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

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 If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission.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

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

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

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

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

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

## Title 1—OFFICE OF ADMINISTRATION
## Division 20—Personnel Advisory Board and Division of Personnel
## Chapter 2—Classification and Pay Plans

### PROPOSED AMENDMENT

**1 CSR 20-2.015 Broad Classification Bands for Managers**. The Personnel Advisory Board is amending paragraph (6)(B)2.

*PURPOSE: This amendment is necessary to allow for consistent application of rules governing layoffs.*

(6) Separation, Suspension and Demotion. The provisions of 1 CSR 20-3.070 are applicable in the administration of broad classification bands for managers in agencies covered by the merit system provisions of the State Personnel Law, except as specifically outlined in this section, or necessary for implementation.

(B) Demotions and Transfers. An appointing authority may demote an employee in accordance with the following:

1. No demotion for cause shall be made unless the employee to be demoted meets the minimum qualifications for the lower position demoted to, and shall not be made if any regular employee in the affected class and band or range would be laid off by reason of the action; and

2. An appointing authority, upon written request of the regular employee affected, shall demote such employee in lieu of layoff to a position in a lower band in the same class; or shall demote or transfer such employee *[to another class for which the employee meets the qualifications; or]* to an appropriate class and pay range in the same occupational job series; or to a position in which the employee previously has served and has obtained regular status in the division of service involved; even though these actions may result in additional layoffs. **An appointing authority may also, upon written request of the regular employee affected, demote or transfer such employee in lieu of layoff to another class for which the employee meets the qualifications, even if these actions may result in additional layoffs.** In the event of a demotion to a lower band, or a demotion or transfer to a class and pay range in lieu of layoff, an employee shall have his/her name placed on the appropriate register.

*AUTHORITY: section 36.070, RSMo [Supp. 1998] **2000**. Original rule filed March 11, 1999, effective Sept. 30, 1999. Emergency amendment filed Jan. 2, 2003, effective Jan. 12, 2003 expires July 10, 2003. Amended: Filed Jan. 2, 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 OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Director of Personnel, Office of Administration, PO Box 388, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. A public hearing on this proposed amendment is scheduled for 1:00 p.m., March 11, 2003 in Room 500 of the Harry S Truman State Office Building, 301 W. High Street, Jefferson City, Missouri.*

## Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
## Division 30—Missouri Board for Architects, Professional Engineers, *[and]* Professional Land Surveyors *and Landscape Architects*
## Chapter 4—Applications

### PROPOSED AMENDMENT

**4 CSR 30-4.060 Evaluation—Comity Applications—Architects**. The board is proposing to amend the original Purpose statement and sections (1)–(3).

*PURPOSE: This amendment changes the word "registered" to "licensed" and "registration" to "licensure" and deletes "practicing as a principal or the equivalent as determined by the architectural division" from section (3).*

*PURPOSE: This rule insures that applicants for [registration] **licensure** as architects meet the minimum requirements for initial [registration] **licensure** in Missouri.*

(1) Individuals applying for *[registration]* **licensure** as an architect under section 327.381, RSMo who were originally *[registered]* **licensed** in another state without being required to pass the **National Council of Architectural Registration Boards (**NCARB**)** examinations, that is, the Qualifying Test, the Design Problem and the Professional Examination, will be required to pass the NCARB examination(s) or any portion which s/he was not required to pass to attain his/her original or subsequent *[registration(s)]* **licensure(s)**.

(2) Individuals applying for *[registration]* **licensure** as an architect under section 327.381, RSMo who were originally *[registered]* **licensed** in a territory or possession of the United States or in another country without being required to pass the NCARB examinations, that is, the Qualifying Test, the Design Problem and the Professional Examination, must pass such examination(s) as the architectural division deems necessary.

(3) Experience as a *[registered]* **licensed** architect *[practicing as a principal or the equivalent as determined by the architectural division,]* acceptably documented for a period of at least two (2) years, may be accepted in lieu of passing the Qualifying Test and/or the Design Problem.

*AUTHORITY: sections 327.041 **and 327.381**, RSMo [1986] **Supp. 2001**. Original rule filed Dec. 8, 1981, effective March 11, 1982. Amended: Filed Dec. 9, 2002.*

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

*PRIVATE COST: This proposed amendment is estimated to save private entities approximately four hundred twenty-nine dollars ($429) annually for the life of the rule. It is anticipated that the total savings will recur annually for the life of the rule, may vary with inflation and is expected to increase annually at the rate projected by the Legislative Oversight Committee. A detailed fiscal note, which estimates the savings established with this rule change, 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 amendment with the Missouri Board for Architects, Professional Engineers, Professional Land Surveyors and Landscape Architects, PO Box 184, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

# FISCAL NOTE
# PRIVATE ENTITY COST

## I. RULE NUMBER

**Title:** 4 – Department of Economic Development

**Division:** 30 – Missouri Board for Architects, Professional Engineers, Professional Land Surveyors and Landscape Architects

**Chapter:** 4 - Applications

**Type of Rulemaking:** Proposed Amendment

**Rule Number and Name:** 4 CSR 30-4.060 Evaluation – Comity Applications - Architects

## II. SUMMARY OF FISCAL IMPACT

| Estimate of the number of entities by class which would likely be affected by the adoption of the proposed amendment: | Classification by types of the business entities which would likely be affected: | Estimated annual cost savings of the amendment by the affected entities: |
|---|---|---|
| 1 | Applicant (testing fees - $429) | $429.00 |
| | **Total annual cost savings for the life of the rule** | **$429.00** |

## III. WORKSHEET

See above table

## IV. ASSUMPTIONS

1. The board anticipates one (1) applicant per year will be relieved of taking and passing the Qualifying Test and/or the Design Problem, therefore, private entities will save approximately $429.00 annually.

2. It is anticipated that the total annual savings will recur each year for the life of the rule, may vary with inflation and are expected to increase annually at the rate projected by the Legislative Oversight Committee.

**Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT**
**Division 30—Missouri Board for Architects, Professional Engineers, *[and]* Professional Land Surveyors *and Landscape Architects***
**Chapter 11—Renewals**

## PROPOSED RULE

**4 CSR 30-11.030 Professional Engineer Renewal and Reactivation of Licensure**

*PURPOSE: This rule clarifies the requirements and conditions for renewing and reactivating a professional engineer's certificate of licensure.*

(1) Licenses not renewed on or before the renewal date become non-current and subject to the provisions of section 327.261, RSMo. No person is entitled to practice as a professional engineer unless s/he holds a current and active license.

(2) In order to renew a license, the licensee must:

(A) Submit a completed renewal application form furnished by the board; and

(B) Pay the required fee; provided however, no fee shall be paid by a licensee who is at least seventy-five (75) years of age at the time the renewal is due; and

(C) Submit a completed Professional Development Hour (PDH) form furnished by the board verifying that the licensee has completed at least thirty (30) PDHs during the preceding two (2) calendar years unless otherwise exempted.

(3) Licensees who request to be classified as inactive pursuant to section 327.271.1, RSMo, may maintain their inactive status and receive a certificate indicating their inactive status by paying the renewal fee as provided in 4 CSR 30-6.015. Holders of an inactive license need not complete the PDH requirement. However, a holder of an inactive license shall not have his/her license reactivated until s/he pays the required reactivation fee, and in addition, completes thirty (30) Professional Development Hours within the two (2) years immediately prior to the date of reactivation.

*AUTHORITY: sections 327.041, RSMo Supp. 2001 and 327.261 and 327.271.1, RSMo 2000. Original rule filed Dec. 9, 2002.*

*PUBLIC COST: This proposed rule is estimated to cost Missouri Board for Architects, Professional Engineers, Professional Land Surveyors and Landscape Architects an estimated fifty-one dollars and twenty cents ($51.20) biennially for the life of the rule. It is anticipated that the total cost will recur 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 rule is estimated to cost private entities approximately two thousand dollars ($2,000) biennially for the life of the rule. It is anticipated that the total costs will recur for the life of the rule, may vary with inflation and are 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.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Board for Architects, Professional Engineers, Professional Land Surveyors and Landscape Architects, PO Box 184, Jefferson City, Missouri 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

**FISCAL NOTE**
**PUBLIC ENTITY COST**

**I. RULE NUMBER**

Title: 4 - Department of Economic Development

Division: Division 30 - Missouri Board for Architects, Professional Engineers, Professional Land Surveyors and Landscape Architects

Chapter: Chapter 11-Renewals

Type of Rulemaking: Proposed Rule

Rule Number and Name: 4 CSR 30-11.030 Professional Engineer Renewal and Reactivation of Licensure

Prepared August 20, 2002 by the Division of Professional Registration.

