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SALUS POPULI SUPREMA LEX ESTO

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

JASON KANDER

SECRETARY OF STATE

MISSOURI REGISTER

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

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HOW TO CITE RULES AND RSMo

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

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

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

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

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

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

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

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

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

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2220—State Board of Pharmacy
Chapter 2—General Rules

EMERGENCY AMENDMENT

20 CSR 2220-2.020 Pharmacy Permits. The board is amending subsection (9)(K) and section (11).

PURPOSE: This rule is being amended to allow Missouri pharmacies to dispense prescriptions issued based on a valid medical evaluation.

EMERGENCY STATEMENT: Subsection (9)(K) and section (11) of this rule prohibit a pharmacist from filling a prescription if the prescription was written without a physical, in-person examination of the patient. Since the original enactment of the rule's prohibition, both Missouri and federal law have been amended to recognize and allow healthcare delivered via "telehealth" or "telemedicine." For example, section 335.175, RSMo, specifically authorizes collaborating physicians and advanced practice registered nurses to provide "telehealth services" in rural areas. [See also section 208.670, RSMo, (authorizing MO HealthNet payment for "telehealth services"), section 191.1140, RSMo, (establishing the Show-Me Extension for Community Health Care Outcomes (ECHO) Program to encourage "telehealth services" for chronic, common, and complex diseases); section 376.1900, RSMo, (mandating insurance reimbursement for qualifying "telehealth services.")]

Under a valid "telehealth" or "telemedicine" arrangement, medical information is exchanged from one site to another via electronic communication or consultations. With advancements in technology, healthcare practitioners are able to electronically examine and monitor patients and prescribe medication as deemed medically appropriate. Missouri has multiple large telehealth programs serving a wide population of Missouri patients, including programs operated by Mercy Health System, the University of Missouri, and Barnes-Jewish Hospital. Despite these advances, the board's current rule prohibits Missouri pharmacies from filling a prescription resulting from a telehealth or telemedicine consultation.

In September of 2015, the board began receiving a significant increase in consumer complaints from patients who are unable to fill prescriptions issued pursuant to a telehealth or telemedicine arrangement. The board subsequently confirmed in October of 2015 that all of Missouri's largest chain pharmacies have prohibited their member pharmacies from filling prescriptions issued pursuant to a telehealth or telemedicine examination, due to the board's current rule language. The board also received notice from a large statewide psychiatric health program indicating that it will be required to immediately suspend telehealth/telemedicine prescriptive services if the rule is not amended.

To address this emergency, the board held an open session meeting to solicit comments from stakeholders on an emergency amendment and subsequently worked with stakeholders and other regulatory agencies to identify appropriate rule language. The board received comments that the rule's prohibition is particularly impacting rural areas where telehealth services are used to provide access to providers and specialty services for high-risk medical conditions that are otherwise unavailable in these regions.

Absent an emergency amendment, Missouri patients receiving telehealth/telemedicine services may be forced to go untreated and/or access to needed medications for these patients will be significantly delayed which could likely result in adverse medical consequences. Some patients may be forced to consult another healthcare provider for a duplicate evaluation that may not be covered by insurance or third-party payors. This delay in/denial of needed medication is particularly emergent given that telehealth/telemedicine services are widely used in Missouri to treat mental health patients and designated high-risk diseases. Pharmacies prohibited from dispensing will also experience reduced commerce.

*As a result of the detrimental impact on patient care and access to medical services, the Missouri State Board of Pharmacy finds that there is an immediate danger to the public health, safety, and/or welfare and a compelling governmental interest that requires this emergency action. A proposed amendment, which covers the same material, is published in this issue of the **Missouri Register**. 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 Missouri State Board of Pharmacy believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed January 19, 2016, becomes effective February 2, 2016, and expires July 30, 2016.*

(9) The following classes of pharmacy permits or licenses are hereby established:

(K) Class K: Internet. A pharmacy that provides services as defined in section 338.010, RSMo, and is involved in the receipt, review, preparation, compounding, dispensing**,** or offering for sale any drugs, chemicals, medicines**,** or poisons for any new prescriptions originating from the Internet for greater than ninety percent (90%) of the total new prescription volume on any day*[. A prescription must be provided by a practitioner licensed in the United States authorized by law to prescribe drugs and who has*

*performed a sufficient physical examination and clinical assessment of the patient.]***;**

(11) Prescriptions processed by any classification of licensed pharmacy must be provided by a practitioner licensed in the United States**,** authorized by law to prescribe drugs**,** and who has performed a *[sufficient physical examination and clinical assessment of the patient]* **medical evaluation of the patient as required by law**. *[A pharmacist shall not dispense a prescription drug if the pharmacist has knowledge, or reasonably should know under the circumstances, that the prescription order for such drug was issued on the basis of an Internet-based questionnaire, an Internet-based consultation, or a telephonic consultation, all without a valid preexisting patient-practitioner relationship.]*

AUTHORITY: section[s] 338.140, ***RSMo Supp. 2013,*** *and* ***section*** *338.280, RSMo 2000. This rule originally filed as 4 CSR 220-2.020. Original rule filed July 18, 1962, effective July 28, 1962. For intervening history, please consult the* ***Code of State Regulations****. Emergency amendment filed Jan. 19, 2016, effective Feb. 2, 2016, expires July 30, 2016. A proposed amendment covering this same material is published in this issue of the* ***Missouri Register****.*

The Secretary of State shall publish all executive orders beginning January 1, 2003, pursuant to section 536.035.2, RSMo Supp. 2014.

EXECUTIVE ORDER
16-03

WHEREAS, severe weather systems impacted the state of Missouri beginning December 22, 2015, resulting in historic flooding and loss of life as well as damage to homes, businesses, transportation infrastructure, agricultural land and other property across the state; and

WHEREAS, a State of Emergency was declared on December 27, 2015, pursuant to Executive Order 15-10; and

WHEREAS, the State of Emergency will expire on January 22, 2016; and

WHEREAS, the impacts from these severe weather systems continue to cause ongoing conditions of distress and hazard to the safety, welfare, and property of the citizens of Missouri beyond the capabilities of local jurisdictions and other established agencies; and

WHEREAS, I issued Executive Order 15-11 ordering the Adjutant General of the State of Missouri to call into active service such portions of the organized militia deemed necessary to aid the executive officials of Missouri to protect life and property; and

WHEREAS, I ordered the Missouri National Guard to manage "Operation Recovery," a debris removal program in the St. Louis region that is facilitating the collection and disposal of both debris left behind by flood water and household debris; and

WHEREAS, "Operation Recovery" remains underway assisting local communities in the St. Louis region clean up from the historic flooding; and

WHEREAS, I issued Executive Order 16-02 authorizing the Department of Natural Resources to waive certain environmental rules and regulations on a temporary and short-term basis to expedite the cleanup and recovery process; and

WHEREAS, the state of Missouri will continue to be proactive where the health and safety of the citizens of Missouri are concerned; and

WHEREAS, the resources of the state of Missouri have been needed and will continue to be needed to assist affected jurisdictions and to help relieve the condition of distress and hazard to the safety and welfare of our fellow Missourians.

NOW THEREFORE, I, JEREMIAH W. (JAY) NIXON, GOVERNOR OF THE STATE OF MISSOURI, by virtue of the authority vested in me by the Constitution and laws of the State of Missouri, including Chapter 44, RSMo, do hereby extend the declaration of emergency contained in Executive Order 15-10 until February 22, 2016, unless extended in whole or in part by subsequent order.

It is further ordered that Executive Order 15-11 and Executive Order 16-02 be extended until February 22, 2016, unless extended in whole or in part by subsequent order.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 22nd day of January, 2016.

Jeremiah W. (Jay) Nixon
Governor

ATTEST:

Jason Kander
Secretary of State

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

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

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

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

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

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

Proposed Amendment Text Reminder:
Boldface text indicates new matter.
[Bracketed text indicates matter being deleted.]

Title 2—DEPARTMENT OF AGRICULTURE
Division 30—Animal Health
Chapter 9—Animal Care Facilities

PROPOSED AMENDMENT

2 CSR 30-9.010 Animal Care Facilities Definitions. The director is amending subsection (2)(K).

PURPOSE: This amendment removes interim rules that were made effective by statute from April 27, 2011 through December 31, 2015. This amendment establishes final requirements for space and flooring that become effective under section 273.345, RSMo on January 1, 2016.

(2) Definitions. As used in 2 CSR 30-9.020 and 2 CSR 30-9.030, the following terms shall mean:

(K) Approved flooring means elevated flooring used for a surface on which an animal stands, approved by the state veterinarian, and listed on the department's website by description *[of manufacturer]* and specifications, as revised, except that *[for any enclosure newly constructed after April 15, 2011, and for all enclosures as of January 1, 2016,]* flooring meeting the definition of wire strand **flooring** shall be prohibited and ineligible as approved flooring;

AUTHORITY: sections 273.344 and 273.346, RSMo 2000. Original rule filed Jan. 13, 1994, effective Aug. 28, 1994. Amended: Filed Oct. 24, 1994, effective May 28, 1995. Emergency amendment filed July 11, 2011, effective July 21, 2011, expired Feb. 23, 2012. Amended: Filed July 22, 2011, effective Jan. 30, 2012. Amended: Filed Jan. 21, 2016.

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with State Veterinarian, Dr. Linda Hickam, PO Box 630, Jefferson City, MO 65102-0630. 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 2—DEPARTMENT OF AGRICULTURE
Division 30—Animal Health
Chapter 9—Animal Care Facilities

PROPOSED AMENDMENT

2 CSR 30-9.020 Animal Care Facility Rules Governing Licensing, Fees, Reports, Record Keeping, Veterinary Care, Identification, and Holding Period. The director is amending subsection (14)(F).

PURPOSE: This amendment updates an incorporated reference document to the most current edition.

(14) Miscellaneous.

(F) Handling of Animals.

1. Handling of all animals shall be done as expeditiously and carefully as possible in a manner that does not cause trauma, overheating, excessive cooling, behavioral distress, physical harm, or unnecessary discomfort.

2. Physical abuse shall not be used to train, work, or otherwise handle animals.

3. Deprivation of food or water shall not be used to train, work, or otherwise handle animals; provided however, that the short-term withholding of food or water from animals by exhibitors is allowed by this rule as long as each of the animals affected receives its full dietary and nutrition requirements each day.

4. During public exhibition, any animal must be handled so there is minimal risk of harm to the animal and to the public, with sufficient distance or barriers, or both, between the animal and the general viewing public so as to assure the safety of animals and the public.

A. Performing animals shall be allowed a rest period between performances at least equal to the time for one (1) performance.

B. Young or immature animals shall not be exposed to rough or excessive public handling or exhibited for periods of time which would be detrimental to their health or well-being.

C. Drugs, such as tranquilizers, shall not be used to facilitate, allow, or provide for public handling of the animals.

D. Animals shall be exhibited only for periods of time and under conditions consistent with their good health and well-being.

E. A responsible, knowledgeable, and readily identifiable employee or attendant must be present at all times during periods of public contact.

F. During public exhibitions, dangerous animals such as lions, tigers, or wolves must be under the direct control and supervision of a knowledgeable and experienced animal handler.

G. If public feeding of animals is allowed, the food must be provided by the animal facility and shall be appropriate to the type of animal and its nutritional needs and diet.

5. All euthanasia of animals shall be accomplished by a method approved by the *[2000]* **2013** edition, or later revisions, of the *American Veterinary Medical Association's [Panel on Euthanasia]* ***Guidelines for the Euthanasia of Animals,*** as incorporated by reference in this rule.

AUTHORITY: sections 273.344 and 273.346, RSMo 2000. Original rule filed Jan. 13, 1994, effective Aug. 28, 1994. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Jan. 21, 2016.*

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with State Veterinarian, Dr. Linda Hickam, PO Box 630, Jefferson City, MO 65102-0630. 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 2—DEPARTMENT OF AGRICULTURE
Division 30—Animal Health
Chapter 9—Animal Care Facilities

PROPOSED AMENDMENT

2 CSR 30-9.030 Animal Care Facilities Minimum Standards of Operation and Transportation. The director is amending subsections (1)(F) and (2)(B).

PURPOSE: This amendment removes interim rules that were made effective by statute from April 27, 2011 through December 31, 2015. This amendment establishes final requirements for space and flooring that become effective under section 273.345, RSMo on January 1, 2016.

(1) Facilities and Operating Standards.

(F) Primary Enclosures. Primary enclosures for animals must meet the following minimum requirements:

1.General requirements.

A. Primary enclosures must be designed and constructed of suitable materials so that they are structurally sound. The primary enclosure must be kept in good repair.

B. Primary enclosures must be constructed and maintained so that they—

(I) Have no sharp points or edges that could injure the animals;

(II) Protect the animals from injury;

(III) Contain the animals securely;

(IV) Keep other animals from entering the enclosure;

(V) Enable the animals to remain dry and clean;

(VI) Provide shelter and protection from extreme temperatures and weather conditions that may be uncomfortable or hazardous to the animals;

(VII) Provide sufficient shade to shelter all the animals housed in the primary enclosure at one time;

(VIII) Provide all the animals with easy and convenient access to clean food and water;

(IX) Enable all surfaces in contact with the animals to be readily cleaned and sanitized in accordance with this rule, or be replaceable when worn or soiled;

(X) Have floors that are constructed in a manner that protects the animals' feet and legs from injury and that, if elevated construction, *[it]* must be constructed of materials strong enough to prevent sagging and with a mesh small enough that will not allow the animals' feet to pass through any openings in the floor. If the floor of the primary enclosure is constructed of elevated flooring, a solid resting surface(s) **or a perforated surface(s) with holes small enough to prevent any portion of the animals' feet or toes to pass through** that, in the aggregate, is large enough to hold all the occupants of the primary enclosure at the same time comfortably must be provided; and

(XI) Provide sufficient space to allow each animal to turn about freely, to stand, sit, and lie in a comfortable, normal position**,** and to walk in a normal manner.

C. Any primary enclosure subject to the provisions of section 273.345, RSMo*[, newly constructed after April 15, 2011, and for all enclosures as of January 1, 2016,]* shall meet the following standards for elevated flooring:

(I) Wire strand flooring shall be prohibited;

(II) *[Bare metal flooring shall be prohibited;*

(III)] Slatted flooring must be flat, no less than *[two]* **one** and one-half inches (*[2]***1**.5") in width, and constructed of materials strong enough to prevent sagging and with openings that will not allow the animals' feet to pass through any openings in the floor. Any premanufactured slatted flooring must be described by *[manufacturer and]* specifications, listed on the approved flooring list maintained by the state veterinarian, and posted on the department's website, as revised;

*[(IV)]***(III)** Plastic flooring must be constructed of materials strong enough to prevent sagging and with openings that will not allow the animals' feet to pass through any openings in the floor. Any premanufactured flooring must be described by *[manufacturer and]* specifications, listed on the approved flooring list maintained by the state veterinarian, and posted on the department's website, as revised;

*[(V)]***(IV)** Expanded metal flooring coated with a flexible plastic surface must be constructed of materials strong enough to prevent sagging and with openings that will not allow the animals' feet to pass through any openings in the floor. The coating must be maintained in such a manner that the animal is not allowed to come into contact with the metal. Any premanufactured flooring must be described by *[manufacturer and]* specifications, listed on the approved flooring list maintained by the state veterinarian, and posted on the department's website, as revised; and

*[(VI)]***(V)** Galvanized expanded metal flooring must be constructed of materials strong enough to prevent sagging and with openings that will not allow the animals' feet to pass through any openings in the floor. Galvanized expanded metal flooring must have a flat surface that is free of rust and sharp points. Any premanufactured flooring must be described by *[manufacturer and]* specifications, listed on the approved flooring list maintained by the state veterinarian, and posted on the department's website, as revised;

2. Additional requirements for cats.

A. Space. Each cat, including weaned kittens, that is housed in any primary enclosure must be provided minimum vertical space and floor space as follows:

(I) Each primary enclosure housing cats must be at least twenty-four inches (24") high or sixty and ninety-six hundredths centimeters (60.96 cm). Temporary housing such as queening cages may be reduced to a height of eighteen inches (18") or forty-five and seventy-two hundredths centimeters (45.72 cm) to reduce injury to kittens;

(II) Cats up to and including eight and eight-tenths (8.8) pounds or four (4) kilograms must be provided with at least three (3.0) square feet or twenty-eight hundredths (0.28) square meters;

(III) Cats over eight and eight-tenths (8.8) pounds or four (4) kilograms must be provided with at least four (4.0) square feet or thirty-seven hundredths (0.37) square meters;

(IV) Each queen with nursing kittens must be provided with an additional amount of floor space, based on her breed and behavioral characteristics, and in accordance with generally accepted husbandry practices **as determined by the attending veterinarian**. If the additional amount of floor space for each nursing kitten is equivalent to less than five percent (5%) of the minimum requirement for the queen, the housing must be approved by the state veterinarian; and

(V) The minimum floor space required by this section is exclusive of any food or water pans. The litter pan may be considered part of the floor space if properly cleaned and sanitized.

B. Compatibility. All cats housed in the same primary enclosure must be compatible, as determined by observation. Not more than twelve (12) adult nonconditioned cats may be housed in the same primary enclosure. Queens in heat may not be housed in the same primary enclosure with sexually mature males, except for breeding. Except when maintained in breeding colonies, queens with litters may not be housed in the same primary enclosure with other adult cats, and kittens under four (4) months of age may not be housed in the same primary enclosure with adult cats, other than the dam or foster dam. Cats with a vicious or aggressive disposition must be housed separately.

C. Litter. In all primary enclosures, a receptacle containing sufficient clean litter must be provided to contain excreta and body wastes.

D. Resting surfaces. Each primary enclosure housing cats must contain a resting surface(s) that, in the aggregate, is large enough to hold all the occupants of the primary enclosure at the same time comfortably. The resting surfaces must be elevated, impervious to moisture**,** and be able to be easily cleaned and sanitized or easily replaced when soiled or worn.

(I) Low resting surfaces that do not allow the space under them to be comfortably occupied by the animal will be counted as part of the floor space. Floor space under low resting surfaces shall not be counted as floor space to meet the minimum space requirements.

(II) Elevated resting surfaces will not be required for short-term housing facilities such as boarding kennels, commercial kennels, contract kennels, pet shops, and pounds or dog pounds, however, elevated resting surfaces may be properly installed to increase floor space to that required in this rule; and

3. Additional requirements for dogs.

A. Space.

(I) Each dog housed in a primary enclosure (including weaned puppies) must be provided a minimum amount of floor space, calculated as follows: Find the mathematical square of the sum of the length of the dog in inches (measured from the tip of its nose to the base of its tail) plus six inches (6"); then divide the product by one hundred forty-four (144). The calculation is: (length of dog in inches plus six (6)) times (length of dog in inches plus six (6)) equals required floor space in square inches. Required floor space in inches divided by one hundred forty-four (144) equals required floor space in square feet.

(II) Each bitch with nursing puppies must be provided with an additional amount of floor space, based on her breed and behavioral characteristics, and in accordance with generally accepted husbandry practices as determined by the attending veterinarian. If the additional amount of floor space for each nursing puppy is less than five percent (5%) of the minimum requirement for the bitch, this housing must be approved by the state veterinarian.

(III) The interior height of a primary enclosure must be at least six inches (6") higher than the head of the tallest dog in the enclosure when it is in a normal standing position.

(IV) Permanent tethering of dogs is prohibited for use as a primary enclosure. Temporary tethering of dogs is prohibited for use as a primary enclosure unless written approval is obtained from the state veterinarian.

B. Compatibility. All dogs housed in the same primary enclosure must be compatible, as determined by observation. Not more than twelve (12) adult nonconditioned dogs may be housed in the same primary enclosure. Bitches in heat may not be housed in the same primary enclosure with sexually mature males, except for breeding. Except when maintained in breeding colonies, bitches with litters may not be housed in the same primary enclosure with other adult dogs, and puppies under four (4) months of age may not be housed in the same primary enclosure with adult dogs, other than their dam or foster dam. Dogs with a vicious or aggressive disposition must be housed separately.

C. Additional space requirements for dogs subject to the provisions of section 273.345, RSMo, shall be based upon the minimum amount of floor space as calculated from part (1)(F)3.A.(I) of this rule and multiplied by factor or added to the total living area as prescribed in this rule.

[(I) From January 1, 2012, through December 31, 2015, for any enclosure existing prior to April 15, 2011, the minimum allowable space shall be calculated as follows:

(a) Dogs housed singly. Any dogs housed singly must have their minimum amount of floor space as calculated from part (1)(F)3.A.(I) of this rule (minimum amount of floor space) and multiplied by a factor of four (4).

(b) Dogs housed as a pair. Any dogs housed as a pair must have their minimum amount of floor space as calculated from part (1)(F)3.A.(I) of this rule (minimum amount of floor space) and multiplied by a factor of two (2).

(c) Dogs housed in small groups of three (3) to four (4). Any dogs housed in small groups of three (3) to four (4) shall have the largest two (2) dogs calculated from part (1)(F)3.A.(I) of this rule (minimum amount of floor space) and multiplied by a factor of two (2), with each additional dog being provided additional space at one hundred percent (100%) of the same formula.

(d) Dogs housed in large groups of five (5) to eight (8). Any dogs housed in large groups of five (5) to eight (8) must have their minimum amount of floor space as calculated from part (1)(F)3.A.(I) of this rule (minimum amount of floor space) and multiplied by a factor of two (2). No more than eight (8) adult dogs may be housed in the same primary enclosure.

Common examples under part (1)(F)3.C.(I)

	Single	*Pair*	*Group of 3*	*Group of 4*
18 inch dog	*16 sq ft*	*16 sq ft*	*20 sq ft*	*24 sq ft*
30 inch dog	*36 sq ft*	*36 sq ft*	*45 sq ft*	*54 sq ft*
42 inch dog	*64 sq ft*	*64 sq ft*	*80 sq ft*	*96 sq ft*

	Group of 5	*Group of 6*	*Group of 7*	*Group of 8*
18 inch dog	*40 sq ft*	*48 sq ft*	*56 sq ft*	*64 sq ft*
30 inch dog	*90 sq ft*	*108 sq ft*	*126 sq ft*	*144 sq ft*
42 inch dog	*160 sq ft*	*192 sq ft*	*224 sq ft*	*256 sq ft*

(II) For any enclosure newly constructed after April 15, 2011, and for all enclosures as of January 1, 2016, the

minimum allowable space shall be calculated as follows:]

(I) The minimum allowable space for primary enclosures subject to the provisions of section 273.345, RSMo, shall be calculated as follows:

(a) Dogs housed singly. Any dogs housed singly must have their minimum amount of floor space as calculated from part (1)(F)3.A.(I) of this rule (minimum amount of floor space) and multiplied by a factor of six (6)*[.]***;**

(b) Dogs housed as a pair. Any dogs housed as a pair must have their minimum amount of floor space as calculated from part (1)(F)3.A.(I) of this rule (minimum amount of floor space) and multiplied by a factor of three (3)*[.]***;**

(c) Dogs housed in small groups of three (3) to four (4). Any dogs housed in small groups of three (3) to four (4) shall have the largest two (2) dogs calculated from part (1)(F)3.A.(I) of this rule (minimum amount of floor space) and multiplied by a factor of *[two (2)]* **three (3)**, with each additional dog being provided additional space at one hundred percent (100%) of the same formula*[.]***; and**

(d) Dogs housed in large groups of five (5) to six (6). Any dogs housed in large groups of five (5) to six (6) must have their minimum amount of floor space as calculated from part (1)(F)3.A.(I) of this rule (minimum amount of floor space) and multiplied by a factor of *[two (2)]* **three (3)**. No more than six (6) adult dogs may be housed in the same primary enclosure.

