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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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IN THIS ISSUE:

EMERGENCY RULES

Office of Administration

Personnel Advisory Board and Division of Personnel39

Department of Natural Resources

Clean Water Commission39

Department of Health and Senior Services

Division of Regulation and Licensure42

EXECUTIVE ORDERS

.46

PROPOSED RULES

Department of Elementary and Secondary Education

Division of Learning Services47

Missouri Commission for the Deaf and Hard of Hearing . . .50

Department of Public Safety

Missouri Gaming Commission50

Department of Health and Senior Services

Division of Regulation and Licensure51

Department of Commerce and Insurance

Missouri Board for Architects, Professional Engineers,
Professional Land Surveyors, and Professional
Landscape Architects54

ORDERS OF RULEMAKING

Department of Conservation

Conservation Commission55

Department of Elementary and Secondary Education

Division of Learning Services71

Division of Financial and Administrative Services71

Elected Officials

Secretary of State72

Department of Health and Senior Services

Division of Regulation and Licensure73

Department of Commerce and Insurance

Property and Casualty79

State Board of Pharmacy79

IN ADDITIONS

Department of Conservation

Conservation Commission80

Department of Natural Resources

Hazardous Waste Management Commission80

Department of Health and Senior Services

Missouri Health Facilities Review Committee80

DISSOLUTIONS

.82

SOURCE GUIDES

RULE CHANGES SINCE UPDATE88

EMERGENCY RULES IN EFFECT94

EXECUTIVE ORDERS96

REGISTER INDEX97

Register Filing Deadlines	Register Publication Date	Code Publication Date	Code Effective Date
September 1, 2020 September 15, 2020	October 1, 2020 October 15, 2020	October 31, 2020 October 31, 2020	November 30, 2020 November 30, 2020
October 1, 2020 October 15, 2020	November 2, 2020 November 16, 2020	November 30, 2020 November 30, 2020	December 30, 2020 December 30, 2020
November 2, 2020 November 16, 2020	December 1, 2020 December 15, 2020	December 31, 2020 December 31, 2020	January 30, 2021 January 30, 2021
December 1, 2020 December 15, 2020	January 4, 2021 January 15, 2021	January 29, 2021 January 29, 2021	February 28, 2021 February 28, 2021
January 4, 2021 January 15, 2021	February 1, 2021 February 16, 2021	February 28, 2021 February 28, 2021	March 30, 2021 March 30, 2021
February 1, 2021 February 16, 2021	March 1, 2021 March 15, 2021	March 31, 2021 March 31, 2021	April 30, 2021 April 30, 2021
March 1, 2021 March 15, 2021	April 1, 2021 April 15, 2021	April 30, 2021 April 30, 2021	May 30, 2021 May 30, 2021
April 1, 2021 April 15, 2021	May 3, 2021 May 17, 2021	May 31, 2021 May 31, 2021	June 30, 2021 June 30, 2021

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 sos.mo.gov/adrules/pubsched.

HOW TO CITE RULES AND RSMO

RULES

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

Title		Division	Chapter	Rule
3	CSR	10-	4	.115
Department	<i>Code of State Regulations</i>	Agency Division	General area regulated	Specific area regulated

and should be cited in this manner: 3 CSR 10-4.115.

Each department of state government is assigned a title. Each agency or division in 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 paragraphs 1., subparagraphs A., parts (I), subparts (a), items I. and subitems a.

The rule is properly cited by using the full citation, for example, 3 CSR 10-4.115 NOT Rule 10-4.115.

Citations of RSMo are to the *Missouri Revised Statutes* as of the date indicated.

Code and Register on the Internet

The *Code of State Regulations* and *Missouri Register* are available on the Internet.

The *Code* address is sos.mo.gov/adrules/csr/csr

The *Register* address is sos.mo.gov/adrules/moreg/moreg

These websites contain rulemakings and regulations as they appear in the *Code* and *Registers*.

Rules appearing under this heading are filed under the authority granted by section 536.025, RSMo. 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) business 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 1—OFFICE OF ADMINISTRATION
Division 20—Personnel Advisory Board and Division of Personnel
Chapter 5—Working Hours, Holidays and Leaves of Absence**

ORDER TERMINATING EMERGENCY AMENDMENT

By the authority vested in the Personnel Advisory Board under section 36.070, RSMo Supp. 2020, and section 36.350, RSMo 2016, the board hereby terminates an emergency amendment effective December 9, 2020, as follows:

1 CSR 20-5.020 Leaves of Absence is terminated.

A notice of emergency rulemaking containing the text of the emergency amendment was published in the *Missouri Register* on October 15, 2020 (45 MoReg 1551-1552).

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 8—Design Guides**

EMERGENCY AMENDMENT

10 CSR 20-8.300 Design of Concentrated Animal Feeding Operations. This emergency amendment adds in section (2).

PURPOSE: This emergency amendment corrects an inadvertent deletion of necessary definitions relevant to the design standards of wastewater management and containment structures for concentrated animal feeding operations (CAFOs).

*EMERGENCY STATEMENT: The emergency amendment is necessary to preserve a compelling governmental interest, in the clarity and functionality of regulations that effect the safe design and operation of certain wastewater containment structures for concentrated animal feeding operations (CAFOs), so that such structures may be designed and operated in a manner that is protective of human health and the environment. The Department of Natural Resources finds a compelling governmental interest, which requires this emergency action. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the *Missouri* and *United States Constitutions*. The department believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment reinstates the prior definitions inadvertently deleted during the Red Tape Reduction rule review pursuant to Executive Order (EO) 17-03 in 2017 and 2018. The emergency amendment eliminates unintentional regulatory uncertainty and ambiguity, and returns the regulation to its previous status, as amended in 2016. This emergency amendment was filed December 8, 2020, becomes effective December 22, 2020, and expires June 19, 2021.*

(2) Definitions.

(A) Definitions as set forth in the Missouri Clean Water Law, Chapter 644, Concentrated Animal Feeding Operation (Hog Bill) section 640.703, RSMo, 10 CSR 20-2.010, and 10 CSR 20-6.300 shall apply to the terms in this rule unless otherwise defined by subsection (2)(B) below.

(B) Other applicable definitions are as follows:

1. Design storage period—The calculated number of days that will fill the manure storage structure from the lower to the upper operating level for a covered storage structure or from the lower to the upper operating level for an uncovered, liquid storage structure during a period of average rainfall minus evaporation (R-E).

A. For a design storage period of fewer than three hundred sixty-five (365) days, the largest consecutive average monthly R-E, corresponding with the number of months of the storage period, shall be used.

B. For multiple storage stages, the storage period is the sum of available storage days in each stage.

C. For covered liquid manure storage structures, the upper operating level is one foot (1') below the top of the structure;

2. Freeboard—The elevation difference between the bottom of the spillway to the top of the berm for an earthen basin;

3. Groundwater table—The seasonal high water level occurring beneath the surface of the ground, including underground watercourses, artesian basins, underground reservoirs and lakes, aquifers, other bodies of water located below the surface of the ground, and water in the saturated zone. For the purposes of this rule, groundwater table does not include the perched water table;

4. Manure—The fecal and urinary excretion of animals;

5. Manure storage structure—A fabricated structure or earthen basin used to store manure, litter, and/or process wastewater;

6. Rainfall minus evaporation (R-E)—The average depth of monthly liquid precipitation minus evaporation as published in the most recent National Weather Service Climate Atlas for the geographical region of the proposed structure;

7. Safety depth—One foot (1') of liquid depth or the depth needed to hold the volume of the ten- (10-) year, ten- (10-) day storm, whichever is greater;

8. Solid manure—Manure that can be stacked without free flowing liquids;

9. Safety volume—The volume of wastewater stored between the upper pumpdown and emergency spillway crest;

10. Storage lagoon—A lagoon that does not have adequate volume to accomplish treatment;

11. Storage volume—The volume of manure, runoff, wash-water, rainfall, and additional water sources between the lower and upper operating levels;

12. Ten- (10-) year, ten- (10-) day storm—The depth of rainfall occurring in a ten- (10-) day duration over a ten- (10-) year return frequency as defined by the most recent publication of the National Weather Service Climate Atlas for the geographical region of the proposed manure storage structure;

13. Total storage capacity—The combined volume of storage and safety volumes stored between the lower pumpdown level and emergency spillway crest;

14. Treatment volume—The permanent volume maintained below the lower pumpdown designed for anaerobic treatment of manure based on latitude;

15. Waste treatment lagoon—A lagoon that is sized to have three hundred sixty-five (365) days of storage volume and adequate treatment volume;

16. Wastewater—A combination of manure, washwater, runoff, rainfall, and process wastewater; and

17. Wastewater flow—The annual rate of wastewater contributed to an animal waste management system.

[(2)](3) Permit Application Documents. All engineering documents shall be prepared by, or under the direct supervision of, a registered professional engineer licensed to practice in Missouri.

[(3)](4) Location.

(A) Protection from Flooding—Manure storage structures, confinement buildings, open lots, composting pads, and other manure storage areas in the production area shall be protected from inundation or damage due to the one hundred- (100-) year flood.

(B) The minimum setback distances from manure storage structures, manure storage areas, confinement buildings, open lots, or mortality composters shall be as follows:

1. Ten feet (10') to public water supply pipelines;
2. Fifty feet (50') to property lines;
3. Fifty feet (50') to public roads;
4. One hundred feet (100') to wetlands, ponds, or lakes not used for human water supply;
5. One hundred feet (100') to gaining streams (classified or unclassified; perennial or intermittent);
6. Three hundred feet (300') to human water supply lakes or impoundments; and
7. Three hundred feet (300') to losing streams (classified or unclassified; perennial or intermittent) and sinkholes.

(C) Distances from earthen basins shall be measured from the outside edge of the top of the berm.

[(4)](5) Manure Storage Structure Sizing.

(A) No Discharge Requirement. All manure storage structures shall comply with the design standards and effluent limitations of 40 CFR 412.46(a)(1), November 20, 2008, and shall hereby be incorporated by reference, without any later amendments or additions, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954.

(B) Design Storage Period. The minimum design storage period for manure storage structures shall be as follows:

1. The minimum design storage period for liquid manure, solid manure, and dry process waste to be land applied is one hundred eighty (180) days;
2. The minimum design storage period for solid manure and dry process waste to be sold or used as bedding is ninety (90) days; and
3. The minimum design storage period for waste treatment lagoons without an impermeable cover is three hundred sixty-five (365) days.

(C) New Class I swine, veal, or poultry operations shall evaluate

proposed uncovered manure storage structures in accordance with applicable federal regulation as set forth in 40 CFR 412.46(a)(1), November 20, 2008, and shall hereby be incorporated by reference, without any later amendments or additions, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954.

(D) Sizing Manure Storage Structures.

1. The structure shall be designed to hold all inputs, between the upper and lower operating levels, anticipated during the design storage period.

2. Uncovered liquid storage structures shall also include:

A. One in ten (1-in-10) year rainfall minus evaporation from the surface of the structure, held between the operating levels; and

B. Safety volume based on the twenty-five (25) year, twenty-four (24) hour storm event above the upper operating level.

3. Tanks and pits shall also include six inches (6") of depth below the lower operating level for incomplete removal allowance.

4. Earthen basins shall also include:

A. At least one foot (1') of freeboard or two feet (2') for structures that receive storm water from open lots larger than the surface area of the storage structure;

B. Two feet (2') of permanent liquid depth below the lower operating level. Anaerobic treatment volume greater than two feet (2') will satisfy this requirement;

C. Sludge accumulation volume; and

D. Treatment volume below the lower operating level for anaerobic treatment lagoons.

[(5)](6) Construction of Earthen basins.

(A) Geohydrologic Evaluation. A geohydrologic evaluation of the proposed earthen basin prepared by the Missouri Geological Survey shall be submitted to the department. If the geohydrologic evaluation gives a severe rating for collapse potential, an earthen basin shall not be used.

(B) Detailed Soils Investigation. A detailed soils investigation is required to substantiate feasibility and to determine the quantity and quality of soil materials on-site and from a borrow area for use in the basin and/or liner. The following information, in whole or in part, is required:

A. Atterburg limits;

B. Standard proctor density (moisture/density relationships);

C. Coefficient of permeability (undisturbed and remolded);

D. Depth to bedrock;

E. Particle size analysis; and

F. Depth to groundwater table.

(C) Shape and Location.

1. The shape of all cells shall be such that there are no narrow or elongated portions or islands, peninsulas, or coves.

2. The floor of the structure shall be a consistent elevation with finished elevations not be more than three inches (3") above or below the average elevation of the floor.

3. The floor of the basin shall be at least four feet (4') above the groundwater table or the water table as modified by subsurface drainage and at least two feet (2') above bedrock.

(D) Outer berm slopes shall not be steeper than three to one (3:1), horizontal to vertical, and inner slopes not be flatter than four to one (4:1) or steeper than three to one (3:1) for uncovered lagoons or two and one-half to one (2.5:1) for covered lagoons.

(E) Berm Construction and Width. Construction specifications shall include the following:

1. Compact soil used in constructing the basin floor (not including clay liner) and berm cores to between two percent (2%) below and four percent (4%) above the optimum water content and to at least ninety percent (90%) standard proctor density;

2. Use lifts for berm construction not exceeding twelve inches (12") with a maximum rock size not exceeding one-half (1/2) the thickness of the compacted lift; and

3. Construct the top width of the berm a minimum of eight feet

(8') for fill heights from fifteen to twenty feet (15'-20'), use minimum top widths of ten feet (10') and for fill heights from twenty to twenty-five feet (20'-25'), use minimum top widths of twelve feet (12').

(F) Emergency Spillway. To prevent overtopping and cutting of berms, an emergency overflow shall be provided that—

1. Has a minimum bottom width of ten feet (10') and a minimum depth of one foot (1'); and
2. Is compacted and vegetated or otherwise constructed to prevent erosion due to possible flow.

(G) Compacted Clay Liner.

1. Liner construction. Compacted clay liners shall be constructed to—

A. Be scarified and compacted to between two percent (2%) below and four percent (4%) above the optimum water content and to at least ninety percent (90%) standard proctor density.

B. Be raised in lifts not exceeding six inches (6") with a maximum rock size not exceeding one-half (1/2) the thickness of the compacted lift.

C. Be maintained at or above the optimum water content until the basin is prefilled with water.

D. Have a minimum thickness of twelve inches (12").

2. Permeability. All earthen basins shall be sealed so that seepage loss through the seal is minimized and to meet the following specifications:

A. Cover the floor and extend up the inner slope to where the side slope intersects with the top of the berm.

B. Have a design permeability of the basin seal not exceeding 1.0×10^{-7} centimeter per second (cm/sec). For soils which have a coefficient of permeability greater than 1.0×10^{-7} (cm/sec), unusual depth, or potable ground water contamination potential, liner thickness of more than twelve inches (12") may be required. The following equation shall be used to determine minimum seal thickness:

$$t = (H \times K) / 5.4 \times 10^{-7} \text{ cm/sec}$$

where

K = permeability coefficient of the soil in question;

H = head (maximum water level depth) of water in the basin; and

t = thickness of the soil seal.

(H) Protection of Berms. Rip-rap or some other acceptable method of erosion control is required as a minimum around all piping entrances and exits, for aerated cell(s), on the slopes and floor in the areas where turbulence will occur, and for protection from wave action for basins with a surface area greater than five (5) acres.

(I) If alternative liners are used, permeability, durability, and integrity of the proposed materials must be satisfactorily demonstrated for anticipated conditions.

(J) Depth Gauges. A permanent depth measurement gauge or marker shall be installed and maintained in the basin that is easily readable at one-foot (1') or smaller increments and clearly displayed lower, upper, and emergency spillway levels.

(K) Piping. Fill around pipes installed through embankments shall be compacted to prevent seepage and pressurized piping must be valved. Valves are not required on gravity piping into the lagoon.

(L) Safety. Consideration shall be given for safety in using open storage structures including the use of prevention and recovery components.

(M) Operation and Maintenance. An operation and maintenance plan is required addressing the major components of the concentrated animal feeding operation system.

[[6]](7) Construction of Tanks and Pits. Construction of tanks and pits shall meet the following requirements:

(A) Soils and Foundation. A thorough site investigation shall be made to determine the physical characteristics and suitability of the soil and foundation for the fabricated storage structure. Position the floor of the below-ground storage tanks two feet (2') above the groundwater table;

(B) Allow one foot (1') of depth at the top of covered structures for agitation and/or ventilation;

(C) Include a permanent depth measurement gauge or marker that is easily readable at one-foot (1') or smaller increments for uncovered tanks and pits;

(D) Use perimeter tiling and granular backfill for below-ground pits;

(E) Locate tank and pit footings at or below the maximum frost depth;

(F) Design concrete and steel features according to published guidelines; and

(G) Design and construct tanks and pits to be watertight.

[[7]](8) Construction of Solid Manure Components. The following requirements shall be met when constructing poultry buildings, open lots, stacking pads, stacksheds, and other similar structures:

(A) Divert surface water away from animal confinement areas and buildings;

(B) Floors and Pads. Construct the base of covered and uncovered lots, poultry buildings, and other solid manure storage areas of concrete or other rigid, essentially watertight materials or from a firm, compacted, earthen base of Unified Soil Classification System (USCS) class CH, MH, CL, GC, or SC soils a minimum of two feet (2') above the groundwater table and be at least two feet (2') above bedrock;

(C) Uncovered solids storage areas must also meet the following:

1. Have an overall slope between two percent (2%) and four percent (4%) for unpaved lots;
2. Be maintained in a way that prevents ponding; and
3. Have a runoff collection structure that meets the requirements of this rule.

[[8]](9) Design and Construction of Pipelines, Pump Stations, and Land Application Systems.