**II. SUMMARY OF FISCAL IMPACT**

| Affected Agency or Political Subdivision | Estimated Biennial Cost of Compliance |
|---|---|
| Missouri Board for Architects, Professional Engineers, Professional Land Surveyors and Landscape Architects (Professional Engineer Reactivation) | $51.20 |

**Total biennial cost for the life of the rule** **$51.20**

**III. WORKSHEET**

The office estimates that 20 professional engineers will apply for reactivation biennially. The following is a breakdown of the expense and equipment costs associated with reactivation.

| CLASSIFICATION | FEE AMOUNT | NUMBER OF APPLICANTS | TOTAL ANNUAL COST |
|---|---|---|---|
| Renewal Application Printing Cost | $.15 | 20 | $3.00 |
| Envelope for Mailing Renewal Application | $.16 | 20 | $3.20 |
| Postage for Mailing Renewal Application | $.37 | 20 | $7.40 |
| Renewal License Printing Cost | $.15 | 20 | $3.00 |
| Envelope for Mailing Renewal License | $.16 | 20 | $3.20 |
| Postage for Mailing Renewal License | $.37 | 20 | $7.40 |

**Total expense and equipment costs associated with professional land surveyor renewal and reactivation:** **$27.20**

The board estimates that approximately 20 professional engineers will reactive their license biennially. The Clerk Stenographer II reviews these applications and updates the information contained on the form in the licensing computer system. The figures below represent the personal service costs paid by the Missouri Board for Architects, Professional Engineers, Professional Land Surveyors and Landscape Architects for the reactivation process.

| STAFF | ANNUAL SALARY | SALARY TO INCLUDE FRINGE BENEFITS | HOURLY SALARY | COST PER MINUTE | TIME PER APPLICATION | COST PER APPLICATION | TOTAL ANNUAL COST |
|---|---|---|---|---|---|---|---|
| Clerk Stenographer II | $21,192 | $28.963 | $14.06 | $.24 | 5 minutes | $1.20 | $24.00 |

**Total personal service costs associated with land surveyor reactivation:** **$24.00**

**IV. ASSUMPTIONS**

- The number of licensees by class are based on projected figures in FY03.

- Employee's salaries were calculated using their annual salary multiplied by 36.67% for fringe benefits and then were divided by 2080 hours per year to determine the hourly salary. The hourly salary was then divided by 60 minutes to determine the cost per minute. The cost per minute was then multiplied by the amount of time individual staff spent on the processing of applications or renewals. The total cost was based on the cost per application multiplied by the estimated number of applications or renewals.

- The total costs will recur for the life of the rule, may vary with inflation and are expected to increase at the rate projected by the Legislative Oversight Committee.

**FISCAL NOTE**
**PRIVATE ENTITY COST**

**I. RULE NUMBER**

Title: 4 - Department of Economic Development

Division: Division 30 - Missouri Board for Architects, Professional Engineers, Professional Land Surveyors and Landscape Architects

Chapter: Chapter 11-Renewals

Type of Rulemaking: Proposed Rule

Rule Number and Name: 4 CSR 30-11.030 Professional Engineer Renewal and Reactivation of Licensure.

Prepared August 20, 2002 by the Division of Professional Registration.

**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 biennial cost of compliance with the rule by the affected entities: |
|---|---|---|
| 20 | Professional Land Surveyors (Reactivation Fee - $100) | $2,000 |
| | **Total biennial cost for the life of the rule** | **$2,000** |

**III. WORKSHEET**

See above Table

**IV. ASSUMPTIONS**

- The number of licensees by class are based on projected figures in FY03.
- It is anticipated that the total annual cost will recur for the life, may vary with inflation and is expected to increase annually at the rate projected by the Legislative Oversight Committee

**Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT**
**Division 90—State Board of Cosmetology**
**Chapter 13—General Rules**

## PROPOSED AMENDMENT

**4 CSR 90-13.010 Fees**. The board is proposing to amend subsections (1)(A), (1)(B) and (1)(M) and add a new subsection (1)(Q).

*PURPOSE: In order to ensure the board will have sufficient funds to conduct its licensing and regulatory functions pursuant to section 329.210, RSMo, this rule is being amended to increase the renewal fee for Cosmetology Salons, to increase the reciprocity fee to be consistent with the operator renewal fee and to create a fee for the issuance of an inactive license.*

(1) The following application fees hereby are established by the State Board of Cosmetology:

| | |
|---|---|
| (A) Operator Reciprocity Fee | $*[30.00]* **50.00** |
| (B) Duplicate License Fee | $*[5.00]* **10.00** |
| (M) Salon License/Renewal Fee (up to and including three (3) operators) | $*[60.00]* **100.00** |
| **(Q) Inactive License Fee** | **$ 30.00** |

*AUTHORITY: sections 329.110, RSMo 2000 and 329.210, **RSMo Supp. 2001**.* Emergency rule filed July 1, 1981, effective July 11, 1981, expired Nov. 11, 1981. Original rule filed July 1, 1981, effective Dec. 11, 1981. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Dec. 9, 2002.*

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

*PRIVATE COST: Beginning in FY04, this proposed amendment is estimated to cost private entities approximately six thousand six hundred sixty-five dollars ($6,665) annually and four hundred sixty-eight thousand six hundred eighty-five dollars ($468,685) biennially for the life of the rule. It is anticipated that the costs will recur 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.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri State Board of Cosmetology, Darla Fox, Executive Director, PO Box 1062, 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.*

## PRIVATE ENTITY FISCAL NOTE

**I. RULE NUMBER**

**Title 4 -Department of Economic Development**

**Division 90 - State Board of Cosmetology**

**Chapter 13 - General Rules**

**Proposed Amendment - 4 CSR 90-13.010 Fees**

Prepared November 3, 2002 by the Division of Professional Registration

**II. SUMMARY OF FISCAL IMPACT**

**Annual Cost of Compliance Beginning in FY04**

| Estimate the number of entities by class which would likely be affected by the adoption of the proposed amendment: | Classification by type of the business entities which would likely be affected: | Estimated annual cost of compliance with the amendment by affected entities: |
|---|---|---|
| 327 | Operators (Reciprocity Fee -$20 increase) | $6,540.00 |
| 25 | Inactive Licensees (Duplicate License Fee - $5 increase) | $125.00 |
| | **Estimated Annual Cost of Compliance for the Life of the Rule** | **$6,665.00** |

**Biennial Cost of Compliance Beginning in FY04**

| Estimate the number of entities by class which would likely be affected by the adoption of the proposed amendment: | Classification by type of the business entities which would likely be affected: | Estimated biennial cost of compliance with the amendment by affected entities: |
|---|---|---|
| 11,714 | Salon Owners (Salon License Renewal Fee - $40 increase) | $468,560.00 |
| | **Estimated Biennial Cost of Compliance for the Life of the Rule** | **$468,685.00** |

**III. WORKSHEET**

See table above.

**IV. ASSUMPTION**

1. The above figures were based on FY2002 actual figures and projections for FY2003 and FY2004.

2. It is anticipated that the total cost will recur 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 4—DEPARTMENT OF ECONOMIC DEVELOPMENT**
**Division 90—State Board of Cosmetology**
**Chapter 13—General Rules**

## PROPOSED AMENDMENT

**4 CSR 90-13.050 Renewal, Inactive Status, and Reactivation Requirements for Cosmetologists and Instructors**. The board is proposing to amend section (3) and delete the forms that follow this rule in the *Code of State Regulations*.

*PURPOSE: This amendment requires licensees to submit an inactive fee along with the application to place the license on the inactive status. This amendment also establishes an expiration date for the inactive license.*

(3) Inactive License—A cosmetologist and/or instructor may choose to place his/her license on an inactive status by signing a change in licensure status affidavit stating that s/he will not engage in the practice of cosmetology in Missouri and submitting that application to the board office **along with the inactive license fee**. An inactive license will be issued to individuals requesting inactive status. **All inactive licenses shall expire on September 30 of each odd-numbered year.**

*AUTHORITY: sections 329.210, RSMo Supp. [1998] **2001** and 329.230, RSMo [1994] **2000**. Original rule filed Jan. 4, 1999, effective July 30, 1999. Amended: Filed Dec. 9, 2002.*

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

*PRIVATE COST: Beginning in FY04, this proposed amendment is estimated to cost private entities approximately two hundred twenty-four thousand five hundred fifty dollars ($224,550) biennially for the life of the rule. It is anticipated that the costs will recur 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.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri State Board of Cosmetology, Darla Fox, Executive Director, PO Box 1062, 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.*

## PRIVATE ENTITY FISCAL NOTE

**I. RULE NUMBER**

**Title 4 -Department of Economic Development**

**Division 90 - State Board of Cosmetology**

**Chapter 13 - General Rules**

**Proposed Amendment - 4 CSR 90-13.050 Renewal, Inactive Status, and Reactivation Requirements for Cosmetologists and Instructors**

Prepared November 3, 2002 by the Division of Professional Registration

**II. SUMMARY OF FISCAL IMPACT**

**Biennial Cost of Compliance Beginning in FY04**

| Estimate the number of entities by class which would likely be affected by the adoption of the proposed amendment: | Classification by type of the business entities which would likely be affected: | Estimated biennial cost of compliance with the amendment by affected entities: |
|---|---|---|
| 7485 | Inactive Licensees (Inactive License Fee - $30) | $224,550.00 |
| | **Estimated Biennial Cost of Compliance for the Life of the Rule** | **$224,550.00** |

**III. WORKSHEET**

See table above.

**IV. ASSUMPTION**

1. The above figures were based on FY2002 actual figures and projections for FY2003 and FY2004.

2. It is anticipated that the total cost will recur 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 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
## Division 150—State Board of Registration for the Healing Arts
## Chapter 8—Licensing of Clinical Perfusionists

### PROPOSED AMENDMENT

**4 CSR 150-8.140 Continuing Professional Education**. The board is proposing to amend subsection (1)(B).

*PURPOSE: This amendment allows the board to incorporate the American Board of Cardiovascular Perfusion's revised requirement for recertification.*

(1) Each renewal period the licensee must be able to provide proof of current certification by the American Board of Cardiovascular Perfusion (ABCP) or its successor or provide proof of the following:

(B) Documentation of performing forty (40) cases each calendar year as primary perfusionist for cardiopulmonary bypass, ECMO, VAD, Isolated Limb Perfusion, or VENO-VENO bypass. **Fifteen (15) of the forty (40) cases may be documentable intraoperative pump standbys.**

*AUTHORITY: sections 324.144, 324.159 and 324.183, RSMo [Supp. 1997] **2000**. Original rule filed Dec. 2, 1998, effective June 30, 1999. Amended: Filed Dec. 9, 2002.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri State Board of Healing Arts, Attn: Tina Steinman, Executive Director, 3605 Missouri Boulevard, PO Box 4, 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 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
## Division 230—State Board of Podiatric Medicine
## Chapter 2—General Rules

### PROPOSED AMENDMENT

**4 CSR 230-2.070 Fees**. The board is proposing to amend subsections (1)(D) and (1)(O), deleting subsections (1)(P) and (1)(Q), and renumbering the remaining subsection accordingly.