Common examples under part (1)(F)3.C.*[(III)]***(I)**

	Single	Pair	Group of 3	Group of 4	Group of 5	Group of 6
18 inch dog	24 sq ft	24 sq ft	28 sq ft	32 sq ft	60 sq ft	72 sq ft
30 inch dog	54 sq ft	54 sq ft	63 sq ft	72 sq ft	135 sq ft	162 sq ft
42 inch dog	96 sq ft	96 sq ft	112 sq ft	128 sq ft	240 sq ft	288 sq ft

*[(III)]***(II)** Exemptions.

(a) Covered dogs subject to the provisions of **section** 273.345, RSMo, may be exempted from the space requirements of this rule for the purpose of documented treatment for veterinary purposes, provided that they meet space requirements under part (1)(F)3.A.(I) of this rule.

(b) Female covered dogs subject to the provisions of **section** 273.345, RSMo, may be exempted from the space requirements of this rule when they are within two (2) weeks of their whelping date and eight (8) weeks post parturition, provided that they meet space requirements under part (1)(F)3.A.(II) of this rule.

(2) Animal Health and Husbandry Standards.

(B) Exercise for Dogs.

1. Animal shelters, boarding kennels, commercial kennels, commercial breeders, dealers, exhibitors, and voluntary licensees must develop, document, and follow an appropriate plan to provide dogs with an opportunity for exercise. In addition, the plan must be approved and signed by the licensee and the attending veterinarian. The plan must include written standard procedures to be followed in providing the opportunity for exercise. The plan must be made available to the state veterinarian or his/her designated representative upon request. The plan, at a minimum, must comply with each of the following:

A. Dogs housed individually. Dogs over twelve (12) weeks of age, except bitches with litters, housed, held, or maintained by any animal shelter, boarding kennel, commercial kennel, commercial breeder, dealer, exhibitor, or voluntary licensee must be provided the opportunity for exercise regularly if they are kept in individual cages, pens, or runs that provide less than two (2) times the required floor space for that dog, as prescribed in this rule.

B. Dogs housed in groups. Dogs over twelve (12) weeks of age housed, held, or maintained in groups by any dealer or exhibitor do not require additional opportunity for exercise regularly if they are maintained in cages, pens, or runs that provide in total at least one hundred percent (100%) of the required space for each dog if maintained separately. These animals may be maintained in compatible groups unless—

(I) In the opinion of the attending veterinarian, this housing would adversely affect the health or well-being of the dogs(s); or

(II) Any dog exhibits aggressive or vicious behavior.

2. Methods and period of providing exercise opportunity.

A. The frequency, method, and duration of the opportunity for exercise shall be determined by the attending veterinarian.

B. Licensees, in developing their plan, should consider providing positive physical contact with humans that encourages exercise through play or other similar activities. If a dog is housed, held, or maintained at a facility without sensory contact with another dog, it must be provided with positive physical contact with humans at least daily.

C. The opportunity for exercise may be provided in a number of ways, such as—

(I) Group housing in cages, pens, or runs that provide at least one hundred percent (100%) of the required space for each dog if maintained separately under the minimum floor space requirements of this rule;

(II) Maintaining individually housed dogs in cages, pens, or runs that provide at least twice the minimum amount of floor space required by this rule;

(III) Providing access to a run or open area at the frequency and duration prescribed by the attending veterinarian; or

(IV) Other similar activities.

D. Forced exercise methods or devices such as swimming, treadmills, or carousel-type devices are unacceptable for meeting the requirements of this section.

3. Exemptions. If, in the opinion of the attending veterinarian, it is inappropriate for certain dogs to exercise because of their health, condition, or well-being, the licensee may be exempted from meeting the requirements of this section for those specific dogs. This exemption must be documented by the attending veterinarian and, unless the basis for exemption is a permanent condition, must be reviewed and signed at least every thirty (30) days by the attending veterinarian.

4. Constant and unfettered access. Except as prescribed herein by rule, commercial breeders with more than ten (10) intact females must provide covered dogs with constant and unfettered access to an attached outdoor run.

[A. General exemptions.] The following general exemptions shall apply to constant and unfettered access:

*[(I)]***A.** Purposes of veterinary care. Covered dogs subject to the provisions of section 273.345, RSMo, may be exempted from the requirement of constant and unfettered access to outdoor exercise for the purpose of documented treatment for veterinary purposes*[.]***;**

*[(II)]***B.** Whelping. Female covered dogs subject to the provisions of section 273.345, RSMo, may be exempted from the requirement of constant and unfettered access to outdoor exercise when they are within two (2) weeks of their whelping date and eight (8) weeks post parturition*[.]***;**

*[(III)]***C.** Extreme weather. Covered dogs subject to the provisions of section 273.345, RSMo, may be exempted from the requirement of constant and unfettered access to outdoor exercise during extreme weather conditions as defined under 2 CSR 30-9.010(2)(CC)*[.]***;**

*[(IV)]***D.** Nocturnal predators. Covered dogs subject to the provisions of section 273.345, RSMo, may be exempted from the requirement of constant and unfettered access to outdoor exercise from dusk to dawn*[.]***; and**

*[(V)]***E.** Municipal zoning ordinances. Covered dogs subject to the provisions of section 273.345, RSMo, may be exempted from the requirement of constant and unfettered access to outdoor exercise to comply with municipal zoning ordinances.

[B. Specific exemptions only granted under written approval. Until January 1, 2016, covered dogs subject to the provisions of section 273.345, RSMo, may be exempted from the requirement of constant and unfettered access to

outdoor exercise under limited circumstances and only by written approval of the director of agriculture. Any exemption must be requested in writing and will be considered only on an individual and annual basis. Likewise, such exemption may be revoked for failure to comply with this section or for violations of the Animal Care Facilities Act or of any rules promulgated pursuant thereto.

(I) For indoor facilities lacking constant and unfettered access to the outdoors, the following requirements must be met for consideration of exemption under written approval:

(a) The primary enclosures must exceed the applicable space standards on their own and cannot rely on the exercise yard to count toward space requirements;

(b) The facility must be climate controlled and the ambient temperature of the indoor facility must not fall below forty-five degrees Fahrenheit (45 °F) or seven and two-tenths degrees Celsius (7.2 °C), or rise above eighty-five degrees Fahrenheit (85 °F) or twenty-nine and four-tenths degrees Celsius (29.4 °C);

(c) The lighting within the indoor facility must include natural lighting;

(d) The outdoor exercise yard must be fenced and maintained in a manner that it protects the animals from injury and contains the animals securely;

(e) The outoor exercise yard must include one (1) or more shelter structures that are accessible to each animal and large enough to allow each animal to sit, stand, and lie in a normal manner and turn about freely;

(f) The outdoor exercise yard must be large enough to allow the dogs to achieve a full running stride. The yard must be at least ten (10) times the space calculated from part (1)(F)3.A.(I) of this rule (minimum amount of floor space), and the dimensions must be included in the written request for exemption;

(g) The exercise plan must be approved by the state veterinarian and include a schedule or journal that allows for verification of compliance and must include a plan to implement constant and unfettered access prior to January 1, 2016; and

(h) Application for such exemption shall be specific to the breed of dog and signed by the attending veterinarian for that facility along with the department's program veterinarian.

I. Approval by the director of agriculture must be posted publicly by county on the department's website for a period not shorter than thirty (30) days.

II. For sheltered facilities lacking constant and unfettered access to the outdoors, the following requirements must be met for consideration of exemption under written approval:

a. The facility must meet the definition of sheltered housing facility under 2 CSR 30-9.010 (2) (XX);

b. The primary enclosures must exceed the applicable space standards on their own and cannot rely on an exercise yard to count toward space requirements;

c. The animal areas must be provided a regular diurnal lighting cycle of sufficient natural light;

d. The facility must have procedures in place that allow for natural airflow outside of extreme weather conditions.

III. Outdoor housing facilities are exempt from any additional requirements of constant and unfettered access to the outdoors provided that they meet the following:

a. The facility must meet the definition of outdoor housing facility under 2 CSR 30-9.010 (2) (MM);

b. The primary enclosures must exceed the applicable space standards on their own and cannot rely on an exercise yard to count toward space requirements;

c. The animal areas must be provided a regular diurnal lighting cycle of sufficient natural light;

d. The animal areas must have constant natural airflow.]

AUTHORITY: sections 273.344 and 273.346, RSMo 2000. Original rule filed Jan. 13, 1994, effective Aug. 28, 1994. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Jan. 21, 2016.*

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with State Veterinarian, Dr. Linda Hickam, PO Box 630, Jefferson City, MO 65102-0630. 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 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 3—Filing and Reporting Requirements

PROPOSED AMENDMENT

4 CSR 240-3.105 Filing Requirements for Electric Utility Applications for Certificates of Convenience and Necessity. The commission is amending the purpose, sections (1) and (2), adding new sections (2) and (4), and renumbering as needed.

PURPOSE: This amendment revises the filing requirements for applications, pursuant to section 393.170, RSMo, which request that the commission grant a certificate of convenience and necessity to an electric utility for either a service area or to construct in Missouri electric generating plants, electric transmission lines, or gas transmission lines to facilitate the operation of electric generating plants.

PURPOSE: Applications to the commission, ***pursuant to section 393.170, RSMo,*** *requesting that the commission grant a certificate of convenience and necessity* ***to an electric utility for a service area or to construct in Missouri an electric generating plant, an electric transmission line, or a gas transmission line to facilitate the operation of an electric generating plant,*** *must meet the requirements of this rule. As noted in the rule, [additional]* ***general*** *requirements pertaining to such applications are set forth in 4 CSR 240-2.060(1).* ***In Missouri, a certificate of convenience and necessity is needed to construct an electric generating plant regardless of whether the site for the electric generating plant is inside or outside of the electric utility's certificated service area. However, a separate certificate of convenience and necessity is not needed for the construction of an electric transmission line or for the construction of a gas transmission line to facilitate the operation of an electric generating plant if the line(s) to be constructed is(are) in the electric utility's certificated service area. Finally, this rule is not intended to replace or duplicate the electric utility resource planning requirements or procedures of 4 CSR 240-22.010–4 CSR 240-22.080.***

(1) In addition to the **general** requirements of 4 CSR 240-2.060(1), applications by an electric utility for a certificate of convenience and

necessity**, pursuant to section 393.170, RSMo,** shall include:

(A) If the application is for **authorization to provide electric service to retail customers in** a **new** service area **for the electric utility**—

1. A *[statement as to the same or similar utility service,]* **list of those entities providing** regulated *[and]* **or** nonregulated*[, available in]* **retail electric service in all or any part of** the **service** area *[requested]* **proposed, including a map that identifies where each entity is providing retail electric service within the area proposed**;

2. If there are ten (10) or more residents or landowners, the name and address of no fewer than ten (10) persons residing in the proposed service area or of no fewer than ten (10) landowners in the event there are no residences in the area, or, if there are fewer than ten (10) residents or landowners, the name and address of all residents and landowners;

3. The legal description of the **service** area to be certificated;

4. A plat **of the proposed service area** drawn to a scale of one-half inch (1/2") to the mile on maps comparable to county highway maps issued by the Missouri Department of Transportation or a plat drawn to a scale of two thousand feet (2,000') to the inch; and

5. A feasibility study containing plans and specifications for the utility system and estimated cost of the construction of the utility system during the first three (3) years of construction; plans for financing; proposed rates and charges**;** and an estimate of the number of customers, revenues**,** and expenses during the first three (3) years of operations;

(B) If the application is for **a certificate of convenience and necessity for the construction of an electric generating plant,** electric*[al]* transmission line(s)**, or** gas transmission line(s) *[or]* **to facilitate the operation of** electric*[al production facilities]* **generating plant(s) in Missouri**—

1. A description of the **proposed** route **or site** of construction and a list of all electric**, gas,** and telephone **utility, conduit, wires, cables, and** lines of regulated and nonregulated utilities, railroad tracks *[or any]***, and each** underground facility, as defined in section 319.015, RSMo, which the proposed construction will cross **or come within two hundred fifty feet (250') of**;

2. **A description of** *[T]***t**he plans and specifications for the complete **scope of the** construction project and estimated cost of the construction project *[or]***, which also clearly identifies the operating and other features of the electric generating plant, electric transmission line(s), and gas transmission line(s) to facilitate the operation of the electric generating plant(s), when the construction is fully operational and used for service; the projected beginning of construction date and the anticipated fully operational and used for service date of each electric generating plant, each electric transmission line, and each gas transmission line to facilitate the operation of each electric generating plant for which the applicant is seeking the certificate of convenience and necessity; and identify whether the construction project for which the certificate of convenience and necessity is being sought will include common electric generating plant, common electric transmission plant, or common gas transmission plant to facilitate the operation of the common electric generating plant, and if it does, then identify the nature of the common plant. If this information is currently unavailable, then** a statement of the reasons the information is currently unavailable and a date when it will be *[furnished]* **filed**; *[and]*

3. Plans for financing **the construction of the electric generating plant, electric transmission line(s), or gas transmission line(s) to facilitate the operation of the electric generating plant(s)**;

4. An overview of plans for operating and maintaining the electric generating plant, electric transmission line(s), or gas transmission line(s) to facilitate the operation of the electric generating plant(s);

5. An overview of plans for restoration of safe and adequate service after significant, unplanned/forced outages of the electric generating plant, electric transmission line(s), or gas transmission line(s) to facilitate the operation of the electric generating plant(s); and

6. The facts showing a) the utilization of a non-discriminatory, fair, and reasonable competitive bidding process for entering into, identifying, and/or being the projected process for identifying: the design, engineering, procurement, construction management, and construction contracts for the construction of electric generating plant, electric transmission line(s), or gas transmission line(s) to facilitate the operation of electric generating plant(s), and b) the utilization of a non-discriminatory, fair, and reasonable competitive bidding process for purchased power capacity and energy from alternative suppliers, reviewed by the electric utility at an identified time(s) as a possible resource(s) in lieu of the construction of electric generating plant, electric transmission line(s), or gas transmission line(s) to facilitate the operation of electric generating plant(s);

(D) When approval of the affected governmental bodies is required, evidence must be provided as follows:

1. When consent or franchise by a city or county is required, approval shall be shown by a certified copy of the document granting the consent or franchise*[, or an affidavit of the applicant that consent has been acquired]***; when consent or franchise by a city that has all or part of its electrical or gas supply provided by a joint municipal utility commission, established pursuant to section 393.700 *et seq.*, RSMo, is required, a certified copy of the joint municipal utility commission board resolution granting approval for such project; or a verified statement of the president and secretary of the corporation, showing that the applicant has received the required consent of the proper governmental bodies**; and

2. A certified copy of the required approval of other governmental agencies; and

(E) The facts showing that the granting of the application is *[required by the public convenience and necessity]* **necessary or convenient for the public service**.

(2) The term "construction," pursuant to section 393.170, RSMo—

(A) Includes construction in Missouri of new electric generating plant regardless of whether the site for the electric generating plant is inside or outside of the electric utility's certificated service area;

(B) Includes construction in Missouri of new electric transmission line(s) or new gas transmission line(s) to facilitate the operation of electric generating plant(s) in Missouri; however, a separate certificate of convenience and necessity is not needed for the construction of new electric transmission line(s) or for the construction of new gas transmission line(s) to facilitate the operation of electric generating plant(s) if the line(s) to be constructed is(are) in the electric utility's certificated service area;

(C) Includes substantial rebuild, renovation, improvement, retrofit, and/or other construction in Missouri that will result in—

1. A substantial increase in the capacity of the electric generating plant beyond the planned capacity of the plant at the time the commission granted the prior certificate of convenience and necessity for the electric generating plant; and/or

2. A material change in the discharges, emissions, or other environmental by-products of the electric generating plant than those projected at the time the prior certificate of convenience and necessity was granted by the commission for the electric generating plant;

(D) Includes acquisition of full or partial ownership by purchase or capital lease of an electric generating plant in Missouri, whether the site for the electric generating plant is inside or outside of the electric utility's certificated service area, and electric

transmission line(s), or gas transmission line(s) to facilitate the operation of electric generating plant(s), if the electric transmission line(s) or gas transmission line(s) to facilitate the operation of electric generating plant(s) is(are) outside the electric utility's certificated service area in Missouri;

(E) Does not include periodic, routine or preventative maintenance, or replacement of failed or near term projected failure of equipment or devices with the same or substantially similar items that are intended to restore the electric generating plant to an operational state at or near a recently rated capacity level.

*[(2)]***(3)** If any of the items required under this rule **for the issuance of a certificate of convenience and necessity** are unavailable at the time the application is filed, **alternatively, as determined by the commission,** the*[y]* **unavailable items** shall be *[furnished]* **filed** prior to the granting of *[the]* authority *[sought]* **by the commission, or, the commission may grant the certificate subject to the condition that the unavailable items be filed before authority under the certificate is exercised**.

(4) The commission may, by its order, impose upon the issuance of a certificate of convenience and necessity, such condition or conditions as it may deem reasonable and necessary.

AUTHORITY: section 386.250, RSMo 2000. Original rule filed Aug. 16, 2002, effective April 30, 2003. Amended: Filed Jan. 22, 2016.

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

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

NOTICE TO SUBMIT COMMENTS AND NOTICE OF PUBLIC HEARING: Anyone may file comments in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Morris L. Woodruff, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices on or before April 29, 2016, and should include a reference to Commission Case No. EX-2015-0225. Comments may also be submitted via a filing using the commission's electronic filing and information system at http://www.psc.mo.gov/efis.asp. A public hearing regarding this proposed amendment is scheduled for May 12, 2016, at 10:00 a.m., in Room 305 of the Governor Office Building, 200 Madison St., Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed amendment, and may be asked to respond to commission questions.

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

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 13—Service and Billing Practices for Residential Customers of Electric, Gas, Sewer, and Water Utilities

PROPOSED AMENDMENT

4 CSR 240-13.020 Billing and Payment Standards. The commission is adding a new section (13).

PURPOSE: This amendment limits the use of payday loan type lending entities as authorized pay agents for collection of payments to utilities.

(13) No utility may enter into any contractual or authorized pay agent relationship with any pawnshop, auto title loan company, payday loan company, or other short-term lending entity engaged in the business of making unsecured loans of five hundred dollars ($500) or less, with original payment terms of thirty-one (31) days, or less, or where repayment of the loan is secured by the borrower's postdated check. This restriction shall not apply if the lending entity offers such loans at an aggregate, effective annual percentage interest rate of less than thirty-six percent (36%).

AUTHORITY: sections 386.250(6) and 393.140(11), RSMo 2000. Original rule filed Dec. 19, 1975, effective Dec. 30, 1975. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Jan. 22, 2016.*

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

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

NOTICE TO SUBMIT COMMENTS AND NOTICE OF PUBLIC HEARING: Anyone may file comments in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Morris L. Woodruff, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices on or before March 31, 2016, and should include a reference to Commission Case No. AX-2015-0061. Comments may also be submitted via a filing using the commission's electronic filing and information system at http://www.psc.mo.gov/efis.asp. A public hearing regarding this proposed amendment is scheduled for April 8, 2016, at 10:00 a.m., in Room 305 of the Governor Office Building, 200 Madison St., Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed amendment, and may be asked to respond to commission questions.

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

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

PROPOSED RESCISSION

5 CSR 20-100.180 Waivers of Regulations. This rule established the criteria and procedures for annually identifying school district and/or school building eligibility for waivers in compliance with state statutes.

PURPOSE: This rule is being rescinded as it is no longer necessary for the implementation of the Missouri School Improvement Program.

AUTHORITY: sections 160.518, 160.545 and 161.092, RSMo Supp. 2003 and 161.210 and 163.031, RSMo 2000. This rule previously

filed as 5 CSR 50-345.200. Original rule filed June 30, 2004, effective Jan. 30, 2005. Moved to 5 CSR 20-100.180, effective Aug. 16, 2011. Rescinded: Filed Jan. 25, 2016.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Department of Elementary and Secondary Education, Attn: Jocelyn Strand, Coordinator, School Improvement, PO Box 480, Jefferson City, MO 65102-0480 or email msip@dese.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 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 6—Permits

PROPOSED AMENDMENT

10 CSR 20-6.300 Concentrated Animal Feeding Operations. The director proposes to amend the purpose and sections (1)–(6).

PURPOSE: This proposed amendment is necessary as a result of changes in section 644.052, RSMo, effective August 28, 2013. In addition, staff are proposing minor revisions to definitions and language.

[PURPOSE: This rule sets forth the permitting and other requirements for concentrated animal feeding operations. Minimum federal requirements are incorporated and additional state requirements are included to provide increased environmental protection of sensitive watersheds. This rule consolidates requirements for animal feeding operations from other Chapter 6 rules. Section (5) of this rule contains the letter of approval application procedures which were previously under sections (4)–(10) of 10 CSR 20-6.015.]

PURPOSE: This rule sets forth the requirements and procedures for operating permits for concentrated animal feeding operations. Minimum federal requirements are incorporated, and additional state requirements are included to provide increased environmental protection of sensitive watersheds.

(1) Definitions.

(A) Definitions as set forth in 10 CSR 20-2.010 **and 10 CSR 20-8.300** shall apply to the terms when used in this rule unless otherwise defined in subsection (B) below.

