

**U**nder 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."

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 If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission.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

**A**n 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.

**I**f 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*.

**A**n 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.

**I**f 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.

*licensed drug distributors.*

(1) [As defined in section 338.315, RSMo, pharmacies and all individuals employed by pharmacies shall purchase or receive legend drugs only from a licensed or registered drug distributor or licensed pharmacy. For purposes of this rule, the term drug distributor is used to define anyone engaged in an activity as defined in section 338.330, RSMo. Drug distributors as defined in 338.330, RSMo, shall only purchase or receive legend drugs and drug related devices from a licensed or registered drug distributor or licensed pharmacy.] A "wholesale drug distributor" is defined in section 338.330(3), RSMo. No wholesale drug distributor with physical facilities located in the state of Missouri shall knowingly purchase or receive legend drugs and/or drug related devices from a wholesale drug distributor or pharmacy not licensed or registered by the board. A wholesale drug distributor with physical facilities located in the state of Missouri will be deemed to have knowledge of the unlicensed or unregistered status of another wholesale drug distributor upon notification from the board by mail or electronic facsimile transmission (FAX).

(C) Wholesale drug distributors shall inform the board of their current FAX number, any change in FAX number, and/or the fact that the wholesale drug distributor does not have a working FAX. In the event a wholesale drug distributor notifies the board that the wholesale drug distributor does not have a working FAX, notification from the board will be made to the wholesale drug distributor by first class mail. For the purposes of this rule, such notification by mail shall be considered effective three (3) days after mailing and shall have the same effect as notification by FAX.

(D) Failure to receive notification from the board shall not be a defense to violations of section (1) of this rule when the wholesale drug distributor has failed to comply with the requirements of subsection (1)(C) of this rule.

(4) Drug distributor license applications and renewal applications shall be completed and submitted to the Board of Pharmacy along with the appropriate fees before any license is issued or renewed. Information required on the application shall include:

(A) The name, full business address, **electronic facsimile transmission number (FAX)** and telephone number of the licensee;

*AUTHORITY: sections 338.330, 338.333, 338.335, 338.337, 338.340 and 338.350, RSMo 2000. Original rule filed Feb. 4, 1991, effective June 10, 1991. Amended: Filed April 28, 1992, effective Feb. 26, 1993. Amended: Filed Jan. 27, 1995, effective Sept. 30, 1995. Amended: Filed March 15, 2000, effective Sept. 30, 2000. Amended: Filed Nov. 1, 2000, effective June 30, 2001. Amended: Filed April 6, 2001, effective Nov. 30, 2001. Amended: Filed June 16, 2003.*

*PUBLIC COST: This proposed amendment will cost the State Board of Pharmacy approximately three hundred dollars (\$300) for initial set up cost and approximately two thousand five hundred one dollars and eighty-eight cents (\$2,501.88) biennially for the life of the rule. It is anticipated that the cost will recur biennially for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee. A detailed fiscal note, which estimates the cost of compliance with this rule, has been filed with the secretary of state.*

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

Proposed Amendment Text Reminder:

**Boldface text indicates new matter.**

*[Bracketed text indicates matter being deleted.]*

## Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

### Division 220—State Board of Pharmacy Chapter 5—Drug Distributor

#### PROPOSED AMENDMENT

**4 CSR 220-5.020 Drug Distributor Licensing Requirements.** The board is proposing to amend section (1), add new language in subsections (1)(C) and (1)(D) and amend subsection (4)(A).

*PURPOSE: This amendment redefines the term "wholesale drug distributor," requires that licensed drug distributors purchase only from other licensed drug distributors; compiles current fax numbers of licensees in order to establish a fax communication system so that information about unlicensed entities may be communicated to*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Pharmacy, Kevin Kinkade, Executive Director, PO Box 625, Jefferson City, MO 65102, via facsimile to (573) 526-3464 or e-mail at [pharmacy@mail.state.mo.us](mailto:pharmacy@mail.state.mo.us). 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.*

PUBLIC ENTITY FISCAL NOTE

I. RULE NUMBER

Title 4 -Department of Economic Development  
Division 220 - State Board of Pharmacy  
Chapter: 5 - Drug Distributor  
Proposed Amendment: 4 CSR 220-5.010 Drug Distributor Advisory Committee  
Prepared May 5, 2003 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Biennial Cost of Compliance
State Board of Pharmacy	\$2,501.88
<b>Total Biennial Cost of Compliance for the Life of the Rule</b>	
	<b>\$2,501.88</b>

III. WORKSHEET

**Personal Service Dollars** - The board anticipates 350 instate licensees will be required to report their fax numbers to the board office on the biennial renewal notice. Private entities will not incur additional cost to include this information on their renewal application. Upon receipt of the information, the Licensure Technician II will enter the fax numbers into the software program used to generate board communications. The board estimates that it will take approximately 3 hours to enter all the fax numbers. Additionally, the board estimates that 4 hours per month of the biennial period will be dedicated to updating the fax number communication system.

STAFF	ANNUAL SALARY	SALARY TO INCLUDE FRINGE BENEFIT	HOURLY SALARY	HOURS TO INITIALLY UPDATE SYSTEM PER BIENNIAL PERIOD	TOTAL COST
Licensure Technician II	\$22,344.00	\$31,386.62	\$15.09	99	\$1,493.88
<b>Total personal service costs associated with updating the fax number communication system per biennial period</b>					<b>\$1,493.88</b>

**Expense and Equipement Cost -**

Modem and Software Program (initial \$300.00  
Cost of sending faxed communications to all instate licensees is estimated at \$.06 per fax. The board estimates 350 instate distributors will receive 2 faxes per month during the biennial \$1,008.00

IV. ASSUMPTION

1. The number of instate licensees is based on actual figures from FY02 and projected figures in FY03.
2. Personal service dollars were calculated using the Licensure Technician's annual salary multiplied by 40.47% for fringe benefits and then divided by 2080 hours per year to determine the hourly salary. The hourly salary was then multiplied by the number of hours estimated updating the fax number communication system each biennial period.
3. The board estimates the initial set up cost for the modem and software program will be approximately \$300. This proposed amendment is estimated to cost the State Board of Pharmacy approximately \$2,501.88 for personal service expenses and the cost of sending faxed communications to instate licensees.
4. It is anticipated that the total cost will recur biennially for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.

**Title 5—DEPARTMENT OF ELEMENTARY AND  
SECONDARY EDUCATION  
Division 30—Division of Administrative and  
Financial Services  
Chapter 261—Pupil Transportation**

**PROPOSED AMENDMENT**

**5 CSR 30-261.010 Requirements for the Operation of School Buses.** The State Board of Education is proposing to amend subsections (1)(E), (3)(A), (5)(A), (5)(B), delete section (4) and renumber the remaining section, and delete the school bus accident report form that follows this rule in the *Code of State Regulations*.

*PURPOSE:* This proposed amendment will allow the Department of Elementary and Secondary Education to eliminate the *School Bus Accident Report (3-260-011)*. In addition, *ridership lists, ineligible and eligible miles, restrictions on blocking of aisles, and requirements of buses to be visible during loading and unloading are clarified.*

(1) General Requirements for Approval of School Bus Transportation.

(E) Public school district boards of education shall provide for proper accounting of pupil transportation data and shall prepare and submit to the State Board of Education (**board**) necessary reports for apportioning state transportation aid and for statistical purposes.

1. A listing shall be made of pupils *[scheduled to be]* regularly transported on each board of education's approved routes on the second Wednesday of the month for the months of October and February.

2. The school district listing of pupils *[scheduled to be]* regularly transported by route must be signed and maintained by the superintendent of schools or an appointed designee.

(3) Driver Operation.

(A) A school bus driver shall/—/:

1. Observe carefully all signs, signals and rules of the road as provided by the Missouri Motor Vehicle Laws;

2. Follow these loading and unloading procedures/—/:

A. If school bus is equipped with a master switch, make sure the master switch is in the "on" position;

B. Activate prewarning amber flashing lights at least five hundred feet (500') before a designated stop;

C. When stopping for a designated stop, apply brakes hard enough to light up the brake lights so that vehicles behind the school bus will know it is slowing down;

D. Pull as far to the right as practicable on the traveled portion of the roadway and at a location so that the school bus is visible for at least three hundred feet (300') in both directions **or five hundred feet (500') if the speed limit is greater than sixty (60) miles per hour**. Check all mirrors to see that traffic is clear and it is safe to stop;

E. Approach waiting students with extreme care, paying attention to the surface on which the school bus will stop (dry, slippery, slopes right, rough ground, and the like). Bring the school bus to a complete stop so that the closest part of the school bus is not less than six feet (6') and not more than ten feet (10') from the closest student;

F. Place the transmission in neutral and set the parking brake as needed;

G. Deactivate the prewarning amber flashing lights and activate the red flashing warning lights and the stop arm when opening the service door after stopping;

H. Check traffic in front and rear of school bus before you give the students a hand signal that it is okay to cross the road. Drivers should train students not to approach the school bus until given a signal and to check traffic before crossing the roadway;

I. Require students who must cross the roadway after leaving the bus or before boarding the bus to cross a minimum of ten feet (10') in front of the bus and only upon a signal given by the driver, monitor or bus patrol when organized bus patrols are used; and

J. Have students go directly to their seats. When students are seated, check traffic and close the front door to deactivate the red flashing warning lights and stop arm;

3. Perform and prepare written documentation of the daily pre-trip inspection which is to be submitted to the transportation administrator. Pretrip inspection of vehicle shall include brakes, steering components, lights, signaling devices, emergency door, tires and safety equipment, as a minimum. Any defects or deficiencies that may affect the safety of vehicle operation or result in mechanical breakdown shall be reported immediately in writing and driver shall not operate school bus until the defect or deficiency has been corrected;

4. Activate the prewarning amber flashing lights if a school bus stop must be made in close proximity to the crest of a hill or on curves with limited sight distance, approximately one hundred feet (100') before passing the crest so that vehicles following to the rear shall be made aware the bus is preparing to stop for the purpose of loading or unloading pupils;

5. Assume control of all children while they are being transported requiring respectable and orderly behavior from them. Particular attention should be given to the care and protection of the younger pupils. Any continued disorderly conduct should be reported to the proper school authorities;

6. Not back school bus on school grounds unless rear is guarded by school patrol or adult and driver is advised that the way is clear. Backing the bus at any time shall be avoided if at all possible;