*PURPOSE: The State Board of Podiatric Medicine is statutorily obligated to enforce and administer the provisions of Chapter 330, RSMo. Pursuant to section 330.140, RSMo, the board shall by rule and regulation set the amount of fees authorized by Chapter 330, RSMo so that the revenue produced is sufficient, but not excessive, to cover the cost and expense to the board for administering the provisions of Chapter 330, RSMo. This proposed amendment is necessary because the board's fund balance and projected revenue will not support the expenditures necessary to enforce and administer the provisions of Chapter 330, RSMo, which will result in an endangerment to the health, welfare, and safety of the public. This amendment also deletes subsections (1)(P) and (1)(Q) pursuant to section 610.026, RSMo which states fees for copying records shall not exceed the actual cost of document search and duplication.*

(1) The following fees are established by the State Board of Podiatric Medicine:

| | | |
|---|---|---|
| (E) Biennial Renewal Fee | *[$280.00]* | **$350.00** |
| (O) Application Processing Fee | *[$150.00]* | **$250.00** |
| *[(P) Photocopy Fee (records) (per page)* | | *$ .25* |
| *(Q) Research Fee (requiring more than two (2) hours of staff time) (per hour)* | | *$ 20.00]* |
| *[(R)]* **(P)** Continuing Education Sponsor Fee | | $ 25.00. |

*AUTHORITY: sections 330.095 and 330.140, RSMo [Supp. 1999] **2000**. Emergency rule filed June 30, 1981, effective July 9, 1981, expired Nov. 11, 1981. Original rule filed June 30, 1981, effective Nov. 12, 1981. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Dec. 9, 2002.*

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

*PRIVATE COST: Beginning in FY04 this proposed amendment is estimated to cost private entities an increase of two thousand two hundred dollars ($2,200) annually and eighteen thousand six hundred ninety dollars ($18,690) biennially for the life of the rule. It is anticipated that the total annual cost will recur each year for the life of the rule, however, may vary with inflation and is expected to increase annually 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.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri State Board of Podiatric Medicine, PO Box 423, Jefferson City, MO 65102, by facsimile to (573) 751-1155 or by e-mail to podiatry@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.*

# PRIVATE ENTITY FISCAL NOTE

## I. RULE NUMBER

**Title 4 -Department of Economic Development**

**Division 230 - State Board of Podiatric Medicine**

**Chapter 2 - General Rules**

**Proposed Amendment - 4 CSR 230-2.070 Fees**

Prepared November 8, 2002 by the Division of Professional Registration

## II. SUMMARY OF FISCAL IMPACT

**Annual Costs Beginning in FY04**

| Estimate the number of entities by class which would likely be affected by the adoption of the proposed amendment: | Classification by type of the business entities which would likely be affected: | stimated biennial cost of complian with the amendment by affected entities: |
|---|---|---|
| 22 | Applicants (application processing fee - $100 increase) | $2,200 |
| | **Estimated Annual Cost of Compliance for the Life of the Rule** | **$2,200** |

**Biennial Costs Beginning in FY04**

| Estimate the number of entities by class which would likely be affected by the adoption of the proposed amendment: | Classification by type of the business entities which would likely be affected: | stimated annual cost of compliane with the amendment by affected entities: |
|---|---|---|
| 267 | Licensees (biennial renewal fee - $70 increase) | $18,690 |
| | **Estimated Annual Cost of Compliance for the Life of the Rule** | **$18,690** |

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

### PROPOSED AMENDMENT

**10 CSR 10-6.350 Emission Limitations and Emissions Trading of Oxides of Nitrogen**. The commission proposes to amend original subsections (1)(B), (1)(C), (2)(M), (5)(F) and (5)(G); amend sections (3) and (4); add new subsections (1)(D), (2)(M), (2)(FF) and (2)(II); delete original subsection (5)(C); and renumber original subsections (2)(M) through (2)(JJ) and (5)(D) through(5)(G). If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency to replace the current rule in the Missouri State Implementation Plan. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address and phone number listed in the Notice of Public Hearing at the end of this rule.

*PURPOSE: This rulemaking will place limitations on cyclone boilers that burn tire derived fuel and extend the compliance date based on recent legislation and legal determinations. Administrative aspects of the $NO_x$ emissions trading program will also be clarified. The evidence supporting the need for this rulemaking per section 536.016, RSMo, is 260.270, RSMo and comments submitted by the Missouri Electric Utility Environmental Committee.*

(1) Applicability.

(B) Exemptions.

1. Any unit under subsection (1)(A) of this rule which demonstrates, using *[40 CFR part 75.19]* **the emission estimation methods outlined in paragraph (5)(E)1. of this rule**, that the unit's mass $NO_x$ emissions are twenty-five (25) tons or less during the control period is exempt from the requirements of this rule.

2. The provisions of section (3) of this rule shall not apply to any emergency standby generators, internal combustion engines and peaking combustion turbine units demonstrated to operate less than four hundred (400) hours per control period averaged over the three (3) most recent years of operation, which have installed and maintained in proper operation a nonresettable engine hour meter.

(C) Loss of Exemption. If the exemption limit in paragraph (1)(B)1. or (1)(B)2. is exceeded, the exemption shall be automatically and permanently withdrawn. The owner or operator must notify the *[department]* **staff** director **or designee** within thirty (30) days if an exemption limit is exceeded. **If the owner or operator can demonstrate to the staff director or designee that the exemption limit was exceeded due to emergency operations or uncontrollable circumstances and the unit should be exempt from the provisions of this rule, the exemption shall only be withdrawn for that calendar year.**

**(D) Compliance with this rule shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the Air Conservation Law and rules or any other requirements under local, state or federal law. Specifically, compliance with this rule shall not violate the permit conditions previously established under 10 CSR 10-6.060 or 10 CSR 10-6.065.**

(2) Definitions.

**(M) Cyclone EGU—An electric generating unit (EGU) with a fossil fuel-fired boiler consisting of one or more horizontal cylindrical barrels that utilize tangentially applied air to produce a swirling combustion pattern of coal and air.**

*[(M)]* **(N)** Early reduction credit (ERC)—$NO_x$ emission reductions in the years 2000, 2001, *[and]* 2002 **and 2003** that are below *[those required for the control period starting in 2003]* **the limits specified in subsection (3)(A) of this rule**. *[Early reduction credits]* **ERCs** will only be available for use during the years of *[2003]* **2004** and *[2004]* **2005**. **When calculating ERCs or performing calculations involving ERCs, ERCs shall always be rounded down to the nearest ton.**

*[(N)]* **(O)** Electric generating unit (EGU)—Any fossil fuel-fired boiler or turbine that serves an electrical generator with the potential to use more than fifty percent (50%) of the usable energy from the boiler or turbine to generate electricity.

*[(O)]* **(P)** Emergency standby generator—A generator operated only during times of loss of primary power at the facility that is beyond the control of the owner or operator of the facility or during routine maintenance.

*[(P)]* **(Q)** Fossil fuel—Natural gas, petroleum, coal, or any form of solid, liquid or gaseous fuel derived from such material.

*[(Q)]* **(R)** Fossil fuel-fired—With regard to a unit, the combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel is projected to comprise more than fifty percent (50%) of the annual heat input.

*[(R)]* **(S)** Generator—A device that produces electricity.

*[(S)]* **(T)** Heat input—The product (expressed as million British thermal units per hour) of the gross calorific value of the fuel (expressed as British thermal units per pound) and the fuel feed rate into a combustion device (expressed as pounds per hour), as measured, recorded and reported to the department by the $NO_x$ authorized account representative and as determined by the director in accordance with this rule and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

*[(T)]* **(U)** Nameplate capacity—The maximum electrical generating output (expressed as megawatt) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings, as listed in the National Allowance Data Base (NADB) under the data field "NAMECAP" if the generator is listed in the NADB or as measured in accordance with the United States Department of Energy standards. For generators not listed in the NADB, the nameplate capacity shall be used.

*[(U)]* **(V)** $NO_x$ allowance—An authorization by the department under the $NO_x$ trading program to emit one (1) ton of $NO_x$ during the control period of the specified year or of any year thereafter.

*[(V)]* **(W)** $NO_x$ allowance tracking system—The system by which the director records allocations, deductions and transfers of $NO_x$ allowances under the $NO_x$ trading program.

*[(W)]* **(X)** $NO_x$ allowance transfer deadline—Close of business on December 31 following the control period or, if December 31 is not a business day, close of business on the first business day thereafter and is the deadline by which $NO_x$ allowances may be submitted for recording in an affected unit's compliance account, or the overdraft account of the installation where the unit is located.