(A) General. Design of pipelines shall be based on the following requirements:

1. Ensure the storage/treatment facilities can be emptied within the time limits stated in the nutrient management plan;
2. Convey the required flow without plugging, based on the type of material and total solids content;
3. Install at a depth sufficient to protect against freezing;
4. Install with appropriate connection devices to prevent contamination of private or public water supply distribution systems and groundwater;
5. Size pumps to transfer material at the required system head and volume;
6. Install a minimum of three feet (3') below the natural stream floor and as nearly perpendicular to the stream flow as possible;
7. Encase when buried under public roads; and
8. Separation from potable water lines. Pipelines shall be located at least ten feet (10') horizontally from and at least eighteen inches (18") below the base of any potable water line.
9. Aerial pipeline crossings of streams shall:

A. Provide support for all joints in pipes utilized in the crossing;

B. Protect from the impact of flood waters and debris; and

C. Be constructed so that they will remain watertight and free from changes in alignment or grade.

(B) Gravity Pipelines. Design of pipelines shall be based on the following requirements:

1. Use a minimum slope of one percent (1%) for four inch (4") pipe, six-tenths percent (0.6%) for six inch (6") pipe, and four-tenths percent (0.4%) for eight inch (8") pipe;
2. Design with clean-outs at a maximum interval of three hundred feet (300') and with maximum horizontal curves of ten (10) degrees at pipe joints; and
3. Design gravity discharge pipes used for emptying a storage/treatment structure with a minimum of two (2) valves in series.

(C) Force Mains and Pressure Pipes. Design velocities shall be between three (3) and six (6) feet per second.

(D) Testing. Hydro-pressure tests shall be made only after the completion of backfilling operations and for a minimum of one (1) hour using a minimum test pressure of the maximum system operating pressure.

(E) Pump Stations.

1. Water supply protection. Manure pump stations shall not be connected to a potable water supply and shall be located at least three hundred feet (300') from any potable water supply well.

2. Alarm systems. Alarm systems are required for pumping stations that are activated in cases of power failure, pump failure, or any cause of high water in the wet well.

(F) Land Application Systems. Land application systems shall be designed with:

1. Spray application equipment specified that minimizes the formation of aerosols;

2. The pumping system and distribution system sized for the flow and operating pressure requirements of the distribution equipment and the application restrictions of the soils and topography;

3. Provisions for draining the pipes to prevent freezing, if pipes are located above the frost line;

4. A suitable structure provided for either a portable pumping unit or a permanent pump installation, the intake to the pumping system providing the capability for varying the withdrawal depth, the intake elevation maintained twelve to twenty-four inches (12"-24") below the liquid elevation, the intake screened so as to minimize clogging of the sprinkler nozzle or distribution system orifices, and, for use of a portable pump, a stable platform and flexible intake line with flotation device to control depth of intake;

5. Thrust blocking of pressure pipes; and

6. An automatic pump or engine shut-offs in case of pressure drop.

[(9)](10) General System Details.

(A) Mechanical Equipment. Mechanical equipment shall be used and installed in accordance with manufacturers' recommendations and specifications and major mechanical units installed under the supervision of the manufacturer's representative.

(B) Potable Water Supply Protection. No piping or other connections shall exist in any part of the concentrated animal feeding operation system, which under any conditions, might cause the contamination of a potable water supply.

[(10)](11) Mortality Management. Class I operations shall not use burial as a permanent mortality management method to dispose of routine mortalities.

AUTHORITY: sections 640.710 and 644.026, RSMo 2016. Original rule filed July 14, 2011, effective April 30, 2012. Amended: Filed Jan. 26, 2016, effective Oct. 30, 2016. Amended: Filed June 15, 2018, effective Feb. 28, 2019. Emergency amendment filed Dec. 8, 2020, effective Dec. 22, 2020, expires June 19, 2021.

PUBLIC COST: This emergency amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the time the emergency is effective.

PRIVATE COST: This emergency amendment will not cost private entities more than five hundred dollars (\$500) in the time the emergency is effective.

**Title 19—DEPARTMENT OF HEALTH AND
SENIOR SERVICES
Division 30—Division of Regulation and Licensure
Chapter 1—Controlled Substances**

EMERGENCY RULE

19 CSR 30-1.080 Electronic Prescribing Waiver

PURPOSE: This rule establishes the process for practitioners to obtain waivers to the electronic prescribing requirements established by section 195.550, RSMo.

*EMERGENCY STATEMENT: Section 195.550, RSMo requires that, beginning January 1, 2021, no person shall issue any prescription in this state for any Schedule II, III, or IV controlled substances unless the prescription is made by electronic prescription from the person issuing the prescription to a pharmacy, unless one (1) of the listed exceptions applies. One (1) such exception is that the issuing practitioner has obtained a waiver from the Department of Health and Senior Services due to economic hardship, technological limitations, or other exceptional circumstance. As this deadline approaches, information from practitioners suggests that many practitioners in the state do not meet one (1) of listed exemptions and are in need of a waiver in order to continue providing services to Missouri patients. Emergency implementation of this rule is necessary to prevent an interruption of services to Missouri patients caused by their physicians not being able to issue new prescriptions for Schedule II, III, and IV controlled substances. The governor has waived the electronic prescribing requirement through March 30, 2021; however, a proposed rule will not be effective by then so the risk of an interruption in services still exists. The waiver, paired with an emergency rule, allows practitioners some time to request waivers in advance of the deadline. A proposed rule, which covers the same material, is published in this issue of the *Missouri Register*. 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*. The Department of Health and Senior Services believes this emergency rule is fair to all interest persons and parties under the circumstances. This emergency rule was filed December 15, 2020, becomes effective December 31, 2020, and expires June 28, 2021.*

(1) Practitioners required to utilize electronic prescribing pursuant to section 195.550, RSMo may request a waiver of this requirement from the Department of Health and Senior Services.

(A) Applications shall only be submitted by practitioners with active Missouri Controlled Substance Registrations. Applications shall not be submitted by a registrant's designee or representative.

(B) Applicants requesting a waiver shall submit an application for a waiver by sending their application to BNDDRxWaiver@health.mo.gov. A sample application may be found on the Department's website, www.health.mo.gov/safety/bnndd.

(C) The application shall include:

1. Applicant's first and last name;
2. Applicant's licensure type;
3. Applicant's Missouri Controlled Substance Registration number;
4. Applicant's email address;
5. The Applicant shall indicate for which of the following reasons they are seeking a waiver:
 - A. Economic hardship;
 - B. Technological limitations; or
 - C. Other exceptional circumstances;
6. The Applicant shall provide any additional details they consider necessary to support their waiver request;
7. The Applicant shall certify that the information included in their application is true and accurate; and
8. The Applicant shall sign and date the application. An electronic signature will satisfy this requirement.

(D) Waivers granted by the department shall be valid for one (1) year after the date on which they are issued.

(E) Waivers shall be kept on file at the practitioner's primary, principle practice location and available for review by the Department.

*AUTHORITY: section 195.550, RSMo Supp. 2020. Emergency rule filed Dec. 15, 2020, effective Dec. 31, 2020, expires June 28, 2020. A proposed rule covering this same material is published in this issue of the **Missouri Register**.*

PUBLIC COST: This emergency rule will cost state agencies or political subdivisions fifty-eight thousand nine hundred fifty-three dollars (\$58,953) in the aggregate in the time the emergency is effective.

PRIVATE COST: This emergency rule will not cost private entities more than five hundred dollars (\$500) in the time the emergency is effective.

**FISCAL NOTE
PUBLIC COST**

- I. Department Title: Department of Health and Senior Services
Division Title: Division of Regulation and Licensure
Chapter Title: Controlled Substances**

Rule Number and Name:	19 CSR 30-1.080 Electronic Prescribing Waiver
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Total Fiscal Impact in the Aggregate, During Emergency Rule Period
Department of Health and Senior Services – Bureau of Narcotics and Dangerous Drugs	\$58,953

III. WORKSHEET

Maximum number of waiver requests expected annually: 28,143
 Estimated number of requests processed per hour: 5 requests/ person
 Total hours per year (40 per week, 50 working weeks per year): 2,000

Number of FTE required to process requests per year:
 $28,143 \text{ requests} \div 5 \text{ request/hour} \div 2,000 \text{ hours/week} = 2.8 \text{ FTE}$

Annual salary for 1 FTE (Program Assistant) = \$39,302

Total annual cost of processing waiver requests:
 $\$39,302 \times 3 \text{ FTE} = \$117,906$

Emergency Rule Period: Dec. 30, 2020 to June 28, 2021 (26 weeks or ½ year)
 Pro-rated total cost: $\$117,906 \div 2 = \$58,953$

IV. ASSUMPTIONS

1. It is unknown how many practitioners will request waiver from electronic prescribing. Only those practitioners with a Missouri Controlled Substance Registration can prescribe controlled substances within the state of Missouri, so the maximum number of requests is based on the total number of registered practitioners, not including veterinarians who are statutorily exempt from the electronic prescribing requirements in section 195.550, RSMo. The total number of individual practitioners with current Missouri Controlled Substance Registrations who may request a waiver from electronic prescribing is:

APRNs	1,991
Assistant Physicians	21
Dentists (DMD)	694
Dentists (DDS)	2,116
Optometrists	679
Physicians (DO)	3,304
Physicians (MD)	18,649
Physician Assistants	431
<u>Podiatrists (DMP)</u>	<u>258</u>
TOTAL	28,143

2. Processing a waiver request will require a staff person to review the request to ensure that all information required by rule is provided and that it meets one of the requirements for obtaining a waiver (economic hardship, technological limitation, or other exceptional circumstance). Once the determination has been made, an email will be sent to the requesting practitioner letting them know that their request was granted or denied. Information about the requesting practitioner and their waiver request will then be entered into a spreadsheet for tracking. This entire process is estimated to take 10-15 minutes per request.

3. Personnel with the position "Program Assistant" will be responsible for processing requests. These personnel have an annual salary of \$39,302. It is assumed that each assigned Program Assistant will work full time (40 hours per week) processing requests for 50 weeks per year (2 non-working weeks per year are assumed).

4. The rate at which practitioners will request waivers is unknown. However, because the number of requests that may be processed at any one time are based on a determined amount, it is assumed that requests will be processed at this rate for an ongoing basis until all such requests are processed. Because waivers may only be issued for one year, it is assumed that all waiver requests received during a year will be processed in that year.

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

EXECUTIVE ORDER 20-20

TO ALL DEPARTMENTS AND AGENCIES:

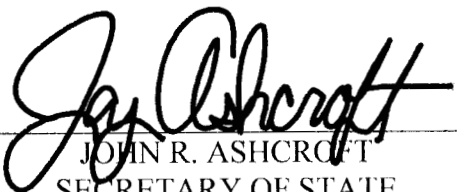
This is to advise that state offices of the executive branch under the purview of the Governor will be closed on Thursday, December 24, 2020.

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 7th day of December, 2020.




MICHAEL L. PARSON
GOVERNOR

ATTEST:


JOHN R. ASHCROFT
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 symbolology 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 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION

Division 20—Division of Learning Services Chapter 100—Office of Quality Schools

PROPOSED AMENDMENT

5 CSR 20-100.230 Virtual Instruction Program. The State Board of Education (board) is amending the purpose, section (1), section (2), section (7), subsections (3)(A), (6)(B), (6)(C), (4)(B), adding section (9), subsections (2)(A), (2)(B), (3)(B), paragraph (6)(B)1., subparagraphs (6)(B)1.A-F, and renumbering as needed.

PURPOSE: This amendment codifies additional operating procedures for Missouri Course Access and Virtual School Program (MOCAP) courseware providers (providers) that join the catalog through LEA partnerships including reporting and instructional processes. This amendment also clarifies access requirements for

LEAs and providers.

PURPOSE: This rule establishes policies and procedures for the Missouri Department of Elementary and Secondary Education (department) to implement a public virtual school program to serve school-age students residing in the state, as authorized by section 161.670, RSMo. There are two (2) paths to become an approved Missouri Course Access and Virtual School Program (MOCAP) provider, through the Request for Proposal (RFP) process or in partnership with a local education agency (LEA). This rule specifically addresses requirements for LEAs, the same requirements are addressed by the RFP.

(1) General information. *[Missouri Course Access and Virtual School Program (MOCAP)] MOCAP publishes a course catalog of [MOCAP] approved courses on its website for any kindergarten through grade twelve (K-12) students residing in Missouri. All MOCAP teachers are Missouri appropriately certified. All courses offered through MOCAP are aligned with Missouri Learning Standards. Failure of a LEA provider established through section 161.670.3(14), RSMo, to stay in compliance with this rule may result in the department revoking, suspending, or taking other corrective action regarding the authorization of the provider and/or courses.*

(2) Access. *[School officials will advise students who are considering MOCAP courses about whether those courses are in the best educational interest of that child.]*

(A) LEAs.

1. LEAs shall inform parents/guardians of their child's right to participate in MOCAP. LEAs shall ensure that the availability of the program is made clear in the—

A. Parent/Guardian Handbook;

B. Registration documents; and

C. Homepage of the LEA website.

2. Kindergarten students are considered eligible to enroll in MOCAP after their first semester of full-time enrollment in a Missouri public school, provided the student meets the other MOCAP requirements. This applies to students fully enrolled in a school-sponsored early childhood program. Virtual learning in Missouri does not begin until kindergarten as required by section 161.670.1, RSMo.

(B) Providers.

1. Providers shall ensure students have weekly, ongoing interaction with their assigned teachers, for the purposes of instruction, feedback, and/or communication.

2. Providers shall ensure enrolled students have multiple methods of communication with teachers such as email, telephone, office hours, and synchronous tools (e.g., online chat, etc.) This must include providing students with a direct telephone number or extension for each teacher. A general phone number that requires students to "hold for the next available teacher," or something similar, is not acceptable. Provider teachers should respond to student messages within twenty-four (24) hours on school days, defined as non-holiday weekdays, when school is in session.

3. The LEA shall have the ability to be able to interact with the providers' educators from whom the LEA has students receiving instruction, as needed, throughout the online course via multiple methods such as email, telephone, office hours, and synchronous tools (e.g., online chat, etc.). This communication shall not be limited to one (1) specific method.

(3) Credit. Course credit earned through MOCAP shall be recognized by all LEAs in Missouri.

(A) *[Courseware p]*Providers will notify *[local education*

agencies/ LEAs of the percentage complete and the grade percentage earned in each course.

(B) LEAs shall recognize course credit earned through MOCAP, as long as the provider meets all the criteria set forth in this rule.

[(B)](C) LEAs will accept all transfer credit earned from any MOCAP course.

[(C)](D) LEAs will ensure transcripts specify which credits were earned through MOCAP courses.

(4) Provider and Course Inclusion in the MOCAP Catalog. There are two (2) methods by which virtual providers and virtual coursework will be included in the MOCAP Catalog:

(B) LEAs.

1. LEAs may request that the department include virtual courses offered by the *[school district or charter school]* LEA in the MOCAP catalog.

2. *[(Requests)]* In order to be included in a MOCAP catalog, LEAs must *[be made]* make requests to the MOCAP office by January 1 for inclusion in the fall catalog and by July 1 for inclusion in the spring catalog.

3. The LEA is deemed to be an approved provider; however, before courses are included in the MOCAP catalog, the LEA must demonstrate that they meet the requirements of sections 161.670 and 162.1250, RSMo, and other requirements for doing business in Missouri, if requested, including, but not limited to:

A. Pricing and billing structures meet the requirements of section 161.670, RSMo;

B. Student information is secure and the LEA's designee signs the department's attestation that they have measures in place to **comply with the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. section 1232g; 34 C.F.R. Part 99) and to prevent data breaches and that data breaches are reported pursuant to sections 162.1475 and 407.1500, RSMo;**

C. Courses are taught by teachers appropriately certified by the department as required by section 161.670, RSMo;

[(D. Courses meet the requirements of section 162.1250, RSMo;)]

[(D. Courses meet the standards of section 161.935, RSMo, to assure compliance with federal web accessibility laws; and)]

[(F./E. Courses are aligned to Missouri State Learning Standards./);]

F. Provide assurance through Cloud Service Agreement Review;

G. Provide the MOCAP checklist to the department to indicate which accommodations and modifications the provider is able to offer; and if requested;

H. Certify business status, enrollment documentation, and work authorization when services are not provided directly by the LEA; and

I. Provide information to the department regarding products or services performed at sites outside of the United States, employee conflicts of interest, and proposed subcontractors.

4. If a LEA sponsors, co-brands, licenses, purchases, contracts for, or otherwise offers through MOCAP any virtual courses or a full-time virtual program *[that is purchased from another vendor]*, the LEA is the approved provider. The approved provider's responsibilities include, but are not limited to, **complying with obligations of this rule**, coordination of enrollment, billing, progress and completion reporting, educator assignment reporting, and dispute resolution.

(6) Reporting. The following are requirements for reporting MOCAP coursework:

(A) LEAs will report MOCAP courses using the appropriate delivery system codes specified by the department;

(B) Providers *[will transmit reports to the department in a*

manner and format and on a timeline specified by the department; and].

1. The following requirements must be met for providers to be retained in the MOCAP catalog. Failure to meet these requirements will result in corrective action, including possible suspension or revocation, outlined in section 161.670, RSMo. Providers must—

A. Transmit reports to the department in a manner and format and on a timeline specified by the department;

B. Provide LEAs with accurate and timely progress reporting through a secure online portal, updated at least weekly;

C. Provide LEAs access to standard and user-customizable reports for both individual and multiple students;

D. Provide LEAs with monthly billing invoices based on the student's completion of assignments and assessments that includes the student's overall progress and current grade in the course;

E. Ensure the provider's teachers keep records up-to-date in the provider's Learning Management System (LMS), or the provider's student information system, as applicable, to ensure that the MOCAP staff, LEA personnel, and parents/guardians, have online access to view a student's current progress at any time; and

F. Send final grade reports as a percentage of the course completed and as a percentage of the grade earned to the LEA and parent/guardian.

[(C)]2. All courses offered by MOCAP providers must use course numbers established by the department.

(7) MOCAP Enrollment Decisions.

(A) If a student, excluding students with an Individualized Education *[Plan]* Program (IEP) or a Section 504 plan, requests enrollment in a MOCAP course or full-time virtual school, the LEA must either approve or deny the initial request within ten (10) business days, defined as any non-holiday weekday in which the administrative offices operate normal business hours. The ten (10) business day period will begin when the LEA receives the request. A failure to render and communicate the initial decision within ten (10) business days will be deemed to be an enrollment approval.