(B) Other applicable definitions are incorporated as follows:

1. Animal—Domestic animals, fowls, or other types of livestock except for aquatic animals;

2. Animal unit—A unit of measurement to compare various animal types at an animal feeding operation. One (1) animal unit equals the following: 1.0 beef cow or feeder, cow/calf pair, veal calf, or dairy heifer; 0.5 horse; 0.7 mature dairy cow; 2.5 swine weighing over 55 pounds; 10 swine weighing less than 55 pounds; 10 sheep, lamb, or meat and dairy goats; 30 chicken laying hens or broilers with a wet handling system; 82 chicken laying hens without a wet handling system; 55 turkeys in grow-out phase; 125 chicken broilers, chicken pullets, or turkey poults in brood phase without a wet handling system;

3. Animal unit equivalent—Any unique animal type, not listed, that has a similar manure characteristic as one **(1)** of the listed animal unit categories. The department shall make the determination of an animal unit equivalent based upon manure characteristics that include manure volume and nutrient concentration;

4. Animal feeding operation (AFO)—A lot, building, or complex at an operating location where animals are stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve- (12-) month period, and crops, vegetation, forage growth, or post-harvest residues cannot be sustained over at least fifty percent (50%) of the animal confinement area within the normal crop growing season;

5. Catastrophic storm event—A precipitation event of twenty-four- (24-) hour duration that exceeds the twenty-five- (25-) year, twenty-four- (24-) hour storm event as defined by the most recent publication of the National Weather Service Climate Atlas;

6. Chronic weather event—The chronic weather event will be based upon an evaluation of the *[one-in-]* ten (*[1-in-]*10) year return rainfall frequency over a ten- (10-) day, ninety- (90-) day, one hundred eighty- (180-) day, and three hundred sixty-five- (365-) day operating period. It is preferred the University of Missouri's Missouri Climate Center will determine, within a reasonable time frame, when a chronic weather event is occurring for any given county in the state;

7. Class I and Class II operation—An AFO or CAFO's class size is based on the operating level in animal units of an individual animal type at one (1) operating location. Once a CAFO becomes a Class I operation, the animal units of all confined animals at the operating location are summed to determine whether the operation is Class IA, IB, or IC. Operations that are smaller than the Class II category are considered unclassified. The class categories, sorted by animal type, are presented in the following chart:

1 Animal Unit =

1**.0**	Beef cow*[s]*, feeder *[cattle]*, veal *[calves]* **calf**, *[and]* cow/calf pair*[s]***, and dairy heifer**	10	Sheep, lambs, and meat and dairy goats
0.5	Horses	30	Chicken laying hens**, pullets,** and broilers with a wet handling system
0.7	Mature *[d]***D**airy cows		
2.5	Swine weighing over 55 pounds	55	Turkeys in growout phase
10	Swine weighing *[less than]* **under** 55 pounds	82	Chicken laying hens without a wet handling system
5	**Ducks with a wet handling system**	125	Chicken broilers and pullets, and turkey poults in brood phase, all without a wet handling system
300	**Ducks without a wet handling system**		

Animal Class Category

Animal Class Category	**Class IA 7,000 AUs***	**Class IB 3,000 to 6,999 AUs***	**Class IC 1,000 to 2,999 AUs***	**Class II 300 to 999 AUs***
Beef cows, feeder cattle, veal calves, *[and]* cow/calf pairs**, and dairy heifers**	7,000	3,000 to 6,999	1,000 to 2,999	300 to 999
Horses	3,500	1,500 to 3,499	500 to 1,499	150 to 499
Mature *[d]***D**airy *[c]***C**ows	4,900	2,100 to 4,899	700 to 2,099	200 to 699
Swine weighing over 55 *[lbs.]* **pounds**	17,500	7,500 to 17,499	2,500 to 7,499	750 to 2,499
Swine weighing under 55 *[lbs.]* **pounds**	70,000	30,000 to 69,999	10,000 to 29,999	3,000 to 9,999
Sheep, lambs, and meat and dairy goats	70,000	30,000 to 69,999	10,000 to 29,999	3,000 to 9,999
Chicken laying hens**, pullets,** and broilers with a wet handling system	210,000	90,000 to 209,999	30,000 to 89,999	9,000 to 29,999
Chicken laying hens without a wet handling system	574,000	246,000 to 573,999	82,000 to 245,999	24,*[6]***5**00 to 81,999
Turkeys in growout phase	385,000	165,000 to 384,999	55,000 to 164,999	16,500 to 54,999
Chicken broilers and pullets, and turkey poults in brood phase, all without a wet handling system	875,000	375,000 to 874,999	125,000 to 374,999	37,500 to 124,999
Ducks without a wet handling system	**210,000**	**90,000 to 209,999**	**30,000 to 89,999**	**10,000 to 29,999**
Ducks with a wet handling system	**35,000**	**15,000 to 34,999**	**5,000 to 14,999**	**1,500 to 4,999**

*Animal Units *[AUs]*

8. Concentrated animal feeding operation (CAFO)—An AFO that meets one (1) of the following criteria:

A. Class I operation;

B. Class II operation where either one (1) of the following conditions are met:

(I) Pollutants are discharged *[directly]* into waters of the state through a manmade ditch, flush system, or other similar manmade device; or

(II) Pollutants are discharged directly into waters of the state which originate outside of and pass over, across, or through the production area or otherwise come into contact with the animals confined in the operation; or

C. An unclassified operation that is designated as a CAFO in accordance with subsection (2)(D) of this rule;

9. Critical watersheds—defined as the following:

A. Watersheds for public drinking water lakes (L1 lakes defined in 10 CSR 20-7.031 and identified in Table G);

B. Watersheds located upstream away from the dam from all drinking water intake structures on lakes including the watershed of Table Rock Lake;

C. Areas in the watershed and within five (5) miles upstream of any stream or river drinking water intake structure, other than those intake structures on the Missouri and Mississippi Rivers; and

D. Watersheds of the Current (headwaters to Northern Ripley County Line), Eleven Point (headwaters to Hwy. 142), and Jacks Fork (headwaters to mouth) Rivers;

10. Discharge—A CAFO is said to discharge when it is designed, constructed, operated, or maintained such that a discharge of process waste to surface waters of the state will occur. *[This does not include CAFOs that merely have the potential to discharge to waters of the state.]* A CAFO that discharges could include one **(1)** that continuously discharges process wastewater to surface waters of the state, as well as one that may only have an intermittent and sporadic discharge. Discharges of agricultural storm water is a nonpoint source and therefore not included within this definition;

11. Dry process waste—A process waste mixture which may include manure, litter, or compost (including bedding, compost, **mortality by-products,** or other raw materials which is commingled with manure) and has less than seventy-five percent (75%) moisture content and does not contain any free draining liquids;

12. Flush system—Any animal waste moving or removing system utilizing the force of periodic liquid flushing as the primary mechanism for removing manure from animal containment buildings, as opposed to a primarily mechanical or automatic device. This definition does not include confinement buildings that utilize deep or shallow underfloor pits with pull plug devices;

13. Land application area—Agricultural land which is under the operational control of the CAFO owner or operator, whether it is owned, rented, or leased, to which manure, litter, or process wastewater from the production area is or may be applied;

14. Multi-year phosphorus application—Phosphorus applied to a field in excess of the crop needs for that year. When multi-year phosphorus applications are followed, no additional manure, litter, or process wastewater is applied to the same land in subsequent years until the applied phosphorus has been removed from the field via harvest and crop removal or until subsequent soil testing allows for nitrogen-based rates;

15. No-discharge operation—A CAFO is considered no-discharge if the operation is designed, constructed, operated, and maintained in a manner such that the CAFO will not discharge to waters of the state. A discharge of agricultural storm water is a nonpoint source and therefore not included within this definition;

16. Occupied residence—A residential dwelling which is inhabited at least fifty percent (50%) of the year;

17. Operating location—For purposes of determining CAFO classification, an operating location includes all contiguous lands owned, operated, or controlled by one (1) person or by two (2) or more persons jointly or as tenants in common or noncontiguous lands if they use a common area for the land application of wastes. State and county roads are not considered property boundaries for purposes of this rule. Two (2) or more animal feeding operations under a common ownership are considered to be a single animal feeding operation if they adjoin each other or if they use a common area for the land application of wastes;

18. Overflow—The discharge of process wastewater resulting from the filling of wastewater or manure storage structures beyond the point at which no more manure, process wastewater, or stormwater can be contained by the structure;

19. Process wastewater—Water which carries or contains manure, including manure commingled with litter, compost, or other animal production waste materials used in the operation of the CAFO. Also includes water directly **or indirectly** used in the operation of the CAFO for any or all of the following: spillage or overflow from confined animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other CAFO facilities; and water resulting from the washing, or spray cooling of confined animals**. Process wastewater also includes any water which comes into contact with any raw materials, products, or by-products feed, milk, eggs, or bedding**;

20. Production area—The non-vegetated portions of an operation where manure, litter, or process wastewater from the AFO is generated, stored, and/or managed. The production area includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes, but is not limited to, open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes, but is not limited to, lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes, but is not limited to, feed and silage**,** silos, pads, and bunkers**, and bedding materials**. The waste containment area includes, but is not limited to, settling basins and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing operation and any area used in the storage, treatment, or disposal of animal mortalities;

21. Public building—A building open to and used routinely by the public for public purposes;

22. Vegetated buffer—A narrow, permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for the purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters; *[and]*

23. Waste management system—Includes all structures and equipment, used to collect, store, transfer or treat, manure, litter, and/or process waste water. A waste management system will be considered in operation when animals are placed in confinement; and

*[23.]***24.** Wet handling system—Wet handling system is the handling of process wastewater that contains more than seventy five percent (75%) moisture content or has free draining liquids. A wet handling system includes, but is not limited to, lagoons, pits, tanks, all gravity outfall lines, recycle pump stations, recycle force mains, and appurtenances.

(2) Applicability and Application for Coverage.

(A) Scope of Rule. This rule applies solely to manure, litter, and/or process wastewater management systems at concentrated animal feeding operations (CAFOs). CAFOs are point sources, and are subject to both state and federal National Pollutant Discharge Elimination System (NPDES) regulations in accordance with sections 640.710 and 644.026, RSMo.

(B) Permit Coverage Required—Any CAFO owner or operator *[that proposes the construction, modification, expansion, and/or*

operation of a manure, litter, and/or process] **shall obtain one (1) of the operating permits listed below prior to operating a** waste*[water]* management system at a concentrated animal feeding operation *[shall obtain one (1) or more of the following permits listed below]* unless otherwise exempted under subsection (2)(E) of this rule*[.]***:**

[1. Construction permit—All existing or proposed Class I CAFOs must obtain a construction permit prior to the initial construction, installation, modification, or expansion of a manure, litter, or process wastewater management system.]

*[2.]***1.** NPDES **general or site-specific operating** permits—Owners or operators of Class I CAFOs that discharge **and Class II AFOs that are defined or designated as a CAFO,** must obtain a *[state]* NPDES operating permit *[before any discharge occurs]*. Class I CAFOs that do not discharge may also apply for coverage under an NPDES **operating** permit*[.]***;**

*[3.]***2.** State no-discharge **operating** permit—Owners or operators of Class I CAFOs that do not *[intend to]* discharge *[or propose to discharge]* and do not apply for coverage under a *[state]* NPDES **operating** permit shall obtain and maintain coverage under a state no-discharge operating permit. *[Compliance with a state no-discharge permit will provide a CAFO "No-Discharge Certification" in accordance with 40 CFR 122.23(i) and (j) July 1, 2009, 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.]*

[(C) Voluntary Permit Coverage—Any owner or operator of a Class II or smaller AFO, which is not otherwise designated as a CAFO, may on their own behalf elect to be covered under one (1) of the above three (3) permits. Any person making such an election will be subject to all terms and conditions of the permit unless and until permit coverage is terminated.]

*[(D)]***(C)** CAFO Designation at Class II Size AFOs.

1. The department may designate an AFO as a concentrated animal feeding operation upon determining that it is a significant contributor of pollutants to waters of the state. In making such designation, the department shall consider the following factors:

A. The size of the AFO and the amount of wastes reaching waters of the state;

B. The location of the AFO relative to waters of the state;

C. The means of conveyance of animal wastes and process waste into waters of the state;

D. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes manure and process waste into waters of the state; and

E. Other relevant factors.

2. No AFO shall be designated under this section unless the department has conducted an on-site inspection of the operation and determined that the operation should and could be regulated as a concentrated animal feeding operation. In addition, no AFO with number of animals below a Class II size operation may be designated as a CAFO unless—

A. Pollutants are discharged into waters of the state through a manmade ditch, flushing system, or other similar manmade device; or

B. Pollutants are discharged directly into the waters of the state which originate outside of the AFO and pass over, across, or through the AFO, or otherwise come into direct contact with the animals confined in the operation.

*[(E)]***(D)** Exemptions.

[1. Pilot projects or demonstration projects for beneficial use may receive construction permit exemption by written approval from the department. An operating permit application shall be submitted at least ninety (90) days prior to end of the demonstration period if the operation intends to continue use of the pilot project.

2. Construction permits are not required for the construction or alteration of mortality composters or other storage buildings for dry process waste when the compost operation or dry process waste storage is located within a roofed building and the storage floor complies with the requirements in 10 CSR 20-8.300.

3. Construction permits are not required for minor piping changes and other modifications include, but are not limited to, small sections of buried wastewater lines, normal repair or replacement of existing wastewater lines, installation of manholes, wet wells, and other changes that do not significantly impact the normal operation of the waste management system.]

*[4.]***1.** In accordance with section 640.758, RSMo, livestock markets and auctions are exempt from the provisions of 10 CSR 20-6.300(3)(B)–(C), 10 CSR 20-6.300(3)(H), and 10 CSR 20-6.300(7).

*[5.]***2.** Permits are not required for nonpoint source discharges, agricultural stormwater discharges, and return flows from irrigated agriculture. A precipitation related discharge of manure, litter, or process wastewater from land application areas under the control of a CAFO is considered an agricultural stormwater discharge when manure, litter, or process wastewater is applied in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater.

[6. If a construction permit is waived by the department, or for some other reason not required, part or all of the information necessary to issue a construction permit may be required with the application for the operating permit.]

*[(F)]***(E)** *[Construction and]* Operating Permit Applications. This section describes the application process and requirements for CAFO *[construction and general NPDES and state no-discharge]* operating permits. **A separate application for each operating location must be submitted to the department.**

[1. An application for a construction permit shall include the permit application documents required within the CAFO manure storage design rule at 10 CSR 20-8.300. The construction application shall also include the application for an operating permit along with all applicable permit fees. The department may require other information as necessary to determine compliance with the Missouri Clean Water Law and these regulations.

2. An operating permit application for an AFO that did not previously have a construction permit or letter of approval (LOA) shall include the permit application documents required within the CAFO manure storage design rule at 10 CSR 20-8.300.

3. All construction permit applications shall require engineering documents along with a professional engineer's seal affixed to such documents in accordance with 10 CSR 20-8.300.]

*[4.]***1.** The department will not examine the adequacy or efficiency of the structural, mechanical, or electrical components of the *[manure]* **waste** management systems, only adherence to rules and regulations. The issuance of permits will not include approval of such features.

2. Applications for general operating permits should be submitted at least ninety (90) days prior to the start of operation. Applications for site-specific operating permits shall be submitted at least one hundred eighty (180) days prior to the start of operation. The application shall include at a minimum the following documents:

A. Title page of engineering report or similar document including name of the operation, date the report was prepared, name and address of firm preparing the report, seal and signature of the engineer, and a statement indicating the project was designed in accordance with 10 CSR 20-8.300 and 10 CSR 20-6.300;

B. Narrative project summary. This shall describe the existing and any proposed modifications to operating conditions

including the number of confinement buildings or areas, the total design capacity in animal units and actual animal numbers for each type of animal, and an explanation of the existing and/or proposed modifications to the waste management system;

C. Include the amount of manure generated annually, storage volume, and days of storage of all manure storage structures, including mortality composter;

D. A recent aerial or topographic map showing the extent of the production area including;

(I) All existing and proposed confinement buildings, open lots, manure storage structures;

(II) Surface waters and areas subject to a one hundred (100) year flood event within or adjacent to the production area; and

(III) Production area setback distances in accordance with 10 CSR 20-8.300(5)(B);

E. Nutrient Management Plan—

(I) NPDES permit – applications shall include the operations' nutrient management plan; or

(II) State no-discharge permit – applications for a new permit shall include the operations' nutrient management plan;

F. Applications for Class I CAFOs shall also include:

(I) An aerial or topographic map that meets the requirement of 10 CSR 20-6.300(3)(C)4.;

(II) Proof of neighbor notice to all parties listed in 10 CSR 20-6.300(3)(C)2.

3. For renewal of NPDES operating permits, a copy of the operations nutrient management plan shall be submitted if it has not previously been submitted.

[5. An application for a construction permit should be submitted to the department at least one hundred eighty (180) days in advance of the date on which the proposed construction will begin. A separate application for each operating location must be submitted to the department.]

*[6.]***4.** When an application is submitted incomplete *[and missing key components,]* **or any of the required permit documents are deficient, or if additional information is needed including, but not limited to, engineering design plans, the department will act in one (1) of the following ways:**

A. *[t]***T**he department may return the entire permit application back to the applicant for re-submittal*[.]*; **or**

B. *[When an application is submitted sufficiently complete, but is otherwise deficient, t]***T**he applicant and/**or** the applicant's engineer will be notified of the deficiency and will be provided time to address department comments and submit corrections. Processing of the application may be placed on hold until the applicant has corrected identified deficiencies.

*[7.]***5.** Applicants who fail to correct deficiencies and/or fail to satisfy all department comments after two (2) certified department comment letters shall have the application returned as incomplete and the *[construction and operating]* permit fee(s) shall be forfeited. The department will grant reasonable time extensions when the applicant requests additional time to respond to department comments, however, such requests must be in writing and must occur within the time frame set by the department.

*[8.]***6.** When the department has received all documents and information necessary for a properly completed *[construction]* **operating** permit application, including appropriate permit fees, the department will, *[upon completion of the]* review **the application** and *[approval of]* said documents*[,]* **for compliance with this regulation and 10 CSR 20-8.300 and, if met,** act in one (1) of the following ways:

A. For an operation seeking coverage under the state no-discharge general operating permit the department will issue *[both the construction and]* the state no-discharge general operating permit *[concurrently]*; or

B. For an operation seeking coverage under the NPDES **operating** permit the department will post for fifteen (15) days on the department's webpage a notice of the pending CAFO NPDES permit. The notice will include an announcement of the opportunity for public review and comment on *[a]* **the** CAFO's nutrient management plan and draft NPDES permit. *[The public may request, in writing, a fifteen- (15-) day extension to the public notice period for a permit.]* The department will *[post the public notice of a pending CAFO NPDES permit and]* consider all comments before issuing the *[construction and]* operating permit. *[The construction and NPDES operating permit will be issued concurrently. A public notice will not be required prior to the issuance of a construction permit for a manure or wastewater pipeline or land application system.]*

[9. Construction permits shall expire one (1) year from the date of issuance unless the permittee applies for an extension. The department shall extend construction permits only one (1) time for a period not to exceed the originally issued effective period. An applicant requesting extension shall show that there have been no substantial changes in the original project. Extension requests should be received thirty (30) days prior to permit expiration.

10. When a construction permit is issued for a project for which the construction period is known in advance to require longer than one (1) year from the date of issuance, the department may issue a permit allowing a period of time greater than one (1) year upon the applicant showing that the period of time is necessary and that no substantial changes in the project will be made without first notifying the department. If there are substantial changes, the department may require the applicant to apply for a new construction permit.

11. Upon completion of construction and prior to the expiration date of the construction permit, the owner or operator for which a construction permit was issued, shall submit in writing on forms approved by the department the engineering certification of the newly constructed systems. Engineering certification will document that the project was completed in accordance with approved plans and specifications. If changes were made during construction, as-built drawings of said changes shall be submitted with the certification in accordance with 10 CSR 20-8.300.]

(3) **Operating** Permit Requirements. **These requirements apply to all operating permits unless otherwise specified.**

(A) General Requirements.

1. All **operating** permits required by this rule shall be issued in accordance with applicable provisions of 10 CSR 20-6.010, 10 CSR 20-6.011, 10 CSR 20-6.020, and 10 CSR 20-8.300. When the state regulations referenced within these rules are found to be incompatible with the requirements of 10 CSR 20-6.300, the provisions of 10 CSR 20-6.300 will take precedence.

2. *[For NPDES permits only—]*In addition to the state requirements found in this rule, all CAFO NPDES permits shall be issued in compliance with applicable federal regulation as set forth in 40 CFR 122.42(e), and 40 CFR 412, Subpart A through Subpart D, July *[1, 2009]* **30, 2012**, 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.

3. Permits shall allow the CAFO to operate at a*[n]* **level of** animal units *[level]* not to exceed its respective class size (i.e., Class IC or IB). When determining the appropriate classification, a rolling twelve- (12-) month average method will be used. The rolling twelve- (12-) month average shall at no time exceed the upper threshold limit of the CAFO's designated class size. CAFOs may change animal numbers and weights within its respective class size; however, such changes must not subsequently violate applicable effluent limitations found in section (4) of this rule or adversely impact the storage and handling capacities of the waste management system and may be subject to

other appropriate conditions or limitations. **If a Class I CAFO has reduced animal numbers and is operating as a Class II or smaller AFO, the operation may request termination of their operating permit. The rolling twelve- (12-) month average for the last twelve (12) months shall be submitted with the termination request. The department will then conduct an inspection to determine if the permit can be terminated. If the operation increases animal numbers to the Class I operating size, the owner or operator of the CAFO shall apply for an operating permit.**

4. Permits shall require the CAFO operator to provide the recipient of any manure, litter, or process wastewater transfer, a current manure nutrient analysis.

5. Mortalities must not be disposed of in any liquid manure or process wastewater system, unless specifically designed to handle them. Mortalities must be handled in such a way as to prevent the discharge of pollutants to surface waters and prevent the creation of a public health hazard.

(B) Buffer Distances.

1. All Class I concentrated animal feeding operations shall maintain a buffer distance between the nearest animal confinement building or wastewater storage structure and any existing public building or occupied residence. The public building or occupied residence will be considered existing if it is being used prior to the start of the neighbor notice requirements of subsection (C) of this section or thirty (30) days prior to *[construction]* **the date the department receives an operating** permit application, whichever is later. Buffer distances shall be—

A. One thousand feet (1000') for concentrated animal feeding operations between 1,000 and 2,999 animal units (Class IC operations);

B. Two thousand feet (2,000') for concentrated animal feeding operations between 3,000 and 6,999 animal units (Class IB operations); and

C. Three thousand feet (3,000') for concentrated animal feeding operations equal to or greater than 7,000 animal units (Class IA).

2. When a CAFO proposes an expansion or modification but does not increase to a larger classification size, the buffer distance requirements shall be applicable only to the proposed confinement buildings and wastewater storage structures unless exempted by paragraph 3. of this subsection. Neighbor notice requirements of subsection (C) of this section shall apply to all existing and proposed confinement buildings and wastewater storage structures. If the proposed expansion or modification results in an increase to a larger classification size, the buffer distance and neighbor notice requirement of the larger classification size will apply to all existing and proposed confinement buildings and wastewater storage structures unless exempted by paragraph 4. of this subsection.

*[2.]***3.** A concentrated animal feeding operation and any future modification or expansion of a CAFO is exempt from buffer distance requirements, but not neighbor notice requirements, when it meets all of the following criteria:

A. The CAFO was in existence prior to June 25, 1996; and

B. The CAFO does not expand to a larger classification size.

*[3.]***4.** When existing animal feeding operations or concentrated animal feeding operations expand to a larger class size, the *[setback]* **buffer** distances shall not apply to the portion of the operation in existence as of June 25, 1996.

*[4.]***5.** Buffer distances are not applicable to residences owned by the concentrated animal feeding operation or a residence from which a written agreement for operation is obtained from the owner of that residence. When shorter *[setback]* **buffer** distances are proposed by the operation and allowed by the department, the written agreement for a shorter *[setback]* **buffer** distance shall be recorded with the county recorder and filed in the chain of title for the property of the land owner agreeing to the shorter buffer distance.

*[5.]***6.** The department may, upon review of the information contained in the *[construction]* **operating permit** application, including, but not limited to, the prevailing winds, topography, and other local environmental factors, authorize a buffer distance which is less than the distance prescribed in this rule. The department's recommendation shall be sent to the governing body of the county in which such site is proposed. The department's authorized buffer distance shall become effective unless the county governing body rejects the department's recommendation by a majority vote at the next meeting of the governing body after the recommendation is received.

(C) Neighbor Notice Requirements *[for Construction Permits]*.

