Other manufacturing facilities required to submit alert plans by the director—requirements for plan.**

(I) Reduction of air contaminant emissions by curtailing or deferring production and allied operations. Stoppage of all trade waste disposal practices which emit particles, gases, vapors or malodorous substances including incineration.

(II) Reduction of heat load demands for processing to a minimum.

**E. Air contaminant source. Private, public and commercial refuse disposal operations—requirement for plan.**

(I) Stoppage of all open burning including disposal of trees and burning at fire-fighting schools, except as required for disposal of hazardous materials or other emergency needs.

(II) Operation of incinerators shall be limited to the hours between 10:00 a.m. and 2:00 p.m.

**F. Air contaminant source. Transportation—requirement for plan. The unnecessary operation of any motor vehicle should be restricted.**

[(5)] **(E) [Air Pollution] Maroon Emergency Alert.**

[(A)] **1.** **Maroon** [E]emergency alert procedures shall be initiated by the director, if the following conditions are met:

[1.] **A.** An [a]Air [s]Stagnation [a]Advisory is in effect; and

[2.] **B.** The [air pollution] **maroon** emergency alert [PSI] **AQI** value is equal to or exceeded at any one (1) monitoring station within the advisory area.

[(B)] **2.** The [air pollution] **maroon** emergency procedures can also be initiated if—

[1.] **A.** The [air pollution] **maroon** emergency alert [PSI] **AQI** value is equal[ed] or exceeded as the arithmetic mean of twelve (12) consecutive hours and a forecast of stagnation for the following twelve (12) hours is received;

[2.] **B.** The [red] **purple** alert [PSI] **AQI** value is equal[ed] or exceeded as the arithmetic mean for twenty-four (24) hours and a forecast of stagnation for the following twelve (12) hours is received; or

[3.] **C.** The [yellow] **red** alert [PSI] **AQI** value is equal[ed] or exceeded as the arithmetic mean for thirty-six (36) hours and a forecast of stagnation for the following twelve (12) hours is received.

[(C)] **3.** The following are **maroon** emergency alert procedures:

[1.] **A.** All affected governmental control agencies shall be notified that a[n] **maroon** emergency alert exists and that coordination of action is required;

[2.] **B.** All hospitals within the affected area shall be notified that a[n] **maroon** emergency alert exists and to be so prepared;

[3.] **C.** The frequency of air monitoring shall be increased[, if necessary,] at all sampling stations which are not continuous at intervals not exceeding one-half (1/2) hour with continual half-hour review at a central control location, **if this equipment is available and it is deemed necessary by the director;**

[4.] **D.** Open burning and incineration shall cease throughout the area;

[5.] **E.** Facilities which are sources of air contaminant emissions and are required to have filed approved plans with the director shall initiate these plans upon notification by the director or his/her representative that air pollution emergency conditions exist (see [section (9)] **paragraph (3)(E)4.**);

[6.] **F.** The use of motor vehicles is prohibited except in emergencies with the approval of local or state police;

[7.] **G.** All manufacturing facilities except those listed in [paragraph (5)(C)5.] **subparagraph (3)(E)3.E.** shall institute action that will result in maximum reduction of air contaminants from their operations by ceasing, curtailing or postponing operations to the extent possible without causing injury to persons or damage to equipment;

[8.] **H.** All airplane flights originating within the area of the [air pollution] **maroon** emergency alert shall be cancelled;

[9.] **I.** All places of employment described as follows immediately shall cease operation during the [air pollution] **maroon** emergency alert:

[A.] **(I)** Mining and quarrying;

[B.] **(II)** Contract construction work;

[C.] **(III)** Wholesale trade establishments;

[D.] **(IV)** Schools and libraries;

[E.] **(V)** Governmental agencies except those needed to administer air pollution alert program and other essential agencies determined by the director to be vital for public safety and welfare and needed to administer the provisions of this rule;