[(A)](B) MOCAP enrollment decisions for students with disabilities must be made by the student's IEP team or Section 504 *[team]* committee.

[(B)](C) Appeals *[to the department]* of enrollment in MOCAP courses can be made through the department's website: www.mocap.mo.gov. If a student or parent/guardian (appellant) files an appeal to the department of an enrollment decision, the department will notify the appellant and the LEA of receipt of the appeal. The appellant, when filing the appeal, must submit any and all material previously submitted to the governing board of the LEA whose decision is being appealed along with the final decision of the governing board. The *[school district or charter school]* LEA will have seventy-two (72) hours from the filing of the appeal to submit the full record, including evidence given by the LEA used to make the governing board's decision. The LEA must provide the initial good cause justification for the enrollment decision. If necessary, the department may ask for clarification of the materials presented.

(9) Instructional Process.

(A) LEAs.

1. Special Education/Section 504 Requirements.

A. Pursuant to the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. section 1400, et seq., and its implementation regulations at 34 C.F.R. section 300) and the Americans with Disabilities Act (Section 504) (42 U.S.C. section 12101, et seq., and its implementation regulations at 34 C.F.R. section 104), the identification and education of students with disabilities or students who are in need of accommodations contained in an IEP

and/or a Section 504 Plan is the responsibility of the LEA that enrolls the student.

B. The IEP team or Section 504 committee of the student is responsible for making the determination that registering a student with an IEP or a Section 504 plan in a MOCAP course is in the educational best interest of the student and will confer a Free Appropriate Public Education (FAPE).

C. If the IEP team or the Section 504 committee determine that a student's enrollment in MOCAP is appropriate, then the IEP or Section 504 plan will be revised to include the services, aids, supports, accommodations, and modifications that will be required in order for the IEP or Section 504 plan to be reasonably calculated to confer educational benefit to the student.

D. If an IEP team or a Section 504 committee determines that a student should be taking MOCAP courses, the LEA shall send the MOCAP provider a description of the accommodations and modifications contained in the IEP or Section 504 Plan. The LEA and provider(s) must work closely together to develop and implement a monitoring protocol or process to ensure that the provider is implementing the accommodations and modifications as written in the IEP or Section 504 plan. This will include the provision of reports or participation in IEP team or Section 504 committee meetings by the provider's teacher, as necessary.

E. If a provider fails to implement accommodations and modifications, the IEP team or the Section 504 committee may reconsider approval for the student taking virtual courses at any time during the semester.

F. The LEA (through the IEP team or the Section 504 committee) may initially, or after reevaluation, determine that based upon a student's unique needs, an online program is not appropriate to confer FAPE, even with the provision of appropriate and individualized accommodations, modifications, aids, or services. Such a determination is subject to the parents'/guardians' rights and procedural safeguards under IDEA and Section 504, respectively.

G. The LEA shall provide to MOCAP the reasons for any determination by an IEP team or a Section 504 committee to discontinue any online program for a student enrolled in MOCAP, including any failure on the part of the provider to provide the required accommodations and modifications.

(B) Providers.

1. Providers shall ensure that pacing charts are integrated into the LMS and aligned with the LEA's start and end dates.

2. Providers shall furnish LEAs, parents or guardians, and students with policies on academic integrity, internet etiquette, plagiarism, and privacy before the beginning of each course. These policies must be emailed to the LEAs, parents/guardians or guardians, and students. The provider must post copies of all academic integrity, internet etiquette, and privacy information on the provider's website before providing courseware or services to any student.

3. Providers will treat all student personally identifiable information, as that term is defined in 34 C.F.R. section 99.3, as confidential, whether or not the student has been officially enrolled in the provider's program. Providers will notify the department, any impacted LEAs, and its partnered provider, if applicable, in the event of a data breach relating to student personally identifiable information, within twenty-four (24) hours, and will follow all applicable state and federal law with respect to required parent/guardian and student notifications.

4. Student-teacher ratios shall not exceed a total number of one-hundred fifty (150) students to one (1) teacher. The total number is not of unique students; it is the total number of students the teacher instructs. For example, an elementary teacher who teaches one hundred (100) students and teaches all core subjects would be a ratio of four hundred (400) to one (1), not one-hundred (100) to one (1). Within five (5) business days after receiving a student-teacher ratio request from the department,

the course provider shall provide proof this requirement is being met.

5. Prior to adding a teacher or changing a teacher's course assignment during a semester, the provider shall communicate with the department to ensure certification requirements are met.

6. Special Education/Section 504 Requirements.

A. Providers must—

(I) Sign and return the accommodations and modifications checklist to the department;

(II) Work closely with the LEA to develop and implement a monitoring protocol or process to ensure that the accommodations and modifications are being implemented by the provider as written in the IEP or Section 504 plan. This will include the provision of reports or participation in IEP team or Section 504 committee meetings by the provider's teacher, as necessary; and

(III) Work with the LEA staff to ensure that a student's IEP goals are being met and/or that a student has the required accommodations and modifications.

AUTHORITY: section 161.092, RSMo 2016, and section 161.670, RSMo Supp. 2020. This rule previously filed as 5 CSR 50-500.010. Original rule filed Sept. 12, 2007, effective March 30, 2008. Moved to 5 CSR 20-100.230, effective Aug. 16, 2011. Amended: Filed Jan. 15, 2019, effective Aug. 30, 2019. Amended: Filed June 12, 2020, effective Jan. 30, 2021. Amended: Filed Dec. 14, 2020.

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 Elementary and Secondary Education, ATTN: Chris Neale, Assistant Commissioner, Office of Quality Schools, PO Box 480, Jefferson City, MO 65102-0480 or by email at DESE.MOCAP@dese.mo.gov. To be considered, comments must be received within sixty (60) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 20—Division of Learning Services
Chapter 100—Office of Quality Schools**

PROPOSED RULE

5 CSR 20-100.275 Transfer of Charter Sponsors

PURPOSE: This rule establishes requirements and procedures for transfer of sponsorship for charter schools prior to the expiration of a contract between a charter and its sponsor. This transfer process is designed to ensure continuity of support for the charter school, accurate and timely data submissions, and accurate transmittal of funds due to sponsors.

(1) Transfer Requirements and Application.

(A) A transfer of charter school sponsorship from one (1) approved sponsor to another prior to the expiration of the contract between a charter and its sponsor may only occur if approved by the State Board of Education (board).

(B) All standards and requirements established in the current charter contract shall remain in effect until the scheduled renewal of the

charter school, unless the board approves any changes.

(C) All parties, the charter school, and its current sponsor, along with the proposed sponsor, must submit a joint application for transfer to the board for consideration prior to February 1 to be considered for the following school year, and shall include the following components:

1. A signed resolution by the charter governing board authorizing the school leader and school board chair to take steps necessary to execute the transfer if approved by the board;

2. A signed resolution from the governing board of the proposed sponsor to which the school seeks to transfer in support of such request; and

3. An explanation of why the school is seeking to transfer to another sponsor, including:

A. An explanation as to how this transfer is in the best interest of the students served by the school;

B. Evidence that the applicant has solicited input from and notified students, parents, and staff of the request to transfer sponsors at least six (6) months prior to approaching other sponsoring institutions related to potential transfer. Feedback should be included in application for transfer;

C. Evidence of the proposed sponsor's financial health and capacity to support and oversee an additional charter school(s);

D. Evidence that the proposed sponsor has implemented the department's sponsorship standards for charter school sponsors, including the adoption of performance measures to guide the ongoing oversight and evaluation of the school; and

E. A detailed plan that outlines how services provided for students will not be disrupted by the change in sponsoring institution.

(D) The board shall only consider approval of charter school requests to transfer to another sponsor if it finds the transfer applicant has submitted evidence of the criteria outlined in subsection (C), above. The board maintains its discretion to deny a transfer request if the criteria outlined in subsection (C), above, is not met, and for good cause including, but not limited to:

1. Failure to seek input from students, parents, and staff;

2. The transfer is motivated by an adverse review by the department; or

3. There is evidence of the current sponsor's unwillingness to end its contract early.

(2) Transition Requirements.

(A) All obligations of the previous charter sponsor shall terminate upon the official date of transfer on June 30.

(B) The receiving sponsor will be responsible for ensuring that all required documents due after the date of transfer are submitted in a timely fashion, including, but not limited to, the Annual Secretary of the Board Report and Financial Audit.

(C) Within thirty (30) days of transfer, the prior charter sponsor shall provide all charter school information in its possession necessary for the proposed charter sponsor to operate the school and as requested by the proposed charter sponsor, including, but not limited to, assets, student records, and reports.

(D) A charter school sponsor that seeks to sponsor a transferring school must have met all requirements of the Standards of Charter Sponsorship in its most recent sponsor evaluation.

AUTHORITY: sections 160.405 and 161.092, RSMo 2016. Original rule filed Dec. 11, 2020.

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 Department of Elementary and Secondary Education, Attention: Dr. Chris Neale, Assistant Commissioner, Office of Quality Schools, PO Box 480, Jefferson City, MO 65102-0480 or by email to charters@dese.mo.gov. To be considered, comments must be received within sixty (60) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION

Division 100—Missouri Commission for the Deaf and Hard of Hearing

Chapter 200—Board for Certification of Interpreters

PROPOSED RULE

5 CSR 100-200.135 Military Certification Status

PURPOSE: This rule will allow active duty military members who hold interpreter certification to remain in good standing for the duration of duty.

(1) While a certificate holder is an active duty member of the United States Armed Forces, the certificate referenced in this section shall be renewed without—

(A) The payment of dues or fees; and

(B) Obtaining continuing education credits when—

1. Circumstances associated with military duty prevent obtaining such training and a waiver request has been submitted to the appropriate Missouri Commission for the Deaf and Hard of Hearing (MCDHH) staff; or

2. The military member, while on active duty, performs the certified occupation as part of his or her military duties as annotated in Defense Department Form 214 (DD 214).

(2) The certificate issued under this rule shall be continued as long as the certificate holder is a member of the United States Armed Forces on active duty and for a period of at least six (6) months after being released from active duty.

AUTHORITY: sections 209.295(8) and 209.297(2), RSMo 2016. Original rule filed Dec. 8, 2020.

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 Missouri Commission for the Deaf and Hard of Hearing, 3216 Emerald Drive, Suite B, Jefferson City, MO 65109. 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 45—Missouri Gaming Commission

Chapter 12—Liquor Control

PROPOSED AMENDMENT

11 CSR 45-12.090 Rules of Liquor Control. The commission is amending sections (10) and (12).

PURPOSE: This amendment removes references to “nonintoxicating beer” to stay consistent with the liquor control regulations governed by the Missouri Division of Alcohol and Tobacco Control and removes advertising prohibitions in accordance with the 8th Circuit federal court ruling in Missouri Broadcasters Ass’n v. Schmitt.

(10) Commercial Credit. No excursion liquor licensee shall accept any equipment, money, credit, or property of any kind, except ordinary commercial credit for liquors purchased from a distiller, wholesaler, winemaker, or brewer.

(A) Ordinary commercial credit as used in the malt beverage [and nonintoxicating beer] industry shall be credit on such terms as shall require payment to be made by the excursion licensee by the last day of the month for malt beverages [or nonintoxicating beer] which is delivered to the excursion licensee on or after the first day of the month and up to and including the fifteenth day of the month and by the fifteenth day of the month next succeeding for malt beverages [or nonintoxicating beer] which is delivered to the excursion licensee on or after the sixteenth day of the month and up to and including the last day of the month. No brewer or wholesaler shall sell or deliver to any excursion licensee any malt beverage [or nonintoxicating beer] while the excursion licensee owes the brewer or wholesaler for any malt beverage [or nonintoxicating beer] beyond the period of time as indicated in this subsection.

(12) Advertising.

[(A) Prohibited Advertising. No advertisement of intoxicating liquor visible outside the premises shall contain any statement offering any coupon, premium, prize, rebate, or sale price below the licensee’s actual cost or at a discount, as an inducement to purchase intoxicating liquor.]

[(B) Fee Not to be Accepted For Advertising Product.] No licensee [shall] may accept payment of any fee, rental, or other consideration from manufacturers, wholesalers, or distributors for the use of any part of the licensed retail premises for advertising any brand name of distilled spirits, wine, or malt liquor[, or nonintoxicating beer] or for the purpose of advertising the name, trademark, or trade name of any maker thereof from any distiller, wholesaler, winemaker, brewer or its employees, officers, or agents.

AUTHORITY: sections [311.205] 311.180, 313.004, 313.805, and 313.840, RSMo 2016. Emergency rule filed Sept. 1, 1993, effective Sept. 20, 1993, expired Jan. 17, 1994. Emergency rule filed Jan. 5, 1994, effective Jan. 18, 1994, expired Jan. 30, 1994. Original rule filed Sept. 1, 1993, effective Jan. 31, 1994. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 10, 2020.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: *Anyone may file a statement in support of or in opposition to this proposed amendment via email to MGCPolicy@mgc.dps.mo.gov, or by mail to the Missouri Gaming Commission, Policy Section, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. A public hearing is scheduled for February 9, 2021, at 10:00 a.m., in the Missouri Gaming Commission’s Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.*

**Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 30—Division of Regulation and Licensure
Chapter 1—Controlled Substances**

PROPOSED RULE

19 CSR 30-1.080 Electronic Prescribing Waiver

PURPOSE: This rule establishes the process for practitioners to obtain waivers to the electronic prescribing requirements established by section 195.550, RSMo.

(1) Practitioners required to utilize electronic prescribing pursuant to section 195.550, RSMo may request a waiver of this requirement from the Department of Health and Senior Services.

(A) Applications shall only be submitted by practitioners with active Missouri Controlled Substance Registrations. Applications shall not be submitted by a registrant’s designee or representative.

(B) Applicants requesting a waiver shall submit an application for a waiver by sending their application to BNDDRxWaiver@health.mo.gov. A sample application may be found on the Department’s website, www.health.mo.gov/safety/bnidd.

(C) The application shall include:

1. Applicant’s first and last name;
2. Applicant’s licensure type;
3. Applicant’s Missouri Controlled Substance Registration number;
4. Applicant’s email address;
5. The Applicant shall indicate for which of the following reasons they are seeking a waiver:
 - A. Economic hardship;
 - B. Technological limitations; or
 - C. Other exceptional circumstances;
6. The Applicant shall provide any additional details they consider necessary to support their waiver request;
7. The Applicant shall certify that the information included in their application is true and accurate; and
8. The Applicant shall sign and date the application. An electronic signature will satisfy this requirement.

(D) Waivers granted by the department shall be valid for one (1) year after the date on which they are issued.

(E) Waivers shall be kept on file at the practitioner’s primary, principal practice location and available for review by the department.

AUTHORITY: section 195.550, RSMo Supp. 2020. Emergency rule filed Dec. 15, 2020, effective Dec. 31, 2020, expires June 28, 2021. Original rule filed Dec. 15, 2020.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions one hundred seventeen thousand nine hundred six dollars (\$17,906) annually.

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 Michael Boeger, Missouri Department of Health and Senior Services, Bureau of Narcotics and Dangerous Drugs, PO Box 570, Jefferson City, MO 65102, or via email at BNDD@health.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 Health and Senior Services
Division Title: Division of Regulation and Licensure
Chapter Title: Controlled Substances**

Rule Number and Name:	19 CSR 30-1.080 Electronic Prescribing Waiver
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Total Fiscal Impact in the Aggregate per Year
Department of Health and Senior Services – Bureau of Narcotics and Dangerous Drugs	\$117,906

III. WORKSHEET

Maximum number of waiver requests expected annually: 28,143
 Estimated number of requests processed per hour: 5 requests/ person
 Total hours per year (40 per week, 50 working weeks per year): 2,000

Number of FTE required to process requests per year:
 $28,143 \text{ requests} \div 5 \text{ request/hour} \div 2,000 \text{ hours/week} = 2.8 \text{ FTE}$

Annual salary for 1 FTE (Program Assistant) = \$39,302

Total annual cost of processing waiver requests:
 $\$39,302 \times 3 \text{ FTE} = \$117,906$

IV. ASSUMPTIONS

1. It is unknown how many practitioners will request waiver from electronic prescribing. Only those practitioners with a Missouri Controlled Substance Registration can prescribe controlled substances within the state of Missouri, so the maximum number of requests is based on the total number of registrants, less veterinarians who are statutorily exempt from the electronic prescribing requirements in section 195.550, RSMo. The total number of individual practitioners with current Missouri Controlled Substance Registrations who may request a waiver from electronic prescribing is:

APRNs	1,991
Assistant Physicians	21
Dentists (DMD)	694

Dentists (DDS)	2,116
Optometrists	679
Physicians (DO)	3,304
Physicians (MD)	18,649
Physician Assistants	431
<u>Podiatrists (DMP)</u>	<u>258</u>
TOTAL	28,143

2. Processing a waiver request will require a staff person to review the request to ensure that all information required by rule is provided and that it meets one of the requirements for obtaining a waiver (economic hardship, technological limitation, or other exceptional circumstance). Once the determination has been made, an email will be sent to the requesting practitioner letting them know that their request was granted or denied. Information about the requesting practitioner and their waiver request will then be entered into a spreadsheet for tracking. This entire process is estimated to take 10-15 minutes per request.

3. Personnel with the position "Program Assistant" will be responsible for processing requests. These personnel have an annual salary of \$39,302. It is assumed that each assigned Program Assistant will work full time (40 hours per week) processing requests for 50 weeks per year (2 non-working weeks per year are assumed).

4. The rate at which practitioners will request waivers is unknown. However, because the number of requests that may be processed at any one time are based on a determined amount, it is assumed that requests will be processed at this rate for an ongoing basis until all such requests are processed. Because waivers may only be issued for one year, it is assumed that all waiver requests received during a year will be processed in that year.

