Volume 42, Number 3
Pages 151–250
February 1, 2017

SALUS POPULI SUPREMA LEX ESTO

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

JOHN R. ASHCROFT

SECRETARY OF STATE

MISSOURI REGISTER

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MISSOURI REGISTER

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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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HOW TO CITE RULES AND RSMo

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.

Rules 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.

Rules 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.

All 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 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 110—Notary Use of Electronic Signatures and Seals

EMERGENCY RULE

15 CSR 30-110.010 Electronic Notary Definitions

PURPOSE: This rule provides definitions pertaining to the use of electronic signatures and seals by notaries.

*EMERGENCY STATEMENT: This emergency rule is necessary to address statutory sections enacted in SB 932 (2016), specifically section 486.275.2, which became law on August 28, 2016. This legislation provides that electronic signatures may now be used to satisfy certain acts currently performed by notaries in Missouri using original signatures. Section 486.275.2, RSMo states that "if a signature or record is required to be notarized, acknowledged, verified, or made under oath, notwithstanding the provisions of section 486.285 to the contrary, the requirement is satisfied if the electronic signature of the person authorized to perform such acts, together with all other information required to be included, is attached to or logically associated with the signature or record." Unfortunately, this section provides no further guidance or direction to any Missouri notary public who may wish to utilize electronic signatures or electronic seals in the performance of notarial acts. To provide such direction to Missouri notaries, extensive research into e-notarization was completed in developing this rule. From August 2016 to October of 2016, all current Missouri notary regulations were reviewed as well as other e-notarization laws and administrative rules throughout the United States. State administrators of e-notary systems in three (3) different states, the National Notary Association, and American Society of Notaries were consulted. After these consultations, conference calls with stakeholders active in the passage of SB 932 took place. These stakeholders were then provided with draft rules to be reviewed. Throughout October through December of 2016, the feedback from stakeholders regarding the draft rules was collected and was taken into account in producing updated language. Without this emergency rule in place, notaries wanting to use an electronic signature will be forced to proceed without any direction from the State of Missouri. Providing guidance will be beneficial to notaries who wish to complete important transactions in Missouri with electronic signatures. As such, the Office of the Secretary of State finds a compelling governmental interest to provide notaries public with guidance in the form of minimum standards and procedures as soon as possible utilizing an emergency rule. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the **Missouri** and **United States Constitutions**. After reviewing laws and regulations pertaining to this subject matter in other states and after communicating with numerous stakeholders within Missouri, the Office of the Secretary of State believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed December 21, 2016, becomes effective December 31, 2016, and expires February 23, 2017.*

(1) The following definitions, except where inconsistent with Chapter 486, RSMo, shall mean:

(A) "Capable of independent verification" means that any interested person may confirm the validity of a notary public's identity and authority through a publicly accessible system;

(B) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

(C) "Electronic signature" means a symbol that is executed with technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities and is attached to or logically associated with an electronic record and is executed or adopted by a person with the intent to sign the record;

(D) "Electronic seal" means an electronic representation of a notary's seal;

(E) "Electronic notarial certificate" means the portion of a notarized electronic document that is completed by the notary public, bears the notary public's electronic signature and electronic seal, and meets all other statutory requirements of this state regarding notarial certificates;

(F) "Principal" means an individual whose signature is notarized, or an individual, other than a witness required for the electronic notarization, taking an oath or affirmation from the notary public;

(G) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and

(H) "Sole control" means at all times being in the direct physical custody of the notary public or safeguarded by the notary with a password or other secure means of authentication.

*AUTHORITY: section 486.275, RSMo 2016. Emergency rule filed Dec. 21, 2016, effective Dec. 31, 2016, expires Feb. 23, 2017. A proposed rule covering this same material is published in this issue of the **Missouri Register**.*

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 110—Notary Use of Electronic Signatures and Seals

EMERGENCY RULE

15 CSR 30-110.020 Electronic Signatures and Seals

PURPOSE: This rule describes the process for notary use of electronic signatures and seals.

*EMERGENCY STATEMENT: This emergency rule is necessary to address statutory sections enacted in SB 932 (2016), specifically section 486.275.2, which became law on August 28, 2016. This legislation provides that electronic signatures may now be used to satisfy certain acts currently performed by notaries in Missouri using original signatures. Section 486.275.2, RSMo states that "if a signature or record is required to be notarized, acknowledged, verified, or made under oath, notwithstanding the provisions of section 486.285 to the contrary, the requirement is satisfied if the electronic signature of the person authorized to perform such acts, together with all other information required to be included, is attached to or logically associated with the signature or record." Unfortunately, this section provides no further guidance or direction to any Missouri notary public who may wish to utilize electronic signatures or electronic seals in the performance of notarial acts. To provide such direction to Missouri notaries, extensive research into e-notarization was completed in developing this rule. From August 2016 to October of 2016, all current Missouri notary regulations were reviewed as well as other e-notarization laws and administrative rules throughout the United States. State administrators of e-notary systems in three (3) different states, the National Notary Association, and American Society of Notaries were consulted. After these consultations, conference calls with stakeholders active in the passage of SB 932 took place. These stakeholders were then provided with draft rules to be reviewed. Throughout October through December of 2016, the feedback from stakeholders regarding the draft rules was collected and was taken into account in producing updated language. Without this emergency rule in place, notaries wanting to use an electronic signature will be forced to proceed without any direction from the State of Missouri. Providing guidance will be beneficial to notaries who wish to complete important transactions in Missouri with electronic signatures. As such, the Office of the Secretary of State finds a compelling governmental interest to provide notaries public with guidance in the form of minimum standards and procedures as soon as possible utilizing an emergency rule. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the **Missouri** and **United States Constitutions**. After reviewing laws and regulations pertaining to this subject matter in other states and after communicating with numerous stakeholders within Missouri, the Office of the Secretary of State believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed December 21, 2016, becomes effective December 31, 2016, and expires February 23, 2017.*

(1) A notary may use an electronic seal in the performance of a notarial act.

(2) Any notary who wishes to use an electronic signature and seal in the performance of a notarial act must provide written notice to the Commissions Division of the Missouri Secretary of State's Office prior to that notary's first such use.

(3) In using an electronic signature and seal in the performance of a notarial act, the notary public must adhere to all applicable laws of this state that apply to notaries public.

(4) If a notarial act requires an electronic record to be signed, the principal must appear in person before the notary public.

(5) A notary public must keep in the sole control of the notary any system used to produce the notary's electronic signature and seal.

(6) The electronic signature and seal of a notary public shall contain the notary's name exactly as indicated on the notary's commission, and the electronic seal must contain all elements of a notary seal required by law and meet all other statutory requirements of this state regarding notary seals.

(7) A notary's electronic signature must be identical to the signatures on file with the secretary of state.

(8) If an electronic signature or seal is used in the performance of a notarial act, a notary public shall complete an electronic notarial certificate that is attached or logically associated with the notary's electronic signature and seal.

(9) An electronic signature shall be capable of independent verification.

*AUTHORITY: section 486.275, RSMo 2016. Emergency rule filed Dec. 21, 2016, effective Dec. 31, 2016, expires Feb. 23, 2017. A proposed rule covering this same material is published in this issue of the **Missouri Register**.*

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2015—Acupuncturist Advisory Committee
Chapter 1—General Rules

EMERGENCY AMENDMENT

20 CSR 2015-1.030 Fees. The advisory committee is proposing to amend subsection (3)(B).

PURPOSE: The advisory committee is statutorily obligated to enforce and administer the provisions of sections 324.475–324.499, RSMo. Pursuant to section 324.481, RSMo, the Missouri State Board of Chiropractic Examiners, upon recommendation of the Acupuncturist Advisory Committee, shall set fees necessary to administer the provisions of sections 324.475–324.499, RSMo. The advisory committee is proposing to decrease the practitioner renewal fee.

EMERGENCY STATEMENT: The Missouri State Board of Chiropractic Examiners, upon the recommendation of the Acupuncturist Advisory Committee, is statutorily obligated to set all fees, by regulation, necessary to administer the provisions of sections 324.475–324.499, RSMo. Pursuant to section 324.481, RSMo, the advisory committee shall, by regulation, set the amount of fees authorized by sections 324.475–324.499, RSMo, to produce revenue which shall not substantially exceed the cost and expense of administering the provisions of sections 324.475–324.499, RSMo. Therefore, the board, upon recommendation by the advisory committee, is proposing to decrease the biennial renewal fee from one hundred twenty-five dollars ($125) to fifty dollars ($50) for the 2017 renewal period.

The acupuncturist license expires on June 30, 2017. The renewal notices for acupuncturists will be mailed April 1, 2017, and any acupuncturist wishing to reinstate or renew their license beginning April 1, 2017 will be assessed the decreased renewal fee. Without this emergency amendment the decreased fee requirement will not be effective in time for the renewal notice, and the advisory committee will collect more revenue than it is statutorily authorized to collect.

The potential impact of HB 2615, passed by the Kansas legislature and signed into law in 2016, must be considered. The Kansas Acupuncture Practice Act includes a "grandfather clause" waiving formal education defined by rule, as well as the national examination. To be eligible for licensure, according to the Kansas grandfather clause, an application must be submitted prior to July 1, 2018, and the applicant must complete at least one thousand three hundred fifty (1,350) hours of acupuncture study prior to July 1, 2017. Additionally, the applicant must document one thousand five hundred (1,500) patient visits spanning three (3) of the last five (5) years prior to July 1, 2017. Finally, the law includes a provision for a licensed acupuncturist from another state to be eligible for Kansas licensure. As a result of Kansas licensing acupuncturist, Missouri could experience a decrease in the number of licensees but the impact is unknown.

Acupuncturists have been licensed in this state since 2001. Using the original issue date of a license and licensee address, the advisory committee identified practitioners who could potentially meet the years of practice timeline of the Kansas grandfather clause. An overview of the distribution of licensees in and near Kansas is as follows: one hundred thirty-seven (137) current licensees; fifteen (15) current licensees have a Kansas mailing address; nine (9) of these current licensees potentially meet the timeframe parameters of the Kansas grandfather clause. Eighteen (18) current licensees live in the Kansas City area and potentially meet the timeframe parameters of the grandfather clause of the Kansas licensure law.

Various renewal fee reduction scenarios were reviewed, to include a renewal fee of one hundred dollars ($100), seventy-five dollars ($75), and fifty dollars ($50). It is uncertain how many Missouri licensees will maintain licensure in this state and instead opt for the Kansas license. Similarly, it is uncertain if Missouri will annually continue to receive the same number of new applications for licensure. Because of this unknown potential impact upon licensure renewals and applications, the Advisory Committee and State Board of Chiropractic Examiners is requesting an emergency rule with a one- (1-) time decrease to fifty dollars ($50).

*The scope of the emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the **Missouri** and **United States Constitutions**. In developing this emergency amendment, the committee has determined that the fee decrease is necessary for the 2017 renewal period to prevent funds from exceeding the maximum fund balance, thereby resulting in a transfer from the fund to general revenue as set forth in section 324.481.6, RSMo. Pursuant to section 324.001.10, RSMo, a compelling governmental interest is deemed to exist for the purposes of section 536.025, RSMo, for licensure fees to be reduced by emergency rule, if the projected fund balance of any agency assigned to the Division of Professional Registration is reasonably expected to exceed an amount that would require transfer from that fund to general revenue. The committee believes this emergency amendment to be fair to all interested persons and parties under the circumstances. This emergency amendment was filed January 3, 2017, becomes effective January 13, 2017, and expires July 11, 2017.*

(3) The fees are established as follows:

(B) Acupuncturist Biennial Renewal Fee *[$125.00]* **$50**

*AUTHORITY: sections **324.481, 324.487,** 324.490, and 324.493, RSMo [2000, and sections 324.481 and 324.487, RSMo Supp. 2013] **2016**. This rule originally filed as 4 CSR 15-1.030. Original rule filed July 24, 2001, effective Feb. 28, 2002. Amended: Filed March 15, 2004, effective Sept. 30, 2004. For intervening history, please consult the **Code of State Regulations**. Emergency amendment filed Jan. 3, 2017, effective Jan. 13, 2017, expires July 11, 2017.*

The Secretary of State shall publish all executive orders beginning January 1, 2003, pursuant to section 536.035.2, RSMo 2016.

EXECUTIVE ORDER
16-09

TO ALL DEPARTMENTS AND AGENCIES:

This is to advise that state offices located in Cole County will be closed on Monday, January 9, 2017, for the inauguration.

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 23rd day of December, 2016.

Jeremiah W. (Jay) Nixon
Governor

Jason Kander
Secretary of State

EXECUTIVE ORDER
16-10

WHEREAS, Executive Order 12-12 reauthorized the Governor's Committee to End Chronic Homelessness; and

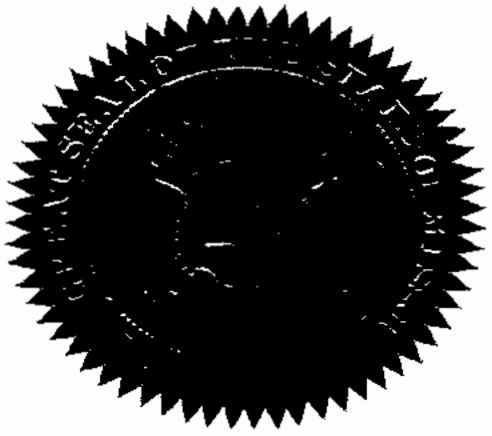
WHEREAS, the Governor's Committee to End Chronic Homelessness works to prevent and end homelessness by promoting public and private coordination and collaboration, developing new strategies to evaluate and reallocate resources, removing barriers to accessing services, evaluating unmet housing needs, providing supportive services and implementing solutions to build economic security; and

WHEREAS, the Governor's Committee to End Chronic Homelessness is set to expire on December 31, 2016; and

WHEREAS, the State of Missouri remains committed to ending homelessness so that individuals and families have access to safe, affordable housing.

NOW, THEREFORE, I, JEREMIAH W. (JAY) NIXON, GOVERNOR OF THE STATE OF MISSOURI, by the authority vested in me by the Constitution and laws of the State of Missouri, do hereby reauthorize the Governor's Committee to End Chronic Homelessness until December 31, 2020.

All other activities, duties, responsibilities and requirements of the Governor's Committee to End Chronic Homelessness shall remain as set out in Executive Order 03-17 unless amended or modified by subsequent Order.



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 30th day of December, 2016.

Jeremiah W. (Jay) Nixon
Governor

ATTEST:

Jason Kander
Secretary of State

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 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 rulemaking 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 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 20—Electric Utilities

PROPOSED RULE

4 CSR 240-20.092 Definitions for Demand-Side Programs and Demand-Side Programs Investment Mechanisms

PURPOSE: This rule incorporates definitions for all terms used in 4 CSR 240-20.093 Demand-Side Programs Investment Mechanisms (DSIM) and 4 CSR 240-20.094 Demand-Side Programs.

(1) As used in 4 CSR 240-20.093 and 4 CSR 240-20.094, the following terms mean:

(A) Annual report means a report of information concerning a utility's demand-side programs having the content described in 4 CSR 240-20.093(8);

(B) Approved demand-side program means a demand-side program or demand-side program pilot which is approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs;

(C) Avoided cost or avoided utility cost means the cost savings obtained by substituting demand-side programs for existing and new supply-side resources. Avoided costs include avoided utility costs resulting from demand-side programs' energy savings and demand savings associated with generation, transmission, and distribution facilities including avoided probable environmental compliance costs. The utility shall use the same methodology used in its most recently-adopted preferred resource plan to calculate its avoided costs;

(D) Baseline demand forecast means a reference forecast of summer or winter peak demand at the customer class level in the absence of any new demand-side programs but including the effects of naturally-occurring energy efficiency and any codes and standards that were in place and known to be enacted at the time the forecast is completed;

(E) Baseline energy forecast means a reference forecast of energy at the customer class level in the absence of any new demand-side programs but including the effects of naturally-occurring energy efficiency and any codes and standards that were in place and known to be enacted at the time the forecast is completed;

(F) Cost recovery amount means the amount approved by the commission in a utility's filing for demand-side program approval or a DSIM rate adjustment case to provide the utility with cost recovery of demand-side program costs based on the approved cost recovery component of a DSIM;

(G) Cost recovery component of a DSIM means the methodology approved by the commission in a utility's filing for demand-side program approval to allow the utility to receive recovery of costs of approved demand-side programs with interest;

(H) Customer class means major customer rate groupings such as residential, small general service, large general service, and large power service;

(I) Deemed savings means the measure-level annual energy savings and/or demand savings documented or calculated in the approved Technical Resource Manual or Technical Reference Manual (TRM), multiplied by the documented measure count. The demand-side program deemed savings is the sum of the deemed savings for all measures installed in a demand-side program. The demand-side portfolio deemed savings is the sum of all demand-side program deemed savings;

(J) Demand means the rate of electric power use over an hour measured in kilowatts (kW);

(K) Demand response means measures that decrease peak demand or shift demand to off-peak periods;

(L) Demand-side portfolio means all of a utility's demand-side programs at a defined point in time;

(M) Demand-side program means any program conducted by the utility to modify the net consumption of electricity on the retail customer's side of the electric meter, including, but not limited to, energy efficiency measures, load management, demand response, interruptible or curtailable load, combined heat and power, and distributed generation;

(N) Demand-side programs investment mechanism, or DSIM, means a mechanism approved by the commission in a utility's filing for demand-side program approval to encourage investments in demand-side programs. The DSIM may include, in combination and without limitation: cost recovery component of a DSIM, throughput disincentive component of a DSIM, and earning opportunity of a DSIM;

(O) Demand savings target means the annual demand savings level approved by the commission at the time of each demand-side portfolio's approval, or adjusted based on an approved mechanism.

Demand savings targets are the baseline for determining the utility's demand-side portfolio's demand savings performance levels for the earnings opportunity component of a DSIM;

(P) DSIM amount means the sum of the cost recovery amount, throughput disincentive amount, and earnings opportunity amount;

(Q) DSIM rate means the rate used to determine the charge on customers' bills for the portion of the DSIM amount assigned by the commission to a rate class;

(R) Earnings opportunity amount means the amount approved by the commission in a utility's filing for demand-side program approval or a rate adjustment case to provide the utility with an earnings opportunity amount based on the approved earnings opportunity component of a DSIM;

(S) Earnings opportunity component of a DSIM means the methodology approved by the commission in a utility's filing for demand-side program approval to allow the utility to receive an earnings opportunity. Any earnings opportunity component of a DSIM shall be implemented on a retrospective basis, and all energy and demand savings used to determine a DSIM earnings opportunity amount shall be verified and documented through EM&V reports;

(T) Economic potential means energy savings and demand savings relative to a utility's baseline energy forecast and baseline demand forecast, respectively, resulting from customer adoption of all cost-effective measures, regardless of customer preferences;

(U) Electric utility or utility means any electric corporation as defined in section 386.020, RSMo;

(V) Energy means the total amount of electric power that is used over a specified interval of time measured in kilowatt-hours (kWh);

(W) Energy efficiency means measures that reduce the amount of electricity required to achieve a given end-use;

(X) Energy savings target means the annual energy savings level approved by the commission at the time of each demand-side portfolio's approval, or adjusted by an approved mechanism. Energy savings targets are the baseline for determining the utility's demand-side portfolio's energy savings performance levels for the earnings opportunity component of a DSIM;

(Y) Evaluation, measurement, and verification, or EM&V, means the performance of studies and activities intended to evaluate the process of the utility's program delivery and oversight and to estimate and/or verify the estimated actual annual energy and demand savings, benefits, cost effectiveness, and other effects from demand-side programs;

(Z) Filing for demand-side programs approval means a utility's filing for approval, modification, or discontinuance of demand-side program(s) which may also include a simultaneous request for the establishment, modification, or discontinuance of a DSIM;

(AA) General rate proceeding means a general rate increase proceeding or complaint proceeding before the commission in which all relevant factors that may affect the costs or rates and charges of the electric utility are considered by the commission;

(BB) Interruptible or curtailable rate means a rate under which a customer receives a reduced charge in exchange for agreeing to allow the utility to withdraw the supply of electricity under certain specified conditions;

(CC) Market potential study means a quantitative analysis of the amount of energy and demand savings that may exist, is cost-effective, and could be realized through the implementation of energy efficiency programs and policies;

(DD) Market transformation means the strategic process of intervening in a market to create lasting change in market behavior by removing identified barriers or exploiting opportunities to accelerate the adoption of all cost-effective energy efficiency as a matter of standard practice;

(EE) Maximum achievable potential means energy savings and demand savings relative to a utility's baseline energy forecast and baseline demand forecast, respectively, resulting from expected program participation and ideal implementation conditions. Maximum achievable potential establishes a maximum target for demand-side savings that a utility can expect to achieve through its demand-side programs and involves incentives that represent a very high portion of total programs costs and very short customer payback periods. Maximum achievable potential is considered the hypothetical upper-boundary of achievable demand-side savings potential, because it presumes conditions that are ideal and not typically observed;

(FF) Measure means any device, technology, behavioral response mechanism, or operating procedure that makes it possible to deliver an adequate level and quality of energy service while—

1. Using less energy than would otherwise be required; or

2. Altering the time pattern of electricity so as to require less generating capacity or to allow the electric power to be supplied by more fuel-efficient units;

(GG) MEEIA means the Missouri Energy Efficiency Investment Act, Section 393.1075, RSMo;

(HH) Net shared benefits means the program benefits measured and documented through EM&V reports or a technical resource manual for demand-side programs, less the sum of the programs' costs including design, administration, delivery, end-use measures, incentive payments to customers, EM&V, utility market potential studies, and technical resource manual;

(II) Non Energy Benefits means—

1. Direct benefits to participants in utility demand side programs, including, but not limited to, increased property values, increased productivity, decreased water and sewer bills, reduced operations and maintenance costs, improved tenant satisfaction, and increases to the comfort, health, and safety of participants and their families;

2. Direct benefits to utilities, including, but not limited to, reduced arrearage carrying costs, reduced customer collection calls/notices, reduced termination/reconnection costs, and reduced bad debt write-offs; or

3. Indirect benefits to society at large, including, but not limited to, job creation, economic development, energy security, public safety, reduced emissions and emission related health care costs, and other environmental benefits;

4. Non Energy Benefits may be included in cost-effectiveness tests unless they cannot be calculated with a reasonable degree of confidence;

(JJ) Non-participant test (sometimes referred to as the ratepayer impact test or RIM test) is a measure of the difference between the change in total revenues paid to a utility and the change in total cost incurred by the utility as a result of the implementation of demand-side programs. The benefits are the avoided cost as a result of implementation. The costs consist of incentives paid to participants, other costs incurred by the utility, and the loss in revenue as a result of diminished consumption. Utility costs include the costs to administer, deliver, and evaluate each demand-side program;

(KK) Participant test means a test of the cost-effectiveness of demand-side programs that measures the economics of a demand-side program from the perspective of the customers participating in the program;

(LL) Preferred resource plan means the utility's resource plan that is contained in the resource acquisition strategy most recently adopted by the utility's decision-makers in accordance with 4 CSR 240-22;

(MM) Probable environmental compliance cost means the likely, expected, or anticipated cost to the utility of complying with new or additional environmental legal mandates, taxes, or other requirements that, in the judgment of the utility's decision-makers, may be reasonably expected to be incurred by the utility and which would result in environmental compliance costs that could have a significant impact on utility rates. In estimating its avoided probable environmental compliance costs, the utility shall consider factors including, but not limited to, reductions in risks, liabilities, and other costs under the Clean Air Act, the Clean Water Act, the Endangered Species Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, Clean

Power Plan, and related federal and state laws and regulation;

(NN) Program pilot means a demand-side program designed to operate on a limited basis for evaluation purposes before full implementation;

(OO) Realistic achievable potential means energy savings and demand savings relative to a utility's baseline energy forecast and baseline demand forecast, respectively, resulting from expected program participation and realistic implementation conditions. Realistic achievable potential establishes a realistic target for demand-side savings that a utility can expect to achieve through its demand-side programs and involves incentives that represent a moderate portion of total program costs and longer customer payback periods when compared to those associated with maximum achievable potential;

(PP) Societal cost test means the total resource cost test with the addition of societal benefits (externalities such as, but not limited to, environmental or economic benefits) to the total benefits of the total resource cost test;

(QQ) Staff means all personnel employed by the commission, whether on a permanent or contract basis, except: commissioners; commissioner support staff, including technical advisory staff; personnel in the secretary's office; and personnel in the general counsel's office, including personnel in the adjudication department. Employees in the staff counsel's office are members of the commission's staff;

(RR) Statewide technical reference manual or statewide TRM means a document developed by the state-wide collaborative and approved by the commission that is used by all electric utilities to quantify energy savings and demand savings attributable to energy efficiency and demand response;

(SS) Technical potential means energy savings and demand savings relative to a utility's baseline energy forecast and baseline demand forecast, respectively, resulting from a theoretical construct that assumes all feasible measures are adopted by customers of the utility regardless of cost or customer preference;

(TT) Technical resource manual, technical reference manual or TRM means a document used to assess energy savings and demand savings attributable to energy efficiency and demand response programs within an electric utility's service territory;

(UU) Throughput disincentive means the electric utility's lost margin revenues that result from decreased retail sales volumes due to its demand-side programs;

(VV) Throughput disincentive amount means the amount approved by the commission in a utility's filing for demand-side program approval or a DSIM rate adjustment case to provide the utility with recovery of throughput disincentive based on the approved throughput disincentive component of a DSIM;

(WW) Throughput disincentive component of a DSIM means the methodology approved by the commission in a utility's filing for a demand-side program approval to allow the utility to receive recovery of throughput disincentive with interest;

(XX) Total resource cost test or TRC means a test that compares the sum of avoided costs to the sum of all incremental costs of end use measures that are implemented due to the program, as defined by the commission in rules. Benefits include the avoided costs, avoided probable environmental compliance costs, other avoided resource benefits (*e.g.,* oil, natural gas, water), and other benefits that accrue to Missourians, including non-energy benefits as defined by the commission. Costs include the sum of all incremental costs of enduse measures that are implemented due to the program (including both utility and participant contributions), plus utility costs to administer, deliver, and evaluate each demandside program. In estimating its avoided probable environmental compliance costs and non-energy benefits, the utility shall consider factors including, but not limited to: reductions in emissions liability under the Clean Air Act; reduction in transmission and distribution costs; reductions in the utility's load factor or peak load; reductions in fuel costs, health and safety improvements, etc; and

(YY) Utility cost test means a test that compares the sum of avoided utility costs to the sum of all utility costs.

AUTHORITY: section 393.1075.11, RSMo 2016. Original rule filed Dec. 27, 2016.

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

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

NOTICE TO SUBMIT COMMENTS AND NOTICE OF PUBLIC HEARING: Anyone may file comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Morris L. Woodruff, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices on or before April 27, 2017, and should include reference to Commission Case No. EX-2016-0334. Comments may also be submitted via a filing using the commission's electronic filing and information system at http://www.psc.mo.gov/efis.asp. A public hearing regarding this proposed rule is scheduled for May 4, 2017, at 10:00 a.m., in Room 310 of the Governor Office Building, 200 Madison St., Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule, and may be asked to respond to commission questions.

SPECIAL NEEDS: Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or TDD Hotline 1-800-829-7541.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 20—Electric Utilities

PROPOSED AMENDMENT

4 CSR 240-20.093 Demand-Side Programs Investment Mechanisms. The department is removing section (1), adding new sections (1) and (15), and amending sections (2)–(9) and (14).

PURPOSE: This amendment modifies the provisions related to applications to establish, continue, or modify demand-side programs, investment mechanisms, and rate design modifications.

[(1) As used in this rule, the following terms mean:

(A) Annual demand savings target means the annual demand savings level approved by the commission at the time of each demand-side program's approval in accordance with 4 CSR 240-20.094(3)(A). Annual demand-side savings targets are the baseline for determining the utility's demand-side programs' annual demand savings performance levels in the methodology for the utility incentive component of a demand-side programs investment mechanism (DSIM);

(B) Annual energy savings target means the annual energy savings level approved by the commission at the time of each demand-side program's approval in accordance with 4 CSR 240-20.094(3)(A). Annual energy savings targets are the baseline for determining the utility's demand-side programs' annual energy savings performance levels in the methodology for the utility incentive component of a DSIM;

(C) Annual net shared benefits means the utility's avoided costs measured and documented through evaluation, measurement, and verification (EM&V) reports for approved

demand-side programs less the sum of the programs' costs including design, administration, delivery, end-use measures, incentives, EM&V, utility market potential studies, and technical resource manual on an annual basis;

(D) Annual report means a report of information concerning a utility's demand-side programs having the content described in 4 CSR 240-3.163(5);

(E) Approved demand-side program means a demand-side program or demand-side program pilot which is approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs;

(F) Avoided cost or avoided utility cost means the cost savings obtained by substituting demand-side programs for existing and new supply-side resources. Avoided costs include avoided utility costs resulting from demand-side programs' energy savings and demand savings associated with generation, transmission, and distribution facilities including avoided probable environmental compliance costs. The utility shall use the same methodology used in its most recently-adopted preferred resource plan to calculate its avoided costs;

(G) Baseline demand forecast means a reference forecast of summer and winter demand at the class level in the absence of any new demand-side programs but including the effects of naturally-occurring energy efficiency and any codes and standards that were in place and known to be enacted at the time the forecast is completed;

(H) Baseline energy forecast means a reference forecast of energy at the class level in the absence of any new demand-side programs but including the effects of naturally-occurring energy efficiency and any codes and standards that were in place and known to be enacted at the time the forecast is completed;

(I) Cost recovery component of a DSIM means the methodology approved by the commission in a utility's filing for demand-side program approval to allow the utility to receive recovery of costs of approved demand-side programs with interest;

(J) Demand means the rate of electric power use over an hour measured in kilowatts (kW);

(K) Demand response means measures that decrease peak demand or shift demand to off-peak periods;

(L) Demand-side program means any program conducted by the utility to modify the net consumption of electricity on the retail customer's side of the meter including, but not limited to, energy efficiency measures, load management, demand response, and interruptible or curtailable load;

(M) Demand-side programs investment mechanism, or DSIM, means a mechanism approved by the commission in a utility's filing for demand-side program approval to encourage investments in demand-side programs. The DSIM may include, in combination and without limitation:

1. Cost recovery of demand-side program costs through capitalization of investments in demand-side programs;

2. Cost recovery of demand-side program costs through a demand-side program cost tracker;

3. Accelerated depreciation on demand-side investments;

4. Recovery of lost revenues; and

5. Utility incentive based on the achieved performance level of approved demand-side programs;

(N) DSIM cost recovery revenue requirement means the revenue requirement approved by the commission in a utility's filing for demand-side program approval or a semi-annual DSIM rate adjustment case to provide the utility with cost recovery of demand-side program costs based on the approved cost recovery component of a DSIM;

(O) DSIM rate means the charge on customers' bills for the portion of the DSIM revenue requirement assigned by the commission to a rate class;

(P) DSIM revenue requirement means the sum of the DSIM cost recovery revenue requirement, DSIM utility lost revenue requirement, and DSIM utility incentive revenue requirement;

(Q) DSIM utility incentive revenue requirement means the revenue requirement approved by the commission to provide the utility with a portion of annual net shared benefits based on the approved utility incentive component of a DSIM;

(R) DSIM utility lost revenue requirement means the revenue requirement explicitly approved (if any) by the commission to provide the utility with recovery of lost revenue based on the approved utility lost revenue component of a DSIM;

(S) Electric utility or utility means any electric corporation as defined in section 386.020, RSMo;

(T) Energy means the total amount of electric power that is used over a specified interval of time measured in kilowatt-hours (kWh);

(U) Energy efficiency means measures that reduce the amount of electricity required to achieve a given end-use;

(V) Evaluation, measurement, and verification, or EM&V, means the performance of studies and activities intended to evaluate the process of the utility's program delivery and oversight and to estimate and/or verify the estimated actual energy and demand savings, utility lost revenue, cost effectiveness, and other effects from demand-side programs;

(W) Filing for demand-side program approval means a utility's filing for approval, modification, or discontinuance of demand-side program(s) which may also include a simultaneous request for the establishment, modification, or discontinuance of a DSIM;

(X) General rate proceeding means a general rate increase proceeding or complaint proceeding before the commission in which all relevant factors that may affect the costs or rates and charges of the electric utility are considered by the commission;

(Y) Lost revenue means the net reduction in utility retail revenue, taking into account all changes in costs and all changes in any revenues relevant to the Missouri jurisdictional revenue requirement, that occurs when utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 cause a drop in net system retail kWh delivered to jurisdictional customers below the level used to set the electricity rates. Lost revenues are only those net revenues lost due to energy and demand savings from utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs and measured and verified through EM&V;

(Z) Probable environmental compliance cost means the expected cost to the utility of complying with new or additional environmental legal mandates, taxes, or other requirements that, in the judgment of the utility's decision-makers, may be imposed at some point within the planning horizon which would result in environmental compliance costs that could have a significant impact on utility rates;

(AA) Program pilot means a demand-side program designed to operate on a limited basis for evaluation purposes before full implementation;

(BB) Staff means all personnel employed by the commission, whether on a permanent or contract basis, except: commissioners; commissioner support staff, including technical advisory staff; personnel in the secretary's office; and personnel in the general counsel's office, including personnel in the adjudication department. Employees in the staff counsel's office are members of the commission's staff;

(CC) Statewide technical resource manual means a document that is used by electric utilities to assess energy savings and demand savings attributable to energy efficiency

and demand response;

(DD) Total resource cost test, or TRC, means the test of the cost-effectiveness of demand-side programs that compares the avoided utility costs to the sum of all incremental costs of end-use measures that are implemented due to the program (including both utility and participant contributions), plus utility costs to administer, deliver, and evaluate each demand-side program;

(EE) Utility incentive component of a DSIM means the methodology approved by the commission in a utility's filing for demand-side program approval to allow the utility to receive a portion of annual net shared benefits achieved and documented through EM&V reports;

(FF) Utility lost revenue component of a DSIM means the methodology approved by the commission in a utility's filing for demand-side program approval to allow the utility to receive recovery of lost revenue; and

(GG) Utility market potential study means an evaluation and report by an independent third party of the energy savings and demand savings available in a utility's service territory broken down by customer class and major end-uses within each customer class.]