[F.] **(VI)** Retail trade stores except those dealing primarily in sale of food or pharmacies;

[G.] **(VII)** Banks, real estate agencies, insurance offices and similar business;

[H.] **(VIII)** Laundries, cleaners and dryers, beauty and barber shops and photographic studios;

[I.] **(IX)** Amusement, [and] recreational, **gaming and entertainment** service establishments[, such as motion picture theaters];

[J.] **(X)** Automobile repair and automobile service garages; and

[K.] **(XI)** Advertising offices, consumer credit reporting, adjustment and collection agencies, printing and duplicating services, rental agencies and commercial testing laboratories; and

[10.] **J.** The general public shall be informed through the news media that a[n] **maroon** emergency alert exists, the geographical area(s) where the alert is applicable, the emission and

type of source(s) that initiated the alert, individual abatement actions which will help alleviate the problem and encourage those with respiratory ailments or heart conditions to take the most appropriate and expedient precautions.

[(6) *Termination of Alerts.* When, in the judgment of the director, meteorological conditions and pollutant concentrations warrant discontinuance of any alert condition, the director shall notify the technical staff, the chairman and members of the Missouri Air Conservation Commission that the alert has been discontinued and issue a public notice to that effect.

(7) *Yellow Alert Plan Objectives.*

(A) *Air Contaminant Source. Electric power generating facilities—requirements for plan.*

1. *Reduction of emission by utilization of fuels having low ash and sulfur content. Soot blowing and boiler lancing to be allowed only during periods of high atmospheric turbulence (12:00 noon to 4:00 p.m.).*

2. *Reduction of emissions by diverting electric power generation to facilities outside of area for which the alert is called.*

(B) *Air Contaminant Source. Process steam generating facilities—requirements for plan.*

1. *Reduction of emissions by utilization of fuels having low ash and sulfur content. Soot blowing and boiler lancing to be allowed only during periods of high atmospheric turbulence (12:00 noon to 4:00 p.m.).*

2. *Reduction of steam load demands consistent with continuing the operation of the plant.*

(C) *Air Contaminant Source. Manufacturing industries of the following Standard Industrial Classification Manual (SIC) group designations: paper and allied products industries, group 26; chemicals and allied products industries, group 28; petroleum refining and related industries, group 29; stone, glass, clay and concrete product industries, group 32; primary metal industries, group 33; and grain industries, group 20—requirements for plan.*

1. *Curtailing, postponing or deferring production and allied operations. Stopping all trade waste disposal practices which emit particles, gases, vapors or malodorous substances including incineration.*

2. *Reducing heat load demands for processing to a minimum.*

(D) *Air Contaminant Source. Other manufacturing facilities required to submit alert plans by the director—requirements for plan.*

1. *Reduction of air contaminant emissions by curtailing or deferring production and allied operations. Stopping of all trade waste disposal practices which emit particles, gases, vapors or malodorous substances including incineration.*

2. *Reduction of heat load demands for processing to a minimum.*

(E) *Air Contaminant Source. Private, public and commercial refuse disposal operations—requirement for plan. Stopping of all open burning including disposal of trees and burning at fire-fighting schools, except as required for disposal of hazardous materials or other emergency needs. Operation of incinerators shall be limited to the hours between 10:00 a.m. and 2:00 p.m.*

(F) *Air Contaminant Source. Transportation—requirement for plan. The unnecessary operation of any motor vehicle should be restricted.*

[(8)] **4.** [Red] **Maroon** emergency [A] alert [P] plan [O] objectives. **AQI breakpoints from three hundred one to four hundred**



**(301–400).** All [yellow] purple alert plans shall be continued. In addition, the following measures shall be taken:

[(A)] **A.** Air [C]contaminant [S]source. Process steam generating facilities—requirements for plan.

[1.] **(I)** Maximum reduction of air contaminant emissions by utilization of fuels having the lowest ash and sulfur content.