Title 20—DEPARTMENT OF COMMERCE AND INSURANCE
Division 2030—Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Professional Landscape Architects
Chapter 5—Examinations

PROPOSED AMENDMENT

20 CSR 2030-5.120 Scope of Examination—Land Surveyor-in-Training and Professional Land Surveyors. The board is amending the purpose and section (2) and adding new section (3).

PURPOSE: This rule is being amended to come into compliance with a statutory amendment via HB 2046, effective August 28, 2020.

PURPOSE: This rule establishes the examinations that are required of a person applying for enrollment as a land surveyor-in-training under section 327.312, RSMo, and for a person applying for licensure as a professional land surveyor other than nonresident or resident military spouses exempt under section 324.009(2), RSMo.

(2) The examinations for licensure as a professional land surveyor shall be the NCEES Principles and Practice of Land Surveying and the Missouri Specific Examination covering Missouri surveying practice and Missouri statutes and rules relating to the practice of land surveying. These two (2) examinations are independent of each other and shall be graded separately. **Applicants must obtain [A]a passing score [must be obtained]** on each examination before licensure will be granted.

(3) The examinations mandated in sections (1) and (2) of this rule shall not be required of nonresident or resident military spouses applying for licensure under section 324.009(2), RSMo.

AUTHORITY: sections 327.041 and 327.314, RSMo [Supp. 2001] 2016 and section 327.312, RSMo [2000] Supp. 2020. This rule originally filed as 4 CSR 30-5.120. Original rule filed Dec. 8, 1981, effective March 11, 1982. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 10, 2020.

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 Board of Architects, Professional Engineers, Professional Land Surveyors, and Professional Landscape Architects, PO Box 184, Jefferson City, MO 65102, via facsimile at (573) 751-8046, or via email at moapeplspla@pr.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 20—DEPARTMENT OF COMMERCE AND INSURANCE
Division 2030—Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Professional Landscape Architects
Chapter 5—Examinations

PROPOSED AMENDMENT

20 CSR 2030-5.160 State Exam Covering Chapter 327, RSMo,

the Board Rules, and Ethics. The board is amending the purpose and section (1) and adding section (5).

PURPOSE: This rule is being amended to come into compliance with a statutory amendment via HB 2046, effective August 28, 2020.

PURPOSE: This rule requires all applicants for an architectural, professional engineering, or professional landscape architectural license, other than nonresident or resident military spouses exempt under section 324.009(2), RSMo, to pass a state specific examination covering Chapter 327, RSMo, the board rules, and ethics before being issued a license to practice.

(1) Before an architect, professional engineer, or professional landscape architect can be licensed to practice in Missouri, he or she must pass [A]an examination on Chapter 327, RSMo, board rules, and ethics [must be passed before an architect, professional engineer, or professional landscape architect can be licensed to practice in Missouri].

(5) Nonresident or resident military spouses, eligible for licensure under section 324.009, RSMo, are not required to take the state examination in this section.

AUTHORITY: section 327.041, RSMo 2016. Original rule filed May 30, 2018, effective Dec. 30, 2018. Amended: Filed Dec. 10, 2020.

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 Board of Architects, Professional Engineers, Professional Land Surveyors, and Professional Landscape Architects, PO Box 184, Jefferson City, MO 65102, via facsimile at (573) 751-8046, or via email at moapeplspla@pr.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 1—Wildlife Code: Organization

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 10-1.010 Organization and Methods of Operation is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 2020 (45 MoReg 1564-1566). 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 six (6) individuals on the proposal to modify verbiage to more accurately describe the Department of Conservation's organizational structure.

COMMENT #1: The commission received comments from six (6) individuals who voiced opposition for proposed changes to this rule; however, specific comments were in opposition to black bear hunting in Missouri.

RESPONSE: The commission thanks those individuals who provided input and will address these comments with others received on this specific change in the order of rulemaking for 3 CSR 10-5.900 Resident Black Bear Hunting Permit.

Title 3—DEPARTMENT OF CONSERVATION Division 10—Conservation Commission Chapter 4—Wildlife Code: General Provisions

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 10-4.135 Transportation is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 2020 (45 MoReg 1566-1567). 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 thirteen (13) individuals on the proposal to establish a black bear hunting permit for residents. The number of individuals who commented was calculated following the removal of duplicate or multiple submissions by one individual when the duplication could be verified. However, all comments received were considered. A spreadsheet detailing comments received is available upon written request to the Missouri Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180.

COMMENT #1: The commission received comments from one (1) individual who voiced support for proposed changes to this rule; however, specific comments pertained to general support of the establishment of a bear hunt.

RESPONSE: The commission thanks the individual who voiced support for the regulation changes and will address these comments with others received on this specific change in the order of rulemaking for 3 CSR 10-5.900 Resident Black Bear Hunting Permit and 3 CSR 10-7.900 Black Bear Hunting Season: General Provisions.

COMMENT #2: The commission received comments from two (2) individuals who voiced opposition for the proposed changes and the specific comments pertained to opposition to hunting and harvesting of black bears and transportation of their carcasses or generally transporting bear carcasses.

RESPONSE: The commission appreciates citizen input. The proposed changes to this rule are a result of the proposed establishment of a black bear hunting season and are consistent with transportation rules for other game species.

COMMENT #3: The commission received comments from ten (10) individuals who voiced opposition to the proposed changes to this rule; however, specific comments pertained to general opposition to black bear hunting for multiple reasons.

RESPONSE: The commission thanks those individuals who provided input and will address these comments with others received on this specific change in the order of rulemaking for 3 CSR 10-5.900 Resident Black Bear Hunting Permit.

Title 3—DEPARTMENT OF CONSERVATION Division 10—Conservation Commission Chapter 4—Wildlife Code: General Provisions

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 10-4.136 Giving Away Wildlife is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 2020 (45 MoReg 1567). 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 six (6) individuals and organizations on the proposal to add provisions for black bears taken during the black bear hunting season. The number of individuals who commented was calculated following the removal of duplicate or multiple submissions by one individual when the duplication could be verified. However, all comments received were considered. A spreadsheet detailing comments received is available upon written request to the Missouri Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180.

COMMENT #1: The commission received comments from two (2) individuals and organizations who voiced opposition to the proposed changes to this rule; however, specific comments pertained to opposition to hunting.

RESPONSE: The commission appreciates citizen input. No changes to the rule have been made as a result of this comment. Providing hunting opportunities for a variety of species is in line with the department's mission and strategic plan.

COMMENT #2: The commission received comments from three (3) individuals and organizations who voiced opposition to the proposed changes to this rule; however, specific comments pertained to concerns the black bear population size in Missouri is not large enough to support a hunting season.

RESPONSE: The commission thanks those individuals who provided input and will address these comments with others received on this specific change in the order of rulemaking for 3 CSR 10-5.900 Resident Black Bear Hunting Permit.

COMMENT #3: The commission received comments from one (1) individual who voiced opposition to the proposed changes to this rule; specifically, opposition to hunting and giving away black bear.

RESPONSE: The commission appreciates citizen input. No changes to the rule have been made as a result of this comment. The proposed changes related to giving away of black bear are consistent with other game species, except that black bear gall bladders may not be given away. The commission will address the comments related to the hunting of black bear with others received on this specific change in the order of rulemaking for 3 CSR 10-5.900 Resident Black Bear Hunting Permit.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 4—Wildlife Code: General Provisions**

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 10-4.137 Wildlife Identification is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15,

2020 (45 MoReg 1567). 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 two (2) individuals on the proposal to add provisions for black bears taken during the black bear hunting season and black bears legally harvested outside of Missouri.

COMMENT #1: The commission received comments from one (1) individual who voiced opposition to the proposed changes to this rule; however, specific comments pertained to concerns the black bear population size in Missouri is not large enough to support a hunting season.

RESPONSE: The commission thanks the individual who provided input and will address these comments with others received on this specific change in the order of rulemaking for 3 CSR 10-5.900 Resident Black Bear Hunting Permit.

COMMENT #2: The commission received comments from one (1) individual who voiced opposition to the proposed changes to this rule; however, specific comments pertained to general opposition to black bear hunting for multiple reasons.

RESPONSE: The commission thanks the individual who provided input and will address these comments with others received on this specific change in the order of rulemaking for 3 CSR 10-5.900 Resident Black Bear Hunting Permit.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 4—Wildlife Code: General Provisions**

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 10-4.140 Possession, Storage, and Processing is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 2020 (45 MoReg 1567-1568). 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 the proposal to add provisions for black bears taken during the black bear hunting season.

COMMENT #1: The commission received comments from one (1) individual who voiced support for proposed changes to this rule, and specifically commented they would like to see a process for abandoned meat to allow processors to recover some costs.

RESPONSE: The commission thanks the individual who voiced support for the regulation changes. At this time, there have been no changes to the proposed rule in regard to abandoned meat, but this specific comment will be noted in the event future changes to this rule occur.

COMMENT #2: The commission received comments from one (1) individual who voiced support for proposed changes to this rule; however, specific comments pertained to the Bear Management Zone Boundaries.

RESPONSE: The commission thanks the individual who voiced support for the regulation changes and will address these comments with others received on this specific change in the order of rulemaking for 3 CSR 10-7.900 Black Bear Hunting Season: General Provisions.

COMMENT #3: The commission received comments from one (1) individual who voiced opposition for proposed changes to this rule; however, specific comments pertained to opposition to trophy hunting. RESPONSE: The commission thanks the individual who provided input and will address these comments with others received on this specific change in the order of rulemaking for 3 CSR 10-5.900 Resident Black Bear Hunting Permit.

COMMENT #4: The commission received comments from one (1) individual who voiced opposition to the proposed changes to this rule; however, specific comments pertained to general opposition to black bear hunting for multiple reasons. The individual who commented indicated they represented themselves, plus an additional person (e.g. husband/wife). RESPONSE: The commission thanks those individuals who provided input and will address these comments with others received on this specific change in the order of rulemaking for 3 CSR 10-5.900 Resident Black Bear Hunting Permit.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 4—Wildlife Code: General Provisions**

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 10-4.145 Preparing and Serving Wildlife is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 2020 (45 MoReg 1568). 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 three (3) individuals on the proposal to add provisions for black bears taken during the black bear hunting season and add conservation number as a method for labeling wildlife.

COMMENT #1: The commission received comments from one (1) individual who voiced support for proposed changes to this rule; however, specific comments pertained to general support of the establishment of a bear hunt and requesting that bait and dogs be allowable methods. RESPONSE: The commission thanks the individual who voiced support for the regulation changes and will address these comments with others received on this specific change in the order of rulemaking for 3 CSR 10-5.900 Resident Black Bear Hunting Permit and 3 CSR 10-7.900 Black Bear Hunting Season: General Provisions.

COMMENT #2: The commission received comments from two (2) individuals who voiced opposition to the proposed changes to this rule; however, specific comments pertained to general opposition to black bear hunting for multiple reasons. RESPONSE: The commission thanks those individuals who provided input and will address these comments with others received on this specific change in the order of rulemaking for 3 CSR 10-5.900 Resident Black Bear Hunting Permit.

**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 10-5.205 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 2020 (45 MoReg 1568-1569). 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 Conservation Commission received comments from nine (9) individuals on the proposal to add requirements and exceptions for black bear hunting permits and black bear hunting. The Conservation Commission received one (1) comment on the proposed amendment.

COMMENT #1: The commission received comments from two (2) individuals who voiced opposition to the proposed changes to this rule; however, specific comments pertained to concerns the black bear population size in Missouri is not large enough to support a hunting season. RESPONSE: The commission thanks those individuals who provided input and will address these comments with others received on this specific change in the order of rulemaking for 3 CSR 10-5.900 Resident Black Bear Hunting Permit.

COMMENT #2: The commission received comments from one (1) individual who voiced support for the proposed changes to this rule; however, specific comments pertained to the establishment of a black bear hunting season and residency requirements. RESPONSE: The commission thanks the individual who provided input and will address these comments with others received on this specific change in the order of rulemaking for 3 CSR 10-5.900 Resident Black Bear Hunting Permit and 3 CSR 10-7.900 Black Bear Hunting Season: General Provisions.

COMMENT #3: The commission received comments from six (6) individuals who voiced opposition to the proposed changes to this rule; however, specific comments pertained to general opposition to black bear hunting for multiple reasons. RESPONSE: The commission thanks those individuals who provided input and will address these comments with others received on this specific change in the order of rulemaking for 3 CSR 10-5.900 Resident Black Bear Hunting Permit.

COMMENT #4: Department of Conservation staff noted the semicolon in the rule title should be a colon. RESPONSE AND EXPLANATION OF CHANGE: The text is revised to remove the semicolon and replace it with a colon.

3 CSR 10-5.205 Permits Required: Exceptions

**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 10-5.215 Permits and Privileges: How Obtained; Not Transferable **is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 2020 (45 MoReg 1569-1570). 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 three (3) individuals on the proposal to add requirements and exceptions for obtaining a Resident Black Bear Hunting Permit.

COMMENT #1: The commission received comments from one (1) individual who voiced opposition to the proposed changes to this rule; however, specific comments pertained to the need for a higher fee for the black bear hunting permit.

RESPONSE: The commission thanks the individual who provided input and will address these comments with others received on this specific change in the order of rulemaking for 3 CSR 10-5.900 Resident Black Bear Hunting Permit.

COMMENT #2: The commission received comments from one (1) individual who voiced support for the proposed changes to this rule; however, specific comments pertained to difficulty for landowners to hunt.

RESPONSE: The commission thanks the individual who provided input and will address these comments with others received on this specific change in the order of rulemaking for 3 CSR 10-7.434.

COMMENT #3: The commission received comments from one (1) individual who voiced opposition to the proposed changes to this rule; however, specific comments pertained to general opposition to black bear hunting.

RESPONSE: The commission thanks the individual who provided input and will address these comments with others received on this specific change in the order of rulemaking for 3 CSR 10-5.900 Resident Black Bear Hunting Permit.

**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 10-5.225 Permits: Permit Issuing Agents; Service Fees; Other Provisions **is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 2020 (45 MoReg 1570). 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 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 10-5.300 Apprentice Hunter Authorization **is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 2020 (45 MoReg 1570). 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 comment from one (1) individual on the proposal to add an exception for black bear hunting permits regarding a hunter education certificate.

COMMENT #1: The commission received comment from one (1) individual who voiced opposition to the proposed changes to this rule; however, specific comments pertained to general opposition to black bear hunting for multiple reasons.

RESPONSE: The commission thanks the individual who provided input and will address these comments with others received on this specific change in the order of rulemaking for 3 CSR 10-5.900 Resident Black Bear Hunting Permit.

**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 10-5.310 Resident Lifetime Conservation Partner Permit **is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 2020 (45 MoReg 1570-1571). 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 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 10-5.320 Resident Lifetime Small Game Hunting Permit is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 2020 (45 MoReg 1571). 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 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 10-5.330 Resident Small Game Hunting and Fishing Permit is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 2020 (45 MoReg 1571). 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 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 10-5.331 Resident National Guard and Reserve Service Small Game Hunting and Fishing Permit is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 2020 (45 MoReg 1571-1572). 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 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 10-5.345 Resident Small Game Hunting Permit is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 2020 (45 MoReg 1572). 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 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 10-5.445 Daily Small Game Hunting Permit is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 2020 (45 MoReg 1572). 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 comment from one (1) individual on the proposal to add an exception for the take of black bear regarding a daily hunting permit. This amendment specifically excludes black bears from the species of mammals that may be chased, pursued, taken, possessed, and transported by the holder of this permit.

COMMENT #1: The commission received comment from one (1) individual who voiced opposition to the proposed changes; however the specific comment pertained to wanting the permit price to be no less than one thousand dollars (\$1,000) and did not relate to the exclusion of black bear from the species authorized to be taken under this permit.

RESPONSE: The commission appreciates citizen input. No changes to the rule have been made as a result of this comment.

**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 10-5.545 Nonresident Small Game Hunting Permit is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 2020 (45 MoReg 1572). 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 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 10-5.605 Nonresident Firearms Deer Management Assistance Program Permit **is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 2020 (45 MoReg 1573). 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 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 rescinds a rule as follows:

3 CSR 10-5.705 Resident Landowner Antlered Elk Hunting Permit **is rescinded.**

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on October 15, 2020 (45 MoReg 1573). 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: The Conservation Commission received one (1) comment from one (1) individual on the proposal to rescind the Resident Landowner Antlered Elk Hunting Permit as qualifying landowners will now apply for a permit that is valid within counties open to elk hunting on both public and private property.

COMMENT #1: The commission received comment from one (1) individual who voiced opposition to proposed changes to this rule and requested no-cost permits for landowners whose property is damaged by elk.

RESPONSE: The proposed rescinding of the landowner antlered elk hunting permit is in conjunction with additional changes to the elk permit process. A new system to increase benefit to landowners was proposed. The new system allows landowners in the elk hunting zone who obtain an elk permit through the elk draw to hunt elk throughout the zone and not just on their property. In addition, landowners will also receive at least ten percent (10%) of the available permits in the draw. The current system only allows a landowner permit to be received from a separate landowner draw and a landowner who draws a landowner elk permit can hunt only on their property. Wildlife are

owned by the people of Missouri and the department has responsibility for managing wildlife on their behalf. Because the department neither owns nor physically controls wildlife, it does not provide financial compensation for damage they may cause.

**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 adopts a rule as follows:

3 CSR 10-5.900 Resident Black Bear Hunting Permit **is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on October 15, 2020 (45 MoReg 1573-1575). 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: The Conservation Commission received comments from one thousand and fifty-nine (1,059) individuals and organizations on the proposal to establish a black bear hunting permit for residents. Comments from individuals and organizations have been grouped into themes and sub-themes for the purposes of review and summarization. The comment categories below represent the general themes. Additionally, the number of individuals who commented was calculated following the removal of duplicate or multiple submissions by one individual when the duplication could be verified. However, all comments received were considered. A spreadsheet detailing comments received is available upon written request to the Missouri Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180.

COMMENT #1: The commission received comments from thirty-one (31) individuals and organizations who voiced support for proposed changes to this rule and specific comments generally pertained to the establishment of a bear hunt. Within the thirty-one (31) individuals, two (2) individuals clicked the “oppose” checkbox, however, their specific comment was in support and fit within this theme.