7. Follow these procedures when a school bus is disabled/—/:

A. Stop the bus as far to the right as possible (on the shoulder, if available);

B. Secure the bus, activate hazard/warning lights and set parking brake;

C. Keep children in bus. If location of the bus is unsafe, remove the children to a safer location;

D. Place triangular reflectors a minimum of one hundred feet (100') in both the front and rear of the bus;

E. Telephone, radio or send capable student to call authorities, giving bus location and description of breakdown; and

F. See that all pupils are delivered to their destinations;

8. Keep inside of vehicle clean and comfortable at all times;

9. Keep lettering and lights on front and rear of bus clean so that all markings are clearly visible;

10. Keep service door closed at all times when bus is in motion;

11. Not leave a loaded bus while motor is running;

12. Fill the fuel tank only when there are no children in the bus;

13. Not allow animals on the school bus except for seeing eye dogs or other specially trained animals necessary to furnishing special education services for handicapped children to comply with *[section 162.710, RSMo]* **applicable state law and regulations**;

14. Not allow weapons or explosive material on the school bus;

15. Not allow items *[carried]* on the school bus to protrude into or block the aisle or be left in the driver or **emergency** exit areas;

16. Make and promptly file all daily, weekly and monthly reports which may be required;

17. Use seat belt whenever the bus is in motion;

18. Not drive any school bus for more than/—/:

A. Eight (8) consecutive hours. Hours will be consecutive unless the individual ceases operation of the vehicle for at least sixty (60) minutes; or

B. An aggregate of twelve (12) hours in a twenty-four (24)-hour period;

19. Illuminate headlights whenever students are being transported;

20. Not use tobacco products at any time in the school bus; and

21. Not operate a school bus while under the influence of intoxicants, narcotics or drugs.

*[(4) Reporting of School Bus Accidents. Any school bus accident which results in personal injury or total property damage in excess of five hundred dollars (\$500) shall be reported on the School Bus Accident Report (3-260-011) immediately following the accident.]*

*[(5)] (4) Public School District Route Approval [General Definitions and Procedures].*

(A) General Definitions.

1. Eligible miles/—/. Those **actual regular school term and handicapped** miles traveled from where the bus is kept at night until it returns to the same location after the pupils have been returned home, as long as it is used only to transport **vocational students and K-12** pupils to and from school **at the beginning and ending of the regular school day**, are eligible for state transportation aid.

2. Ineligible miles/—/. All **actual** miles that are driven for any purpose other than transporting **K-12** students to or from school during the school term are ineligible for state transportation aid. **Regular summer school routes, non-handicapped early childhood routes, /F/field trips, athletic trips, maintenance miles** and other extracurricular activity trips are examples of ineligible miles. Miles traveled to rerun a route or part of a route to transport students participating in before- or after-school activities or training are also ineligible miles. All ineligible miles shall be recorded and subsequently reported on the application for state transportation aid.

3. School bus route/—/. A bus route begins when a bus leaves a point (home, school, and the like) empty and proceeds on a predetermined route, picking up pupils and then traveling to a school(s) until the bus is empty; and returning the pupils to a designated point after school. If more than one (1) route is run by the same bus, each additional route begins when the bus is empty after discharging all the pupils from a previous route and proceeds along another predetermined route, picking up pupils and discharging all of them at their attendance center(s) and returning them home.

(B) *[Public School District Route Approval]* Procedures/—/. Public school districts must adopt a policy implementing school bus route approval procedures for the annual approval of the routes needed for safe and cost efficient pupil transportation service which meets and may exceed the state board's minimum requirements as described in this subsection.

1. Criteria for determining routes/—/:

- A. Location of pupil's residence;
- B. Grade and age of the pupils to be transported;
- C. Type and condition of roads;
- D. Standard of service desired; and
- E. Funds available for transportation service.

2. Safety considerations for establishing school bus routes/—/:

- A. The general safety of all routes in relation to hazards such as hills, intersections, railroad crossings, bridges, sharp curves, and obstructions to visibility;
- B. The general safety of loading and unloading stops in relation to the visibility of approaching motorists;
- C. Walking distance to the bus stop in relation to the age of the pupil; and
- D. Walking route safety to loading stop, from unloading stop, and loading zones.

3. Administrative policy shall be adopted by the public school district board of education which describes the criteria, safety considerations and routing standards school officials must use when establishing or modifying school bus routes. Examples of administrative policy components include but are not limited to:

- A. Duplication of route miles and "deadheading" shall be avoided if at all possible;
- B. School bus stops should be established no less than five hundred feet (500') apart;

C. Multiple routes by a single school bus should be used when possible;

D. Routes should be planned to avoid dead-end streets or cul-de-sacs whenever possible;

E. Assign pupils to school buses so that passenger loads do not exceed manufacturer vehicle passenger capacity and to avoid overloading;

F. All school buses should be loaded as near their capacity as possible;

G. Buses should be used primarily to transport pupils to and from school. Buses may be used to transport pupils on school-sponsored activity trips, but such trips should not interfere with the transportation of pupils to and from school;

H. Each school district shall keep on file an up-to-date map showing the location and length of each school bus route;

I. Bus routing and seating plans shall be coordinated so that there are no standees and every passenger is provided a seat. The seating space provided each passenger must be sufficient to ensure that the back of each passenger may come into full contact with the seat back;

J. All vehicles used to transport pupils shall comply with the requirements of the law and with standards and safety rules as adopted by the *[State Board of Education]* board; and

K. School bus inspections shall not be made more than sixty (60) days prior to operating the vehicles during the school year.

4. School districts which transport nonresident pupils not legally assigned or through an interdistrict contract shall not claim any additional miles as eligible miles and the pupils shall be reported as ineligible pupils.

A. High school pupils from elementary school districts/—/. High school pupils residing in an elementary school district are to be claimed only by the elementary district. The elementary district shall claim mileage from where the bus enters the elementary district, including miles traveled within the elementary district and the most direct route to the school of attendance.

*AUTHORITY: sections 161.092, RSMo Supp. 2002, 163.161, [RSMo Supp. 1999] and 304.060, RSMo [1994] 2000. This rule was previously filed as 5 CSR 40-261.010. Original rule filed June 15, 1951, effective July 1, 1951. For intervening history, please consult the Code of State Regulations. Amended: Filed May 27, 2003.*

*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 Department of Elementary and Secondary Education, Attn: Tom Quinn, Director, School Governance, PO Box 480, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

**Title 5—DEPARTMENT OF ELEMENTARY AND  
SECONDARY EDUCATION  
Division 60—Vocational and Adult Education  
Chapter 120—Vocational Education**

**PROPOSED RESCISSION**

**5 CSR 60-120.020 Implementation of Vocational Education Programs.** This rule, through the *Handbook for Vocational*

*Education in Missouri*, established the guidelines for implementation and operation of vocational education programs for public education agencies.

**PURPOSE:** *This rule is being rescinded due to all of the general guidelines for administration of vocational education programs and services listed in the Handbook are out-of-date. Therefore, the Handbook is no longer needed.*

**AUTHORITY:** *section 178.430, RSMo 1986. Original rule filed Aug. 26, 1974, effective Sept. 6, 1974. Amended: Filed Oct. 29, 1981, effective Feb. 15, 1982. Rescinded: Filed May 27, 2003.*

**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 Missouri Department of Elementary and Secondary Education, Attn: Dr. Nancy Headrick, Assistant Commissioner, Division of Vocational and Adult Education, PO Box 480, Jefferson City, MO 65102-0480. 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 7—DEPARTMENT OF TRANSPORTATION  
Division 10—Missouri Highways and Transportation  
Commission  
Chapter 3—Utility and Private Line Location  
and Relocation**

**PROPOSED RESCISSION**

**7 CSR 10-3.040 Division of Relocation Costs.** This rule provided a uniform system for the designation of cost responsibility for a utility relocation.

**PURPOSE:** *The commission is rescinding this rule and will work towards adopting a new rule that more clearly provides for the designation of cost responsibility.*

**AUTHORITY:** *sections 226.020 and 227.240, RSMo 2000. Original rule filed Oct. 7, 2002, effective May 30, 2003. Emergency rescission filed June 6, 2003, effective June 16, 2003, expires Feb. 26, 2004. Rescinded: Filed June 6, 2003.*

**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 Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, P.O. Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication in the Missouri Register. No public hearing is scheduled.*

**Title 7—DEPARTMENT OF TRANSPORTATION  
Division 10—Missouri Highways and Transportation  
Commission  
Chapter 25—Motor Carrier Operations**

**PROPOSED RULE**

**7 CSR 10-25.010 Skill Performance Evaluation Certificates For Commercial Drivers**

**PURPOSE:** *This rule implements the provisions of section 622.555, RSMo, as enacted by House Bills No. 1270 and No. 2032, 91st General Assembly, Second Regular Session, 2002, by prescribing requirements relating to applications for skill performance evaluation certificates, and the issuance, renewal, suspension and revocation of those certificates by the commission. These certificates authorize certain individuals, who cannot satisfy the physical qualifications generally required by federal regulations, to drive commercial motor vehicles in intrastate commerce if they satisfy alternative requirements, which demonstrate their ability to maintain an equivalent or greater level of safety while operating commercial motor vehicles.*

**PUBLISHER'S NOTE:** *The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. Therefore, the material which is so incorporated is on file with the agency who filed this rule, and with the Office of the Secretary of State. Any interested person may view this material at either agency's headquarters or the same will be made available at the Office of the Secretary of State at a cost not to exceed actual cost of copy reproduction. The entire text of the rule is printed here. This note refers only to the incorporated by reference material.*

(1) Definitions and Substitutions. Except when the context clearly suggests otherwise, the words and terms used in this rule, or in any federal regulation incorporated by reference in this rule, shall have the meaning stated in this section.

(A) Whenever the terms "application," "letter of application," "written request," or any similar terms used in the federal regulation refer to a document to be filed with a federal agency or official, the word "application" shall be substituted for those terms, which means a writing filed with the director, which shall contain all information required to complete the applicable form provided for that purpose by the department.

(B) Whenever the term "commercial motor vehicle" is used in the federal regulation, the term shall include any motor vehicle, or the operation or driver of any motor vehicle, within the jurisdiction of the commission pursuant to the provisions of section 226.008, RSMo.

(C) The word "commission" means the Missouri Highways and Transportation Commission.

(D) The word "department" means the Missouri Department of Transportation.

(E) The word "director" means the director of Motor Carrier Services of the Missouri Department of Transportation.

(F) Whenever the term "exemption" is used in or has reference to 49 CFR part 381, the term "SPE certificate" shall be substituted for the term "exemption." "SPE certificate" means a skill performance evaluation certificate, as defined in subsection 4 of section 622.555, RSMo.

(G) Whenever the term "FMCSA," "field service center, FMCSA" or any comparable term is used in the federal regulation, then the words "Missouri Department of Transportation, Motor Carrier Services" shall be substituted for those terms. If the federal regulation prescribes an address applicable to any of these terms,

then the current business address of the director of Motor Carrier Services shall be substituted for that address.