(1) The definitions of terms used in this section can be found in 4 CSR 240-20.092 Definitions for Demand-Side Programs and Demand-Side Program Investment Mechanisms.

(2) Applications to establish, continue, or modify a **Demand-Side Program Investment Mechanism (**DSIM**)**. Pursuant to the provisions of this rule, 4 CSR 240-2.060, and section 393.1075, RSMo, an electric utility shall file an application with the commission to establish, continue, or modify a DSIM in a utility's filing for demand-side program approval.

(A) *[The electric utility shall meet the filing requirements in 4 CSR 240-3.163(2) in conjunction with an application to establish a DSIM and 4 CSR 240-3.163(3) in conjunction with an application to continue or modify a DSIM.]* **An application to establish a DSIM shall include the following supporting information as part of, or in addition to, its direct testimony. Supporting workpapers shall be submitted as executable versions in native format with all formulas intact.**

1. The notice provided to customers describing how the proposed DSIM will work, how any proposed DSIM rate will be determined, and how any DSIM rate will appear on customers' bills;

2. An example customer bill showing how the proposed DSIM shall be separately identified on affected customers' bills;

3. A complete description and explanation of the design, rationale, and intended operation of the proposed DSIM;

4. Estimates of the effect of the DSIM and all other impacts of the demand-side program spending, in aggregate, on customer rates and average bills for each of the next five (5) years, and as a net present value over the lifetime of the demand-side program impacts, for each rate class;

5. Estimates of the effect of the earnings opportunity component of DSIM on earnings and key credit metrics for each of the next three (3) years including the level of earnings and key credit metrics expected to occur for each of the next three (3) years with and without the earnings opportunity component of DSIM;

6. A complete explanation of all the costs that shall be considered for recovery under the proposed DSIM and the specific account used for each cost item on the electric utility's books and records;

7. A complete explanation of any change in business risk to the electric utility resulting from implementation of an earnings opportunity component of a DSIM in setting the electric utility's allowed return on equity, in addition to any other changes in business risk experienced by the electric utility;

8. A proposal for how the commission can determine if any earning opportunity component of a DSIM is aligned with helping customers use energy more efficiently;

9. If the utility proposes to adjust its DSIM rates between general rate proceedings, proposed DSIM rate adjustment clause tariff sheets;

10. If the utility proposes to adjust the DSIM amount between general rate proceedings, a complete explanation of how the DSIM rates shall be established and how they will be adjusted for any over- and/or under-recovery amounts, as well as the impact on the DSIM amount as a result of approved new, modified, or discontinued demand-side programs.

(B) If an electric utility files to modify its approved DSIM, the electric utility shall file with the commission and serve upon parties, as provided in section (14) below, the following supporting information as part of, or in addition to, direct testimony. Supporting workpapers shall be submitted with all models and spreadsheets provided as executable versions in native format with all formulas intact;

1. Information as required by subsection (2)(A), above;

2. Explanation of any proposed modification to the DSIM and why the proposed modification is being requested;

3. A complete explanation of any change in business risk to the electric utility resulting from modification of an earnings opportunity component of a DSIM in setting the electric utility's allowed return on equity, in addition to any other changes in business risk experienced by the electric utility; and

4. Any additional information the commission orders to be provided.

*[(B)]***(C)** Any party to the application for a utility's filing for demand-side program approval may support or oppose the establishment, continuation, or modification of a DSIM and/or may propose an alternative DSIM for the commission's consideration including, but not limited to, modifications to any electric utility's proposed DSIM. Both the utility and the commission retain the authority to approve, accept, or reject any proposed establishment, continuation, or modification of a DSIM or any proposed alternative DSIM.

*[(C)]***(D)** The commission shall approve the establishment, continuation, or modification of a DSIM and associated tariff sheets if it finds the electric utility's approved demand-side programs are expected to result in energy and demand savings and are beneficial to all customers in the customer class in which the programs are proposed, regardless of whether the programs are utilized by all customers and will assist the commission's efforts to implement state policy contained in section 393.1075, RSMo, to—

1. Provide the electric utility with timely recovery of all reasonable and prudent costs of delivering cost-effective demand-side programs;

2. Ensure that utility financial incentives are aligned with helping customers use energy more efficiently and in a manner that sustains or enhances utility customers' incentives to use energy more efficiently; and

3. Provide timely earnings opportunities associated with cost-effective measurable and/or verifiable energy and demand savings;

*[(D)]***(E)** In addition to any other changes in business risk experienced by the electric utility, the commission shall consider changes in the utility's business risk resulting from establishment, continuation, or modification of the DSIM in setting the electric utility's allowed return on equity in general rate proceedings.

*[(E)]***(F)** In determining to approve, modify, or continue a DSIM, the commission may consider, but is not limited to only considering, the expected magnitude of the impact of the utility's approved demand-side programs on the utility's costs, revenues, and earnings, the ability of the utility to manage all aspects of the approved demand-side programs, the ability to measure and verify the approved **demand-side** programs'*[s]* impacts, any interaction among the various components of the DSIM that the utility may propose,

and the incentives or disincentives provided to the utility as a result of the inclusion or exclusion of *[cost recovery component, utility lost revenue component, and/or utility incentive component in the]* DSIM **components as defined in 4 CSR 240-20.092(N)**. In this context the word "disincentives" means any barrier to the implementation of a DSIM. There is no penalty authorized in this section.

*[(F)]***(G)** Any cost recovery component of a DSIM shall be based on costs of demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs. Indirect costs associated with demand-side programs, including but not limited to**,** costs of utility market potential study**, evaluation, measurement, and verification (EM&V),** and/or utility's portion of statewide technical *[resource]* **reference** manual, shall be allocated to demand-side programs and thus shall be eligible for recovery through an approved DSIM. The commission shall approve any cost recovery component of a DSIM simultaneously with the programs approved in accordance with 4 CSR 240-20.094 Demand-Side Programs.

[(G) Any utility lost revenue component of DSIM shall be based on energy or demand savings from utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs and measured and verified through EM&V.

1. A utility cannot recover revenues lost due to utility demand-side programs unless it does not recover the fixed cost as set in the last general rate case, i.e., actual annual billed system kWh is less than the system kWh used to calculate rates to recover revenues as ordered by the commission in the utility's last general rate case.

2. The commission shall order any utility lost revenue component of a DSIM simultaneously with the programs approved in accordance with 4 CSR 240-20.094 Demand-Side Programs.

3. In a utility's filing for demand-side program approval in which a utility lost revenue component of a DSIM is considered, there is no requirement for any implicit or explicit utility lost revenue component of a DSIM or for a particular form of a lost revenue component of a DSIM.

4. The commission may address lost revenues solely or in part, directly or indirectly, with a performance incentive mechanism through a utility incentive component of DSIM.

5. Any explicit utility lost revenue component of a DSIM shall be implemented on a retrospective basis and all energy and demand savings to determine a DSIM utility lost revenue requirement must be measured and verified through EM&V prior to recovery.]

(H) Any throughput disincentive component of DSIM shall be based on energy or demand savings from utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs and will be determined as a result of energy savings determined through EM&V.

1. The commission shall order any throughput disincentive component of a DSIM simultaneously with the demand-side programs approved in accordance with 4 CSR 240-20.094 Demand-Side Portfolio.

2. In a utility's filing in which a throughput disincentive component of a DSIM is considered, there is no requirement for any implicit or explicit utility throughput disincentive component of a DSIM or for a particular form of a throughput disincentive component of a DSIM.

3. Any explicit throughput disincentive component of a DSIM shall be implemented on a prospective basis.

*[(H)]***(I)** Any *[utility incentive]* **earnings opportunity** component of a DSIM shall be based on the performance of demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs and shall include a methodology for determining the utility's *[portion of annual net shared benefits achieved and documented through EM&V reports for approved demand-side programs. Each utility incentive component of a DSIM shall define the relationship between the utility's portion of annual net shared benefits achieved and documented through EM&V reports, annual energy savings achieved and documented through EM&V reports as a percentage of annual energy savings targets, and demand savings achieved and documented through EM&V reports as a percentage of annual demand savings targets.]* **earnings opportunity amount for individual demand-side programs based upon program performance relative to commission-approved performance metrics for each demand-side program.**

1. *[Annual]* Energy and demand savings targets approved by the commission for use in the *[utility incentive]* **earnings opportunity** component of a DSIM are not necessarily the same as the incremental *[annual]* energy and demand savings goals and cumulative *[annual]* energy and demand savings goals specified in *[4 CSR 240-20.094]* **section** (2).

2. The commission shall order any *[utility incentive]* **earnings opportunity** component of a DSIM simultaneously with the **demand-side** programs approved in accordance with 4 CSR 240-20.094 Demand-Side Programs.

3. Any *[utility incentive]* **earnings opportunity** component of a DSIM shall be implemented on a retrospective basis and all energy and demand savings used to determine a DSIM *[utility incentive revenue requirement]* **earnings opportunity amount** must be measured and verified through EM&V.

*[(I)]***(J)** If the DSIM proposed by the utility includes adjustments to DSIM rates between general rate proceedings, the DSIM shall include a provision to adjust the DSIM rates *[every six (6) months]* **not less than annually** to include a true-up for over- and under-*[collection]***recovery** of the DSIM *[revenue requirement]* **amount** as well as the impact on the DSIM cost recovery *[revenue requirement]* **amount** as a result of approved new, modified, or deleted demand-side programs.

*[(J)]***(K)** If the commission approves *[utility incentive]* **an earnings opportunity** component of a DSIM, such *[utility incentive]* **earnings opportunity** component shall be binding on the commission for the entire term of the DSIM, and such DSIM shall be binding on the electric utility for the entire term of the DSIM, unless otherwise ordered or conditioned by the commission when approved.

*[(K)]***(L)** The commission shall apportion the DSIM *[revenue requirement]* **amount** to each customer class.

(3) Application for Discontinuation of a DSIM. The commission shall allow or require a DSIM to be discontinued or any component of a DSIM to be discontinued only after providing the opportunity for a hearing.

(A) **When submitting an application to discontinue a DSIM,** *[T]***t**he electric utility shall *[meet the filing requirements in 4 CSR 240-3.163(4).]* **file with the commission and serve on parties as provided in section (14), the following supporting information as part of, or in addition to, direct testimony. Supporting workpapers shall be submitted with all models and spreadsheets provided as executable versions in native format with all formulas intact:**

1. An example of the notice to be provided to customers;

2. If the utility's DSIM allows adjustments of the DSIM rates between general rate proceedings, a complete explanation of how the over-/under-recovery of the DSIM amount that the electric utility is proposing to discontinue shall be handled;

3. A complete explanation of why the DSIM is no longer necessary to provide the electric utility a sufficient opportunity to recover demand-side programs costs, throughput disincentive, and/or to receive an earnings opportunity;

4. A complete explanation of any change in business risk to the electric utility resulting from discontinuation of an earnings opportunity related to the DSIM in setting the electric utility's

allowed return on equity, in addition to any other changes in business risk experienced by the electric utility; and

5. Any additional information the commission orders to be provided.

(4) Requirements for *[Semi-Annual]* Adjustments of DSIM Rates*[, if the Commission Approves Adjustments of DSIM Rates]* Between General Rate Proceedings. *[Semi-Annual a]***A**djustments to DSIM rates between general rate proceedings shall *[only]* **occur not less than annually, and may** include adjustments to the DSIM cost recovery *[revenue requirement and shall not include any adjustment to the DSIM utility lost revenue requirement]* **amount, the DSIM throughput disincentive amount, and**/or the DSIM *[utility incentive revenue requirement]* **earnings opportunity amount**. *[Adjustments to the DSIM cost recovery revenue requirement may reflect new and approved demand-side programs, approved program modifications, and/or approved program discontinuations.]*

(A) The electric utility shall file tariff sheets to adjust its DSIM rates accompanied by supporting testimony and contain at least the following supporting information. All models and spreadsheets shall be provided as executable versions in native format with all formulas intact.

1. Amount of revenue that it has over-/under-recovered through the most recent recovery period by rate class.

2. Proposed adjustments or refunds by rate class.

3. Electric utility's short-term borrowing rate.

4. Proposed adjustments to the current DSIM rates.

5. Complete documentation for the proposed adjustments to the current DSIM rates.

6. Any additional information the commission ordered to be provided.

(B) *[When an electric utility files tariff sheets to adjust its DSIM rates between general rate proceedings, t]***T**he staff shall examine and analyze the information filed by the electric utility *[in accordance with 4 CSR 240-3.163(8)]* and additional information obtained through discovery, if any, to determine if the proposed adjustments to the DSIM *[cost recovery revenue requirement]* **amount** and DSIM rates are in accordance with the provisions of this rule, section 393.1075, RSMo, and the DSIM established, modified, or continued in the most recent filing for demand-side program approval. The staff shall submit a recommendation regarding its examination and analysis to the commission not later than thirty (30) days after the electric utility files its tariff sheets to adjust its DSIM rates. If the adjustments to the *[DSIM cost recovery revenue requirement and]* DSIM rates are in accordance with the provisions of this rule, section 393.1075, RSMo, and the DSIM established, modified, or continued in the most recent filing for demand-side program approval, the commission shall issue an interim rate adjustment order approving the tariff sheets and the adjustments to the DSIM rates shall take effect sixty (60) days after the tariff sheets were filed. If the adjustments to the *[DSIM cost recovery revenue requirement and]* DSIM rates are not in accordance with the provisions of this rule, section 393.1075, RSMo, or the DSIM established, modified, or continued in the most recent filing for demand-side program approval, the commission shall reject the proposed tariff sheets within sixty (60) days of the electric utility's filing and may instead order the filing of interim tariff sheets that implement its decision and approval.

*[(A)]***(C)** An electric utility with a DSIM shall file to adjust its DSIM rates *[once every six (6) months]* **no less often than annually**.

*[(B)]***(D)** *[The semi-annual a]***A**djustments to the DSIM rates shall reflect a comprehensive measurement of both increases and decreases to the DSIM *[cost recovery revenue requirement]* **amount** established in the most recent demand-side program approval or *[semi-annual]* DSIM rate adjustment case plus the change in DSIM *[cost recovery revenue requirement]* **amount** which occurred since the most recent demand-side program approval or *[semi-annual]* DSIM rate adjustment case. **All DSIM rate adjustments shall include a true-up of past DSIM collections based on the latest EM&V results where applicable. Any over-/under-recovered amounts will be accounted for in the going forward DSIM rates.**

*[(C)]***(E)** The electric utility shall be current on its submission of its Surveillance Monitoring Reports as required in section (9) and its annual reports as required in section (8) in order to increase the DSIM rates.

*[(D)]***(F)** If the staff, public counsel, or other party receives information which has not been submitted in compliance with *[4 CSR 240-3.163(8)]* **subsection (4)(A)**, it shall notify the electric utility within ten (10) days of the electric utility's filing of an application or tariff sheets to adjust DSIM rates and identify the information required. The electric utility shall submit the information identified by the party, or shall notify the party that it believes the information submitted was in compliance with the requirements of *[4 CSR 240-3.163(8)]* **subsection (4)(A)**, within ten (10) days of the request. A party who notifies the electric utility it believes the electric utility has not submitted all the information required by *[4 CSR 240-3.163(8)]* **subsection (4)(A)** and as ordered by the commission in a previous proceeding and receives notice from the electric utility that the electric utility believes it has submitted all required information may file a motion with the commission for an order directing the electric utility to produce that information, i.e., a motion to compel. While the commission is considering the motion to compel, the processing timeline for the adjustment to increase DSIM rates shall be suspended. If the commission then issues an order requiring the information be submitted, the time necessary for the information to be submitted shall further extend the processing timeline for the adjustment to increase DSIM rates. For good cause shown, the commission may further suspend this timeline. Any delay in submitting sufficient information in compliance with *[4 CSR 240-3.163(8)]* **subsection (4)(A)** or a commission order in a previous proceeding in a request to decrease DSIM rates shall not alter the processing timeline.

(5) Implementation of DSIM. Once a DSIM is approved, modified, or discontinued by the commission, the utility may request deferral accounting using the utility's latest approved weighted average cost of capital until the utility's next general rate proceeding. At the time of filing the general rate proceeding subsequent to DSIM approval, modification, or discontinuance, the commission shall use an interim rate adjustment order to implement the approved, modified, or discontinued DSIM.

(A) Duration of DSIM. Once a DSIM is approved by the commission, it shall remain in effect *[for a term of not more than four (4) years unless the commission earlier authorizes]* **to allow full recovery of all DSIM amounts or for the term otherwise ordered by the commission. The commission may authorize** the modification or discontinuance of the DSIM *[although an]*, **or change the duration previously approved. The** electric utility shall submit proposed tariff sheets to implement interim *[semi-annual]* adjustments to its DSIM rates between general rate proceedings. **During the term of an approved DSIM, any party to the application for a utility's filing for demand-side program approval may propose modifications to the DSIM. The utility may apply to modify the DSIM per section (2).**

[(B) If the utility has an implemented DSIM, the electric utility shall file a general rate proceeding within four (4) years after the effective date of the commission order implementing the DSIM, assuming the maximum statutory suspension of the rates so filed.]

(6) Disclosure *[on Customer's Bills]*. Regardless of whether or not the utility requests adjustments of its DSIM rates between general rate proceedings, any amounts charged under a DSIM approved by the commission, including any *[utility incentives]* **earnings opportunity** allowed by the commission, shall be separately disclosed on each customer's bill. Proposed language regarding this disclosure

shall be submitted to and approved by the commission before it appears on customers' bills. **The disclosure shall also appear on the utility's websites.**

(7) Evaluation, Measurement, and Verification (EM&V) of the Process and Impact of Demand-Side Programs. Each electric utility shall hire an independent contractor to perform and report EM&V of each commission-approved demand-side program in accordance with 4 CSR 240-20.094 Demand-Side Programs. The commission shall hire an independent contractor to audit and report on the work of each utility's independent EM&V contractor. **The commission staff shall provide oversight and guidance to the independent commission contractor, but shall not influence the independent contractor's audit(s). Staff counsel shall provide legal representation to the independent contractor in the event the independent contractor is required to testify before the commission.**

(D) EM&V final reports from the utility's contractor of each approved demand-side program shall—

1. Document, include analysis, and present any applicable recommendations for at least the following. All models and spreadsheets shall be provided as executable versions in native format with all formulas intact:

A. Process evaluation and recommendations, if any; and

B. Impact evaluation—

(I) The lifetime and annual gross and net demand savings and energy savings achieved under each demand-side program, and the techniques used to estimate annual demand savings and energy savings;

(II) For demand-side programs subject to cost-effectiveness tests, include total resource cost test, societal cost test, utility cost test, participant cost test, and nonparticipant cost test of each demand-side program; and

(III) Determine the benefits achieved for each demand-side program and portfolio using the Utility Cost Test (UCT) methodology;

*[1.]***2.** Be completed by the EM&V contractor on a schedule approved by the commission at the time of demand-side program approval in accordance with 4 CSR 240-20.094(3); and

*[2.]***3.** Be filed with the commission **in the case in which the utility's demand-side program approval was received** and delivered simultaneously to the utility and the parties of the case in which the demand-side program was approved.

(E) Electric utility's EM&V contractors shall *[use, if available, a commission-approved statewide technical resource manual when performing EM&V work.]*—

1. Include specific methodology for performing EM&V work; and

2. All applications to establish, continue or modify a DSIM filed after a statewide technical reference manual is approved by the commission shall require EM&V contractors to use the most current statewide technical reference manual. Applications approved before the statewide technical reference manual is approved shall utilize the methodology approved with the application.

(8) Demand-Side Program Annual Report. Each electric utility with one (1) or more approved demand-side programs shall file an annual report by no later than *[sixty (60)]* **ninety (90)** days after the end of each *[calendar]* **program** year**,** *[in the form and having the content provided for by 4 CSR 240-3.163(5)]* and serve a copy on each party to the case in which the **demand-side** programs were last established, modified, or continued. Interested parties may file comments with the commission concerning the content of the utility's annual report within *[sixty (60)]* **ninety (90)** days of its filing. **Annual reports shall include at a minimum the following information, and all models and spreadsheets shall be provided as executable versions in native format with all formulas intact:**

(A) An affidavit attesting to the veracity of the information; and

(B) A list of all approved demand-side programs and the following information for each approved demand-side program:

1. Actual amounts expended by year, including customer incentive payments;

2. Peak demand and energy savings impacts and the techniques used to estimate those impacts;

3. A comparison of the estimated actual annual peak demand and energy savings impacts to the level of annual peak demand and energy savings impacts that were projected when the demand-side program was approved;

4. For market transformation demand-side programs, a quantitative and qualitative assessment of the progress being made in transforming the market;

5. A comparison of actual and budgeted demand-side program costs, including an explanation of any increase or decrease of more than twenty percent (20%) in the cost of a demand-side program;

6. The avoided costs and the techniques used to estimate those costs;

7. The estimated cost-effectiveness of the demand-side program and a comparison to the estimates made by the utility at the time the demand-side program was approved;

8. The estimated net economic benefits and net shared benefits of the demand-side portfolio;

9. For each demand-side program where one (1) or more customers have opted out of demand-side programs pursuant to section 393.1075.7, RSMo, a listing of the customer(s) who have opted out of participating in demand-side programs;

10. As part of its annual report, the electric utility shall file or provide a reference to the commission case that contains a copy of the EM&V report for the most recent annual reporting period; and

11. Demonstration of relationship of the demand-side program to demand-side resources in latest filed 4 CSR 240-22 compliance filing.

(9) Submission of Surveillance Monitoring Reports. Each electric utility with an approved DSIM shall submit to staff, public counsel, and parties approved by the commission a Surveillance Monitoring Report *[in the form and having the content provided for by 4 CSR 240-3.163(6)]*. **Each electric utility with a DSIM shall submit as page 6 of the Surveillance Monitoring Report a quarterly progress report in a format determined by the staff, and all models and spreadsheets shall be provided as executable versions in native format with all formulas intact. The report shall be submitted to the staff, public counsel, and parties approved by the commission**.

(C) Upon a finding that a utility has knowingly or recklessly provided materially false or inaccurate information to the commission regarding the surveillance data prescribed in *[4 CSR 240-3.163(6)]* **section (9)**, after notice and an opportunity for a hearing, the commission may suspend a DSIM or order other appropriate remedies as provided by law.

(14) *[Rule Review. The commission shall complete a review of the effectiveness of this rule no later than four (4) years after the effective date, and may, if it deems necessary, initiate rulemaking proceedings to revise this rule.]* **Party status and providing to other parties affidavits, testimony, information, reports, and workpapers in related proceedings subsequent to the utility's filing for demand-side program approval, modification, or continuation of a DSIM.**

(A) A person or entity granted intervention in a utility's filing for demand-side program approval in which a DSIM is approved by the commission shall have the right to be a party to any subsequent related periodic rate adjustment proceeding without the necessity of applying to the commission for intervention; however, such person or entity shall file a notice of intention to participate

within the intervention period. In any subsequent utility's filing for demand-side program approval, such person or entity must seek and be granted status as an intervenor to be a party to that proceeding. Affidavits, testimony, information, reports, and workpapers to be filed or submitted in connection with a subsequent related semi-annual DSIM rate adjustment proceeding or utility's filing for demand-side program approval to modify, continue, or discontinue the same DSIM shall be served on or submitted to all parties from the prior related demand-side program approval proceeding and on all parties from any subsequent related periodic rate adjustment proceeding or utility's filing for demand-side program approval to modify, continue, or discontinue the same DSIM, concurrently with filing the same with the commission or submitting the same to the manager of the energy resource analysis section of the staff and public counsel.

(B) A person or entity not a party to the utility's filing for demand-side program approval in which a DSIM is approved by the commission may timely apply to the commission for intervention, pursuant to 4 CSR 240-2.075(2) through (4) of the commission's rule on intervention, respecting any related subsequent periodic rate adjustment proceeding or, pursuant to 4 CSR 240-2.075(1) through (5), respecting any subsequent utility's filing for demand-side program approval to modify, continue, or discontinue the same DSIM.

(15) Missouri Energy Efficiency Investment Act (MEEIA) Rate Design Modifications.

(A) An electric utility may request modification of its rate design for demand-side cost recovery by filing tariff schedule(s) with the commission as part of —

1. An application for approval of demand-side programs or a demand-side program plan and a DSIM; or

2. A general rate case proceeding.

(B) Any request for modification of a rate design shall include with the filing supporting documentation for the request, including but not limited to, workpapers, data, computer model documentation, analysis, and other supporting information to support and explain the modification of the rate design. All information shall be labeled and all spreadsheets shall have all formulas intact.

(C) Right to Discovery Unaffected. In addressing certain discovery matters and the provision of certain information by electric utilities, this rule is not intended to restrict the discovery rights of any party.

*AUTHORITY: section 393.1075.11, RSMo [Supp. 2010] **2016**. Original rule filed Oct. 4, 2010, effective May 30, 2011. Amended: Filed Dec. 27, 2016.*

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 AND NOTICE OF PUBLIC HEARING: Anyone may file comments in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Morris L. Woodruff, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices on or before April 27, 2017, and should include reference to Commission Case No. EX-2016-0334. Comments may also be submitted via a filing using the commission's electronic filing and information system at http://www.psc.mo.gov/efis.asp. A public hearing regarding this proposed amendment is scheduled for May 4, 2017, at 10:00 a.m., in Room 310 of the Governor Office Building, 200 Madison St., Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed amendment, and may be asked to respond to commission questions.

SPECIAL NEEDS: Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or TDD Hotline 1-800-829-7541.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 20—Electric Utilities

PROPOSED AMENDMENT

4 CSR 240-20.094 Demand-Side Programs. The department is deleting sections (1) and (10), adding new sections (1), (3), and (10), amending sections (2)–(9), and renumbering as is necessary.

PURPOSE: This amendment modifies the terms and conditions related to demand-side programs, potential studies, and customer opt-outs.

[(1) As used in this rule, the following terms mean:

(A) Annual demand savings target means the annual demand savings level approved by the commission at the time of each demand-side program's approval in accordance with 4 CSR 240-20.094(3)(A). Annual demand-side savings targets are the baseline for determining the utility's demand-side programs' annual demand savings performance levels in the methodology for the utility incentive component of a demand-side programs investment mechanism (DSIM);

(B) Annual energy savings target means the annual energy savings level approved by the commission at the time of each demand-side program's approval in accordance with 4 CSR 240-20.094(3)(A). Annual energy savings targets are the baseline for determining the utility's demand-side programs' annual energy savings performance levels in the methodology for the utility incentive component of a DSIM;

(C) Annual net shared benefits means the utility's avoided costs measured and documented through evaluation, measurement, and verification (EM&V) reports for approved demand-side programs less the sum of the programs' costs including design, administration, delivery, end-use measures, incentives, EM&V, utility market potential studies, and technical resource manual on an annual basis;

(D) Avoided cost or avoided utility cost means the cost savings obtained by substituting demand-side programs for existing and new supply-side resources. Avoided costs include avoided utility costs resulting from demand-side programs' energy savings and demand savings associated with generation, transmission, and distribution facilities including avoided probable environmental compliance costs. The utility shall use the same methodology used in its most recently-adopted preferred resource plan to calculate its avoided costs;

(E) Baseline demand forecast means a reference forecast of annual summer and winter peak demand at the class level in the absence of any new demand-side programs but including the effects of naturally-occurring energy efficiency and any codes and standards that were in place and known to be enacted at the time the forecast is completed;

(F) Baseline energy forecast means a reference forecast of annual energy at the class level in the absence of any new

demand-side programs but including the effects of naturally-occurring energy efficiency and any codes and standards that were in place and known to be enacted at the time the forecast is completed;

(G) Customer class means major customer rate groupings such as residential, small general service, large general service, and large power service;

(H) Demand means the rate of electric power use over an hour measured in kilowatts (kW);

(I) Demand-side program means any program conducted by the utility to modify the net consumption of electricity on the retail customer's side of the meter including, but not limited to, energy efficiency measures, load management, demand response, and interruptible or curtailable load;

(J) Demand-side programs investment mechanism, or DSIM, means a mechanism approved by the commission in a utility's filing for demand-side program approval to encourage investments in demand-side programs. The DSIM may include, in combination and without limitation:

1. Cost recovery of demand-side program costs through capitalization of investments in demand-side programs;

2. Cost recovery of demand-side program costs through a demand-side program cost tracker;

3. Accelerated depreciation on demand-side investments;

4. Recovery of lost revenues; and

5. Utility incentive based on the achieved performance level of approved demand-side programs;

(K) Demand-side program plan means a particular combination of demand-side programs to be delivered according to a specified implementation schedule and budget;

(L) DSIM cost recovery revenue requirement means the revenue requirement approved by the commission in a utility's filing for demand-side program approval or a semi-annual DSIM rate adjustment case to provide the utility with cost recovery of demand-side program costs based on the approved cost recovery component of a DSIM;

(M) DSIM utility incentive revenue requirement means the revenue requirement approved by the commission to provide the utility with a portion of annual net shared benefits based on the approved utility incentive component of a DSIM;

(N) DSIM utility lost revenue requirement means the revenue requirement explicitly approved (if any) by the commission to provide the utility with recovery of lost revenue based on the approved utility lost revenue component of a DSIM;

(O) Electric utility or utility means any electric corporation as defined in section 386.020, RSMo;

(P) Energy means the total amount of electric power that is used over a specified interval of time measured in kilowatt-hours (kWh);

(Q) Energy efficiency means measures that reduce the amount of electricity required to achieve a given end-use;

(R) Evaluation, measurement, and verification, or EM&V, means the performance of studies and activities intended to evaluate the process of the utility's program delivery and oversight and to estimate and/or verify the estimated actual energy and demand savings, utility lost revenue, cost effectiveness, and other effects from demand-side programs;

(S) Filing for demand-side program approval means a utility's filing for approval, modification, or discontinuance of demand-side program(s) which may also include a simultaneous request for the establishment, modification, or discontinuance of a DSIM;

(T) Interruptible or curtailable rate means a rate under which a customer receives a reduced charge in exchange for agreeing to allow the utility to withdraw the supply of electricity under certain specified conditions;

(U) Lost revenue means the net reduction in utility retail revenue, taking into account all changes in costs and all changes in any revenues relevant to the Missouri jurisdictional revenue requirement, that occurs when utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 cause a drop in net system retail kWh delivered to jurisdictional customers below the level used to set the electricity rates. Lost revenues are only those net revenues lost due to energy and demand savings from utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs and measured and verified through EM&V;

(V) Preferred resource plan means the utility's resource plan that is contained in the resource acquisition strategy most recently adopted by the utility's decision-makers in accordance with 4 CSR 240-22;

(W) Probable environmental compliance cost means the expected cost to the utility of complying with new or additional environmental legal mandates, taxes, or other requirements that, in the judgment of the utility's decision-makers, may be imposed at some point within the planning horizon which would result in environmental compliance costs that could have a significant impact on utility rates;

(X) Staff means all personnel employed by the commission, whether on a permanent or contract basis, except: commissioners; commissioner support staff, including technical advisory staff; personnel in the secretary's office; and personnel in the general counsel's office, including personnel in the adjudication department. Employees in the staff counsel's office are members of the commission's staff;

(Y) Total resource cost test, or TRC, means the test of the cost-effectiveness of demand-side programs that compares the avoided utility costs to the sum of all incremental costs of end-use measures that are implemented due to the program (including both utility and participant contributions), plus utility costs to administer, deliver, and evaluate each demand-side program; and

(Z) Utility incentive component of a DSIM means the methodology approved by the commission in a utility's demand-side program approval proceeding to allow the utility to receive a portion of annual net shared benefits achieved and documented through EM&V reports.]

(1) The definitions of terms used in this section can be found in 4 CSR 240-20.092 Definitions for Demand-Side Programs and Demand-Side Program Investment Mechanisms.

(2) Guideline to Review Progress Toward an Expectation that the Electric Utility's Demand-Side Programs Can Achieve a Goal of All Cost-Effective Demand-Side Savings. The goals established in this section are not mandatory and no penalty or adverse consequence will accrue to a utility that is unable to achieve the listed annual energy and demand savings goals.

(A) The commission shall use the greater of the annual realistic **amount of** achievable energy savings and demand savings as determined through *[the utility's]* **a** market potential study or the following incremental annual demand-side savings goals as a guideline to review progress toward an expectation that the electric utility's demand-side programs can achieve a goal of all cost-effective demand-side savings:

1. For *[2012]* **the utility's approved first program year**: three-tenths percent (0.3%) of total annual energy and one percent (1.0%) of annual peak demand;

2. For *[2013]* **the utility's approved second program year**: five-tenths percent (0.5%) of total annual energy and one percent (1.0%) of annual peak demand;

3. For *[2014]* **the utility's approved third program year**: seven-tenths percent (0.7%) of total annual energy and one percent (1.0%) of annual peak demand;

4. For *[2015]* **the utility's approved fourth program year**: nine-tenths percent (0.9%) of total annual energy and one percent (1.0%) of annual peak demand;

5. For *[2016]* **the utility's approved fifth program year**: one-and-one-tenth percent (1.1%) of total annual energy and one percent (1.0%) of annual peak demand;

6. For *[2017]* **the utility's approved sixth program year**: one-and-three-tenths percent (1.3%) of total annual energy and one percent (1.0%) of annual peak demand;

7. For *[2018]* **the utility's approved seventh program year**: one-and-five-tenths percent (1.5%) of total annual energy and one percent (1.0%) of annual peak demand;

8. For *[2019]* **the utility's approved eighth program year**: one-and-seven-tenths percent (1.7%) of total annual energy and one percent (1.0%) of annual peak demand; and

9. For *[2020]* **the utility's approved ninth** and subsequent **program** years, unless additional energy savings and demand savings goals are established by the commission: one-and-nine-tenths percent (1.9%) of total annual energy and one percent (1.0%) of annual peak demand each year.