RESPONSE: The commission thanks those individuals and organizations who voiced support for the regulation changes.

COMMENT #2: The commission received comments from one thousand thirteen (1,013) individuals and organizations who voiced opposition to the proposed changes to this rule; however, some comments expressing opposition to black bear hunting included multiple reasons or fell within an identified sub-theme. Within the one thousand thirteen (1,013) individuals, three (3) indicated they represented themselves plus an additional person (e.g. husband/wife), one (1) letter represented twenty-five (25) organizations, and six (6) individuals clicked the “support” checkbox, however, their specific comment was in opposition and fit within this theme.

RESPONSE: The commission thanks those individuals and organizations who provided input and will address these comments by responding to specific sub-themes that were identified following review of all comments in this category. No changes have been made to the rule as a result of these comments.

Sub-theme 1: Commenters stated the proposed regulations are cruel and unnecessary. Examples of specific comments in this sub-theme include statements that “bears should be protected from trophy hunting,” “hunting tears wild families apart, leaving orphaned cubs to

starve,” and “hunting is not necessary for food, hunters will not eat the meat.”

Response: Establishment of a black bear hunting season for Missouri residents is consistent with the commission’s constitutional authority and in line with the department’s mission and strategic plan. The establishment of a conservative and highly regulated black bear hunting season to provide opportunity for Missouri residents to participate in the sustainable harvest of a native species is consistent with other game species such as turkeys, deer, and elk.

The proposed regulations prohibit the take of bears in the presence of other bears in order to protect female bears with young-of-the-year (bears that are between eight to nine (8-9) months of age at the time of the proposed hunting season) and young-of-the-year bears when they are in the presence of females. Weight restrictions are often used to distinguish young-of-the-year bears from older bears, and are used in some jurisdictions to determine which bears are eligible for harvest. The commission considered whether weight restrictions would be appropriate and felt that weight restrictions put an unnecessary burden on hunters because weight can be challenging to judge, especially for novice bear hunters. Additionally, weight of young-of-the-year bears can be variable dependent upon sex of the bear and food availability. Rather than imposing weight restrictions to protect young-of-the-year bears, the department has opted to protect bears that are in the presence of other bears (e.g. female bears with young-of-the-year). As is pointed out in some of the comments received, it is possible that hunters may encounter young-of-the-year bears that are not in the presence of the adult bear or an adult female not in the presence of her cubs, in which case these bears would be eligible for harvest. To address this concern, educational materials will be developed to help hunters identify young-of-the-year bears. The proposed regulations are consistent with many other eastern jurisdictions. In a 2019 Eastern Black Bear Workshop Jurisdictional survey of wildlife management agencies in the eastern United States and Canada, of the twenty-five (25) jurisdictions that responded to the survey that had a bear season, thirty-six percent (36%) did not have provisions that specifically protect young-of-the-year bears.

The commission does not consider the proposed black bear hunting season to be a “trophy hunting season” as indicated in many comments, but rather a season consistent with other game species such as deer, turkeys, and elk. The commission encourages the wise use of the state’s resources and requires hunters to retrieve the commonly edible portions of game species. Educational materials will be developed for hunters to learn proper cleaning and processing of harvested bears, information on commonly edible portions, and proper care/cooking of bear meat. Additionally, the department’s 2020-2030 Black Bear Management Plan (Objective 2.4), focuses on implementing a hunter education program with information specific to black bear, which includes development of field to fork materials related to black bear to showcase the multiple uses for harvested animals. Additionally, the commission has prohibited the transportation and sale of black bear gall bladders, an item that can be sold in illegal wildlife markets.

Sub-theme 2: Commenters expressed that black bears should be protected from hunting. Examples of specific comments include “leave bears alone,” “we are invading their land,” “we are lucky to have wildlife and we need to actively value and protect it,” and “this is the only bear indigenous to Missouri and should not be hunted.”

Response: The commission is proposing a limited and highly regulated black bear harvest that would not jeopardize the black bear population. The black bear population will continue to be monitored to ensure the sustainability of the harvest. As with other game species, changes to hunting regulations will be implemented should they be warranted to ensure the continued persistence of bears in Missouri. The commission recognizes the intrinsic values associated with black bears as with other harvested species including turkeys, deer, and elk, and the ecological roles of black bears and their importance to the biodiversity of the state. The department does not manage for

individual animals, but rather for the health and sustainability of the population. As such, in line with its mission and strategic plan, the commission aims to ensure black bears remain a part of Missouri’s landscape now and for future generations while providing recreational opportunities for Missourians, which can include hunting, wildlife watching, and other forms of outdoor recreation related to black bears.

Sub-theme 3: Commenters expressed concern that black bear hunting will compromise the integrity of the natural eco-balance, suggesting that black bears are self-regulating in the population and do not need to be hunted. Examples of specific comments include “bears are a part of our ecological structure,” “people take over bear’s habitat,” and “hunting is ineffective at managing wildlife.”

Response: The commission recognizes the importance of black bears to Missouri ecosystems. Implementation of a regulated hunting season is designed to provide opportunity to Missouri residents while ensuring the persistence of bears on the landscape. Harvest would be distributed across black bear range and would not compromise Missouri’s bear population. The department’s 2020-2030 Black Bear Management Plan (Objective 1.3), identifies utilizing research to understand black bear habitat use at multiple scales to better inform management decisions, underscoring the department’s recognition of bears as an important component of Missouri’s biodiversity. Strategies specific to this objective aim to develop black bear habitat best management practices that can be utilized at multiple scales and to utilize and leverage partnerships to promote and develop habitat management practices to benefit black bears and landscape connectivity. The department’s black bear research project has made significant strides in gaining an understanding of black bear habitat use at multiple scales; differences between male and female black bear habitat core areas and predicted distribution within Missouri; and landscape connectivity including barriers to movement; resulting in multiple peer reviewed publications which are used to inform management decisions.

Biological carrying capacity (BCC), the number of bears a landscape can support, and social carrying capacity, also known as cultural carrying capacity (CCC) of black bears, the number of black bears the human population can support, are not equal when bears and humans share the landscape, as occurs in Missouri. The Northeast Black Bear Technical Committee in their Evaluation of Black Bear Management Options noted that, “Typically, in areas where bear and human populations overlap, the upper limit of CCC falls well below BCC. Thus, black bear management often centers on CCC, and populations are managed by accounting for differences in stakeholder views, beliefs, and tolerances regarding human bear interactions.” As identified in the 2020-2030 Black Bear Management Plan, the department will utilize a human dimensions study to assess social carrying capacity for black bear across Missouri. Social carrying capacity, coupled with black bear population and habitat information, will be used to establish population benchmarks. The 2020-2030 Black Bear Management Plan specifies that as the bear population continues to increase, benchmarks will be established; however, those benchmarks have not been developed yet and are pending the results of a human dimensions study aimed at identifying social carrying capacities within Missouri.

Sub-theme 4: Commenters expressed concern that hunting is ineffective at resolving human-bear conflicts. Examples of comments within this sub-theme include “hunting is ineffective at managing wild populations,” “hunting bears does not resolve human-bear conflict,” and the department should “invest in public education” to address human-bear conflict.

Response: The commission has placed a significant focus on minimizing and addressing human-bear conflicts; however, the objective of the proposed initial hunting season is to provide opportunity for Missourians to participate in the sustainable harvest of a valuable natural resource and is not intended to reduce human-bear conflicts. The

department's 2020-2030 Black Bear Management Plan takes a multifaceted approach to bear management with Goal 2 aimed at increasing Bear Awareness in Missouri through targeted and statewide outreach and education and Goal 3 aimed at minimizing and addressing human-bear conflict. The department actively promotes a Be Bear Aware message through various avenues such as statewide and regional news releases, social media posts, and staff presentations. The Be Bear Aware messaging is intended to educate Missourians on how to live and recreate in bear country, with a focus on minimizing human-bear conflicts. Additionally, the department has established Black Bear Response Guidelines and trained staff who respond to reports of human-bear conflict to address conflict through education, mitigation techniques such as electric fencing, aversive conditioning of persistent problem bears, and as a last resort, euthanasia of individual problem bears.

Sub-theme 5: Commenters express concern that the proposed rule is not founded in science and does not support the department's population estimates. They also expressed concern over how department research projects were funded. Examples of comments in this sub-theme included "the population is too low," "black bears are not overpopulated," and this "proposal is not founded in science and instead caters to a small minority of trophy hunter(s)."

Response: The department has conducted extensive research on Missouri's black bear population in cooperation with researchers at Mississippi State University, the State University of New York and the University of Missouri. Black bear research began in Missouri in 2010 and since that time vast amounts of information have been gained on Missouri's black bear population. Wilton et al. (2014) developed an initial understanding of the black bear population size by developing spatially explicit capture-recapture techniques involving black bear hair snare corrals, and home range and movement data was gained from telemetry collars. Initial population estimates suggested Missouri's bear population was around 300 bears, however, this technique did not allow for the development of population growth estimates. Additionally, the research indicated that in areas where black bears occurred, they did so at low densities of 1-10 bears/100 km² (Sollman et al. 2016). Analysis of black bear sighting reports suggested that the bear population was expanding in range with a two percent (2%) increase in the area of Missouri that was considered medium to high bear presence probability between 1991-2003 and 2004-2015 (McFadden-Hiller and Belant 2018). However, bear distribution and range expansion in Missouri varies considerably and is influenced by multiple factors. Early research indicated that bears selected forested areas more than non-forested areas, as well as areas distant from roads and other human development (Hiller et al. 2015). Further research refined our understanding of bear space use, showing that bears established home ranges in areas with greater vegetation productivity, and in forested areas with some forest edge that provide food resources (Gantchoff et al. 2018). Further, females have smaller home ranges and occupy an overall smaller area across Missouri; while males are more likely to make large excursions, occur in peripheral range, and occupy human-dominated areas (Gantchoff et al. 2018; 2019). Finally, black bear range expansion remains dependent on existing landscape connectivity among areas of suitable habitat in both core and peripheral range, with barriers to movement including both highways and agriculture lands (Gantchoff, Conlee, and Belant 2020). Nevertheless, bear sighting reports continue to increase and expand in range as the bear population grows.

A reproductive and survival study was initiated in 2015 to estimate the growth rate of Missouri's bear population. Survival rates, particularly for adult females as well as reproductive rates, have been monitored since 2015 to present and were used to estimate Missouri's bear population. Monitoring data from collared bears (137 individuals, 2010-2018) indicated that adult mortality decreased with bear age, was lower for females than males, and was more often than not, human caused (Gantchoff, Hill, et al. 2020). Bled and Belant (2019) developed a Bayesian population model, developed specifically to

simulate brown and black bear life history and stages, as well as integrate age and sex-specific bear harvest mortality to inform management agencies of likely population-level responses to various harvest scenarios. Using this technique, the Missouri black bear population was modeled using a combination of field data from Missouri and literature data (for data deficient parameters). Specifically, field data from female den checks were used to estimate parameters such as litter size (avg. 1.8 cubs per litter), sex ratio (avg. 60% of cubs male), and cub survival to yearling (male 70%, female 90%). In addition, it was possible to quantify the probability of a female bear having cubs on any given year (avg. 60%). Integrating the available reproductive and survival data, in 2019 it was estimated that Missouri was home to 540-840 black bears and the population was growing at approximately 9% annually.

The department has made a significant investment in black bear research through cooperative agreements with outside researchers at Mississippi State University, State University of New York, and University of Missouri. Data analyses are done through independent cooperators in collaboration with the department. Black bear research in Missouri (2010 to date) was funded (\$3,283,535) through the Federal Aid in Wildlife Restoration Act (also known as the Pittman-Robertson Act) in which the grants required a non-federal match from the Missouri Department of Conservation. Non-monetary contributions (e.g. bear collars and trail cameras) were made by the Safari Club Foundation with our sub-recipient (Mississippi State University) to aid in the research project and totaled approximately one hundred seven thousand dollars (\$107,000).

As identified in the 2020-2030 Black Bear Management Plan, the department will utilize a human dimensions study to assess social carrying capacity for black bear across Missouri. Social carrying capacity, coupled with black bear population and habitat information, will be used to establish population benchmarks. It is important to note the department has never stated it will attempt to keep the bear population to five hundred (500) bears as has been mentioned in some comments. The five hundred (500) bear benchmark referenced in some comments was established in the 2008 Black Bear Management Plan as a population level for which the department would begin exploring the development of a limited hunting season. The 2020-2030 Black Bear Management Plan specifies that as the bear population continues to increase, benchmarks will be established; however, those benchmarks have not been developed yet and are pending the results of a human dimensions study aimed at identifying social carrying capacities within Missouri.

Additionally, Missouri's black bear population is connected to a much larger bear population in Arkansas and Oklahoma. Both Arkansas and Oklahoma have an established hunting season with continued bear population growth. While genetic work indicated a small number of bears likely had persisted in Missouri at very low levels, this work also indicated that bears descended from the releases in Arkansas are also established within Missouri. The department will continue to monitor the black bear population, and should a need arise, will make adjustments to harvest regulations to ensure population persistence. Black bear hunting seasons are common across most of black bear range and regulated hunting does not result in decimated bear populations. For example, in a 2019 Eastern Black Bear Workshop Jurisdictional survey of wildlife management agencies in the eastern United States and Canada, of the twenty-five (25) jurisdictions that responded to the survey that had a bear season, sixty-four percent (64%) reported expanding bear populations and forty-four percent (44%) reported stable populations, with none reporting contracting populations; sixty-four percent (64%) reported an upward five- (5-) year population trend and forty-four percent (44%) reported a stable five- (5-) year population trend, with none reporting downward population trends.

A hunting season will not drive Missouri's bear population to extinction. Additionally, the department did not restock bears into the state. Black bears expanded into Missouri from a growing population in Arkansas, and some remnant bears likely remained in Missouri

and were bolstered by bears coming from Arkansas. The department determined in 2019 that bear populations had reached a level compatible with the establishment of a limited, highly regulated harvest. Harvest quotas and permit quotas will be set following an evaluation of bear population data and model simulations. The department will estimate the number of bears in Missouri in 2020 and will use the previously developed population model to test harvest scenarios to better understand how the bear population would respond to a hunting season. This information will be used to set appropriate harvest quotas.

The proposal for establishment of a resident black bear hunting season permit and associated general provisions for a season have multiple mechanisms that will restrict harvest to ensure harvest stays within sustainable levels.

1. An official harvest quota recommendation will be presented to the Conservation Commission in the spring of 2021. Each bear management zone will have a specific harvest quota, and should that harvest quota be achieved, that specific zone will close to hunting. The harvest quota recommendation will be set at a number that allows for continued growth of the bear population while still providing for ample hunter opportunity.

2. The proposed regulations include a mechanism to help ensure overharvest does not occur. If harvest is at or exceeds 80% of the Bear Management Zone specific-harvest quota, the director can close the season prior to the quota being achieved.

3. The commission will set a permit quota – only a specified number of hunters will be allowed to bear hunt. Permit quotas will be set based on the zone-specific harvest quota and estimated hunter success which will be low (likely below ten to twenty percent (10-20%), if not lower – meaning ten to twenty percent (10-20%) of permitted hunters would actually harvest a bear). For example, if a zone-specific harvest quota is ten (10) and hunter success rates were estimated to be ten percent (10%), one hundred (100) permits will be issued. This provides enough opportunity while limiting the likelihood of exceeding the harvest quota.

4. The proposed hunting season is only ten (10) days long. If the quota is not achieved, the season would close.

Sub-theme 6: Commenters expressed concern that bear hunting permits are intended to make money for the Department of Conservation. Examples of comments in this sub-theme include “the state of Missouri wants money for the permits” and a “black bear’s life is more important than a twenty-five dollar (\$25) permit.”

Response: The commission is proposing the establishment of a limited season for which permit numbers will be very limited (estimated permit numbers could be between two hundred fifty to five hundred (250-500) permits in total). The proposed regulations for establishment of a resident black bear hunting permit are necessary to ensure the department has the ability to restrict bear harvest through permit quotas and monitor bear harvest and hunter effort through surveys of permitted hunters. The addition of the bear hunt adds administrative and technological costs to the department. Permit fees were set to be in line with existing permit costs for other game species and are comparable to many other states.

Sub-theme 7: Commenters expressed opposition to bear hunting citing spiritual or moral beliefs including the sanctity of black bears. Examples of statements include “bear are God’s precious creatures,” “black bears are sacred,” and “too much killing going on in the world.”

Response: The commission recognizes Missourians hold many different values for black bears and respects the right of individuals to express their opinions and beliefs. The establishment of a hunting season does not preclude any one value group, but rather provides an opportunity that is currently not available to Missourians. The department’s 2020-2030 Black Bear Management Plan recognizes this in Strategy 2.1.5: Develop outreach to promote recreational opportunities related to black bear. While this can include hunting, it

can also include other recreational opportunities such as wildlife viewing.

Sub-theme 8: Several commenters expressed their opinion that the majority of Missourians do not support a bear season.

Response: The commission strives to balance the needs and desires of multiple stakeholder groups when establishing regulations. Although it has been indicated in the comments “Missourians don’t want this,” public input collected over the course of several years indicates there are many individuals within Missouri open to and excited about the opportunity to hunt black bears. At the department’s 80th Anniversary open houses in 2017, attendees were asked:

With the following information: Bear Hunting-Black bears are becoming increasingly common in areas of southern Missouri. Ongoing research by the department has determined a statewide estimated population of just under three hundred (300) bears. Current plans are to initiate a limited harvest once bear numbers exceed five hundred (500) animals, a benchmark established by the Conservation Commission. Are you in favor of allowing a limited bear harvest once the bear numbers exceed five hundred (500) animals? For which seventy-three percent (73%) of the respondents said yes. During the department’s Black Bear Management Plan Open Houses in 2019, when asked if folks support or oppose a highly regulated, limited hunting season, eighty-seven percent (87%) of open house respondents said they supported a season and fifty-nine percent (59%) of online respondents supported a season. The commission recognizes viewpoints on black bear hunting can be variable. That being said, the establishment of a black bear hunting season does not preclude others from valuing bears or pursuing other forms of outdoor recreational opportunities, whether related to bears or not.