(H) Whenever the terms "Federal Motor Carrier Safety Administrator," "Federal Highway Administrator," "State Director, FMCSA" or any comparable terms are used in the federal regulation, then the words "Missouri Department of Transportation, director of Motor Carrier Services" shall be substituted for those terms. If the federal regulation prescribes an address applicable to any of these terms, then the current business address of the director of Motor Carrier Services shall be substituted for that address.

(I) Whenever the term "Federal Register" or any comparable term is used in the federal regulation, the term "Missouri Register" shall be substituted for that term.

(J) Whenever the word "interstate" is used in the federal regulation, the word "intrastate" shall be substituted for "interstate."

(2) Delegation of Authority. The commission authorizes the director to administer the skill performance evaluation program for intrastate drivers of commercial motor vehicles, as provided in section 622.555, RSMo, and this rule. The director, at his/her discretion, may delegate any part of this authority to other department personnel.

(3) Filing and Determination of Applications; Demonstration and Verification of Ability to Operate Commercial Motor Vehicles. Applications for an intrastate SPE certificate, and related documents, shall be filed with the director of Motor Carrier Services, at the current business address of the director. Every application shall include all information and supporting documents required by section 622.555, RSMo, this rule, and the latest form of "Application for Skill Performance Evaluation Certificate" and related instructions approved by the director, and any additional information reasonably required by the director.

(A) The director may dismiss, grant or deny applications for SPE certificates, in accordance with the provisions of section 622.555, RSMo, and this rule.

(B) The director may issue SPE certificates that include reasonable limitations, conditions, and requirements to protect public safety, or to promote the department's effective administration of SPE certificates, or both.

(C) At any time while an application is pending, or after the person is issued a SPE certificate, the director may require the person to demonstrate or verify the person's present ability to operate a commercial motor vehicle safely with his/her physical deficiency or impairment. These requirements may include:

1. Successfully completing a road test, using a commercial motor vehicle and associated equipment of the type which the applicant drives or seeks to drive pursuant to the SPE certificate;

2. Obtaining additional or periodic physical examinations by a physician or optometrist; and

3. Filing additional or periodic reports with the director concerning the person's medical or vision examinations, treatment, prognosis, employment, driving record, accidents, traffic violations, and other pertinent information.

(4) Limb Exemption. The commission incorporates by reference in this rule the provisions of 49 CFR section 391.49 (Alternative physical qualification standards for the loss or impairment of limbs), as those regulations have been and periodically may be amended. Except to the extent they are inconsistent with any provisions of section 622.555, RSMo, or of this rule, those regulations are hereby made applicable to the issuance of intrastate SPE certificates to persons who are not physically qualified to drive pursuant to paragraphs (1) or (2), or both paragraphs (1) and (2), of subsection (b) of 49 CFR section 391.41, because of the person's loss or impairment of one (1) or more of the following: a foot, leg, hand, arm, or any part

thereof.

(5) Vision Exemption. The commission incorporates by reference in this rule the provisions of subpart A (General) and subpart C (Procedures for Applying for Exemptions) of part 381 (Waivers, Exemptions and Pilot Programs) of Title 49, *Code of Federal Regulations*, and 49 CFR section 391.64 (Grandfathering for certain drivers participating in vision and diabetes waiver study programs), as those regulations have been and periodically may be amended. Except to the extent those regulations are inconsistent with any provisions of section 622.555, RSMo, or of this rule, those regulations are hereby made applicable to the issuance of intrastate SPE certificates to persons who are not physically qualified to drive pursuant to paragraph (10) of subsection (b) of 49 CFR section 391.41, because of impaired vision. Notwithstanding any provisions of 49 CFR part 381 to the contrary, this rule shall not authorize waivers or pilot programs, as defined in part 381.

(A) Every application filed pursuant to this section shall include one (1) or more affidavits describing the applicant's motor vehicle driving experience during the three (3)-year period immediately before the date of the application. Each affidavit shall contain all information required by the latest form of "Affidavit of Driving Experience" and pertinent instructions approved by the director.

(B) Notwithstanding any requirement of Title 49 CFR, or of any federal agency or officer made pursuant to Title 49 CFR, to the contrary, the director may determine that an applicant has adequately demonstrated the ability to operate a commercial motor vehicle safely with the vision impairment for the three (3)-year period immediately before the date of the application, if the director reasonably finds that:

1. During that three (3)-year period, the applicant safely and continuously operated commercial motor vehicles, or other motor vehicles licensed and used on public highways, with the vision impairment; and

2. If the driving experience required by paragraph 1 of this subsection was not performed in a commercial motor vehicle, then within sixty (60) days immediately before the date of the application, or while the application is pending, the applicant has successfully completed a road test as provided in subpart D of 49 CFR part 391, with the vision impairment, using a commercial motor vehicle and associated equipment of the type which the applicant seeks to drive pursuant to the SPE certificate.

(6) Other Physical Deficiencies. Persons who are physically unqualified to drive commercial motor vehicles pursuant to any provision of 49 CFR section 391.41(b), except paragraphs (1), (2) and (10), may apply for intrastate SPE certificates, and the director may issue intrastate SPE certificates to those applicants, only if:

(A) The Federal Motor Carrier Safety Administration (FMCSA) is currently administering a program for issuing SPE certificates, or exemptions from the physical qualification requirements, to interstate drivers who are physically unqualified because of the same physical deficiency or impairment affecting the applicant;

(B) The applicant files an application for SPE certificate with the director, which conforms to all applicable requirements of section 622.555, RSMo, and this rule, and conforms to the same standards and procedures that are applicable under FMCSA's comparable interstate SPE certificate or exception program, as modified and supplemented by any applicable provisions of section 622.555, RSMo, or this rule.

(7) Multiple Physical Conditions. The director may deny applications for SPE certificates, and may suspend or revoke SPE certificates, regarding any person who is not physically qualified pursuant to the requirements of two (2) or more separate paragraphs within subsection (b) of 49 CFR section 391.41, except a person who is

physically unqualified only pursuant to paragraphs (1) and (2) of that subsection.

(8) Federal Exemption or SPE Certification. Upon the filing of an application containing such information as the director may require, the director may waive any procedural requirements pursuant to this rule and shall issue an intrastate SPE certificate to any driver who is authorized to operate commercial motor vehicles in interstate commerce by a currently valid SPE certificate or vision exemption issued by the FMCSA. Each SPE certificate issued pursuant to this section shall be conditioned upon the driver's continued possession of the federal SPE certificate in good standing, and the driver's compliance with all applicable requirements, including all conditions specified in the driver's federal SPE certificate, and any other conditions imposed by the director.

(9) Operation in Conformity with Terms of SPE Certificate. No person shall operate a commercial motor vehicle by authority of any SPE certificate issued pursuant to this rule, unless the vehicle is operated in conformity with all limitations, requirements and other terms specified in that SPE certificate.

(10) Suspension and Revocation. For good cause, the director may revoke a person's SPE certificate after notice and an opportunity for hearing before the Administrative Hearing Commission, or may suspend the certificate until it is determined whether the certificate should be revoked.

*AUTHORITY: sections 226.008 and 622.555, RSMo Supp. 2002. Emergency rule filed June 6, 2003, effective June 16, 2003, expires Feb. 26, 2004. Original rule filed June 6, 2003.*

*PUBLIC COST: This proposed rule is estimated to cost the department one hundred seventy-seven thousand seven hundred ninety-three dollars (\$177,793), in the aggregate, during FY03 and cost one hundred ninety-six thousand six hundred eight dollars (\$196,608) the subsequent years. A detailed fiscal note, which estimates the cost of compliance with this rule, has been filed with the secretary of state.*

*PRIVATE COST: This proposed rule is estimated to cost medical waiver applicants sixty-eight thousand ninety dollars (\$68,090), in the aggregate, during FY03 and cost one hundred two thousand two hundred ninety-four dollars (\$102,294) the subsequent years. A detailed fiscal note, which estimates the cost of compliance with this rule, has been filed with the secretary of state.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, 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.*

PUBLIC ENTITY COST

I. RULE NUMBER

Title: 7 - Department of Transportation

Division: 10 - Missouri Highways and Transportation Commission

Chapter: 25 - Motor Carrier Operations

Rule Number and Name:	7 CSR 10-25.010 Skill Performance Evaluation Certificates for Commercial Drivers.
Type of Rulemaking	Proposed Rulemaking

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost in the Aggregate.
Missouri Department of Transportation	Cost for FY'03 <u>\$177,793.00</u>
	Subsequent Years <u>\$196,608.00</u>

III. WORKSHEET

Limb Waiver Examiner Inspector's salary and expenses (no examination necessary for the Vision Waiver):

2 full days (preparation and execution) \$267.44

Average mileage for arriving at test site, designing test route, & return trip 280 miles at 27 cents per mile \$75.60

Examining Inspector salary expenses per test \$343.04

Estimated Number of applicants => 193 x \$343.04 \$66,207.00 for FY'03

Estimated # of applicants/renewals => 290 x \$343.04 \$99,482.00 for subsequent years (waiver is in effect for 2 years)

Annual Salary -Intermediate Motor Carrier Specialist \$41,304.00 (midpoint SG 13) + fringe at 0.3601 = \$56,177.57

Annual Salary of Senior Secretary \$23,784.00 (midpoint SG4) + fringe at 0.3601 = \$32,348.62

Recruitment costs (to include interviews, etc) \$3000 (1 time cost)

Training for Medical Waiver Specialist \$3700 (1 time cost)

Salaries, Training & Recruitment Total \$95,227.00 for FY'03

Salaries, Training & Recruitment (minus FY'03 cost) \$88,527.00 for subsequent years



FISCAL NOTE  
PRIVATE ENTITY COST

I. RULE NUMBER

Title: 7 - Department of Transportation

Division: 10 - Missouri Highways and Transportation Commission

Chapter: 25 - Motor Carrier Operations

Rule Number and Name:	7 CSR 10-25.010 Skill Performance Evaluation Certificates for Commercial Drivers.
Type of Rulemaking	Proposed Rulemaking

II. SUMMARY OF FISCAL IMPACT

Estimate of the Number of Entities by class which would likely be affected by the adoption of the rule:	Classification by types of business entities which would be affected:	Estimated Cost in the Aggregate.
193 Limb Waiver applicants in FY'03 290 applicants in subsequent years	Individuals estimated to apply for a waiver who may or may not be employed at the time of application.	Limb Waiver Cost for FY'03 <u>\$34,578.00</u>
284 Vision Waiver applicants in FY'03 and 426 applicants in subsequent years.		Cost for Subsequent Years <u>\$52,026.00</u>
		Vision Waiver Cost for FY'03 <u>\$33,512.00</u>
		Cost for Subsequent Years <u>\$50,268.00</u>