(B) The commission shall also use the greater of the cumulative realistic *[achievable]* **amount of** energy savings and demand savings *[as]* **that is** determined **to be cost-effectively achievable** through *[the utility's]* **a** market potential study or the following cumulative demand-side savings goals as a guideline to review progress toward an expectation that the electric utility's demand-side programs can achieve a goal of all cost-effective demand-side savings:

1. For *[2012]* **the utility's approved first program year**: three-tenths percent (0.3%) of total annual energy and one percent (1.0%) of annual peak demand;

2. For *[2013]* **the utility's approved second program year**: eight-tenths percent (0.8%) of total annual energy and two percent (2.0%) of annual peak demand;

3. For *[2014]* **the utility's approved third program year**: one-and-five-tenths percent (1.5%) of total annual energy and three percent (3.0%) of annual peak demand;

4. For *[2015]* **the utility's approved fourth program year**: two-and-four-tenths percent (2.4%) of total annual energy and four percent (4.0%) of annual peak demand;

5. For *[2016]* **the utility's approved fifth program year**: three-and-five-tenths percent (3.5%) of total annual energy and five percent (5.0%) of annual peak demand;

6. For *[2017]* **the utility's approved sixth program year**: four-and-eight-tenths percent (4.8%) of total annual energy and six percent (6.0%) of annual peak demand;

7. For *[2018]* **the utility's approved seventh program year**: six-and-three-tenths percent (6.3%) of total annual energy and seven percent (7.0%) of annual peak demand;

8. For *[2019]* **the utility's approved eighth program year**: eight percent (8.0%) of total annual energy and eight percent (8.0%) of annual peak demand; and

9. For *[2020]* **the utility's approved ninth year** and subsequent **program** years, unless additional energy savings and demand savings goals are established by the commission: nine-and-nine-tenths percent (9.9%) of total annual energy and nine percent (9.0%) of annual peak demand for 2020, and then increasing by one-and-nine-tenths percent (1.9%) of total annual energy and by one percent (1.0%) of annual peak demand each year *[after 2020]* **thereafter**.

(3) Utility Market Potential Studies.

(A) The market potential study shall—

1. Consider both primary data and secondary data and analysis for the utility's service territory;

2. Be updated with primary data and analysis no less frequently than every four (4) years. To the extent that primary data for each utility service territory is unavailable or insufficient, the market potential study may also rely on or be supplemented by data from secondary sources and relevant data from other geographic regions;

3. Be prepared by an independent third party; and

4. Include an estimate of the achievable potential, regardless of cost-effectiveness, of energy savings from low-income demand-side programs. Energy savings from multifamily buildings that house low-income households may count toward this target.

(B) The utility shall provide an opportunity for commission staff and stakeholder review and input in the planning stages of the potential study including review of assumptions, methodology in advance of the performance of the study.

*[(3)]***(4)** Applications for Approval of Electric Utility Demand-Side Programs or Program Plans. Pursuant to the provisions of this rule, 4 CSR 240-2.060, and section 393.1075, RSMo, an electric utility may file an application with the commission for approval of demand-side *[program plans by filing information and documentation required by 4 CSR 240-3.164(2)]* **portfolio**.

(A) Prior to filing for demand-side programs approval, the electric utility shall hold a stakeholder advisory meeting to receive input on the major components of its filing.

(B) As part of its application for approval of demand-side programs, the electric utility shall file or provide a reference to the commission case that contains any of the following information. All models and spreadsheets shall be provided as executable versions in native format with all formulas intact:

1. A current market potential study. If the market potential study of the electric utility that is filing for approval of demand-side programs or a demand-side portfolio, the sampling methodology shall reflect each utility's service territory and shall provide statistically significant results for that utility:

A. Complete documentation of all assumptions, definitions, methodologies, sampling techniques, and other aspects of the current market potential study;

B. Clear description of the process used to identify the broadest possible list of measures and groups of measures for consideration;

2. Clear description of the process and assumptions used to determine technical potential, economic potential, maximum achievable potential, and realistic achievable potential for a twenty- (20-) year planning horizon for major end-use groups (e.g., lighting, space heating, space cooling, refrigeration, motor drives, etc.) for each customer class; and

3. Identification and discussion of the twenty- (20-) year baseline energy and demand forecasts. If the baseline energy and demand forecasts in the current market potential study differ from the baseline forecasts in the utility's most recent 4 CSR 240-22 triennial compliance filing, the current market potential study shall provide a comparison of the two (2) sets of forecasts and a discussion of the reasons for any differences between the two (2) sets of forecasts. The twenty- (20-) year baseline energy and demand forecasts shall account for the following:

A. Discussion of the treatment of all of the utility's customers who have opted out;

B. Future changes in building codes and/or appliance efficiency standards;

C. Changes in customer combined heat and power applications;

D. Third party and other naturally occurring demand-side savings; and

E. The increasing efficiency of advanced technologies.

(C) Demonstration of cost-effectiveness for each demand-side program and for the total of all demand-side programs of the utility. At a minimum, the electric utility shall include:

1. The total resource cost (TRC) test and a detailed description of the utility's avoided cost calculations and all assumptions used in the calculation;

2. The utility shall also include calculations for the utility cost test, the participant test, the non-participant test, and the

societal cost test; and

3. The impacts on annual revenue requirements and net present value of annual revenue requirements as a result of the integration analysis in accordance with 4 CSR 240-22.060 over the twenty- (20-) year planning horizon.

(D) Detailed description of each proposed demand-side program to include at least:

1. Customers targeted;

2. Measures and services included;

3. Customer incentives;

4. Proposed promotional techniques;

5. Specification of whether the demand-side program will be administered by the utility or a contractor;

6. Projected gross and net annual energy savings;

7. Proposed annual energy savings targets and cumulative energy savings targets;

8. Projected gross and net annual demand savings;

9. Proposed annual demand savings targets and cumulative demand savings targets;

10. Net-to-gross factors;

11. Size of the potential market and projected penetration rates;

12. Any market transformation elements included in the demand-side program and an Evaluation, measurement, and verification (EM&V) plan for estimating, measuring, and verifying the energy and capacity savings that the market transformation efforts are expected to achieve;

13. EM&V plan including at least the proposed evaluation schedule and the proposed approach to achieving the evaluation goals pursuant to 4 CSR 240-20.093(7);

14. Budget information in the following categories:

A. Administrative costs listed separately for the utility and/or program administrator;

B. Demand-side program incentive costs;

C. Estimated equipment and installation costs, including any customer contributions;

D. EM&V costs; and

E. Miscellaneous itemized costs, some of which may be an allocation of total costs for overhead items such as the market potential study or the statewide technical reference manual;

15. Description of all strategies used to minimize free riders;

16. Description of all strategies used to maximize spillover; and

17. For demand-side program plans, the proposed implementation schedule of individual demand-side programs.

(E) Demonstration and explanation in quantitative and qualitative terms of how the utility's demand-side programs are expected to make progress towards a goal of achieving all cost-effective demand-side savings over the life of the demand-side programs. Should the expected demand-side savings fall short of the incremental annual demand-side savings goals and/or the cumulative demand-side savings goals in section (2), the utility shall provide detailed explanation of why the incremental annual demand-side savings goals and/or the cumulative demand-side savings goals cannot be expected to be achieved, and the utility shall bear the burden of proof.

(F) Identification of demand-side programs which are supported by the electric utility and at least one (1) other electric or gas utility (joint demand-side programs).

(G) Designation of Program Pilots. For demand-side programs designed to operate on a limited basis for evaluation purposes before full implementation (program pilot), the utility shall provide as much of the information required under subsections (2)(C) through (E) of this rule as is practical and shall include explicit questions that the program pilot will address, the means and methods by which the utility proposes to address the questions the program pilot is designed to address, a provisional cost-effectiveness evaluation, the proposed geographic area, and duration for the program pilot.

(H) Any existing demand-side program with tariff sheets in effect prior to the effective date of this rule shall be included in the initial application for approval of demand-side programs if the utility intends for unrecovered and/or new costs related to the existing demand-side program be included in the **Demand-Side Program Investment Mechanisms (**DSIM**)** cost recovery *[revenue requirement]* **amount** and/or if the utility intends to establish a *[utility lost revenue]* **throughput disincentive** component of a DSIM or a**n** *[utility incentive]* **earnings opportunity** component of a DSIM for the existing demand-side program. The commission shall approve, approve with modification acceptable to the electric utility, or reject such applications for approval of demand-side program plans within one hundred twenty (120) days of the filing of an application under this section only after providing the opportunity for a hearing. In the case of a utility filing an application for approval of an individual demand-side program, the commission shall approve, approve with modification acceptable to the electric utility, or reject applications within sixty (60) days of the filing of an application under this section only after providing the opportunity for a hearing.

*[(A)]***(I) The commission shall consider the TRC test a preferred cost-effectiveness test.** For demand-side programs and program plans that have a *[total resource cost]* **TRC** test ratio greater than one (1), the commission shall approve demand-side programs or program plans, and annual demand and energy savings targets for each demand-side program it approves, provided it finds that the utility has met the filing and submission requirements of *[4 CSR 240-3.164(2)]* **this rule** and the demand-side programs *[and program plans]*—

1. Are consistent with a goal of achieving all cost-effective demand-side savings;

2. Have reliable evaluation, measurement, and verification plans; and

3. Are included in the electric utility's preferred plan or have been analyzed through the integration process required by 4 CSR 240-22.060 to determine the impact of the demand-side programs and program plans on the net present value of revenue requirements of the electric utility.

*[(B)]***(J)** The commission shall approve demand-side programs having a *[total resource cost]* **TRC** test ratio less than one (1) for demand-side programs targeted to low-income customers or general education campaigns, if the commission determines that the utility has met the filing and submission requirements of *[4 CSR 240-3.164(2),]* **this rule**, the **demand-side** program *[or program plan]* is in the public interest, and **the demand-side program** meets the requirements stated in paragraphs (3)*[(A)]***(G)**2. and 3.

1. If a **demand-side** program is targeted to low-income customers, the electric utility must also state how the electric utility will assess the expected and actual effect of the **demand-side** program on the utility's bad debt expenses, customer arrearages, and disconnections.

*[(C)]***(K)** The commission shall approve demand-side programs which have a *[total resource cost]* **TRC** test ratio less than one (1), if the commission finds the utility has met the filing and submission requirements of *[4 CSR 240-3.164(2)]* **this rule** and the costs of such **demand-side** programs above the level determined to be cost-effective are funded by the customers participating in the **demand-side** programs or through tax or other governmental credits or incentives specifically designed for that purpose and meet the requirements as stated in paragraphs (3)*[(A)]***(G)**2. and 3.

*[(D)]***(L)** Utilities shall file and receive approval of associated tariff sheets prior to implementation of approved demand-side programs.

*[(E)]***(M)** The commission shall simultaneously approve, approve with modification acceptable to the utility, or reject the utility's DSIM proposed pursuant to 4 CSR 240-20.093.

*[(4)]***(5)** Applications for Approval of Modifications to Electric Utility Demand-Side Programs.

(A) Pursuant to the provisions of this rule, 4 CSR 240-2.060, and section 393.1075, RSMo, an electric utility—

1. *[s]***S**hall file an application with the commission for modification of demand-side programs *[by filing information and documentation required by 4 CSR 240-3.164(4)]* when there is a variance of *[twenty]* **forty** percent *[(20)%]* **(40%)** or more in the approved demand-side plan three- (3-)*[-]* year budget and/or any **demand-side** program design modification which is no longer covered by the approved tariff sheets for the **demand-side** program*[.]*;

2. Shall file an application with the commission for modification of demand-side programs including, but not limited to, the following:

A. Reallocation of funds among demand-side programs;

B. Changes in allocation based on contract implementers input, such as if a demand-side program is performing below expectations;

C. Changes in incentive amounts paid to customers;

3. The application shall include a complete explanation for and documentation of the proposed modifications to each of the filing requirements in section (3). All models and spreadsheets shall be provided as executable versions in native format with all formulas intact;

4. The electric utility shall serve a copy of its application to all parties to the case under which the demand-side programs were approved;

5. The parties shall have thirty (30) days from the date of filing of an application to object to the application to modify;

6. If no objection is raised within thirty (30) days, *[T]***t**he commission shall approve, approve with modification acceptable to the electric utility, or reject such applications for approval of modification of demand-side programs within *[thirty (30)]* **forty-five (45)** days of the filing of an application under this section, subject to the same guidelines as established in *[sub]*section*[s]* (3)*[(A) through (C), only after providing the opportunity for a hearing.]*;

7. If objections to the application are raised, the commission shall provide the opportunity for a hearing.

*[(A)]***(B)** For any **demand-side** program design modifications approved by the commission, the utility shall file for and receive approval of associated tariff sheets prior to implementation of approved modifications.

*[(5)]***(6)** Applications for Approval to Discontinue Electric Utility Demand-Side Programs. Pursuant to the provisions of this rule, 4 CSR 240-2.060, and section 393.1075, RSMo, an electric utility may file an application with the commission to discontinue demand-side programs *[by filing information and documentation required by 4 CSR 240-3.164(5)]*.

(A) The application shall include the following information. All models and spreadsheets shall be provided as executable versions in native format with all formulas intact.

1. Complete explanation for the utility's decision to request to discontinue a demand-side program.

2. EM&V reports for the demand-side program in question.

3. Date by which a final EM&V report for the demand-side program in question will be filed.

(B) If a demand-side program subject to the TRC is determined not to be cost-effective, the electric utility shall identify the causes why and present possible demand-side program modifications that could make the demand-side program cost-effective. If analysis of these modified demand-side program designs suggests that none would be cost-effective, the demand-side program may be discontinued. In this case, the utility shall describe how it intends to end the demand-side program and how it intends to achieve the energy and demand savings initially estimated for the discontinued demand-side program. Nothing here-in requires utilities to end any demand-side program which is subject to a cost-effectiveness test deemed not cost-effective immediately. Utilities proposal for any discontinuation of a demand-side program should consider, but not be limited to: the potential impact on the market for energy efficiency services in its territory; the potential impact to vendors and the utilities relationship with vendors; the potential disruption to the market and to customer outreach efforts from immediate starting and stopping of demand-side programs; and whether the long term prospects indicate that continued pursuit of a demand-side program will result in a long-term cost-effective benefit to ratepayers.

(C) The commission shall approve or reject such applications for discontinuation of utility demand-side programs within thirty (30) days of the filing of an application under this section only after providing an opportunity for a hearing.

*[(6)]***(7)** Provisions for Customers to Opt-Out of Participation in Utility Demand-Side Programs.

(A) Any customer meeting one (1) or more of the following criteria shall be eligible to opt-out of participation in utility-offered demand-side programs:

1. The customer has one (1) or more accounts within the service territory of the electric utility that has a demand of the individual accounts of five thousand (5,000) kW or more in the previous twelve (12) months;

2. The customer operates an interstate pipeline pumping station, regardless of size; or

3. The customer has accounts within the service territory of the electric utility that have, in aggregate across its accounts, a coincident demand of two thousand five hundred (2,500) kW or more in the previous twelve (12) months, and the customer has a comprehensive demand-side or energy efficiency program and can demonstrate an achievement of savings at least equal to those expected from utility-provided **demand-side** programs. **The customer shall submit to commission staff sufficient documentation to demonstrate compliance with these criteria, including the amount of energy savings. Examples of documentation could include, but are not limited to:**

A. Lists of all energy efficiency measures with work papers to show energy savings and demand savings. This can include engineering studies, cost benefit analysis, etc.;

B. Documentation of anticipated lifetime of installed energy efficiency measures;

C. Invoices and payment requisition papers;

D. Other information which documents compliance with this rule;

*[A.]***E.** For utilities with automated meter reading and/or advanced metering infrastructure capability, the measure of demand is the customer coincident highest billing demand of the individual accounts during the twelve (12) months preceding the opt-out notification*[.]*; **or**

F. Any confidential business information submitted as documentation shall be clearly designated as such in accordance with 4 CSR 240-2.135;

4. Opt-out in accordance with paragraph (7)(A)3. shall be valid for the term of the Missouri Energy Efficiency Act (MEEIA) cycle approved by the commission. Customers who opt-out consistent with paragraph (7)(A)3. may apply to opt-out again in successive MEEIA cycles, consistent with the requirements of paragraph (7)(A)3.

(B) Written notification of opt-out from customers meeting the criteria under paragraph *[(6)]***(7)**(A)1. or 2. shall be sent to the utility serving the customer. Written notification of opt-out from customers meeting the criteria under paragraph *[(6)]***(7)**(A)3. shall be sent to the utility serving the customer and the manager of the energy resource analysis section of the commission or submitted through the commission's electronic filing and information system (EFIS) as a non-case-related filing. In instances where only the utility is provided notification of opt-out from customers meeting the criteria under paragraph *[(6)]***(7)**(A)3., the utility shall forward a copy of the written notification to the manager of the energy resource analysis section of the commission and submit the notice of opt-out through EFIS

as a non-case-related filing.

(C) Written notification of opt-out from customer shall include at a minimum:

1. Customer's legal name;

2. Identification of location(s) and utility account number(s) of accounts for which the customer is requesting to opt-out from demand-side program's benefits and costs; and

3. Demonstration that the customer qualifies for opt-out.

(D) For customers filing notification of opt-out under paragraph *[(6)]***(7)**(A)1. or 2., notification of the utility's acknowledgement or plan to dispute a customer's notification to opt-out of participation in demand-side programs shall be delivered in writing to the customer and to the staff within thirty (30) days of when the utility received the written notification of opt-out from the customer.

(E) For customers filing notification of opt-out under paragraph *[(6)]***(7)**(A)3., the staff will make the determination of whether the customer meets the criteria of paragraph *[(6)]***(7)**(A)3. Notification of the staff's acknowledgement or disagreement with customer's qualification to opt-out of participation in demand-side programs shall be delivered to the customer and to the utility within thirty (30) days of when the staff received *[written notification of the opt-out]* **complete documentation of compliance with paragraph (7)(A)3**.

(F) Timing and Effect of Opt-Out Provisions.

1. A customer notice **of opt-out** shall be received by the utility no earlier than September 1 and not later than October 30 to be effective for the following *[calendar]* **program** year.

2. For that calendar year **in which the customer receives acknowledgement of opt-out** and each successive *[calendar]* **program** year until the customer revokes the notice pursuant to subsection (6)(H), **or the customer is notified that it no longer satisfies the requirements of paragraph (7)(A)3.,** none of the costs of approved demand-side programs of an electric utility offered pursuant to 4 CSR 240-20.093, 4 CSR 240-20.094, *[4 CSR 240-3.163, and 4 CSR 240-3.164]* or by other authority and no other charges implemented in accordance with section 393.1075, RSMo, shall be assigned to any account of the customer, including its affiliates and subsidiaries listed on the customer's written notification of opt-out.

(G) Dispute Notices. If the utility or staff provides notice that a customer does not meet the opt-out criteria to qualify for opt-out **or renewal of opt-out**, the customer may file a complaint with the commission. The commission shall provide notice and an opportunity for a hearing to resolve any dispute.

(H) Revocation. A customer may revoke an opt-out by providing written notice to the utility and commission two to four (2–4) months in advance of the *[calendar]* **program** year for which it will become eligible for the utility's demand-side programs'*[s]* costs and benefits. Any customer revoking an opt-out to participate in *[a]* **demand-side** program**s** will be required to remain in the **demand-side** program**(s)** for the number of years over which the cost of that **demand-side** program**(s)** is being recovered, or until the cost of their participation in *[that]* **the demand-side** program**(s)** has been recovered.

(I) A customer who participates in demand-side programs initiated after August 1, 2009, shall be required to participate in **demand-side** programs funding for a period of three (3) years following the last date when the customer received a demand-side incentive or a service. **Participation shall be determined based on premise location regardless of the ownership of the premise.**

(J) A customer electing not to participate in an electric utility's demand-side programs under this section shall still be allowed to participate in interruptible or curtailable rate schedules or tariffs offered by the electric utility.

*[(7)]***(8)** Tax Credits and Monetary Incentives.

(A) Any customer of an electric utility who has received a state tax credit under sections 135.350 through 135.362, RSMo, or under sections 253.545 through 253.5*[61]***59**, RSMo, shall not be eligible for participation in any demand-side program offered by a utility if such **demand-side** program offers the customer a monetary incentive to participate. **The provisions of this subsection shall not apply to any low income customer who would otherwise be eligible to participate in a demand-side program that is offered by a utility to low income customers.**

(B) As a condition of participation in any demand-side program offered by an electric utility under this section, when such **demand-side** program offers a monetary incentive to the customer, the customer shall attest to non-receipt of any tax credit listed in subsection *[(7)]***(8)**(A) and acknowledge that the penalty for a customer who provides false documentation is a class A misdemeanor. The electric utility shall maintain documentation of customer attestation and acknowledgement for the term of the demand-side program and three (3) years beyond.

(C) The electric utility shall maintain a database of participants of all demand-side programs offered by the utility when such **demand-side** programs offer a monetary incentive to the customer including the following information:

1. The name of the participant, or the names of the principals if for a company;

2. The service property address; and

3. The date of and amount of the monetary incentive received.

(D) Upon request by the commission or staff, the utility shall disclose participant information in subsections *[(7)]***(8)**(B) and (C) to the commission and/or staff.

*[(8)]***(9)** Collaborative Guidelines.

(A) Utility-Specific Collaboratives. Each electric utility and its stakeholders shall form a utility-specific advisory collaborative for input on the design, implementation, and review of demand-side programs as well as input on the preparation of market potential studies. This collaborative process may take place simultaneously with the collaborative process related to demand-side programs for 4 CSR 240-22. Collaborative meetings are encouraged to occur at least once each calendar quarter. **In order to provide appropriate and informed input on the design, implementation, and review of demand-side programs, the stakeholders will be provided drafts of all plans and documents prior to meeting with adequate time to review and provide comments. In addition, all stakeholders will be provided opportunity to inform and suggest agenda items for each meeting and to present presentations and proposal. All participants shall be given a reasonable period of time to propose agenda items and prepare for any presentations.**

(B) State-Wide Collaborative*[s]*.

1. Electric utilities and their stakeholders shall form**ally establish** a state-wide advisory collaborative *[to: 1) address the creation of a technical resource manual that includes values for deemed savings, 2) provide the opportunity for the sharing, among utilities and other stakeholders, of lessons learned from demand-side program planning and implementation, and 3) create a forum for discussing statewide policy issues]*. **The collaborative shall—**

A. Create and implement statewide protocols for evaluation, measurement, and verification of energy efficiency savings, no later than July 1, 2018, and updated annually thereafter;

B. Establish individual working groups to address the creation of the specific deliverables of the collaborative; and

C. Create a semi-annual forum for discussing and resolving statewide policy issues, wherein utilities may share lessons learned from demand-side program planning and implementation, and wherein stakeholders may provide input on how to implement the recommendations of the individual working groups;

D. Explore other opportunities, such as development of a percentage adder for non-energy benefits.

2. Within sixty (60) days of the effective date of this rule, commission staff shall file, with the commission, a charter for the

statewide advisory collaborative.

3. Collaborative meetings *[are encouraged to]* **shall** occur at least *[once each calendar year]* **semi-annually**. **Additional meetings or conference calls will be scheduled as needed.** Staff shall **schedule the meetings,** provide notice of the *[statewide collaborative]* meetings and **any** interested persons may attend such meetings.

(10) Statewide Technical Reference Manual (TRM).

(A) Utilities and stakeholders will work to create and implement a statewide TRM that includes values and formulas for deemed savings and includes commonly used measures for all utility sectors.

(B) The statewide TRM shall be submitted to the commission for review.

1. The commission may either approve or reject the proposed statewide TRM.

2. If the commission rejects the proposed statewide TRM, stakeholders shall address the commission concerns and submit a revised statewide TRM within ninety (90) days of an order rejecting.

(C) Upon approval of a statewide TRM, the commission may begin the process of securing a vendor to provide an electronic platform that will facilitate annual updates.

1. Funding for the electronic platform and annual updates shall be provided by investor-owned utilities without MEEIA programs through their Public Service Commission assessment and by investor-owned utilities with MEEIA programs through their cost recovery component of a DSIM.

(D) The statewide TRM shall be updated by December 31 of each year following commission approval of the initial statewide TRM.

1. Staff shall be responsible for updating the statewide TRM—

A. No later than July 1 of each year, staff shall convene one (1) or more stakeholder meetings to seek input on revisions to the TRM.

2. Annual updates shall be submitted to the commission for review no later than September 1 of each year.

A. The commission may either approve or reject the proposed revisions no later than October 1 of each year.

B. If the commission rejects the proposed statewide TRM, utilities and stakeholders shall address the commission concerns and submit a revised statewide TRM within thirty (30) days of an order rejecting.

(E) The commission may consider the appropriateness of using an approved statewide TRM in each utility's application for approval of demand-side programs.

*[(9)]***(11)** Variances. Upon request and for good cause shown, the commission may grant a variance from any provision of this rule.

[(10) Rule Review. The commission shall complete a review of the effectiveness of this rule no later than four (4) years after the effective date and may, if it deems necessary, initiate rulemaking proceedings to revise this rule.]

*AUTHORITY: sections 393.1075.11 and 393.1075.15, RSMo [Supp. 2010] **2016**. Original rule filed Oct. 4, 2010, effective May 30, 2011. Amended: Filed Dec. 27, 2016.*

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 AND NOTICE OF PUBLIC HEARING: Anyone may file comments in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Morris L. Woodruff, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices on or before April 27, 2017, and should include reference to Commission Case No. EX-2016-0334. Comments may also be submitted via a filing using the commission's electronic filing and information system at http://www.psc.mo.gov/efis.asp. A public hearing regarding this proposed amendment is scheduled for May 4, 2017, at 10:00 a.m., in Room 310 of the Governor Office Building, 200 Madison St., Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed amendment, and may be asked to respond to commission questions.

SPECIAL NEEDS: Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or TDD Hotline 1-800-829-7541.

Title 6—DEPARTMENT OF HIGHER EDUCATION
Division 10—Commissioner of Higher Education
Chapter 3—*[Higher Educational]* Residency *[Determination]* *and Transfer*

PROPOSED AMENDMENT

6 CSR 10-3.010 Determination of Student Residency. The department is deleting sections (4), (5), and (8); deleting subsections (7)(B), (7)(C), (9)(F), (9)(G), and (9)(H); adding subsections (2)(B), (2)(C), (2)(D), (3)(B), (3)(C), and (3)(D); and amending the chapter title and subsections (1)(B), (1)(E), (1)(F)–(1)(J), (2)(A), (3)(A), (6)(B), (6)(C), (6)(D), (7)(A), (9)(A), (9)(C), (9)(D), (9)(E), (9)(H), (10)(A), (10)(B), (11)(B), and (11)(C), and renumbering as necessary.

PURPOSE: This amendment eliminates repetition, rephrases with simpler and fewer words, updates word choice, and more logically organizes the criteria and requirements for student residency determinations by institutions and the department. Furthermore, this amendment implements the military tuition benefits provided by SB 968 (2016) and harmonizes state tuition benefits for veterans with more generous federal requirements.

(1) Definitions.

(B) Adult student shall mean **any emancipated minor student or** any student having attained the age of twenty-one (21) years.

(E) Dependent student shall mean, for the purposes of **state** financial aid eligibility, any student who is not an independent student.

(F) Domicile shall mean presence *[within]* **in** a state with an intent of making the state a permanent home for an indefinite period.

(G) Emancipated minor student shall mean any student not having attained the age of twenty-one (21) years and who is not under the care, custody, and support of a*[n individual or individuals having]* legal *[custody]* **custodian(s)**. **An unemancipated minor may become emancipated through marriage, formal court action, abandonment, or positive action of alienation on the part of the minor. Mere absence of the minor student from the domicile of his or her legal custodian(s) shall not constitute proof of emancipation. Any minor student taken as an income tax deduction by anyone other than a spouse shall be considered an unemancipated minor. In all instances, alienation from care, custody, and support shall be complete, and the burden of satisfactory proof of emancipation shall be that of the minor student.**

(H) Independent student shall mean, for the purposes of **state** financial aid eligibility, any student who qualifies as an independent student under section 480(d) of the Higher Education Act of 1965, as amended**, codified at 20 U.S.C. section 1087vv(d)**.

(I) Residency or resident status shall mean that status which is achieved when sufficient proof of *[a]* domicile *[within]* **in** a state is presented.

(J) Unemancipated minor student shall mean any student not having attained the age of twenty-one (21) years, and **who remains** under the care, custody, or support of the *[individual or individuals having]* legal *[custody]* **custodian(s)** of the student*[s]*.

(2) *[Adult Students]* **Resident Tuition Eligibility**.

(A) *[For purposes of the determination of fee charges, i]***I**f a*[n]* **nonresident** adult student*[, not a resident, shall]* **or unemancipated minor student's nonresident legal custodian(s)** presents sufficient proof of *[the establishment of a]* domicile *[within the state of]* **in** Missouri, *[this]* **such** student shall be granted *[the]* resident status at the first enrollment following the establishment of the domicile.

(B) Domicile of an unemancipated minor student is presumed to be that of the student's legal custodian(s). In order to establish domicile for an unemancipated minor student, a divorced or separated legal custodian claiming Missouri residency must, in addition to the factors listed in section (6) of this rule, show—

1. A divorce decree or separation agreement giving the resident legal custodian joint or sole legal or physical custody of the unemancipated minor student; or

2. A notarized declaration that the unemancipated minor student resides with the resident legal custodian a majority of the year.

(C) Once an unemancipated minor establishes residency under this rule, they may continue to qualify for resident status so long as they remain continuously enrolled, excluding summer terms, in a Missouri institution of higher education, even if the legal custodian(s) of the unemancipated minor student cease to hold Missouri resident status or the student becomes an adult student.

(D) The criteria set forth in this rule for establishing Missouri residency shall also apply to determinations of in-district residency for public community college districts.

(3) **State Financial Aid Eligibility.**

(A) *[Independent Student. For purposes of financial aid eligibility, i]***I**f a*[n]* **nonresident** independent student*[, not a resident, shall]* **or dependent student's nonresident legal custodian(s)** presents sufficient proof of *[the establishment of a]* domicile *[within the state of]* **in** Missouri, *[this]* **such** student shall be granted resident status at the first enrollment following the establishment of the domicile.

(B) Domicile of a dependent student is presumed to be that of the student's legal custodian(s). In order to establish domicile for a dependent student, a divorced or separated legal custodian claiming Missouri residency must, in addition to the factors listed in section (6) of this rule, show that his or her information was reported on the student's Free Application for Federal Student Aid.

(C) Once a dependent student establishes resident status under this rule, they may continue to qualify for resident status so long as they remain continuously enrolled, excluding summer terms, in a Missouri institution of higher education, even if the legal custodian(s) of the dependent student ceases to hold Missouri resident status or the student becomes an independent student.

(D) Resident status is one (1) criterion of eligibility for state financial aid awards administered by the coordinating board. Resident status does not guarantee an award of state financial aid.

[(4) Unemancipated Minor Students.

(A) The domicile of an unemancipated minor or a dependent student is presumed to be that of the individual or individuals having legal custody of the student.

(B) If those having legal custody of the unemancipated minor or dependent student establish a Missouri domicile, that student shall be granted resident status at the first enrollment following the establishment of the Missouri domicile.

(C) Once unemancipated minor or dependent students have established resident status under this rule, they may continue to qualify for resident status so long as they remain continuously enrolled, excluding summer terms, in a Missouri institution of higher education, even if the individual or individuals having legal custody of the unemancipated minor or dependent students cease to hold Missouri resident status or the students become adult or independent students.

(5) Emancipated Minor Students.

(A) The domicile of emancipated minor students shall be determined as if they were adults.

(B) A minor may become emancipated through marriage, formal court action, abandonment, or positive action of alienation on the part of the minor. In all instances, alienation from care, custody, and support shall be complete and the burden of satisfactory proof of emancipation shall be that of the minor student.

(C) Mere absence of the student from the domicile of the individual or individuals having legal custody of that minor student shall not constitute proof of emancipation.

(D) In no instance shall a minor student be eligible for emancipation when that student is taken as an income tax deduction by a second party other than a spouse.]

*[(6)]***(4)** Members of the Military Forces.

(A) Students shall neither gain nor lose resident status solely as a consequence of military service.

(B) *[For the purposes of student resident status, m]***M**ilitary personnel, when stationed *[within the state of]* **in** Missouri pursuant to military orders, their spouses, and *[unemancipated minor or dependent children]* **dependents, as defined at 37 U.S.C. section 401(a) for tuition purposes and at subsection (1)(E) of this rule for state aid purposes,** shall be regarded as holding Missouri resident status. However, a member of the military forces who is specifically assigned, under orders, to attend a Missouri institution of higher education as a full-time student, shall be classified, along with his/her spouse and *[unemancipated minor or dependent children]* **dependents**, as if they had no connection with the military forces.

(C) Any individual who is **currently serving in the Missouri National Guard or a reserve component of the military forces of the United States or who is** in the process of separating from any branch of the military forces of the United States with an honorable or a general discharge shall have resident status for purposes of admission and—

1. In-state tuition at any public college or university, if the individual—

A. Demonstrates presence *[within the state]* **in Missouri**; and

B. Declares residency *[within the state]* **in Missouri**; or

2. In-state, in-district tuition at any public community college, if the individual—

A. Demonstrates presence *[within]* **in** the taxing district; and

B. Declares residency *[within]* **in** the taxing district.

(D) The following criteria shall be used by an institution for purposes of determining an individual's **separation** status under **subsection** *[6 CSR 10-3.010(6)]*(C) **of this section**:

1. An individual shall be considered to be in the process of separating from any branch of the military forces at any time after

receipt of formal separation orders but prior to *[one (1)]* **three (3)** years after receiving an honorable or general discharge;

2. An individual may demonstrate presence and declare residency *[within the state]* **in Missouri** and/or **the** taxing district through a signed statement indicating the individual currently resides *[within the state]* **in Missouri** and/or **the** taxing district and intends to make *[the state of]* Missouri and/or the taxing district a permanent home; and

3. Discharge status shall be determined based on information contained in the Certificate of Release or Discharge from Active Duty (DD 214).

*[(7)]***(5)** Noncitizens of the United States.

(A) *[Students]* **Individuals** who are not citizens of the United States must possess *[resident alien]* **a lawful immigration** status, as determined by **the** federal *[authority]* **government**, prior to consideration for resident status **as otherwise provided in this rule, except that individuals and their family members who hold F, J, or M visa status are ineligible for resident status**.

[(B) Aliens present within Missouri as representatives of a foreign government or at the convenience of the United States or Missouri governments and holding G visas shall be entitled to resident status, except for those who are government-funded students.