1. Prior to filing an application for a**n** *[construction]* **operating** permit with the department for a new or expanding Class I concentrated animal feeding operation, the following information shall be provided by way of a letter to all the parties listed in paragraph (3)(C)2. of this section:

A. The number of animals designed for the operation;

B. A brief summary of the waste handling plan and general layout of the operation;

C. The location and number of acres of the operation;

D. Name, address, and telephone number of registered agent or owner;

E. Notice that the *[operation and the]* department will accept written comments for a thirty- (30-) day period. The **department will accept written comments from the public for** thirty*[-]* (30*[-]*) day**s** *[notice period will begin on the day the construction]* **after receipt of the operating** permit application *[is received by the department]*; and

F. The address of the department office receiving comments.

2. The neighbor notice shall be provided to the following:

A. The department's Water Protection Program;

B. The county governing body; and

C. All adjoining owners of property located within one and one-half (1 1/2) times the buffer distances specified in subsection (3)(B). Distances are to be measured from the nearest animal confinement building or wastewater storage structure to the adjoining property line.

3. The *[construction]* **operating** permit applicant shall submit to the department proof the above notification has been sent. An acceptable form of proof includes copies of mail delivery confirmation receipts, return receipts, or other similar documentation.

4. All concentrated animal feeding operations shall submit, as part of the *[construction or]* operating permit application, an aerial or topographic map of the production area. The maps shall show the operation layout, buffer distances, property lines, and property owners within one and one-half (1 1/2) times the buffer distance.

5. The neighbor notice will expire if a**n** *[construction]* **operating** permit application has not been received by the department within twelve (12) months of initiating the neighbor notice requirements.

(D) Inspections. *[This subsection pertains to all CAFO operating permits.]*

1. Permits shall require the following minimum visual inspections at the production area:

A. Weekly inspections of all storm water diversion devices, runoff diversion structures, and devices channeling contaminated storm water to the process wastewater storage;

B. Daily inspection of water lines, including wastewater, drinking water, and cooling water lines that can be visually observed within the production area. The inspection of the drinking water and cooling water lines shall be limited to the lines that possess the ability to leak or drain to wastewater storage structures or may come in contact with any process waste;

C. Weekly inspections of the manure, litter, and process wastewater impoundments. The inspection will note the level in liquid impoundments as indicated by the depth marker; and

D. *[Periodically]* **Once per day when in use** conduct leak inspections on equipment used for land application of manure or process wastewater.

2. Permits shall require the following minimum visual inspections at the land application area:

A. Monitoring of the perimeter of the application fields **once per day during land application** to ensure that applied wastewater does not run off the fields where applied;

B. Monitor for drifting from spray irrigation; and

C. Hourly inspections of aboveground irrigation pipelines when in use.

3. Permits shall require that any deficiencies found as a result of inspections be corrected as soon as possible.

(F) Annual Reports. This section *[pertains to]* **is required for** NPDES operating permits **only**.

1. NPDES **operating** *[P]***p**ermits shall require the submission of an annual report that includes:

A. The number and type of animals confined at the operation;

B. Estimated amount of total manure, litter, and process wastewater generated by the operation in the previous twelve (12) months;

C. Estimated amount of total manure, litter, and process wastewater transferred to other persons by the operation in the previous twelve (12) months;

D. Total number of acres for land application covered by the nutrient management plan;

E. Total number of acres under control of the operation that were used for land application of manure, litter, and process wastewater in the previous twelve (12) months;

F. Summary of all manure, litter, and process wastewater discharges from the production area to waters of the state that have occurred in the previous twelve (12) months, including date, time, and approximate volume; *[and]*

G. A statement indicating whether the current version of the CAFO's nutrient management plan was developed or approved by a certified nutrient management planner*[.]***; and**

H. The actual crop(s) planted and actual yield(s) for each field, the actual nitrogen and phosphorus content of the manure, litter, and process wastewater, the data used to calculate and the results of annual calculations for maximum amount of manure, litter, and process wastewater to be applied, the amount of manure, litter, and process wastewater applied to each field during the previous twelve (12) months, the results of any soil tests for nitrogen and phosphorus taken during the previous twelve (12) months, and the amount of any supplemental fertilizer applied during the previous twelve (12) months.

(G) Best Management Practices (BMPs)—Each CAFO subject to *[this section]* **10 CSR 20-6.300,** that land applies manure, litter, or process wastewater must do so in accordance with the following practices:

1. Nutrient management plan. **Operating** *[P]***p**ermits shall require a nutrient management plan be developed and implemented according to the requirements of 10 CSR 20-6.300(5). The plan must also incorporate the requirements of paragraph (3)(G)2. below. *[New CAFOs that apply for a construction permit must develop and submit a nutrient management plan with the construction permit application, unless otherwise stipulated by the department.]* The CAFO must begin implementation of the plan upon the date of operating permit coverage; *[and]*

2. Manure, litter, and process wastewater applied to the land application area must minimize phosphorus and nitrogen transport from the field to surface waters in compliance with the Missouri Concentrated Animal Feeding Operation Nutrient Management Technical Standard (NMTS) approved by the Clean Water Commission on March 4, 2009, in accordance with 40 CFR 123.36, as published by the Missouri Department of Natural Resources, Division of Environmental Quality, Water Protection Program, PO Box 176, Jefferson City, MO 65102-0176, which is hereby incorporated by reference into this rule without any later amendments or additions, or an alternative but equally protective standard subsequently approved by the department that includes, but is not limited to, the following:

A. Include a field-specific assessment of the potential for phosphorus transport from the field to surface waters and address the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and phosphorus movement to surface waters;

B. Include appropriate flexibilities for any CAFO to implement nutrient management practices to comply with the technical standards, including consideration of multiyear phosphorus application on fields that do not have a high potential for phosphorus runoff to surface water, phased implementation of phosphorus-based nutrient management, and other components, as determined appropriate by the department;

C. Require that manure be analyzed a minimum of once annually for nitrogen and phosphorus content, and soil be analyzed a minimum of once every five (5) years for phosphorus content. The results of these analyses are to be used in determining application rates for manure, litter, and other process wastewater;

D. Include conditions that will ensure manure, litter, and process wastewater applications are conducted in a manner that prevents surface runoff of process wastewater beyond the edge of the field. Such measures will include, but not be limited to, restricting the timing, soil conditions, and placement of manure during land application; and

E. Include appropriate land application setbacks that at a minimum require manure, litter, and process wastewater be land applied not closer than one hundred feet (100') from any down-gradient surface waters, open tile line intake structures, sinkholes, agricultural well heads, or other conduits to surface waters unless the operation complies with one (1) of the following compliance alternatives:

(I) For surface and subsurface applications, a setback consisting of a thirty-five foot- (35'-) wide vegetated buffer where applications of manure, litter, or process wastewater are prohibited; or

(II) The CAFO demonstrates that a setback or buffer is not necessary because implementation of alternative conservation practices or field-specific conditions will provide pollutant reductions equivalent or better than the reductions that would be achieved by the one hundred foot (100') setback*[.]***;**

3. Land application shall occur during daylight hours only. Night time applications shall only occur when the department has approved the night time land application plan.

(H) **Additional Requirements for** Class IA *[Requirements. This section pertains to Class IA]* CAFOs only.

1. The owner or operator of any Class IA concentrated animal feeding operation with a wet handling system which also utilizes a flush system shall employ one (1) or more persons who shall visually inspect the *[wet handling system]* **gravity outfall lines, recycle pump stations, recycle force mains, and appurtenances for any release to any containment structure**. Visual inspections shall be made at least *[every twelve (12) hours with a deviation from the twelve- (12-) hour requirement not to exceed three (3) hours]* **once per week**. The inspections shall *[focus on]* **also include** the structural integrity of the collection system and containment structures along with any unauthorized discharges from the flush and wet handling systems. Records shall be maintained by the facility for a minimum of three (3) years on forms approved by the department.

2. Any unauthorized discharges that cross the property line of the facility, or enter the waters of the state from a Class IA concentrated animal feeding operation with a wet handling system that also utilizes a flush system, shall be reported to the department and to all adjoining property owners of the facility within twenty-four (24) hours.

3. Class IA concentrated animal feeding operation with a wet handling system which also utilizes a flush system shall receive at least one (1) on-site inspection by the department each quarter.

4. All Class IA concentrated animal feeding operations with a wet handling system which also utilizes a flush system shall have a

secondary containment structure(s) or earthen dam(s). The containment structure(s) or earthen dam(s) shall be sized to contain a minimum volume equal to the maximum capacity of flushing in any twenty-four- (24-) hour period from all gravity outfall lines, recycle pump stations, and recycle force mains.

5. All Class IA concentrated animal feeding operations with a wet handling system which also utilizes a flush system shall have an electronic or mechanical shut-off in the event of pipe stoppage or backflow. For new facilities, the shut-off shall be included as part of the construction permit application.

6. Class IA concentrated animal feeding operations (both new and those operations that wish to expand to Class IA size) are prohibited from the watersheds of the Current, Jacks Fork, and Eleven Point Rivers as described in 10 CSR 20-6.300(1)(B)9.D.

7. The owner or operator shall visually inspect once per day any lagoon whose water level is less than twelve (12) inches from the emergency spillway. The inspection shall note the level of water below the emergency spillway. A record of these inspections shall be included with the operations annual report.

(4) Design Standards and Effluent Limitations.

(A) Effluent Limitations Applicable to All Class I CAFOs.

1. New and expanding CAFOs that apply for a**n** *[construction]* **operating** permit *[after the effective date of 10 CSR 20-8.300]* shall have manure litter, and process wastewater management systems designed and constructed in accordance with the CAFO manure storage design standard rule 10 CSR 20-8.300.

2. Effluent limits for subsurface waters shall be in accordance with 10 CSR 20-7.015(7)(E).

3. *[For]* NPDES **operating** permits *[only—CAFOs]* shall **also** comply with effluent limitations as set forth in 40 CFR Part 412, Subpart A through Subpart D, July *[1, 2009]* **30, 2012**, 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, which are hereby incorporated by reference.

4. There shall be no discharge of manure, litter, or process wastewater to waters of the state from a CAFO as a result of the land application of manure, litter, or process wastewater to land application areas under the operational control of the CAFO, except where it is an agricultural storm water discharge. When manure, litter, or process wastewater has been land applied in accordance with subsection (3)(G) of this rule, a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of the CAFO is considered to be an agricultural storm water discharge.

5. A chronic weather event is a series of wet weather events and conditions that can delay planting, harvesting, and prevent land application and dewatering practices at wastewater storage structures. When wastewater storage structures are in danger of an overflow due to a chronic weather event, CAFO owners shall take reasonable steps to lower the liquid level in the structure through land application, or other suitable means, to prevent overflow from the storage structure. Reasonable steps may include, but are not limited to, following the department's current guidance on "Wet Weather Management Practices for CAFOs." These practices shall be designed specifically to protect water quality during wet weather periods. **A discharge resulting from a land application conducted during wet weather conditions is not considered an agricultural stormwater discharge and is subject to permit requirements.** The *[University of Missouri's Missouri Climate Center]* **department** will determine, within a reasonable time frame, when a chronic weather event is occurring for any given county in Missouri. The *[Missouri Climate Center's]* determination will be based upon an evaluation of the one-in-ten (1-in-10) year return rainfall frequency over a ten- (10-) day, **ninety- (90-) day,** one hundred *[twenty]* **eighty**- (1*[2]***8**0-) day, and three hundred sixty-five- (365-) day operating period.

(B) Additional Limitations for State No-Discharge **Operating** Permits *[at Class I CAFOs]*. *[A state no-discharge permit will serve as a CAFO "No-Discharge Certification" in accordance with 40 CFR 122.23(i).]*

1. There shall be no discharge of manure, litter, or process wastewater into surface waters of the state from the production area.

2. If at any time a CAFO's waste management system is found to be discharging, the department may revoke the CAFO's no-discharge permit and require the CAFO to seek coverage under a NPDES permit.

3. If a discharge occurs at a CAFO with a state no-discharge permit, the owner or operator must submit to the department for review and approval the following documentation: a description of the discharge, including the date, time, cause, duration, and approximate volume of the discharge, and a detailed explanation of the steps taken by the CAFO to permanently address the cause of the discharge that will ensure that a discharge from this cause does not occur in the future.

4. When a discharge occurs at a CAFO, the CAFO will be allowed to maintain coverage under the no-discharge permit when the following two (2) conditions are met:

A. The department determines that the specific cause has been appropriately corrected so that the CAFO does not discharge; and

B. The CAFO has not had two (2) discharges at a given site for the same cause in any five- (5-) year period.

5. If a CAFO has two (2) separate discharge events brought about by the same cause, the department may terminate the no-discharge permit in which case the CAFO will be required to seek coverage under a NPDES permit.

[6. In accordance with 40 CFR 122.24(j), when a discharge occurs at a CAFO, the CAFO will not be in violation of the requirement to seek NPDES permit coverage so long as the CAFO has operated and maintained the CAFO in compliance with the permit.]

(C) Effluent Limitations Applicable to Class II and Smaller Sized AFOs. When a Class II or smaller sized AFO is designated as a CAFO by the department, the specific effluent limitations will be based upon the department's best professional judgment*[, but]***. The specific effluent limits** shall not be more stringent than those for Class I CAFOs.

(5) Nutrient Management Plans **(NMP)**—In accordance with paragraph (3)(G)1. of this rule, **operating** permits shall require the development and implementation of a nutrient management plan. A portion of a CAFO's nutrient management plan includes the *[engineering design and construction-related]* documents within a CAFO's *[construction and]* operating permit application*[. The plan also includes]* **and** annual reports *[and updates submitted to the department]*. The plan must comply with the requirements found within the Nutrient Management Technical Standard which will satisfy the criteria in subsections (G), (H), and (I) below. **The NMP shall be maintained according to the requirements of paragraph (3)(G)2. of this rule. For NPDES permits only, any revisions to the NMP must be submitted to the department for review with the changes from the previous version identified. Substantial changes to the terms of the NMP incorporated into the NPDES operating will require a permit modification and a fifteen- (15-) day public notice period.** The plan must, at a minimum, address the following areas:

(6) Closure of Waste Storage Structures.

(B) Closure Requirements*[.]*—

1. Lagoons and waste storage structures shall be closed by removal and land application of all wastewater and sludge;

2. The removed wastewater and sludge shall be land applied at agricultural rates for fertilizer not to exceed the maximum nutrient utilization of the land application site and vegetation grown and shall be applied at controlled rates so that there will be no discharge to waters of the state; and

3. After removal and proper land application of wastewater and

sludge, the earthen basins may be demolished by removing the berms, grading, and *[revegetation]* **establish at least seventy percent (70%) plant density over one hundred percent (100%)** of the site so as to provide erosion control, or the basin may be left in place for future use as a farm pond or similar uses.

AUTHORITY: section[s] 640.710, RSMo 2000, and section 644.026, RSMo Supp. 2014. Original rule filed June 1, 1995, effective Jan. 30, 1996. For intervening history, please consult the Code of State Regulations. Amended: Filed Jan. 26, 2016.

PUBLIC COST: This proposed amendment results in a net loss of revenue to the Department of Natural Resources. The aggregate revenue loss is estimated to be eighteen thousand eight hundred thirty-seven dollars ($18,837) annually.

PRIVATE COST: This proposed amendment results in a net savings to private entities. The aggregate savings is estimated to be ninety-two thousand six hundred forty-five dollars ($92,645) annually.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Natural Resources, Division of Environmental Quality, Water Protection Program, Diane Reinhardt, PO Box 176, Jefferson City, MO 65102. Comments may be sent with name and address through email to greg.caldwell@dnr.mo.gov. Public comments must be received by May 18, 2016. The public hearing is scheduled at a meeting of the Clean Water Commission to be held at 10 a.m., on April 6, 2016, at the Department of Natural Resources, Lewis and Clark State Office Building, LaCharrette/Nightingale Conference Rooms, 1101 Riverside Drive, Jefferson City, Missouri 65101.

FISCAL NOTE
PUBLIC COST

I. Department Title: Department of Natural Resources
Division Title: Clean Water Commission
Chapter Title: Permits

Rule Number and Title:	10 CSR 20-6.300, Concentrated Animal Feeding Operations
Type of Rulemaking:	Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Natural Resources	Net loss of revenue of $18,837.48

III. WORKSHEET

Lost revenue to the department.
Reduced number of construction permits.
$1000 application fee X 48 applications/year = $48,000.00

No Class II operating permits.
3 applications/year X $150 annual fee = $450.00

Cost savings to the department.
No construction permit reviews by department staff.
20 hours/application $35.01/hourly wage for EEII@ 48 applications/year = $33,606.08

No as-built or Statement of Work Completed review by department staff.
2 hour/application $35.01/hourly wage for EEII @ 48 applications/year = $3,360.65

Cost increases to the department.
Increased time spent on operating permit review.
5 hours/application $30.64/hourly wage for ESIII X 48 applications =

TOTAL LOST REVENUE	$48,450.00
TOTAL COST INCREASES	$7,354.61
TOTAL COST SAVINGS	$36,967.13
NET LOSS TO THE DEPARTMENT	$18,837.48

IV. ASSUMPTIONS

1. An annualized aggregate cost of this rulemaking is used for the purposes of providing the aggregate cost for the life of the rule. The annualized aggregate cost is the agency estimate of the average costs that will be incurred in any future year, no matter how far distant. For convenience of calculating this fiscal note over a reasonable time period, the life of the rule is assumed to be indefinite. If the life of the rule extends beyond 1 year, the annual costs for additional years will be consistent with the assumptions used to calculate annual costs as identified in this fiscal note.

2. It is difficult to estimate the cost for the department to comply with this rulemaking as it is impossible to predict how many applications will be received in a year. Therefore, the number of applications is based on recent applications. The estimated average cost was determined on a per application basis. Operating permit applications for minor modifications such as facility name change and ownership transfer are not included in this estimate as these requirements have not changed.

3. The reduction of construction permit applications and the elimination of voluntary operating permit applications will result in a loss of revenue to the department. Construction and operating permit fees are based on the fee structure effective January 1, 2015.

4. Construction permit and as-builts or a Statement of Work Completed is no longer required for CAFOs that are not constructing an earthen storage basin. The reduction of construction permit applications will reduce the amount of time spent by engineering staff for review of applications. The hourly rate for an Environmental Engineer II (EEII) is based on the Office of Administration, Division of Personnel pay grid.

5. Some supporting documentation is now required with an operating permit application that was required with a construction permit. Fewer supporting documents are required and no new requirements were added. The amount of time for review on operating permits for operating permit staff will increase, but the amount of time for reviewing construction permits for engineering staff has decreased. This has resulted in an overall decrease in the amount of review time in the permitting process. The amount of time support staff spends issuing the permit has not changed. The hourly rate for an Environmental Specialist III (ESIII) is based on the Office of Administration, Division of Personnel pay grid.

6. This fiscal note accounts for costs associated with the review of construction permit applications by engineering staff and operating permit applications by permit writer staff as these permit requirements were in this regulation. Any costs associated with engineering staff to comply with the 10 CSR 20-8.300 Manure Storage Design Regulations revision, which is being conducted concurrently, is accounted for in the fiscal note for that regulation.

FISCAL NOTE
PRIVATE COST

I. Department Title: Department of Natural Resources
Division Title: Clean Water Commission
Chapter Title: Permits

Rule Number and Title:	10 CSR 20-6.300, Concentrated Animal Feeding Operations
Type of Rulemaking:	Amendment

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
48 CAFO owners each year. **Engineering Services**	**SIC NAICS** **0211 112112 Cattle Feedlots** **0213 112210 Hog and Pig Farming** **0214 112420 Goat Farming** **0214 112410 Sheep Farming** **0241 112120 Dairy Cattle and Milk Production** **0251 112320 Broilers and Other Meat Type Chicken Production** **0252 112310 Chicken Egg Production** **0253 112330 Turkey Production** **0254 112340 Poultry Hatcheries** **0259 112390 Other Poultry Production** **0272 112920 Horses and Other Equine Production** **541330 Engineering services**	**$92,645.10 savings** **As a result of savings to CAFO owners, private engineering services will have a revenue loss of $40,320.**

III. WORKSHEET

Cost Savings

No construction permit required.
$1000 application fee X 48 applications = $48,000

No construction permit application preparation.
8 hours/application X $120/ hourly engineering fee X 48 applications = $46,080

No as-built or Statement of Work Completed required.
2 hours/application X $120.00/hourly engineering fee X 48 application = $11,520

Reduced inspections and record keeping by Class IA CAFOs with wet flush system.
676 fewer inspection/year @ 1 hour/inspection X $33.27/hourly wage for EHSM X 10 facilities = $224,905.20

Cost Increases
Additional lagoon inspections and record keeping by Class IA CAFOs.
20 inspections/year @ 1 hour/inspection X $33.27/hour X 19 operations = $12,642.60

Increased land application and record keeping equipment inspections for CAFOs.
25 inspections/year @ 1 hour/inspection X $33.27/ hourly wage for EHSM X 250 operations = $207,937.50

Additional operating permit application preparation
3 hours/application X $120/hour X 48 applications = $17,280

TOTAL COST SAVINGS	$330,505.20
TOTAL COST INCREASES	$237,860.10
TOTAL NET SAVINGS	$92,645.10

IV. ASSUMPTIONS

1. An annualized aggregate cost of this rulemaking is used for the purposes of providing the aggregate cost for the life of the rule. The annualized aggregate cost is the agency estimate of the average costs that will be incurred in any future year, no matter how far distant. For convenience of calculating this fiscal note over a reasonable time period, the life of the rule is assumed to be indefinite. If the life of the rule extends beyond 1 year, the annual costs for additional years will be consistent with the assumptions used to calculate annual costs as identified in this fiscal note.

2. The number of Concentrated Animal Feeding Operations (CAFO) applications submitted to the department varies from year to year and some CAFO owners may submit more than one application. For cost estimates of this fiscal note, the number of applications is based on recent submittals and each application is submitted by a different owner. The estimated cost was determined on a per application basis. Operating permit applications for minor modifications such as facility name change and ownership transfer are not included in this estimate, as these requirements have not changed.

3. Construction permit fees are based on the fee structure effective January 1, 2015.

4. Class IA CAFOs will be required to conduct additional daily inspections of lagoons when water levels are within one foot of the emergency spillway. Records of these inspections must also be maintained. Because this is requirement is dependent on precipitation amounts, storm frequencies and management of individual lagoons, it is not possible to know the exact number of inspections that will be required and it will vary from year to year. It is estimated this could increase the number lagoon inspections by an average of 20 per year. Also, the number of inspections by Class IA CAFOs with wet flush systems will be reduced by 676 per year. This will also reduce the time spent on record keeping. There are approximately ten CAFO the have flush systems. These inspections are typically conducted by the Environment, Health and Safety Manager (EHSM) and take approximately one half hour to conduct per inspection.

5. Land application equipment will be required to be inspected daily when in use. It is estimated this will increase the average amount of inspections by 25 per year. Records of these inspections must also be maintained. This new requirement applies only to CAFO's that apply manure to fields that are under the operational control of the CAFO owner or operator whether owned, rented or leased. The wages of the CAFO owner or operation was unable to be determined, therefore, the EHSM wages were used.

6. The Environmental Health and Safety Manager (EHSM) hourly wage is based on the Bureau of Labor Statistics 50% median hourly wage from http://www.bls.gov/oes/current/oes299011.htm.

7. Engineering fees are based on a Deltek Axium 2011 survey median for engineering billing rates at https://www.axium.com/blog/architecture-and-engineering-billing-rate-trends/.

8. It is impossible to determine cost savings for each classification of business because there is no way of knowing which ones will submit operating permit applications. For new or expanding CAFOs that do not construct an earthen storage basin, the cost savings would be the same per application regardless of the classification. Based on current issued permits, that majority of cost savings would be in the NAICS Classifications of 112210 Hog and Pig Farming, 112320 Broilers and Other Meat Type Chicken Production, 112310 Chicken Egg Production and 112330 Turkey Production.