III. WORKSHEET

Limb Waiver		Vision Waiver	
<i>Activity</i>	<i>Estimated Cost</i>	<i>Activity</i>	<i>Estimated Cost</i>
Application completion (2 pgs)	\$0.00	Application completion (2 pgs)	\$0.00
Mailing application (Estimated 18 pages + 2 photos)	\$1.06	Mailing application (Estimated 5 pages)	\$0.60
Physiatrist or Orthopedic Surgeon Exam	\$158.00	Optometrist or Ophthalmologist Exam	\$117.00
Photos: 2 photos required, one with prosthesis, one without. (\$9.99 for camera and \$7.90 to develop photos)	\$17.89	No photos required	

Required Copies of Documents Total (Copies are at \$.08/single sided copy)	\$2.21	Required Copies of Documents Total (Copies are at \$.08/single sided copy)	\$0.40
Copy of DOT Physical (estimated 4 pages)	\$0.32	Copy of DOT Physical (estimated 4 pages)	\$0.32
Copy of Physiatrist/Ortho Exam documentation (8 pgs)	\$0.64	Copy of Vision Specialist certification (1 page)	\$0.08
Application for employment (2 pages) no copies necessary.	\$0.00		
Obtain State Driving Record (est. average 2 pages) no copies necessary	\$1.25		
Total Cost to Individual:	\$179.16	Total Cost to Individual:	\$118.00

#### Total Estimated Costs for FY'03 and Subsequent Years

Estimated number of Limb Waiver Applications in FY'03 => 193 x \$179.16      \$34,578.00  
 Estimated number of Limb Waiver Applications & Renewals in subsequent years => 290 x  
 \$179.40      \$52,026.00

Estimated number of Vision Waiver Applications in FY'03 => 284 x \$118.00      \$33,512.00  
 Estimated number of Vision Waiver Applications & Renewals in subsequent years => 426 x  
 \$118.00      \$50,268.00

#### IV. ASSUMPTIONS

The number of Limb and Vision Waiver applicants was estimated by the current (01/02/03) number of amputee and vision-impaired individuals registered with Missouri's Division Vocational Rehabilitation. It is assumed that there will be a certain category of these individuals that may not be qualified, nor choose to work in this field, but there are other individuals that have not registered with Vocational Rehabilitation that would fill in for those unqualified or non-interested candidates. For subsequent years, it is assumed that a 1.5% growth rate of applicants (rounded to the nearest whole number) in both waiver programs would occur due to industry knowledge that the program exists and the possibility for adoption of a revision being considered by the Federal program to add insulin-dependant diabetics to the program.

Estimate for mailing application was obtained by placing required documents in envelope (and 2 photos in the case of Limb Waiver) and weighing on postage scale.

Quotes for physicians/eye care professionals were obtained by contacting the central business office for a local medical group.

Photo estimate was obtained by a quote for 27-exposure disposable camera and a single print film processing quote for 27 photos from a local retailer.

Estimated cost of copies for required documents for application was obtained by a quote from a local copy store.

Any other costs not identified in this fiscal note are unforeseeable.

**Title 12—DEPARTMENT OF REVENUE  
Division 10—Director of Revenue  
Chapter 23—Motor Vehicle**

**PROPOSED RULE**

**12 CSR 10-23.456 Marine Application for Title**

*PURPOSE:* This rule clarifies when the Application for Missouri Watercraft or Outboard Motor Title and Registration (DOR-93 revision date of March 2003) must be used.

(1) Effective July 1, 2003, the department will begin issuing the revised Application for Missouri Watercraft or Outboard Motor Title and Registration form (DOR-93 revision date of March 2003). This form can be requested from the department of revenue's website at <http://www.dort.state.mo.us/mvdl/formorder>.

(2) All Missouri dealers, lienholders, and applicants must submit this form when applying for title and registration on an outboard motor or vessel.

(3) Previous versions of the application form (DOR-93) may no longer be accepted on or after December 31, 2003.

*AUTHORITY:* sections 306.400 and 306.410, RSMo Supp. 2002. Original rule filed May 22, 2003.

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

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

*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Revenue, Office of Legislation and Regulations, PO Box 629, Jefferson City, MO 65105. 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 19—DEPARTMENT OF HEALTH  
AND SENIOR SERVICES  
Division 60—Missouri Health Facilities Review  
Committee  
Chapter 50—Certificate of Need Program**

**PROPOSED AMENDMENT**

**19 CSR 60-50.300 Definitions for the Certificate of Need Process.** The Committee proposes to amend sections (3), (5), (8), (11)–(18), add new sections (12) and (13), amend and renumber section (12), and renumber the remaining sections.

*PURPOSE:* This amendment provides additional definitions and clarifies previous definitions for terms used in the Certificate of Need (CON) review process.

(3) Cost means—

(A) Price paid or to be paid by the applicant for a new institutional health service to acquire, purchase or develop a health care facility or major medical equipment; *or*

(B) Fair market value of the proposed health care facility or major medical equipment as determined by the current selling price at the

date of the application as quoted by builders or architects for similar facilities or normal suppliers of the requested equipment./; or

(C) For the development of a new health care facility to be licensed under Chapter 198, RSMo, on the campus of an existing health care facility, but of a different licensure category, where support space and services such as administration, dining and laundry would be acquired from the existing facility, the following specific proportional and new costs shall apply:

1. If existing licensed bed space is to be utilized for the new facility, the cost (f) shall be determined by using the formula  $[(a \div b) \times c] + d + e = f$  in the following manner:

A. Divide the number of beds in the proposed new facility (a), by the total number of beds in the existing facility (b);

B. Multiply the above result by the total appraised value of the existing facility prepared by a state-certified appraiser, including land, building, equipment and other improvements (c); and

C. Add the above result to all additional renovations (d), and/or new equipment (e), needed for the proposed new facility; or

2. If a newly constructed unit is to be added to an existing licensed facility, cost (f) shall be determined by using the formula  $[(a \div (a + b)) \times c] + d + e = f$  in the following manner:

A. Divide the number of beds in the proposed new facility (a), by the total number of beds in the existing facility (b) added to the proposed new facility (a);

B. Multiply the above result by the total appraised value of the existing support space and equipment prepared by a state-certified appraiser (c); and

C. Add the above result to all new capital costs (d), and/or new equipment costs (e) to be incurred.

(5) Expedited application means a shorter than full application and review period as defined in 19 CSR 60-50.420 and 19 CSR 60-50.430 for any long-term care expansion or replacement as defined in section 197.318.8–10, RSMo, long-term care renovation and modernization, or the replacement of any major medical equipment as defined in section *[(11)]* (14) of this rule which holds a Certificate of Need (CON) previously granted by the Missouri Health Facilities Review Committee (*/c/Committee*). Applications for replacement of major medical equipment not previously approved by the */c/Committee* should apply for a full review.

(8) Health care facility means those described in section 197.366, RSMo, which replaces section 197.305.7, RSMo.

(12) Long-term care hospital (LTCH) means any facility licensed under Chapter 197, RSMo, meeting the requirements described in 42 CFR section 412.23(e).

(13) Long-term care beds include:

(A) Beds in a facility licensed in accordance with Chapter 198, RSMo, including residential care facility (RCF) I and II, intermediate care facility (ICF) and skilled nursing facility (SNF);

(B) Beds designated as ICF or SNF in a Chapter 197, RSMo, licensed hospital as described in subdivision (3) of subsection I of section 198.012, RSMo; or

(C) Beds in a LTCH meeting the requirements described in 42 CFR section 412.23(e).

*[(12)]* (14) Major medical equipment means any piece of equipment and collection of functionally related devices acquired to operate the equipment and additional related costs such as software, shielding, and installation, with an aggregate cost of one *[(1)]* million dollars (\$1,000,000) or more, when the equipment is intended to provide the following services:

- (A) Cardiac Catheterization;
- (B) CT (Computed Tomography);
- (C) Gamma Knife;
- (D) Hemodialysis;
- (E) Lithotripsy;
- (F) MRI (Magnetic Resonance Imaging);
- (G) PET (Positron Emission Tomography);
- (H) Linear Accelerator;
- (I) Open Heart Surgery;
- (J) EBCT (Electron Beam Computed Tomography);
- (K) PET/CT (Positron Emission Tomography/Computed Tomography); or
- (L) Evolving Technology.

*[(13)]* **(15)** Nonsubstantive project includes, but is not limited to, at least one (1) of the following situations:

- (A) An expenditure which is required solely to meet federal or state requirements or involves predevelopment costs or the development of a health maintenance organization;
- (B) The construction or modification of nonpatient care services, including parking facilities, sprinkler systems, heating or air-conditioning equipment, fire doors, food service equipment, building maintenance, administrative equipment, telephone systems, energy conservation measures, land acquisition, medical office buildings, and other projects or functions of a similar nature; or
- (C) Expenditures for construction, equipment, or both, due to an act of God or a normal consequence of maintenance, but not replacement, of health care facilities, beds, or equipment.

*[(14)]* **(16)** Offer, when used in connection with health services, means that the applicant asserts having the capability and the means to provide and operate the specified health services.

*[(15)]* **(17)** Predevelopment costs mean expenditures as defined in section 197.305(13), RSMo, including consulting, legal, architectural, engineering, financial and other activities directly related to the proposed project, but excluding the application fee for submission of the application for the proposed project.

*[(16)]* **(18)** Related organization means an organization that is associated or affiliated with, has control over or is controlled by, or has any direct financial interest in, the organization applying for a project including, without limitation, an underwriter, guarantor, parent organization, joint venturer, partner or general partner.

*[(17)]* **(19)** Service area means *[a]*:

**(A)** A **fifteen (15)-mile radius for long-term care bed proposals**; or

**(B)** For any other health service, a geographic region appropriate to the proposed service, documented by the applicant and approved by the *[c]*Committee. *[For long-term care projects, the fifteen (15)-mile radius calculation must be used.]*

*[(18)]* **(20)** The most current version of Form MO 580-1863 may be obtained by mailing a written request to the **Certificate of Need Program (CONP)**, 915G Leslie Boulevard, Jefferson City, MO 65101, or in person at the CONP Office, or, if technically feasible, by downloading a copy of the form from the CONP web site at [www.dhss.state.mo.us/con](http://www.dhss.state.mo.us/con).