(C) Aliens and their dependents holding A or L visas may be granted resident status if determined to be individually designated as representatives of their governments and whose education is not government-funded.

(8) Public Community College Residency.

(A) Missouri public community college districts have legal geographic boundaries within the state and only residents of each district are eligible for the in-district student fee charge.

(B) For purposes of establishing district residency, a Missouri resident who resides out-of-district shall meet the same criteria as set forth in this rule for establishing Missouri residency by a person not a resident of Missouri. However, Missouri residency is the only residency requirement germane to student eligibility for financial aid programs restricted to Missouri residents.]

*[(9)]***(6)** Determination of Resident Status.

(A) Attendance at an institution of higher education shall be regarded as a temporary presence *[within the state]* **inside or outside** of Missouri; therefore, a student neither gains nor loses resident status solely by such attendance.

(B) The burden of proof of establishing eligibility for Missouri resident status shall rest with the student.

(C) *[In determining resident status for the state of Missouri, e]***E**ither of the following shall be sufficient proof of domicile *[of a person and his/her unemancipated minor or dependent children within the state of]* **in** Missouri:

1. Presence *[within the state of]* **in** Missouri for a minimum of the twelve (12) immediate past, consecutive months coupled with proof of intent**, pursuant to subsection (D) of this section,** to make *[the state of]* Missouri a permanent home for an indefinite period; or

2. Presence *[within the state of]* **in** Missouri for the purpose of retirement, full-time employment, full-time professional practice, or to conduct a business full-time coupled with proof of intent**, pursuant to subsection (D) of this section,** to make *[the state of]* Missouri a permanent home for an indefinite period.

(D) In determining whether an adult*[, emancipated minor,]* or independent student, or the *[individual or individuals having]* legal *[custody]* **custodian(s)** of an unemancipated minor or dependent student*[, holds an intent]* **intends** to make *[the state of]* Missouri a permanent home for an indefinite period, the following factors, although not conclusive, shall be *[given heavy weight]* **considered**:

1. Heavily weighted factors—

A. *[c]***C**ontinuous presence in *[the state of]* Missouri during those periods not enrolled as a student;

B. *[presence within the state of Missouri upon m]***M**arriage to a Missouri resident and *[the maintenance of a common domicile]* **sharing a home** with the resident spouse **in Missouri**;

C. *[s]***S**ubstantial reliance on sources *[within the state of]* **in** Missouri for financial support;

D. *[f]***F**ormer domicile *[within the state]* **in Missouri** and maintenance of significant connections while absent; and

E. *[o]***O**wnership of a home *[within the state of]* **in** Missouri*[.]***;** *[The twelve (12)- month period of presence within the state, as stipulated in paragraph (9)(C)1. of this rule, in and of itself, does not establish resident status in the absence of the required proof of intent.]*

*[(E)]***2.** *[The following factors shall be given less weight than those in subsection (9)(D) and include]* **Lightly weighted factors***[:]***—**

A. *[Voting or r]***R**egistration for voting;

B. *[p]***P**art-time employment;

C. *[l]***L**ease of living quarters;

D. *[a]***A written** statement of intent*[ion]* to establish *[a]* domicile in Missouri;

E. *[a]***A**utomobile registration or *[operator's]* **driver's** license obtained in Missouri; and

F. *[p]***P**ayment of income, personal, *[and]* **or** property taxes in Missouri. *[The factors listed in this subsection have applicability only as they support the intent to make the state of Missouri a permanent home for an indefinite period.*

(F) Resident status is one criterion of eligibility for student grant awards administered by the coordinating board. There are additional criteria of eligibility and the establishment of resident status by a student does not guarantee that the student will be awarded a student grant.

(G) The waiver or forgiveness of a nonresident student fee, in full or in part, shall have no bearing on the residency status of a student and shall not be a basis for classification of a nonresident student as a resident.

(H) For those nonresidents who pay Missouri income tax, the nonresident student shall receive a credit against the nonresident student fee in an amount equal to the actual Missouri income tax paid for the previous calendar year except that the remaining fee obligation shall not be less than the amount of the resident student fee. Unemancipated minor students are eligible by reason of payment of Missouri income tax by the nonresident individual or individuals having legal custody of students. Students entering in January shall be regarded as entering in the immediately preceding fall for purposes of determining previous calendar year. For students entering after January, previous year means immediate past calendar year.]

*[(10)]***(7)** *[Determination of]* **Grace Period for** Loss of Residency Status.

(A) An adult*[,]* **or** emancipated minor*[, or independent]* student will lose Missouri residency status twelve (12) consecutive months after *[establishing a domicile outside of the state of Missouri, unless the absence is for the purpose of attending an institution of higher education in another state and the student remains in compliance with subsections (9)(C)–(E) of this administrative rule]* **he or she can no longer demonstrate sufficient proof of domicile, as provided in this rule**.

(B) An unemancipated minor or dependent student will lose Missouri residency status*[:*

*1. T]***t**welve (12) consecutive months after the *[individual or individuals having]* legal *[custody]* **custodian(s)** of that student

[establish a domicile outside of the state of Missouri] **can no longer demonstrate sufficient proof of domicile**, except as provided *[for]* in subsections *[(4)]***(2)**(C) **and (3)(C)** of this *[administrative]* rule*[; or]***.**

[2. If the individual or individuals having legal custody of that student establish a domicile outside of the state of Missouri more than twelve (12) consecutive months before the student's first enrollment at a postsecondary education institution.]

*[(11)]***(8)** Administrative and Compliance.

(A) Each institution shall establish procedures for the determination of institutional decisions in accordance with this rule. These procedures shall adhere to the guidelines set forth in this rule and to the concepts of procedural fairness and reasonableness to the students, to the institution and to the taxpaying public of the state. The procedures shall provide for at least two (2) levels of institutional appeal review and the last stage of the procedure shall be considered final by the institution.

(B) Compliance with the guidelines as set forth in this rule is required of institutions of higher education in order to be determined as eligible institutions under *[student]* **state** financial aid programs administered by the coordinating board and for which student eligibility is restricted to residents. For **state** financial aid purposes, institutions may exercise professional judgment in residency determinations for documented exceptional circumstances.

(C) On complaint of any student or other indication of possible institutional noncompliance with the guidelines set forth in this rule, the coordinating board may review the eligibility of an institution for *[student]* **state** financial aid programs, or any other funds administered by the board and may take such actions or make such recommendations relating to the institution's eligibility as the coordinating board deems appropriate. These actions shall be consistent with any other administrative rules the board has established pertaining to the review of institutional eligibility.

*AUTHORITY: sections 173.005.2(7) [and], **173.081,** 173.1150.3, **and 173.1153.4,** RSMo [Supp. 2013] **2016**. Original rule filed Aug. 7, 1978, effective March 17, 1979. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Dec. 28, 2016.*

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 submit a statement in support of or in opposition to this proposed amendment to the attention of General Counsel, Missouri Department of Higher Education, PO Box 1469, 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 Developmental Disabilities
Chapter 3—Services and Supports

PROPOSED RULE

9 CSR 45-3.080 Self-Directed Supports

PURPOSE: This rule establishes the scope of and requirements for the use of Self-Directed Supports, a service delivery option available under Home and Community Based waivers as created by section 1915(c) of the Social Security Act.

(1) Definitions.

(A) Agency-based supports—supports provided by a public or private agency, including independent contractors, under contract with the Department of Mental Health and enrolled with the MO HealthNet Division to serve participants of any home and community-based waivers operated by the department.

(B) Back-up plan—an emergency plan developed to address situations when the employee providing essential supports is unavailable. The individual support plan for all individuals receiving self- and family-directed supports must provide information about the back-up plan.

(C) Budget authority—the right and responsibility of the employer to exercise control and management of a yearly budget allocation.

(D) Designated representative (DR)—a parent, relative, or other person designated by an adult individual or a guardian, who shall act in the best interest of the individual and serves at the discretion of the individual.

(E) Employer—individual receiving services through self-directed supports and/or person with the power to act on such individual's behalf, such as: a designated representative; guardian; or parent, if the individual is a minor. The employer maintains the Federal Employer Identification Number and employs persons to provide services to the individual.

(F) Employment authority—the right and responsibility of the employer to recruit, hire, train, manage, supervise, fire, and establish the wages for employees within the limits described in section (16) of this rule.

(G) Family member—a parent, stepparent, sibling, child, grandchild, or grandparent related by blood, adoption, or marriage, or a spouse.

(H) Financial management service (FMS)—a service to assist the employer with payroll-related functions. The FMS ensures the self-directed supports program meets federal, state, and local employment tax, labor and workers' compensation insurance rules, and other requirements that apply when the individual or his/her designee functions as the employer of workers. The FMS makes financial transactions on behalf of the individual.

(I) Home and community-based waivers (HCB waivers)—a set of long term community-based supports and services authorized by the Centers for Medicare and Medicaid Services which are provided as an alternative to care in institutions such as nursing facilities and intermediate care facilities for individuals with intellectual disabilities. The specific services provided under a home and community-based waiver is referred to as home and community-based services.

(J) Improvement plan—a corrective action plan to address issues of non-compliance with program requirements. The goal of the improvement plan is to focus on needed supports to ensure the employer succeeds when using self-directed supports.

(K) Individual—person receiving supports through a home and community-based waiver.

(L) Individual Support Plan (ISP)—a document that results from the person-centered planning process, which identifies the strengths, capacities, preferences, needs, and personal outcomes of the individual. The ISP includes a personalized mix of paid and non-paid services and supports that will assist the person to achieve personally defined outcomes.

(M) Individual Support Plan team (ISP team)—the individual, the individual's designated representative(s), and the support coordinator. Providers of waiver-funded services may also participate in the support plan team if such participation is requested by the individual or guardian.

(N) Natural supports—unpaid support provided through relationships that occur in everyday life. Natural supports typically involve family members, friends, co-workers, neighbors, acquaintances, and community resources.

(O) Self-directed supports (SDS)—a service delivery option available under the home and community-based waivers for persons with intellectual and developmental disabilities and who wish to exercise more choice, control, and authority over their supports.

(2) Eligibility Criteria. Every individual who is receiving services through an HCB waiver shall have the opportunity to utilize SDS as his/her own employer as long as—

(A) The individual; designated representative; guardian; or a parent, if the individual is a minor, is willing and able to act as the employer, assuming both budget and employment responsibilities while receiving HCB waiver services from the Division of Developmental Disabilities (DD); and

(B) The Division of DD does not find good cause to deny the use of this service model under the criteria stated in section (11) of this rule.

(3) Designated Representative. An individual who is eighteen (18) years or older, a guardian, or a parent (if the individual is a minor), may identify a designated representative for purposes of utilizing SDS. Designated representatives must demonstrate a history of knowledge of the individual's preferences, values, needs, and other relevant information. The individual, his or her planning team, and regional office are responsible to ensure that this representative is able to perform all the employer-related responsibilities and complies with requirements associated with representing the individual in directing services and supports.

(A) The following individuals may be designated as a representative:

1. Spouse, unless a formal legal action for divorce is pending;
2. An adult child of the individual;
3. A parent;
4. An adult brother or sister;
5. Another adult relative of the individual;
6. A legal guardian; and
7. Any other adult chosen by the individual with approval of the ISP team consistent with the requirements of this section.

(4) Employer Rights and Responsibilities.

(A) The employer must manage the employees' day-to-day activities ensuring supports are provided as written in the ISP.

(B) The employer may choose to hire eligible persons in accordance with the HCB waiver services requirements and with the following exceptions:

1. A spouse;
2. A parent or stepparent of an individual under age eighteen (18);
3. A legal guardian;
4. A designated representative; or
5. A person who is disqualified from employment under section 630.170, RSMo.

(C) The employer shall complete all forms required by the state's FMS contractor, including Internal Revenue Service (IRS) and Missouri state tax forms.

(D) The employer shall obtain a Federal Employer Identification Number (FEIN) in the name of the individual (or parent/guardian if the individual is under the age of eighteen (18)), with the assistance of the FMS.

(E) The employer shall follow all federal and state employment laws and regulations including, but not limited to:

1. Recruiting, interviewing, checking references, hiring, training, scheduling work, managing and terminating employee(s). This includes directing the day-to-day care of the individual and addressing conflicts between employees;

2. Submitting all new employee paperwork to the FMS prior to the initiation of service. All required documents must be completed, submitted, and approved as a complete packet in order for them to be processed in a timely manner. Incomplete documents may delay an employee's start date;

3. Providing equal employment opportunities to all employees and interested employees without discrimination as to race, creed, color, national origin, gender, age, disability, marital status, sexual orientation, or any other legally protected status in all employment decisions, including recruitment, hiring, changing schedules and number of hours worked, layoffs, and terminations, and all other terms and conditions of employment. The employer accepts full and specific responsibility for following Equal Opportunity laws and requirements regarding employees. Each employee is to be treated fairly and consistently. For example, if the employer decides to check references on one (1) employee, it must be done for all employees;

4. An employee may not provide services while the individual is hospitalized or receiving any other direct care service reimbursed through the MO HealthNet Division (MHD);

5. Reviewing and approving time worked, which authorizes billing;

6. Submitting documentation of time worked in a timely manner in accordance with the FMS payroll schedule. The employer and employee signatures on/approval of the time sheet validates that the information submitted is accurate and true. If the employer signs/approves and the hours have not been worked, the employer will be held financially liable for payment for the time reported but not worked;

7. The employer is responsible for monitoring the monthly spending summary report provided by the FMS and for keeping all expenditures within the individual budget allocation as specified in the ISP. The employer agrees to reimburse the FMS for any payment of wages and expenses in excess of the amount in the individual budget allocation. Payment to the employee is limited to services actually delivered by the employee;

8. If the employer authorizes use of all funds/hours before the end of the period, the employer is responsible for other service arrangements; for example, use of non-paid natural supports. The employer is responsible for the payment of any wages and expenses in excess of the individual budget allocation. Employees must be paid for all hours worked;

9. Informing the FMS within one working day of any changes in the individual's status, including name, address, telephone number, hospitalization, and termination of program eligibility; and

10. Informing the FMS of the employee pay rate (wages), including timely notification of changes to the pay rate. Changes in pay rates must occur at the beginning of a pay period.

(F) The following must be reported immediately:

1. Any possible fraud, including MHD fraud to the FMS;

2. Abuse, neglect, misuse of property or funds, health risk, or other reportable event to the appropriate authorities. Reports of abuse, neglect, or exploitation of adults shall be made to the Department of Health and Senior Services, to the Division of DD, or to the individual's support coordinator; and

3. Employee changes, including name, address, contact number, and/or employment status.

(G) Appointment of a temporary representative if the employer is not capable or available to manage employees and contact made to the support coordinator to evaluate if a new representative must be appointed.

(H) Establishing a work schedule for employees. Time worked by employees in excess of forty (40) hours per week cannot be billed to MHD. Hours worked over forty (40) hours per week are the responsibility of the employer and must be paid through the FMS to ensure employee taxes are withheld.

(I) The employer shall not supplement wages to the employee outside of the fiscal management agreement.

(J) In accordance with the approved HCB waivers, payment for personal assistance services is not allowed for employee sleep time. If an employer schedules an employee to work a period of twenty-four (24) consecutive hours or more, the employer and employee may agree to exclude from hours worked up to eight (8) hours of sleep

time when both of the following conditions are met:

1. The employer furnishes sleeping facilities; and
2. The employee can usually sleep uninterrupted.

(5) Combination of Supports. An individual receiving service through an HCB waiver may receive a combination of supports through SDS and agency-based supports so long as services from one (1) program do not duplicate services from the other.

(6) Exemption from Personal Assistance Services Training. The employer may exempt training for personal assistant services under the following circumstances documented in the ISP:

(A) Duties of the personal assistant will not require skills to be attained from the training requirement; or

(B) The personal assistant has adequate knowledge or experience as determined by the employer.

(7) Family Members Providing Services. The only service family members may provide is personal assistance services and only if he/she is not disqualified under section (4). When a family member provides personal assistance support, the ISP must reflect—

(A) The individual is not opposed to a family member providing the service;

(B) The services to be provided are solely to support the individual and not household tasks expected to be shared with people living in the family unit;

(C) The ISP team determines the paid family member will best meet the needs of the individual; and

(D) The family member cannot be paid for over forty (40) hours per week. Support in excess of forty (40) hours per week provided by a family member is considered a natural (unpaid) support.

(8) Parameter of Services. Services that may be self-directed are specified in each HCB waiver for people with developmental disabilities operated by the Division of DD and approved by the Centers for Medicare and Medicaid Services. Services included in the individual's ISP that may not be self-directed will be delivered through agency-based supports by a provider chosen by the individual.

(9) Consumer-Directed Personal Assistance Program through the Department of Health and Senior Services. Individuals who receive services under the consumer-directed personal assistance program authorized in 19 CSR 15 Chapter 8 and administered by the Department of Health and Senior Services (DHSS) may not simultaneously use SDS under any HCB waiver operated by the Division of DD. Individuals eligible to self-direct supports under both the DHSS consumer-directed personal assistance program and under an HCB waiver operated by the Division of DD must choose which program to direct supports under and choose a qualified provider of agency-based supports for the other.

(10) Voluntary Termination. If an individual voluntarily requests to terminate SDS in order to receive services through an agency, the support coordinator will work with the individual, guardian, or designated representative to select a provider agency and transition services to agency-based supports by changing prior authorizations based on the individual's needs. When the self-directed services are voluntarily terminated, the same level of service is offered to the individual through agency-based supports.

(11) Denial and Mandatory Termination of SDS. The option of self-direction may be denied or terminated under any of the following conditions:

(A) The ISP team determines the health and safety of the individual is at risk;

(B) The employer is unable or unwilling to ensure employee records are accurately kept;

(C) The employer is unable or unwilling to supervise employees to receive services according to the plan;

(D) The employer is unable or unwilling to use adequate supports or unable or unwilling to stay within the budget allocation; or

(E) The employer has been the subject of a Medicaid audit resulting in sanctions for false or fraudulent claims under 13 CSR 70-3.030 Conditions of Provider Participation, Reimbursement, and Procedures of General Applicability, Sanctions for False or Fraudulent Claims for MHD.

(12) Improvement Plans.

(A) When an employer is found to be out of compliance with program requirements, an improvement plan shall be established. The improvement plan shall be jointly developed by the employer, individual, support broker, support coordinator, and other regional office staff, as needed.

(B) The plan shall include the specific issues of concern and shall include specific strategies and time frames for improvement.

(C) Failure to successfully meet the terms of the improvement plan within the established time frames shall result in termination of the option to use SDS.

(13) Termination of SDS for Non-Compliance. Except under circumstances described in section (11) of this rule, before terminating SDS, the support coordinator or appropriate staff of the regional office will first counsel the employer to assist in understanding the issues, inform the employer what corrective action is needed, and offer assistance in making changes. Counseling shall include the establishment of an improvement plan. If the employer refuses to cooperate, including failure to successfully carry out the terms of the improvement plan, the option of SDS shall be terminated.

(A) A letter shall be sent notifying the employer that the option of SDS will be terminated and a choice of agency-based providers offered.

(B) A choice of agency-based provider(s) must be made within fifteen (15) days.

(C) The employer may request a meeting with the regional director to discuss the unsuccessful completion of the improvement plan. The request for a meeting must be made within five (5) business days of the written notification that the option of SDS will be terminated.

(D) The regional director must schedule the meeting within ten (10) business days of the request.

(E) The regional director shall make a final decision within three (3) business days of the meeting. The decision of the regional director shall be final.

(14) Immediate Termination for Non-Compliance. When there is evidence of fraud or repeated patterns or trends of non-compliance with program requirements, counseling has been provided to the employer, an improvement plan has been established but has not been successfully completed within the agreed upon time frames, the regional director shall immediately terminate SDS and shall authorize agency-based services from a provider agency chosen by the individual.

(A) The regional office shall request repayment from the employer for any recoupments by the Department of Social Services Missouri Medicaid Audit and Compliance office from the DMH Division of DD.

(15) Service Level Requirements after SDS Termination. When the option for SDS is terminated, the same level of services must be made available to the individual through a qualified waiver provider. The individual shall have a choice of provider.

(16) Individual Budget Allocation, Employee Wages, and Reimbursement.

(A) The SDS individual budget allocation shall be based on the total number of hours needed for the span dates of the ISP multiplied by the statewide base rate for comparable agency-based supports.

(B) The SDS individual budget allocation shall be equal to but

shall not exceed the level of support the individual would receive from a provider agency.

(C) Supports included in the SDS individual budget allocation to be paid through the HCB waiver shall not supplant or duplicate natural supports available to the individual.

(D) The Department of Social Services, MHD shall establish maximum allowable rates as recommended by DMH for all HCB supports.

(E) Once the individual receives their SDS individual budget allocation, the employer is responsible to set the wages of his/her employees. Wages shall not be less than minimum wage and not in excess of the MHD maximum allowable rate. The wage includes the net pay to the employee plus all related taxes, worker's compensation, and unemployment insurance.

(17) Fiscal management services (FMS).

(A) DMH shall select a FMS contractor through a competitive bid process.

(B) The FMS shall perform the following functions:

1. Managing and directing the distribution of funds contained in the individual budget allocation;

2. Facilitating the employment of staff by the employer by performing employer responsibilities such as processing payroll, withholding and filing federal state, and local taxes, and making tax payments to appropriate tax authorities;

3. Performing fiscal accounting and making expenditure reports to the employer and state authorities;

4. Collecting provider qualifications and training information;

5. Conducting background screens of potential employee candidates;

6. Collecting documentation of services provided; and

7. Collecting and processing employees' time sheets.

AUTHORITY: sections 630.050 and 630.655, RSMo 2016. Original rule filed Dec. 19, 2016.

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

PRIVATE COST: This proposed rule 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 rule by writing to Amber L. Daugherty, Assistant General Counsel, Department of Mental Health, PO Box 687, Jefferson City, MO 65102. To be considered, comments must be delivered by regular mail, express or overnight mail, or by courier within thirty (30) days after publication in the ***Missouri Register****. If to be hand delivered, comments must be brought to the Department of Mental Health at 1706 E. Elm Street, Jefferson City, Missouri. No public hearing is scheduled.*

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 30—Office of the Director
Chapter 16—Victims of Crime Act Grants

PROPOSED RULE

11 CSR 30-16.010 Eligibility Criteria and Application Procedures for VOCA Grants Program

PURPOSE: This rule establishes the allowable programs and services to be funded with federal Victims of Crime Act funds in Missouri. It also establishes the application and appeals procedures to be used.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) The state Victims of Crime Act (VOCA) victim assistance grant program is administered by the Crime Victims Services Unit of the Missouri Department of Public Safety.

(2) The Crime Victims Services Unit of the Missouri Department of Public Safety, as the State Administering Agency, shall follow the rules for the administration of the Victims of Crime Act crime victim assistance grant program as shown in the U.S. Department of Justice final rule 28 CFR Part 94, RIN 1121-AA69 for the Victims of Crime Act Victim Assistance Program, Office for Victims of Crime, effective August 8, 2016 as published in the *Federal Register*, Vol. 81, No. 131, Friday, July 8, 2016, Rules and Regulations, found at https://www.federalregister.gov/documents/2016/07/08/2016-16085/victims-of-crime-act-victim-assistance-program, herein incorporated by reference and made a part of this rule. This rule does not incorporate any subsequent amendments or additions.

(3) The standards used to implement the state Victims of Crime Act victim assistance grant program for the financial support of services to crime victims by eligible crime victim assistance programs as funded by the federal Victims of Crime Act, a formula grant program authorized by Section 1404 of the Victims of Crime Act of 1984, Public Law 98-473, codified at 42 U.S.C. 10603, shall be those shown in the U.S. Department of Justice final rule 28 CFR Part 94, RIN 1121-AA69 for the Victims of Crime Act Victim Assistance Program, Office for Victims of Crime, effective August 8, 2016 as published in the *Federal Register*, Vol. 81, No. 131, Friday, July 8, 2016, Rules and Regulations, found at https://www.federalregister.gov/documents/2016/07/08/2016-16085/victims-of-crime-act-victim-assistance-program, herein incorporated by reference and made a part of this rule. This rule does not incorporate any subsequent amendments or additions.

(4) The standards for eligibility of crime victim assistance programs to receive state Victims of Crime Act victim services grants shall be those shown in the U.S. Department of Justice final rule 28 CFR Part 94, RIN 1121-AA69 for the Victims of Crime Act Victim Assistance Program, Office for Victims of Crime, effective August 8, 2016 as published in the *Federal Register*, Vol. 81, No. 131, Friday, July 8, 2016, Rules and Regulations, found at https://www.federalregister.gov/documents/2016/07/08/2016-16085/victims-of-crime-act-victim-assistance-program, herein incorporated by reference and made a part of this rule. This rule does not incorporate any subsequent amendments or additions.

(5) The standards for eligible crime victim services shall be those shown in the U.S. Department of Justice final rule 28 CFR Part 94, RIN 1121-AA69 for the Victims of Crime Act Victim Assistance Program, Office for Victims of Crime, effective August 8, 2016 as published in the *Federal Register*, Vol. 81, No. 131, Friday, July 8, 2016, Rules and Regulations, found at https://www.federalregister.gov/documents/2016/07/08/2016-16085/victims-of-crime-act-victim-assistance-program, herein incorporated by reference and made a part of this rule. This rule does not incorporate any subsequent amendments or additions.

(6) The standards used for the definitions of the eligible crime victims services through the state Victims of Crime Act victim assistance grant program for the financial support of services to crime

victims by eligible crime victim assistance programs as funded by the federal Victims of Crime Act, a formula grant program authorized by Section 1404 of the Victims of Crime Act of 1984, Public Law 98-473, codified at 42 U.S.C. 10603, shall be those shown in Section 94.102 Definitions of the U.S. Department of Justice final rule 28 CFR Part 94, RIN 1121-AA69 for the Victims of Crime Act Victim Assistance Program, Office for Victims of Crime, effective August 8, 2016 as published in the *Federal Register*, Vol. 81, No. 131, Friday, July 8, 2016, Rules and Regulations, found at https://www.federalregister.gov/documents/2016/07/08/2016-16085/victims-of-crime-act-victim-assistance-program, herein incorporated by reference and made a part of this rule. This rule does not incorporate any subsequent amendments or additions.

(7) The standards used for the administration of the eligible crime victims services through the state Victims of Crime Act victim assistance grant program for the financial support of services to crime victims by eligible crime victim assistance programs as funded by the federal Victims of Crime Act, a formula grant program authorized by Section 1404 of the Victims of Crime Act of 1984, Public Law 98-473, codified at 42 U.S.C. 10603, shall be those shown in the U.S. Department of Justice final rule 28 CFR Part 94, RIN 1121-AA69 for the Victims of Crime Act Victim Assistance Program, Office for Victims of Crime, effective August 8, 2016 as published in the *Federal Register*, Vol. 81, No. 131, Friday, July 8, 2016, Rules and Regulations, found at https://www.federalregister.gov/documents/2016/07/08/2016-16085/victims-of-crime-act-victim-assistance-program, herein incorporated by reference and made a part of this rule, with the following additions:

(A) Funds use. Non-governmental agencies may apply for and use VOCA funds to replace prior funding sources if—

1. The applicant documents the loss of the prior funding caused by circumstances beyond the control of the applicant; or

2. The applicant demonstrates that the prior funds proposed to be replaced will be used for another purpose that will directly sustain, expand, or enhance the applicant's ability to provide eligible victim services;

(B) The Crime Victims Services Unit (hereinafter "the unit") of the Missouri Department of Public Safety (hereinafter "the department") shall adopt an application form to be used by all applicant programs requesting state Victims of Crime Act victim assistance grant program funds (hereinafter "VOCA grant(s)"). Any application form so adopted shall meet the following requirements:

1. Applications for funding—

A. The VOCA grant solicitation and application shall be approved by the director of the Missouri Department of Public Safety;

B. The VOCA grant solicitation and application shall be publically available, prior to the department's identified application submission period during which applications are requested to be made, on the Missouri Department of Public Safety website found at http://dps.mo.gov. The unit shall send, by U.S. mail or electronic communications, a Notice of Funding Availability to all current recipients of victim services grant funds administered by the department detailing the application submission period and how prospective applicants may obtain a funding application form;

C. The adopted VOCA grant solicitation and application shall include the date after which submitted applications shall no longer be considered for funding;

D. The adopted VOCA grant solicitation and application shall provide all information necessary to provide applicants with information on: applicant program and/or agency eligibility; crime victim services eligible for funding; the information required for each section of the application submitted for funding; the objective scoring matrix for each section of the application submitted for funding; the deadline for submission of applications; the process by which applications will be reviewed and scored for funding awards; and the grant application review process by which the department shall evaluate applications based on the requirements and criteria herein incorporated by reference and made a part of this rule;

E. The adopted VOCA grant solicitation and application shall provide reference to the Department's *Financial and Administrative Guidelines* and Travel Policies to assist sub-recipients with administration of sub-awards;

F. The adopted VOCA grant solicitation and application shall provide information on the unit's requirements for applicants to adhere to standards of best practices for the provision of eligible crime victim services by all applicant programs and/or agencies seeking funding. Such information shall include the electronic address by which applicants can obtain the written materials containing the unit's approved standards for crime victim services and programs;

G. The adopted VOCA grant application shall provide information on an applicant's right to appeal the department's denial of funding, in whole or in part, in accord with the appeals process delineated in these rules;

H. All applications for funding shall be submitted via the department's electronic grant management system. The applicant shall submit all data as requested and required within the application; and

I. No VOCA grant application submitted after the deadline will be considered for funding. If technical issues with the department's electronic grant management system preclude the submission of an application by the deadline, the applicant must contact the unit staff as instructed in the grant solicitation.

(8) Evaluation of applications for funding—

(A) The department shall publically solicit members and assemble a grant review committee comprised of internal department staff and external members who have experience and expertise in the provision of services to crime victims;

(B) The department shall publically post the names of internal department staff selected to participate on the grant review committee but shall ensure that subsequent application scoring and evaluation comments by committee members are provided in an aggregate written record that does not identify comments as made by individual committee members;

(C) The department shall provide the grant review committee members with an overview training on the requirements of grant reviews, including written materials detailing: the eligible crime victim services programs and services; the process by which applications are to be reviewed, scored, and evaluated as stated in the application; and the standards for best practices for the provision of eligible crime victim services;

(D) After providing training and instruction to the grant review committee members, the department shall assign committee members to grant application review teams comprised of one (1) internal reviewer and one (1) external reviewer;

(E) The department shall provide both internal and external grant review committee members with full copies of all sections of applications for which grant reviews and evaluations are to be conducted and which were submitted by the required submission deadline for funding;

(F) When needed to complete grant reviews and evaluations, applicants may be required to submit additional materials to correct minor errors which are matters of form rather than substance or insignificant mistakes correctable without unfair advantage to the applicant;

(G) Upon completion of assigned grant reviews, grant review teams shall present their written scoring and evaluation comments to the grant review committee as a whole for acceptance, revisions, and/or final award decisions. Such review by the grant review committee as a whole shall include any additional written information related to the department's determination of good standing of a previously or currently funded applicant as contained in the applicant's record of services maintained by the department;

(H) The department may approve or disapprove any applications

submitted and/or recommended by the unit at its discretion, and all decisions of the department regarding the denial or award of a grant application, in whole or in part, of an application shall be final, subject to reconsideration through the appeal process as provided in these rules;

(I) All applicants shall be notified of the department's decision regarding funding applications through the department's electronic grant management system. Successful applicants will receive such written award notification from the department that shall include the certified assurances, terms, and conditions upon which the funds are awarded and that shall contain the grant review scores and evaluation comments; and

(J) Grants awarded as a result of a competitive solicitation may be amended when such an amendment is in the best interest of the department and does not significantly alter the original intent or scope of the grants.

(9) The Department of Public Safety may implement such policies as, within its discretion, are necessary to implement the administration of these rules.

AUTHORITY: section 650.310.4, RSMo 2016. Original rule filed Dec. 27, 2016.

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

PRIVATE COST: The proposed rule 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 rule with the Missouri Department of Public Safety, PO Box 749, 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 11—DEPARTMENT OF PUBLIC SAFETY
Division 30—Office of the Director
Chapter 16—Victims of Crime Act Grants

PROPOSED RULE

11 CSR 30-16.020 Appeals Procedure and Time Limits for Victims of Crime Act Grant Applications

PURPOSE: This rule prescribes procedures for applicants to protest the department's competitive Request for Proposal solicitation process and/or appeal a department decision regarding the award of grant(s), as a result of a competitive Request for Proposal process.

(1) Appeals process.

(A) Any applicant for Victims of Crime Act (VOCA) funds that is aggrieved by any adverse decision regarding the award or denial of a grant application, in whole or in part, may appeal the decision of the department. Such appeal must be filed with the department director, or his/her designee, in writing not more than ten (10) business days from the date of notification of funding award or denial.

(B) The appeal shall concisely state the grounds for the appeal, detailing what scoring or element of the evaluation and subsequent award determination the applicant believes was incorrect, and any supplementary documentation will be considered only insofar as it bears on the accuracy of a factual determination used in denying an application in part or in whole.

(C) The director or his/her designee shall review the appeal together with the original application, the final written reviews and evaluation scores, and all supplementary documentation provided in the appeal by the applicant, and shall render a decision affirming the original award or reversing the appealed funding decision in whole or in part.

(D) All decisions on appeals made by the director, or his/her designee, shall be rendered within ten (10) working days of the receipt of the appeal and shall be transmitted in writing to the applicant through the department's electronic grant management system.

(E) The director, or his/her designee, shall provide a written explanation of the department's decision to an applicant relative to that applicant's appeal that shall provide specific information supporting the department's decision.

(2) The Department of Public Safety may implement such policies as, within its discretion, are necessary to implement the administration of these rules.

AUTHORITY: section 650.310.4, RSMo 2016. Original rule filed Dec. 27, 2016.

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

PRIVATE COST: The proposed rule 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 rule with the Missouri Department of Public Safety, PO Box 749, 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 13—DEPARTMENT OF SOCIAL SERVICES
Division 35—Children's Division
Chapter 32—Child Care

PROPOSED RESCISSION

13 CSR 35-32.010 Basis of Payment. This rule established requirements to participate in the child care subsidy programs both as a benefit participant and as a child care provider.