*[(X)]* **(Y)** $NO_x$ authorized account representative—The person who is authorized by the owners or operators of the unit to represent and legally bind each owner and operator in matters pertaining to the $NO_x$ trading program.

*[(Y)]* **(Z)** $NO_x$ emissions limitation—For an affected unit, the tonnage equivalent of the $NO_x$ emissions rate available for compliance deduction for the unit and for a control period adjusted by any deductions of such $NO_x$ allowances to account for actual utilization for the control period or to an account for excess emissions for a prior control period or to account for withdrawal from the $NO_x$ trading program or for a change in regulatory status for an affected unit.

*[(Z)]* **(AA)** $NO_x$ emission rate—The amount of $NO_x$ emitted by a combustion unit in pounds per million British thermal units of heat input as recorded by monitoring devices approved in section (5) of this rule.

*[(AA)]* **(BB)** $NO_x$ opt-in unit—An EGU whose owner or operator has requested to become an affected unit under the $NO_x$ trading program and has been approved by the department.

*[(BB)]* **(CC)** $NO_x$ unit—Any fossil fuel-fired stationary boiler, combustion turbine, internal combustion engine or combined cycle system.

*[(CC)]* **(DD)** Opt-in—To voluntarily become an affected unit under the $NO_x$ trading program.

*[(DD)]* **(EE)** Overdraft account—The $NO_x$ allowance tracking system account established by the director for each $NO_x$ authorized account representative *[with two or more affected units]*.

**(FF) Passenger tire equivalent (PTE)—The weight of waste tires or parts of waste tires equivalent to the average weight of one (1) passenger tire. The average weight of one (1) passenger tire is equal to twenty (20) pounds.**

*[(EE)]* **(GG)** Peaking combustion unit—A combustion turbine normally reserved for operation during the hours of highest daily, weekly, or seasonal loads.

*[(FF)]* **(HH)** Serial number—When referring to $NO_x$ allowances, the unique identification number assigned to each $NO_x$ allowance.

**(II) Tire-derived fuel—The end product of a process that converts whole scrap tires into a specific chipped form capable of being used as fuel.**

*[(GG)]* **(JJ)** Unit load—The total output of a unit in any control period produced by combusting a given heat input of fuel expressed in terms of the total electrical generation (expressed as megawatt) produced by the unit including generation for use within the plant, and/or in the case of a unit that uses heat input for purposes other than electrical generation, the total steam flow (lb/hr) produced by the unit, including steam for use by the unit.

*[(HH)]* **(KK)** Unit operating day—A calendar day in which a unit combusts any fuel.

*[(II)]* **(LL)** Unit operating hour or hour of unit operation—Any hour or fraction of an hour during which a unit combusts fuel.

*[(JJ)]* **(MM)** Utilization—The heat input (expressed as million British thermal units per hour) for a unit.

(3) General Provisions.

(A) $NO_x$ Emissions Limitations. Beginning May 1, *[2003]* **2004**, the following $NO_x$ emission rates shall apply:

1. EGUs located in the *[City of St. Louis and the]* counties of Bollinger, Butler, Cape Girardeau, Carter, Clark, Crawford, Dent, Dunklin, *[Franklin,]* Gasconade, Iron, *[Jefferson,]* Lewis, Lincoln, Madison, Marion, Mississippi, Montgomery, New Madrid, Oregon, Pemiscot, Perry, Phelps, Pike, Ralls, Reynolds, Ripley, St. Charles, St. Francois, *[St. Louis,]* Ste. Genevieve, Scott, Shannon, Stoddard, Warren, Washington and Wayne, shall limit emissions of $NO_x$ to the more stringent of a rate of 0.25 lbs*[.]* $NO_x$/million British thermal units per hour (mmBtu) of heat input during the control period or any applicable permitted $NO_x$ limitation under 10 CSR 10-6.060.

**2. EGUs located in the City of St. Louis and the counties of Franklin, Jefferson and St. Louis shall limit emissions of $NO_x$ to the more stringent rate of 0.18 lbs $NO_x$/mmBtu of heat input during the control period, or any applicable permitted $NO_x$ limitation under 10 CSR 10-6.060. For the purpose of calculating ERCs under subparagraph (3)(B)5.C. of this rule, the regulated $NO_x$ emission rate ($NO_xER_r$) for units located in these areas shall be 0.25 lbs $NO_x$/mmBtu.**

**3. Cyclone EGUs located in the counties of Buchanan, Jackson, Jasper or Randolph shall limit emissions of $NO_x$ to the more stringent rate of any applicable permitted $NO_x$ limitation under 10 CSR 10-6.060 or the less stringent of:**

**A. 0.35 lbs $NO_x$/mmBtu of heat input during the control period; or**

**B. 0.68 lbs $NO_x$/mmBtu of heat input during the control period, provided that the unit burns tire-derived fuel in a quantity of at least one hundred thousand (100,000) PTEs per year. For installations with multiple cyclone EGUs, compliance with the one hundred thousand (100,000) PTE burned per year may also be based on the average number of PTEs burned per cyclone EGU.**

*[2.]* **4.** EGUs**, other than cyclone EGUs,** located in any county not identified in paragraph (3)(A)1. **or (3)(A)2.** of this rule shall limit emissions of $NO_x$ to the more stringent of a rate of 0.35 lbs*[.]* $NO_x$/mmBtu of heat input during the control period or any applicable permitted $NO_x$ limitation under 10 CSR 10-6.060.

*[3.]* **5.** In lieu of complying with the applicable emission limitations in paragraph (3)(A)1. *[or (3)(A)2.]* **through (3)(A)4.** of this rule, any affected unit may comply through the $NO_x$ emissions trading program under subsection (3)(B) of this rule.

(B) $NO_x$ Emissions Trading Program.

1. $NO_x$ authorized account representative. The $NO_x$ authorized account representative shall have the responsibilities and meet the requirements identified in this subsection.

A. Each affected unit shall have only one $NO_x$ authorized account representative with respect to all matters under the $NO_x$ trading program. Each affected unit may have only one **(1)** alternate $NO_x$ authorized account representative who may act on behalf of the $NO_x$ authorized account representative.

B. A $NO_x$ authorized account representative may be responsible for multiple units at an installation or within a system of installations with the same owner.

C. The department will act on a valid submission made on behalf of owners or operators of an affected unit only if the submission has been made, signed and certified by the $NO_x$ authorized account representative or the alternate $NO_x$ authorized account representative.

D. Each unit must submit an account certificate of representation no later than January 1, *[2003]* **2004** or December 31 of the year in which the rule becomes applicable for units installed after January 1, *[2003]* **2004**.

2. $NO_x$ allowance tracking system.

A. $NO_x$ allowance tracking system accounts. The department will establish one **(1)** compliance account for each $NO_x$ unit and one **(1)** overdraft account for each $NO_x$ authorized account representative with one **(1)** or more $NO_x$ units. Allocations of $NO_x$ allowances pursuant to paragraphs (3)(B)3. or (3)(B)10. of this rule and deductions or transfers of $NO_x$ allowances pursuant to paragraphs (3)(B)3., (3)(B)7., (3)(B)9., or (3)(B)10. of this rule will be recorded in the compliance accounts or overdraft accounts.

B. Establishment of accounts.

(I) Compliance accounts and overdraft accounts. Upon receipt of a complete account certificate of representation, the department will establish—

(a) A compliance account for each affected $NO_x$ unit for which the account certificate of representation was submitted; and

(b) An overdraft account for each $NO_x$ authorized account representative for which the account certificate of representation was submitted.

(II) Account identification. The department will assign a unique identifying number to each compliance account and each overdraft account.

C. Recording of $NO_x$ allowance allocations.

(I) The department will record the $NO_x$ allowances for the *[2003]* **2004** control period in the $NO_x$ units' compliance accounts.

(II) Serial numbers for allocated $NO_x$ allowances. The department will assign each $NO_x$ allowance a unique identification number that will include digits identifying the year for which the $NO_x$ allowance is allocated.

3. $NO_x$ allowances.

A. Projected $NO_x$ allowances.

(I) By March 1, *[2003]* **2004**, the $NO_x$ authorized account representative for each affected unit shall submit to the department a report containing the following:

(a) The projected control period $NO_x$ emission rate for each affected unit;

(b) The average of the three (3) most recent control period heat inputs, unless those three (3) periods are not representative of normal operation; and

(c) A plan identifying the methodology for compliance with subsection (3)(A) of this rule.

(II) The department will review each report and make any amendments within fifteen (15) working days.

(III) The department will develop a summary of projected $NO_x$ allowances on a unit by unit and statewide basis for distribution on or before May 1 of each year using Equation 1 of this rule.

Equation 1:

$$\frac{HI_{[opt]p} \times ER_{[opt]p}}{2000} = NO_xAL_{[opt]p}$$

where:

$HI_p$ = the projected control period heat input for each $NO_x$ unit;

$ER_p$ = the projected control period emission rate for each $NO_x$ unit; and

$NO_xAL_p$ = the projected $NO_x$ allowance for each $NO_x$ unit **rounded down to the nearest ton** (in tons).

B. Control period $NO_x$ allowances.

(I) By October 31 following each control period, each $NO_x$ authorized account representative shall submit to the department the actual total control period heat input and actual average emission rate in a compliance report consistent with requirements of section (4) of this rule for each affected $NO_x$ unit.

(II) By November 15 following each control period, the department will issue a notice to each $NO_x$ authorized account representative of the actual $NO_x$ allowances for each affected $NO_x$ unit using Equation 2 of this rule.