*AUTHORITY: section 197.320, RSMo 2000. Original rule filed June 2, 1994, effective Nov. 30, 1994. For intervening history, please consult the Code of State Regulations. Emergency rescission and rule filed Dec. 16, 2002, effective Jan. 1, 2003, expired June 29, 2003. Amended: Filed June 9, 2003.*

*PUBLIC COST: This proposed amendment will not cost state agen-*

*cies or political subdivisions more than five hundred dollars (\$500) in the aggregate.*

*PRIVATE COST: This proposed amendment will cost private entities no more than thirty-five thousand dollars (\$35,000) in the aggregate.*

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support or in opposition to this proposed amendment with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Blvd., Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on July 31, 2003. A public hearing has been scheduled for July 31, 2003, at 10:00 a.m. at the Certificate of Need Program Office located at 915G Leslie Blvd., Jefferson City, Missouri.*

**FISCAL NOTE  
 PRIVATE COST**

**I. RULE NUMBER**

Rule Number and Name:	19 CSR 60-50.300 Definitions for the Certificate of Need Process
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 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:
5	Health care associations	\$25,000
20	Health facility appraisals	\$10,000

**III. WORKSHEET**

Based on the following assumptions and estimates, the Private Entity Cost associated with the Proposed Amendment would be calculated as follows:

Certificate of Need activity monitoring costs:  $[(\$500 \text{ per CON meeting} \times 6 \text{ meetings}) + (\$2000 \text{ for special hearing and meetings})] \times 5 \text{ associations} = \$25,000$

Appraisals done by state certified appraisers:  $\$500 \text{ per appraisal} \times 20 \text{ appraisals per year} = \$10,000$

**IV. ASSUMPTIONS**

Based on past experience and observations, it is estimated that state provider associations, including the Missouri Hospital Association, Missouri Health Care Association, Missouri Association of Homes for the Aging, Missouri Assisted Living Association, and Missouri League of Nursing Home Administrators, will expend specific funds to monitor each meeting of the Missouri Health Facilities Review Committee to assess its application of the rules and statutes to long term care applications, and to participate in additional meetings related to the administration of the certificate of need program activities. The expenses are based on an estimate of \$50 per hour per association representative.

In order to appraise the value of an existing facility to which a new facility of a different category would be added, the total appraised value must be prepared by a state-certified appraiser at an estimated cost of \$500 each, based on inquires with real estate appraisers. It is estimated that 20 such applications would be prepared and submitted each year.

**Title 19—DEPARTMENT OF HEALTH  
AND SENIOR SERVICES  
Division 60—Missouri Health Facilities Review  
Committee  
Chapter 50—Certificate of Need Program**

**PROPOSED AMENDMENT**

**19 CSR 60-50.400 Letter of Intent Process.** The Committee proposes to amend sections (1)–(5).

*PURPOSE:* This amendment clarifies the process for submitting a Letter of Intent to begin the Certificate of Need (CON) review process and further outlines the projects subject to CON review.

(1) Applicants shall submit a Letter of Intent (LOI) package to begin the Certificate of Need (CON) review process at least thirty (30) days prior to the submission of the CON application and will remain valid in accordance with the following time frames:

(A) For full reviews, expedited equipment replacements, expedited long-term care (LTC) renovation or modernization reviews and expedited LTC facility replacement reviews, *[an]* a LOI is valid for six (6) months;

(B) For expedited LTC bed expansion reviews in accordance with section 197.318.8, RSMo, *[an]* a LOI is valid for twenty-four (24) months; and

(C) For non-applicability reviews, *[an]* a LOI is valid for six (6) months.

(2) Once filed, *[an]* a LOI may be amended, except for project address, not later than ten (10) days in advance of the CON application filing, or it may be withdrawn at any time without prejudice.

(3) A LTC bed expansion or replacement as defined in these rules includes all of the provisions pursuant to section 197.318.8 through 197.318.10, RSMo, requiring a CON application, but allowing shortened information requirements and review time frames. When *[an]* a LOI for *[an]* a LTC bed expansion, except replacement(s), is filed, the **Certificate of Need Program (CONP)** staff shall immediately request certification for that facility of average licensed bed occupancy and final Class 1 patient care deficiencies for the most recent six (6) consecutive calendar quarters by the Division of Health Standards and Licensure (DHSL), Department of Health and Senior Services, through *[an]* a LTC Facility Expansion Certification (Form MO 580-2351) to verify compliance with occupancy and deficiency requirements pursuant to section 197.318.8, RSMo. Occupancy data shall be taken from the DHSL's most recently published *[Quarterly Survey] Six-Quarter Occupancy of [Hospital and Nursing Home] Intermediate Care and Skilled Nursing Facility (or Residential Care Facility) Licensed Beds [Utilization]* reports. For LTC bed expansions or replacements, the sellers and purchasers shall be defined as the owner(s) and operator(s) of the respective facilities, which includes building, land, and license. On the Purchase Agreement (Form MO 580-2352), both the owner(s) and operator(s) of the purchasing and selling facilities should sign.

(4) The *[Certificate of Need Program/CONP/]* staff, as an agent of the Missouri Health Facilities Review Committee (*[c/Committee]*), will review LOIs according to the following provisions:

(F) A CON application must be made if:

1. The project involves the development of a new *[health care facility] hospital* costing *[in excess of] one [(1)] million dollars (\$1,000,000) or more, except for a facility licensed under Chapter 197, RSMo, meeting the requirements described in 42 CFR, section 412.23(e);*

2. The project involves the acquisition or replacement of major medical equipment in any setting not licensed under Chapter 198, RSMo, costing *[in excess of] one [(1)] million dollars*

*(\$1,000,000) or more;*

3. The project involves the acquisition or replacement of major medical equipment for a health care facility licensed under Chapter 198, RSMo, costing *[in excess of] four hundred thousand dollars (\$400,000) or more;*

4. The project involves the acquisition of any equipment or beds in a long-term care hospital meeting the requirements found in 42 CFR section 412.23(e) at any cost;

5. The project involves a capital expenditure **for renovation, modernization or replacement**, but not additional beds, by or on behalf of an existing health care facility licensed under Chapter 198, RSMo, costing *[in excess of one (1) million dollars] six hundred thousand dollars (\$600,000) or more; [or]*

6. *[Prior to January 1, 2003, the]* **The project involves either additional [long-term care] LTC (licensed or certified residential care facility I or II, intermediate care facility, or skilled nursing facility) beds or LTC bed expansions or replacements licensed under Chapter 198, RSMo, as defined in section (3) above of this rule, [regardless of cost with certain exemptions and exceptions.] costing six hundred thousand dollars (\$600,000) or more; or**

7. **The project involves the expansion of an existing health care facility as described in subdivisions (1) and (2) of section 197.366, RSMo, that either:**

A. **Costs six hundred thousand dollars (\$600,000) or more; or**

B. **Exceeds ten (10) beds or ten percent (10%) of that facility's existing licensed capacity, whichever is less; and**

(G) **An exception may exist if the LOI test verifies that the proposed new long-term care beds (excluding LTCH beds) cost less than six hundred thousand dollars (\$600,000) or do not exceed ten (10) beds or ten percent (10%) of that facility's existing licensed capacity, whichever is less, and the proposed beds are in the same licensure category as the existing facility's license.**

(5) For *[an]* a LTC bed expansion proposal pursuant to section 197.318.8(1)(e), RSMo, the CONP staff shall request occupancy verification by the DHSL who shall also provide a copy to the applicant.

*AUTHORITY:* section 197.320, RSMo 2000. Original rule filed June 2, 1994, effective Nov. 30, 1994. For intervening history, please consult the **Code of State Regulations**. Emergency rescission and rule filed Dec. 16, 2002, effective Jan. 1, 2003, expired June 29, 2003. Amended: Filed June 9, 2003.

*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 no more than thirty-three thousand dollars (\$33,000) in the aggregate.

**NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS:** Anyone may file a statement in support or in opposition to this proposed amendment with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Blvd., Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on July 31, 2003. A public hearing has been scheduled for July 31, 2003, at 10:00 a.m. at the Certificate of Need Program Office located at 915G Leslie Blvd., Jefferson City, Missouri.

**FISCAL NOTE  
PRIVATE COST**

**I. RULE NUMBER**

Rule Number and Name:	19 CSR 60-50.400 Letter of Intent Process
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 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:
5	Health care associations	\$25,000
80	Non-Applicability requests	\$8,000

**III. WORKSHEET**

Based on the following assumptions and estimates, the Private Entity Cost associated with the Proposed Amendment would be calculated as follows:

Certificate of Need activity monitoring costs:  $[(\$500 \text{ per CON meeting} \times 6 \text{ meetings}) + (\$2000 \text{ for special hearing and meetings})] \times 5 \text{ associations} = \$25,000$

Requests prepared for non-applicability letters:  $\$100 \text{ per request} \times 80 \text{ requests per year} = \$8,000$

**IV. ASSUMPTIONS**

Based on past experience and observations, it is estimated that state provider associations, including the Missouri Hospital Association, Missouri Health Care Association, Missouri Association of Homes for the Aging, Missouri Assisted Living Association, and Missouri League of Nursing Home Administrators, will expend specific funds to monitor each meeting of the Missouri Health Facilities Review Committee to assess its application of the rules and statutes to long term care applications, and to participate in additional meetings related to the administration of the certificate of need program activities. The expenses are based on an estimate of \$50 per hour per association representative.

In order to prepare a request for a non-applicability Certificate of Need letter, certain information must be prepared including a Letter of Intent, Proposed Expenditure form and support documentation. It is estimated that this would require approximately 3 hours at \$30 per hour plus \$10 in expenses, and that 80 such requests would be prepared and submitted to CON each year.

**Title 19—DEPARTMENT OF HEALTH  
AND SENIOR SERVICES  
Division 60—Missouri Health Facilities Review  
Committee  
Chapter 50—Certificate of Need Program**

**PROPOSED AMENDMENT**

**19 CSR 60-50.410 Letter of Intent Package.** The Committee proposes to amend sections (1) and (2), delete sections (3) and (6) and renumber the remaining sections.