COMMENT #3: The commission received comments from eleven (11) individuals who voiced support for this rule however, specific comments pertained to allowing the use of bait and/or dogs for black bear hunting.

RESPONSE: The commission thanks those individuals who provided input and will address these comments with others received on this specific change in the order of rulemaking for 3 CSR 10-7.900 Black Bear Hunting Season: General Provisions.

COMMENT #4: The commission received comments from one (1) individual who voiced opposition to the proposed changes to this rule; however, specific comments pertained to opposition to the use of bait and/or dogs for black bear hunting.

RESPONSE: The commission thanks the individual who provided input and will address these comments with others received on this specific change in the order of rulemaking for 3 CSR 10-7.900 Black Bear Hunting Season: General Provisions.

COMMENT #5: The commission received comments from one (1) individual who voiced support for proposed changes to this rule and specific comments pertained to their disagreement with the department charging a fee for a black bear hunting permit and stating would not purchase a permit if a fee was charged.

RESPONSE: The commission thanks the individual who voiced support for the regulation changes. The addition of the bear hunt adds administrative and technological costs to the department. Permit fees were set to be in line with existing permit costs for other game species and are comparable to many other states. No changes have been made to the rule as a result of this comment.

COMMENT #6: The commission received comments from one (1) individual who voiced opposition to the proposed changes to this rule; however, specific comments pertained to the opinion that hunters will choose the best genetics to harvest a bear, caliber requirements are inadequate, and concerns about regulations for a lone bear.

RESPONSE: The commission thanks the individual who provided

input. While these comments pertain to 3 CSR 10-7.900 Black Bear Hunting Season: General Provisions, they will be addressed here. The commission did not include specific caliber restrictions or specifics related to archery equipment to be consistent with other game regulations. Educational materials for hunters will be developed with recommendations for appropriate firearms and archery equipment. Defining bears illegal to harvest as those in the presence of other bears is the most explicit way to define that a sow with cubs would be ineligible for harvest. No changes have been made to the rule as a result of this comment.

COMMENT #7: The commission received comments from one (1) individual who voiced opposition to the proposed changes to this rule; however, specific comments pertained to the opinion that a reasonable compromise for the first year is to limit hunting to Missouri residents hunting on their own property and limiting it to the explicit purpose of protecting personal property, crops, farm animals, and pets, and the belief this could minimize/neutralize opposition should expanding the scope of licensing becoming desirable in the future. RESPONSE: The *Wildlife Code of Missouri* currently has provisions that allow landowners to remove a bear that is damaging or threatening property. The establishment of a black bear hunting season is to create opportunity for Missourians to participate in the sustainable harvest of a native game species. No changes have been made to the rule as a result of these comments.

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 10-6.550 Other Fish is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 2020 (45 MoReg 1576). 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 7—Wildlife Code: Hunting: 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 adopts a rule as follows:

3 CSR 10-7.412 Landowner Application is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on October 15, 2020 (45 MoReg 1576-1577). 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 7—Wildlife Code: Hunting: 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 10-7.434 Deer: Landowner Privileges is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 2020 (45 MoReg 1577-1578). 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 three (3) individuals on the proposal to move the landowner application process for deer permits to 3 CSR 10-7.412.

COMMENT #1: The commission received comments from three (3) individuals who voiced opposition to proposed changes to this rule; however, specific comments were not related to the proposal to move the landowner application process to 3 CSR 10-7.412. RESPONSE: The commission thanks those individuals who provided input.

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 7—Wildlife Code: Hunting: 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 10-7.455 Turkeys: Seasons, Methods, Limits is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 2020 (45 MoReg 1578). 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 7—Wildlife Code: Hunting: 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 10-7.600 Deer Management Assistance Program
is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 2020 (45 MoReg 1578-1579). 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 7—Wildlife Code: Hunting: 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 10-7.700 Elk Hunting Seasons: General Provisions
is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 2020 (45 MoReg 1579-1580). 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 from one (1) individual on the proposal to eliminate the landowner elk permit process, remove the overall elk permit application process from this rule and move it to 3 CSR 10-7.710, and clarify which muzzleloading firearms may be used to take elk.

COMMENT #1: The commission received comments from one (1) individual who voiced opposition to proposed changes to this rule; however, specific comments were in opposition to black bear hunting in Missouri.

RESPONSE: The commission thanks the individual who provided input and will address these comments with others received on this specific change in the order of rulemaking for 3 CSR 10-5.900 Resident Black Bear Hunting Permit.

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 7—Wildlife Code: Hunting: 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 10-7.710 Elk: Application and Draw Process is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 2020 (45 MoReg 1580-1582). 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 7—Wildlife Code: Hunting: 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 adopts a rule as follows:

3 CSR 10-7.900 Black Bear Hunting Season: General Provisions
is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on October 15, 2020 (45 MoReg 1583-1584). 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: The Conservation Commission received comments from one hundred and ninety-eight (198) individuals and organizations on the proposal to establish the general provisions for hunting black bears. Additionally, the number of individuals who commented was calculated following the removal of duplicate or multiple submissions by one (1) individual when the duplication could be verified. However, all comments received were considered. A spreadsheet detailing comments received is available upon written request to the Missouri Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180.

COMMENT #1: The commission received comments from eighteen (18) individuals and organizations who voiced support for proposed changes to this rule and specific comments generally pertained to the establishment of a bear hunt.

RESPONSE: The commission thanks those individuals and organizations who voiced support for the regulation changes.

COMMENT #2: The commission received comments from one (1) individual who voiced support for proposed changes to this rule but voiced concern over the twenty-five dollar (\$25) fee should quotas be met and, if so, expressed desire for refunds to be issued. This individual also suggested check stations as an alternative method of tooth collection

RESPONSE: The commission thanks the individual who voiced support for the regulation changes. It is possible that a hunter may purchase the resident black bear hunting permit and for quotas to be filled prior to that person hunting. The quota system is necessary at this time to restrict harvest and ensure that it is sustainable for Missouri's bear population even though quota systems are often less desirable for hunters. In this instance, the commission strives to strike a balance between hunter convenience and ensuring a sustainable harvest. Given the permit is awarded through a lottery system, the fee helps ensure that hunters who apply have a vested interest in hunting. Additionally, the addition of the bear hunt adds administrative and technological costs to the department. Educational materials will be developed to aid hunters in pulling a tooth from a harvested bear, which is a practice used in many states. During deliberations, it was determined that check stations would be logistically challenging for the department and for hunters, as bear harvest is likely to be distributed across a large area.

COMMENT #3: The commission received comments from one (1) individual who voiced general support for proposed changes to this rule; however, specific comments pertained to the opinion that some

of the proposed regulations were unnecessary, including the ten o'clock p.m. telecheck deadline, prohibition on atlatl, and the bears that are legal for harvest.

RESPONSE: The commission thanks the individual who voiced support for the regulation changes. The commission strives to strike a balance between the detail and restrictiveness of a regulation and ease for hunters. The ten o'clock p.m. telecheck deadline is consistent with other game species. Restricting the use of an atlatl would likely impact very few hunters, given the limited number of permits issued. Defining bears that would be illegal to harvest as those in the presence of other bears is the most explicit way to define that a sow with cubs would be ineligible for harvest.

COMMENT #4: The commission received comments from one hundred seventy-three (173) individuals and organizations who voiced opposition to the proposed changes to this rule; however, specific comments pertained to general opposition to black bear hunting for multiple reasons. Within the one hundred seventy-three (173) individuals, two (2) individuals clicked the "support" checkbox, however, their specific comment was in opposition and fit within this theme.

RESPONSE: The commission thanks those individuals and organizations who provided input and will address these comments with others received on this specific change in the order of rulemaking for 3 CSR 10-5.900 Resident Black Bear Hunting Permit.

COMMENT #5: The commission received comments from four (4) individuals who voiced support for this rule and who desire the commission to allow the use of bait and/or dogs for bear hunting.

RESPONSE: The commission thanks those individuals who provided input on the proposed regulations. While the use of bait or dogs can increase hunter success rates, it was determined that these methods were not needed at this time. In the 2019 Eastern Black Bear Workshop Jurisdictional Survey, eleven (11) out of the twenty-five (25) eastern United States and Canadian provinces that had a hunting season did not allow the use of bait and twelve (12) out of twenty-five (25) did not allow the use of dogs, and although success rates were lower, hunters were still able to harvest bears. The commission recognizes the potential lower success rates and will allocate permits accordingly to ensure adequate hunter opportunity. The use of bait and/or dogs may be reevaluated should management needs change in the future.

COMMENT #6: The commission received comments from one individual who voiced opposition to the proposed rule; however, specific comment pertained to the desire to use bait and dogs for bear hunting.

RESPONSE: The commission thanks the individual who provided input on the proposed regulations. While the use of bait or dogs can increase hunter success rates, it was determined that these methods were not needed at this time. In the 2019 Eastern Black Bear Workshop Jurisdictional Survey, eleven (11) out of the twenty-five (25) eastern United States and Canadian provinces that had a hunting season did not allow the use of bait and twelve (12) out of twenty-five (25) did not allow the use of dogs, and although success rates were lower, hunters were still able to harvest bears. The commission recognizes the potential lower success rates and will allocate permits accordingly to ensure adequate hunter opportunity. The use of bait and/or dogs may be reevaluated should management needs change in the future.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 7—Wildlife Code: Hunting: Seasons, Methods,
Limits**

ORDER OF RULEMAKING

By the authority vested in the Conservation Commission under sec-

tions 40 and 45 of Art. IV, Mo. Const., the commission adopts a rule as follows:

3 CSR 10-7.905 Black Bear Hunting Season: Application and Draw Process is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on October 15, 2020 (45 MoReg 1584-1586). 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: The Conservation Commission received comments from thirty-six (36) individuals and organizations on the proposal to establish the application and draw process for black bear hunting in Missouri. Additionally, the number of individuals who commented was calculated following the removal of duplicate or multiple submissions by one (1) individual when the duplication could be verified. However, all comments received were considered. A spreadsheet detailing comments received is available upon written request to the Missouri Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180.

COMMENT #1: The commission received comments from three (3) individuals and one (1) organization who voiced support for proposed changes to this rule and specific comments generally pertained to the establishment of a bear hunt.

RESPONSE: The commission thanks those individuals who voiced support for the regulation changes.

COMMENT #2: The commission received comment from one (1) individual who voiced support for proposed changes to this rule, however, the specific comment pertained to the use of bait for bear hunting.

RESPONSE: The commission thanks the individual who voiced support for the regulation changes and will address these comments with others received on this specific change in the order of rulemaking for 3 CSR 10-7.900 Black Bear Hunting Season: General Provisions.

COMMENT #3: The commission received comments from one (1) individual who voiced support for proposed changes to this rule and whose specific comments pertained to the desire for a point system and higher application fee.

RESPONSE: The commission thanks the individual who voiced support for the regulation changes. The price of the application fee was set to be consistent with other similar applications. The commission has chosen to implement a random lottery to ensure a more equal opportunity for success of drawing a permit. Preference point systems put those who do not apply the first year at a disadvantage, including those who are ineligible to apply during year one (1) of the drawing (age, residence status, etc.). No changes have been made to the rule as a result of this comment.

COMMENT #4: The commission received comment from one (1) individual who voiced support for proposed changes to this rule and whose specific comment pertained to the desire to eliminate the landowner permit quota and instead sell nonresident permits for an increased cost.

RESPONSE: The commission thanks the individual who voiced support for the regulation changes. Establishing a minimum allocation of bear hunting permits to eligible resident landowners was determined to be an appropriate way to ensure landowner engagement, while also allowing landowners the same opportunities for harvest by not limiting landowners to their own properties. At this time, it was decided to open this season to Missouri residents only given the low number of permits that would likely be allocated and the likely low harvest success rates. No changes have been made to the rule as a result of this comment.

COMMENT #5: The commission received comment from one (1) organization which voiced support for proposed changes to this rule, but cited concerns over the minimum allocation of black bear hunting permits to eligible landowners and the suggestion to restrict the pool of eligible landowners to those that reside in black bear population core areas as opposed to within the black bear management zone for which they are applying.

RESPONSE: The commission thanks the organization which voiced support for the regulation changes. Establishing a minimum allocation of bear hunting permits to eligible resident landowners was determined to be an appropriate way to ensure landowner engagement, while also allowing landowners the same opportunities for harvest by not limiting landowners to their own properties. While restricting the pool of eligible landowners to those that reside in black bear population core areas could decrease the number of eligible landowners considered for the minimum permit allocation, it would be logistically more complicated for administration of the system, and black bear population core areas continue to increase as the population grows adding increased complexity to administration of the proposed hunting season. No changes have been made to the rule as a result of this comment.

COMMENT #6: The commission received comments from twenty-nine (29) individuals and organizations who voiced opposition to the proposed changes to this rule; however, specific comments pertained to general opposition to black bear hunting for multiple reasons.

RESPONSE: The commission thanks those individuals who provided input and will address these comments with others received on this specific change in the order of rulemaking for 3 CSR 10-5.900 Resident Black Bear Hunting Permit.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 9—Wildlife Code: Confined Wildlife: Privileges,
Permits, Standards**

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 10-9.625 Field Trial Permit is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 2020 (45 MoReg 1587). 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 10—Wildlife Code: Commercial Permits:
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 10-10.707 Resident Fur Dealer's Permit is amended.

A notice of proposed rulemaking containing the text of the proposed

amendment was published in the *Missouri Register* on October 15, 2020 (45 MoReg 1587). 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 10—Wildlife Code: Commercial Permits:
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 10-10.708 Nonresident Fur Dealer's Permit is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 2020 (45 MoReg 1587). 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 one (1) individual and one (1) organization on the proposal to maintain the ability of fur dealers to buy, sell, possess, transport and ship the pelts of bears legally harvested outside of Missouri.

COMMENT #1: The commission received comments from one (1) individual who voiced opposition to proposed changes to this rule; however, specific comments pertained to opposition to the fur industry and not the proposed changes related to black bear.

RESPONSE: The commission thanks the individual who provided input. Furbearer hunting and trapping is deep-rooted in Missouri's history and is an important part of the state's cultural heritage.

COMMENT #2: The commission received comments from one (1) organization who voiced opposition to the proposed changes to this rule; however, specific comments pertained to general opposition to black bear hunting for multiple reasons.

RESPONSE: The commission thanks the organization who provided input and will address these comments with others received on this specific change in the order of rulemaking for 3 CSR 10-5.900 Resident Black Bear Hunting Permit.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 10—Wildlife Code: Commercial Permits:
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 10-10.715 Resident and Nonresident Fur Dealers: Reports,
Requirements is amended.**

A notice of proposed rulemaking containing the text of the proposed

amendment was published in the *Missouri Register* on October 15, 2020 (45 MoReg 1588). 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 three (3) individuals and one (1) organization on the proposal to clarify reporting and other requirements to be met by fur dealers and fur buyers transacting in pelts of black bears legally harvested outside of Missouri.

COMMENT #1: The commission received comments from one (1) individual who voiced opposition for proposed changes to this rule; however, specific comments pertained to opposition to trapping.

RESPONSE: The commission thanks the individual who provided input. Furbearer hunting and trapping is deep-rooted in Missouri's history and is an important part of the state's cultural heritage.

COMMENT #2: The commission received comments from one (1) individual who voiced opposition to the proposed changes and the specific comment pertained to the current definition of black bears as a furbearer in the *Wildlife Code of Missouri*, that Furbuyer Reports have a mechanism to report black bear pelts, and a desire for stakeholders to be made aware of these proposed changes in advance.

RESPONSE: The commission appreciates citizen input and stakeholder involvement. Under this regulations package, the definition for furbearers is proposed to be amended to remove black bears. While the department will continue to allow furbuyers to purchase pelts of black bears harvested outside of Missouri, the commission has proposed to not allow the sale of parts of black bears harvested within Missouri. As a result, the proposed amendment does not change what furbuyers have previously been allowed to do with respect to black bears harvested in other states.

COMMENT #3: The commission received comments from one (1) individual and one (1) organization who voiced opposition to the proposed changes to this rule; however, specific comments pertained to general opposition to black bear hunting for multiple reasons.

RESPONSE: The commission thanks those who provided input and will address these comments with others received on this specific change in the order of rulemaking for 3 CSR 10-5.900 Resident Black Bear Hunting Permit.

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 10—Wildlife Code: Commercial Permits:
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 10-10.732 Tag and Release Fishing Promotion Permit
is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 2020 (45 MoReg 1588). 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 10—Wildlife Code: Commercial Permits:
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 10-10.744 Commercial Game Processing: Permit,
Privileges, Requirements **is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 2020 (45 MoReg 1589). 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 10—Wildlife Code: Commercial Permits:
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 10-10.767 Taxidermy; Tanning: Permit, Privileges,
Requirements **is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 2020 (45 MoReg 1589). 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 one (1) organization on the proposal to add clarification for black bear regarding taxidermy permit, privileges, and requirements.

COMMENT #1: The commission received one (1) letter from an organization which voiced opposition to the proposed changes to this rule; however, specific comments pertained to general opposition to black bear hunting for multiple reasons.

RESPONSE: The commission thanks the organization who provided input and will address these comments with others received on this specific change in the order of rulemaking for 3 CSR 10-5.900 Resident Black Bear Hunting Permit.

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 10-11.110 General Provisions is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 2020 (45 MoReg 1589-1590). 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 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 adopts a rule as follows:

3 CSR 10-11.111 Commercial Use is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on October 15, 2020 (45 MoReg 1590-1592). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective **July 1, 2021**.

SUMMARY OF COMMENTS: The Conservation Commission received comments from two (2) individuals on the proposal to establish requirements and conditions for allowing commercial use on department areas.

COMMENT #1: The commission received comments from one (1) individual who voiced opposition to proposed changes to this rule, citing concerns regarding the need to apply for the permit for each photography session.