PURPOSE: This rule is being rescinded as it is being replaced by a new set of rules within this Chapter. These rules include 13 CSR 35-32.050 through 13 CSR 35-32.130. The new regulations encompass all necessary information included in 13 CSR 35-32.010, making this rule unnecessary.

AUTHORITY: section 207.020, RSMo 2000. Original rule filed June 15, 2007, effective Dec. 30, 2007. Rescinded: Filed Jan. 3, 2017.

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

PRIVATE COST: The 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 the Children's Division at ADRULESFEEDBACK.CD@dss.mo.gov. 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 13—DEPARTMENT OF SOCIAL SERVICES
Division 35—Children's Division
Chapter 32—Child Care

PROPOSED RULE

13 CSR 35-32.050 Definitions

PURPOSE: This regulation establishes the definitions that will be used throughout regulations 13 CSR 35-32.050 to 13 CSR 35-32.130.

(1) For the purposes of 13 CSR 35-32.050 through 13 CSR 35-32.130, the following terms shall be defined pursuant to this regulation.

(2) "Adjusted Gross Income" means the applicant's gross income less health insurance premiums paid for by household members.

(3) "Agency Error" means Child Care Subsidy incorrectly paid on behalf of a participant due to an action by the division. These actions may include, but are not limited to:
(A) Loss or misfiling of forms or documents;
(B) Data entry errors;
(C) System errors;
(D) Mathematical errors;
(E) Failure to determine eligibility correctly or in a timely manner or to certify subsidy in the correct amount when all essential information was available to the division; or
(F) Failure to make timely changes to re-determine eligibility following amendments to policies requiring the changes by a specific date.

(4) "Applicant" means a person applying to be a recipient of Child Care Subsidy.

(5) "Background check" shall include:
(A) A search of the state criminal and sex offender registries or repositories in Missouri and in the state where the child care provider, employee, or volunteer resides, and each state where such person resided during the preceding five (5) years;
(B) A search of the Family Care Safety Registry as described in sections 210.903 through 210.936, RSMo, and state-based child abuse and neglect registries and databases in the state where the child care provider, employee, or volunteer resides, and each state where such person resided during the preceding five (5) years; and
(C) A search of the National Crime Information Center, a Federal Bureau of Investigation fingerprint check using the Integrated Automated Fingerprint Identification System, and a search of the National Sex Offender Registry established under the Adam Walsh Child Protection and Safety Act of 2006 (42 U.S.C. 16901 et seq.).

(6) "Certificate of Registration" means the legal document issued to a child care provider by the division for a period not to exceed one (1) year which indicates the child care provider has met the minimum health and safety requirements, subject to compliance with sections 210.025 and 210.027, RSMo., 13 CSR 35-32.070, and 13 CSR 35-32.080.

(7) "Child Care Services" means child care provided to an eligible child on a regular basis either in or away from the child's residence, for less than twenty-four (24) hours per day, provided by an eligible child care provider as defined in section (16).

(8) "Child Care Provider" means a child care center, group home, or family home that provides child care services, whether known or incorporated under another title or name.

(9) "Child Care Provider Applicant" means an individual applying to be registered or contracted as a child care provider.

(10) "Child Care Subsidy" means the program that makes payment to a child care provider, or in rare circumstances reimburses the parent, by the division if the department finds a family unit eligible for child care services.

(11) "Child with Special Needs" means an eligible child who is under the age of eighteen (18), or under age nineteen (19) and still in school, who meets one (1) or more of the following verified criteria:
(A) A child receiving Supplemental Security Income (SSI);
(B) A child receiving services through the Missouri Department of Mental Health;
(C) A child with a physical or mental disability or delay verified in writing by a medical professional or mental health professional;
(D) A Protective Service Child;
(E) An Adoption Subsidy Child; or
(F) A child under court-ordered supervision.

(12) "Department" means the Missouri Department of Social Services.

(13) "Director" means the director of the Children's Division of the Department of Social Services.

(14) "Division" means the Children's Division of the Department of Social Services.

(15) "Eligible Child" means:
(A) A child who resides with a parent who meets the program and financial eligibility requirements for the particular type of Child Care Subsidy and who—
1. Is a citizen of the United States of America or a qualified alien; and
2. Is under the age of thirteen (13); or
3. Is under the age of eighteen (18) and classified as having a special need; or
4. Is under age nineteen (19) and still in school and classified as having a special need; or
(B) A protective Services Child.

(16) "Eligible Child Care Provider" means one (1) of the following:
(A) A child care provider licensed by the Missouri Department of Health and Senior Services and contracted with the Missouri Department of Social Services; or
(B) A child care provider determined to be license exempt by the Missouri Department of Health and Senior Services and registered and contracted with the department, in accordance with 13 CSR 35-32.080; or
(C) A child care provider caring for four (4) or fewer children not related to the child care provider within the third degree by blood, marriage, or adoption and registered and contracted with the department, in accordance with 13 CSR 35-32.070; or
(D) An out-of-state child care provider licensed or exempt from licensure, based on that state's license requirements, and registered and contracted with the department; or
(E) A child care provider under the jurisdiction of a military base and is registered and contracted with the department.

(17) "Eligibility Unit" means people living in the same household, whose needs and income shall be considered when determining eligibility for Child Care Subsidy, including:
(A) The child for whom care is requested;
(B) The child's parents (whether married or unmarried);
(C) The child's parent's spouse;
(D) The child's biological, step-, half-, or adopted sibling(s) under eighteen (18) years of age;
(E) The unmarried parental partner who is the parent of the child's

sibling;

(F) The child under eighteen (18) years of age of the unmarried parental partner;

(G) The Non-Parent Caretaker Relative (NPCR) if no biological or adoptive parent or legal guardian resides in the household; and

(H) A school age child, who is also the parent of a child in the same home, has the option of being a separate family unit for purposes of determining eligibility for Child Care Subsidy.

(18) "Emergency preparedness and response plan" means planning for emergencies resulting from a natural disaster or a man-caused event (such as violence at a child care facility).

(19) "Exempt from licensure" means a child care provider pursuant to section 210.211, RSMo.

(20) "Gross Income" includes, but is not limited to, income from the following:

(A) Wages, salary, and income from self-employment;

(B) Commissions, tips, bonuses;

(C) Dividends and interest;

(D) Social Security benefits, including disability and survivor benefits;

(E) Pensions and annuities;

(F) Estate Income;

(G) Unemployment and worker's compensation; and

(H) Alimony and child support.

(21) "Intentional Violation" means the receipt of any benefit through the wrongful acquisition or issuance of Child Care Subsidy payment for child care services by the division through false representation or concealment of material facts by the participant, eligibility unit, child care provider, or any other representatives. These actions may include, but are not limited to:

(A) Submission of inaccurate information for the purpose of obtaining compensation for which the child care provider is not legally entitled;

(B) Charging the division an amount higher than what is charged for private pay participants for the same child care services;

(C) Failure to maintain the Child Attendance Record by the eligibility unit as specified by the division;

(D) Improper billing practices that do not comply with the child care provider's agreement or that do not comply with state or federal laws and regulations governing child care services;

(E) False or misleading statements, oral or written, regarding the participant's income or other circumstances that affect eligibility or the amount of subsidy received; or

(F) Failure to timely report changes in income or other circumstances that affect eligibility or the amount of subsidy received.

(22) "Licensed child care provider" means a child care provider pursuant to section 210.201, RSMo.

(23) "Licensed exempt" means a child care provider pursuant to section 210.211, RSMo.

(24) "Maximum base rate" means the amount paid to the child care provider based on the age of the child for whom child care services are requested, hours of care requested, the facility type requested, and the applicable geographic area of the state.

(25) "Medical Professional" means a licensed physician pursuant to section 632.005, RSMo, a nurse practitioner, or physician's assistant.

(26) "Mental Health Professional" means a mental health professional pursuant to section 632.005, RSMo, or licensed clinical social worker.

(27) "Overpayment" means any benefit or payment received in an amount greater than the amount the participant or child care provider is entitled to receive.

(28) "Parent" means a child's biological parent whose parental rights have not been terminated, a step-parent, an adoptive parent, a legal guardian, a caretaker relative, or other person standing in *loco parentis* for the child who has applied for Child Care Subsidy.

(29) "Participant" means an applicant for Child Care Subsidy found to be eligible to receive Child Care Subsidy.

(30) "Promissory Note" means a written, dated, and signed promise by one (1) party to pay money to another party on demand or at a specified future date.

(31) "Protective Services Child" means a child in foster care or receiving preventive services through the division.

(32) "Qualified Alien" means any person who is not a citizen or national of the United States who, at the time such person applies for, receives, or attempts to receive a federal public benefit, is—

(A) Lawfully admitted for permanent residence under the Immigration and Nationality Act, as codified in 8 U.S.C. section 1101, et. seq.;

(B) Granted asylum under section 208 of such Act, as codified in 8 U.S.C. section 1158;

(C) A refugee admitted to the United States under section 207 of such Act, as codified in 8 U.S.C. section 1157;

(D) Paroled into the United States for a period of at least one (1) year under section 212(d)(5) of such Act, as codified in 8 U.S.C. section 1182 (d)(5);

(E) An alien whose deportation is being withheld under section 243(h) of such Act, as codified in 8 U.S.C. section 1253 as amended;

(F) Granted conditional entry pursuant to section 203(a)(7) of such Act, as codified in 8 U.S.C. section 1153 (a)(7) as in effect prior to April 1, 1980; or

(G) A Cuban or Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980 (Public Law 96-422).

(33) "Rate Differential" means an additional amount paid to a child care provider over and above the maximum base rate.

(34) "Recoupment" means the repayment of an overpayment by a reduction in a future payment to the child care provider.

(35) "Registered Child Care Provider" means a child care provider who is exempt from licensure or licensed exempt as defined in section 210.211, RSMo, and meets the requirements of 13 CSR 35-32.070 or 13 CSR 35-32.080.

(36) "Related Child" means the relationship of the child to the child care provider is within the third degree, which includes siblings (if not residing in the same home), nephews, nieces, grandchildren, and great-grandchildren.

(37) "School Age" means an eligible child at least five (5) years of age.

(38) "Sliding Fee" means participant's share of the child care cost based on the eligibility unit's income and household size.

(39) "Staff" means a person employed by a child care provider or a volunteer who is counted in staff/child ratios.

(40) "Substantiated Child Abuse and Neglect Report" or "Substantiated CA/N Report" means when the division has determined that there is sufficient evidence to believe that a person committed

child abuse or neglect, either by finding of probable cause prior to August 28, 2004, or by a preponderance of the evidence after August 28, 2004.

(41) "Transitional Child Care" means a benefit program assisting families currently receiving Child Care Subsidy with the continued cost of child care at a reduced rate of the regular Child Care Subsidy payment when the family's income increases and becomes greater than the full Child Care Subsidy income eligibility guidelines allow, with the families having an increased responsibility for the cost of child care.

(42) "Unintentional Violation" means the receipt of any benefit through the wrongful acquisition or issuance of Child Care Subsidy payment for child care services by the division through incorrect representation, but not by the concealment of material facts by the participant, eligibility unit, child care provider, or any other representatives. These actions may include, but are not limited to:

(A) The participant or child care provider unintentionally failing to provide the division with the correct or complete information;

(B) The child care provider failing to notify the division that their license status has changed or business operation changes have occurred that affect the payment rate; or

(C) The child care provider submitting information, such as invoices or attendance records, with unintentional errors.

(43) "Unrelated Child" means a child who is not related to the provider within the third degree of consanguinity or affinity.

AUTHORITY: sections 207.020, 210.025, and 210.027, RSMo 2016, 42 U.S.C. section 9858, et. seq., Executive Order 03-03. Original rule filed Jan. 3, 2017.

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

PRIVATE COST: This proposed rule 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 rule with the Children's Division at ADRULESFEEDBACK.CD@dss.mo.gov. 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 13—DEPARTMENT OF SOCIAL SERVICES
Division 35—Children's Division
Chapter 32—Child Care

PROPOSED RULE

13 CSR 35-32.060 Eligibility and Authorization for Child Care Subsidy

PURPOSE: This rule establishes the requirements for eligibility requirements and authorization of Child Care Subsidy.

(1) Eligibility. To be eligible to receive Child Care Subsidy, the applicant shall meet the following criteria:

(A) Residency. The applicant must reside in the state of Missouri and intend to remain in the state of Missouri for the duration Child Care Subsidy is provided;

(B) Citizenship Status. A child receiving services shall be a—

1. United States (U.S.) citizen; or
2. Qualified alien pursuant to 8 U.S.C. section 1641;

(C) Eligibility Unit. The applicant must qualify as an eligibility unit. A school age child, who is also the parent of a child in the same home, has the option of being a separate family unit for purposes of determining eligibility for Child Care Subsidy;

(D) Relationship. The applicant for child care services must be the parent of the child for whom child care services are being requested;

(E) Income Eligibility Requirements.

1. To qualify for Child Care Subsidy, the eligibility unit's Adjusted Gross Income must be less than or equal to the maximum income for the family size allowed by income guidelines. Guidelines shall be published annually in an electronic format available to the public. Income guidelines are based on the Federal Poverty Level as published in the *Federal Register*. An eligibility unit income may not exceed eighty-five percent (85%) of the state median income for an eligibility unit of the same size on the date a subsidized service is delivered. Protective services children do not have to demonstrate a financial need for Child Care Subsidy under this subsection.

2. Eligibility unit assets cannot exceed one (1) million dollars as certified by the applicant. The eligibility unit shall provide documentation of eligibility unit's assets if requested by the division.

3. The applicant shall provide documentation or any information requested by the Family Support Division to verify the eligibility unit's income;

(F) Need for Child Care.

1. To be eligible for Child Care Subsidy, applicant must have a valid need for child care and must be unable to arrange another child care plan. The applicant must provide documentation or any information requested by the Family Support Division to verify his/her need for child care. The need requirement is met under the following circumstances:

A. The applicant is a recipient of Temporary Assistance for Needy Families (TANF) benefits and employed, in school, or enrolled in a training program for employment; or

B. The applicant is enrolled in a school or training program—

(I) To complete the High School Equivalency Test (HiSET);

(II) To attend regular high school classes;

(III) To attend a college or university with the intent of receiving a bachelor's degree; or

(IV) To attend a training or educational program in which the end result is a professional or technical job skill leading toward employment in a specific field upon graduation; or

C. The applicant has a disability or incapacity, confirmed by a medical professional or mental health professional, which renders him/her unable to care for a child except with the provision of child care. The applicant must submit a written, signed statement from a medical professional or mental health professional. This statement must include the hours of care needed per day/week and the anticipated duration of need for care;

D. The applicant is consider homeless as defined in 42 U.S.C. section 11302(a), also known as the McKinney-Vento Homeless Assistance Act and the applicant is working with a community based organization to eradicate homelessness; or

E. The child is in the legal custody of the Children's Division pursuant to an order of the juvenile court.

(2) Processing of Application.

(A) An applicant shall request child care subsidy in person, by telephone, by mail, by fax, or by electronic means using a form furnished by the division. The form shall include, but not be limited to, information related to the applicant's residency, citizenship, household composition, relationships, assets, and household income.

(B) Applicants shall provide complete and accurate information to the division when determining eligibility or continuing eligibility for child care services. Applicants who fail to provide complete and accurate information or to comply with the provisions of these rules shall be ineligible for Child Care Subsidy.

(C) Information provided by applicants or participants shall not be

disclosed to the public, except as allowed by section 208.120, RSMo.

(D) Upon receipt of a completed application, the Family Support Division of the Department of Social Services shall review the application and determine the applicant's eligibility.

(E) If the Family Support Division determines the applicant is eligible for Child Care Subsidy, the Family Support Division will send a written notice to the applicant notifying him/her of child care services authorized, amount of sliding scale fee, and changes that must be reported to maintain eligibility.

(F) If the Family Support Division determines the applicant is not eligible for Child Care Subsidy, the Family Support Division will send a written notice to the applicant. The notice shall—

1. Inform the applicant of the nature of the decision;

2. Include a brief summary of the factual and legal basis for the division's decision; and

3. Notify the applicant of his/her right to appeal to the director.

(3) Payment.

(A) Parental Choice.

1. A participant may enroll his/her child with any child care provider contracted with the division, subject to acceptance by the child care provider. A parent may choose to enroll his/her child with a different provider at any time. Child Care Subsidy payments shall be made directly to the child care provider. The parent shall notify the Family Support Division of the initial child care provider and any change in the child care provider within 10 (ten) days of the change. The notice shall include: the date of disenrollment from the provider, the names and identifying information of the child(ren) involved and, where applicable, identify the new subsidized child care provider.

2. If the participant chooses a child care provider who will care for a related child, the participant must sign an attestation of relationship to the child on a form provided by the division.

(B) Maximum Payment. Maximum payment by the division for infant, pre-school, or school-age child care services shall not exceed the maximum base rate plus any rate differentials or the actual charges by the child care provider, whichever is less. The maximum base rate is set on an annual basis based on appropriations from the General Assembly for the child care subsidy program and is based on the age of the child, hours of care requested, facility type, and in the applicable geographic area of the state.

(C) Sliding Fee Scale. Child care participants may be required to pay a fee to the child care provider based on their adjusted gross income and family size. This fee shall be based on a sliding fee scale, which shall be determined on an annual basis based on appropriations from the General Assembly.

1. The sliding fee amount is determined by the household size and adjusted gross income.

2. The maximum child care subsidy payment shall be the maximum base rate minus the applicable sliding fee amount, if any.

3. The maximum base rate is based on the age of the child for whom child care services are requested, hours of care requested, the facility type requested, in the applicable geographic area of the state. The maximum base rate is subject to appropriations.

4. The sliding fee may be waived for a child with special needs.

5. Child care participants who fail to pay the required sliding fee shall be ineligible for Child Care Subsidy until the required sliding fee is paid or until the child care participant enters into a written agreement with the child care provider to pay the required fee. The participant shall provide a copy of any such agreement to the Division before the subsidy is paid.

(D) Co-Payment. Child care participant may be required to pay a co-payment to the child care provider when the child care provider's rate for care is higher than the maximum rate paid by the division. The parent must negotiate this fee directly with the child care provider. The division shall not be responsible for the payment of, collection, or enforcement of any co-payment.

(4) Maintaining Eligibility.

(A) Reporting Changes.

1. A participant must report the following events to the Family Support Division within ten (10) business days from the date of occurrence:

A. A change in income if it exceeds eighty-five percent (85%) of the state median income for an eligibility unit of the same size;

B. Eligible child no longer resides with the participant;

C. Cessation of employment, job training, or education program; or

D. Any changes to the participant's contact information, including, but not limited to, address and phone number.

2. Failure to timely report the above changes may result in a participant overpayment pursuant to 13 CSR 35-32.100.

3. Upon receipt of a reported change under subparagraphs (4)(A)1.A.–(4)(A)1.C, the Family Support Division shall redetermine the participant's eligibility to receive child care subsidy, and notify the participant of the redetermination in the same manner as described in section (2). The Family Support Division may, but is not required to, redetermine the participant's eligibility upon receipt of a reported change under subparagraph (4)(A)1.D.

4. Participants will remain eligible for child care subsidy for not less than three (3) months after parent's employment, job training, or educational program ends.

(B) Annual Redetermination. To continue to receive child care subsidy, participants shall request a redetermination every twelve (12) months from the date of initial eligibility determination or most recent redetermination.

(C) Transitional Child Care. An eligibility unit may be allowed a gradual phase out of child care assistance if the family income has increased but remains less than upper income limit for the highest level of transitional child care. The Family Support Division shall determine the eligibility unit's eligibility for transitional child care and shall notify the parent in writing.

(5) Direct Appeal to the Director. Any applicant or participant, whose child care subsidy eligibility has been denied or changed may appeal such decision to the director in accordance with the provisions of section 208.080, RSMo.

(A) The participant/applicant shall request a direct appeal to the director in writing within ninety (90) days of the date of notification of the denial or change of Child Care Subsidy eligibility.

(B) If the participant/applicant timely makes a direct appeal to the director, the director shall designate the Administrative Hearings Unit of the Division of Legal Services of the Department of Social Services to hear all cases. The Administrative Hearings Unit shall hear cases under the procedures outlined in 13 CSR 40-2.160.

(C) The burden shall be on the participant/applicant to prove:

1. The denial or change of Child Care Subsidy eligibility was inconsistent with all applicable laws and regulations.

(D) The department may present testimony, documents, or other evidence to rebut evidence presented by the participant/applicant.

(E) Upon completion of the hearing, the Administrative Hearings Unit shall issue a written decision as approved by the director, except in default cases or cases disposed of by stipulation, consent order, or agreed settlement. The decision shall include or be accompanied by findings of fact and conclusions of law. The findings of fact shall be stated separately from the conclusions of law and shall include a concise statement of the findings on which the agency bases its order. The Administrative Hearings Unit shall deliver or mail its decision, findings of fact, and conclusions of law to each party, or his/her attorney of record. The decision of the Administrative Hearings Unit shall be the final decision of the department.

(6) Destruction of Records. The division may destroy all applications and records compiled in connection with the determination and payment of Child Care Subsidy after ten (10) years have elapsed after the case is closed or the application has been rejected and the decision is final.

AUTHORITY: sections 207.020, 210.025, and 210.027, RSMo 2016, 42 U.S.C. section 9858, et. seq., Executive Order 03-03. Original rule filed Jan. 3, 2017.

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

PRIVATE COST: This proposed rule 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 rule with the Children's Division at ADRULESFEEDBACK.CD@dss.mo.gov. 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 13—DEPARTMENT OF SOCIAL SERVICES
Division 35—Children's Division
Chapter 32—Child Care

PROPOSED RULE

13 CSR 35-32.070 Registration Requirements for Child Care Providers Serving Four or Less Unrelated Children

PURPOSE: The purpose of this rule is to implement the provisions of sections 210.025 and 210.027, RSMo, for the purpose of registering child care providers and defining eligibility for providers to receive state or federal funds for providing child care services.

(1) Requirements for Registration. To receive a certificate of registration as a registered child care provider, the child care provider applicant shall meet the requirements set forth in this section.

(A) The child care provider applicant must have attained eighteen (18) years of age.

(B) The child care provider shall not care for more than four (4) unrelated children.

(C) A child care provider applicant shall—

1. Pass a background check as defined in 13 CSR 35-32.050. Passing a background check shall include:

A. The child care provider shall not have received a substantiated child abuse and neglect report;

B. The child care provider shall not have been previously refused licensure or have experienced licensure suspension or revocation;

C. The child care provider cannot appear on the Department of Mental Health's Disqualification Registry pursuant to section 630.170, RSMo;

D. The child care provider shall not be a registered sex offender or required to register as a sex offender in any state;

E. The child care provider applicant shall not have had a certificate of registration denied or revoked within the past six (6) months; and

F. A child care provider applicant shall not have pled guilty or *nolo contendere* to or been found guilty of—

(I) Any felony for an offense against the person as defined in Chapter 565, RSMo, or any other offense (misdemeanor or felony) against the person involving the endangerment of a child as prescribed by law;

(II) Any misdemeanor or felony for sexual offense as defined in Chapter 566, RSMo, for an offense against the family as defined in Chapter 568, RSMo, with the exception of the sale of fireworks to a child under the age of eighteen (18), for pornography or related offense as defined by Chapter 573, RSMo, for an offense relating to public assistance including, but not limited to, unlawful receipt, conversion or transfer of public benefits pursuant to sections 578.377 through 578.381, RSMo, (sections 570.400 through 570.404, RSMo, after January 1, 2017), perjury committed when obtaining public assistance pursuant to section 578.385, RSMo, (section 570.408, RSMo, after January 1, 2017); or

(III) Any similar crime in any federal, state, municipal, or other court of similar jurisdiction or any offenses or reports which will disqualify an applicant from receiving state or federal funds, including the following:

(a) The following crimes, in any degree, if considered a felony in the jurisdiction in which it was filed: murder, manslaughter, assault, kidnapping, felonious restraint, false imprisonment, interference with child custodial rights, adult abuse or stalking, burglary; or

(b) The following crimes, in any degree, if considered a felony or misdemeanor in the jurisdiction in which it was filed: rape, sodomy, prostitution, child molestation, bigamy, child abandonment, child endangerment, criminal nonsupport of a child, child abuse, elder abuse, robbery, arson, armed criminal action, unlawful possession/use/transfer of a firearm or weapon, unlawful promotion/possession/furnishing of obscene or pornographic material (including, but not limited to, child pornography), or human trafficking;

(c) The following crimes, in any degree, if considered a felony or misdemeanor in the jurisdiction in which it was filed and if involving the endangerment of a child or a child victim: assault, kidnapping, felonious restraint or false imprisonment, interference with child custodial rights; or

(d) The following crimes, in any degree, if considered a felony or misdemeanor in the jurisdiction in which it was filed and if filed within the past ten (10) years: unlawful possession, sale, transfer, or trafficking of a controlled substance or any similar crime;

(e) The following crimes, in any degree, if considered a felony in the jurisdiction in which it was filed and if committed against the Department of Social Services or any division thereof: fraud, stealing, or forgery; or

(f) Any municipal court offense for conduct which, if prosecuted in a court of general jurisdiction, would be an offense described in subparagraph (1)(C)1.F. above.

(D) The child care provider shall submit a "Risk Assessment for Tuberculosis" form, to be completed, signed, and dated by a medical professional no more than ninety (90) days prior to submission. If a child care provider has active, contagious tuberculosis, the child care provider must submit documentation showing that a medical professional has certified that the child care provider is non-infectious before the child care provider may become registered.

(E) Child care provider shall submit a statement completed, signed, and dated by a medical professional no more than ninety (90) days prior to submission on a prescribed form, regarding his/her opinion of the physical and mental health of the child care provider applicant and certifying that a physical examination was completed within the past ninety (90) days, that the child care provider applicant was free from communicable disease, and is not a threat to the health of children.

(F) Child care provider applicant and anyone residing with the child care provider applicant shall be legally allowed in the presence of children.

(G) All individuals residing with the child care provider applicant over the age of seventeen (17) shall pass—

1. A search of the Family Care Safety Registry as described in sections 210.903 through 210.936, RSMo; and

2. State-based child abuse and neglect registries and databases in Missouri and in the state where the child care provider household member resides, and each state where such person resided during the preceding five (5) years;

3. State-based sex offender registry or repository in Missouri and in the state where the child care provider household member resides, and each state where such person resided during the preceding five (5) years;

4. No individual residing with the child care provider applicant over the age of seventeen (17) shall have received a substantiated child abuse and neglect report, appear on the Department of Mental Health employee disqualification list, or be a registered sex offender or required to register as a sex offender in any state.

(H) The department shall not pay for any costs associated with the requirements of registration.

(I) The child care provider applicant must cooperate and allow for an unannounced on-site inspection by the division or designee at initial application. The on-site inspections shall ensure that the child care provider applicant's home is in compliance with the following health, safety, fire, and other requirements:

1. Local ordinances, codes, and regulations.

A. The child care provider applicant's home shall meet local ordinances, codes, and regulations, particularly with regard to fire safety and smoke or carbon monoxide detectors.

B. If there are no local ordinances or regulations regarding smoke and carbon monoxide detectors that apply to the child care provider applicant's home, the child care provider applicant shall—

(I) Install and maintain operable smoke and carbon monoxide detectors in accordance with the manufacturer's instructions;

(II) Install and maintain all detectors on the ceiling or wall at a point centrally located in a corridor or other area giving access to rooms used for providing child care services in the home unless the manufacturer's instructions provide otherwise; and

(III) Ensure that when activated, the detectors shall provide an alarm in the structure or room;

2. Physical Space: The physical space of the child care provider applicant's home must meet the following criteria:

A. It must be clean, free of insects and vermin;

B. It must have working heating and cooling systems;

C. It must have potable, running water, at least one (1) flushable toilet and one (1) sink for hand washing accessible to children;

D. Hygiene items such as toilet paper, soap, hand drying towels (paper or cloth) must be accessible to children;

E. The food preparation area clean and equipped to prepare snacks and meals;

F. It must have inside space for play and napping;

G. Hazardous materials must be inaccessible to children;

H. Smoking in the home is prohibited while children are present;

I. Weapons and ammunition stored in locked cabinets inaccessible to children; and

J. Smoke detectors and fire extinguisher present;

3. Outdoor play area: The outdoor play area must meet the following criteria:

A. It must be an area safe, maintained, and no hazards;

B. The outdoor area must either be continuously fenced to ensure that the children cannot leave and others cannot enter the premises without supervision; or, if not fenced, child care provider must have a division approved, supervision plan for when children are in outdoor play area;

C. Pools and open water areas are not accessible to children without adult supervision; and

D. Play equipment is well-constructed and free from hazards;

4. Emergency preparedness and response plan available and posted;

5. Animals: Any animals present on the premises must meet the following criteria:

A. They must be non-threatening to children;

B. None of the animals may have a history of attacking or injuring human beings or other animals;

C. The animals must be disease free and have all required vaccinations according to state and local law;

D. Indoor and outdoor areas used by children are free of animal excrement; and

E. Litter boxes are not located in food preparation or serving area and inaccessible to children;

6. The child care provider applicant's home must be free of illegal substances and criminal activity.

(J) The child care provider applicant shall register with Opportunities in a Professional Education Network (OPEN) and secure a Missouri Professional Development Identifier (MOPD-ID) to track and successfully complete all required trainings as approved by the division. The child care provider shall provide satisfactory, written documentation of successful completion to the division. The child care provider applicant shall successfully complete training which includes, but is not limited to:

1. First aid and cardiopulmonary resuscitation (CPR) training;

2. Child Care Subsidy Orientation Training;

3. Prevention of Sudden Infant Death Syndrome and safe sleeping, if child care provider serves infants under the age of one (1) year of age;

4. Prevention of shaken baby syndrome and abusive head trauma;

5. Emergency disaster and response training; and

6. Mandatory Child Abuse and Neglect (CA/N) reporting.

(K) If a child care provider applicant has an outstanding debt owed to the state due to a previous child care overpayment, the child care provider applicant must participate in a repayment plan pursuant to 13 CSR 35-32.050 to become registered with the division.

(2) Providing Care for Related Child. If a child care provider applicant wishes to provide child care to a related child, the child care provider applicant must meet the requirements listed in section (1) and must sign an attestation of relationship to child on a form provided by the division.

(3) Providing Care in the Child's Home. If a child care provider applicant wishes to provide child care in the child's home, the child care provider applicant must meet the requirements listed in section (1), with the exception of the on-site inspection listed in subsection (1)(I).

(4) Processing of Application.

(A) Upon receipt of an initial application for registration and completion of on-site inspection, the division shall review all information to make a determination as to whether the child care provider applicant is eligible to receive a certificate of registration. The division, in its discretion, may request additional documentation if concerns arise regarding the child care provider applicant's ability to provide for the health and safety of children, ability to follow generally accepted accounting practices (GAAP), or to address other concerns as noted by the division. The child care provider applicant shall provide all requested documentation.

(B) If the division determines the child care provider applicant meets all eligibility requirements, the division shall issue a certificate of registration good for one (1) year to the child care provider applicant.

(C) If the division determines the child care provider applicant fails to meet eligibility requirements, the division may, in its discretion, give the child care provider a reasonable opportunity to cure any defect. The division may specify a reasonable time frame for the provider to cure the deficiency, not to exceed ninety (90) days. The division shall take into account the severity of any defect and whether such defect is likely to be cured in a reasonable amount of time. If the division determines that a defect cannot be cured or the applicant is otherwise ineligible, the division shall provide written notice of the denial of registration. The notice shall—

1. Inform the child care provider applicant of the nature of the decision;

2. State generally the factual and legal basis for the division's decision; and

3. Notify the child care provider applicant of his/her right to seek an administrative review.

(5) Renewal of Child Care Provider Registration.

(A) A child care provider shall renew registration annually. The child care provider shall adhere to the timeframes listed below for every subsequent renewal.

(B) To renew a certificate of registration as a registered child care provider, the child care provider shall—

1. Within ten (10) days of circumstance, incident, or occurrence which would alter any information provided in the child care provider's original application for registration, the child care provider shall notify the division in writing;

2. Perform the following annually:

A. Cooperate and allow for an unannounced on-site inspection by the division or designee prior to renewal. The on-site inspections shall ensure that the registered child care provider is in compliance with the health, safety, fire, and other requirements listed in subsection (1)(I);

3. Perform the following every two (2) years:

A. Submit a "Risk Assessment for Tuberculosis" form, to be completed, signed, and dated by a medical professional no more than ninety (90) days prior to submission. If a registered child care provider has active, contagious tuberculosis, the registered child care provider must submit documentation showing that a medical professional has certified that the registered child care provider is non-infectious before the registered child care provider may become renewed; and

B. Submit a statement completed, signed, and dated no more than ninety (90) days prior to submission by a medical professional on a prescribed form, regarding his/her opinion of the physical and mental health of the registered child care provider and certifying that a physical examination was completed no more than ninety (90) days prior to submission, that the registered child care provider was free from communicable disease and is not a threat to the health of children;

4. Perform the following every five (5) years:

A. Pass a background check as defined in 13 CSR 35-32.050. Passage of a background check shall be determined as defined in paragraph (1)(C)1. above;

B. All individuals residing with the registered child care provider over the age of seventeen (17) shall adhere to the requirements listed in subsection (1)(G) above; and

C. Upon receipt of registration renewal request, the division shall make a determination as to whether the registered child care provider is eligible to receive a renewed certificate of registration. The division shall follow the same process for the renewal of a registration as that followed to process an initial application as described in section (2) above.

(6) Corrective Action. The division may require the child care provider to submit and implement a corrective action plan to resolve any health or safety concerns, regulatory violations, or contractual violations. The division shall provide written notification to the child care provider of the requirement to submit and implement a corrective action plan, identifying the specific performance, regulatory requirements, or contractual requirements not being met, and the expected corrective resolution.

(A) The child care provider shall submit a written corrective action plan to the division within ten (10) days of notice.

(B) The corrective action plan must include the actions the child care provider proposes to take to remedy concerns, time frames for achieving such, the staff responsible for the necessary action, the improvement that is expected, a description of how progress will be measured, and a description of the actions to be taken to prevent the situation from recurring.