Equation 2:

$$\frac{HI_{[opt]a} \times ER_{[opt]r}}{2000} = NO_xAL_a$$

where:

$HI_a$ = the actual control period heat input for each $NO_x$ unit;

$ER_r$ = the allowable control period emission rate for each $NO_x$ unit as determined in paragraph (3)(A)1. *[or (3)(A)2.]* **through (3)(A)4.** of this rule; and

$NO_xAL_a$ = the actual $NO_x$ allowance for each unit for the control period **rounded down to the nearest ton** (in tons).

4. Compliance. By the end of the $NO_x$ allowance transfer deadline, each $NO_x$ unit shall have sufficient $NO_x$ allowances in their compliance account to allow for the deductions in subparagraph (3)(B)4.B. of this rule.

A. $NO_x$ allowance transfer deadline. The $NO_x$ allowances are available to be deducted for compliance with a unit's $NO_x$ emissions limitation for a control period in a given year only if the $NO_x$ allowances—

(I) Were allocated for a control period in a prior year or the same year; and

(II) Are held in the unit's compliance account or the unit's overdraft account as of the $NO_x$ allowance transfer deadline for that control period.

B. Deductions for compliance.

(I) The director will deduct $NO_x$ allowances to cover the unit's $NO_x$ emissions for the control period—

(a) From the compliance account; and

(b) Only if no more $NO_x$ allowances available under subparagraph (3)(B)4.A. of this rule remain in the compliance account, from the overdraft account. In deducting allowances for units from the overdraft account, the director will begin with the unit having the compliance account with the lowest $NO_x$ Allowance Tracking System account number and end with the unit having the compliance account with the highest $NO_x$ Allowance Tracking System account number.

(II) The director will deduct $NO_x$ allowances until the number of $NO_x$ allowances deducted for the control period equals the number of tons of $NO_x$ emissions, determined in accordance with part (3)(B)4.B.(III) of this rule, from the unit for the control period for which compliance is being determined; or until no more $NO_x$ allowances available under subparagraph (3)(B)4.A. of this rule remain in the respective account.

(III) For a $NO_x$ unit that is allocated $NO_x$ allowances under part (3)(B)3.B.(II) of this rule for a control period, the department will deduct $NO_x$ allowances under subparagraph (3)(B)4.B. or (3)(B)4.E. of this rule to account for the actual utilization of the unit during the control period. The department will calculate the number of $NO_x$ allowances to be deducted to account for the unit's actual utilization using Equation 3 of this rule.

Equation 3:

$$\sum HI_a \times ER_a = NO_xAL_d$$

where:

$HI_a$ = the actual control period heat input for each $NO_x$ unit;

$ER_a$ = the actual control period emission rate for each $NO_x$ unit; and

$NO_xAL_d$ = the number of $NO_x$ allowances that will be deducted from each $NO_x$ unit's compliance account **(truncated down to the nearest allowance)**.

C. Identification of $NO_x$ allowances by serial number.

(I) The *[department]* **$NO_x$ authorized account representative** may identify by serial number the $NO_x$ allowances to be deducted from the unit's compliance account under subparagraph (3)(B)4.B., (3)(B)4.D., or (3)(B)4.E. of this rule. Such identification will be made in the compliance certification report submitted in accordance with paragraph (4)(A)1. of this rule.

(II) *[First-in, first-out (FIFO).]* The **staff** director will deduct $NO_x$ allowances for a control period from the compliance account, in the absence of an identification or in the case of a partial identification of $NO_x$ allowances by serial number under part (3)(B)*[9.]***4.**C.(I) of this rule, or the overdraft account *[on a FIFO accounting basis]* in the following order:

(a) Those $NO_x$ allowances that were allocated for the control period to the unit under part (3)(B)3.B.(II) of this rule;

(b) Those $NO_x$ allowances that were allocated for the control period to any unit and transferred and recorded in the account pursuant to paragraphs (3)(B)7. and (3)(B)8. of this rule, in order of their date of recording;

(c) Those $NO_x$ allowances that were allocated for a prior control period to the unit under part (3)(B)3.B.(II) of this rule; and

(d) Those $NO_x$ allowances that were allocated for a prior control period to any unit and transferred and recorded in the account pursuant to paragraphs (3)(B)7. and (3)(B)8. of this rule, in order of their date of recording.

D. Deductions for units sharing a common stack. In the case of units sharing a common stack and having emissions that are not separately monitored or apportioned in accordance with section (4) of this rule—

(I) The $NO_x$ authorized account representative of the units shall identify the percentage of $NO_x$ allowances to be deducted from each such unit's compliance account to cover the unit's share of $NO_x$ emissions from the common stack for a control period. Such identification shall be made in the compliance certification report submitted in accordance with paragraph (4)(A)1. of this rule.

(II) Notwithstanding part (3)(B)4.B.(II) of this rule, the director will deduct $NO_x$ allowances for each unit until the number

of $NO_x$ allowances deducted equals the unit's identified percentage (under part (3)(B)4.D.(I) of this rule) of the number of tons of $NO_x$ emissions, as determined in accordance with section (4) of this rule, from the common stack for the control period for which compliance is being determined or, if no percentage is identified, an equal percentage for each unit, plus the number of allowances required for deduction to account for actual utilization under subparagraph (4)(A)1.G. of this rule for the control period.

E. The director will record in the appropriate compliance account or overdraft account all deductions from such an account pursuant to subparagraphs (3)(B)4.B. and (3)(B)4.D. of this rule.

5. Banking.

A. $NO_x$ allowances may be banked for future use or transfer into a compliance account or an overdraft account, as follows:

(I) Any $NO_x$ allowance that is held in a compliance account or an overdraft account, will remain in such account until the $NO_x$ allowance is deducted or transferred under paragraphs (3)(B)4., (3)(B)5., (3)(B)6., or (3)(B)7. of this rule.

(II) The director will designate, as a banked $NO_x$ allowance, any $NO_x$ allowance that remains in a compliance account or an overdraft account after the director has made all deductions for a given control period from the compliance account or overdraft account pursuant to paragraph (3)(B)4. of this rule.

B. Each year, starting in *[2004]* **2005**, after the director has completed the designation of banked $NO_x$ allowances under part (3)(B)5.A.(II) of this rule and before May 1 of the year, the department will determine the extent to which banked $NO_x$ allowances may be used for compliance in the control period for the current year, as follows:

(I) The director will determine the total number of banked $NO_x$ allowances held in compliance accounts or overdraft accounts.

(II) If the total number of banked $NO_x$ allowances determined, under part (3)(B)5.B.(I) of this rule, to be held in compliance accounts or overdraft accounts is less than or equal to ten percent (10%) of the sum of the $NO_x$ trading program allocations for the previous control period, any banked $NO_x$ allowance may be deducted for compliance in accordance with paragraph (3)(B)4. of this rule.

(III) If the total number of banked $NO_x$ allowances determined, under part (3)(B)5.B.(I) of this rule, and held in compliance accounts or overdraft accounts exceeds ten percent (10%) of the sum of the state trading program allocations for the previous control period, any banked allowance may be deducted for compliance in accordance with paragraph (3)(B)4. of this rule, except as follows:

(a) The director will determine the adjustment factor using Equation 4 of this rule.

Equation 4:

$$AF = \frac{0.1 \times \sum NO_xAL_a}{\sum NO_xAL_b}$$

where:

*[AL]* **AF** = the adjustment factor;

$\sum NO_xAL_a$ = the sum of the statewide $NO_x$ allowance allocated for the previous control period; and

$\sum NO_xAL_b$ = the sum of the banked $NO_x$ allowances as determined under part (3)(B)5.B.(I) of this rule on January 1 of the current year;

(b) The director will determine the number of banked $NO_x$ allowances in the account that may be deducted for compliance in accordance with paragraph (3)(B)4. of this rule using Equation 5 of this rule. Any banked $NO_x$ allowances in excess of the product of Equation 5 may be deducted for compliance in accordance with paragraph (3)(B)4. of this rule, except that, if such $NO_x$ allowances are used to make a deduction, two (2) such $NO_x$ allowances must be deducted for each deduction of one (1) $NO_x$ allowance required under paragraph (3)(B)4. of this rule.

Equation 5:

$$AF \times NO_xAL_b$$

where:

AF = the adjustment factor calculated in Equation 4; and

$NO_xAL_b$ = the number of $NO_x$ allowances in a $NO_x$ unit's account;

(IV) Geographic flow control.

(a) Banked $NO_x$ allowances made available for use in parts (3)(B)5.B.(II) and (3)(B)5.B.(III) of this rule may be traded *[from the control region for which paragraph (3)(A)1. of this rule is applicable to the control region for which paragraph (3)(A)2. of this rule is applicable]* on a one to one (1:1) basis **unless otherwise specified in subparts (3)(B)5.B.(IV)(b) and (3)(B)5.B.(IV)(c) of this rule**.

(b) Banked $NO_x$ allowances made available for use in parts (3)(B)5.B.(II) and (3)(B)5.B.(III) of this rule may be traded from the control region for which paragraph**s** (3)(A)*/2./***3. and (3)(A)4.** of this rule *[is]* **are** applicable to the control region for which paragraph (3)(A)1. of this rule is applicable on a one and one-half to one (1.5:1) basis.