RESPONSE: A separate special use permit is only required in certain situations, including commercial photography at the area mentioned, Burr Oak Woods Conservation Area. Burr Oak Woods receives some of our heaviest use by commercial photographers and there have been safety issues with too many cars blocking the front driveway to allow emergency vehicle access. There is not a fee connected with the special use permit. The commercial photography fee price is one hundred dollars (\$100) annually. The department is investigating an online special use permit system that would facilitate applying for and obtaining a permit online.

COMMENT #2: The commission received comment from one (1) individual who voiced opposition to proposed changes to this rule and asked how commercial photographers would be distinguished from amateur photographers.

RESPONSE: Commercial photography permits are very commonly required for commercial photography on public lands. If you are being paid for photography (directly or indirectly), you will need a commercial photography permit. On some of our busiest areas, the department may look at requiring a special use permit for all portrait photography.

**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 sec-

tions 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

3 CSR 10-11.145 Tree Stands is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 2020 (45 MoReg 1593). 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 one (1) individual and one (1) organization on the proposal to clarify the use of tree stands for black bear hunting on department areas.

COMMENT #1: The commission received comments from one (1) individual who voiced opposition to the proposed changes to this rule; however, specific comments pertained to opposition to tree stand marking rather than the addition of black bear to the species which can be hunted from a tree stand on department areas.

RESPONSE: The commission thanks the individual who provided input.

COMMENT #2: The commission received comments from one (1) organization which voiced opposition to the proposed changes to this rule; however, specific comments pertained to general opposition to black bear hunting for multiple reasons.

RESPONSE: The commission thanks the organization who provided input and will address these comments with others received on this specific change in the order of rulemaking for 3 CSR 10-5.900 Resident Black Bear Hunting Permit.

**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 10-11.180 Hunting, General Provisions and Seasons
is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 2020 (45 MoReg 1593). 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 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 adopts a rule

as follows:

3 CSR 10-11.191 Black Bear Hunting is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on October 15, 2020 (45 MoReg 1593). 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: The Conservation Commission received comments from forty-five (45) individuals and organizations on the proposal to establish provisions for black bear hunting on department areas. The number of individuals who commented was calculated following the removal of duplicate or multiple submissions by one (1) individual when the duplication could be verified. However, all comments received were considered. A spreadsheet detailing comments received is available upon written request to the Missouri Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180.

COMMENT #1: The commission received comments from six (6) individuals who voiced support for proposed changes to this rule; however, specific comments pertained to general support of the establishment of a bear hunt.

RESPONSE: The commission thanks those individuals who voiced support for the regulation changes and will address these comments with others received on this specific change in the order of rulemaking for 3 CSR 10-5.900 Resident Black Bear Hunting Permit and 3 CSR 10-7.900.

COMMENT #2: The commission received comments from thirty-eight (38) individuals and organizations who voiced opposition to the proposed changes to this rule; however, specific comments pertained to general opposition to black bear hunting for multiple reasons. Within the thirty-eight (38) individuals, one (1) indicated they represented themselves, plus an additional person (e.g. husband/wife).

RESPONSE: The commission thanks those individuals who provided input and will address these comments with others received on this specific change in the order of rulemaking for 3 CSR 10-5.900 Resident Black Bear Hunting Permit.

COMMENT #3: The commission received comments from one (1) individual who voiced support for proposed changes to this rule; however, specific comments pertained to letting the bear population grow before establishment of a bear hunt.

RESPONSE: The commission thanks the individual who voiced support for the regulation changes and will address these comments with others received on this specific change in the order of rulemaking for 3 CSR 10-5.900 Resident Black Bear Hunting Permit.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 12—Wildlife Code: Special Regulations for
Areas Owned by Other Entities**

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 10-12.109 Closed Hours is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15,

2020 (45 MoReg 1593-1594). 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 12—Wildlife Code: Special Regulations for
Areas Owned by Other Entities**

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 10-12.110 Use of Boats and Motors is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 2020 (45 MoReg 1594). 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 12—Wildlife Code: Special Regulations for
Areas Owned by Other Entities**

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 10-12.115 Bullfrogs and Green Frogs is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 2020 (45 MoReg 1594-1595). 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 12—Wildlife Code: Special Regulations for
Areas Owned by Other Entities**

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 10-12.130 Fishing, General Provisions and Seasons
is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 2020 (45 MoReg 1595). 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 12—Wildlife Code: Special Regulations for
Areas Owned by Other Entities**

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 10-12.135 Fishing, Methods is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 2020 (45 MoReg 1595-1596). 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 20—Wildlife Code: Definitions**

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 10-20.805 Definitions is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 2020 (45 MoReg 1596). 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 five (5) individuals on the proposal to move black bear from the furbearer definition to the game mammal definition, modify the muzzleloading firearm definition to specifically include any firearm capable of having the powder or propellant loaded from the breech if the bullet or projectile(s) can only be loaded from the muzzle, and clarify the definition of resident landowner with respect to land that is owned by a trust.

COMMENT #1: The commission received comments from one (1) individual who voiced support for proposed changes to this rule; however, specific comments pertained to general support of the establishment of a bear hunt.

RESPONSE: The commission thanks the individual who voiced support for the regulation changes and will address these comments with others received on this specific change in the order of rulemaking for

3 CSR 10-5.900 Resident Black Bear Hunting Permit and 3 CSR 10-7.900 Black Bear Hunting Season: General Provisions.

COMMENT #2: The commission received comments from three (3) individuals who voiced opposition to the proposed changes to this rule; however, specific comments pertained to general opposition to black bear hunting for multiple reasons.

RESPONSE: The commission thanks those individuals who provided input and will address these comments with others received on this specific change in the order of rulemaking for 3 CSR 10-5.900 Resident Black Bear Hunting Permit.

COMMENT #3: The commission received comments from one (1) individual who voiced support for proposed changes to this rule; specifically, the updated muzzleloading firearm definition.

RESPONSE: The commission thanks the individual who voiced support for the regulation changes.

**Title 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 20—Division of Learning Services
Chapter 400—Office of Educator Quality**

ORDER OF RULEMAKING

By the authority vested in the State Board of Education (board) under sections 161.092, 168.011, 168.071, and 168.081, RSMo 2016, and section 168.021, RSMo Supp. 2020, the board withdraws a proposed amendment as follows:

5 CSR 20-400.220 Application for Substitute Certificate of License to Teach is withdrawn.

A notice of the proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 1, 2020 (45 MoReg 1406). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: The board has received numerous comments on this proposed amendment. A total of forty-one (41) responses were in favor of the proposed amendment citing increased flexibility for addressing the shortage of substitute teachers, the advantage of targeted training to give individuals the knowledge and skills needed as a substitute teacher, and the reduced cost of the online training compared to sixty (60) semester hours. A large majority of the comments were in opposition to the amendment. A total of two hundred forty-three (243) comments were against the rule citing the danger of lowering standards, the risk of undermining the entire teaching profession, and the importance of students having individuals with the appropriate knowledge and skills to be an effective substitute teacher.

RESPONSE: In light of these comments, the board is withdrawing this proposed amendment to further study the on-line training option by collecting and analyzing data on its effectiveness.

**Title 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 30—Division of Financial and Administrative
Services
Chapter 660—School Finance**

ORDER OF RULEMAKING

By the authority vested in the State Board of Education (board) under sections 161.092, 163.043, and 163.087, RSMo 2016, and sections 160.415 and 163.031, RSMo Supp. 2020, the board adopts a rule as follows:

5 CSR 30-660.090 Charter School Local Education Agency (LEA) Attendance Hour Reporting **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on October 1, 2020 (45 MoReg 1410). 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: The board received seventy-one (71) letters of support for adoption of the rule. The letters were from charter school staff members, board members, and parents of students. The letters included appreciation for the emergency rule, and the need to maintain the rule through the course of the year to ensure essential services are provided to students. No changes to the rule were made as a result of the letters of support.

**Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 100—Notary Commissions**

ORDER OF RULEMAKING

By the authority vested in the secretary of state under section 486.830, RSMo Supp. 2020, the secretary adopts a rule as follows:

15 CSR 30-100.005 Notary Complaint Process **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on October 1, 2020 (45 MoReg 1421). 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 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 100—Notary Commissions**

ORDER OF RULEMAKING

By the authority vested in the secretary of state under section 486.605, RSMo Supp. 2020, the secretary amends a rule as follows:

15 CSR 30-100.010 Approval, Revocation, and Suspension of Notary Commission **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 1, 2020 (45 MoReg 1421). 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 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 100—Notary Commissions**

ORDER OF RULEMAKING

By the authority vested in the secretary of state under section

486.830, RSMo Supp. 2020, the secretary amends a rule as follows:

15 CSR 30-100.015 Request for Hearing on Suspension or an Appeal on a Denial of an Application **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 1, 2020 (45 MoReg 1421-1422). 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 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 110—Electronic Notarization**

ORDER OF RULEMAKING

By the authority vested in the secretary of state under section 486.830, RSMo Supp. 2020, the secretary rescinds a rule as follows:

15 CSR 30-110.010 Electronic Notary Definitions **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on October 1, 2020 (45 MoReg 1422). 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 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 110—Electronic Notarization**

ORDER OF RULEMAKING

By the authority vested in the secretary of state under section 486.830, RSMo Supp. 2020, the secretary rescinds a rule as follows:

15 CSR 30-110.020 Electronic Signatures and Seals **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on October 1, 2020 (45 MoReg 1422). 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 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 110—Electronic Notarization**

ORDER OF RULEMAKING

By the authority vested in the secretary of state under section 486.1110, RSMo Supp. 2020, the secretary adopts a rule as follows:

15 CSR 30-110.030 Remote Online Notarization (RON) Approval **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on October 1, 2020 (45 MoReg 1422). 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 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 110—Electronic Notarization**

ORDER OF RULEMAKING

By the authority vested in the secretary of state under section 486.1110, RSMo Supp. 2020, the secretary adopts a rule as follows:

15 CSR 30-110.040 Remote Online Notarization (RON) Criteria is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on October 1, 2020 (45 MoReg 1422-1423). 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 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 110—Electronic Notarization**

ORDER OF RULEMAKING

By the authority vested in the secretary of state under section 486.1110, RSMo Supp. 2020, the secretary adopts a rule as follows:

15 CSR 30-110.050 Remote Online Notarization (RON) Credentials is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on October 1, 2020 (45 MoReg 1423-1424). 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 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 110—Electronic Notarization**

ORDER OF RULEMAKING

By the authority vested in the secretary of state under section 486.1110, RSMo Supp. 2020, the secretary adopts a rule as follows:

15 CSR 30-110.060 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on October 1, 2020 (45 MoReg 1424). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The secretary of state received one (1) comment on the proposed rule.

COMMENT #1: Business Services staff commented that section (4) was confusing and needed to be clarified to make sure non-public information is not part of the video transaction.

RESPONSE AND EXPLANATION OF CHANGE: The secretary of state agrees with business services staff and will clarify that non-public information is not part of the video transaction.

15 CSR 30-110.060 Audio and Video Quality

(4) Video capture of documents or credentials that contain non-public personal information during the RON is not required as part of these standards.

**Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 110—Electronic Notarization**

ORDER OF RULEMAKING

By the authority vested in the secretary of state under section 486.1110, RSMo Supp. 2020, the secretary adopts a rule as follows:

15 CSR 30-110.070 Storage and Retention of Notarial Records is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on October 1, 2020 (45 MoReg 1424). 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 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 110—Electronic Notarization**

ORDER OF RULEMAKING

By the authority vested in the secretary of state under section 486.1110, RSMo Supp. 2020, the secretary adopts a rule as follows:

15 CSR 30-110.080 Audit Trail is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on October 1, 2020 (45 MoReg 1424-1425). 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 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 30—Division of Regulation and Licensure
Chapter 61—Licensing Rules for Family Child Care Homes**

ORDER OF RULEMAKING

By the authority vested in the Department of Health and Senior Services under section 210.221.1(3), RSMo Supp. 2020, the department amends a rule as follows:

19 CSR 30-61.010 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 1, 2020 (45 MoReg 1425-1427). 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 department received one (1) staff comment on this proposed amendment.

COMMENT #1: Department staff commented that the proposed amendment to 19 CSR 30-63.010(2) proposes defining child care staff members as people eighteen (18) and up including individuals residing in a family home however 19 CSR 30-61.010(7) proposes defining child care staff member as people seventeen (17) and up including individual residing in a family care home.

RESPONSE AND EXPLANATION OF CHANGE: This comment correctly notes an inconsistency between chapters and 19 CSR 30-61.010(7) is updated accordingly.

19 CSR 30-61.010 Definitions

(7) Child care staff member is a child care provider; persons employed by the child care provider for compensation, including contract employees or self-employed individuals; individuals or volunteers whose activities involve the care or supervision of children for a child care provider or unsupervised access to children who are cared for or supervised by a child care provider; or individuals residing in a family child care home who are eighteen (18) years of age and older.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 30—Division of Regulation and Licensure
Chapter 61—Licensing Rules for Family Child Care Homes

ORDER OF RULEMAKING

By the authority vested in the Department of Health and Senior Services under sections 210.221.1(3) and 210.1080, RSMo Supp. 2020, the department amends a rule as follows:

19 CSR 30-61.045 Licensing Process is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 1, 2020 (45 MoReg 1427-1429). 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 department received four (4) comments on this proposed amendment.

COMMENTS #1-3: Three (3) comments related to the department removing previous language that “licensing rules shall not apply to children related to the provider as defined in section 210.211, RSMo.” including:

- Leona Holycross commented, “I have a home daycare. I fill (sic) like I shouldn’t have to count my Grandkids. In my total of my 10 I am license for. Thank you.”

- Kathy Pogue commented, “I have an in home daycare and I just feel like making us count our related kids is really making it hard to stay in business. I’m sure if the daycare providers like myself would never charge to keep our grandchildren! Some of us have been in

business since our own children were infants, it is hard just out of the blue they changed the rule! I understand, but hope you will take into consideration that this is our income and having to count related kids really could put some daycares out of business! Thank you for your consideration!”

- Cathy Scribner commented, “I have an in Home Daycare and I have kept my Grandchildren for years. I do not charge by children for daycare. This new rule that is making us count our related has really made it very hard to stay in business. I have been in business since my kids were babies. It was so sudden without notice, 3 weeks. We live in a very small community and there are few Daycares. It has really hurt our little town. I understand that there needs to be a limit but no related is hurting us really bad. I feel like they should allow us at least 3 related for in Home Daycares. Please consider changing the rules because this is our income. I know of lots of Daycares that this has really hurt their business. Thank you for your consideration!”

RESPONSE: No changes were made in response to these comments. The language regarding related children was removed in response to changes made to section 210.211, RSMo, by HB 397, also known as “Nathan’s Law” which went into effect on August 28, 2019. To be consistent with the section 210.211, the department added language stating that “children five (5) years of age and older who live in the provider’s home shall not be counted in the licensed capacity,” as noted in subsection (2)(C) of the proposed amendment to 19 CSR 30-61.105.

COMMENT #4: Patricia Forward commented, “The wording of (3) and (20) need to be consistent. In an initial inspection (3) – “... an inspection of the ENTIRE premises.” In an annual renewal inspection – (20) – “... access to the facility, premises and records.” I have had comments from several providers over the years, about inspectors wanting to go upstairs, or downstairs, and other parts of the home that is not used for daycare. They become upset about this, and feel it is very intrusive. This especially happens when a new licensing inspector comes into the established home that has been operating for years.” Ms. Forward suggested using the language “ENTIRE facility, ENTIRE premises, and an inspection of records” in section (20).

RESPONSE: No changes were made in response to this comment. The addition of “entire” to section (20) seems redundant of its implied meaning and the language has been used as proposed in previous versions of this rule for several years.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 30—Division of Regulation and Licensure
Chapter 61—Licensing Rules for Family Child Care Homes

ORDER OF RULEMAKING

By the authority vested in the Department of Health and Senior Services under section 210.221.1(3), RSMo Supp. 2020, the department amends a rule as follows:

19 CSR 30-61.055 Annual Requirements is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 1, 2020 (45 MoReg 1429-1432). 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 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 30—Division of Regulation and Licensure
Chapter 61—Licensing Rules for Family Child Care Homes

ORDER OF RULEMAKING

By the authority vested in the Department of Health and Senior Services under sections 210.221 and 210.1080, RSMo Supp. 2020, and section 210.223, RSMo 2016, the department amends a rule as follows:

19 CSR 30-61.105 The Child Care Provider and Other Child Care Personnel is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 1, 2020 (45 MoReg 1433-1434). 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 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 30—Division of Regulation and Licensure
Chapter 62—Licensing Rules for Group Child Care Homes and Child Care Centers

ORDER OF RULEMAKING

By the authority vested in the Department of Health and Senior Services under section 210.221.1(3), RSMo Supp. 2020, the department amends a rule as follows:

19 CSR 30-62.010 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 1, 2020 (45 MoReg 1434-1436). 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 department received two (2) comments on this proposed amendment.

COMMENT #1: Lynn Navin commented, “The use of day and child care is still interchanged in some places. I suggest using child care clearly throughout the document.”

RESPONSE: No changes were made in response to this comment. The terms day care and child care are currently used interchangeably, though the department will continue working towards the exclusive use of the term child care as it completes future rule updates.

COMMENT #2: Department staff commented that the proposed amendment to 19 CSR 30-63.010(2) proposes defining child care staff members as people eighteen (18) and up including individuals residing in a family home however 19 CSR 30-62.010(6) proposes defining child care staff member as people seventeen (17) and up including individual residing in a family care home.

RESPONSE AND EXPLANATION OF CHANGE: This comment correctly notes an inconsistency between chapters and 19 CSR 30-62.010(6) is updated accordingly.