*PURPOSE: This amendment provides the information requirements and the details of how to complete the Letter of Intent package to begin the Certificate of Need (CON) review process, and removes several provisions which no longer apply.*

(1) The Letter of Intent (LOI) (Form MO 580-1860) shall be completed as follows:

(E) Estimated Project Cost: total proposed expenditures necessary to achieve the application's objectives—not required for long-term care (LTC) bed expansions pursuant to section 197.318.8(1), RSMo;

(2) If a non-applicability review is sought, applicants shall submit the following additional information:

(B) Schematic drawings and evidence of site control, with appropriate documentation; and

*[(3) If an exemption is sought for a residential care facility (RCF) I or II of one hundred (100) beds or less operated by a religious organization pursuant to section 197.305(7), RSMo, applicants shall submit the following additional information:*

*(A) A letter from the Internal Revenue Service documenting the religious organization's 501(c)(3) tax-exempt status;*

*(B) Copies of the religious organization's By-Laws and Articles of Incorporation stating the organization's religious mission;*

*(C) A letter from the religious organization stipulating that it will be the licensed operator and public funds would not be used for the purchase or operation of the proposed facility; and*

*(D) Any other documents necessary to establish compliance with section 197.305(7), RSMo.]*

*[(4)] (3) If an exemption is sought for a RCF I or II pursuant to section 197.312, RSMo, applicants shall submit documentation that this facility had previously been owned or operated for or, on behalf of St. Louis City.*

*[(5)] (4) If an exemption is sought pursuant to section 197.314(1), RSMo, for a sixty (60)-bed stand-alone facility designed and operated exclusively for the care of residents with Alzheimer's disease or dementia and located in a tax increment financing district established prior to 1990 within any county of the first classification with a charter form of government containing a city with a population of over three hundred fifty thousand (350,000) and which district also has within its boundaries a skilled nursing facility (SNF), applicants shall submit documentation that the health care facility would meet all of these provisions.*

*[(6) If an exemption is sought pursuant to section 197.314(2), RSMo, for either of two (2) SNFs of up to twenty (20) beds each, by a Chapter 198 facility that is owned or operated by a not-for-profit corporation which was created by a special act of the Missouri General Assembly, is*

*exempt from federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986, is owned by a religious organization and is to be operated as part of a continuing care retirement community offering independent living, residential care and skilled care which had no skilled nursing beds as of January 1, 1999, documentation that the health care facility would meet all of these provisions.]*

*[(7)] (5) The LOI must have an original signature for the contact person until the Certificate of Need Program (CONP), when technically ready, shall allow for submission of electronic signatures.*

*[(8)] (6) The most current version of Forms MO 580-1860 and MO 580-2375 may be obtained by mailing a written request to the CONP, 915G Leslie Boulevard, Jefferson City, MO 65101, or in person at the CONP Office, or, if technically feasible, by downloading a copy of the forms from the CONP web site at [www.dhss.state.mo.us/con](http://www.dhss.state.mo.us/con).*

*AUTHORITY: section 197.320, RSMo 2000. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. For intervening history, please consult the Code of State Regulations. Emergency rescission and rule filed Dec. 16, 2002, effective Jan. 1, 2003, expired June 29, 2003. Amended: Filed June 9, 2003.*

*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 no more than twenty-five thousand dollars (\$25,000) in the aggregate.*

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support or in opposition to this proposed amendment with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Blvd., Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on July 31, 2003. A public hearing has been scheduled for July 31, 2003, at 10:00 a.m. at the Certificate of Need Program Office located at 915G Leslie Blvd., Jefferson City, Missouri.*

**FISCAL NOTE  
 PRIVATE COST**

**I. RULE NUMBER**

Rule Number and Name:	19 CSR 60-50.410 Letter of Intent Package
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 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:
5	Health care associations	\$25,000

**II. WORKSHEET**

Based on the following assumptions and estimates, the Private Entity Cost associated with the Proposed Amendment would be calculated as follows:

Certificate of Need activity monitoring costs: [(\$500 per CON meeting x 6 meetings) + (\$2000 for special hearing and meetings)] x 5 associations = \$25,000

**IV. ASSUMPTIONS**

Based on past experience and observations, it is estimated that state provider associations, including the Missouri Hospital Association, Missouri Health Care Association, Missouri Association of Homes for the Aging, Missouri Assisted Living Association, and Missouri League of Nursing Home Administrators, will expend specific funds to monitor each meeting of the Missouri Health Facilities Review Committee to assess its application of the rules and statutes to long term care applications, and to participate in additional meetings related to the administration of the certificate of need program activities. The expenses are based on an estimate of \$50 per hour per association representative.

**Title 19—DEPARTMENT OF HEALTH  
AND SENIOR SERVICES**  
**Division 60—Missouri Health Facilities Review  
Committee**  
**Chapter 50—Certificate of Need Program**

**PROPOSED AMENDMENT**

**19 CSR 60-50.420 Review Process.** The Committee proposes to amend section (3), delete section (4), and renumber sections (5)–(11).

*PURPOSE: This amendment clarifies the process for submitting a Certificate of Need (CON) application for a CON review, and removes unneeded provisions.*

(3) All filings must occur at the principal office of the [c]Committee during regular business hours. The CONP staff, as an agent of the [c]Committee, shall provide notification of applications received through publication of the Application Review Schedule (schedule), as follows:

(A) For full applications **and expedited applications**, the schedule shall include the filing date of the application, a brief description of the proposed service, the time and place for filing comments and requests for a public hearing, and the tentative date of the meeting at which the **full** application is scheduled for review **or tentative decision date for expedited applications**. Publication of the schedule shall occur on the next business day after the filing deadline. The publication of the schedule is conducted through the following actions:

[1. The schedule shall be submitted to the secretary of state's office for publication in the next regularly scheduled Missouri Register;]

[2.] **1.** A press release about the CON application schedule shall be sent by e-mail to all legislators, affected persons and all newspapers of general circulation in Missouri as supplied by the Department of Health and Senior Services (DHSS), Office of Public Information;

[3.] **2.** The schedule shall be [posted] published on the CON website; and

**3. The schedule shall be submitted to the secretary of state's office for publication in the next regularly scheduled Missouri Register;**

[4. The schedule shall be mailed to all affected persons who have registered with the CONP staff as having an interest in such CON applications.]

[(B) For expedited applications the schedule shall include the filing date of the application, a brief description of the proposed service, including the name and location of all participating facilities, the time and place for filing comments and requests for a public hearing, and the tentative decision date for the application. Publication of the schedule shall occur on the next business day after the filing deadline. The publication of the schedule is conducted through the following actions:

1. The schedule shall be submitted to the secretary of state's office for publication in the next regularly scheduled Missouri Register; and

2. The schedule shall be posted on the CON website.]

[(C)] **(B)** For non-applicability requests, the listing of non-applicability letters to be confirmed shall be posted on the CON website at least twenty (20) days prior to each scheduled meeting of the [c]Committee where confirmation is to take place.

[(4) When an application for a full review is filed pursuant to

section 197.318.1, RSMo, the CONP staff shall immediately request certification of licensed and available bed occupancy and deficiencies for each of the most recent four (4) consecutive calendar quarters in the county and fifteen (15)-mile radius by the DHSS.]

[(5)] **(4)** The CONP staff shall review CON applications relative to the Criteria and Standards in the order filed.

[(6)] **(5)** The CONP staff shall notify the applicant in writing regarding the completeness of a full CON application within fifteen (15) calendar days of filing or within five (5) working days for an expedited application.

[(7)] **(6)** Verbal information or testimony shall not be considered part of the application.

[(8)] **(7)** Subject to statutory time constraints, the CONP staff shall send its written analysis to the [c]Committee as follows:

(A) For full CON applications, the CONP staff shall send the analysis twenty (20) days in advance of the first [c]Committee meeting following the seventieth (70th) day after the CON application is filed. The written analysis of the CONP staff shall be sent to the applicant no less than fifteen (15) days before the meeting.

(B) For expedited applications which meet all statutory and rules requirements and which have no opposition, the CONP staff shall send its written analysis to the [c]Committee and the applicant within two (2) working days following the expiration of the thirty (30)-day public notice waiting period or the date upon which any required additional information is received, whichever is later.

(C) For expedited applications which do not meet all statutory and rules requirements or those which have opposition, they will be considered at the earliest scheduled [c]Committee meeting where the written analysis by the CONP staff can be sent to the [c]Committee and the applicant at least seven (7) days in advance.

[(9)] **(8)** See rule 19 CSR 60-50.600 for a description of the CON decision process.

[(10)] **(9)** An applicant may withdraw an application without prejudice by written notice at any time prior to the [c]Committee's decision. Later submission of the same application or an amended application shall be handled as a new application with a new fee.

[(11)] **(10)** In addition to using the Community Need Criteria and Standards [as guidelines], the [c]Committee may also consider other factors to include, but not be limited to, the number of patients requiring treatment, the changing complexity of treatment, unique obstacles to access, competitive financial considerations, or the specialized nature of the service.

*AUTHORITY: section 197.320, RSMo 2000. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. Rescinded and readopted: Filed June 29, 1999, effective Jan. 30, 2000. Emergency rescission filed Dec. 14, 2001, effective Jan. 1, 2002, expired June 29, 2002. Rescinded and readopted: Filed Dec. 14, 2001, effective June 30, 2002. Emergency rescission and rule filed Dec. 16, 2002, effective Jan. 1, 2003, expired June 29, 2003. Amended: Filed June 9, 2003.*

*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 no more than twenty-five thousand dollars (\$25,000) in the aggregate.*

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support or in opposition to this proposed amendment with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Blvd., Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on July 31, 2003. A public hearing has been scheduled for July 31, 2003, at 10:00 a.m. at the Certificate of Need Program Office located at 915G Leslie Blvd., Jefferson City, Missouri.*

**FISCAL NOTE  
PRIVATE COST**

**I. RULE NUMBER**

Rule Number and Name:	19 CSR 60-50.420 Review Process
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 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:
5	Health care associations	\$25,000

**III. WORKSHEET**

Based on the following assumptions and estimates, the Private Entity Cost associated with the Proposed Amendment would be calculated as follows:

Certificate of Need activity monitoring costs: [(\$500 per CON meeting x 6 meetings) + (\$2000 for special hearing and meetings)] x 5 associations = \$25,000

**IV. ASSUMPTIONS**

Based on past experience and observations, it is estimated that state provider associations, including the Missouri Hospital Association, Missouri Health Care Association, Missouri Association of Homes for the Aging, Missouri Assisted Living Association, and Missouri League of Nursing Home Administrators, will expend specific funds to monitor each meeting of the Missouri Health Facilities Review Committee to assess its application of the rules and statutes to long term care applications, and to participate in additional meetings related to the administration of the certificate of need program activities. The expenses are based on an estimate of \$50 per hour per association representative.