**(c) Banked $NO_x$ allowances made available for use in part (3)(B)5.B.(II) and (3)(B)5.B.(III) of this rule may be traded from the control region for which paragraphs (3)(A)1., (3)(A)3. and (3)(A)4. of this rule are applicable to the control region for which paragraph (3)(A)2. of this rule is applicable on a one and one-half to one (1.5:1) basis.**

C. Early Reductions. For any affected $NO_x$ unit that reduces its $NO_x$ emission rate in the 2000, 2001**,** *[or]* 2002 **or 2003** control period, the owner or operator of the unit may request early reduction allowances, and the department will allocate ERCs by January 31 of each year to the unit in accordance with the following requirements.

(I) Each $NO_x$ unit for which the owner or operator requests any *[early reduction credits]* **ERCs** under part (3)(B)5.C.(IV) of this rule shall monitor $NO_x$ emissions in accordance with section (4) of this rule for each control period for which such *[early reduction credits]* **ERCs** are requested. The unit's monitoring system availability shall be not less than ninety percent (90%) during the control period, and the unit must not have been found to be in violation of any applicable state or federal emissions or emissions-related requirements.

(II) $NO_x$ emission rate and heat input under parts (3)(B)5.C.(III) through (3)(B)5.C.(V) of this rule shall be determined in accordance with section (4) of this rule.

(III) Each $NO_x$ unit for which the owner or operator requests any *[early reduction credits]* **ERCs** under part (3)(B)5.C.(IV) of this rule shall reduce its $NO_x$ emission rate, for each control period for which *[early reduction credits]* **ERCs** are requested, to less than the applicable requirement of *[paragraph (3)(A)1. or (3)(A)2.]* **subsection (3)(A)** of this rule.

(IV) The $NO_x$ authorized account representative of a $NO_x$ unit that meets the requirements of parts (3)(B)5.C.(I) and (3)(B)5.C.(III) of this rule may submit to the department a request for *[early reduction credits]* **ERCs** for the unit based on $NO_x$ emission rate reductions made by the unit in the control period for 2000, 2001**,** *[or]* 2002 **or 2003** in accordance with part (3)(B)5.C.(III) of this rule.

(a) In the *[early reduction credit]* **ERC** request, the $NO_x$ authorized account representative may request *[early reduction credits]* **ERCs** for such control period using Equation 6 of this rule.

Equation 6:

$$ERC = HI_a \times (NO_xER_r - NO_xER_a) \div 2000$$

where:

ERC = the *[early reduction credits]* **ERCs** accrued rounded **down** to the nearest ton of $NO_x$;

$HI_a$ = the actual control period heat input for each $NO_x$ unit;

$NO_xER_r$ = the regulated $NO_x$ emission rate as identified in paragraph (3)(A)1. *[or (3)(A)2.]* **through (3)(A)4.** of this rule; and

$NO_xER_a$ = the actual control period emission rate for each $NO_x$ unit.

(b) The *[early reduction credit]* **ERC** request must be submitted, in a format specified by the department, by October 31 of the year in which the $NO_x$ emission rate reductions are made.

(V) The department will allocate $NO_x$ allowances no later than January 31 to $NO_x$ units meeting the requirements of parts (3)(B)5.C.(I) and (3)(B)5.C.(III) of this rule and covered by early reduction requests meeting the requirements of subpart (3)(B)5.C.(IV)(b) of this rule.

(VI) $NO_x$ allowances recorded under part (3)(B)5.C.(V) of this rule may be deducted for compliance under paragraph (3)(B)3. of this rule for the control periods in *[2003]* **2004** or *[2004]* **2005**. Notwithstanding subparagraph (3)(B)5.A. of this rule, the director will deduct as retired any $NO_x$ allowance that is recorded under part (3)(B)5.C.(V) of this rule and is not deducted for compliance in accordance with paragraph (3)(B)3. of this rule for the control period in *[2003]* **2004** or *[2004]* **2005**.

(VII) $NO_x$ allowances recorded under part (3)(B)5.C.(V) of this rule are not treated as banked allowances in *[2004]* **2005** for the purposes of subparagraphs (3)(B)5.A. and (3)(B)5.B. of this rule.

(VIII) Compliance set-aside account.

(a) The department will establish a compliance set-aside account, which will contain fifty percent (50%) of the *[early reduction credits]* **ERCs, rounded down to the nearest ton,** that are issued in accordance with part (3)(B)5.C.(II) of this rule.

**(b) Fifty percent (50%) of the ERCs, rounded down to the nearest ton, in the compliance set-aside account will be sold to the $NO_x$ authorized account representatives that apply for the ERCs and can demonstrate that the ERCs will be used for compliance by a unit that is in a research, development or trial stage for new air pollution control technology. If all fifty percent (50%) of the ERCs are not needed for these units, they will be sold in accordance with subpart (3)(B)5.C.(VIII)(c) of this rule.**

*[(b)]* **(c)** *[Early reduction credits]* **The remaining ERCs in the compliance set-aside account** will be sold *[from the compliance set-aside pool by the department]* in the order of request *[to $NO_x$ authorized account representatives requesting such credits]*.

*[(c)]***(d)** *[A]* $NO_x$ authorized account representatives *[may]* **must** request *[early reduction credits]* **all of the ERCs needed** from the compliance set-aside account *[by submitting a report containing the following on or before October 31, 2003 and 2004 for the 2003 and 2004 control periods, respectively]* **for the 2004 and 2005 control periods by February 28, 2004. The request for ERCs shall include the following information**:

I. The owner and operator;

II. The $NO_x$ authorized account representative;

III. The $NO_x$ unit identification number and name;

*[IV. The projected control period heat input and projected control period emission rate;]*

*[V.]***IV.** The number of ERCs being requested; and

*[VI.]***V.** The overdraft or compliance account number.

*[(d)]***(e)** The department shall set the market rate for *[early reduction credits on January 1 of each year and shall review the rate quarterly]* **ERCs by February 1, 2003**. Market rate shall **not be set at a value below five hundred dollars ($500) per ERC nor in excess of one thousand dollars ($1,000) per ERC, and shall** be established based on the following in the order listed:

I. The average rate of exchange of $NO_x$ credits *[for the most recent quarter]* **and ERCs in the Missouri $NO_x$ Emissions Trading Program**; and

II. The most recent control cost data available.

*[(e)]***(f)** *[Proceeds from the sale of early reduction credits will be distributed to the owner of units issued ERCs under part (3)(B)5.C.(V) of this rule by percentage of issuance.]* **The department shall notify the successful purchasers of ERCs by April 1, 2004 and payment shall be made by the purchaser to the sellers by April 15, 2003 for ERCs purchased. Once payment has been received by the sellers, they shall notify the department and the appropriate ERCs shall be transferred to the appropriate account by May 1, 2004.**

**(g) The ERCs will be sold from the compliance set-aside account on a percentage basis. Each purchaser will purchase a portion of each seller's ERCs.**

**(h) Once the appropriate ERCs are transferred to the purchaser's account, the ERCs are non-transferrable.**

*[(f)]***(i)** Any ERC allowances remaining in the compliance set-aside account after *[October 31]* **May 1**, 2004, will be returned to the unit that generated the *[early reduction credits]* **ERCs by May 15, 2004**.

(IX) All ERCs will be retired on January 31, *[2005]* **2006**.

6. Account error. The director may correct any error in any $NO_x$ Allowance Tracking System account. Within ten (10) business days of making such correction, the director will notify the $NO_x$ authorized account representative for the account. The $NO_x$ authorized account representative will then have ten (10) business days to appeal the correction if they feel the correction was made in error.

7. $NO_x$ allowance transfers. The $NO_x$ authorized account representatives seeking the recording of a $NO_x$ allowance transfer shall submit the transfer request to the director. To be considered correctly submitted, the $NO_x$ allowance transfer shall include the following elements in a format specified by the director:

A. The numbers identifying both the transferor and transferee accounts;

B. A specification by serial number of each $NO_x$ allowance to be transferred; and

C. The printed name and signature of the $NO_x$ authorized account representative of the transferor account and the date signed.

8. Department recording.

A. Within five (5) business days of receiving a $NO_x$ allowance transfer, except as provided in subparagraph (3)(B)9.B. of this rule, the department will record a $NO_x$ allowance transfer by moving each $NO_x$ allowance from the transferor account to the transferee account as specified by the request, provided that—

(I) The transfer is correctly submitted under paragraph (3)(B)8. of this rule;

(II) The transferor account includes each $NO_x$ allowance identified by serial number in the transfer; and

(III) The transfer meets all other requirements of this paragraph.

B. A $NO_x$ allowance transfer that is submitted for recording following the $NO_x$ allowance transfer deadline and that includes any $NO_x$ allowances allocated for a control period prior to or the same as the control period to which the $NO_x$ allowance transfer deadline applies will not be recorded until after completion of the process of recording of $NO_x$ allowance allocations of this rule.

C. Where a $NO_x$ allowance transfer submitted for recording fails to meet the requirements of subparagraph (3)(B)9.A. of this rule, the department will not record such transfer.

9. Notification.

A. Notification of recording. Within five (5) business days of recording of a $NO_x$ allowance transfer under paragraph (3)(B)8. of this rule, the department will notify each $NO_x$ authorized account representative of the transfer in writing.

B. Notification of nonrecording. Within ten (10) business days of receipt of a $NO_x$ allowance transfer that fails to meet the

requirements of paragraph (3)(B)7. of this rule, the department will notify in writing the $NO_x$ authorized account representatives of both accounts subject to the transfer of—

(I) A decision not to record the transfer; and

(II) The reasons for such nonrecording.

10. Individual EGU opt-ins. An EGU that is not an affected unit under subsection (1)(A) of this rule that vents all of its emissions to a stack may qualify to become a $NO_x$ opt-in unit under this paragraph of this rule. A $NO_x$ opt-in unit will not be allowed to participate in the $NO_x$ trading program without prior approval.