[2.] **(II)** Maximum utilization of periods of high atmospheric turbulence (12:00 noon to 4:00 p.m.) for soot blowing and boiler lancing. Prepare to implement the emergency plan submitted to the director.

[(B)] **B.** Air [C]contaminant [S]source. Manufacturing industries of the following SIC group designations: **grain industries, group 20**; paper and allied products industries, group 26; chemical and allied products industries, group 28; petroleum refining and related industries, group 29; stone, glass, clay and concrete product industries, group 32; primary metals industries, group 33 [grain industries, group 20]—requirements for plan.

[1.] **(I)** Maximum reduction of air contaminant emissions by, if necessary, postponing production and allied operations.

[2.] **(II)** Maximum reduction of heat load demands for processing. Prepare to implement the emergency plan submitted to the director;

[(C)] **C.** Air [C]contaminant [S]source. Other manufacturing facilities required to submit alert plans by the director—requirement for plan. Maximum reduction of air contaminant emissions, if necessary, by postponing production and allied operations;

[(D)] **D.** Air [C]contaminant [S]source. Private, public and commercial refuse disposal operations—requirement for plan. Stop operation of all incinerators; and

[(E)] **E.** Air [C]contaminant [S]source. Transportation—requirement for plan. Car pools and public transportation must be used in place of unnecessary motor vehicle operation.

[(9)] **5.** [Air Pollution] **Maroon** [E]emergency alert [P]plan [O]objectives. **AQI breakpoints from four hundred one to five hundred (401–500).** All [yellow and red] purple alert plans and maroon emergency alert plan from AQI breakpoints three hundred one to four hundred (301–400) shall be continued. In addition, the following measures shall be taken:

[(A)] **A.** Air [C]contaminant [S]source. Process steam generating facilities—requirements for plan.

[1.] **(I)** Maximum reduction of air contaminant emissions by reducing heat and steam load demands to values consistent with preventing equipment damage.

[2.] **(II)** Maximum utilization of periods of high atmospheric turbulence (12:00 noon to 4:00 p.m.) for soot blowing and boiler lancing;

[(B)] **B.** Air [C]contaminant [S]source. Manufacturing industries of the following SIC group designations: **grain industries, group 20**; paper and allied products industries, group 26; chemicals and allied products industries, group 28; petroleum refining and related industries, group 29; stone, glass, clay and concrete product industries, group 32; primary metals industries, [grain industries, group 20] group 33—requirement for plan. Elimination of air contaminant from the manufacturing operations by ceasing, curtailing, postponing or deferring production and allied operations to the extent possible without causing injury to persons or damage to equipment;

[(C)] **C.** Air [C]contaminant [S]source. Other manufacturing facilities required to submit alert plans by the director—requirements for plan.

[1.] **(I)** Elimination of air contaminant emissions from the manufacturing operations by ceasing, curtailing, postponing or deferring production and allied operations to the extent possible without causing injury to persons or damage to equipment.

[2.] **(II)** Maximum reduction of heat load demands for processing;

[(D)] **D.** Air [C]contaminant [S]source. Private, public and commercial operations—requirement for plan. The following places of employment, if notified by the director, immediately shall cease operations: mining and quarrying operations; construction projects except as required to avoid emergent physical harm; manufacturing establishments except those required to have in force an air pollution alert plan; wholesale trade establishments; governmental units, except as required to implement the provisions of this rule and other operations essential to immediate protection of the public welfare and safety; retail trade and service establishments except pharmacies, food stores and other similar operations providing for emergency needs; other commercial service operations, such as those engaged in banking, insurance, real estate, advertising, and the like; educational institutions; and amusement, [and] recreational, **gaming and entertainment** facilities; [and]

[(E)] **E.** Air [C]contaminant [S]source. Transportation—requirement for plan. Motor vehicles shall only be used for private and public emergency needs.