9. This fiscal note accounts for costs associated with permit applications and operating permit requirements. It does not account for costs associated with the engineering design of the CAFO. These costs are accounted for in the fiscal note for 10 CSR 20-8.300.

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

PROPOSED AMENDMENT

10 CSR 20-8.300 Manure Storage Design Regulations. The department is amending the purpose statement, eliminating section (4) and renumbering sections, and revising all other sections in the rule except section (13).

PURPOSE: The amendment will 1) reflect the statute change in 644.051, RSMo that eliminated construction permitting for Confined Animal Feeding Operations for projects that do not involve the construction of earthen basins, 2) improve and/or add definitions, 3) clarify items required in an application for engineering review, 4) edit rule language to reflect the recent change to the name of the Division of Geology and Land Survey to Missouri Geological Survey, 5) remove nutrient management plan requirements that are redundant with the requirements of 10 CSR 20-6.300, and 6) add specific requirements related to lagoon design including changing the minimum top widths required for various fill heights, excluding stormwater runoff when possible, specifying that berm fill around pipes be compacted to prevent seepage, requiring valves on all pipes going through berms, locating pipes at a point of minimum lagoon fill, establishing a minimum lagoon drawdown depth of two feet (2') to protect the lagoon line, requiring an operations and maintenance plan for all major components, and requiring that safety aspects be considered in design.

[PURPOSE: This rule sets forth criteria prepared as a guide for the design of manure management systems at concentrated animal feeding operations. This rule shall be used together with 10 CSR 20-6.300 Concentrated Animal Feeding Operations. This rule reflects the minimum requirements of the Missouri Clean Water Commission in regard to adequacy of design, submission of plans, and approval of plans. It is not reasonable or practical to include all aspects of design in this standard. The design engineer should obtain appropriate reference materials which include but are not limited to: copies of ASTM International standards, design manuals such as Water Environment Federation's Manuals of Practice, and other design manuals containing principles of accepted engineering practice. Deviation from these minimum requirements will be allowed where sufficient documentation is presented to justify the deviation.]

PURPOSE: This rule sets forth criteria prepared as a guide for the design of animal waste management systems at Concentrated Animal Feeding Operations. This rule shall be used together with 10 CSR 20-6.300 Concentrated Animal Feeding Operations. This rule reflects the minimum requirements of the Missouri Clean Water Commission in regard to adequacy of design, submission of plans, and approval of plans. It is not reasonable or practical to include all aspects of design in this standard. The design engineer should obtain appropriate reference materials which include, but are not limited to: copies of ASTM International standards, design manuals such as Water Environment Federation's Manuals of Practice, and other design manuals containing principles of accepted engineering practice. Deviation from these minimum requirements will be allowed where sufficient documentation is presented to justify the deviation.

(1) Definitions.

(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 manure storage 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 *[and process wastewater and dry process waste as defined in 10 CSR 20-6.300(1)(B)]*;

5. *[Missouri Concentrated Animal Feeding Operation Nutrient Management Technical Standard (NMTS)—The current version of the technical standard published by the department]* **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;

*[9.]***11.** Storage volume—The volume of manure**, runoff, washwater, rainfall, and additional water sources** between the lower and upper operating levels; *[and]*

*[10.]***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) General.

(A) Applicability. This rule shall apply to new or expanding *[c]***C**oncentrated *[a]***A**nimal *[f]***F**eeding *[o]***O**perations (CAFOs) *[that commence construction on or after April 30, 2012]*.

(3) Permit Application Documents. *[Application]* **Applicants** for a construction permit*[, or for an operating permit that did not previously receive a construction permit,]* **for earthen basins** shall *[submit]* **include** one (1) set of documents described in this section for department approval as part of the permit application process.

[(A) Engineering Documents.] The engineering documents shall provide the basic information, present design criteria and assumptions, examine alternate systems, where appropriate, and provide plans and specifications. The documents shall also include process description, sizing, data, controlling assumptions, and considerations for the functional operation of a *[manure]* **animal waste** management system. All engineering documents shall be prepared by or under the direct supervision of a registered professional engineer licensed to practice in Missouri. The department will not examine the adequacy or efficiency of the structural, mechanical, or electrical components of the *[manure]* ***animal waste*** management systems, only adherence to rules and regulations.

*[1.]***(A)** Engineering report—The following paragraphs *[should be utilized as a guideline]* **list requirements** for the content of the project engineering report to be submitted to the department for review and approval:

[A. Letter of transmittal. A one- (1-) page letter typed on the design engineer's letterhead should be included in the submission of the report;

*[B.]***1.** Title page. Title of project, date, operation's name and address, name and address of firm preparing the report, and seal and signature of the engineer;

*[C.]***2.** Project location map. This map shall include state and county roads, county boundaries, and city boundaries, and show the location of the proposed project;

[D. The table of contents shall include section and subsection headings. All pages of the report shall be numbered and the table of contents shall reference these numbers;]

*[E.]***3.** Narrative project summary. *[This section should provide]* **Provide** an explanation of any existing conditions at the operation and a summary of the proposed modifications to the operation;

*[F.]***4.** *[Technical information and design criteria]* **Summary of design**. This section should include the design data, calculations, all assumptions, and all relevant information used to justify the design. If the engineering documents contain known deviations from the design criteria contained in this rule, documentation and justification for the deviation should be submitted with the design criteria. The following items should be included:

*[(I)]***A.** Each animal type and number within the production area, the maximum design animal capacity, and the average weight for each animal type;

*[(II)]***B.** A detailed explanation of the process by which manure is deposited, handled, managed, and transferred within the operation;

*[(III)]***C.** Calculations showing the estimated annual amount of manure generated at the production area **and wastewater flows with average rainfall**.

[(a)] Where possible, design manure volume shall be based on past operating records or operating data from facilities with similar feed inputs and animal characteristics. Documentation of these volumes shall be included.

[(b)] If operating data is not available, the design manure volume shall be estimated using the most recent edition of a research-based reference. The reference name, edition, and data shall be included;

*[(IV)]***D.** Design calculations justifying the size of manure storage structures. **This includes safety volume, storage volume, total storage capacity, design storage period, and treatment volume.** For *[anaerobic]* **waste** treatment lagoons, the volume of treatment shall be based on the geographical region of the proposed structure and calculated using the most recent edition of a research-based reference. The reference name, edition, and data shall be included;

*[(V)]***E.** *[Depth and volume]* **Stage-storage** tables on at least one-foot (1') increments for all **earthen** *[manure storage]* **basin**s with design operating depths **(elevation of lower and upper pumpdown levels) shall be** clearly identified;

*[(VI)]***F.** Collection, treatment, and disposal of all domestic wastewater flows associated with the operation; and

*[(VII)]***G.** If applicable, justifications for constructing an uncovered manure storage structure. Covered storages are preferred due to the lower risk of environmental damage from excessive rainfall;

*[G.]***5.** Soils report/soils information. The engineering report shall contain county soil survey information for the soil types and characteristics of the production areas. Unless required otherwise by the department, soils information shall include soil series name, soil *[texture, soil permeability]* **textural class**, **and physical properties** and *[water-holding capacity]* **water features for earthen basins and solid manure components**. *[If a county]* **The** soils map *[is available, the]* **shall show** approximate boundaries of the different soils *[shall be shown]*. When applicable, the engineering report shall incorporate all recommendations by the *[Division of Geology and Land]* **Missouri Geological** Survey. Any soil boring **or test pit** logs shall also be included in the report; and

*[H.]***6.** Operation and maintenance plan—An operation and maintenance plan shall be provided to explain the key operating procedures. At a minimum, the plan shall address operation and maintenance of mechanical equipment.

*[2.]***(B)** General layout drawings. Plans shall include both an aerial and a topographic map or drawing that shows the spatial location and extent of the production area. Each drawing or map must be easily readable and include a visual scale**, preferably one inch (1") per one thousand feet (1,000')**, a north directional arrow, a fixed geographic reference point, and the date the drawing or map was completed. Each drawing or map shall include the following:

*[A.]***1.** All confinement barns, open lots, manure storage, and control structures, along with the other various components of the operation such as areas designated for stockpiling, composting, and for the management of animal mortalities;

*[B.]***2.** The source of the operation's water supply and all wells within three hundred feet (300') of the production area; and

*[C.]***3.** The location of all surface water features within the boundaries or immediately adjacent to the production area.

*[3.]***(C)** Construction plan drawings. Plan drawings shall include the following:

*[A.]***1.** The name of the operation and the scale in feet, a graphic scale, a north directional arrow, and the signed and dated engineer's seal;

*[B.]***2.** The plans shall be clear and legible. They shall be drawn to a scale which will permit all necessary information to be plainly shown. The size of the plans generally should not be larger than thirty inches by forty-two inches (30" × 42"), with a preference for smaller sizes;

*[C.]***3.** Locations of all test borings with date shall be shown on the plans;

*[D.]***4.** Detail plans shall consist of plan views, elevation*[s]* **views**, **profiles,** sections, and supplementary views which, together with the specifications and general layouts, provide the working information for the construction of the containment facilities; and

*[E.]***5.** Include dimensions and relative elevations of **manure storage** structures, the location *[and outline form]* of *[equipment, storage tanks, location]* **components of the animal waste management system, alignment** and size of piping, and *[ground elevations]* **profiles of piping with grades**.

*[4.]***(D)** Specifications. When specifically directed by the department, technical specifications shall accompany the plans.

[(B) Other Documents.

1. Neighbor notice and buffer verification. One (1) copy of the neighbor notice letter and proof that the notification has been sent. A map shall also be included that meets the

requirements of 10 CSR 20-6.300(3)(C)4.

2. Geohydrologic evaluation by the department's Division of Geology and Land Missouri Geological Survey. This is required only for proposed earthen manure storage basins.

3. An emergency response plan, if not included in the nutrient management plan.

(C) Nutrient Management Plan. The application shall include a nutrient management plan that meets the specifications of the NMTS and the requirements of 10 CSR 20-6.300(5). This plan shall include:

1. Land application maps—An aerial, topographic, and soils map that shows the spatial boundaries of planned land application areas. The aerial map(s) must clearly show the following within three hundred feet (300') beyond the field boundaries:

A. The location and extent of all permanent flowing streams, intermittent flowing streams, wetlands, and sinkholes;

B. Open tile line intake structures that will not be plugged during land application;

C. Lakes, reservoirs, or other private and publicly-owned water impoundments;

D. Private and public wells;

E. Public roads;

F. Public use areas;

G. Public dwellings; and

H. Property boundaries; and

2. All additional components necessary to prove compliance with 10 CSR 20-6.300(5).

(4) Revisions to Approved Plans. Deviations from approved plans affecting storage capacity, flow, or location must be approved in writing before these changes are made. Revised plans shall be submitted well in advance of any construction work which will be affected by these changes to allow sufficient time for review and approval. Structural revisions or other minor changes not affecting storage capacity, flow, or location will be permitted during construction without approval. As-built plans clearly showing these alterations shall be submitted to the department after the completion of the work.]

*[(5)]***(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 are 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 manure storage basins shall be measured from the outside edge of the top of the berm.

(D) Separation distance from wells for manure storage structures or confinement buildings shall be in accordance with 10 CSR 23-3.010.

(E) An all-weather access road shall be provided from a public road *[to the Animal Feeding Operation (AFO)]*. Sufficient room shall be provided at the site to permit turning vehicles around. In determining the type of roadway and method of construction, consideration shall be given to the types of vehicles and equipment necessary to maintain and operate the **C**AFO.

*[(6)]***(5)** Manure Storage **Structure** Sizing.

(A) No Discharge Requirement. All manure storage structures shall comply with the design standards and effluent limitations of 10 CSR 20-6.300(4).

(B) Design Storage Period.

1. The recommended design storage period is three hundred sixty-five (365) days.

2. The minimum design storage period for liquid manure**,** *[and for]* solid manure *[that will be used in the land application area]***, and dry process waste to be land applied** is one hundred eighty (180) days.

3. Solid manure **and dry process waste** to be sold or used as bedding shall have a minimum design storage period of ninety (90) days unless justification is given for a shorter time period.

[4. An operation proposing an uncovered, liquid manure storage structure, with less than three hundred sixty-five (365) days of storage, will be evaluated based upon the ability to actively manage the system. The following, at a minimum, will be evaluated:

A. Does the AFO owner(s) have at least fifty percent (50%) ownership in the land application equipment;

B. Does the AFO owner(s) own at least fifty percent (50%) of the needed annual land application area;

C. Is at least fifty percent (50%) of the needed annual land application area in permanent, perennial vegetation; and

D. Is the available equipment and labor capable of lowering the liquid level by ten percent (10%) of the storage volume in one (1) working day?

5. The design storage period must be accounted for in the Nutrient Management Plan.]

*[6.]***4.** The minimum design storage period for *[anaerobic]* **waste** treatment lagoons without an impermeable cover is three hundred sixty-five (365) days.

5. Lagoons shall be designed to exclude runoff when possible.

(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, which is hereby 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. This typically includes:

A. Animal manure;

B. Bedding material;

C. Wash water;

D. Flush water (excluding recycled flush water);

E. Cooling water for animals or from equipment; and

F. Runoff from pervious and impervious areas, due to average rainfall.

2. Uncovered liquid storages shall also include:

A. R-E from the surface of the structure, held between the operating levels; and

B. Safety depth, 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 unless there is adequate justification for not including this depth.

4. Earthen *[manure storage]* basins shall also include:

A. Freeboard of at least one foot (1'). Two feet (2') is

required 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. Anaerobic treatment lagoons shall include treatment volume below the lower operating level.

*[(7)]***(6)** Construction *[and Maintenance]* of Earthen basins.

(A) Geohydrologic Evaluation. A geohydrologic evaluation of the proposed earthen *[manure storage]* basin prepared by the *[department's Division of Geology and Land]* **Missouri Geological** Survey shall be submitted. To obtain a geohydrologic evaluation of the proposed site, the engineer shall submit the appropriate request form to the *[Division of Geology and Land]* **Missouri Geological** Survey. All potential basin sites will receive two (2) ratings from the geohydrologic evaluation. The ratings will infer the relative geological limitations for designing and constructing a basin at the site in question.

1. Collapse potential rating. If the geohydrologic evaluation gives a severe rating for collapse potential, an earthen basin is not acceptable. Concrete or steel structures or an alternate site should be considered.

2. Overall geologic limitations rating. Sites that have a severe rating for the overall geologic limitations but a slight or moderate collapse potential will be reviewed on a case-by-case basis. The department may require artificial liners or additional geotechnical exploration and design implementation and/or post-construction testing in these situations.

(B) Detailed Soils Investigation.

1. A detailed soils investigation is required to substantiate feasibility. The quantity and quality of soil materials on-site and from a borrow area must be identified and evaluated for use in the basin and/or liner.

2. Exploration shall be sufficient to identify and define the quantity and quality of the soil material. The use of test pits, split spoon (barrel), or thin-walled tube sampling or a combination of these techniques may be used depending on the total area of investigation and the depth to which exploration is needed. 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 seasonal high groundwater table.

3. Information gathered from the investigation shall be presented on a map drawn to scale. Slope, location, and other surface features should also be included. The soil profile should be shown of the representative soil material. Copies of original boring and other soil test logs shall also be included. An interpretation of the collected data shall be incorporated into the report. Any site constraints and how they will be dealt with should be discussed.

(C) Shape and Location.

1. Shape of cells. The shape of all cells should be such that there are no narrow or elongated portions. Round, square, or rectangular cells (length not exceeding three (3) times the width) are recommended. No islands, peninsulas, or coves shall be permitted.

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

3. Distance to groundwater and bedrock. The floor of the basin shall be at least four feet (4') above the high water table or the water table as modified by subsurface drainage. In addition, the floor shall be at least two feet (2') above bedrock. For perched water tables, a curtain drain with a positive outlet may be installed around the structure *[to permanently lower the water table]*.

(D) Slopes. Inner and outer berm slopes shall not be steeper than three to one (3:1), horizontal to vertical. Inner slopes shall not be flatter than four to one (4:1). Consideration may be given to steeper inner slopes provided special attention is given to stabilizing the slope with rip-rap, concrete, or other rigid materials. These stabilization methods shall be specified. The flatness of the outer slope is of no concern provided surface water can be diverted around the lagoon. Long outer slopes should be flatter than three to one (3:1) to assist in safe mowing of vegetation.

(E) Berm Construction and Width.

1. Soil used in constructing the basin floor (not including clay liner) and berm cores shall be relatively incompressible, tight, and compacted between two percent (2%) below and four percent (4%) above the optimum water content and compacted to at least ninety percent (90%) standard proctor density.

2. Compaction of lifts for berm construction shall not exceed twelve inches (12").

3. Maximum rock size should not exceed one-half (1/2) of the thickness of the compacted lift.

4. The minimum top of berm width shall be *[four]* **eight** feet *[(4')]* **(8')**. *[If large equipment is to be used for mowing, a top minimum width of at least eight feet (8') shall be provided.]* **For fill heights from fifteen to twenty feet (15'–20'), top widths shall be ten feet (10'); for fill heights from twenty to twenty-five feet (20'–25'), top widths shall be twelve feet (12'). Exceptions to minimum top widths can be made with documentation from a slope stability analysis.**

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

1. Be located in the location with the minimum amount of constructed earthen fill;

2. Provide passage of liquid at a safe velocity to a point outside of the berm(s);

3. Have a minimum bottom width of ten feet (10') and a minimum depth of one foot (1'); and

4. Be compacted and vegetated or otherwise constructed to prevent erosion due to possible flow.

(G) Compacted Clay Liner. The following criteria are for design and construction of soil liners. Engineering reports, plans, and specifications should address these criteria.

1. Soils information. The soils used for construction of an earthen basin liner should meet the following minimum specifications:

A. Be classified under the Unified Soil Classification System*[s]* **(ASTM D2487)** as CL, CH, GC, or SC;

B. Allow more than fifty percent (50%) passage through a Number 200 sieve;

C. Have a liquid limit equal to or greater than thirty (30);

D. Have a plasticity index equal to or greater than twenty (20); and

E. Have a coefficient of permeability equal to or less than 1×10^{-7} centimeters per second (cm/sec) when compacted to ninety percent (90%) of standard proctor density with the moisture content between two percent (2%) below and four percent (4%) above the optimum moisture content.

2. Liner construction.

A. Construction shall include scarification and compaction of base material between two percent (2%) below and four percent (4%) above the optimum water content and compacted to at least ninety percent (90%) standard proctor density.

B. Compaction of lifts shall not exceed six inches (6"). Maximum rock size should not exceed one-half (1/2) of the thickness of the compacted lift.

C. The completed seal shall be maintained at or above the optimum water content until the basin is prefilled with water in accordance with this section of the rule.

D. Fill around pipes installed through embankments shall be compacted to prevent seepage.

3. Permeability. All earthen basins shall be sealed so that seepage loss through the seal is minimized. The basin seal shall cover the floor and extend up the inner slope to where the side slope intersects with the top of the berm.

A. The design permeability of the basin seal shall not exceed five hundred (500) gallons per acre per day in areas where potable groundwater might become contaminated or when the wastewater contains industrial contributions of concern. Design seepage rates up to three thousand five hundred (3,500) gallons per acre per day may be considered in other areas where potable groundwater contamination is not a concern, provided that the cells will maintain adequate water levels to provide treatment and avoid nuisance conditions.

B. Liner thickness. The minimum thickness of the liner is twelve inches (12"). For soils which have a coefficient of permeability greater than 1×10^{-7} centimeter per second (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.
Units for H and t may be English (feet) or metric (meters); however, they must be the same.

4. Soil additives. Bentonite, soda ash, or other sealing aids may be used to achieve an adequate seal in systems using soil. The design shall include information on the type of soil additive and the method of application.

(H) Prefilling. The basin shall be prefilled in order to protect the liner, prevent weed growth, reduce odor, allow measurement of percolation losses, and maintain moisture content of the seal. However, the berms must be completely prepared before the introduction of water. If the clay liner is allowed to dry, the liner must be scarified and recompacted as described in this section of the rule.

(I) Protection of Berms.

1. Livestock, burrowing animals, and woody vegetation must be excluded from basins to protect the integrity of the berms and liners.

2. The berms, diversion ditches, and terraces shall be seeded and a good vegetative cover established to minimize erosion and aid in weed control. The inner berms should be seeded down to the upper operating level of the structure. Where the structure is not anticipated to reach its upper operating level during the first growing season, consideration should be given to further seeding on the berm slope. Long rooted grasses shall not be used for seeding of berms. Fertilization needs, mulching, and watering must be considered for all basins to ensure that a good growth of grass occurs rapidly and is sustained. Specifications shall detail specific amounts and variety of seeds to be used, mulching, and fertilizer requirements as appropriate and the proper time period for application to be reasonably assured that vegetative cover will be established.

3. 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), the design should ensure erosion protection on the slopes and floor in the areas where turbulence will occur.

4. For basins with a surface area greater than five (5) acres, consideration shall be given to providing embankment protection from wave action.

(J) Alternative Liners. Seals consisting of *[asphalt,]* **reinforced** concrete, soil cement, or synthetic liners may be used provided the permeability, durability, and integrity of the proposed materials can be satisfactorily demonstrated for anticipated conditions.

(K) Percolation Losses. Measurement of percolation losses, when required, shall consider flow into and out of the lagoon, rainfall and evaporation, and changes in water level. Measured percolation losses in excess of one-sixteenth inch (1/16") per day will be considered excessive. The barrel test as described in 10 CSR 20-8.020(16) is an acceptable water balance study. Other tests will require department approval.

(L) Depth Gauges. A permanent depth measurement gauge or marker shall be installed and maintained in the basin and shall be easily readable at one-foot (1') increments or smaller. It shall clearly display the lower and upper operating levels and the spillway elevation. The gauge shall be placed in a suitable location where it is easily accessible during routine operations.

(M) Sludge *[Accumulation]* **Removal**. Sludge levels shall be maintained so as to not reduce the approved storage volume of the basin.

(N) Protection of clay liner. The minimum liquid depth at maximum drawdown shall be two feet (2').

(O) Piping. Piping through the lagoon berm shall be located at a point of minimum fill, preferably on cut slope, and must be valved.

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

(Q) Operation and Maintenance. An operation and maintenance plan is required addressing the major components of the animal waste management system.

*[(8)]***(7)** Construction of Tanks and Pits.

(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. The floor of the below-ground storage tanks shall be two feet (2') above the *[high water]* **groundwater** table unless curtain drains or interception drains are installed around the perimeter of the structure to permanently lower the water table. The drain shall be at an elevation of at least one foot (1') below the floor to permanently lower the water table. A sump or a positive outlet for the drain shall be provided.

(B) Depth Allowance for Agitation and Ventilation. An allowance of one foot (1') should be provided at the top of covered structures for agitation and/or ventilation requirements.

(C) Depth Gauges. Uncovered tanks and pits shall include a permanent depth measurement gauge or marker that is easily readable at one-foot (1') increments or smaller.

(D) Footing Drains/Perimeter Tiling. Perimeter tiling and granular backfill are required for below-ground pits unless justification is given that they are not needed. Tiles should be located below the base of the outside of the footing. At least two feet (2') of granular drain material, such as pea gravel or three-quarter inch (3/4") crushed rock shall be placed around the tile. A positive outlet or sump for the drain shall be provided.