A. A $NO_x$ opt-in unit shall have a $NO_x$ authorized account representative.

B. Request for initial $NO_x$ opt-in. In order to request to opt-in to the trading program, the $NO_x$ authorized account representative of the unit must submit to the department at any time the following:

(I) The projected $NO_x$ emission rate for each affected unit;

(II) The average of the three (3) most recent years heat input on a monthly basis over the control period for each affected unit; and

(III) A plan detailing the methodology for compliance with paragraph (3)(B)10. of this rule.

C. The department will review the request and respond within ninety (90) days of the date of receipt of the request.

D. Request for opting-in to the $NO_x$ trading program must be received by the department no later than February 1 of the same year as the control period that the $NO_x$ opt-in unit requests to begin participation in the $NO_x$ trading program.

E. The $NO_x$ opt-in units shall establish a baseline heat input and a baseline $NO_x$ emissions rate under the requirements of subsection (5)(G) of this rule. After calculating the baseline heat input and the baseline $NO_x$ emissions rate for the $NO_x$ opt-in unit, the department will notify the $NO_x$ authorized account representative of the unit of the resulting baseline.

F. The established baseline shall be the regulated $NO_x$ emission rate for the opt-in unit. The $NO_x$ opt-in unit shall meet the same schedule as all $NO_x$ units with respect to all deadlines and schedules. The allowances issued to the opt-in unit under this paragraph shall be calculated using equation 7 of this rule.

Equation 7:

$$\frac{HI_{opt} \times ER_{opt}}{2000} = NO_xAL_{opt}$$

where:

$HI_{opt}$ = the actual control period heat input for the $NO_x$ opt-in unit;

$ER_{opt}$ = the baseline emission rate for the $NO_x$ opt-in unit as determined under subsection (5)(G) of this rule; and

$NO_xAL_{opt}$ = the actual $NO_x$ allowances for the opt-in unit for the control period (in tons).

G. If at any time before the approval of a $NO_x$ opt-in unit, the department determines that the unit does not qualify as a $NO_x$ opt-in unit under this paragraph, the department will issue a denial of the $NO_x$ opt-in request for the unit.

H. Withdrawal of $NO_x$ opt-in request. A $NO_x$ authorized account representative of a unit may withdraw its request to opt-in at any time prior to the approval for the $NO_x$ opt-in unit. Once the request for a $NO_x$ opt-in unit is withdrawn, a $NO_x$ authorized account representative seeking to reapply must submit a new request for a $NO_x$ opt-in unit under this subsection.

I. Effective date. The effective date of the initial $NO_x$ opt-in shall be May 1 of the first control period starting after the approval **of t**he $NO_x$ opt-in unit by the department. The unit shall be a $NO_x$ opt-in unit and an affected $NO_x$ unit as of the effective date of the approval and be subject to the requirements of this rule.

J. Change in regulatory status. When a $NO_x$ opt-in unit becomes an affected unit, the $NO_x$ authorized account representative shall notify the department in writing of such change in the $NO_x$ opt-in unit's regulatory status within thirty (30) days of such change.

K. Withdrawal from $NO_x$ trading program. A $NO_x$ opt-in unit may withdraw from the $NO_x$ trading program if it meets the following requirements:

(I) To withdraw from the $NO_x$ trading program, the $NO_x$ authorized account representative of a $NO_x$ opt-in unit shall submit to the department a request to withdraw effective as of a specified date prior to May 1 or after September 30. The submission shall be made no later than ninety (90) days prior to the requested effective date of withdrawal.

(II) Before a $NO_x$ opt-in unit may withdraw from the $NO_x$ trading program, the following conditions must be met.

(a) For the control period immediately before the withdrawal is to be effective, the $NO_x$ authorized account representative must submit or must have submitted to the department an annual compliance certification report.

(b) If the $NO_x$ opt-in unit has excess emissions for the control period immediately before the withdrawal is to be effective, the department will deduct from the $NO_x$ opt-in unit's compliance account, or the overdraft account of the affected unit where the affected unit is located, the full amount required for the control period.

(III) A $NO_x$ opt-in unit that withdraws from the $NO_x$ trading program shall comply with all requirements under the $NO_x$ trading program concerning all years for which such $NO_x$ opt-in unit was a $NO_x$ opt-in unit, even if such requirements must be complied with after the withdrawal takes effect.

(IV) Notification procedures shall be as follows:

(a) After the requirements for withdrawal under this paragraph have been met, the department will issue a notification to the $NO_x$ authorized account representative of the $NO_x$ opt-in unit of the acceptance of the withdrawal of the $NO_x$ opt-in unit as of a specified effective date that is after such requirements have been met and that is prior to May 1 or after September 30.

(b) If the requirements for withdrawal under this paragraph have not been met, the department will issue a notification to the $NO_x$ authorized account representative of the $NO_x$ opt-in unit that the $NO_x$ opt-in unit's request to withdraw is denied. If the $NO_x$ opt-in unit's request to withdraw is denied, the $NO_x$ opt-in unit shall remain subject to the requirements for a $NO_x$ opt-in unit.

(V) A $NO_x$ opt-in unit shall continue to be a $NO_x$ opt-in unit until the effective date of the withdrawal.

(VI) Once a $NO_x$ opt-in unit withdraws from the $NO_x$ trading program, the $NO_x$ authorized account representative may not submit another application for the $NO_x$ opt-in unit prior to the date that is four (4) years after the date on which the withdrawal became effective.

11. Output based emissions trading of $NO_x$. *(Reserved)*

(4) Reporting and Record Keeping.

(A) Reporting.

1. A compliance certification report for each affected unit **subject to section (3) of this rule** shall be submitted to the department by October 31 following each control period. The report shall include:

A. The owner and operator;

B. The $NO_x$ authorized account representative;

C. $NO_x$ unit name, compliance and overdraft account numbers;

D. $NO_x$ emission rate limitation (lb/mmBtu);

E. Actual $NO_x$ emission rate (lb/mmBtu) for the control period;

F. Actual heat input (mmBtu) for the control period. The unit's total heat input for the control period in each year will be determined in accordance with section (5) of this rule; and

G. Actual $NO_x$ mass emissions (tons) for the control period.

2. Reporting shall be based on the test methods identified in section (5) of this rule. Any unit with valid **continuous emission**

**monitoring system (**CEMS**)** data for the control period must use that data to determine compliance with the provisions of this rule. The owner or operator for each affected unit which performs non-CEMS testing to demonstrate compliance of a unit subject to section (3) of this rule shall submit:

A. A control period report identifying monthly fuel usage and monthly total heat input by December 31 of the same year as the control period; and

B. A written report of all stack tests completed after controls are effective to the department within sixty (60) days after completion of sample and data collection.

(B) Record Keeping.

1. Each owner or operator of an affected unit subject to section (3) of this rule shall maintain records of the following:

A. Total fuel consumed during the control period;

B. The total heat input for each emissions unit during the control period;

C. Reports of all stack testing conducted to meet the requirements of this rule;

D. All other data collected by a CEMS necessary to convert the monitoring data to the units of the applicable emission limitation;

E. All performance evaluations conducted in the past year;

F. All monitoring device calibration checks;

G. All monitoring system, monitoring device and performance testing measurements;

H. Records of adjustments and maintenance performed on monitoring systems and devices; and

I. A log identifying each period during which the CEMS or alternate procedure was inoperative, except for zero and span checks, and the nature of the repairs and adjustments performed to make the system operative.

2. All records must be kept on-site for a period of five (5) years and made available to the department upon request.

**3. Each owner or operator of any gas- or oil-fired unit that qualifies for the low-emitter exemption in paragraph (1)(B)1. of this rule or the low hours of operation exemption in paragraph (1)(B)2. of this rule, shall maintain records of the total operating hours during which fuel is consumed for each emission unit during the control period. In the event that another record keeping schedule has been previously approved for the EGU and is included as an operating permit condition, the EGU may use that schedule to comply with this requirement.**

(5) Test Methods and Monitoring. For units subject*[s]* to this rule, the following requirements shall apply:

*[(C) If a CEMS is not applicable, an alternate procedure listed in 40 CFR part 75 Appendix E shall be performed every three thousand (3,000) operating hours or every five (5) years whichever is more frequent. Identical units may use procedures identified in 40 CFR part 75.19 for purposes of testing;]*

*[(D)]***(C)** Coal-Fired Units. Any coal-affected unit subject to this rule shall install, certify, operate, maintain, and quality assure a $NO_x$ and diluent CEMS pursuant to the requirements in 40 CFR part 75;

*[(E)]***(D)** Non-Exempt Peaking Units. Any gas- or oil-fired peaking unit that is subject to the emission limitation or trading aspects of this rule shall:

1. Install, certify, operate, maintain, and quality assure a $NO_x$ and diluent CEMS; or

2. Install, certify, operate, and quality assure fuel-metering equipment pursuant to 40 CFR part 75, Appendix D and shall establish a $NO_x$-to-load curve pursuant to 40 CFR part 75, Appendix E;

*[(F)]***(E)** Exempt Units. *[Any gas- or oil-fired unit that qualifies for the low-emitter exemption in paragraph (1)(B)1. or the low hours of operation exemption in paragraph (1)(B)2. shall:*

*1. Install, certify, operate, maintain, and quality assure a $NO_x$ and diluent CEMS;*