(C) The division shall notify the child care provider in writing if the corrective action plan is approved or if modifications are required. In the event the division requires changes to the corrective action plan, the child care provider shall submit a revised corrective action plan, within ten (10) days of notice that changes are required.

(7) Registration Revocation.

(A) The division shall revoke a child care provider's registration if—

1. Health or safety issues exist which place children at risk of immediate harm;

2. Child care provider or anyone over the age of seventeen (17) living in the child care provider's home has a substantiated child abuse or neglect report;

3. Child care provider committed an intentional violation;

4. Child care provider failed to report child abuse and neglect when required by law to do so;

5. Child care provider is not mentally, emotionally, or physically fit to care for children as determined by a medical professional or mental health professional;

6. Child care provider is not legally allowed in the presence of children;

7. Child care provider failed to cooperate in a Welfare Investigative Unit investigation, a law enforcement investigation, a Child Abuse and Neglect investigation, compliance review, or audit; or

8. The Department of Health and Senior Services determines the child care provider is operating in violation of law.

(B) The division may revoke a child care provider's registration if—

1. Child care provider failed to disclose all household members subject to a check of the Family Care Safety Registry;

2. Health and safety issues exist that negatively impact the safety and well-being of the children in the child care provider's care, and the child care provider fails or is unable to rectify the issues;

3. Child care provider fails to successfully submit or complete the requirements of a corrective action plan within time period specified in the plan; or

4. Child care provider is non-compliant with registration requirements.

(C) If any health or safety issues exist which place children at immediate risk of harm, the division shall immediately revoke the child care provider's registration. In the case of immediate revocation, the child care provider shall promptly be granted an administrative review under section (9).

(D) If the division determines the child care provider's registration is subject to revocation and no health or safety issues exist which place children at immediate risk of harm, the division shall provide written notice of the revocation. The notice shall—

1. Inform the child care provider applicant of the nature of the decision;

2. State generally the factual and legal basis for the division's decision; and

3. Notify the child care provider of his/her right to seek an administrative review.

(8) Contract. To be eligible to contract to receive state or federal funds as a registered child care provider, the child care provider shall meet the following requirements:

(A) Obtain a certificate of registration which shall be maintained throughout the duration of the contract;

(B) The child care provider shall sign a contract issued by the state, agreeing to all terms including, but not limited to:

1. All records of children shall be confidential, protected from unauthorized examination and available to the parent(s) and division upon request unless otherwise allowed by law;

2. Child care provider shall care for no more than four (4) or fewer unrelated children;

3. Child care provider shall not be engaged in any other employment while providing child care services;

4. Child care provider shall maintain records pursuant to 13 CSR 35-32.130;

5. Child care provider shall notify all custodial parents and legal guardians of the child care provider's—

A. Phone number;

B. Discipline policy; and

C. Emergency preparedness and response plan;

6. Child care provider shall notify custodial parents and legal guardians if the child care provider does not have immediate access to a telephone and provide parents with an alternative, effective method of communication;

7. Child care provider shall ensure custodial parents and legal guardians have access to their child(ren);

8. Child care provider shall report child deaths and serious injuries to the division within twenty-four (24) hours of the incident, using a form provided by the division. This includes, but is not limited to:

A. The death of a child if the child died while at the child care provider;

B. The death of a child enrolled at the child care provider if the child died of a contagious disease; or

C. A "serious injury" to a child that occurs while the child is at the child care provider or away from the child care provider's facility but still in the care of the child care provider, if an injury results in the child being treated by a medical professional or admitted to a hospital;

9. Child care provider shall cooperate with any investigations, audits, or other requests of the division;

10. Child care provider shall follow all statutes, regulations, and policies of the division;

11. Child care providers must report the following changes to the division in writing within ten business (10) days: physical address, mailing address, telephone number, email address, the addition of any new household members seventeen (17) years of age or older, or current household member turns seventeen (17) years of age;

12. Child care provider shall not utilize physical or corporal punishment including, but not limited to, spanking, slapping, shaking, biting, or pulling hair;

13. Child care provider shall submit to monitoring by division or its designee for compliance with contractual or regulatory obligations. Such monitoring may include, but is not limited to—

A. Providing attendance records at the request of the division or its designee;

B. Submitting to unannounced or announced on-site inspections; or

C. Other monitoring as determined necessary by the division;

14. Child care provider shall attend training as approved by the division, and provide documentation of the successful completion of all training to the division through the Opportunities in a Professional Education Network (OPEN). The child care provider shall complete the following training within six (6) months of receiving a signed contract from the department:

A. Infectious disease prevention and control;

B. Hand-washing and universal health precautions;

C. Medication and parental consent;

D. Sanitary food handling;

E. Prevention and response to food allergy emergencies;

F. Building and physical premises safety;

G. Emergency and disaster response;

H. Handling and storage of hazardous materials;

I. Protection for hazards that can cause bodily harm;

J. Child's physical, social, and emotional development; and

K. Transportation of children;

(C) If the child care provider is providing care for a child in the child's own home, the child care provider shall sign a contract issued by the state, agreeing to all terms listed in subsection (8)(B), except for the requirement listed in subparagraph (8)(B)13.B. The child care provider shall further agree in the contract that he/she shall not provide child care in the child's home to any child who does not reside in the child's home;

(D) A child care provider may not be eligible for a contract if the child care provider was denied a contract or a previous contract was terminated for cause and the underlying issues causing denial or termination of the contract have not been resolved. A child care provider may not be eligible for a contract if the child care provider was the owner, director, board member, officer, shareholder, agent, agent registered with the secretary of state's office, or had decision making authority over a licensed or licensed exempt child care facility, and was denied a contract or a previous contract was terminated for cause;

(E) Termination of Contract. If a child care provider fails to adhere to the terms of the contract, the division may terminate the contract by providing written notice to the child care provider. The notice shall—

1. Inform the child care provider of the date upon which the contract shall be terminated;

2. State generally the factual and legal basis for the division's decision; and

3. Notify the child care provider of his/her right to seek administrative review.

(9) Administrative Review.

(A) The child care provider/applicant may request an administrative review of the decision to deny registration, deny registration renewal, revoke registration, deny a contract, or terminate a contract by providing a written request for an administrative review within ten (10) days of the notification. The child care provider/applicant may submit additional documentation for consideration with the request for an administrative review. The division may, in its discretion, review any information received after the request for review, but is not required to do so. In no circumstances shall the division be required to review information provided after the division has conducted its administrative review.

(B) The child care provider/applicant may request the opportunity to present additional information via telephone conference call by making such a request in writing with the request for administrative review. If the child care provider/applicant timely requests a telephone conference call, the division shall notify the child care provider/applicant in writing of the date, time, and telephone number at which the child care provider/applicant may present information. In such circumstances, the child care provider/applicant is responsible for ensuring that he/she is able to present information via telephone on the date/time provided, and that he/she has a working telephone and stable connection. The division shall not be responsible for any technical difficulties the child care provider/applicant may experience.

(C) The division shall—

1. Review the denial of registration, denial of registration renewal, registration revocation, contract denial, or contract termination, and any written materials provided by the child care provider;

2. Conduct a telephone conference call, if requested by the child care provider/applicant; and

3. Upon completion of the administrative review, notify the child care provider of the results of the administrative review in writing.

(10) Direct Appeal to the Director. If, after conducting the administrative review, the division upholds the denial of registration, denial of registration renewal, or registration revocation, the child care provider/applicant may appeal the decision directly to the director pursuant to section 208.080, RSMo. The child care provider/applicant must submit a request for direct appeal to the director within ten (10) days of notification of the results of the administrative review.

(A) If the child care provider/applicant timely makes a direct appeal to the director, the director shall designate the Administrative Hearings Unit of the Division of Legal Services of the Department of Social Services to hear all cases. The Administrative Hearings Unit shall hear cases under the procedures outlined in 13 CSR 40-2.160.

(B) The burden shall be on the child care provider/applicant to prove the denial of registration, denial of registration renewal, or registration revocation was inconsistent with all applicable laws and regulations.

(C) Upon completion of the hearing, the Administrative Hearings Unit shall issue a written decision as approved by the director, except in default cases or cases disposed of by stipulation, consent order, or agreed settlement. The decision shall include or be accompanied by findings of fact and conclusions of law. The findings of fact shall be stated separately from the conclusions of law and shall include a concise statement of the findings on which the agency bases its order. The Administrative Hearings Unit shall deliver or mail its decision, findings of fact, and conclusions of law to each party, or his/her attorney of record. The decision of the Administrative Hearings Unit shall be the final decision of the department.

AUTHORITY: sections 207.020, 210.025, and 210.027, RSMo 2016, 42 U.S.C. section 9858, et. seq., Executive Order 03-03. Original rule filed Jan. 3, 2017.

PUBLIC COST: This proposed rule will cost state agencies or political subdivision approximately three million five hundred twenty thousand four hundred seventy-four dollars ($3,520,474) annually.

PRIVATE COST: This proposed rule will cost private entities approximately four hundred ninety-four thousand nine hundred ten dollars ($494,910) annually.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Children's Division at ADRULESFEEDBACK.CD@dss.mo.gov. 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.*

FISCAL NOTE
PUBLIC COST

I. Department Title: Department of Social Services
Division Title: Children's Division
Chapter Title: Child Care

Rule Number and Name:	**13 CSR 35-32.070 Registration Requirements for Child Care Providers Serving Four or Less Unrelated Children** **13 CSR 35-32.080 Registration Requirements for Licensed Exempt Child Care Facilities**
Type of Rulemaking:	Proposed Rulemaking

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Children's Division	$3,520,474

III. WORKSHEET

Requirements	Costs	Registered Providers	Total Cost
On-site Monitoring of Registered Providers	$ 343	5897	$ 2,022,671
Training for Registered Providers	$ 87	11469	$ 997,803
Systems Updates for Monitoring	$ 500,000		$ 500,000
			$ 3,520,474

IV. ASSUMPTIONS

On-site monitoring, training, and system updates needed to track results of on-site monitoring are costs associated to all registered provider; providers serving four or less (FOL) unrelated children and related children and license exempt child care providers. The above costs were appropriated in FY-17 as new decision items for the Children's Division.

On-Site Monitoring: There are approximately 5,897 registered providers and applicants for registration that will be monitored through a site visit annually; 343 active registered license exempt providers, 1,911 active FOL providers and 3,508 applications for registration. The approximate cost per site visit and actions necessary to approve a registration is $343 per applicant or renewing registered provider.

Training for Registered Providers: The federal Child Care and Development Fund requires all child care providers receiving child care subsidy to complete health and safety training within 3 months of receiving subsidy payments. This includes applicants for registration and providers renewing registration to receive child care subsidy; FOLs and License Exempt. Children's Division contracts with Educare providers to provide support and technical assistance to registered providers. Due to the training requirements, the Children's Division amended Educare contracts for FY-17 for Educare contractors to provide the training for registered providers. The estimated cost of the training per provider and staff is $1,000,000. This is based on an approximate cost of $87 per FOL provider and staff employed by License Exempt child care providers; 1991 FOL providers, 5,970 license exempt provider staff and an additional 3,508 new registration applicants of for a total of 11,469.

System Updates for Monitoring: Information on registered provider compliance with health and safety requirements is to be made available to the public through an electronic system. Currently, the Department of Health and Senior Services, Section for Child Care Regulation has a system in which staffs are able to input findings or on-site monitoring and an electronic means for the public to search for results on licensed child care providers. The Children's Division will work with DHSS in enhancing its current system to allow for the on-site monitoring results to be captured in the DHSS electronic system and be made available to the public through the child care provider search system. Estimated cost for system changes is $500,000.

FISCAL NOTE
PRIVATE COST

I. Department Title: Department of Social Services
Division Title: Children's Division
Chapter Title: Child Care

Rule Number and Title:	**13 CSR 35-32.070 Registration Requirements for Child Care Providers Serving Four or Less Unrelated Children**
Type of Rulemaking:	Proposed Rulemaking

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the 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:
5,499	**Child Care Providers**	**$494,910.00**

III. WORKSHEET

Requirements	*Costs*	*FOL Providers*	*Total Cost*
Training	*$75*	*5,499*	*$412,425*
Medical Exam	*$125*	*660*	*$82,485*
Total Cost			***$494,910***

IV. ASSUMPTIONS

As of January 31, 2016, there were 1,991 registered Four or Less (FOL) providers and 3,508 applicants to become a Four or Less provider. Four or Less providers and applicants will be required to complete trainings for pre-service and orientation. The only cost for training is the cardiopulmonary resuscitation (CPR) and first-aid training. The American Red Cross charges $75 per person. All other trainings are free and offered through the Child Care Resource, Referral, and Training Service contract or Educare contracts.

In addition, FOL providers will be required to have an annual medical exam. For patients without health insurance, which is estimated at 12% of the state population, an annual physical typically costs $50-$200. To estimate the cost of a physical exam an average of $125.00 was used multiplied by 12% of the 5,499 projected FOL providers. (The Medical Expenditure Panel Survey)

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 35—Children's Division
Chapter 32—Child Care

PROPOSED RULE

13 CSR 35-32.080 Registration Requirements for Child Care Facilities that are License Exempt

PURPOSE: The purpose of this rule is to implement the provisions of section 210.027, RSMo, relating to child care facilities that are licensed exempt or exempt from licensure who receive state or federal funds for providing child care services.

(1) Requirements for Registration. To receive a certificate of registration as a registered child care provider, the child care provider applicant and staff shall meet the requirements set forth in this section.

(A) The child care provider applicant and staff must have attained eighteen (18) years of age.

(B) A child care provider applicant and staff shall—

1. Register with the Family Care Safety Registry pursuant to section 210.903 through 210.936, RSMo;

2. A child care provider applicant shall be eligible to receive a registration if the child care provider applicant and staff meet the following criteria:

A. The child care provider applicant and all staff shall not have received a substantiated child abuse and neglect report;

B. The child care provider applicant shall not have been previously refused licensure or have experienced licensure suspension or revocation;

C. The child care provider applicant and all staff cannot appear on the Department of Mental Health's Disqualification Registry pursuant to section 630.170, RSMo;

D. The child care provider applicant and all staff shall not be a registered sex offender or required to register as a sex offender in any state;

E. The child care provider applicant shall not have had a certificate of registration denied or revoked within the past six (6) months;

F. A child care provider applicant and all staff shall not have pled guilty or *nolo contendere* to or been found guilty of—

(I) Any felony for an offense against the person as defined in Chapter 565, RSMo, or any other offense (misdemeanor or felony) against the person involving the endangerment of a child as prescribed by law;

(II) Any misdemeanor or felony for sexual offense as defined by Chapter 566, RSMo, for an offense against the family as defined in Chapter 568, RSMo, with the exception of the sale of fireworks to a child under the age of eighteen (18), for pornography or related offense as defined by Chapter 573, RSMo, for an offense relating to public assistance including, but not limited to, unlawful receipt, conversion or transfer of public benefits pursuant to sections 578.377 through 578.381, RSMo, (sections 570.400 through 570.404, RSMo, after January 1, 2017), perjury committed when obtaining public assistance pursuant to section 578.385, RSMo, (section 570.408, RSMo, after January 1, 2017); or

(III) Any similar crime in any federal, state, municipal, or other court of similar jurisdiction, or any offenses or reports which will disqualify an applicant from receiving state or federal funds, including the following:

(a) The following crimes, in any degree, if considered a felony in the jurisdiction in which it was filed: murder, manslaughter, assault, kidnapping, felonious restraint, false imprisonment, interference with child custodial rights, adult abuse or stalking, burglary;

(b) The following crimes, in any degree, if considered a felony or misdemeanor in the jurisdiction in which it was filed: rape, sodomy, prostitution, child molestation, bigamy, child abandonment, child endangerment, criminal nonsupport of a child, child abuse, elder abuse, robbery, arson, armed criminal action, unlawful possession/use/transfer of a firearm or weapon, unlawful promotion/possession/furnishing of obscene or pornographic material (including, but not limited to, child pornography), or human trafficking;

(c) The following crimes, in any degree, if considered a felony or misdemeanor in the jurisdiction in which it was filed and if involving the endangerment of a child or a child victim: assault, kidnapping, felonious restraint or false imprisonment, interference with child custodial rights;

(d) The following crimes, in any degree, if considered a felony or misdemeanor in the jurisdiction in which it was filed and if filed within the past ten (10) years: unlawful possession, sale, transfer, or trafficking of a controlled substance or any similar crime;

(e) The following crimes, in any degree, if considered a felony in the jurisdiction in which it was filed and if committed against the Department of Social Services or any division thereof: fraud, stealing, or forgery; or

(f) Any municipal court offense for conduct which, if prosecuted in a court of general jurisdiction, would be an offense described in subparagraph (1)(B)2.F.

(C) The child care provider applicant and all staff shall submit a "Risk Assessment for Tuberculosis" form, to be completed, signed, and dated by a medical professional no more than ninety (90) days prior to submission. If a child care provider applicant or staff has active, contagious tuberculosis, the child care provider applicant or staff must submit documentation showing that a medical professional has certified that the child care provider applicant or staff is noninfectious before the child care provider applicant may become registered.

(D) Child care provider applicant and all staff shall submit a statement completed, signed, and dated within the past ninety (90) days by a medical professional on a prescribed form, regarding his/her opinion of the physical and mental health of the child care provider applicant or staff and certifying that a physical examination was completed within the past ninety (90) days, that the child care provider applicant or staff was free from communicable disease, and is not a threat to the health of children.

(E) Child care provider applicant and all staff shall be legally allowed in the presence of children.

(F) The department shall not pay for any costs associated with the requirements of registration.

(G) The child care provider applicant must cooperate and allow for an unannounced on-site inspection by the division or designee at initial application. The purpose of the inspection is to ensure that the child care provider applicant's home or facility is in compliance with all health, safety, fire, and other requirements for registration.

(H) The child care provider applicant's facility shall fully comply with the following health, safety, fire, and other requirements:

1. Local ordinances, codes, and regulations.

A. The child care provider applicant's facility shall meet local ordinances, codes, and regulations, particularly with regard to fire safety and smoke or carbon monoxide detectors.

B. If there are no local ordinances or regulations regarding smoke detectors that apply to the child care provider applicant's facility, the child care provider applicant shall—

(I) Install and maintain operable smoke and carbon monoxide detectors in accordance with the manufacturer's instructions;

(II) Install and maintain all detectors on the ceiling or wall at a point centrally located in a corridor or other area giving access to rooms used for providing child care services in the home unless the manufacturer's instructions provide otherwise; and

(III) Ensure that when activated, the detectors shall provide an alarm in the structure or room;

2. Ratios: The following staff/child ratios shall be maintained at all times:

A. Birth through two (2) years shall have no less than one (1) adult to four (4) children, with no more than eight (8) children in a

group;

B. Age two (2) years shall have no less than one (1) adult to eight (8) children, with no more than sixteen (16) children in a group;

C. Ages three (3) through four (4) years shall have no less than one (1) adult to ten (10) children with no more than thirty (30) children in a group; and

D. Ages five (5) and up shall have no less than one (1) adult to every sixteen (16) children with no more than forty-eight (48) children in a group;

3. Physical space: The facility of the child care provider shall—

A. It must be clean, free of insects and vermin;

B. It must have a constant temperature not less than sixty-five (65) degrees Fahrenheit and not higher than eighty-five (85) degrees Fahrenheit;

C. It must have potable, running water, at least one (1) flushable toilet and one (1) sink for hand washing accessible to children;

D. Hygiene items such as toilet paper, soap, hand drying towels (paper or cloth) must be accessible to children;

E. The food preparation area clean and equipped to prepare snacks and meals;

F. It must have inside space for play and napping;

G. Hazardous materials must be inaccessible to children;

H. Smoking in the home prohibited while children are present;

I. Weapons and ammunition stored in locked cabinets inaccessible to children; and

J. Smoke detectors and fire extinguisher present;

4. Outdoor play area: The outdoor play area must meet the following criteria:

A. It must be an area that is safe, maintained, and has no hazards;

B. The outdoor area must either be continuously fenced to ensure that the children cannot leave and others cannot enter the premises without supervision; or, if not fenced, child care provider must provide a written supervision plan, to be approved by the division for when children are in outdoor play areas. Any written supervision plan must be resubmitted to the division for approval if changes are made;

C. Pools and open water areas are not accessible to children without adult supervision; and

D. Play equipment is well-constructed and free from hazards;

5. Emergency preparedness and response plan is available and posted;

6. Animals: Any animals present on the premises must meet the following criteria:

A. They must be non-threatening to children;

B. None of the animals may have a history of attacking or injuring human beings or other animals;

C. Food and water bowls must be inaccessible to children;

D. The animals must be disease free and have all required vaccinations according to state and local law;

E. Indoor and outdoor areas used by children must be free of animal excrement; and

F. Litter boxes are not to be located in food preparation or serving area, and are inaccessible to children;

7. The child care provider applicant's facility must be free of illegal substances and criminal activity.

(I) The child care provider applicant and all staff shall register with Opportunities in a Professional Education Network (OPEN) and secure a Missouri Professional Development Identifier (MOPD-ID) to track and complete trainings. The child care provider applicant and all staff shall successfully complete training which includes, but is not limited to:

1. First aid and cardiopulmonary resuscitation (CPR) training;

2. Child Care Subsidy Orientation Training;

3. Prevention of Sudden Infant Death Syndrome (SIDS) and safe sleeping, if child care provider serves infants under the age of one (1) year of age;

4. Prevention of shaken baby syndrome and abusive head trauma;

5. Emergency disaster and response training; and

6. Mandatory Child Abuse and Neglect (CA/N) Reporting.

(J) If a child care provider applicant has an outstanding debt owed to the state due to a previous child care overpayment, the child care provider applicant must participate in a repayment plan pursuant to 13 CSR 35-32.110 to become registered with the division.

(2) Processing of Application.

(A) Upon receipt of an initial application for registration and completion of on-site inspection, the division shall review all information to make a determination as to whether the child care provider applicant is eligible to receive a certificate of registration. The division, in its discretion, may request additional documentation if concerns arise regarding the child care provider applicant's ability to provide for the health and safety of children, ability to follow good business and accounting practices, or to address other concerns as noted by the division. The child care provider applicant shall provide all requested documentation.

(B) If the division determines the child care provider applicant meets all eligibility requirements, the division shall issue a certificate of registration good for one (1) year to the child care provider applicant.

(C) If the division determines the child care provider applicant fails to meet eligibility requirements, the division shall provide written notice of the denial of registration. The notice shall—

1. Inform the child care provider applicant of the nature of the decision;

2. State generally the factual and legal basis for the division's decision; and

3. Notify the child care provider applicant of his/her right to seek administrative review.

(3) Renewal of Child Care Provider Registration.

(A) A child care provider shall renew registration annually. The child care provider shall adhere to the timeframes listed below for every subsequent renewal.

(B) To renew a certificate of registration as a registered child care provider, the child care provider shall—

1. Within ten (10) days of circumstance, incident, or occurrence which would alter any information provided in the child care provider's original application for registration, the child care provider shall notify the division in writing;

2. Within thirty (30) days of obtaining new or additional staff, the registered child care provider applicant shall require all staff to meet the requirements listed in section (1). A staff member shall not provide direct supervision of children until the staff member has met the eligibility criteria set forth in paragraph (1)(B)2.;

3. Perform the following annually:

A. Cooperate and allow for an unannounced on-site inspection by the division or designee prior to renewal. The on-site inspections shall ensure that the registered child care provider is in compliance with requirements listed in subsection (1)(H); and

B. Ensure that the child care provider and all staff meet the eligibility criteria set forth in paragraph (1)(B)2.;

4. Perform the following every two (2) years:

A. Submit a "Risk Assessment for Tuberculosis" form, to be completed, signed, and dated by a medical professional no more than ninety (90) days prior to submission. If a registered child care provider or staff has active, contagious tuberculosis, the registered child care provider or staff must submit documentation showing that a medical professional has certified that the registered child care provider or staff is non-infectious before the registered child care provider may become renewed; and

B. Submit a statement completed, signed, and dated no more than ninety (90) days prior to submission by a medical professional

on a prescribed form, regarding his/her opinion of the physical and mental health of the registered child care provider or staff and certifying that a physical examination was completed no more than ninety (90) days prior to submission, that the registered child care provider or staff was free from communicable disease and is not a threat to the health of children;

5. Upon receipt of registration renewal request, the division shall make a determination as to whether the registered child care provider is eligible to receive a renewed certificate of registration. The division shall follow the same process for the renewal of a registration as that followed to process an initial application as described in section (2).

(4) Corrective Action. The division may require the child care provider to submit and implement a corrective action plan to resolve any health or safety concerns, regulatory violations, or contractual violations. The division shall provide written notification to the child care provider of the requirement to submit and implement a corrective action plan, identifying the specific performance, regulatory requirements, or contractual requirements not being met and the expected corrective resolution.

(A) The child care provider shall submit a written corrective action plan to the division within ten (10) days of notice.

(B) The corrective action plan must include the actions the child care provider proposes to take to remedy concerns, time frames for achieving such, the staff responsible for the necessary action, the improvement that is expected, a description of how progress will be measured, and a description of the actions to be taken to prevent the situation from recurring.

(C) The division shall notify the child care provider in writing if the corrective action plan is approved or if modifications are required. In the event the division requires changes to the corrective action plan, the child care provider shall submit a revised corrective action plan within ten (10) days of notice that changes are required.

(5) Registration Revocation.

(A) The division shall revoke a child care provider's registration if—

1. Health or safety issues exist which place children at risk of immediate harm;

2. Child care provider or staff has a substantiated CA/N report;

3. Child care provider committed an intentional violation;

4. Child care provider failed to report child abuse and neglect when required by law to do so;

5. Child care provider is not mentally, emotionally, or physically fit to care for children as determined by a medical professional or mental health professional;

6. Child care provider is not legally allowed in the presence of children;

7. Child care provider failed to cooperate in a Welfare Investigative Unit investigation, Child Abuse and Neglect investigation, compliance review, or audit; or

8. The Department of Health and Senior Services determines the child care provider is operating in violation of the law.

(B) The division may revoke a child care provider's registration if—

1. Health and safety issues exist that negatively impact the safety and well-being of the children in the child care provider's care, and the child care provider fails to rectify the issues;

2. Child care provider fails to ensure new/additional staff meet all requirements within thirty (30) days pursuant to section (3);

3. Child care provider fails to successfully submit or complete the requirements of a corrective action plan within the time period specified in the plan; or

4. Child care provider is non-compliant with registration requirements.

(C) If any health or safety issues exist which place children at immediate risk of harm, the division shall immediately revoke the child care provider's registration. In the case of immediate revocation, the child care provider shall promptly be granted an administrative review under section (7).

(D) If the division determines the child care provider's registration is subject to revocation and no health or safety issues exists which place children at immediate risk of harm, the division shall provide written notice of the revocation. The notice shall—

1. Inform the child care provider applicant of the nature of the decision;

2. State generally the factual and legal basis for the division's decision; and

3. Notify the child care provider of his/her right to seek an administrative review.

(6) Contract. To be eligible to contract to receive state or federal funds as a registered child care provider, the child care provider shall meet the following requirements:

(A) Obtain a certificate of registration, which must be maintained throughout the duration of the contract;

(B) The child care provider shall sign a contract issued by the state, agreeing to all terms including, but not limited to:

1. All records of children shall be confidential, protected from unauthorized examination, and available to the parent(s) and division upon request unless otherwise allowed by law;

2. Child care provider and staff shall not be engaged in other employment while providing child care services;

3. Child care provider shall maintain records pursuant to 13 CSR 35-32.130;

4. Child care provider shall notify all custodial parents and legal guardians of the child care provider's—

A. Phone number;

B. Discipline policy; and

C. Emergency preparedness and response plan;

5. Child care provider shall notify custodial parents and legal guardians if the child care provider does not have immediate access to a telephone and provide parents with an alternative, effective method of communication;

6. Child care provider shall ensure custodial parents and legal guardians have access to their child(ren);

7. Child care provider shall report child deaths and serious injuries to the division within twenty-four (24) hours of the incident, using a form provided by the division. This includes, but is not limited to:

A. The death of a child if the child died while at the child care provider;

B. The death of a child enrolled at the child care provider if the child died of a contagious disease; or

C. A serious injury to a child that occurs while the child is at the child care provider or away from the child care provider's facility, but still in the care of the child care provider, which results in the child being treated by a medical professional or admitted to a hospital;

8. Child care provider shall cooperate with any investigations, audits, or other requests of the division;

9. Child care provider shall follow all statutes, regulations, and policies of the division;

10. Child care provider must report the following changes to the division in writing within ten business (10) days: physical address, mailing address, telephone number, or email address;

11. Child care provider shall not utilize physical or corporal punishment including, but not limited to, spanking, slapping, shaking, biting, or pulling hair;

12. Child care provider shall submit to monitoring by division or its designee for compliance with contractual or regulatory obligations. Such monitoring may include, but is not limited to:

A. Providing attendance records at the request of the division or its designee;

B. Submitting to unannounced or announced on-site inspections; or

C. Other monitoring as determined necessary by the division;

13. Child care provider and staff shall attend training as approved by the division, and provide documentation of the successful completion of all training to the division through the Opportunities in a Professional Education Network (OPEN). The child care provider and staff shall complete the following training within six (6) months of receiving a signed contract from the department:

A. Infectious disease prevention and control;
B. Hand-washing and universal health precautions;
C. Medication and parental consent;
D. Sanitary food handling;
E. Prevention and response to food allergy emergencies;
F. Building and physical premises safety;
G. Emergency and disaster response;
H. Handling and storage of hazardous materials;
I. Protection for hazards that can cause bodily harm;
J. Child's physical, social, and emotional development; and
K. Transportation of children.

(C) A child care provider may not be eligible for a contract if the child care provider was denied a contract or a previous contract was terminated for cause, and the underlying issues causing denial or termination of the contract have not been resolved.

(D) A child care provider may not be eligible for a contract if the owner, director, board member, officer, shareholder, agent, agent registered with the secretary of state's office, or any other person with decision making authority over the facility, was denied a contract, or a previous contract was terminated for cause and previous owner, director, board member, officer, shareholder, agent, agent registered with the secretary of state's office, or any other person with decision making authority over the facility remains in a position to make decisions on behalf of the facility.

(E) Termination of Contract. If a child care provider fails to adhere to the terms of the contract, the division may terminate the contract by providing written notice to the child care provider. The notice shall—

1. Inform the child care provider of the date upon which the contract shall be terminated;

2. State generally the factual and legal basis for the division's decision; and

3. Notify the child care provider applicant of his/her right to seek administrative review.

(7) Administrative Review.

(A) The child care provider/applicant may request an administrative review of the decision to deny registration, deny registration renewal, revoke registration, deny a contract, or terminate a contract by providing a written request for an administrative review within ten (10) days of the notification. The child care provider may submit additional documentation for consideration with the request for an administrative review. The division may, in its discretion, review any information received after the request for review, but is not required to do so. In no circumstances shall the division be required to review information provided after the division has conducted its administrative review.

(B) The child care provider/applicant may request the opportunity to present additional information via telephone conference call by making such a request in writing with the request for administrative review. If the child care provider/applicant timely requests a telephone conference call, the division shall notify the child care provider/applicant in writing of the date, time, and telephone number at which the child care provider/applicant may present information. In such circumstances, the child care provider/applicant is responsible for ensuring that he/she is able to present information via telephone on the date/time provided, and that he/she has a working telephone and stable connection. The division shall not be responsible for any technical difficulties the child care provider/applicant may experience.

(C) The division shall—

1. Review the denial of registration, denial of registration renewal, registration revocation, contract denial, or contract termination along with any written materials provided by the child care provider;

2. Conduct a telephone conference call, if timely requested by the child care provider/applicant; and

3. Upon completion of the administrative review, the division shall notify the child care provider of the results of the administrative review in writing.

(8) Direct Appeal to the Director. If, after conducting the administrative review, the division upholds the denial of registration, denial of registration renewal, or registration revocation, the child care provider/applicant may appeal the decision directly to the director pursuant to section 208.080, RSMo. The child care provider/applicant must submit a request for direct appeal to the director within ten (10) days of notification of the results of the administrative review.

(A) If the child care provider/applicant timely makes a direct appeal to the director, the director shall designate the Administrative Hearings Unit of the Division of Legal Services of the Department of Social Services to hear all cases. The Administrative Hearings Unit shall hear cases under the procedures outlined in 13 CSR 40-2.160.

(B) The burden shall be on the child care provider/applicant to prove the denial of registration, denial of registration renewal, or registration revocation was inconsistent with all applicable laws and regulations.

(C) Upon completion of the hearing, the Administrative Hearings Unit shall issue a written decision as approved by the director, except in default cases or cases disposed of by stipulation, consent order, or agreed settlement. The decision shall include, or be accompanied by, findings of fact and conclusions of law. The findings of fact shall be stated separately from the conclusions of law and shall include a concise statement of the findings on which the agency bases its order. The Administrative Hearings Unit shall deliver or mail its decision, findings of fact, and conclusions of law to each party, or his/her attorney of record. The decision of the Administrative Hearings Unit shall be the final decision of the department.

AUTHORITY: sections 207.020, 210.025, and 210.027, RSMo 2016, 42 U.S.C. section 9858, et. seq., Executive Order 03-03. Original rule filed Jan. 3, 2017.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions approximately three million five hundred twenty thousand four hundred seventy-four dollars ($3,520,474) annually.

PRIVATE COST: This proposed rule will cost private entities approximately six hundred eighty-eight thousand five hundred ninety dollars ($688,590) annually.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Children's Division at ADRULESFEEDBACK.CD@dss.mo.gov. 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.*

FISCAL NOTE
PUBLIC COST

I. Department Title: Department of Social Services
Division Title: Children's Division
Chapter Title: Child Care

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Type of Rulemaking:	Proposed Rulemaking

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IV. ASSUMPTIONS

On-site monitoring, training, and system updates need to track results of on-site monitoring are costs associated to all registered provider; providers serving four or less (FOL) unrelated children and related children and license exempt child care providers. The above costs were appropriated in FY-17 as new decision items for the Children's Division.

On-Site Monitoring: There are approximately 5,897 registered providers and applicants for registration that will be monitored through a site visit annually; 343 active registered license exempt providers, 1,911 active FOL providers and 3,508 applications for registration. The approximate cost per site visit and actions necessary to approve a registration is $343 per applicant or renewing registered provider.