(E) Tank and pit footings are to be located at or below the maximum frost depth unless adequate justification is given that it is not needed. A compacted foundation of frost-free material such as drained granular material, extending to below frost depth, may be used as an alternate to extending the structural footing.

(F) Concrete and steel features shall be designed according to published guidelines. These guidelines must be referenced in the application packet.

(G) Watertight Requirement. Tanks and pits must be designed, constructed, and maintained to be watertight.

*[(9)]***(8)** Construction of Solid Manure *[Systems]* **Components**. This section covers the construction of poultry buildings, open lots, stacking pads, **stacksheds,** and other similar structures.

(A) Surface water shall be diverted around or away from animal confinement areas and buildings.

(B) Floors and Pads. The base of covered and uncovered lots, poultry buildings, and other solid manure storage areas can be made of concrete or other rigid, essentially watertight materials *or* from a firm, compacted, earthen base that meets the following criteria:

1. *[The floor shall be evaluated for suitable soils and*

groundwater table to a depth of four feet (4') below the proposed floor elevation] **The base can utilize existing consolidated soils if there is one (1) continuous foot of soil classified as class CH, MH, CL, GC, or SC in the Unified Soil Classification System (USCS) within four feet (4') of the proposed earthen floor**;

2. The finished earthen floor shall be a minimum of two feet (2') above the *[apparent high water table or the water]* **groundwater** table as modified by subsurface drainage;

3. The finished earthen floor shall be at least two feet (2') above bedrock;

4. *[The existing soils shall have at least one (1) continuous foot of suitable soils within four feet (4') of the proposed earthen floor in order to use existing soils without amendments.]* **The compacted earthen base shall be constructed from** *[Suitable]* soils *[are defined in this section]* **classified** as Unified Soil Classification System (USCS) class CH, MH, CL, GC, or SC *[and permeability group III or IV according to the United States Department of Agriculture's (USDA's) National Engineering Handbook, Agricultural Waste Management Field Handbook]*;

5. *[Existing soils can be modified using soil amendments provided that the modified soil has at least one (1) compacted, continuous foot of soil modified to meet permeability group III or IV;]* **Inplace soils, amended soils, or borrow soils shall meet permeability group III or IV as defined by the United States Department of Agriculture's (USDA's)** ***National Engineering Handbook, Agricultural Waste Management Field Handbook*** **or other soil permeability description; and**

[6. Borrow soils can be used for the floor. Borrow soils must provide at least one (1) compacted, continuous foot of suitable soils as defined above; and]

*[7.]***6.** The use of one (1) five-foot- (5'-) deep test pit, near the center of each proposed set of four (4) buildings, or each acre, will generally be sufficient to satisfy the intent of this section.

(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.

(D) Roofed areas of five thousand (5,000) square feet or less, that are used for mortality composting or to store solid manure, are exempt from the requirements of this section.

*[(10)]***(9)** Temporary Stockpiling of *[Solid Manure]* **Dry Process Waste**.

(A) Temporary stockpiling of uncovered *[solid manure]* **dry process waste** within the production area, without runoff collection, is not allowed.

(B) Temporary stockpiling within the land applications areas shall be in accordance with the following:

1. Location.

A. Any temporary stockpiles need to be placed to prevent storm water from draining into or through the pile. If storm water does drain through the pile, a one-foot (1') berm will be required on the up-slope side of the pile.

B. No location shall be used for stockpiling for more than two (2) weeks, unless the pile is covered.

C. Separation distances shall be maintained between the stockpile and other features as follows:

(I) Three hundred feet (300') from any losing stream, well, sinkhole, water supply (for human consumption) reservoir, nonowned dwelling or residence, public building, or public use area;

(II) One hundred feet (100') from intermittent and permanent flowing streams; and

(III) Fifty feet (50') from public roads and property lines.

D. Stockpiles cannot be placed on slopes steeper than six percent (6%)*[.]***;**

2. Size. No temporary storage site can be larger than two (2) acres*[.]***;**

3. Formation. All piles shall be placed so as to minimize forming pockets, hollows, or mini-dams that would collect and hold water. One (1) pile with an angle of repose so that it forms a crust and will tend to shed water off the pile will be the desirable design. If there are two (2) or more stockpiles, they should be placed far enough apart that they do not trap and hold water*[.]***;**

4. In no case shall runoff from a stockpile cause a violation of water quality standards.

*[(11)]***(10)** Design and Construction of Pipelines, Pump Stations, and Land Application Systems.

(A) General. Design of pipelines shall be in accordance with sound engineering principles considering the manure properties, management operations, exposure, etc.

1. The minimum pipeline capacity from storage/treatment facilities to utilization areas shall ensure the storage/treatment facilities can be emptied within the time limits stated in the nutrient management plan.

2. All pipes shall be designed to convey the required flow without plugging, based on the type of material and total solids content.

3. All pressure pipelines shall be installed at a depth sufficient to protect against freezing.

4. Pipelines shall be installed with appropriate connection devices to prevent contamination of private or public water supply distribution systems and groundwater.

5. Pumps shall be sized to transfer material at the required system head and volume. Type of pump shall be based on the consistency of the material and the type of solids. Requirements for pump installations shall be based on manufacturer's recommendations.

6. The top of all pipelines entering or crossing streams shall be at sufficient depth below the natural floor of the stream bed to protect the pipe. The top of the pipe should be a minimum of three feet (3') below the natural stream floor. Pipelines crossing streams should be designed to cross the stream as nearly perpendicular to the stream flow as possible. Aerial pipeline crossing of streams shall be in accordance with 10 CSR 20-8.120(9).

7. Buried pipeline crossings under roads shall be properly cased.

8. Potable water line and buried manure pipeline separation. There shall be no permanent physical connection between a potable water supply and buried manure pipeline or appurtenances thereto which will permit the passage of wastewater or contaminated water into the potable water supply. Whenever possible, buried manure pipelines and pump stations should be located at least ten feet (10') horizontally from any existing or proposed water line. Should local conditions prevent a lateral separation of ten feet (10'), a manure pipeline may be laid closer than ten feet (10') if it is in a separate trench or if it is in the same trench with the waterline located at one (1) side on a bench of undisturbed earth. In either case, the elevation of the top of the manure pipeline must be at least eighteen inches (18") below the base of the water line.

(B) Gravity Pipelines.

1. The minimum slope for a gravity pipe installation is one percent (1%). The design slope shall account for the head differential and the percent solids of the manure.

2. Clean-out access shall be provided for gravity pipelines at a maximum interval of *[one]* **three** hundred *[fifty]* feet (*[150]***300***'*) unless an alternative design is approved. Gravity pipelines shall not have horizontal curves or bends except minor deflections (less than ten (10) degrees) in the pipe joints unless special design considerations are used.

3. Gravity discharge pipes used for emptying a storage/treatment structure shall have a minimum of two (2) gates or valves in series, one (1) of which shall be manually operated.

(C) Force Mains and Pressure Pipes. To minimize settling of solids

in the pipeline, 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 after the concrete thrust blocks have set for at least thirty-six (36) hours.

1. The duration of pressure tests shall be a minimum of one (1) hour unless otherwise directed by the engineer.

2. The minimum test pressure shall be the maximum system operating pressure. All tests are to be conducted under the supervision of the engineer.

3. The pipe line shall be slowly filled with water. The specified pressure measured at the lowest point of elevation shall be applied by means of a pump connected to the pipe in a manner satisfactory to the engineer.

(E) Pump Stations.

1. Water supply protection. There shall be no physical interconnection between any potable water supply and a pump station or any of its components which under any conditions might cause contamination of a potable water supply unless otherwise approved by the *[department's Division of Geology and Land]* **Missouri Geological** Survey. Manure pumping stations 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 where a failure could cause an overflow. Alarm systems shall be activated in cases of power failure, pump failure, or any cause of high water in the wet well.

(F) Land Application Systems. The following shall be considered in the design of land application systems:

1. Any spray application equipment specified shall minimize the formation of aerosols;

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

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

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

5. Thrust blocking of pressure pipes shall be provided. For use of above-ground risers for sprinklers, a concrete pad and support bracing should be considered; and

6. Automatic pump or engine shut-offs, in case of pressure drop, are required.

*[(12)]***(11)** General System Details.

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

(B) Construction Materials. Due consideration should be given to the use of construction materials which are resistant to the action of hydrogen sulfide and other corrosives frequently present in manure.

(C) Grading and Groundcover. Upon completion of construction, the ground shall be graded and reseeded to prevent erosion and the entrance of surface water into any storage structure or animal confinement area.

(D) Potable Water Supply Protection. No piping or other connections shall exist in any part of the *[manure]* **animal waste** management system which, under any conditions, might cause the contamination of a potable water supply.

*[(13)]***(12)** Groundwater Monitoring. An approved groundwater monitoring program may be required around the perimeter of a manure storage site and/or land application areas to facilitate groundwater monitoring. The necessity of a groundwater monitoring program, which may include monitoring wells and/or lysimeters, will be determined by the *[department's Division of Geology and Land]* **Missouri Geological** Survey on a case-by-case basis and will be based on potential to contaminate a drinking water aquifer due to soil permeability, bedrock, distance to aquifer, etc. Where the *[Division of Geology and Land]* **Missouri Geological** Survey has deemed groundwater monitoring necessary, a geohydrological site characterization will be required prior to the design of the groundwater monitoring program.

*[(14)]***(13)** Mortality Management.

(A) Class I operations shall not use burial as a permanent mortality management method to dispose of routine mortalities.

(B) Operations shall first receive approval from the department before burying significant numbers of unexpected mortalities and shall conduct the burial in accordance with Missouri Department of Agriculture requirements. Rendering, composting, incineration, or landfilling, in accordance with Chapter 269, RSMo *[Supp. 2010]*, shall be considered acceptable options and do not require prior approval.

AUTHORITY: section[s] 640.710, RSMo 2000, and ***section*** *644.026,* ***RSMo Supp. 2014****. Original rule filed July 14, 2011, effective April 30, 2012. Amended: Filed Jan. 26, 2016.*

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

PRIVATE COST: This proposed amendment results in a net cost increase to private entities. The aggregate net cost increase is estimated to be seven thousand nine hundred seventy dollars ($7,970) annually.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Natural Resources, Division of Environmental Quality, Water Protection Program, Diane Reinhardt, PO Box 176, Jefferson City, MO 65102. Comments may be sent with name and address through email to diane.reinhardt@dnr.mo.gov . Public comments must be received by May 18, 2016. The public hearing is scheduled at a meeting of the Clean Water Commission to be held at 10 a.m, on April 6, 2016, at the Department of Natural Resources, Lewis and Clark State Office Building, LaCharrette/Nightingale Conference Rooms, 1101 Riverside Drive, Jefferson City, Missouri 65101.

FISCAL NOTE

PRIVATE COST

I. RULE NUMBER

Rule Number and Name	*10 CSR 20-8.300 Manure Storage Design Regulations*
Type of Rulemaking	*Proposed Rule Amendment*

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
One facility per year	541330 Engineering services 112112 Cattle Feedlots 112210 Hog and Pig Farming 112420 Goat Farming 112410 Sheep Farming 112120 Dairy Cattle and Milk Production 112320 Broilers and Other Meat Type Chicken Production 112310 Chicken Egg Production 112330 Turkey Production 112340 Poultry Hatcheries 112390 Other Poultry Production 112920 Horses and Other Equine Production	$7,970 increase

III. WORKSHEET

The revisions to 10 CSR 20-8.300 *Manure Storage Design Regulations* will:

1) improve and add several definitions
2) clarify regarding the items required in an application for engineering review
3) remove nutrient management plan requirements that are redundant with the requirements of 10 CSR 20-6.300 Confined Animal Feeding Operations
4) change design requirements for lagoons
5) make a name change of Missouri Geological Survey

COST SAVINGS:

Fewer hours needed for preparing application/plans

2 hours/application x $120.00/hour (engineering fee) x 1 application = $2400 savings

COST INCREASES:

Increased number of yards needed in lagoon berms

17,000 cubic yards x 0.2 x $ 3.05/cy x 1 application = $10,370 increased cost

TOTAL COST INCREASES	$10,370
TOTAL COST SAVINGS	$2,400
TOTAL NET COST INCREASE	$7,970

IV. ASSUMPTIONS

1. An annualized aggregate cost of this rulemaking is used for the purposes of providing the aggregate cost for the life of the rule. The annualized aggregate cost is the agency estimate of the average costs that will be incurred in any future year, no matter how far distant. For convenience of calculating this fiscal note over a reasonable time period, the life of the rule is assumed to be indefinite. If the life of the rule extends beyond 1 year, the annual costs for additional years will be consistent with the assumptions used to calculate annual costs as identified in this fiscal note.

2. The number of animal waste lagoons being constructed has dropped in the last 20 years with the industry standard for swine facilities changing to the use of deep pit systems. This trend may see a reversal with the increased interest in biogas collection from covered lagoons.

   Lagoons are commonly used on dairy operations however we receive very few construction permit applications for new or expanding dairies. Therefore no additional applications are calculated in for dairy. At this point we only anticipate receiving 1application per year for a lagoon or lagoon system from the integrators.

3. With fewer requirements in the engineering report, the engineer will use 2 fewer hours to complete the design. Engineering fees are based on a Deltek Axium 2011 survey median for engineering billing rates https://www.axium.com/blog/architecture-and-engineering-billing-rate-trends/.
4. Top widths will increase by at least two times based on fill heights. This increase will increase the total yardage in lagoon berms by a factor of 0.2. An average yardage value of 17,000 cy was used at a construction rate of $3.05 per cubic yard. This cost was gleaned from data collected annually by the NRCS.
5. The net cost of compliance was calculated without applying a factor for inflation.

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

PROPOSED AMENDMENT

13 CSR 70-15.220 Disproportionate Share Hospital Payments. The division is amending sections (2), (4), and (8).

PURPOSE: This amendment provides for the following changes: 1) adds language regarding the trends applied to the state DSH survey to be a fixed one and a half percent (1.5%) which will be applied from the year subsequent to the state DSH survey to the current SFY; 2) clarifies the definitions of a new facility and state DSH survey; that interim DSH payments are subject to the availability of state funds; the calculation of interim DSH payments for new facilities; and the due dates for submission of the state DSH survey; 3) modifies the exception process to allow for an alternate state DSH survey to be used in determining interim DSH payments for twenty percent (20%) DSH outliers, extraordinary circumstances, and interim DSH payment adjustments; and 4) corrects grammatical references.

(2) Definitions.

(C) Estimated Medicaid net cost. Estimated Medicaid net cost is the cost of providing inpatient (IP) and outpatient (OP) hospital services for all Medicaid eligible individuals including dual eligible and managed care participants less payments the hospital received for claims. The estimated Medicaid net cost is determined by using Medicare cost reporting methodologies described in this rule and is calculated using data reported on the state DSH survey. Depending on the hospital's response to questions 14, 15, and 16 of the state DSH survey, versions 1, 2, and 3, the source of the Medicaid out-of-state net cost, Medicaid organ acquisition net cost, and Medicaid/Medicare crossover net cost will either be—the hospital's estimated data, an amount estimated by MHD based on the most recent annual independent DSH audit trended to the SFY the DSH payments relate to, or was determined by the hospital to be insignificant or zero.

1. The estimated Medicaid net cost determined from the state DSH surveys prior to SFY 2017 is the sum of the following estimated data from the "Settlement Calculation" tab:

A. In-state Medicaid inpatient net cost;

B. In-state Medicaid outpatient net cost;

C. Out-of-state Medicaid inpatient net cost;

D. Out-of-state Medicaid outpatient net cost;

E. Medicaid organ acquisition net cost; and

F. Medicaid/Medicare crossover net cost.

2. Beginning with SFY 2017 interim DSH payments, the estimated Medicaid net cost is determined from the state DSH survey using the "Report Summary" tab and is calculated as follows:

A. Total Cost of Care for Medicaid IP/OP Services;

B. Less Regular IP/OP Medicaid FFS Rate Payments (excluding any other Medicaid payments as defined in subsection (2)(S)); *[and]*

C. Less IP/OP Medicaid MCO Payments*[.]***;**

D. Equals the Estimated Medicaid Net Cost; and

E. The Estimated Medicaid Net Cost shall be trended as set forth in subsection (2)(Y).

(D) Estimated uninsured net cost. Estimated uninsured net cost is the cost of providing inpatient and outpatient hospital services to individuals without health insurance or other third party coverage for the hospital services they receive during the year less uninsured payments received on a cash basis for the applicable Medicaid state plan year. The costs are to be calculated using Medicare cost report costing methodologies described in this rule and should not include costs for services that were denied for any reason.

1. The estimated uninsured net cost determined from the state DSH survey prior to SFY 2017 is calculated as the sum of the following:

A. Uninsured inpatient net cost; and

B. Uninsured outpatient net cost.

2. Beginning with SFY 2017 interim DSH payments, the estimated uninsured net cost **is** determined from the state DSH survey using the "Report Summary" tab **and** is *[the]* **calculated as follows:**

A. Total IP/OP Uninsured Cost of Care**;**

B. *[/]***/**Less Total IP/OP Indigent Care/Self-Pay Revenues*[.]***;**

C. Equals the Estimated Uninsured Net Cost.

(E) Estimated uninsured uncompensated care cost (UCC).

1. The estimated uninsured uncompensated care cost from the state DSH survey prior to SFY 2017 is the estimated uninsured net cost less Section 1011 payments.

2. Beginning with SFY 2017 interim DSH payments, the estimated uninsured uncompensated care cost **is determined** from the state DSH survey using the "Report Summary" tab **and** is *[the]* **calculated as follows:**

A. Estimated Uninsured Net Cost**, as defined in subsection (2)(D);**

B. *[/]***/**Less *[the]* Total Applicable Section 1011 Payments*[.]***;**

C. Equals the Estimated Uninsured Uncompensated Care Cost; and

D. The Estimated Uninsured Uncompensated Care Cost shall be trended as set forth in subsection (2)(Y).

(R) New facility. A new hospital determined in accordance with 13 CSR 70-15.010 without a base year cost **report**.

(W) State DSH survey. The state DSH survey was designed to reflect the standards of calculating uncompensated care cost established by the federal DSH rules in determining hospital-specific DSH limits. The DSH survey is also similar to, or the same as, the DSH survey that is utilized by the independent auditor during the annual independent DSH audit performed in accordance with the federally-mandated DSH audit rules. The blank state DSH survey is referred to as the state DSH survey template. The following state DSH survey templates and instructions are incorporated by reference and made a part of this rule as published by the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109. This rule does not incorporate any subsequent amendments or additions.

1. Version 1 (9/10), also referred to as the 2011 state DSH survey, was used to calculate the SFY 2011 DSH payment adjustments set forth in section (3) and the SFY 2012 interim DSH payments set forth in section (4).

2. Version 2 (9/11) or Version 3 (2/12). The hospital may elect to complete either Version 2 (9/11) or Version 3 (2/12) on which its SFY 2013 interim DSH payments will be calculated. The survey shall be referred to as the SFY to which payments will relate. For example, the survey used to determine interim DSH payments for SFY 2013 will be referred to as the 2013 state DSH survey.

3. Version 3 (2/12) will be used to calculate interim DSH payments beginning with SFY 2014 as set forth in section (4). The survey shall be referred to as the SFY to which payments will relate.

4. Version 4, designated as Myers and Stauffer LC, DSH Version *[7.10]* **7.20**, will be used to calculate interim DSH payments beginning with SFY 2017 as set forth in section (4). The state DSH survey shall be the most recent DSH survey collected during the independent DSH audit of the fourth prior SFY (i.e., the most recent survey collected by the independent DSH auditor for the SFY 2013 independent DSH audit will also be used to calculate the interim DSH payment for SFY 2017). *[If Myers and Stauffer LC, DSH Version 7.10, is superseded by an alternate state DSH survey reporting tool, that tool must be used for the applicable SFY.]* The survey shall be referred to as the SFY to which payments will relate.

(Y) Trends. A trend of one and a half percent (1.5%) will be applied to the hospital's Estimated Medicaid Net Cost and the Estimated Uninsured Uncompensated Care Cost (UCC) from the year subsequent to the state DSH survey period to the current

SFY (i.e., the SFY for which the interim DSH payment is being determined). The first year's trend shall be adjusted to bring the facility's cost to a common fiscal year end of June 30 and the full trends shall be applied for the remaining years. The trends shall be compounded each year to determine the total cumulative trend.

*[(Y)]***(Z)** Uncompensated care costs (UCC). The uncompensated care costs eligible for consideration in determining the hospital-specific DSH limit are calculated by reducing costs incurred in furnishing inpatient and outpatient hospital services to the Medicaid and uninsured populations by revenues received from Medicaid (not including DSH payments), Medicare, private pay, managed care, self pay, other third parties, and Section 1011 payments. The costs are to be calculated using Medicare cost report costing methodologies described in this rule and should not include costs for services that were denied for any reason. For purposes of this calculation, the Medicaid and uninsured populations include:

1. The Medicaid population includes all Medicaid eligible individuals including dual eligible and managed care participants; and

2. The uninsured population includes individuals without health insurance or other third-party coverage as defined in this rule, consistent with 42 CFR 447.

*[(Z)]***(AA)** Uninsured revenues. Payments received on a cash basis that are required to be offset against the uninsured cost to determine the uninsured net cost include any amounts received by the hospital, by or on behalf of, either self-pay or uninsured individuals during the SFY under audit.

(4) Interim DSH Payments.

(B) The interim DSH payments will be calculated as follows:

1. The estimated hospital-specific DSH limit is calculated as follows:

A. Estimated Medicaid net cost from the state DSH survey calculated in accordance with subsection (2)(C);

B. Less estimated other Medicaid payments calculated by MHD in accordance with 13 CSR 70-15.010;

C. Equals estimated Medicaid uncompensated care cost;

D. Plus estimated uninsured uncompensated care cost from the state DSH survey calculated in accordance with subsection (2)(E);

E. Equals estimated hospital-specific DSH limit;

2. The estimated uncompensated care costs potentially eligible for MHD interim DSH payments excludes out-of-state DSH payments and is calculated as follows:

A. Estimated hospital-specific DSH limit;

B. Less estimated out-of-state (OOS) DSH payments;

C. Equals estimated uncompensated care cost (UCC) net of OOS DSH payments;

3. Hospitals determined to have a negative estimated UCC net of OOS DSH payments (payments exceed costs) will not receive interim DSH payments because their estimated payments for the SFY are expected to exceed their estimated hospital-specific DSH limit; and

4. Qualified DSH hospitals determined to have a positive estimated UCC net of OOS DSH payments (costs exceed payments) will receive interim DSH payments. The interim DSH payments are subject to the federal DSH allotment**, the availability of state funds,** and the estimated hospital-specific DSH limits less estimated OOS DSH payments. The interim DSH payments will be calculated as follows:

A. Interim DSH payments to qualified DSH hospitals determined to have a positive estimated UCC net of OOS DSH payments will be calculated as follows:

(I) Up to one-hundred percent (100%) of the available federal DSH allotment will be allocated to each hospital with a positive estimated UCC net of OOS DSH payments, and the allocation shall result in each hospital receiving the same percentage of their estimated UCC net of OOS DSH payments. The allocation percentage will be calculated at the beginning of the SFY by dividing the available federal DSH allotment to be distributed by the total hospital industry's positive estimated UCC net of OOS DSH payments; and

(II) The allocated amount will then be reduced by one percent (1%) for hospitals that do not contribute through a plan that is approved by the director of the Department of Health and Senior Services to support the state's poison control center and the Primary Care Resource Initiative for Missouri (PRIMO) and Patient Safety Initiative.