**Title 19—DEPARTMENT OF HEALTH  
AND SENIOR SERVICES  
Division 60—Missouri Health Facilities Review  
Committee  
Chapter 50—Certificate of Need Program**

**PROPOSED AMENDMENT**

**19 CSR 60-50.430 Application Package.** The Committee proposes to amend sections (2) and (4).

*PURPOSE: This amendment provides the information requirements and the application format of how to complete a Certificate of Need (CON) application for a CON review, and removes unneeded provisions.*

(2) A written application package consisting of an original and eleven (11) bound copies (comb or three (3)-ring binder) shall be prepared and organized as follows:

(B) The application package should use one (1) of the following CON Applicant's Completeness Checklists and Table of Contents appropriate to the proposed project, as follows:

1. New Hospital Application (Form MO 580-2501);
2. New **or Additional** Long-Term Care (LTC) Beds Application (Form MO 580-2502);

**3. New or Additional Long-Term Care Hospital (LTCH) Beds Application (use Form MO 580-2502);**

[3.] **4. New//or Additional Equipment Application (Form MO 580-2503);**

[4.] **5. Expedited LTC Bed Replacement/Expansion Application (Form MO 580-2504);**

[5.] **6. Expedited LTC Renovation/Modernization Application (Form MO 580-2505); or**

[6.] **7. Expedited Equipment Replacement Application (Form MO 580-2506).**

(4) The Proposal Description shall include documents which:

(B) Describe the developmental details including:

1. A legible city or county map showing the exact location of the facility or health service, and a copy of the site plan showing the relation of the project to existing structures and boundaries;

2. Preliminary schematics for the project that specify the functional assignment of all space which will fit on an eight and one-half inch by eleven inch (8 1/2" × 11") format (not required for replacement equipment projects). The [CON] **Certificate of Need Program (CONP)** staff may request submission of an electronic version of the schematics, when appropriate. The function for each space, before and after construction or renovation, shall be clearly identified and all space shall be assigned;

3. Evidence of submission of architectural plans to the Division of [Health Standards and Licensure (DHSL) engineer] **Senior Services and Regulation, Department of Health and Senior Services**, for long-term care projects and [the DHSL architect for] other facilities (not required for replacement equipment projects);

4. For long-term care proposals, existing and proposed gross square footage for the entire facility and for each institutional service or program directly affected by the project. If the project involves relocation, identify what will go into vacated space;

5. Documentation of ownership of the project site, or that the site is available through a signed option to purchase or lease; and

6. Proposals which include major and other medical equipment should include an equipment list with prices and documentation in the form of bid quotes, purchase orders, catalog prices, or other sources to substantiate the proposed equipment costs;

(C) Proposals for new hospitals, new **or additional** long-term care

(LTC) beds, or new major medical equipment must define the community to be served/./;

1. Describe the service area(s) population using year 2005 populations and projections which are consistent with those provided by the Bureau of Health Data Analysis [or the Office of Social and Economic Data Analysis (OSED) when additional LTC beds are sought]] which can be obtained by contacting:

Chief, Bureau of Health Data Analysis

Center for Health Information Management and Evaluation  
(CHIME)

Department of Health and Senior Services

PO Box 570, Jefferson City, MO 65102

Telephone: (573) 751-6278

[or

Director, Office of Social and Economic Data Analysis

625 Clark Hall, University of Missouri

Columbia, MO 65211

Telephone: (573) 882-7396].

There will be a charge for any of the information requested, and seven to fourteen (7-14) days should be allowed for a response from the CHIME [or OSED). Information requests should be made to CHIME [or OSED) such that the response is received at least two (2) weeks before it is needed for incorporation into the CON application; and

2. Use the maps and population data received from CHIME [or OSED) with the CON Applicant's Population Determination Method to determine the estimated population, as follows:

A. Utilize all of the population for zip codes entirely within the fifteen (15)-mile radius for LTC beds or geographic service area for hospitals and major medical equipment;

B. Reference a state highway map (or a map of greater detail) to verify population centers (see Bureau of Health Data Analysis information) within each zip code overlapped by the fifteen (15)-mile radius or geographic service area;

C. Categorize population centers as either "in" or "out" of the fifteen (15)-mile radius or geographic service area and remove the population data from each affected zip code categorized as "out";

D. Estimate, to the nearest ten percent (10%), the portion of the zip code area that is within the fifteen (15)-mile radius or geographic service area by "eyeballing" the portion of the area in the radius (if less than five percent (5%), exclude the entire zip code);

E. Multiply the remaining zip code population (total population less the population centers) by the percentage determined in [“D”] **(4)(C)2.D.** (due to numerous complexities, population centers will not be utilized to adjust overlapped zip code populations in Jackson, St. Louis, and St. Charles Counties or St. Louis City; instead, the total population within the zip code will be considered uniform and multiplied by the percentage determined in [“D”] **(4)(C)2.D;**

F. Add back the population center(s) "inside" the radius or region for zip codes overlapped; and

G. The sum of the estimated zip codes, plus those entirely within the radius, will equal the total population within the fifteen (15)-mile radius or geographic service area;

3. Provide other statistics, such as studies, patient origin or discharge data, Hospital Industry Data Institute's [HIDI] information, or consultants' reports, to document the size and validity of any proposed user-defined "geographic service area";

(G) If an alternative methodology is added, specify the method used to make need forecasts and describe in detail whether projected utilizations will vary from past trends; **and**

*AUTHORITY: section 197.320, RSMo 2000. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. For*

*intervening history, please consult the Code of State Regulations. Emergency rescission and rule filed Dec. 16, 2002, effective Jan. 1, 2003, expired June 29, 2003. Amended: Filed June 9, 2003.*

*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 no more than twenty-five thousand dollars (\$25,000) in the aggregate.*

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support or in opposition to this proposed amendment with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Blvd., Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on July 31, 2003. A public hearing has been scheduled for July 31, 2003, at 10:00 a.m. at the Certificate of Need Program Office located at 915G Leslie Blvd., Jefferson City, Missouri.*

**FISCAL NOTE  
 PRIVATE COST**

**I. RULE NUMBER**

Rule Number and Name:	19 CSR 60-50.430 Application Package
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 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:
5	Health care associations	\$25,000

**III. WORKSHEET**

Based on the following assumptions and estimates, the Private Entity Cost associated with the Proposed Amendment would be calculated as follows:

Certificate of Need activity monitoring costs: [(\$500 per CON meeting x 6 meetings) + (\$2000 for special hearing and meetings)] x 5 associations = \$25,000

**IV. ASSUMPTIONS**

Based on past experience and observations, it is estimated that state provider associations, including the Missouri Hospital Association, Missouri Health Care Association, Missouri Association of Homes for the Aging, Missouri Assisted Living Association, and Missouri League of Nursing Home Administrators, will expend specific funds to monitor each meeting of the Missouri Health Facilities Review Committee to assess its application of the rules and statutes to long term care applications, and to participate in additional meetings related to the administration of the certificate of need program activities. The expenses are based on an estimate of \$50 per hour per association representative.

**Title 19—DEPARTMENT OF HEALTH  
AND SENIOR SERVICES  
Division 60—Missouri Health Facilities Review  
Committee  
Chapter 50—Certificate of Need Program**

**PROPOSED AMENDMENT**

**19 CSR 60-50.450 Criteria and Standards for Long-Term Care.** The Committee proposes to amend sections (1) and (2), add a new section (3), amend and renumber sections (4) and (5) and delete section (6).

*PURPOSE: This amendment outlines, clarifies and expands the criteria and standards against which any project involving a long-term care facility would be evaluated in a Certificate of Need (CON) review, and removes unneeded provisions.*

(1) *[All additional long-term care (LTC) beds in nursing homes, hospitals, and residential care facilities (RCF), and beds in long-term acute hospitals are subject to the LTC bed minimum occupancy requirements (MOR) pursuant to sections 197.317 and 197.318(1), RSMo, with certain exemptions and exceptions pursuant to sections 197.305(7) and 197.312, RSMo, and LTC bed expansions and replacements pursuant to sections 197.318.8 through 197.318.10, RSMo.] For purposes of determining need and evaluating area occupancy, residential care facility (RCF) I and RCF II shall be one separate classification and intermediate care facility (ICF) and skilled nursing facility (SNF) shall be another separate classification. For purposes of defining facilities and determining need, RCF I and RCF II, ICF and SNF, and long-term care hospital (LTCH) shall be recognized as three (3) separate classifications, consistent with the definition of health care facility in section 197.366(1), (2), and (3), RSMo.*

(2) *[The MOR for additional LTC beds pursuant to section 197.318.1, RSMo, shall be met if the average occupancy for all licensed and available LTC beds located within the county and within fifteen (15) miles of the proposed site exceeded ninety percent (90%) during at least each of the most recent four (4) consecutive calendar quarters at the time of application filing as reported in the Division of Health Standards and Licensure (DHSL), Department of Health and Senior Services, Quarterly Survey of Hospital and Nursing Home (or Residential Care Facility) Bed Utilization and certified through a written finding by the DHSL, in which case the] The following population-based long-term care bed need methodology for the fifteen (15)-mile radius shall be used to determine the maximum size of the need:*

(A) Approval of additional *[intermediate care facility/skilled nursing facility (ICF/SNF)]* beds will be based on a service area need determined to be fifty-three (53) beds per one thousand (1,000) population age sixty-five (65) and older minus the current supply of ICF/SNF beds shown in the *[Inventory] Six-Quarter Occupancy* of Hospital and Nursing Home **Licensed and Available** ICF/SNF Beds as provided by the Certificate of Need Program (CONP) which includes licensed *[and] beds*, Certificate of Need (CON)-approved beds, and **non-applicability beds**; *[and]*

(B) Approval of additional RCF beds will be based on a service area need determined to be sixteen (16) beds per one thousand (1,000) population age sixty-five (65) and older minus the current supply of RCF beds shown in the *[Inventory] Six-Quarter Occupancy* of Residential Care Facility **Licensed and Available**

Beds as provided by the CONP which includes licensed *[and] beds*, CON-approved beds~~./~~, and **non-applicability beds**; and

(C) Approval for LTCH beds, as described in 42 CFR, section 412.23(e), will be based on a service area need determined to be one-tenth (0.1) bed per one thousand (1,000) population minus the current supply of LTCH beds shown in *Six-Quarter Occupancy of Long-Term Care Hospital Licensed and Available Beds* as provided by the CONP which includes licensed beds and CON-approved beds.

(3) The minimum average utilization for all other long-term care beds of the same classification within a fifteen (15)-mile radius of the proposed site should have achieved at least eighty percent (80%) for the preceding six (6) consecutive calendar quarters at the time of application filing as reported in the *Division of Senior Services and Regulation, Department of Health and Senior Services, Six-Quarter Occupancy of Hospital and Nursing Home (or Residential Care Facility) Licensed and Available Beds and certified through a written finding by the DHSL.*

*[(3)] (4)* Replacement Chapter 198, RSMo, beds qualify for *[an exception to the LTC bed MOR plus]* shortened information requirements and review time frames if an applicant proposes to *[-]*:

(A) Relocate RCF beds within a six (6)-mile radius pursuant to section 197.318.8(4), RSMo;

(B) Replace one-half (1/2) of its licensed beds within a thirty (30)-mile radius pursuant to section 197.318.9, RSMo; or

(C) Replace a facility in its entirety within a fifteen (15)-mile radius pursuant to section 197.318.10, RSMo, under the following conditions:

1. The existing facility's beds shall be replaced at only one (1) site;
2. The existing facility and the proposed facility shall have the same owner(s), regardless of corporate structure; and
3. The owner(s) shall stipulate in writing that the existing facility's beds to be replaced will not be used later to provide long-term care services; or if the facility is operated under a lease, both the lessee and the owner of the existing facility shall stipulate the same in writing.