**(4) Reporting and Record Keeping. Facilities which are sources of air contaminant emissions per paragraphs (3)(C)3., (3)(D)4. and (3)(E)4. shall file approved red, purple and maroon alert plans within sixty (60) days with the director after request by the director to submit alert plans.**

**(5) Test Methods. The testing references for Missouri ambient air quality data are as specified in 10 CSR 10-6.040 Reference Methods.**

*AUTHORITY: section 643.050, RSMo [Supp. 1992] 2000. Original rule filed May 11, 1984, effective Oct. 11, 1984. Amended: Filed Jan. 5, 1988, effective April 28, 1988. Amended: Filed March 13, 2002.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.*

**NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS:** A public hearing on this proposed amendment will begin at 9:00 a.m., May 30, 2002. The public hearing will be held at the Hannibal Inn & Conference Center, Becky Thatcher Room, 4141 Market Street, Hannibal, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Roger D. Randolph, Director, Missouri Department of Natural Resources' Air Pollution Control Program, 205 Jefferson Street, PO Box 176, Jefferson City, MO 65102-0176, (573) 751-4817. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., June 6, 2002. Written comments shall be sent to Chief, Planning Section, Missouri Department of Natural Resources' Air Pollution Control Program, 205 Jefferson Street, PO Box 176, Jefferson City, MO 65102-0176.

**Title 10—DEPARTMENT OF NATURAL RESOURCES  
Division 40—Land Reclamation Commission  
Chapter 10—Permit and Performance Requirements for  
Industrial Mineral Open Pit and In-Stream Sand and  
Gravel Operations**

**PROPOSED AMENDMENT**

**10 CSR 40-10.020 Permit Application Requirements.** The commission is amending subsection (2)(F) and section (3).

*PURPOSE: The purpose of this amendment is to change the fee structure in order to provide the Department of Natural Resources with adequate funding in order to implement The Land Reclamation Act, sections 444.760 to 444.790, RSMo Supp. 2001. The need for this proposed amendment is supported by the accompanying fiscal note. The proposed amendment will increase the fee income by an estimated one hundred sixty-five thousand three hundred seventy-three dollars (\$165,373). The necessary documentation is on file at the Land Reclamation Program office at the address and phone number listed at the end of this proposed amendment.*

(2) As required by section 444.772, RSMo, an applicant shall provide a complete application package submitted which includes the following:

(F) All required fees based upon the type of operation and amount of production as follows:

*[1. For gravel operations producing less than five thousand (5000) tons annually, an annual permit fee of one hundred dollars (\$100) plus an acreage fee of thirty-five dollars (\$35) per whole or fractional acre permitted; and*

*2. For all other operations (including gravel over five thousand (5000) tons annually), the applicant shall pay an annual permit fee of three hundred fifty dollars (\$350) plus an acreage fee of thirty-five dollars (\$35) per whole or fractional acre permitted plus an annual site fee of forty dollars (\$40) per site to be operated during the succeeding twelve (12) months;]*

**1. An annual permit fee of five hundred dollars (\$500).**

**2. An annual site fee for each site listed on a permit of three hundred dollars (\$300). If surface mining operations are not conducted at a site for a total of six (6) months or more during any one (1) permit year, the fee for such site for that year shall be reduced by fifty percent (50%) or to the amount of one hundred fifty dollars (\$150).**

**3. An annual acreage fee for each acre bonded by the operator of five dollars (\$5) per acre for each acre permitted.**

**4. For any operator of a gravel mining operation where the annual tonnage of gravel mined by such operator is less than five thousand (5,000) tons, the total cost of submitting an application shall be three hundred dollars (\$300).**

**5. In no case shall the total fee for any permit be more than two thousand five hundred dollars (\$2,500).**

**6. Fees imposed shall expire on December 31, 2007.**

(3) As required by section 444.772, RSMo, any mining permit covering affected land that has not been totally reclaimed and released from liability prior to permit expiration must be *[repermitted each year until reclamation is complete and liability is released. To repermit, the operator shall file a complete permit application and pay the appropriate fees, as outlined in section 444.772, RSMo and as outlined by these rules]* renewed annually.