(F) New facilities that do not have a Medicare/Medicaid cost report on which to base the state DSH survey will be paid the lesser of the estimated hospital-specific DSH limit less OOS DSH payments based on the estimated state DSH survey or the industry average estimated interim DSH payment. The industry average estimated interim DSH payment*, as determined from subsection (4)(B),]* is calculated as follows:

1. Hospitals receiving interim DSH payments**, as determined from subsection (4)(B),** shall be divided into quartiles based on total beds;

2. DSH payments shall be individually summed by quartile and then divided by the total beds in the quartile to yield an average interim DSH payment per bed; and

3. The number of beds for the new facility shall be multiplied by the average interim DSH payment per bed.

(8) State DSH Survey Reporting Requirements.

(B) *[DSH surveys collected during SFY 2016 will be used to calculate SFY 2017 interim DSH payments.]* Beginning in SFY 2016, each hospital must complete and submit the state DSH survey set forth in paragraph (2)(W)4. **(i.e., required state DSH survey)** to the independent DSH auditor, the MO HealthNet Division's authorized agent, in order to be considered for an interim DSH payment **for the subsequent SFY (i.e., DSH surveys collected during SFY 2016 will be used to calculate SFY 2017 interim DSH payments)**. **The independent DSH auditor will distribute the state DSH survey template to the hospitals to complete and will notify them of the due date, which shall be a minimum of thirty (30) days from the date it is distributed. However,** *[T]***t**he state DSH survey is due to the independent DSH auditor *[by the]* **no later than** March 1 *[preceeding]* **preceding** the beginning of each state fiscal year **for which the interim DSH payment is being calculated** (i.e., the state DSH survey used for SFY 2017 interim DSH payments will be due to the independent DSH auditor *[by]* **no later than** March 1, 2016). Hospitals that do not submit the state DSH survey by March 1 will not be eligible to receive an interim DSH payment for that SFY. **The division may grant an industry-wide extension on the March 1 deadline due to unanticipated circumstances that affect the industry as a whole.**

1. A new facility that does not have cost report data for the fourth prior year may complete the state DSH survey using actual, untrended cost and payment data from the most recent twelve- (12-) month cost report filed with the division.

2. A new facility that has not yet filed a Medicaid cost report with the division may complete the state DSH survey using facility projections to reflect anticipated operations for the interim DSH payment period. Trends shall not be applied to the data used to complete the state DSH survey. Interim DSH payments determined from this state DSH survey are limited to the industry average estimated interim DSH payment as set forth in subsection (4)(F).

3. Hospitals may elect not to receive an interim DSH payment for a SFY by completing a DSH Waiver form. Hospitals that elect not to receive an interim DSH payment for a SFY must notify the division, or its authorized agent, that it elects not to receive an interim DSH payment for the upcoming SFY. If a hospital does not receive an interim DSH payment for a SFY, it will not be included in the independent DSH audit related to that SFY, and will not be eligible for final DSH audit payment adjustments related to that SFY unless it submits a request to the division to be included in the independent DSH audit.

4. If a hospital received an interim DSH payment and later determined that it did not have uncompensated care costs for Medicaid and the uninsured to support part or all the interim DSH payment that it received or is receiving, the hospital may request that the interim DSH payments be stopped or it may return the entire interim DSH payment it received.

[5. Extraordinary Circumstances. A hospital may submit a request to the division to complete the state DSH survey using the actual, untrended cost and payment data from the most recent twelve- (12-) month cost report filed with the division in lieu of the fourth prior year if it experiences extraordinary circumstances. The division may, at its discretion and for good cause shown, accept such survey and use it in determining the interim DSH payment for the upcoming SFY. The request must be submitted to the division within fourteen (14) days of receiving the state DSH survey template for the SFY and include an explanation of the extraordinary circumstance, the impact it had on the state DSH survey period, and how it causes the data to be materially misstated or unrepresentative. The division shall review the facility's request and notify the facility of its decision regarding the request. The state DSH survey shall be completed using the data period approved by the division and is due by the March 1 preceeding the beginning of each SFY.

A. Extraordinary circumstances include unavoidable circumstances that are beyond the control of the facility and include the following:

(I) Act of nature (i.e., tornado, hurricane, flooding, earthquake, lightening, natural wildfire, etc.);

(II) War;

(III) Civil disturbance; or

(IV) If the data to complete the state DSH survey set forth in paragraph (2)(W)4. is not available due to a change in ownership because the prior owner is out of business and is uncooperative and unwilling to provide the necessary data.

B. A change in hospital operations or services (i.e., terminating or adding a service or a hospital wing; or, a change of owner, except as noted in part (8)(B)5.A.(IV), manager, control, operation, leaseholder or leasehold interest, or Medicare provider number by whatever form for any hospital previously certified at any time for participation in the MO HealthNet program, etc.) does not constitute an extraordinary circumstance.

6. Interim DSH Payment Adjustment. A hospital may request an adjustment to its interim DSH payment if it can provide a revised state DSH survey completed using actual, untrended cost and payment data from the most recent twelve- (12-) month cost report filed with the division that demonstrates the hospital's revised estimated hospital-specific DSH limit is materially different from the estimated hospital-specific DSH limit calculated by the division. The division may, at its discretion and for good cause shown, accept such survey and use it in determining a revised interim DSH payment for the SFY. The division will process interim DSH payment adjustments once a year. After all requests are received, the division will determine whether revisions to the interim DSH payments are appropriate. Any revisions to the interim DSH payments are subject to the unobligated DSH allotment remaining for the SFY and availability of state funds.

A. The request must meet the following criteria to be considered:

(I) The request must be submitted by December 31 of the current SFY for which interim DSH payments are being made;

(II) The request must be accompanied by a completed, revised state DSH survey based on actual, untrended cost and payment data from the most recent twelve- (12-) month cost report filed with the division;

(III) The request must include an explanation of the change in the hospital's operations, services, or other circumstances causing the original state DSH survey to be materially misstated or unrepresentative, including the impact it had on the state DSH survey period and how it causes the data to be materially misstated or unrepresentative; and

(IV) The revised estimated hospital-specific DSH limit must be at least eighty percent (80%) higher than the estimated hospital-specific DSH limit calculated by the division. No trends shall be applied to the revised state DSH survey in determining the revised estimated hospital-specific DSH limit.

B. Interim DSH payment adjustments will be calculated as follows:

(I) The DSH allotment for the SFY that has not otherwise been obligated will be distributed proportionally to the hospitals determined to meet the above criteria, based on the revised estimated hospital-specific DSH limit, less OOS DSH payments, subject to the availability of state funds.]

5. Exceptions Process to Use Alternate State DSH Survey for Interim DSH Payment.

A. A hospital may submit a request to the division to have its interim DSH payment based on a state DSH survey completed using the actual, untrended cost and payment data from the most recent twelve- (12-) month cost report filed with the division (i.e., alternate state DSH survey) rather than the state DSH survey required to be submitted for the year (i.e., required state DSH survey) if it meets the criteria for any of the circumstances detailed below in subparagraph (8)(B)5.D. The request must include an explanation of the circumstance, the impact it has on the required state DSH survey period, and how it causes the data to be materially misstated or unrepresentative. The division shall review the facility's request and may, at its discretion and for good cause shown, use the alternate state DSH survey in determining the interim DSH payment for the SFY. The division shall notify the facility of its decision regarding the request.

B. The provider must submit both the required state DSH survey and the alternate state DSH survey to the independent DSH auditor for review to determine if the facility meets the criteria set forth below in subparagraph (8)(B)5.D.

C. The interim DSH payment based on the alternate state DSH survey shall be calculated in the same manner as the interim DSH payment based on the required state DSH survey, except that the trends applied to the alternate state DSH survey shall be from the year subsequent to the alternate state DSH survey period to the current SFY for which the interim DSH payment is being determined.

D. Following are the circumstances for which a provider may request that its interim DSH payment be based on the alternate state DSH survey rather than the required state DSH survey, including the criteria and other requirements:

(I) Twenty Percent (20.00%) DSH Outlier. A provider may request that the alternate state DSH survey be used prior to the interim DSH payment being determined for the SFY if the Untrended Total Estimated Net Cost on the "Report Summary" tab, Column J, from the alternate state DSH survey is at least twenty percent (20.00%) higher than the Trended Total Estimated Net Cost on the "Report Summary" tab, Column L, from the required state DSH survey (i.e., the increase is at least twenty percent (20.00%) rounded to two (2) decimal places).

(a) Both the required state DSH survey and the alternate state DSH survey must be submitted to the independent DSH auditor no later than March 1 preceding the beginning of each SFY for which interim DSH payments are being made.

(II) Extraordinary Circumstances. A provider may

request that the alternate state DSH survey be used if the facility experienced an extraordinary circumstance during or after the required state DSH survey report period up to the SFY for which the interim DSH payment is being calculated that caused the required DSH survey report period to be materially misstated and unrepresentative. If circumstances found in items (8)(B)5.D.(II)(a)I.–III. below are applicable, the facility may supply trends in addition to the cumulative trend defined in subsection (2)(Y) to reflect anticipated operations for the SFY for which the interim DSH payment is being calculated. The facility must also provide an explanation justifying the additional trends.

(a) Extraordinary circumstances include unavoidable circumstances that are beyond the control of the facility and include the following:

I. Act of nature (i.e., tornado, hurricane, flooding, earthquake, lightening, natural wildfire, etc.);

II. War;

III. Civil disturbance; or

IV. If the data to complete the required state DSH survey set forth in paragraph (2)(W)4. is not available due to a change in ownership because the prior owner is out of business and is uncooperative and unwilling to provide the necessary data.

(b) A change in hospital operations or services (i.e., terminating or adding a service or a hospital wing; or, a change of owner, except as noted in item (8)(B)5.D.(II)(a)IV., manager, control, operation, leaseholder or leasehold interest, or Medicare provider number by whatever form for any hospital previously certified at any time for participation in the MO HealthNet program, etc.) does not constitute an extraordinary circumstance.

(c) Both the required state DSH survey and the alternate state DSH survey must be submitted to the independent DSH auditor no later than March 1 if the alternate state DSH survey is to be used to determine the interim DSH payment at the beginning of the SFY.

(d) A hospital may submit a request to use the alternate state DSH survey due to extraordinary circumstances after March 1, but the alternate state DSH survey and the resulting interim DSH payment will be subject to the same requirements as the Interim DSH Payment Adjustments noted below in subparts (8)(B)5.D.(III)(b)–(d). The requests relating to extraordinary circumstances received after the March 1 deadline will be included with the Interim DSH Payment Adjustments requests in part (8)(B)5.D.(III) in distributing the unobligated DSH allotment and available state funds remaining for the SFY.

(III) Interim DSH Payment Adjustment.

(a) After the interim DSH payment has been calculated for the current SFY based on the required state DSH survey, a provider may request that the alternate state DSH survey be used if the Untrended Total Estimated Net Cost on the "Report Summary" tab, Column J, from the alternate state DSH survey is at least thirty-five percent (35.00%) higher than the Trended Total Estimated Net Cost on the "Report Summary" tab, Column L, from the required state DSH survey (i.e., the increase is at least thirty-five percent (35.00%) rounded to two (2) decimal places).

(b) The division will process interim DSH payment adjustments once a year. After all requests are received, the division will determine whether revisions to the interim DSH payments are appropriate. Any revisions to the interim DSH payments are subject to the unobligated DSH allotment remaining for the SFY and availability of state funds.

(c) The request must be submitted by December 31 of the current SFY for which interim DSH payments are being made.

(d) The DSH allotment for the SFY that has not otherwise been obligated will be distributed proportionally to the hospitals determined to meet the above criteria, based on the revised estimated hospital-specific DSH limit, less OOS DSH payments, subject to the availability of state funds.

*AUTHORITY: section 208.152, RSMo Supp. [2014] **2015**, sections 208.153 and 208.201, RSMo Supp. 2013, and section 208.158, RSMo 2000. Emergency rule filed May 20, 2011, effective June 1, 2011, expired Nov. 28, 2011. Original rule filed May 20, 2011, effective Jan. 30, 2012. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Feb. 1, 2016.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be delivered by regular mail, express or overnight mail, in person, or by courier within thirty (30) days after publication of this notice in the **Missouri Register**. If to be hand-delivered, comments must be brought to the MO HealthNet Division at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.*

Title 14—DEPARTMENT OF CORRECTIONS
Division 80—State Board of Probation and Parole
Chapter 3—Conditions of Probation and Parole

PROPOSED AMENDMENT

14 CSR 80-3.020 Conditions of Lifetime Supervision. The board is amending section (2).

PURPOSE: The board is updating language in section (2).

(2) The second condition reads, "GLOBAL POSITIONING SATELLITE MONITORING (GPS): I will *[abide by the requirements of GPS supervision including maintaining]* **ensure that I wear the required GPS device at all times, keep it in a charged and functioning condition, and maintain** a residence that allows for *[this supervision to occur]* **effective GPS supervision**."

*AUTHORITY: section 217.755, RSMo 2000, [and] section[s] 217.735, **RSMo Supp. 2013,** and **section** 559.106, RSMo Supp. [2011] **2014**. Original rule filed Oct. 19, 2011, effective May 30, 2012. Amended: Filed Jan. 25, 2016*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in 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 Corrections, State Board of Probation and Parole, Ellis McSwain Jr., Chairman, 3400 Knipp Drive, 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 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 400—Life, Annuities and Health
Chapter 5—Advertising and Material Disclosures

PROPOSED AMENDMENT

20 CSR 400-5.600 Missouri Life and Health Insurance Guaranty Association. The director is amending Appendix One to replace "or" with "and" with respect to life insurance cash surrender and withdrawal values which will make the required notice consistent with section 376.717, RSMo.

PURPOSE: This amendment corrects an inconsistency between the required notice set forth in Appendix One and section 376.717, RSMo.

(1) Effective May 31, 1989 no insurer may deliver a policy or contract described in section 376.717.2, RSMo, to a policy or contract holder unless a copy of the notice set out in Appendix One is given to the policy or contract holder before or at the time of delivery.

If the policy or contract is excluded under section 376.717.3, RSMo, the notice set out in Appendix One, which is included herein, does not need to be delivered to the policy or contract holder.

APPENDIX ONE
NOTICE OF PROTECTION PROVIDED BY
MISSOURI LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION

This notice provides a *brief summary* of the Missouri Life and Health Insurance Guaranty Association ("the Association") and the protection it provides for policyholders. This safety net was created under Missouri law, which determines who and what is covered and the amounts of coverage.

The Association was established to provide protection in the unlikely event that your life, annuity, or health insurance company becomes financially unable to meet its obligations and is taken over by its insurance department. If this should happen, the Association will typically arrange to continue coverage and pay claims, in accordance with Missouri law, with funding from assessments paid by other insurance companies.

The basic protections provided by the Association are as follows:

- Life Insurance
  - $300,000 in death benefits
  - $100,000 in cash surrender *[or]* **and** withdrawal values
- Health Insurance
  - $500,000 in hospital, medical, and surgical insurance benefits
  - $300,000 in disability insurance benefits
  - $300,000 in long-term care insurance benefits
  - $100,000 in other types of health insurance benefits
- Annuities
  - $250,000 in withdrawal and cash values

The maximum amount of protection for each individual, regardless of the number of policies or contracts, is as follows:

- $300,000 in aggregate for all types of coverage listed above, with the exception of basic hospital, medical, and surgical insurance or major medical insurance
- $500,000 in aggregate for basic hospital, medical, and surgical insurance or major medical insurance
- $5,000,000 to one policy owner of multiple nongroup policies of life insurance, whether the policy owner is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees, or other persons

Note: Certain policies and contracts may not be covered or fully covered. For example, coverage does not extend to any portion(s) of a policy or contract that the insurer does not guarantee, such as certain investment additions to the account value of a variable life insurance policy or a variable annuity contract. There are also various residency requirements and other limitations under Missouri law.

To learn more about the above protections, as well as protections relating to group contracts or retirement plans, please visit the Association's website at www.mo-iga.org, or contact:

Missouri Life and Health
Insurance Guaranty Association
994 Diamond Ridge, Suite 102
Jefferson City, Missouri 65109
Ph.: 573-634-8455
Fax: 573-634-8488

Missouri Department of Insurance, Financial
Institutions and Professional Registration
301 West High Street, Room 530
Jefferson City, Missouri 65101
Ph.: 573-522-6115

Insurance companies and agents are not allowed by Missouri law to use the existence of the Association or its coverage to encourage you to purchase any form of insurance. When selecting an insurance company, you should not rely on Association coverage. If there is any inconsistency between this notice and Missouri law, then Missouri law will control.

APPENDIX TWO
NOTICE

This policy or contract is not covered by the Missouri Life and Health Insurance Guaranty Association. If the company providing this policy or contract is unable to meet its obligation by reason of insolvency or financial impairment, the fund(s) of the Missouri Life and Health Insurance Guaranty Association will not be available to protect the policy or contract holder or his/her beneficiaries, payees, or assignees.

AUTHORITY: section 374.045.1(2), RSMo Supp. 2013, and section 376.756, RSMo 2000. This rule was previously filed as 4 CSR 190-13.290. Original rule filed Sept. 6, 1988, effective April 1, 1989. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Jan. 22, 2016.*

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

PRIVATE COST: This proposed amendment will cost private entities approximately one hundred five thousand dollars ($105,000) 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 Insurance, Financial Institutions and Professional Registration, Attention: Tamara W. Kopp, PO Box 690, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

FISCAL NOTE
PRIVATE COST

I. **Department Title:** Department of Insurance, Financial Institutions and Professional Registration
Division Title: 400 - Life, Annuities and Health
Chapter Title: 5 – Advertising and Material Disclosures

Rule Number and Title:	20 CSR 400-5.600 Missouri Life and Health Insurance Guaranty Association
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
418	Insurance Companies	Approx. $105,000

III. WORKSHEET

418 companies
$50/form filing
Average 5 forms per company ($250.00/company)
418 companies x $250 filing fees = $104,500

IV. ASSUMPTIONS

Insurance companies that deliver certain types of policies or contracts are required to provide a notice of life and health insurance guaranty fund limits. That notice is promulgated as Appendix 1 to 20 CSR 400-5.600. Once the notice changes, companies may refile forms to incorporate the new notice. Form filings cost companies $50 per filing. The aggregate impact will be determined by the number of insurance companies that deliver policies described in § 376.717.2 and how many policy forms will have to be filed per company. The Department estimates that each company will file approximately five forms, bringing the total to approximately $105,000.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2220—State Board of Pharmacy
Chapter 2—General Rules

PROPOSED AMENDMENT

20 CSR 2220-2.020 Pharmacy Permits. The board is amending sections (1), (2), (3), (4), (6), (7), (9), (10), and (11).

PURPOSE: The board is amending subsection (9)(K) and section (11) of this rule to allow Missouri pharmacies to dispense prescriptions written by an authorized prescriber based on a valid medical evaluation. The board is also amending other provisions of the rule to address signature requirements for entities submitting a pharmacy permit application and to update the rule's current definitions of specific pharmacy classes.

(1) All permits for the operation of a pharmacy shall expire on the date specified by the director of the Division of Professional Registration pursuant to *[4 CSR 230-2.031]* **20 CSR 2231-2.010**.

(2) A pharmacy permit may be issued on the application of the owners. If the owner is a corporation, an officer of the corporation must sign the application as the applicant. If the owner is a partnership, a partner must sign the application as the applicant. If the owner is a limited liability partnership, a general partner must sign the application as the applicant. If the owner is a limited liability company, a member must sign the application as the applicant. In the case where a pharmacy is owned and operated by a person(s) who is a licensed pharmacist and in active charge of the pharmacy, the application for permit can be made by either party. **Alternatively, a pharmacy permit application may be signed by an attorney or other person lawfully granted power of attorney to sign the application on the applicant's behalf. In such case, a representative of the applicant shall review the application for truth and accuracy prior to submitting the application to the board. Proof of a power of attorney designation shall be submitted with the application.**

(3) When a pharmacy changes ownership, the original permit becomes void on the effective date of the change of ownership. Before any new business entity resulting from the change opens a pharmacy for business, it must obtain a new permit from the board. A temporary license shall be issued once a completed application and fee have been received by the board. The effective date of the temporary license *[shall]* **may** be the date the change of ownership is listed as effective on the application. Such license shall remain in effect until a permanent license is issued or denied by the board.

(4) If an individual or business entity operating a pharmacy changes the location of the pharmacy to a new facility (structure), the pharmacy shall not open for business at the new location until the board or its duly authorized agent has inspected the premises of the new location and approved it and the pharmacy as being in compliance with section 338.240, RSMo and all other provisions of the law. Upon the approval and receipt of a change of location fee, the board shall issue a permit authorizing operation of a pharmacy at the new location and the permit shall bear the same number as the previous pharmacy permit. However, the permit remains valid if the pharmacy address changes, but not the location**,** and an amended permit will be issued without charge under these circumstances.

(A) Remodeling of a licensed pharmacy within an existing structure shall be deemed to have occurred when any change in the storage conditions of the Schedule II controlled substances is made or new connections to water/sewer resources are made or any changes in the overall physical security of drugs stored in the pharmacy as defined in *[4 CSR 220-2.010(1)(H)]* **20 CSR 2220-2.010(1)(H)** are made. Remodeling as defined within this section will not require the initiation of any change of location procedures. Satisfactory evidence of plans for any remodeling of a pharmacy must be provided to the board office thirty (30) days in advance of commencing such changes along with an affidavit showing any changes to the pharmacy physical plant and the projected completion date for any remodeling.

(6) No pharmacy permit will be issued unless the pharmacy area is under the direct supervision of a licensed pharmacist in good standing with the Missouri State Board of Pharmacy*[,]* who **is designated as the pharmacist-in-charge and** meets the requirements of *[4 CSR 220-2.090]* **20 CSR 2220-2.090**.

(7) If the owner/applicant is not the licensed pharmacist-in-charge, then the pharmacist-in-charge must meet the requirements of *[4 CSR 220-2.090]* **20 CSR 2220-2.090** and complete the pharmacist-in-charge affidavit of the permit application *[and have it notarized]*.