19 CSR 30-62.010 Definitions

(6) Child care staff member is a child care provider; persons employed by the child care provider for compensation, including contract employees or self-employed individuals; individuals or volunteers whose activities involve the care or supervision of children for a child care provider or unsupervised access to children who are cared for or supervised by a child care provider; or individuals residing in a family child care home who are eighteen (18) years of age and older.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 30—Division of Regulation and Licensure
Chapter 62—Licensing Rules for Group Child Care Homes and Child Care Centers

ORDER OF RULEMAKING

By the authority vested in the Department of Health and Senior Services under sections 210.221.1(3) and 210.1080, RSMo Supp. 2020, the department amends a rule as follows:

19 CSR 30-62.042 Licensing Process is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 1, 2020 (45 MoReg 1436-1439). 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 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 30—Division of Regulation and Licensure
Chapter 62—Licensing Rules for Group Child Care Homes and Child Care Centers

ORDER OF RULEMAKING

By the authority vested in the Department of Health and Senior Services under sections 210.221.1(3) and 210.252.2, RSMo Supp. 2020, the department amends a rule as follows:

19 CSR 30-62.052 Annual Requirements is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 1, 2020 (45 MoReg 1439-1442). 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 department received two (2) comments on this proposed amendment.

COMMENT #1: Megan Huffman commented, “New annual licensing requirement – this change was explained and “sold” to providers as “hey, your license won’t expire anymore!” But this is a bait and switch. Now instead of going through re-licensure every-other-year, now we have to do it annually??? That is not necessary and seriously time consuming for providers. We need LESS paperwork requirements so that we have MORE time to ensure that the children in our care are reaching their potential.” Ms. Huffman suggested the department “keep the bi-annual requirement to turn in the equipment list, staff sheet, etc. Leave the licensing check-ups as they are rather

than creating MORE busy work for directors that takes us AWAY from the children and their success and wellbeing!”

RESPONSE: The department made no changes in response to this comment. Licenses are now non-expiring; however, the annual requirements in this rule ensure that providers meet the basic requirement to provide a safe environment conducive to the care of children.

COMMENT #2: Megan Huffman commented, “Time table that was made up to show that it takes less than 2 hours to get ready for licensing. Whoever made up these time frames has ZERO understanding of what it takes to get ready for re-licensure. Those timeframes are COMPLETELY ridiculous. There is no possible way that it only takes 2 hours to complete the paperwork that is required bi-annually today.” Ms. Huffman suggested, “Perhaps ASK the providers who are actually doing the work how much time and resources to prepare for re-licensure instead of randomly guessing at some amount of time you THINK it takes.”

RESPONSE: This comment is referring to the private fiscal note prepared for this rule. The figures in this fiscal note were estimated as explained in the note’s assumptions by department staff with a history of working in child care facilities. As no suggested changes were submitted for consideration, no changes were made in response to this comment.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

Division 30—Division of Regulation and Licensure Chapter 62—Licensing Rules for Group Child Care Homes and Child Care Centers

ORDER OF RULEMAKING

By the authority vested in the Department of Health and Senior Services under sections 210.221 and 210.1080, RSMo Supp. 2020, and section 210.223, RSMo 2016, the department amends a rule as follows:

19 CSR 30-62.102 Personnel is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 1, 2020 (45 MoReg 1443-1445). 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 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

Division 30—Division of Regulation and Licensure Chapter 63—Child Care Comprehensive Background Screening

ORDER OF RULEMAKING

By the authority vested in the Department of Health and Senior Services under section 210.1080, RSMo Supp. 2020, the department amends a rule as follows:

19 CSR 30-63.010 Definitions is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 1, 2020 (45 MoReg 1445). 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 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

Division 30—Division of Regulation and Licensure Chapter 63—Child Care Comprehensive Background Screening

ORDER OF RULEMAKING

By the authority vested in the Department of Health and Senior Services under section 210.1080, RSMo Supp. 2020, the department amends a rule as follows:

19 CSR 30-63.020 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 1, 2020 (45 MoReg 1445-1446). 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 department received five (5) comments on this proposed amendment.

COMMENT #1: Erin Balleine commented, “The change in background checks is causing extremely (sic) hardship for programs because DHSS has been unable to produce background checks in a timely manner. I had submitted the required documentation to DHSS on 9/9/2020, and received my final letter on 10/13/2020 clearing an employee – 34 days later. We are running at Out of School program in response to the pandemic and need to hire employees quickly. We were told our requests would be priority. I sent several follow up emails and called to expediate (sic) the background check process, and it still took 34 days.” Ms. Balleine suggested, “Until the department is able to produce letters in a timely manner, the rule needs to be postponed.”

RESPONSE: Section 210.1080.8(1) requires that “the department processing the request for a criminal background check for any prospective child care staff member or child care staff member shall do so as expeditiously as possible, but not to exceed forty-five days after the date on which the provider submitted the request.” No changes were made in response to this comment.

COMMENTS #2-4: The department received three (3) comments related to the language in 19 CSR 30-63.020(2), specifically:

- Brian Schubert commented, “The regulation is poorly worded since surveyors have told us that we cannot have a teacher train or be on the premises without a qualifying result back on their fingerprint but it reads that “pending return of the results” they can be supervised by someone who has been cleared. I think this should be reconsidered since this has cost us qualified teachers who cannot wait to start working with no income while we wait on qualifying results to be returned.” Mr. Schubert suggested, “Regulation should allow for an individual to work while supervised by someone who has cleared.”

- Gail Barker commented, “We were told by our surveyors that we cannot even train a new teacher without having their fingerprint and background check back. This causes weeks of delay in hiring qualified teachers, in some cases, the teachers seek other jobs because they can’t wait to have income. The reading of the rule states that “pending the result” they should be supervised by someone who has one. I think this is confusing and should be reworded or we should be allowed to train outside of the classroom.” Ms. Barker suggested,

“Allow the training of staff outside of the classroom until qualified results are returned of the fingerprint or allow supervision by someone who has already been cleared.”

• Department staff commented, “Many SCCR staff have reported getting questions about the meaning of this language and how they will know if a child care staff member has completed these steps. Suggest to add the following language to clarify 63.020(2):

(2) A prospective child care staff member may begin work for a child care provider if:

(A) The prospective child care staff member has received notice from the department that the individual is eligible for employment or presence in a child care setting; or

(B) The prospective child care staff member has received notice from the department that the individual is temporarily eligible for employment or presence in a child care setting. An individual working with a temporary eligibility shall be supervised at all times by a child care staff member with a qualifying result.”

RESPONSE AND EXPLANATION OF CHANGE: The department recognizes that the proposed language has created confusion about when a prospective child care staff member may begin working at a facility. A qualifying or disqualifying result cannot be issued until all portions of the criminal background check, as defined by section 210.1080.1(2), RSMo, have been completed; however, the department can issue a temporary eligibility letter to those prospective child care staff members who have been fingerprinted and have completed the Family Care Safety Registry Screening (required separately by 19 CSR 30-61.105 and 19 CSR 30-62.102). If the prospective child care staff member has not resided in another state in the previous five (5) years, those steps would complete all steps of the criminal background check and a qualifying or disqualifying result could be determined. However, requesting results from other states (including criminal history, sex offender history, and child abuse/neglect history) can create delay in determining if a prospective child care staff member is eligible for employment or presence in a child care setting. To alleviate the strain cause by this delay, the department will issue a temporary eligibility letter for those prospective child care staff members whose Missouri and FBI fingerprint-based criminal record check (completed simultaneously) and Family Care Safety Registry Screening (which checks sex offender and child abuse/neglect history) return a qualifying result. This allows the prospective child care staff member to begin working in a supervised capacity until the other information is received and a final determination can be made. This will be clarified and the language will be updated as suggested.

COMMENT #5: The department received a staff comment stating, “Proposed law states who requires background screenings whether regulated or licensed for “member(s), manager(s), shareholder(s), director(s) or officer(s)” First, does this mean ALL of these people in a corporation? Such as ALL officers on a corporation’s board? All managing members of LLCs? All shareholders? Second, 19 CSR 30-63.020(4)(D) immediately creates an exception to the definition by stating unless... “they have no oversight or direction for the child care AND does not have independent access” in which case they must be “accompanied and supervised” when on the child care premises. If they had only oversight OR access would they need a background screening?” The staff member suggests, “The exception should more clearly define what “independent” access means- perhaps unsupervised access is more accurate? Or the definition should be reworded so as not to need the exception. Perhaps stating the specific officer (one primary corporate officer – board president/CEO/manager, one managing member of the llc, the director, etc. who SHOULD have a background screening. Would we really want to license a facility who has a board president or managing member who can’t pass a background screening anyway? Or the exception should be removed and background screenings required for all those people as defined. Just because it is inconvenient does not make it not worthwhile.”

RESPONSE: The determination of who is or is not required to have a criminal background check is based on section 210.1080.2, RSMo

and the department does not have the authority to change this in rule; therefore, no changes were made in response to this comment. To answer the commenter’s questions, the definition from section 210.1080, RSMo and 19 CSR 30-63.010 does apply to all member(s), manager(s), shareholder(s), director(s), or officer(s) unless the individual is exempted by section 210.1080.2(4) and 19 CSR 30-63.020(4)(D) because he/she “is not responsible for the oversight or direction of the child care facility *and* does not have independent access to the child care facility.” (Emphasis added). Both of those are requirements to be exempted from the criminal background check requirements, not just one or the other.

19 CSR 30-63.020 General Requirements

(2) A prospective child care staff member may begin work for a child care provider if:

(A) The prospective child care staff member has received notice from the department that the individual is eligible for employment or presence in a child care setting; or

(B) The prospective child care staff member has received notice from the department that the individual is temporarily eligible for employment or presence in a child care setting based on the qualifying results of either a Federal Bureau of Investigation fingerprint check or a search of the Missouri criminal registry or repository with the use of fingerprints. Pending completion of the criminal background check, an individual working with a temporary eligibility notice shall be supervised at all times by a child care staff member who received a qualifying result on the criminal background check within the past five (5) years.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

Division 30—Division of Regulation and Licensure

Chapter 63—Child Care Comprehensive Background Screening

ORDER OF RULEMAKING

By the authority vested in the Department of Health and Senior Services under section 210.1080, RSMo Supp. 2020, the department amends a rule as follows:

19 CSR 30-63.040 Background Screening Findings is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 1, 2020 (45 MoReg 1446-1447). 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 department received one (1) comment on this proposed amendment.

COMMENT #1: Dorothy Robinson commented, “In regards to the “Background Screening Findings”, I believe these new results that make a person “ineligible” for employment within a childcare center are too strict. I agree that we all want the best for our kids, therefore we need the best kind of people. But, I just don’t feel it’s fair to impose these strict rules with no grandfathering in, or terms included that these said findings could be “gone around” so to speak. There is always an exception to every gray area. For instance, we have staff member who has been with us for 1 year now. She was deemed “eligible” last year. This woman has been my right hand to the greatest extend (sic) of the word! But, with these new rules... to think that I might lose her ... I/we’ve been extremely worried that an appeal may not work. We all know the turn over rate for childcare workers is too

high. It's hard to find reliable trustworthy people to work anywhere, especially childcare! I can't lose this woman. I can't." Ms Robinson suggested, "I think there should be some sort of "grandfathering in" for staff members who have been deemed "eligible" after the proper processes for hiring."

RESPONSE: The disqualifying offenses outlines in this rule are based on section 210.1080, RSMo. Because the statute does not include a "grandfathering" exception to these offenses, the department does not have the authority to do so in rule. Therefore, no changes were made in response to this comment.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 30—Division of Regulation and Licensure
Chapter 63—Child Care Comprehensive Background Screening

ORDER OF RULEMAKING

By the authority vested in the Department of Health and Senior Services under section 210.1080, RSMo Supp. 2020, the department amends a rule as follows:

19 CSR 30-63.050 Process for Appeal Required in Section 210.1080, RSMo is **amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 1, 2020 (45 MoReg 1447). 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 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 30—Division of Regulation and Licensure
Chapter 91—Authorized Electronic Monitoring in Long-Term Care Facilities

ORDER OF RULEMAKING

By the authority vested in the Missouri Department of Health and Senior Services under sections 198.612, 198.616, 198.620, 198.622, and 198.626, RSMo Supp. 2020, the department adopts a rule as follows:

19 CSR 30-91.010 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on October 1, 2020 (45 MoReg 1447-1462). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Department of Health and Senior Services received one (1) letter with four (4) comments on the proposed rule.

COMMENT #1: Harvey M. Tettlebaum representing Missouri Health Care Association, Missouri Assisted Living Association, and LeadingAge of Missouri requested that the department change section (4) of the proposed rule to allow facilities the ability to immediately disable and/or remove any unauthorized electronic monitoring device discovered by the facility in situations that merit its removal.

Mr. Tettlebaum suggests that this will provide the maximum protection of the privacy rights of the residents because there may be situations where facilities discover an unauthorized electronic monitoring device that is violating the privacy rights of the resident or the resident's roommate(s) based on its location. There may also be situations where the resident, guardian or legal representative does not remove the device after requested by the facility.

RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment and has amended section (4) for these potential situations.

COMMENT #2: Harvey M. Tettlebaum representing Missouri Health Care Association, Missouri Assisted Living Association, and LeadingAge of Missouri comments that the standards set out in sections (4), (5), and (6) and subsections (8)(B) and (9)(A)-(D) of the proposed rule are not standards imposed on facilities, rather these are requirements imposed on the individuals requesting authorized electronic monitoring. Mr. Tettlebaum suggests there should be no standards imposed on the facilities for sections (4), (5), and (6) and subsections (8)(B) and (9)(A)-(D).

RESPONSE: The department does not agree that sections (4), (5), and (6) and subsections (8)(B) and (9)(A)-(D) only impose requirements on individuals requesting authorized electronic monitoring. Instead, sections (4), (5), and (6) and subsections (8)(B) and (9)(A)-(D) all require the facility to ensure that requirements are being followed in the correct manner in order to protect the resident and any roommates who may reside in the room with an electronic monitoring device. Facilities are required to protect the privacy rights of the roommates who reside in the room where an electronic monitoring device is in use. Before issuing any citation, the department will look at all evidence that the facility provides, such as charting in the medical record, as to the facilities' attempts to ensure compliance of these requirements. Failure of the resident, guardian, or legal representative to follow the facilities' proper enforcement of the regulation should not affect the facility and result in violations of standards. No changes have been made as a result of this comment.

COMMENT #3: Harvey M. Tettlebaum representing Missouri Health Care Association, Missouri Assisted Living Association, and LeadingAge of Missouri comments that the department should not impose violation of standards in the proposed rule against facilities as set forth in section 198.065, RSMo. Mr. Tettlebaum states section 198.630, RSMo, only authorizes the department to impose sanctions on the administrator of the facility, not the facility itself.

RESPONSE: The department disagrees that section 198.630, RSMo, only authorizes the department to impose sanctions on the administrator of the facility and not the facility. Section 198.630.2, RSMo, allows the department to assess an administrative penalty against a facility that (1) refuses to permit a resident or the resident's guardian or legal representative to conduct authorized electronic monitoring; (2) refuses to admit an individual to residency or allows the removal of a resident from the institution because of a request to conduct authorized electronic monitoring; (3) allows the removal of a resident from the facility solely because unauthorized electronic monitoring is being conducted by, or on behalf of, the resident; or (4) violates another provision of sections 198.610 to 198.632. The proposed rule was promulgated pursuant to the direction of and with the authority of sections 198.610 to 198.632. Section 198.066, RSMo, sets forth the sanctions the department is authorized to impose against facilities commensurate with the seriousness of the violation which occurred (class I, II or III violations) in order to encourage facilities to comply with the provisions of Chapter 198, RSMo, and any rules promulgated thereto. Section 198.065, RSMo, requires the department to classify the standards into three categories (class I, II and III standards). The department has to classify the violation of each requirement in the rule into a standard in order to be able to enforce facility compliance of the requirements in the rule and to be able to assess an administrative penalty against the facility under section 198.066,

RSMo. No changes have been made as a result of this comment.

COMMENT #4: Harvey M. Tettlebaum representing Missouri Health Care Association, Missouri Assisted Living Association, and LeadingAge of Missouri comments that none of the facility standards that the department has set out in the rule could possibly be a class II standard which has a direct or immediate relationship to the health, safety or welfare of a resident.

RESPONSE: The department disagrees that the class II standards that it listed in the proposed rule do not meet the definition of Class II standards in section 198.085(2), RSMo. Section 198.085(2), RSMo, states, "Class II standards are standards which have a direct or immediate relationship to the health, safety or welfare of any resident, but which do not create imminent danger." The department finds that the Class II standard violations in this rule are similar to the Class II standard violations set forth in its resident rights' rule (19 CSR 30-88.010). Violations that involve the resident's right to place and use an authorized electronic monitoring device in order to ensure the safety and welfare of the resident, the wrongful discharge of a resident, an electronic monitoring device injuring a resident because of improper placement and violations of a resident or of roommates' privacy could involve a direct and immediate relationship to the health, safety, or welfare of any resident. No changes have been made as a result of this comment.

19 CSR 30-91.010 Authorized Electronic Monitoring

(4) AEM shall not begin nor an electronic monitoring device(s) be installed until the Electronic Monitoring Device Acknowledgement and Request Form has been completed and returned to the facility. The facility at its option may disable or remove the unauthorized electronic monitoring device or may require the resident or the resident's guardian or legal representative to remove or disable the electronic monitoring device. II/III

Title 20—DEPARTMENT OF COMMERCE AND INSURANCE Division 500—Property and Casualty Chapter 4—Rating Laws

ORDER OF RULEMAKING

By the authority vested in the Director of the Department of Commerce and Insurance under section 374.045, RSMo 2016, the director amends a rule as follows:

20 CSR 500-4.200 Rate and Supplementary Rates Information Filings is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 1, 2020 (45 MoReg 1463-1467). 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 public comment period ended November 4, 2020 and a public hearing on the proposed amendment was held November 4, 2020. No written or oral comments were received.

Title 20—DEPARTMENT OF COMMERCE AND INSURANCE Division 2220—State Board of Pharmacy Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the State Board of Pharmacy under section

338.280, RSMo 2016, the board adopts a rule as follows:

20 CSR 2220-2.195 Prospective Drug Utilization Review is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on October 1, 2020 (45 MoReg 1467-1468). 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.