(A) The operator shall submit a permit renewal form furnished by the director for an additional permit year and pay an annual fee equal to an application fee calculated pursuant to subsection (2)(F) of this rule, but in no case shall the annual renewal fee for any operator be more than two thousand five hundred dollars (\$2,500).

(B) For any operator of a gravel mining operation where the annual tonnage of gravel mined by such operator is less than five thousand (5,000) tons, the operator shall submit an annual permit renewal form furnished by the director for an additional permit year and pay an annual fee of three hundred dollars (\$300).

(C) Upon receipt of the completed permit renewal form and annual fee from the operator, the director shall approve the renewal. With approval of the director and operator, the

**permit renewal may be extended for a portion of an additional year with a corresponding prorating of the renewal fee.**

*AUTHORITY: sections 444.767, [RSMo Supp. 1993] 444.772, [RSMo Supp. 1992] and 444.784, RSMo [Supp. 1990] **Supp. 2001**. Original rule filed Aug. 2, 1991, effective Feb. 6, 1992. Amended: Filed June 1, 1994, effective Nov. 30, 1994. Amended: Filed March 15, 2002.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.*

*PRIVATE COST: This proposed amendment will cost private entities an estimated one hundred sixty-five thousand three hundred seventy-three dollars (\$165,373) per year in the aggregate.*

**NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS:** *Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Natural Resources, Land Reclamation Program, Larry Coen, Staff Director, PO Box 176, Jefferson City, MO 65102, (573) 751-4041. To be considered, comments must be received by June 14, 2002. A hearing is scheduled for 1:00 p.m., May 23, 2002 at the Department of Natural Resources meeting complex located at 1738 East Elm Street, Jefferson City, Missouri.*

**FISCAL NOTE  
PRIVATE ENTITY COST**

**I. RULE NUMBER**

Title: 10 – DEPARTMENT OF NATURAL RESOURCES

Division: Industrial Minerals Fee Increase

Chapter: 10- Permit and Performance Requirements for Industrial Mineral Open Pit and In-Stream Sand and Gravel Operations

Type of Rulemaking: Proposed Increase Application Fees

Rule Number and Name: 10 CSR 40-10.020(2)

**II. SUMMARY OF FISCAL IMPACT**

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities.
It is estimated that 359 permitted mining operations will be affected by this change. The public entity affected will be the Department of Natural Resources Land Reclamation Program which will use the estimated costs increase on the private entities to implement HB 453, passed in FY01 legislative session.	Industrial Mineral Mining Companies	The estimated cost of this rule change will be \$165,373. This is based on maximum permit fees capped at \$500. In the fiscal note for HB 453, this amount was \$200,388, which was based on a maximum permit fee of \$600. We are not requesting the entire amount allowed on this rule change. These rule costs will be used to implement HB 453, passed FY01.

**III. WORKSHEET**

Type of Operations	# Permits	Current Costs	Total Estimated Costs
Sand and Gravel operations	176	\$41,800	\$90,928
Limestone operations	156	\$112,493	\$211,885
Clay operations	19	\$20,540	\$32,890
Barite	1	\$780	\$1,605
Granite	4	\$1,950	\$4,698
Sandstone	3	\$1,555	\$2,485
	<u>359</u>	<u>\$179,118</u>	<u>\$344,491</u>

Difference of \$165,373 is the amount of this rule change private entity costs.

Note: See attached for more detail cost by commodity

**IV. ASSUMPTIONS**

Permit fee will be \$500. (Maximum fee in HB 453 could be \$600)

Site fee would be \$300. There are 888 sites.