Training for Registered Providers: The federal Child Care and Development Fund requires all child care providers receiving child care subsidy to complete health and safety training within 3 months of receiving subsidy payments. This includes applicants for registration and providers renewing registration to receive child care subsidy; FOLs and License Exempt. Children's Division contracts with Educare providers to provide support and technical assistance to registered providers. Due to the training requirements, the Children's Division amended Educare contracts for FY-17 for Educare contractors to provide the training for registered providers. The estimated cost of the training per provider and staff is $1,000,000. This is based on an approximate cost of $87 per FOL provider and staff employed by License Exempt child care providers; 1991 FOL providers, 5,970 license exempt provider staff and an additional 3,508 new registration applicants of for a total of 11,469.

System Updates for Monitoring: Information on registered provider compliance with health and safety requirements is to be made available to the public through an electronic system. Currently, the Department of Health and Senior Services, Section for Child Care Regulation has a system in which staffs are able to input findings or on-site monitoring and an electronic means for the public to search for results on licensed child care providers. The Children's Division will work with DHSS in enhancing its current system to allow for the on-site monitoring results to be captured in the DHSS electronic system and be made available to the public through the child care provider search system. Estimated cost for system changes is $500,000.

FISCAL NOTE
PRIVATE COST

I. Department Title: Department of Social Services
Division Title: Children's Division
Chapter Title: Child Care

Rule Number and Title:	13 CSR 35-32.080 Registration Requirements for Licensed Exempt Child Care Facilities
Type of Rulemaking:	Proposed Rulemaking

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the 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:
Licensed Exempt Providers	**Child Care Providers**	**$668,590**

III. WORKSHEET

Requirements	Cost	LEX Provider Staff (Estimated number of staff)	Total Cost
Tuberculosis Assessment	$10	5,970	$59,700
Training - CPR/First Aid	$75	5,970	$447,750
Family Care Safety Registry	$12	5,970	$71,640
Medical Exam	$125	716	$89,500
			$668,590

IV. ASSUMPTIONS

Using data from the National Association of Child Care Resource and Referral Agencies, it is estimated that a license exempt provider employees on average 15 staff. As of

January 31, 2016 there were 398 license exempt providers receiving child care subsidy payments for a total of 5,970 staff.
Tuberculosis Assessment - $10.00 per staff every two years
Training – CPR/First Aid - $75.00 per staff every two years
Family Care Safety Registry - $12.00 onetime fee
Annual Medical Exam - $125.00 per staff if uninsured. For patients without health insurance, which is estimated at 12% of the state population, an annual physical typically costs $50-$200. To estimate the cost of a physical exam an average of $125.00 was used multiplied by 12% of the 5,970 projected License Exempt providers and staff. (The Medical Expenditure Panel Survey)

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 35—Children's Division
Chapter 32—Child Care

PROPOSED RULE

13 CSR 35-32.090 Requirements for Licensed Child Care Facilities to Contract for State or Federal Child Care Funds

PURPOSE: The purpose of this rule is to define the requirements for child care providers licensed by the Department of Health and Senior Services, section for Child Care Regulations, who wish to contract with the division to receive state or federal funds for providing child care services.

(1) Requirements to Contract. To receive a contract from the department to receive state or federal funds, a licensed child care provider and staff shall meet the following requirements:

(A) The child care provider shall be fully licensed and in good standing with the Department of Health and Senior Services, section for Child Care Regulations;

(B) The licensed child care provider and all staff shall be legally allowed in the presence of children;

(C) The department shall not pay for any costs associated with the requirements of licensure or requirements to contract with the department;

(D) The licensed child care provider and all staff shall register with Opportunities in a Professional Education Network (OPEN) and secure a Missouri Professional Development Identifier (MOPD-ID) to track and complete trainings. The licensed child care provider and all staff shall complete the following training prior to a contract being issued, which includes, but is not limited to:

1. First aid and cardiopulmonary resuscitation (CPR) training;
2. Child Care Subsidy Orientation Training;
3. Prevention of Sudden Infant Death Syndrome (SIDS) and safe sleeping, if child care provider serves infants under the age of one (1) year of age;
4. Prevention of shaken baby syndrome and abusive head trauma;
5. Emergency disaster and response training; and
6. Mandatory Child Abuse and Neglect (CA/N) reporting;

(E) If a licensed child care provider seeking to contract with the division has an outstanding debt owed to the state due to a previous child care overpayment, the licensed child care provider must participate in a repayment plan pursuant to 13 CSR 35-32.110 to become contracted with the division;

(F) A licensed child care provider shall require all staff to meet all requirements listed in section (1) within thirty (30) days of becoming employed or volunteering. A staff member shall not provide direct supervision of children until the staff member has met the eligibility criteria set forth in section (1). A licensed child care provider may not be eligible for a contract if the licensed child care provider was denied a contract, or a previous contract was terminated for cause, and the underlying issues causing denial or termination of the contract have not been resolved;

(G) A licensed child care provider may not be eligible for a contract if the owner, director, board member, officer, shareholder, agent, agent registered with the secretary of state's office, or any other person with decision making authority over the facility, was denied a contract, or a previous contract was terminated for cause, and previous owner, director, board member, officer, shareholder, agent, agent registered with the secretary of state's office, or any other person with decision making authority over the facility remains in a position to make decisions on behalf of the facility.

(2) Contract.

(A) Upon receipt of a request to contract, the division shall make a determination as to whether the licensed child care provider is eligible to enter into a contract with the department for state or federal funds for child care services.

(B) If the division determines the licensed child care provider meets all eligibility requirements, the division may issue a contract to the licensed child care provider. The licensed child care provider shall sign a contract, agreeing to all terms including, but not limited to:

1. Child care provider and staff shall not be engaged in other employment while providing child care services;
2. Child care provider shall maintain records pursuant to 13 CSR 35-32.130;
3. Child care provider shall notify all custodial parents and legal guardians of the child care provider's—
   A. Phone number;
   B. Discipline policy; and
   C. Emergency preparedness and response plan;
4. Child care provider shall ensure custodial parents and legal guardians have access to their child(ren);
5. Child care provider shall report child deaths and serious injuries to the division within twenty-four (24) hours of the incident, using a form provided by the division. This includes, but is not limited to:
   A. The death of a child if the child died while at the child care provider;
   B. The death of a child enrolled at the child care provider if the child died of a contagious disease; or
   C. A serious injury to a child that occurs while the child is at the child care provider or away from the child care provider's facility, but still in the care of the child care provider, which results in the child being treated by a medical professional or admitted to a hospital;
6. Child care provider shall cooperate with any investigations, audits, or other requests of the division;
7. Child care provider shall follow all statutes, regulations, and policies of the division;
8. Child care providers must report the following changes to the division in writing within ten business (10) days: physical address, mailing address, telephone number, email address, or any other circumstance, incident, or occurrence which would alter any information provided in the child care provider's original application for contract;
9. Child care provider shall not utilize physical or corporal punishment including, but not limited to, spanking, slapping, shaking, biting, or pulling hair;
10. Child care provider shall submit to monitoring by division or its designee for compliance with contractual or regulatory obligations. Such monitoring may include, but is not limited to:
    A. Providing attendance records at the request of the division or its designee;
    B. Submitting to unannounced or announced on-site inspections; or
    C. Other monitoring as determined necessary by the division;
11. Child care provider shall attend training as approved by the division and provide documentation of the successful completion of all training to the division through the Opportunities in a Professional Education Network (OPEN). The child care provider shall complete the following training within six (6) months of receiving a signed contract from the department:
    A. Infectious disease prevention and control;
    B. Hand-washing and universal health precautions;
    C. Medication and parental consent;
    D. Sanitary food handling;
    E. Prevention and response to food allergy emergencies;
    F. Building and physical premises safety;
    G. Emergency and disaster response;
    H. Handling and storage of hazardous materials;
    I. Protection for hazards that can cause bodily harm;
    J. Child's physical, social, and emotional development; and

K. Transportation of children.

(C) If the division determines the licensed child care provider fails to meet all requirements to contract, the division shall provide written notice of the denial to contract with the licensed child care provider. The notice shall—

1. Inform the child care facility of the nature of the decision;

2. State generally the factual and legal basis for the division's decision, if applicable; and

3. Notify the child care facility of the right to seek administrative review.

(D) Corrective Action. The division may require the licensed child care provider to submit and implement a corrective action plan to resolve any health or safety concerns, regulatory violations, or contractual violations. The division shall provide written notification to the licensed child care provider of the requirement to submit and implement a corrective action plan, identifying the specific performance, regulatory requirements, or contractual requirements not being met and the expected corrective resolution.

1. The licensed child care provider shall submit a written corrective action plan to the division within ten (10) days of notice.

2. The corrective action plan must include the actions the licensed child care provider proposes to take to remedy concerns, time frames for achieving such, the staff responsible for the necessary action, the improvement that is expected, a description of how progress will be measured, and a description of the actions to be taken to prevent the situation from recurring.

3. The division shall notify the licensed child care provider in writing if the corrective action plan is approved or if modifications are required. In the event the division requires changes to the corrective action plan, the licensed child care provider shall submit a revised corrective action plan within ten (10) days of notice that changes are required.

(E) Termination of Contract. The division may immediately terminate a licensed child care provider's contract upon written notice if—

1. The licensed child care provider allows staff to work within the child care facility who have a substantiated CA/N report;

2. The licensed child care provider committed an intentional violation;

3. The licensed child care provider failed to report child abuse and neglect;

4. The licensed child care provider employs individuals or allows volunteers who are not mentally, emotionally, or physically fit to care for children as determined by a medical professional or mental health professional;

5. The licensed child care provider employs individuals or allows volunteers who are not legally allowed in the presence of children;

6. The licensed child care provider failed to cooperate in a Welfare Investigative Unit investigation, Child Abuse and Neglect investigation or assessment, compliance review, or audit; or

7. The Department of Health and Senior Services, section for Child Care Regulations, takes action to immediately suspend or revoke licensed child care provider's license;

8. If a condition exists that negatively impacts the health and/or safety of the children and the child care provider fails to rectify the issues in a timely manner;

9. The licensed child care provider fails to successfully submit or complete the requirements of a corrective action plan within the time period specified in the plan; or

10. The licensed child care provider is non-compliant with contractual requirements.

11. The division shall provide written notice of the termination. The notice shall—

A. Inform the child care facility of the nature of the termination of the contract; and

B. State generally the factual and legal basis for the division's decision; and

C. Notify the child care provider of his/her right to seek administrative review.

(3) Administrative Review.

(A) The licensed child care provider may request an administrative review of the decision to deny a contract by providing a written request for an administrative review within ten (10) days of the notification. The licensed child care provider may submit additional documentation for consideration with the request for an administrative review. Documentation received after the request may not be considered by the division.

(B) The licensed child care provider may request the opportunity to present additional information by telephone conference call by making such a request in writing with the request for administrative review. If the licensed child care provider timely requests a telephone conference call, the division shall notify the licensed child care provider in writing of the date, time, and telephone number at which the licensed child care provider may present information. In such circumstances, the licensed child care provider is responsible for ensuring that he/she is able to present information via telephone on the date/time provided, and that he/she has a working telephone and stable connection. The division shall not be responsible for any technical difficulties the licensed child care provider may experience.

(C) The division shall—

1. Review the denial/termination of contract and any written materials provided by the licensed child care provider;

2. Conduct a telephone conference call, if timely requested by the licensed child care provider; and

3. Upon completion of the administrative review, the division shall notify the licensed child care provider of the results of the administrative review in writing. This decision shall be the final decision of the agency.

AUTHORITY: sections 207.020, 210.025, and 210.027, RSMo 2016, 42 U.S.C. section 9858, et. seq., Executive Order 03-03. Original rule filed Jan. 3, 2017.

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

PRIVATE COST: This proposed rule will cost private entities approximately one million six hundred fifty-four thousand two hundred dollars ($1,654,200) annually.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Children's Division at ADRULESFEEDBACK.CD@dss.mo.gov. 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.*

FISCAL NOTE
PRIVATE COST

I. Department Title: Department of Social Services
Division Title: Children's Division
Chapter Title: Child Care

Rule Number and Title:	13 CSR 35-32.090 Requirements for Licensed Child Care Facilities to Contract for state or Federal Child Care Funds
Type of Rulemaking:	Proposed Rulemaking

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the 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:
1,838 Contracted Providers	**Contracted Licensed Child Care Providers**	**$1,654,200.00**

III. WORKSHEET

Requirements	Cost	Licensed Provider Staff (Estimated number of staff)	Total Cost
Training - CPR/First Aid	$ 75.00	22,056	$ 1,654,200.00

IV. ASSUMPTIONS

Using data from the National Association of Child Care Resource and Referral Agencies, it is estimated that a licensed child care providers employees on average 13 staff. As of January 31, 2016 there were 1,838 contracted licensed child care providers receiving child care subsidy payments for a total of 23,894 staff. Presently, licensed child care facilities are required to have at least one staff member in the building trained in first aid and CPR. Therefore, of the 23,894 staff members at least 1,838 staff are already trained. This means that estimated 22,056 staff members would require First Aid/CPR training. Training – CPR/First Aid - $75.00 per staff every two years

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 35—Children's Division
Chapter 32—Child Care

PROPOSED RULE

13 CSR 35-32.100 Participant Overpayments

PURPOSE: This rule establishes procedures to use when determining and collecting child care subsidy overpayments made to participants.

(1) Overpayments. All child care subsidy participant overpayments shall be subject to repayment from a participant up to the full amount of the overpayment.

(A) If the department determines that it has made an overpayment on behalf of a participant, as a result of agency error, participant error, fraud, intentional violations, unintentional violations, or inadvertent error, the department shall provide written notice to the participant. The department shall send the notification via first class mail to the participant's address of record. The notification shall include—

1. The total amount of the overpayment;
2. The service date and/or dates;
3. The reason for the overpayment; and
4. The method in which the overpayment may be contested.

(B) Notifications sent to participant's address of record via first class mail shall constitute good service of notice.

(C) If the participant wishes to contest the overpayment, the participant shall make a direct appeal to the director pursuant to section 208.080, RSMo, in writing within ninety (90) days of the date of the written notice of overpayment.

(D) If the participant does not timely make a direct appeal to the director in writing, the department may proceed to collection of overpayment.

(2) Direct Appeal to the Director.

(A) If the participant timely makes a direct appeal to the director, the director shall designate the Administrative Hearings Unit of the Division of Legal Services of the Department of Social Services to hear all cases. The Administrative Hearings Unit shall hear cases under the procedures outlined in 13 CSR 40-2.160.

(B) The department shall not seek collection or repayment of an overpayment until the hearing is completed and a decision rendered.

(C) The burden shall be on the participant to prove there was no overpayment or that the overpayment was calculated incorrectly.

(D) Upon completion of the hearing, the Administrative Hearings Unit shall issue a written decision as approved by the director, except in default cases or cases disposed of by stipulation, consent order, or agreed settlement. The decision shall include, or be accompanied by, findings of fact and conclusions of law. The findings of fact shall be stated separately from the conclusions of law and shall include a concise statement of the findings on which the agency bases its order. The Administrative Hearings Unit shall deliver or mail its decision, findings of fact, and conclusions of law to each party, or his/her attorney of record. The decision of the Administrative Hearings Unit shall be the final decision of the department.

(3) Collection and Repayment.

(A) Once the assessment of the overpayment is final, the department may utilize any and all procedures in law and equity to collect the overpayment.

(B) The department and participant may enter into a voluntary repayment plan as follows:

1. The department and the participant shall negotiate a repayment plan within forty-five (45) days from the date the overpayment becomes final;

2. The repayment plan may include a single lump-sum payment or equal, monthly installment payments over a specified period of time; and

3. The department shall provide the negotiated repayment plan in writing to the participant. Every repayment plan that includes monthly installment payments shall also include a promissory note executed by the participant in favor of the Department of Social Services as provided by the department. The participant shall sign the repayment plan and promissory note, as applicable, and shall return the original, signed copy to the department. The participant shall then make payments as directed in the repayment plan and/or promissory note, as applicable.

(4) Default.

(A) An overpayment account shall be in default if—

1. The participant fails to negotiate a mutually agreeable repayment plan;

2. The participant fails to sign or return the repayment plan and/or promissory note;

3. The account is not subject to a repayment plan and the full amount is not repaid within ninety (90) days from the date of notice of overpayment or date of the Administrative Hearing Unit's decision, whichever is later; or

4. The account is subject to a repayment plan and/or an installment payment, and is not received within thirty (30) days of the date that it is due.

(B) If an overpayment is in default, the balance of the overpayment shall be immediately due and payable.

(C) The department may take appropriate actions to recover default accounts, which may include, but are not limited to:

1. Filing a claim for debt off-set with the Director of Revenue to recover the overpayment from any refunds due to the participant by the Department of Revenue pursuant to section 143.781, RSMo;

2. Filing a cause of action in a court of competent jurisdiction;

3. Other action as allowed by state or federal law as deemed appropriate by the department.

AUTHORITY: sections 207.020, 210.025, and 210.027, RSMo 2016, 42 U.S.C. section 9858, et. seq., Executive Order 03-03. Original rule filed Jan. 3, 2017.

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

PRIVATE COST: This proposed rule 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 rule with the Children's Division at ADRULESFEEDBACK.CD@dss.mo.gov. 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 13—DEPARTMENT OF SOCIAL SERVICES
Division 35—Children's Division
Chapter 32—Child Care

PROPOSED RULE

13 CSR 35-32.110 Child Care Provider Overpayments

PURPOSE: This rule establishes procedures to use when determining and collecting child care subsidy overpayments made to child care providers.

(1) Overpayments. All child care subsidy provider overpayments shall be subject to repayment or recoupment from a child care

provider up to the full amount of the overpayment.

(A) If the department determines that it has made an overpayment to a child care provider as a result of agency error, child care provider error, participant error, fraud, intentional violations, unintentional violations, or inadvertent error, the department shall provide written notice to the child care provider. The department shall send the notification via first class mail to the child care provider's address of record. The notification shall include—

1. The total amount of the overpayment;
2. The service date and/or dates;
3. The reason for the overpayment; and
4. The method in which the overpayment may be contested.

(B) Notification sent to the child care provider's address of record via first class mail shall constitute good service of notice.

(C) If the child care provider wishes to contest the overpayment, the child care provider shall request an administrative review. This request shall be made in writing within thirty (30) days of the date on the notice of overpayment.

(D) If the child care provider does not timely request an administrative review in writing, the division may proceed to collection of overpayment.

(2) Administrative Review.

(A) If the child care provider timely requests administrative review, the child care provider may provide additional documentation for review within ten (10) business days of the request for administrative review. The department may not consider documents received after ten business (10) days.

(B) Upon receipt of a request for administrative review and additional documentation, the department shall—

1. Verify the child care subsidy payment and overpayment were properly calculated;
2. Examine additional documentation or other material timely provided by the child care provider; and
3. Upon completion of the administrative review, the department shall notify the child care provider of the results of the administrative review in writing. The results of the administrative review may include a confirmation of the original overpayment amount, a decrease in the overpayment amount, or an increase in the overpayment amount.

(C) The results of the administrative review shall be final.

(3) Collection and Repayment.

(A) Once the assessment of the overpayment is final, the department may utilize any and all procedures in law and equity to collect the overpayment.

(B) The department and child care provider may enter into a voluntary repayment plan as follows:

1. The department and the child care provider shall negotiate a repayment plan within forty-five (45) days from the date the overpayment becomes final;
2. The repayment plan may include:
   A. A single lump-sum payment;
   B. Equal, monthly installment payments over a specified period of time not to exceed one (1) year; or
   C. Recoupment from future child care provider subsidy payments;
3. The department shall provide the negotiated repayment plan in writing to the child care provider. Every repayment plan that includes monthly installment payments or recoupment from future child care provider subsidy payments shall also include a promissory note executed by the child care provider in favor of the department. The child care provider shall sign the repayment plan and promissory note, as applicable, and shall return the original, signed copy to the department. The child care provider shall then make payments as directed in the repayment plan or promissory note, as applicable.

(4) Default.

(A) An overpayment account shall be in default if—

1. The child care provider fails to timely negotiate a mutually agreeable repayment plan and promissory note;
2. The child care provider fails to timely sign or return the repayment plan and/or promissory note;
3. The account is not subject to a repayment plan, and the full amount is not repaid within ninety (90) days from the date of notice of overpayment or date of the results of the administrative review, whichever is later; or
4. The account is subject to a repayment plan, and an installment payment or lump-sum payment is not received within thirty (30) days of the installment or lump-sum due date.

(B) If an overpayment is in default, the balance of the overpayment shall be immediately due and payable.

(C) The department may take appropriate actions to recover default accounts, which may include, but are not limited to:

1. Recoup the overpayment from future child care provider subsidy payments due to the child care provider by the department;
2. File a claim for debt off-set with the Director of Revenue to recover the overpayment from any refunds due to the child care provider by the Department of Revenue pursuant to section 143.781, RSMo;
3. File a cause of action in a court of competent jurisdiction; or
4. Other action as allowed by state or federal law as deemed appropriate by the department.

AUTHORITY: sections 207.020, 210.025, and 210.027, RSMo 2016, 42 U.S.C. section 9858, et. seq., Executive Order 03-03. Original rule filed Jan. 3, 2017.

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

PRIVATE COST: This proposed rule 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 rule with the Children's Division at ADRULESFEEDBACK.CD@dss.mo.gov. 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 13—DEPARTMENT OF SOCIAL SERVICES
Division 35—Children's Division
Chapter 32—Child Care

PROPOSED RULE

13 CSR 35-32.120 Regulatory and Contractual Violations of Registered Child Care Providers

PURPOSE: This rule sets forth the investigation of complaints made on registered child care providers.

(1) Investigation.

(A) Any member of the public may notify the division of a regulatory or contractual violation of a registered child care provider. The division or designee shall investigate regulatory or contractual violations.

(B) Any member of the public wishing to notify the division of child abuse or neglect shall do so in accordance with section 210.145, RSMo.

(C) Registered child care providers shall fully cooperate with any investigation conducted by the division or designee. This includes, but is not limited to, providing information or documentation

requested by the division or designee.

(D) Upon conclusion of an investigation, the division or designee shall notify the child care provider in writing. The notification shall include—

1. A description of the complaint;

2. Whether the division has substantiated the complaint; and

3. If substantiated, the child care provider's right to an administrative review.

(2) Administrative Review.

(A) The child care provider may request an administrative review of the decision to substantiate the violation by providing a written request for an administrative review within ten (10) days of the notification. The child care provider may submit additional documentation for consideration with the request for an administrative review. The division may, but is not required to, review documentation received after the request for administrative review.

(B) The child care provider may request the opportunity to present additional information by telephone conference call by making such a request in writing with the request for administrative review. If the child care provider timely requests a telephone conference, the division shall notify the child care provider in writing of the date, time, and telephone number at which the child care provider may present evidence. In such circumstances, the child care provider is responsible for ensuring that he/she is able to present information via telephone on the date/time provided, and that he/she has a working telephone and stable connection. The division shall not be responsible for any technical difficulties the child care provider may experience.

(C) If a child care provider makes a timely request for administrative review, the division will not include the provider in the list described in section (3) until the administrative review process is complete and a final decision has been made.

(D) The division shall—

1. Review the investigation of the violation and any written materials timely provided by the child care provider;

2. Conduct a telephone conference, if timely requested by the child care provider; and

3. Upon completion of the administrative review, notify the child care provider of the results of the administrative review in writing. The results of the administrative review may uphold or overturn the substantiated complaint.

(E) The results of the administrative review shall be final.

(3) Public Access.

(A) The division shall maintain a record of final, substantiated regulatory violations of registered child care providers and compliance actions taken against child care providers. Such record shall include the name of the child care provider, date of the violation, a description of the substantiated contractual or regulatory violation, and any corrective action taken.

(B) The division shall maintain a record of the date and results of any on-site inspection of a registered child care provider, including any regulatory violations found during the on-site inspection.

(C) The division shall make its records available for public viewing on the division's website.

AUTHORITY: sections 207.020, 210.025, and 210.027, RSMo 2016, 42 U.S.C. section 9858, et. seq., Executive Order 03-03. Original rule filed Jan. 3, 2017.

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

PRIVATE COST: This proposed rule 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 rule with the Children's Division at ADRULESFEEDBACK.CD@dss.mo.gov. 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 13—DEPARTMENT OF SOCIAL SERVICES
Division 35—Children's Division
Chapter 32—Child Care

PROPOSED RULE

13 CSR 35-32.130 Recordkeeping

PURPOSE: This rule sets forth the records, documents, and reports which a child care provider shall maintain and, upon request, submit to the division.

(1) Notwithstanding any other provision of law, all registered and licensed child care providers shall maintain accurate, auditable records as described below.

(2) Child Information Register. The child care provider shall maintain an accurate register of all children who receive care from the provider. At a minimum, the register shall contain the following information for each child served under contract with the department:

(A) The child's full-name and date of birth;

(B) The name, address, e-mail address, phone number, and other necessary contact information of each person legally responsible for each child;

(C) Allergies to food, medications, insects, or other materials;

(D) Daily medications, including dosage, time of administering, and route for administering;

(E) Listing of persons authorized to pick-up and drop-off child as approved by person legally responsible for the child; and

(F) For infants, feeding times and amount of breast milk or formula per feeding.

(3) Time and Attendance Register. The child care provider shall maintain a time and attendance register of all children who receive care from the provider. At a minimum, the time and attendance register shall contain the following information for each child served under a subsidized child care contract with the department:

(A) The actual dates and times that the child received subsidized child care services, showing for each day of service the date that the child arrived and the time that the child was picked up;

(B) The name of the person who dropped off the child and the name of the person who picked up the child; and

(C) The child care provider shall record the required information at the time the transaction took place.

(4) Billing Records. The child care provider shall maintain copies of all invoices submitted to the division for payment. The child care provider shall ensure all invoices, bills, and data are true, accurate, and complete at the time of submission to the division.

(5) The child care provider shall provide copies of all records to the division upon request.

(6) The child care provider shall maintain all registers and records listed in this regulation for all children no less than five (5) years after the date of the last day that subsidized child care services are provided for the child. The child care provider shall, in addition, keep the records for such additional time periods that the department may request for audit or litigation purposes.

AUTHORITY: sections 207.020, 210.025, and 210.027, RSMo 2016, 42 U.S.C. section 9858, et. seq., Executive Order 03-03. Original rule filed Jan. 3, 2017.

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

PRIVATE COST: This proposed rule 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 rule with the Children's Division at ADRULESFEEDBACK.CD@dss.mo.gov. 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 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 15—Hospital Program

PROPOSED AMENDMENT

13 CSR 70-15.220 Disproportionate Share Hospital Payments. The division is amending section (8).

PURPOSE: This amendment clarifies and amends the state DSH survey reporting requirements and exceptions process to receive an interim DSH payment or an adjustment to the interim DSH payment.

(8) State DSH Survey Reporting Requirements.

(B) Beginning in SFY 2016, each hospital must complete and submit the state DSH survey set forth in paragraph (2)(W)4. (i.e., required state DSH survey) to the independent DSH auditor, the MO HealthNet Division's authorized agent, in order to be considered for an interim DSH payment for the subsequent SFY (i.e., DSH surveys collected during SFY 2016 will be used to calculate SFY 2017 interim DSH payments). The independent DSH auditor will distribute the state DSH survey template to the hospitals to complete and will notify them of the due date, which shall be a minimum of thirty (30) days from the date it is distributed. However, the state DSH survey is due to the independent DSH auditor no later than March 1 preceding the beginning of each state fiscal year for which the interim DSH payment is being calculated (i.e., the state DSH survey used for SFY 2017 interim DSH payments will be due to the independent DSH auditor no later than March 1, 2016). Hospitals that do not submit the state DSH survey by March 1 will not be eligible to receive an interim DSH payment for that SFY. The division may grant an industry-wide extension on the March 1 deadline due to unanticipated circumstances that affect the industry as a whole. **The independent DSH auditor may perform an initial review of the required state DSH survey submitted by the hospital and make preliminary adjustments for use in calculating the interim DSH payment. The independent DSH auditor shall provide the hospital with any preliminary adjustments that are made for review and comment prior to the data being provided to MHD for use in calculating the interim DSH payment for the SFY. Additional or revised audit adjustments may be made to the DSH survey for purposes of the independent DSH audit.**

1. A new facility that does not have cost report data for the fourth prior year may complete the state DSH survey using actual, untrended cost and payment data from the most recent twelve- (12-) month cost report filed with the division.

2. A new facility that has not yet filed a **twelve- (12-) month** Medicaid cost report with the division may complete the state DSH survey using facility projections to reflect anticipated operations for the interim DSH payment period. Trends shall not be applied to the data used to complete the state DSH survey. Interim DSH payments determined from this state DSH survey are limited to the industry average estimated interim DSH payment as set forth in subsection (4)(F).

3. Hospitals may elect not to receive an interim DSH payment for a SFY by completing a DSH Waiver form. Hospitals that elect not to receive an interim DSH payment for a SFY must notify the division, or its authorized agent, that it elects not to receive an interim DSH payment for the upcoming SFY. If a hospital does not receive an interim DSH payment for a SFY, it will not be included in the independent DSH audit related to that SFY, and will not be eligible for final DSH audit payment adjustments related to that SFY unless it submits a request to the division to be included in the independent DSH audit.

4. If a hospital received an interim DSH payment and later determined that it did not have uncompensated care costs for Medicaid and the uninsured to support part or all the interim DSH payment that it received or is receiving, the hospital may request that the interim DSH payments be stopped or it may return the entire interim DSH payment it received.

5. Exceptions Process to Use Alternate *[State DSH Survey]* **Data** for Interim DSH Payment.

A. A hospital may submit a request to the division to have its interim DSH payment based on *[a state DSH survey completed using the actual, untrended cost and payment data from the most recent twelve- (12-) month cost report filed with the division (i.e., alternate state DSH survey)]* **alternate data as set forth below** rather than the state DSH survey required to be submitted for the year (i.e., required state DSH survey) if it meets the criteria for any of the circumstances detailed below in subparagraph (8)(B)5.D. The request must include an explanation of the circumstance, the impact it has on the required state DSH survey period, and how it causes the data to be materially misstated or unrepresentative. The division shall review the facility's request and may, at its discretion and for good cause shown, use the alternate *[state DSH survey]* **data** in determining the interim DSH payment for the SFY. The division shall notify the facility of its decision regarding the request.

(I) Alternate state DSH survey. A state DSH survey completed using the actual, untrended cost and payment data from the most recent twelve- (12-) month cost report filed with the division. Any hospital requesting an exception must complete an alternate state DSH survey. If the most recent full year cost report filed with the division does not reflect the impact of any material changes, a supplemental schedule, as defined below, may be completed and submitted in addition to the alternate state DSH survey. If the impact of any changes is reflected in the most recent full year cost report filed with the division, the facility may only use the alternate state DSH survey.

(II) Alternate state DSH survey supplemental schedule. A supplemental schedule developed by the division to recognize material changes that have occurred at a hospital that are not yet reflected in the hospital's alternate state DSH survey. The supplemental schedule uses the data from the alternate state DSH survey as the basis and includes additional fields to reflect changes that occurred subsequent to the alternate state DSH survey period through the SFY for which the interim DSH payment is being calculated. The blank alternate state DSH survey supplemental schedule is referred to as the alternate state DSH survey supplemental template. This template and instructions are incorporated by reference and made a part of this rule as published by the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109, at its website dss.mo.gov/mhd, February 1, 2017. This rule does not incorporate any subsequent amendments or additions.

B. The provider must submit both the required state DSH survey and the alternate *[state DSH survey to the independent*

DSH auditor] **data** for review to determine if the facility meets the criteria set forth below in subparagraph (8)(B)5.D.

C. The interim DSH payment based on the **applicable** alternate *[state DSH survey]* **data** shall be calculated in the same manner as the interim DSH payment based on the required state DSH survey, except *[that the trends applied to the alternate state DSH survey shall be from the year subsequent to the alternate state DSH survey period to the current SFY for which the interim DSH payment is being determined]* **for the trends applied to the alternate data as noted below in part (8)(B)5.C.(I) and (II). The allocation percentage calculated at the beginning of the SFY year as set forth in part (4)(B)4.A.(I) shall be applied to the estimated UCC net of OOS DSH payments based on the alternate data to determine the preliminary interim DSH payment**.

(I) Alternate state DSH survey. The trends applied to the alternate state DSH survey shall be from the year subsequent to the alternate state DSH survey period to the current SFY for which the interim DSH payment is being determined.

(II) Alternate state DSH survey supplemental schedule. Trends shall not be applied to an alternate state DSH survey supplemental schedule since it incorporates changes from the full year cost report period through the SFY for which the interim DSH payment is being calculated.

D. Following are the circumstances for which a provider may request that its interim DSH payment be based on *[the]* alternate *[state DSH survey]* **data** rather than the required state DSH survey, including the criteria and other requirements:

(I) Twenty Percent (20.00%) DSH Outlier. A provider may request that the alternate state DSH survey be used prior to the interim DSH payment being determined for the SFY if the Untrended Total Estimated Net Cost on the "Report Summary" tab, Column J, from the alternate state DSH survey is at least twenty percent (20.00%) higher than the Trended Total Estimated Net Cost on the "Report Summary" tab, Column L, from the required state DSH survey (i.e., the increase is at least twenty percent (20.00%) rounded to two (2) decimal places).

(a) Both the required state DSH survey and the alternate state DSH survey must be submitted to the independent DSH auditor **and the division, respectively,** no later than March 1 preceding the beginning of each SFY for which interim DSH payments are being made;

(II) Extraordinary Circumstances. A provider may request that *[the]* alternate *[state DSH survey]* **data** be used if the facility experienced an extraordinary circumstance during or after the required state DSH survey report period up to the SFY for which the interim DSH payment is being calculated that caused the required DSH survey report period to be materially misstated and unrepresentative. If circumstances found in items (8)(B)5.D.(II)(a)I.–III. below are applicable, the facility may *[supply trends in addition to the cumulative trend defined in subsection (2)(Y) to reflect anticipated operations for the SFY for which the interim DSH payment is being calculated. The facility must also provide an explanation justifying the additional trends]* **complete and submit the applicable alternate data**.