(9) The following classes of pharmacy permits or licenses are hereby established **for entities providing services as defined in section 338.010, RSMo**:

(B) Class B: Hospital *[Outpatient]* Pharmacy. *[A pharmacy operated by and located within a hospital that provides services as defined in section 338.010, RSMo to patients other than to the hospital's inpatient population;]* **A pharmacy owned, managed, or operated by a hospital as defined by section 197.020, RSMo, or a clinic or facility under common control, management, or ownership of the same hospital or hospital system. This section shall not be construed to require a Class B hospital pharmacy permit or license for hospitals solely providing services within the practice of pharmacy under the jurisdiction of, and the licensure granted by, the Department of Health and Senior Services under and pursuant to Chapter 197, RSMo;**

(E) Class E: Radiopharmaceutical. A pharmacy that is not open to the general public and provides services as defined in section 338.010, RSMo *[limited to the preparation and dispensing of]* **that prepares and dispenses** radioactive drugs as defined by the Food and Drug Administration (FDA) **and drugs related to the use of radioactive drugs** to health care providers for use in the treatment or diagnosis of disease and that maintains a qualified nuclear pharmacist as the pharmacist-in-charge;

(H) Class H: Sterile Product Compounding. A pharmacy that provides services as defined in section 338.010, RSMo**,** and provides a sterile pharmaceutical as defined in 20 CSR 2220-2.200 *[(11)(I) and (AA). Pharmacies providing sterile pharmaceuticals within the exemptions outlined in 20 CSR 2220-2.200(25) shall not be considered a Class H pharmacy]*;

(J) Class J: Shared Service. *[A pharmacy that provides services as defined in section 338.010, RSMo, and is involved in the processing of a request from another pharmacy to fill or refill a prescription drug order, or that performs or assists in the performance of functions associated with the dispensing process, drug utilization review (DUR), claims adjudication, refill authorizations and therapeutic interventions; and]* **A pharmacy engaged in the processing of a request from another pharmacy to fill or refill a prescription drug order, or that performs or assists in the performance of functions associated with the dispensing process, drug utilization review (DUR), claims adjudication, refill authorizations, and therapeutic interventions;**

(K) Class K: Internet. A pharmacy that provides services as defined in section 338.010, RSMo, and is involved in the receipt, review, preparation, compounding, dispensing**,** or offering for sale any drugs, chemicals, medicines**,** or poisons for any new prescriptions originating from the Internet for greater than ninety percent (90%) of the total new prescription volume on any day*[. A prescription must be provided by a practitioner licensed in the United States authorized by law to prescribe drugs and who has performed a sufficient physical examination and clinical*

assessment of the patient.];

(L) Class L: Veterinary. A pharmacy engaged in the sale, dispensing, or filling of a legend drug for use in animals that must only be dispensed by prescription under state or federal law, provided that an additional Class L pharmacy permit shall not be required for pharmacies holding a Class A pharmacy permit that are also engaged in the sale, dispensing, or filling of a legend drug for animal use;

(M) Class M: Specialty (bleeding disorder). A pharmacy that provides blood-clotting products and ancillary infusion equipment or supplies to patients with bleeding disorders, as defined by 20 CSR 2220-6.100;

(N) Class N: Automated dispensing system (health care facility). An automated dispensing system as defined in 20 CSR 2220-2.900 that is located in a facility where medical services are provided to patients on the premises of or at the same physical location as such facility;

(O) Class O: Automated dispensing system (ambulatory care). An automated dispensing system as defined in 20 CSR 2220-2.900 that is not located in a healthcare facility identified in subsection (9)(N) of this rule; and

(P) Class P: Practitioner office/clinic. A pharmacy that is located in or on the premises of an office or clinic of a healthcare practitioner licensed in the United States who is authorized to prescribe medication by law and that provides pharmacy services as defined in section 338.010, RSMo, solely for patients of such practitioner or practitioners.

(10) Pharmacy applications for initial licensure or renewals of a license shall accurately note each class of pharmacy that is practiced at the location noted on the application or renewal thereof. The permit (license) issued by the board shall list each class of licensure that the pharmacy is approved to engage in. *[Whenever a change in service classification occurs at a pharmacy the permit must be sent to the board with a notarized statement explaining any additions or deletions of pharmacy classes that are to be made.]* **A Pharmacy Change of Classification Application shall be filed with the board prior to adding or deleting any pharmacy classes with the applicable fee.**

(11) Prescriptions processed by any classification of licensed pharmacy must be provided by a practitioner licensed in the United States**,** authorized by law to prescribe drugs**,** and who has performed a *[sufficient physical examination and clinical assessment of the patient]* **medical evaluation of the patient as required by law**. *[A pharmacist shall not dispense a prescription drug if the pharmacist has knowledge, or reasonably should know under the circumstances, that the prescription order for such drug was issued on the basis of an Internet-based questionnaire, an Internet-based consultation, or a telephonic consultation, all without a valid preexisting patient-practitioner relationship.]*

*AUTHORITY: section[s] 338.140, **RSMo Supp. 2013,** and **section** 338.280, RSMo 2000. This rule originally filed as 4 CSR 220-2.020. Original rule filed July 18, 1962, effective July 28, 1962. For intervening history, please consult the **Code of State Regulations**. Emergency amendment filed Jan. 19, 2016, effective Feb. 2, 2016, expires July 30, 2016. Amended: Filed Jan. 19, 2016.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Board of Pharmacy, PO Box 625, 3605 Missouri Boulevard, Jefferson City, MO 65102, by facsimile at (573) 526-3464, or via email at pharmacy@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this rule 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 or 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 13—DEPARTMENT OF SOCIAL SERVICES
Division 40—Family Support Division
Chapter 2—Income Maintenance

ORDER OF RULEMAKING

By the authority vested in the Department of Social Services under section 660.017, RSMo 2000, the director amends a rule as follows:

13 CSR 40-2.300 Definitions Which Are Applicable for Benefit Programs Funded by the Temporary Assistance for Needy Families (TANF) Block Grant **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 1, 2015 (40 MoReg 1285–1286). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 40—Family Support Division
Chapter 2—Income Maintenance

ORDER OF RULEMAKING

By the authority vested in the Department of Social Services under section 660.017, RSMo 2000, the director amends a rule as follows:

13 CSR 40-2.310 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 1, 2015 (40 MoReg 1286–1298). 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 Family Support Division (FSD), a division of the Department of Social Services (DSS), received two (2) comments on the proposed amendment.

COMMENT #1: Legal Services of Eastern Missouri identified a discrepancy between the proposed amendment, which states in part (8)(B)1.D.(I) that the income and resources of a new spouse of a recipient of Temporary Assistance (TA) is disregarded in the first month after the marriage in which TA would have been reduced without the application of the disregard, and FSD policy stating that the disregard begins in the first month after the marriage in which TA benefits could have been affected by the new spouse's income and resources, regardless of whether they actually affect the household's eligibility.
RESPONSE AND EXPLANATION OF CHANGE: FSD acknowledges this discrepancy between the proposed amendment and agency policy. The rule will be updated to clarify that the disregard is effective on the first day of the first month after the marriage in which TA benefits could have been affected by the new spouse's income and resources, regardless of whether they actually affect the household's eligibility. The Department of Social Services does not interpret the Strengthening Missouri Families Act as authorizing FSD to wait to apply the disregard after the marriage. Section 208.026.7, RSMo, states that the disregard is to be applied for six (6) consecutive months "when a...recipient marries." FSD does acknowledge that the disregard should only be applied in a month in which the recipient is requesting TA and is not going to apply the disregard in months in which TA is not being requested. The final rule will be modified to reflect this comment.

COMMENT #2: Once a TA recipient's case is closed for failure to meet the work activity requirements, the recipient must complete thirty (30) hours of work activities before TA benefits can be reissued. Legal Services of Eastern Missouri suggested that this thirty- (30-) hour requirement should be qualified by the twenty- (20-) hour exception for parents with a child under age six (6) in the home, pursuant to Section 261 of Title 45, *Code of Federal Regulations.*
RESPONSE: The twenty- (20-) hours-per-week exception for parents with children who are under age six (6) applies to active recipients of TA, for the purpose of determining monthly work participation rates under Section 607 of Title 42, *United States Code.* The thirty- (30-) hour requirement to cure a full family sanction does not apply to active recipients, nor does it affect the monthly work participation rate. The Strengthening Missouri Families Act does not authorize the Family Support Division to apply this exception in situations where the parent is doing work activities to cure a full family sanction. No changes have been made to this rule as a result of this comment.

13 CSR 40-2.310 Requirements as to Eligibility for Temporary Assistance

(8) Determining the Amount of Cash Payments.

(B) Consideration of available income to determine whether a need for TA exists—

1. In TA cases, all income of the following persons who are in the household, irrespective of subsection (8)(A), shall be considered in determining whether the children (including stepchild) are in need, and if so, the amount of that need:

A. Eligible children;

B. Parents of one (1) or more of the eligible children;

C. Any needy non-parent caretaker relative or related or unrelated guardian if they desire to be included in the assistance group and are eligible for inclusion;

D. New spouse and stepparent income:

(I) Upon the marriage of a TA recipient, the division will disregard the income and resources of the TA recipient's new spouse for six (6) consecutive TA months. Only months in which a TA benefit is paid to the recipient will be counted toward the six (6) consecutive months. The disregard begins the first day of the first month following the marriage date, in which benefits could possibly, but not necessarily, have been affected without application of this disregard. The TA recipient cannot receive this disregard again if he or she remarries. The TA recipient shall provide proof of a valid marriage to the division;

(II) Except as otherwise excluded in part D.(I) of this subparagraph, the income of a stepparent living in the same home as an eligible child counts toward the TA household's eligibility, insofar as it exceeds the sum of—

(a) The first ninety dollars ($90) of the stepparent's earned income, for such month;

(b) The Standard of Need for a family of the same composition as the stepparent and those other individuals living in the same household as the dependent child, and claimed, or who could be claimed, by such stepparent as dependents for purposes of determining the stepparent's federal personal income tax liability, but whose needs are not taken into account;

(c) Amounts paid by the stepparent to individuals not living in such household and claimed by him/her as dependents for purposes of determining the stepparent's federal personal income tax liability; and

(d) Payments by such stepparent of court-ordered alimony or child support with respect to individuals not living in such household;

(III) Dissolution of a marriage severs the legal relationship of the stepparent to the stepchild unless legal guardianship is established by the court;

E. The income of any biological or adoptive brother or sister of an eligible child, if such brother or sister meets the conditions described in 13 CSR 40-2.310(4) and 13 CSR 40-2.325(1)(A)1. and 2., and is living in the home;

F. With respect to a parent or legal guardian who is under age eighteen (18) with an eligible child, the income of such minor parent's own parents who are living in the home shall be included to the same extent that the income of a stepparent is included (see part (8)(B)1.D.(II) above). The minor parent's earned income shall be disregarded up to one hundred percent (100%) of the federal poverty level; and

G. Income of all other persons in the household will be considered in the amount made available to the household;

2. In computing the income of a participant, or of the household of which s/he is a member, only that income which is available during the period under consideration shall be taken into account. To be considered as available, the income shall actually and presently exist (not to be a potential or remote income) and shall be sufficient to have some appreciable significance in meeting the immediate requirements of the participant.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 40—Family Support Division
Chapter 2—Income Maintenance

ORDER OF RULEMAKING

By the authority vested in the Department of Social Services under section 660.017, RSMo 2000, the director amends a rule as follows:

13 CSR 40-2.315 Work Activity and Work Requirements for Recipients of Temporary Assistance **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 1, 2015 (40 MoReg 1299–1306). 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 Family Support Division (FSD), a division of the Department of Social Services (DSS), received three (3) comments on the proposed amendment.

COMMENT #1: Once a TA recipient's case is closed for failure to meet the work activity requirements, the recipient must complete thirty (30) hours of work activities before TA benefits can be reissued. Legal Services of Eastern Missouri suggested that this thirty- (30-) hour requirement should be qualified by the twenty- (20-) hour exception for parents with a child under age six (6) in the home, pursuant to Section 261 of Title 45, *Code of Federal Regulations*.
RESPONSE: The Family Support Division respectfully disagrees with this interpretation. The twenty (20) hours-per-week exception for parents with children who are under age six (6) applies to active recipients of TA for the purpose of determining monthly work participation rates under Section 607 of Title 42, *United States Code*. The thirty- (30-) hour requirement to cure a full family sanction does not apply to active recipients, nor does it affect the monthly work participation rate. The Strengthening Missouri Families Act, section 208.026, RSMo, does not authorize the Family Support Division to apply this exception in situations where the parent is doing work activities to cure a full family sanction. No changes have been made to this rule as a result of this comment.

COMMENT #2: Changes to 13 CSR 40-2.315 exempt parents with children under the age of twelve (12) weeks from the work activity requirement. Previously, this exemption applied to parents with children under twelve (12) months of age. Legal Services of Eastern Missouri suggested retaining the policy of exempting parents with children under twelve (12) months of age, stating that there is no statutory authority for this change and that keeping the exemption age at twelve (12) months will result in healthier outcomes for the family.
RESPONSE: There are no state laws barring the Family Support Division (FSD) from reducing the exemption age to twelve (12) weeks. Federal law states that the exemption for parents with children under twelve (12) months of age is optional. The exemption for parents with children under twelve (12) weeks of age is consistent with labor protections afforded to other Missourians with newborn children, and is in turn consistent with FSD's goal of helping parents become self-sufficient and successful members of the workforce. No changes have been made to this rule as a result of this comment.

COMMENT #3: Legal Services of Eastern Missouri (LSEM), states that the proposed rule subjects Temporary Assistance (TA) recipients who have already been partially sanctioned under the old work requirement rules to the new, stricter requirements, without giving them an opportunity to comply with the new requirements. Specifically, LSEM states that "[c]Changing the penalties on TA recipients *after the fact* by imposing full-family sanctions on recipients with partial sanctions that existed before SB 24's enactment is an illegal, retroactive application of the statute."
RESPONSE: The Family Support Division respectfully disagrees. The proposed amendment does not automatically increase the sanction on partially-sanctioned recipients without first giving them a chance to comply with the new work requirements. Like other recipients who are not cooperating with the work requirements, partially-sanctioned recipients are afforded an opportunity to have a face-to-face meeting with FSD before any action is taken. If the recipient arrives for and

participates in the meeting with FSD in the manner required by law, the partial sanction is lifted, and no penalty is applied. If the recipient fails to arrive for the meeting without good cause, the six- (6-) week conciliation period goes into effect just like it does for other TA recipients, and the fifty percent (50%) sanction does not occur until after that period. The rule does not assume that these recipients are automatically subject to the new sanctions. Moreover, partially-sanctioned recipients are not going through a process that is any different than the process that other recipients must go through. No changes have been made to this rule as a result of this comment.

This section may contain notice of hearings, correction notices, public information notices, rule action notices, statements of actual costs, and other items required to be published in the *Missouri Register* by law.

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation Commission
Chapter 25—Motor Carrier Operations

IN ADDITION

7 CSR 10-25.010 Skill Performance Evaluation Certificates for Commercial Drivers

PUBLIC NOTICE

Public Notice and Request for Comments on Applications for Issuance of Skill Performance Evaluation Certificates to Intrastate Commercial Drivers with Diabetes Mellitus or Impaired Vision

SUMMARY: This notice publishes MoDOT's receipt of applications for the issuance of Skill Performance Evaluation (SPE) Certificates from individuals who do not meet the physical qualification requirements in the Federal Motor Carrier Safety Regulations for drivers of commercial motor vehicles in Missouri intrastate commerce because of impaired vision or an established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control. If granted, the SPE Certificates will authorize these individuals to qualify as drivers of commercial motor vehicles (CMVs), in intrastate commerce only, without meeting the vision standard prescribed in 49 CFR 391.41(b)(10), if applicable, or the diabetes standard prescribed in 49 CFR 391.41(b)(3).

DATES: Comments must be received at the address stated below, on or before, April 1, 2016.

ADDRESSES: You may submit comments concerning an applicant, identified by the Application Number stated below, by any of the following methods:
• *Email:* Pamela.lueckenotto@modot.mo.gov
• *Mail:* PO Box 270, Jefferson City, MO 65102
• *Hand Delivery:* 830 MoDOT Drive, Jefferson City, MO 65102
• *Instructions:* All comments submitted must include the agency name and Application Number for this public notice. For detailed instructions on submitting comments, see the Public Participation heading of the Supplementary Information section of this notice. All comments received will be open and available for public inspection and MoDOT may publish those comments by any available means.

COMMENTS RECEIVED BECOME MoDOT PUBLIC RECORD

• By submitting any comments to MoDOT, the person authorizes MoDOT to publish those comments by any available means.
• *Docket:* For access to the department's file, to read background documents or comments received, 830 MoDOT Drive, Jefferson City, MO 65102, between 7:30 a.m. and 4:00 p.m., CT, Monday through Friday, except state holidays.

FOR FURTHER INFORMATION CONTACT: Pam Lueckenotto, Motor Carrier Investigations Specialist, 636-288-6082, MoDOT Motor Carrier Services Division, PO Box 270, Jefferson City, MO 65102. Office hours are from 7:30 a.m. to 4:00 p.m., CT, Monday through Friday, except state holidays.

SUPPLEMENTARY INFORMATION:

Public Participation
If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard.

Background
The individuals listed in this notice have recently filed applications requesting MoDOT to issue SPE Certificates to exempt them from the physical qualification requirements relating to vision in 49 CFR 391.41(b)(10), or to diabetes in 49 CFR 391.41(b)(3), which otherwise apply to drivers of CMVs in Missouri intrastate commerce.

Under section 622.555, RSMo, MoDOT may issue an SPE Certificate, for not more than a two- (2-) year period, if it finds that the applicant has the ability, while operating CMVs, to maintain a level of safety that is equivalent to or greater than the driver qualification standards of 49 CFR 391.41. Upon application, MoDOT may renew an exemption upon expiration.

Accordingly, the agency will evaluate the qualifications of each applicant to determine whether issuing an SPE Certificate will comply with the statutory requirements and will achieve the required level of safety. If granted, the SPE Certificate is only applicable to intrastate transportation wholly within Missouri.

Qualifications of Applicants

Application #182

Renewal Applicant's Name & Age: Neil E. Simmons, 56

Relevant Physical Condition: Insulin-treated diabetes mellitus (ITDM). Mr. Simmons's best uncorrected visual acuity is 20/30 Snellen in the right eye and best uncorrected visual acuity is 20/40 Snellen in the left eye. Mr. Simmons has been an insulin treated diabetic since 1995.

Relevant Driving Experience: Mr. Simmons has approximately thirty-four (34) years of commercial motor vehicle experience. Mr. Simmons currently has a Class B license. In addition, he has experience driving personal vehicle(s) daily.

Doctor's Opinion & Date: Following an examination in December 2015, a board-certified endocrinologist certified his condition would not adversely affect his ability to operate a commercial motor vehicle safely.

Traffic Accidents and Violations: Mr. Simmons has had no tickets or accidents on record for the previous three (3) years.

Request for Comments
The Missouri Department of Transportation, Motor Carrier Services Division, pursuant to section 622.555, RSMo, and rule 7 CSR 10-25.010, requests public comment from all interested persons on the applications for issuance of Skill Performance Evaluation Certificates described in this notice. We will consider all comments received before the close of business on the closing date indicated earlier in this notice.

Issued on: January 29, 2016

Scott Marion, Motor Carrier Services Director, Missouri Department of Transportation.

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation Commission
Chapter 25—Motor Carrier Operations

IN ADDITION

7 CSR 10-25.010 Skill Performance Evaluation Certificates for Commercial Drivers

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COMMENTS RECEIVED BECOME MoDOT PUBLIC RECORD

• By submitting any comments to MoDOT, the person authorizes MoDOT to publish those comments by any available means.
• *Docket:* For access to the department's file, to read background documents or comments received, 830 MoDOT Drive, Jefferson City, MO 65102, between 7:30 a.m. and 4:00 p.m., CT, Monday through Friday, except state holidays.

FOR FURTHER INFORMATION CONTACT: Pam Lueckenotto, Motor Carrier Investigations Specialist, 636-288-6082, MoDOT Motor Carrier Services Division, PO Box 270, Jefferson City, MO 65102. Office hours are from 7:30 a.m. to 4:00 p.m., CT, Monday through Friday, except state holidays.

SUPPLEMENTARY INFORMATION:

Public Participation
If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard.

Background
The individuals listed in this notice have recently filed applications requesting MoDOT to issue SPE Certificates to exempt them from the physical qualification requirements relating to vision in 49 CFR 391.41(b)(10), or to diabetes in 49 CFR 391.41(b)(3), which otherwise apply to drivers of CMVs in Missouri intrastate commerce.

Under section 622.555, RSMo, MoDOT may issue an SPE Certificate, for not more than a two- (2-) year period, if it finds that the applicant has the ability, while operating CMVs, to maintain a level of safety that is equivalent to or greater than the driver qualification standards of 49 CFR 391.41. Upon application, MoDOT may renew an exemption upon expiration.

Accordingly, the agency will evaluate the qualifications of each applicant to determine whether issuing an SPE Certificate will comply with the statutory requirements and will achieve the required level of safety. If granted, the SPE Certificate is only applicable to intrastate transportation wholly within Missouri.

Qualifications of Applicants

Application #301

New Applicant's Name & Age: Christopher W. Cochran, 32

Relevant Physical Condition: Vision impaired.
Mr. Cochran has had optic atrophy with hand motion visual acuity in his left eye since birth. His best corrected visual acuity in his right eye is 20/20 Snellen. Mr. Cochran has had this visual impairment since December 27, 1983.

Relevant Driving Experience: Mr. Cochran has approximately six (6) months of commercial motor vehicle experience. Mr. Cochran currently has a Class B permit license. In addition, he has experience driving personal vehicle(s) daily.

Doctor's Opinion & Date: Following an examination in October 2015, a board-certified optometrist certified his condition would not adversely affect his ability to operate a commercial motor vehicle safely.

Traffic Accidents and Violations: Mr. Cochran has had no tickets or accidents on record for the previous three (3) years.

Request for Comments
The Missouri Department of Transportation, Motor Carrier Services Division, pursuant to section 622.555, RSMo, and rule 7 CSR 10-25.010, requests public comment from all interested persons on the applications for issuance of Skill Performance Evaluation Certificates described in this notice. We will consider all comments received before the close of business on the closing date indicated earlier in this notice.

Issued on: January 26, 2016

Scott Marion, Motor Carrier Services Director, Missouri Department of Transportation.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 60—Missouri Health Facilities Review Committee
Chapter 50—Certificate of Need Program

NOTIFICATION OF REVIEW: APPLICATION REVIEW SCHEDULE

The Missouri Health Facilities Review Committee has initiated review of the applications listed below. A decision is tentatively scheduled for

March 23, 2016. These applications are available for public inspection at the address shown below:

Date Filed
Project Number: Project Name
City (County)
Cost, Description

2/8/16
#5292 HT: Cass Regional Medical Center
Harrisonville (Cass County)
$1,330,750, Replace MRI

2/9/16
#5290 HT: Heartland Regional Medical Center
St. Joseph (Buchanan County)
$2,365,856, Replace MRI

2/10/16
#5286 RT: Americare at Mill Creek Village Assisted Living
Columbia (Boone County)
$8,470,000, Replace 30 ALF beds and 16 ALF beds

Any person wishing to request a public hearing for the purpose of commenting on these applications must submit a written request to this effect, which must be received by March 12, 2016. All written requests and comments should be sent to—

Chairman
Missouri Health Facilities Review Committee
c/o Certificate of Need Program
3418 Knipp Drive, Suite F
PO Box 570
Jefferson City, MO 65102
For additional information contact Alicia Wieberg, (573) 751-6403.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN ADDITION

Pursuant to section 376.1224, RSMo, regarding the maximum prescribed insurance benefit for the coverage of applied behavior analysis for the treatment of autism, the Director of Insurance, Financial Institutions and Professional Registration is required to calculate the new maximum each year to adjust for inflation.

Using Consumer Price Index for All Urban Consumers, as required by section 376.1224, RSMo, the new maximum required benefit was established by the following calculation:

Index Based on 1984 Dollars
CPI for 2014: 236.736
CPI for 2015: 237.017

New ABA Mandated Maximum Benefit = 2015 Limit × (2015 Annual Index/2014 Annual Index)

$43,427 × (237.017/236.736) = $43,478