Annual acre fee will be \$5 per acre for all acres permitted

Number of permits at the \$500 maximum is 216; permits at the \$150 minimum is 143.

Maximum Fee would be \$2,500, based on the combination of permit fee (\$500), site fee (300 for each site), and annual acre fee (\$5 for each acre permitted) and the minimum fee would be \$300.

Private entity costs will be used to implement HB 453, passed in the FY01 legislative session.

2001 Industrial Minerals Permits and Fees		Site Fees at \$300
Fiscal Note Private Entity Cost		Acres Fees set at \$.5 for all
Maximum Fee at \$2500 and Minimum Fee at \$300		
Permit Fee at \$500 (Could be \$600)		
<b>Current Permits and Sites</b>		
Number of Open Pit Permits =	216	Number of Site Fees @ \$300/ea = 888
Number of Sand and Gravel Permits =	143	<b>Total Number of Sites= 888</b>
<b>Total Number of Permits=</b>	<b>359</b>	<b>Total Number of Acres = 21,157</b>
<b>By Commodity:</b>		
	<b>Sand and Gravel</b>	<b>Limestone</b>
	<b>Clay</b>	<b>Barite</b>
	<b>Granite</b>	<b>Sandstone</b>
Projected new fees:	\$344,490	\$211,885
Percent Revenue by Cost	100.00%	61.51%
Number of Permits	359	156
Percent by Permits	100.00%	43.45%
Number of Sites	888	355
Percent by Sites	100.00%	39.98%

Distribution By Size:	Number		Percent by		Total Cost		Total Cost	
	Of Permits	Number	With Caps	Without Caps	With Caps	Without Caps	W/O Caps	W/O Caps
Companies Capped at \$2500 =	38	10.58%	27.58%	95,000			\$182,568	
Companies that pay \$2000 to \$2499 =	13	3.62%	8.42%	\$29,020			\$29,020	
Companies that pay \$1500 to \$1999 =	20	5.57%	9.97%	\$34,343			\$34,343	
Companies that pay \$1000 to \$1499 =	52	14.48%	18.10%	\$62,338			\$62,338	
Companies that pay \$500 to \$999 =	93	25.91%	23.48%	\$80,890			\$80,890	
Companies that pay \$301 to \$499 =	0	0.00%	0.00%	\$0			\$0	
Small Operators Capped at \$300 =	143	39.83%	12.45%	\$42,900			\$161,376	
<b>Total Permits =</b>	<b>359</b>			<b>\$344,490</b>			<b>\$550,533</b>	

Distribution By Size and Commodity:	Max Capped at		\$2000 to		\$1500 to		\$1000 to		\$500 to		Min Capped		Total by Commodity
	\$2,500	\$2,499	\$2,499	\$1,999	\$1,999	\$1,499	\$1,499	\$999	\$999	at \$300	at \$300	Commodity	
Sand and Gravel	\$10,000	\$6,250	\$6,250	\$13,790	\$9,143	\$8,845	\$42,900	\$90,928					\$90,928
Limestone	\$67,500	\$20,365	\$15,363	\$44,323	\$64,335	\$0	\$0	\$211,885					\$211,885
Clay	\$17,500	\$2,405	\$3,585	\$5,145	\$4,255	\$0	\$0	\$32,890					\$32,890
Barite	\$0	\$0	\$1,605	\$0	\$0	\$0	\$0	\$1,605					\$1,605
Granite	\$0	\$0	\$0	\$0	\$970	\$0	\$0	\$4,698					\$4,698
Sandstone	\$0	\$0	\$0	\$0	\$2,485	\$0	\$0	\$2,485					\$2,485
<b>Total Dollars by Size:</b>	<b>\$95,000</b>	<b>\$29,020</b>	<b>\$34,343</b>	<b>\$62,338</b>	<b>\$80,890</b>	<b>\$42,900</b>	<b>\$344,490</b>	<b>\$550,533</b>					<b>\$550,533</b>