(a) Extraordinary circumstances include unavoidable circumstances that are beyond the control of the facility and include the following:

I. Act of nature (i.e., tornado, hurricane, flooding, earthquake, lightening, natural wildfire, etc.);

II. War;

III. Civil disturbance; or

IV. If the data to complete the required state DSH survey set forth in paragraph (2)(W)4. is not available due to a change in ownership because the prior owner is out of business and is uncooperative and unwilling to provide the necessary data.

(b) A change in hospital operations or services (i.e., terminating or adding a service or a hospital wing; or, a change of owner, except as noted in item (8)(B)5.D.(II)(a)IV., manager, control, operation, leaseholder or leasehold interest, or Medicare provider number by whatever form for any hospital previously certified at any time for participation in the MO HealthNet program, etc.) does not constitute an extraordinary circumstance.

(c) Both the required state DSH survey and the alternate *[state DSH survey]* **data** must be submitted to the independent DSH auditor **and the division, respectively,** no later than March 1 if the alternate *[state DSH survey]* **data** is to be used to determine the interim DSH payment at the beginning of the SFY.

(d) A hospital may submit a request to use *[the]* alternate *[state DSH survey]* **data** due to extraordinary circumstances after March 1, but the alternate *[state DSH survey]* **data** and the resulting interim DSH payment will be subject to the same requirements as the Interim DSH Payment Adjustments noted below in subparts (8)(B)5.D.(III)(b)–(d). The requests relating to extraordinary circumstances received after the March 1 deadline will be included with the Interim DSH Payment Adjustments requests in part (8)(B)5.D.(III) in distributing the unobligated DSH allotment and available state funds remaining for the SFY; or

(III) Interim DSH Payment Adjustment.

(a) After the interim DSH payment has been calculated for the current SFY based on the required state DSH survey, a provider may request that *[the]* alternate *[state DSH survey]* **data** be used if the Untrended Total Estimated Net Cost on the "Report Summary" tab, Column J, from the alternate *[state DSH survey]* **data** is at least *[thirty-five percent (35.00%)]* **twenty percent (20.00%)** higher than the Trended Total Estimated Net Cost on the "Report Summary" tab, Column L, from the required state DSH survey (i.e., the increase is at least *[thirty-five percent (35.00%)]* **twenty percent (20.00%)** rounded to two (2) decimal places).

(b) The division will process interim DSH payment adjustments once a year. After all requests are received, the division will determine whether revisions to the interim DSH payments are appropriate. Any revisions to the interim DSH payments are subject to the unobligated DSH allotment remaining for the SFY and availability of state funds.

(c) The request**, including the alternate data,** must be submitted **to the division** by December 31 of the current SFY for which interim DSH payments are being made.

(d) **To the extent that state funds are available,** *[T]***t**he DSH allotment for the SFY that has not otherwise been obligated will be distributed proportionally to the hospitals determined to meet the above criteria, based on the *[revised estimated hospital-specific DSH limit, less OOS DSH payments, subject to the availability of state funds.]* **difference between the preliminary interim DSH payment based on the alternate data and the original interim DSH payment;**

(IV) If a provider met the criteria to use alternate data for an Interim DSH Payment Adjustment ((8)(B)5.D.(III)) in the prior SFY, it may continue to use alternate data for its interim DSH payment until the required state DSH survey reflects the impact of the change. The hospital must submit the request and the alternate data to the division for review and approval no later than March 1.

*AUTHORITY: sections 208.152, [RSMo Supp. 2015, sections] 208.153, **208.158,** and 208.201, [RSMo Supp. 2013, and section 208.158,] RSMo [2000] **2016**. Emergency rule filed May 20, 2011, effective June 1, 2011, expired Nov. 28, 2011. Original rule filed May 20, 2011, effective Jan. 30, 2012. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Dec. 30, 2016.*

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 with the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be delivered by regular mail, express or overnight mail, in person, or by courier within thirty (30) days after publication of this notice in the ***Missouri Register****. If to be hand-delivered, comments must be brought to the MO HealthNet Division at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.*

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 110—Notary Use of Electronic Signatures and Seals

PROPOSED RULE

15 CSR 30-110.010 Electronic Notary Definitions

PURPOSE: This rule provides definitions pertaining to the use of electronic signatures and seals by notaries.

(1) The following definitions, except where inconsistent with Chapter 486, RSMo, shall mean:

(A) "Capable of independent verification" means that any interested person may confirm the validity of a notary public's identity and authority through a publicly accessible system;

(B) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

(C) "Electronic signature" means a symbol that is executed with technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities and is attached to or logically associated with an electronic record and is executed or adopted by a person with the intent to sign the record;

(D) "Electronic seal" means an electronic representation of a notary's seal;

(E) "Electronic notarial certificate" means the portion of a notarized electronic document that is completed by the notary public, bears the notary public's electronic signature and electronic seal, and meets all other statutory requirements of this state regarding notarial certificates;

(F) "Principal" means an individual whose signature is notarized, or an individual, other than a witness required for the electronic notarization, taking an oath or affirmation from the notary public;

(G) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and

(H) "Sole control" means at all times being in the direct physical custody of the notary public or safeguarded by the notary with a password or other secure means of authentication.

AUTHORITY: section 486.275, RSMo 2016. Emergency rule filed Dec. 21, 2016, effective Dec. 31, 2016, expires Feb. 23, 2017. Original rule filed Dec. 21, 2016.

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

PRIVATE COST: This proposed rule 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 rule with Sheila Heather, 600 W. Main St. Room 322, Jefferson City, MO 65101 or email sheila.heather@sos.mo.gov. 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 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 110—Notary Use of Electronic Signatures and Seals

PROPOSED RULE

15 CSR 30-110.020 Electronic Signatures and Seals

PURPOSE: This rule describes the process for notary use of electronic signatures and seals.

(1) A notary may use an electronic seal in the performance of a notarial act.

(2) Any notary who wishes to use an electronic signature and seal in the performance of a notarial act must provide written notice to the Commissions Division of the Missouri Secretary of State's Office prior to that notary's first such use.

(3) In using an electronic signature and seal in the performance of a notarial act, the notary public must adhere to all applicable laws of this state that apply to notaries public.

(4) If a notarial act requires an electronic record to be signed, the principal must appear in person before the notary public.

(5) A notary public must keep in the sole control of the notary any system used to produce the notary's electronic signature and seal.

(6) The electronic signature and seal of a notary public shall contain the notary's name exactly as indicated on the notary's commission, and the electronic seal must contain all elements of a notary seal required by law and meet all other statutory requirements of this state regarding notary seals.

(7) A notary's electronic signature must be identical to the signatures on file with the secretary of state.

(8) If an electronic signature or seal is used in the performance of a notarial act, a notary public shall complete an electronic notarial certificate that is attached or logically associated with the notary's electronic signature and seal.

(9) An electronic signature shall be capable of independent verification.

AUTHORITY: section 486.275, RSMo 2016. Emergency rule filed Dec. 21, 2016, effective Dec. 31, 2016, expires Feb. 23, 2017. Original rule filed Dec. 21, 2016.

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

PRIVATE COST: This proposed rule 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 rule with Sheila Heather, 600 W. Main St. Room 322, Jefferson City, MO 65101 or email sheila.heather@sos.mo.gov. 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 15—ELECTED OFFICIALS
Division 40—State Auditor
Chapter 1—Organization

PROPOSED AMENDMENT

15 CSR 40-1.010 Function and Organization of Auditor's Office. The office is amending section (4).

PURPOSE: This amendment corrects the address and telephone number by which to contact the State Auditor's Office.

(4) The office of the state auditor is located in the state capitol building and the Truman State Office Building, 301 West High **Street**, Jefferson City, MO 65101. Internal organization reflects the objectives and standards set by the auditor. Any information requested by the public can be obtained by writing the Missouri State Auditor, P*[.]*O*[.]* Box 869, Jefferson City, MO 65102, *[(314)]* **(573)** 751-4824 or **(573)** 751-4213.

*AUTHORITY: sections 29.100[, RSMo Supp. 1993] and 536.023, RSMo [1986] **2016**. Original rule filed April 8, 1976, effective Aug. 12, 1976. Amended: Filed Jan. 24, 1984, effective May 11, 1984. Amended: Filed June 14, 1994, effective Nov. 30, 1994. Amended: Filed Dec. 21, 2016.*

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 with the Missouri State Auditor's Office, Attention: Paul Harper, PO Box 869, Jefferson City, MO 65101 or email to rules@auditor.mo.gov. 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.*

This section will contain the final text of the rules proposed by agencies. The order of rulemaking is required to contain a citation to the legal authority upon which the order of rulemaking is based; reference to the date and page or pages where the notice of proposed rulemaking was published in the *Missouri Register*; an explanation of any change between the text of the rule as contained in the notice of proposed rulemaking and the text of the rule as finally adopted, together with the reason for any such change; and the full text of any section or subsection of the rule as adopted which has been changed from that contained in the notice of proposed rulemaking. The effective date of the rule shall be not less than thirty (30) days after the date of publication of the revision to the *Code of State Regulations*.

The agency is also required to make a brief summary of the general nature and extent of comments submitted in support of or opposition to the proposed rule and a concise summary of the testimony presented at the hearing, if any, held in connection with the rulemaking, together with a concise summary of the agency's findings with respect to the merits of any such testimony or comments which are opposed in whole or in part to the proposed rule. The ninety- (90-) day period during which an agency shall file its Order of Rulemaking for publication in the *Missouri Register* begins either: 1) after the hearing on the Proposed Rulemaking is held; or 2) at the end of the time for submission of comments to the agency. During this period, the agency shall file with the secretary of state the order of rulemaking, either putting the proposed rule into effect, with or without further changes, or withdrawing the proposed rule.

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 5—Wildlife Code: Permits

ORDER OF RULEMAKING

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

3 CSR 10-5.210 Permits to be Signed and Carried **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 3, 2016 (41 MoReg 1300–1302). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Conservation Commission received one (1) comment on proposed changes to 3 CSR 10-5.210 Permits to be Signed and Carried.

COMMENT: Martin (last name unknown), St. Clair, voiced general support for the proposed changes.
RESPONSE: The commission appreciates citizen input. No changes to the amendment have been made as a result of this comment.

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 6—Wildlife Code: Sport Fishing: Seasons, Methods, Limits

ORDER OF RULEMAKING

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

3 CSR 10-6.505 Black Bass **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 3, 2016 (41 MoReg 1303). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Conservation Commission received comments from thirty-five (35) individuals on proposed changes to 3 CSR 10-6.505 Black Bass.

COMMENTS: Kyle Marler, location unknown; Marvin Lee Douglas, Houston; Danny Marshall, Steelville; Richard Rogers, Boise, ID; Steve Harrison, Ballwin; Frank Jones, location unknown; Andrew Acord, St. Louis; Robert Kinker, Ellisville, and Dan Zimmerman, Olathe, KS, voiced general support for the proposed changes.
RESPONSE: The commission thanks those individuals who voiced support for the regulation changes.

COMMENTS: Daniel Kreher, Ellisville; Troy McAfee, Winona; William Wakefield, Affton; Steve Harrison, Ballwin; Jerry Prewett, Pulaski Co.; Chris Holman, KS; Matthew Wier, St. Louis; Tori McAfee, Winona; Max & Lola Barkley, Winona, and Margaret McAfee, Winona, voiced support for the proposed changes but offered their opinions regarding alternate daily and length limits in and out of established black bass special management areas.
RESPONSE: The commission thanks those individuals who voiced support for the proposed changes and appreciates their opinions and suggestions for improvements to the *Wildlife Code*. No changes to the amendment have been made as a result of these comments.

COMMENT: Michael Lachtrup, location unknown, indicated indecision regarding the proposed changes. Instead, he suggested that all special management areas be catch and release only and a limit of one (1) fish per day be implemented on all other waters of the state.
RESPONSE: Smallmouth bass fishing is very popular in Missouri Ozark streams. Smallmouth bass anglers take an average of ten (10) fishing trips per year. On average, anglers caught seven (7) smallmouth bass and harvested two (2) smallmouth bass per trip. On average, it takes smallmouth bass five (5) years to attain a length of twelve inches (12"); seven (7) years to attain a length of fifteen inches (15"); and nine (9) to ten (10) years to attain a length of eighteen inches (18") in Missouri Ozark streams. Due to existing rates of mortality, few smallmouth bass live to be more than seven (7) to eight (8) years old. In order for more restrictive harvest regulations to produce a significant change in the number or size of fish in the population, three (3) conditions need to be present: 1) Fish need to be growing relatively fast and living relatively long, 2) Natural mortality rates need to be low, and 3) Harvest mortality rates need to be high. Where these three (3) conditions are not present, particularly a high rate of harvest, more restrictive harvest regulations will have little to no effect on changing the number or size of fish in the population. An exploitation study conducted from 2011 through 2014 examined angler harvest rates on selected Ozark streams. The study concluded that under most conditions, the statewide length limit of twelve inches (12") is adequate to balance the desire of quality fishing and harvest opportunities on most Ozark streams.

Currently, smallmouth bass have a statewide minimum-length limit of twelve inches (12") with a six (6) fish daily limit, while special

management areas have a minimum-length limit of fifteen (15) or eighteen (18) inches with a daily limit of one (1) or two (2) fish. The department is proposing no change to the statewide regulation and proposing a fifteen inch (15") minimum and one (1) fish per day on the special management areas.

The department is proposing changes to existing fishing regulations to provide the best long-term, sustainable quality smallmouth bass and rock bass populations in Ozark streams. Proposed changes will simplify regulations for anglers to improve voluntary compliance, expand and redefine special management areas that will provide additional protection and unique angling opportunities for our diverse fishing public, and set realistic expectations for Missouri anglers for these fisheries. No changes to the amendment have been made as a result of these comments.

COMMENT: Brian Atchley, Forsyth, voiced general opposition to the proposed changes.
RESPONSE: The commission appreciates citizen input on proposed regulation changes. No changes to the amendment have been made as a result of this comment.

COMMENTS: Craig Nelson, Ozark, and Mark Hatfield, Grain Valley, voiced opposition to the proposed changes and called for stricter regulations to protect smallmouth bass statewide.
RESPONSE: Currently, smallmouth bass have a statewide minimum-length limit of twelve inches (12") with a six (6) fish daily limit, while special management areas have a minimum-length limit of fifteen (15) or eighteen (18) inches with a daily limit of one (1) or two (2) fish. The department is proposing no change to the statewide regulation and proposing a fifteen inch (15") minimum and one (1) fish per day on the special management areas.

The department is proposing changes to existing fishing regulations to provide the best long-term, sustainable quality smallmouth bass and rock bass populations in Ozark streams. Proposed changes will simplify regulations for anglers to improve voluntary compliance, expand and redefine special management areas that will provide additional protection and unique angling opportunities for our diverse fishing public, and set realistic expectations for Missouri anglers for these fisheries. No changes to the amendment have been made as a result of these comments.

COMMENTS: Matt Joachim, Poplar Bluff, and Eric Batton, Poplar Bluff, voiced opposition to the proposed changes. They do not support any reduction in the length limit for smallmouth bass on the Jacks Fork River and shared their preference for a statewide twelve inch (12") smallmouth bass length limit with a daily limit of six (6) fish.
RESPONSE: As for the proposed changes to the Jacks Fork smallmouth bass regulations, we have proposed the smallmouth bass minimum length limit change from eighteen (18) to fifteen (15) inches, while maintaining the one (1) fish daily limit.

Although present, the percentage of fish exceeding eighteen inches (18") has not significantly increased since the eighteen inch (18") regulation was put in place nearly twenty (20) years ago, and it appears few fish live long enough to reach that length. As we've seen multiple times within the past few years, the river can be a difficult environment to survive, let alone thrive. However, we have proposed extensions of the special management areas on the Jacks Fork River that will offer additional protection of valuable sections of quality smallmouth bass habitat. No changes to the amendment have been made as a result of these comments.

COMMENTS: Lester Nicholson, Birch Tree; Bill Terry, Jadwin; Laurel Terry, TN; William Terry, Jadwin, and Devin Simms, AL, voiced opposition to the proposed changes and shared their preference for a statewide twelve inch (12") smallmouth bass length limit with a daily limit of six (6) fish.
RESPONSE: Currently, smallmouth bass have a statewide minimum-length limit of twelve inches (12") with a six (6) fish daily limit, while special management areas have a minimum-length limit of fifteen (15) or eighteen (18) inches with a daily limit of one (1) or two (2) fish. We are proposing no change to the statewide regulation and proposing a fifteen inch (15") minimum and one (1) fish per day on the special management areas.

The department is proposing changes to existing fishing regulations to provide the best long-term, sustainable quality smallmouth bass and rock bass populations in Ozark streams. Proposed changes will simplify regulations for anglers to improve voluntary compliance, expand and redefine special management areas that will provide additional protection and unique angling opportunities for our diverse fishing public, and set realistic expectations for Missouri anglers for these fisheries. No changes to the amendment have been made as a result of these comments.

COMMENT: Brian Jones, Bonne Terre, voiced opposition to the proposed changes and called for stricter regulations to protect smallmouth bass statewide. Mr. Jones does not support any reduction in the length limit for smallmouth bass on the Jacks Fork River and requested that the Current River also be designated as a Smallmouth Bass Special Management Area.
RESPONSE: As for the proposed changes to the Jacks Fork River, the department has proposed the smallmouth bass minimum length limit change from eighteen (18) to fifteen (15) inches, while maintaining the one (1) fish daily limit. Although present, the percentage of fish exceeding eighteen inches (18") has not significantly increased since the regulations went into place nearly twenty (20) years ago and it appears few fish live long enough to reach that length.

Using results from recent research projects as well as public input, the department has proposed extensions of the special management areas on the Jacks Fork River to offer additional protection of valuable sections of quality smallmouth bass habitat.

During the department's public input process, angler opposition for implementing a regulation change for the Current River was identified. Therefore, after assessing the biological and social implications associated with the proposed regulation change that would create a Smallmouth Bass Special Management Area on the Current River, the decision was made to **not** include this area as part of the regulation package at this time. No changes to the amendment have been made as a result of this comment.

COMMENT: Kenton Lohraff, Dixon, voiced opposition to the proposed changes, citing his desire to harvest smaller fish for consumption. Instead, Mr. Lohraff voiced his preference for a length limit twelve (12) to fifteen (15) inches and a daily limit of three (3) fish.
RESPONSE: Currently, smallmouth bass have a statewide minimum-length limit of twelve inches (12") with a six (6) fish daily limit, while special management areas have a minimum-length limit of fifteen (15) or eighteen (18) inches with a daily limit of one (1) or two (2) fish. We are proposing no change to the statewide regulation and proposing a fifteen inch (15") minimum and one (1) fish per day on the special management areas.

The department is proposing changes to existing fishing regulations to provide the best long-term, sustainable quality smallmouth bass and rock bass populations in Ozark streams. Proposed changes will simplify regulations for anglers to improve voluntary compliance, expand and redefine special management areas that will provide additional protection and unique angling opportunities for our diverse fishing public, and set realistic expectations for Missouri anglers for these fisheries. No changes to the amendment have been made as a result of this comment.

COMMENT: Robert Williams, Van Buren, voiced opposition to the proposed changes and called for elimination of the Smallmouth Bass Special Management Area on the Jacks Fork River, indicating that this change will result in thirty-five percent (35%) of all waters with smallmouth populations being designated as trophy areas. Instead, Mr. Williams believes that a daily limit of three (3) fish is more reasonable.

RESPONSE: The State of Missouri has over one hundred ten thousand (110,000) miles of streamside. As proposed, the special management area regulations would cover just over four hundred (400) miles of Missouri streams. No changes to the amendment have been made as a result of this comment.

COMMENT: Corey Cottrell, Steelville, voice opposition to the proposed changes and shared his preference for a statewide daily limit of three (3) smallmouth bass.
RESPONSE: Currently, smallmouth bass have a statewide minimum-length limit of twelve inches (12") with a six (6) fish daily limit, while special management areas have a minimum-length limit of fifteen (15) or eighteen (18) inches with a daily limit of one (1) or two (2) fish. We are proposing no change to the statewide regulation and proposing a fifteen inch (15") minimum and one (1) fish per day on the special management areas.

The department is proposing changes to existing fishing regulations to provide the best long-term, sustainable quality smallmouth bass and rock bass populations in Ozark streams. Proposed changes will simplify regulations for anglers to improve voluntary compliance, expand and redefine special management areas that will provide additional protection and unique angling opportunities for our diverse fishing public, and set realistic expectations for Missouri anglers for these fisheries. No changes to the amendment have been made as a result of this comment.

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 6—Wildlife Code: Sport Fishing: Seasons, Methods, Limits

ORDER OF RULEMAKING

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

3 CSR 10-6.530 Goggle-eye (Ozark Bass, Rock Bass, and Shadow Bass) and Warmouth **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 3, 2016 (41 MoReg 1303–1304). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Conservation Commission received comments from fifteen (15) individuals on proposed changes to 3 CSR 10-6.530 Goggle-eye (Ozark Bass, Rock Bass, and Shadow Bass) and Warmouth.

COMMENTS: Brian Jones, Bonne Terre; Danny Marshall, Steelville; Corey Cottrell, Steelville, and Matthew Wier, St. Louis, voiced support for the proposed changes.
RESPONSE: The commission thanks those individuals who voiced support for the regulation change. No changes have been made to the amendment as a result of these comments.

COMMENTS: Daniel Kreher, Ellisville; Craig Carter, Ava; William Wakefield, Affton; Chris Holman, KS; Ken Olive, Camdenton; Ira Dale Kipp, Van Buren; Frank (last name unknown), location unknown, and Jerry Prewett, Pulaski Co., voiced general support for the proposed changes but offered suggestions for additional or alternate daily and/or length limits.
RESPONSE: The commission thanks those individuals who voiced support for the regulation change. No changes to the amendment have been made as a result of these comments.

COMMENT: Eric Biller, Agency, indicated indecision regarding the proposed changes. Mr. Biller suggested that the department implement a program to provide barbless hooks to outfitters and area businesses to encourage catch and release fishing. He also encouraged additional focus on habitat improvements along Missouri streams and rivers.
RESPONSE: The commission appreciates citizen comments on a variety of topics. No changes to the amendment have been made as a result of this comment.

COMMENT: Tim Feeler, Edgar Springs, voiced general opposition to the proposed changes but offered suggestions for additional or alternate daily and/or length limits.
RESPONSE: A recently completed angler survey (2011) indicates that anglers harvest rock bass of any size, in proportion to the sizes that are caught. Harvest mortality rates are estimated to make up a significant portion of total annual mortality. As estimated from the angler survey, the overall harvest rate for rock bass in Missouri Ozark streams is fifty percent (50%). More than forty percent (40%) of anglers surveyed felt rock bass fishing quality has declined over the last ten (10) years. The majority of anglers favored implementation of a statewide minimum length limit (fifty-two percent (52%) favored, seventeen percent (17%) opposed, twenty-six percent (26%) had no opinion). Minimum length limit regulations have already been implemented on Ozark streams where there is the highest potential to produce a noticeable improvement in the rock bass fishery (the existing six (6) special management areas). Having statewide regulations with some special management areas is well accepted by most anglers. Modeling of rock bass sampling data predicts a noticeable increase in the number of larger rock bass. No changes to the amendment have been made as a result of this comment.

COMMENT: Kenton Lohraff, Dixon, indicated support for the change in larger streams, however, he does not support the proposed changes in smaller streams. Mr. Lohraff contends that implementation of a seven inch (7") length limit in smaller streams will not produce larger fish and will result in decreased harvest.
RESPONSE: A recently completed angler survey (2011) indicates that anglers harvest rock bass of any size, in proportion to the sizes that are caught. Harvest mortality rates are estimated to make up a significant portion of total annual mortality. As estimated from the angler survey, the overall harvest rate for rock bass in Missouri Ozark streams is fifty percent (50%). More than forty percent (40%) of anglers surveyed felt rock bass fishing quality has declined over the last ten (10) years. The majority of anglers favored implementation of a statewide minimum length limit (fifty-two percent (52%) favored, seventeen percent (17%) opposed, twenty-six percent (26%) had no opinion). Minimum length limit regulations have already been implemented on Ozark streams where there is the highest potential to produce a noticeable improvement in the rock bass fishery (the existing six (6) special management areas). Having statewide regulations with some special management areas is well accepted by most anglers. Modeling of rock bass sampling data predicts a noticeable increase in the number of larger rock bass. No changes to the amendment have been made as a result of this comment.

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 11—Wildlife Code: Special Regulations for Department Areas

ORDER OF RULEMAKING

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

3 CSR 10-11.215 Fishing, Length Limits **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 3, 2016 (41 MoReg 1307). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Conservation Commission received comments from four (4) individuals on proposed changes to 3 CSR 10-11.215 Fishing, Length Limits.

COMMENTS: Tori McAfee, Winona, and Max & Lola Barkley, Winona, voiced general support for the proposed changes.
RESPONSE: The commission appreciates citizen input. No changes to the amendment have been made as a result of these comments.

COMMENT: Margaret McAfee, Winona, voiced general support for the proposed changes with the exception of proposed changes to the length limit for smallmouth bass on the Jacks Fork River.
RESPONSE: The process for adding or changing regulations to the *Wildlife Code of Missouri* begins with evaluating the resource-based needs for the change. Staff evaluates the resource using biological and available angler survey data. Department staff then met as a team to see if adjustments in regulations can produce desired biological changes. The department sought public input on the proposed regulation changes for both smallmouth bass and rock bass through eight (8) open houses held at various locations around the state in the fall of 2015. Department staff held an additional public meeting in Van Buren on April 8, 2016. Our goal through this process was to listen to anglers from across the state to help make meaningful regulation changes to improve and sustain fish populations into the future. Based on the biological information we have and solid public input, we believe the proposed regulation changes will simplify regulations for anglers to improve voluntary compliance, expand and redefine special management areas that will provide additional protection and unique angling opportunities for our diverse fishing public, and set realistic expectations for Missouri anglers for these fisheries.

As for the proposed changes to the Jacks Fork River smallmouth bass regulations, we have proposed the smallmouth bass minimum length limit change from eighteen (18) to fifteen (15) inches, while maintaining the one (1) fish daily limit. Although present, the percentage of fish exceeding eighteen inches (18") has not significantly increased since the eighteen inch (18") regulation was put in place nearly twenty (20) years ago, and it appears few fish live long enough to reach that length. As we've seen multiple times within the past few years, the river can be a difficult environment to survive, let alone thrive. However, the proposed extensions of the special management areas on the Jacks Fork River will offer additional protection of valuable sections of quality smallmouth bass habitat. No changes to the amendment have been made as a result of these comments.

Title 6—DEPARTMENT OF HIGHER EDUCATION
Division 10—Commissioner of Higher Education
Chapter 2—Student Financial Assistance Program

ORDER OF RULEMAKING

By the authority vested in the Commissioner of Higher Education under section 160.545, RSMo 2016 as transferred to the Missouri Department of Higher Education by Executive Order 10-16, dated January 29, 2010, the commissioner amends a rule as follows:

6 CSR 10-2.190 A+ Scholarship Program **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 17, 2016 (41 MoReg 1465–1468). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 35—Children's Division
Chapter 31—Child Abuse

ORDER OF RULEMAKING

By the authority vested in the Children's Division, Department of Social Services, under sections 207.020 and 210.148, RSMo 2016, the director adopts a rule as follows:

13 CSR 35-31.050 Consent to Termination of Parental Rights and/or Adoption **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on October 3, 2016 (41 MoReg 1324–1335). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 40—Family Support Division
Chapter 2—Income Maintenance

ORDER OF RULEMAKING

By the authority vested in the Family Support Division under sections 207.022 and 208.040.5(6), RSMo 2016, the director rescinds a rule as follows:

13 CSR 40-2.250 Resource Eligibility Standards for Title XIX Under the Poverty Level **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on October 3, 2016 (41 MoReg 1335). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 10—Nursing Home Program

ORDER OF RULEMAKING

By the authority vested in the MO HealthNet Division under sections 208.153, 208.159, and 208.201, RSMo 2016, the division amends a rule as follows:

13 CSR 70-10.030 Prospective Reimbursement Plan for Nonstate-Operated Facilities for ICF/IID Services **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2016 (41 MoReg 1175–1181). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 700—Insurance Licensing
Chapter 1—Insurance Producers

ORDER OF RULEMAKING

By the authority vested in the director of the Department of Insurance, Financial Institutions and Professional Registration under sections 374.045 and 379.1640, RSMo 2016, the director adopts a rule as follows:

20 CSR 700-1.170 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on October 3, 2016 (41 MoReg 1343–1350). The section with changes is reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed rule was held November 2, 2016, and the public comment period ended November 2, 2016. At the public hearing, two (2) comments were made.

COMMENT #1: Grady Martin, with the Division of Administration in the Department of Insurance, Financial Institutions and Professional Registration, and Kathryn East, Executive Director of the Missouri Self-Storage Owners Association, each spoke at the public hearing in support of the proposed rule with the addition of a form register for limited lines self-service storage insurance producers to use in compliance with section 379.1640.2(1)(b), RSMo.
RESPONSE AND EXPLANATION OF CHANGE: Paragraph (3)(A)1. of the rule will be changed to accommodate a new Exhibit 2, representing the desired form.

COMMENT #2: Kathryn East, Executive Director of the Missouri Self-Storage Owners Association, spoke in favor of increasing the coverage limit for self-service storage insurance producers' authority in excess of five thousand dollars ($5,000).
RESPONSE: The five thousand dollar ($5,000) limit is explicitly imposed by subsection (6) of the enabling statute, section 379.1640, and therefore the department lacks authority to change that value by rule.

20 CSR 700-1.170 Licensing Procedures and Standards for Limited Lines Self-Service Storage Insurance Producers

(3) Register of Individuals Offering Self-Service Storage Insurance on Limited Lines Self-Service Storage Insurance Producer's Behalf.

(A) Contents of register to be established, maintained, and updated by the limited lines self-service storage insurance producer.

1. Each limited lines self-service storage insurance producer shall establish at the time of licensure, and thereafter maintain and update annually a self-service storage register in the form included herein as Exhibit 2, or in a substantially similar document that shall include the following:

A. Name, address, telephone number, and email address of the limited lines self-service storage insurance producer;

B. Name, address, telephone number, and email address of any officer or person who directs or controls the limited lines self-service storage insurance producer's operations;

C. Name, address, telephone number, and email address of each individual that offers self-service storage insurance on behalf of the limited lines self-service storage insurance producer;

D. The self-service storage facility's federal tax identification number; and

E. Dated signature by the limited lines self-service storage insurance producer, under penalty of perjury, certifying that each individual listed on the self-service storage register complies with 18 U.S.C. Section 1033.

STATE OF MISSOURI
DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
SELF-SERVICE STORAGE REGISTER

PO BOX 690
JEFFERSON CITY, MISSOURI 65102

As required by § 379.1640 RSMo, every limited lines self-service storage insurance producer shall establish and maintain a register of each individual who offers self-service storage insurance on the insurance producer's behalf. This register shall be maintained and updated annually by the limited lines self-service storage insurance producer and is open to inspection and audit by the Director of Insurance upon request. This form may be duplicated as needed.

NAME OF LIMITED LINES SELF-SERVICE STORAGE INSURANCE PRODUCER		
ADDRESS	TELEPHONE NUMBER	EMAIL ADDRESS
MISSOURI LIMITED LINES SELF-SERVICE STORAGE INSURANCE PRODUCER LICENSE NUMBER	NATIONAL PRODUCER NUMBER (IF APPLICABLE)	
NAME OF OFFICER/DIRECTOR OF OPERATIONS	ADDRESS OF OFFICER/DIRECTOR OF OPERATIONS	
TELEPHONE NUMBER OF OFFICER/DIRECTOR OF OPERATIONS	EMAIL OF OFFICER/DIRECTOR OF OPERATIONS	

BUSINESS NAME	FEIN	STREET ADDRESS, CITY, STATE, ZIP CODE	TELEPHONE NUMBER	EMAIL ADDRESS

NAME OF INDIVIDUAL OFFEROR	STREET ADDRESS, CITY, STATE, ZIP CODE	TELEPHONE NUMBER	EMAIL ADDRESS

Certification – As the Limited Lines Self-Service Storage Insurance Producer, I hereby certify under penalty of perjury that the listing above represents all individuals, including names and contact information, who offer or disseminate self-service storage insurance on my behalf. I further certify that each individual has received appropriate training and instruction on the types of insurance offered, ethical sales practices, and required disclosures to prospective customers. I further certify that each individual listed above complies with 18 U.S.C. § 1033.

SIGNATURE OF LIMITED LINES SELF-SERVICE STORAGE INSURANCE PRODUCER	DATE

MO 375-1003 (11-16)

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2220—State Board of Pharmacy
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the Missouri Board of Pharmacy under sections 338.140, 338.240, 338.280, and 338.315, RSMo 2016, the Board of Pharmacy adopts a rule as follows:

20 CSR 2220-2.095 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on October 3, 2016 (41 MoReg 1376–1379). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The board received two (2) comments in response to the proposed rule.

COMMENT #1: A comment was received from the National Association of Chain Drug Stores (NACDS) suggesting the board amend the rule to include and allow collection of controlled substances for destruction. NACDS further commented controlled substance requirements should align with federal law. The Missouri Retail Association (MRA) concurred with NACDS' comments.
RESPONSE AND EXPLANATION OF CHANGE: Section (1) of the proposed rule currently provides: "Pharmacies collecting controlled substances must comply with all applicable state and federal controlled substance laws." The proposed language was intended to allow the collection of controlled substances as suggested by NACDS and MRA. To provide further clarity, the board has amended the rule title and section (1) of the rule to more clearly provide that Missouri pharmacies may accept controlled substances for destruction as authorized by, and in compliance with, state/federal law.

20 CSR 2220-2.095 Collection of Medication for Destruction

(1) Missouri licensed pharmacies may collect medication from the public for destruction in compliance with this rule. Pharmacies collecting controlled substances shall comply with all applicable state and federal controlled substance laws. Pharmacies collecting non-controlled substances shall comply with sections (2) to (9) of this rule. Participation in a medication return or destruction program is voluntary. This rule shall not be construed to require that a licensee or permit holder participate in or establish a return/destruction program.