*[(4)] (5)* LTC bed expansions involving a Chapter 198, RSMo, facility qualify for *[an exception to the LTC bed MOR. In addition to the]* shortened information requirements and review time frames, and applicants shall also submit the following information:

(A) If an effort to purchase has been successful pursuant to section 197.318.8(1), RSMo, a Purchase Agreement (Form MO 580-2352) between the selling and purchasing facilities, and a copy of the selling facility's reissued license verifying the surrender of the beds sold; or

(B) If an effort to purchase has been unsuccessful pursuant to section 197.318.8(1), RSMo, a Purchase Agreement (Form MO 580-2352) between the selling and purchasing facilities which documents the "effort(s) to purchase" LTC beds.

*[(5)] (6)* An exception to the *[LTC bed MOR and]* CON application filing fee will be recognized for any proposed facility which is designed and operated exclusively for persons with acquired human immunodeficiency syndrome (AIDS).

*[(6)] An exception to the LTC bed MOR will be recognized for a proposed LTC facility where at least ninety-five percent (95%) of the patients require kosher diets pursuant to section 197.318.5, RSMo.]*

*AUTHORITY: section 197.320, RSMo 2000. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. For intervening history, please consult the **Code of State Regulations**. Emergency rescission and rule filed Dec. 16, 2002, effective Jan. 1, 2003, expired June 29, 2003. Amended: Filed June 9, 2003.*

*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 no more than one hundred fifty thousand dollars (\$150,000) in the aggregate.*

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support or in opposition to this proposed amendment with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Blvd., Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on July 31, 2003. A public hearing has been scheduled for July 31, 2003, at 10:00 a.m. at the Certificate of Need Program Office located at 915G Leslie Blvd., Jefferson City, Missouri.*

**FISCAL NOTE  
PRIVATE COST**

**I. RULE NUMBER**

Rule Number and Name:	19 CSR 60-50.450 Criteria and Standards for Long-Term Care
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 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:
5	Health care associations	\$25,000
25	Full CON applications	\$125,000

**III. WORKSHEET**

Based on the following assumptions and estimates, the Private Entity Cost associated with the Proposed Amendment would be calculated as follows:

Certificate of Need activity monitoring costs: [(\$500 per CON meeting x 6 meetings) + (\$2000 for special hearing and meetings)] x 5 associations = \$25,000

Applications for CONs: (10 RCF app. + 10 ICF/SNF app. + 5 LTCH app.) x \$5,000 per app. = \$125,000

**IV. ASSUMPTIONS**

Based on past experience and observations, it is estimated that state provider associations, including the Missouri Hospital Association, Missouri Health Care Association, Missouri Association of Homes for the Aging, Missouri Assisted Living Association, and Missouri League of Nursing Home Administrators, will expend specific funds to monitor each meeting of the Missouri Health Facilities Review Committee to assess its application of the rules and statutes to long term care applications, and to participate in additional meetings related to the administration of the certificate of need program activities. The expenses are based on an estimate of \$50 per hour per association representative.

Based on CON application submission experience, it is estimated that full applications for either expansions of existing or development of new long term care facilities would annually include the following: 10 applications for residential care facilities, 10 applications for intermediate care and/or skilled nursing facilities, and 5 long term care hospitals. According to inquiries with experienced consultants, the estimated cost for the preparation and submission of each application would be \$5,000.

**Title 19—DEPARTMENT OF HEALTH  
AND SENIOR SERVICES  
Division 60—Missouri Health Facilities Review  
Committee  
Chapter 50—Certificate of Need Program**

**PROPOSED AMENDMENT**

**19 CSR 60-50.700 Post-Decision Activity.** The Committee proposes to amend and renumber sections (1)–(8) and add new sections (3) and (4).

*PURPOSE: This amendment clarifies and expands the procedure for filing Periodic Progress Reports after approval of Certificate of Need (CON) applications, CONs subject to forfeiture, and the procedure for requesting a cost overrun.*

(1) Applicants who have been granted a Certificate of Need (CON) or a **Non-Applicability CON letter** shall file reports with the Missouri Health Facilities Review Committee (Committee), using Periodic Progress Report (Form MO 580-1871). *[The reports]* **A report** shall be filed by the end of each six (6)-month period after CON approval, or issuance of a **Non-Applicability CON letter**, until project construction and/or expenditures are complete. All Periodic Progress Reports must contain a complete and accurate accounting of all expenditures for the report period.

(2) Applicants who **have been granted a CON and** fail to incur a capital expenditure within six (6) months may request an extension of six (6) months by submitting a letter to the */c/*Committee outlining the reasons for the failure, with a listing of the actions to be taken within the requested extension period to insure compliance.; *the/* **The** Certificate of Need Program (CONP) staff on behalf of the */c/*Committee will analyze the request and grant an extension, if appropriate. Applicants who request additional extensions must provide additional financial information or other information, if requested by the CONP staff.

(3) **For those long-term care proposals receiving a CON in 2003 for which no construction can begin prior to January 1, 2004, such proposals shall not be subject to forfeiture until July 1, 2004, at which time reporting requirements shall commence. Applicants may request an extension of six (6) months for such proposals.**

(4) **A Non-Applicability CON letter is valid for six (6) months from the date of issuance. Failure to incur a capital expenditure or purchase the proposed equipment within that time frame shall result in the Non-Applicability CON letter becoming null and void. The applicant may request one (1) six (6)-month extension unless otherwise constrained by statutory changes.**

*[[3]]* (5) A CON shall be subject to forfeiture for failure to—

(A) Incur a project-specific capital expenditure within twelve (12) months after the date the CON was issued through initiation of project aboveground construction or lease/purchase of the proposed equipment since a capital expenditure, according to generally accepted accounting principles, must be applied to a capital asset; or  
(B) File the required Periodic Progress Report.

*[[4]]* (6) If the CONP staff finds that a CON may be subject to forfeiture—

(A) Not less than thirty (30) calendar days prior to a */c/*Committee meeting, the CONP shall notify the applicant in writing of the pos-

sible forfeiture, the reasons for it, and its placement on the */c/*Committee agenda for action; and

(B) After receipt of the notice of possible forfeiture, the applicant may submit information to the */c/*Committee within ten (10) calendar days to show compliance with this rule or other good cause as to why the CON shall not be forfeited.

*[[5]]* (7) If the Committee forfeits a CON or a **Non-Applicability CON letter becomes null and void**, CONP staff shall notify all affected state agencies of this action.

*[[6]]* (8) Cost overrun review procedures implement the CON statute section 197.315.7, RSMo. Immediately upon discovery that a project's actual costs would exceed approved project costs by more than ten percent (10%), an applicant shall apply for approval of the cost variance. A nonrefundable fee in the amount of one-tenth of one percent (0.1%) of the additional project cost above the approved amount made payable to "Missouri Health Facilities Review Committee" shall be required. The original and eleven (11) copies of the information requirements for a cost overrun review are required as follows:

(A) Amount and justification for cost overrun shall document—

1. Why and how the approved project costs would be exceeded, including a detailed listing of the areas involved;

2. Any changes that have occurred in the scope of the project as originally approved; and

3. The alternatives to incurring this overrun that were considered and why this particular approach was selected./.; and

(B) Provide a Proposed Project Budget (Form MO 580-1863).

*[[7]]* (9) At any time during the process from Letter of Intent to project completion, the applicant is responsible for notifying the */c/*Committee of any change in the designated contact person. If a change is necessary, the applicant must file a Contact Person Correction (Form MO 580-1870).

*[[8]]* (10) The most current version of Forms MO 580-1871, MO 580-1863, and MO 580-1870 may be obtained by mailing a written request to the CONP, 915G Leslie Boulevard, Jefferson City, MO 65101, or in person at the CONP Office, or, if technically feasible, by downloading a copy of the forms from the CONP website at [www.dhss.state.mo.us/con](http://www.dhss.state.mo.us/con).

*AUTHORITY: section 197.320, RSMo 2000. Original rule filed June 2, 1994, effective Nov. 30, 1994. For intervening history, please consult the Code of State Regulations. Emergency rescission and rule filed Dec. 16, 2002, effective Jan. 1, 2003, expired June 29, 2003. Amended: Filed June 9, 2003.*

*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 no more than sixty-five thousand dollars (\$65,000) in the aggregate.*

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support or in opposition to this proposed amendment with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Blvd., Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on July 31, 2003. A public hearing has been scheduled for July 31, 2003, at 10:00 a.m. at the Certificate of Need Program Office located at 915G Leslie Blvd., Jefferson City, Missouri.*

**FISCAL NOTE  
PRIVATE COST**

**I. RULE NUMBER**

Rule Number and Name:	19 CSR 60-50.700 Post-Decision Activity
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 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:
5	Health care associations	\$25,000
40	Non-Applicability followups	\$40,000

**II. WORKSHEET**

Based on the following assumptions and estimates, the Private Entity Cost associated with the Proposed Amendment would be calculated as follows:

Certificate of Need activity monitoring costs:  $[(\$500 \text{ per CON meeting} \times 6 \text{ meetings}) + (\$2000 \text{ for special hearing and meetings})] \times 5 \text{ associations} = \$25,000$

Progress reports for Non-Applicability CON letters:  $40 \text{ letters} \times \$1,000 \text{ per letter} = \$40,000$

**IV. ASSUMPTIONS**

Based on past experience and observations, it is estimated that state provider associations, including the Missouri Hospital Association, Missouri Health Care Association, Missouri Association of Homes for the Aging, Missouri Assisted Living Association, and Missouri League of Nursing Home Administrators, will expend specific funds to monitor each meeting of the Missouri Health Facilities Review Committee to assess its application of the rules and statutes to long term care applications, and to participate in additional meetings related to the administration of the certificate of need program activities. The expenses are based on an estimate of \$50 per hour per association representative.

Based on CON periodic progress experience and Non-Applicability CON letter estimates, it is estimated that half of those letters issued will be immediately completed, and the remaining 40 letters will require a series of progress reports to be submitted prior to completion. According to inquiries with experienced consultants, the estimated cost for the preparation and submission of each project would be \$1,000.