*2. Install, certify, operate, maintain, and quality assure fuel-metering equipment pursuant to 40 CFR part 75, Appendix D and shall establish a $NO_x$-to-load curve pursuant to 40 CFR part 75, Appendix E; or*

*3. Estimate or measure $NO_x$ emissions pursuant to the requirements in 40 CFR part 75, section 75.19; and]*

**1. The following hierarchy of methods may be used to determine if a unit qualifies for the low-emitter exemption in paragraph (1)(B)1. of this rule. If data is not available for an emission estimation method or an emission estimation method is impractical for a source, then the subsequent emission estimation method should be used in its place:**

**A. CEMS as specified in 10 CSR 10-6.110;**

**B. Stack tests as specified in 10 CSR 10-6.110;**

**C. Material/mass balance;**

**D. AP-42 (Environmental Protection Agency (EPA)** ***Compilation of Emission Factors*****) or FIRE (Factor Information and Retrieval System) (as updated);**

**E. Other EPA documents as specified in 10 CSR 10-6.110;**

**F. Sound engineering calculations; or**

**G. Facilities shall obtain department pre-approval of emission estimation methods other than those listed in subparagraphs (5)(E)1.A. through (5)(E)1.F. of this rule before using such method to estimate emissions. In the event that such method has previously been approved for the EGU and included as an operating permit condition, the EGU may use that method to comply with this requirement.**

**2. Any gas- or oil-fired unit that qualifies for the low-emitter exemption in paragraph (1)(B)1. or the low hours of operation exemption in paragraph (1)(B)2. shall install and operate a non-resettable hour meter or determine the hours of operation for each emission unit during the control period. In the event that another monitoring method has previously been approved for the EGU and included as an operating permit condition, the EGU may use that method to comply with this requirement.**

*[(G)]***(F)** Opt-In Units. Any unit that opts into the trading program, pursuant to paragraph (3)(B)10., shall be monitored consistent with the provisions of subsections *[(5)(E)]* **(5)(D)** and *[(5)(F)]* **(5)(E)** above. For the purpose of establishing the baseline allowance allocation, an opt-in unit shall install, certify, operate, maintain, and quality assure the monitoring device(s) and collect data for at least one (1) control season prior to submission of an opt-in application.

*AUTHORITY: section 643.050, RSMo [Supp. 1999] **2000**. Original rule filed Feb. 15, 2000, effective Sept. 30, 2000. Amended: Filed Dec. 4, 2002.*

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

*PRIVATE COST: This proposed amendment will cost private entities approximately $5,478,000 in the aggregate.*

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed amendment will begin at 9:00 a.m., March 27, 2003. The public hearing will be held at the Holiday Inn West Park Conference Center, Sierra Room, 3257 Williams Street, Cape Girardeau, MO 63702. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Air Pollution Control Program, 205 Jefferson Street, PO Box 176, Jefferson City, MO 65102-0176, (573) 751-4817. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., April 3, 2003. Written comments shall be sent to Chief, Planning Section, Missouri Department of Natural Resources' Air Pollution Control Program, 205 Jefferson Street, PO Box 176, Jefferson City, MO 65102-0176.*

**FISCAL NOTE**
**PRIVATE ENTITY COST**

**I. RULE NUMBER**

Title: 10 – Department of Natural Resources

Division: 10 – Air Conservation Commission

Chapter: 6 Air Quality Standards, Definitions, Sampling and Reference Methods and Air Pollution Control Regulations for the Entire State of Missouri

Type of Rulemaking: Proposed Amendment

Rule Number and Name: 10 CSR 10-6.350 Emission Limitations and Emissions Trading of Oxides of Nitrogen

**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: |
|---|---|---|
| 1 | Electric Generating Facilities | $5,478,000 |
| | | |
| | | |

**III. WORKSHEET**

Table 1: Fiscal Impact on NOx Budget Units Affected by Proposed Amendment to 10 CSR 10-6.350

| | Total Emission Reductions | FY2004 | FY2005 | FY2006 | FY2007 | FY2008 |
|---|---|---|---|---|---|---|
| | | | | | | |
| Ameren U.E. | 3286 tons | $91,300 | $547,800 | $547,800 | $547,800 | $547,800 |

| FY2009 | FY2010 | FY2011 | FY2012 | FY2013 | FY2014 | TOTAL COST |
|---|---|---|---|---|---|---|
| | | | | | | |
| $547,800 | $547,800 | $547,800 | $547,800 | $547,800 | $456,500 | $5,478,000 |
| | | | | | | |

**IV. ASSUMPTIONS**

1. For the convenience of calculating this fiscal note over a reasonable time frame, the life of the rule is assumed to be ten (10) years although the duration of the rule is indefinite. If the life of the rule extends beyond ten years, the annual costs for additional years will be consistent with the assumptions used to calculate annual costs as identified in this fiscal note.

2. For FY2004 and FY2014 the rule will be effective for only the last two (2) months and the first ten (10) months, respectively.

3. Cost estimates are based on a capital cost assumption of $1,667 per ton of NOx reduction. Capital costs are spread over the life of the rule.

4. Assume that only facilities in the city of St. Louis and the counties of Franklin, Jefferson and St. Louis will incur any cost as a result of this rule amendment.

5. The date on which affected electric generating units (EGUs) must be in compliance with this regulation is May 1, 2004.

6. NOx reductions are only required during the control period, which is May 1 through September 30.

7. The NOx emission numbers used in this fiscal note for EGUs are not intended to be the actual NOx allowances for each unit. The NOx emission numbers are for cost calculations only and are based on the NOx emissions inventory used in the St. Louis Ozone Nonattainment Area Attainment Demonstration. The actual NOx allowance allocations will be identified by the department as required by this rule.

8. Potential controls on which costs are based for EGUs include selective catalytic reduction, selective noncatalytic reduction, natural gas reburns and combustion controls.

9. Assume that some EGUs may experience a cost savings as a result of this rule amendment. The cost savings have not been reported to the department and are not reflected in this fiscal note.

## Title 10—DEPARTMENT OF NATURAL RESOURCES
## Division 23—Division of Geology and Land Survey
## Chapter 5—Heat Pump Construction Code

### PROPOSED AMENDMENT

**10 CSR 23-5.050 Construction Standards for Closed-Loop Heat Pump Wells**. The secretary is amending section (9) by adding a new subsection.

*PURPOSE: This amendment addresses the minimum construction standards for a properly constructed closed-loop heat pump well as provided in section 256.626, RSMo. This amendment establishes an additional approved grout material.*

(9) Approved Grout Materials. The following *[three (3)]* **four (4)** grout types are permitted for use in heat pump wells:

(B) Nonslurry Bentonite. Chipped or pelletized bentonite varieties that are designed to fall through standing water may only be used when sealing the annulus of a well that is below the water level in the saturated zone. Complete hydration is difficult to achieve when using dry nonslurry bentonite in the unsaturated zone. All nonslurry sodium bentonite varieties may be used in the unsaturated zone if the hole is dry and no bridging occurs. The dry bentonite must be hydrated after emplacement. The effective use of nonslurry bentonite as a sealing agent depends on the efficient hydration of the product; *[and]*

**(C) Thermal Grout Slurry. Grout containing at least seven and one-half percent (7.5%) by weight bentonite solids and at least sixty-five percent (65%) by weight silica solids may be used as grout. The grout slurry mixture must exhibit a thermal conductivity greater than 0.85 Btu/hr. ft. degree F and permeability not more than $1 \times 10^{-7}$ cm/s. Specialized pumps are required and the slurry mixture must be installed full-length in one (1) continuous motion, through a tremie lowered to a grouting point within twenty feet (20') of the base of the borehole; and**

*[(C)]***(D)** Other Grout. Other types of grout may be used if approval is granted in advance by the division.

*AUTHORITY: sections 256.606 and 256.626, RSMo [1994] 2000. Emergency rule filed Nov. 16, 1993, effective Dec. 11, 1993, expired April 9, 1994. Original rule filed Aug. 17, 1993, effective March 10, 1994. Amended: Filed July 13, 1994, effective Jan. 29, 1995. Amended: Filed Nov. 1, 1995, effective June 30, 1996. Amended: Filed Dec. 16, 2002.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate. No net increase in personnel will be required to implement this proposed amendment.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate. Net cost for construction of heat pump wells is not changed by implementation of the proposed amendment.*

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Natural Resources, Geological Survey and Resource Assessment Division, PO Box 250, Rolla, MO 65402-0250, attention Mr. Bob Archer. If hand delivered, comments must be brought to the offices of the Department of Natural Resources, Geological Survey and Resource Assessment Division, 111 Fairgrounds Road, Rolla, Missouri. To be considered, comments must be received within thirty (30) days after publication of this notice in the* ***Missouri Register****. A public hearing is scheduled for February 20, 2003, at 10:00 a.m. in the offices of the Department of Natural Resources, Geological Survey and Resource Assessment Division, 111 Fairgrounds Road, Rolla, Missouri.*

## Title 12—DEPARTMENT OF REVENUE
## Division 10—Director of Revenue
## Chapter 26—Dealer Licensure

### PROPOSED RESCISSION

**12 CSR 10-26.100 Advertising Regulation**. This rule set forth requirements to ensure truthful advertising practices by licensees as required in section 301.562, RSMo.

*PURPOSE: This rule is being rescinded due to the passage of section 301.567, RSMo, effective August 28, 2002, which supercedes the contents of this rule.*

*AUTHORITY: sections 301.553 and 301.562, RSMo Supp. 1998. Original rule filed Nov. 1, 1999, effective May 30, 2000. Rescinded: Filed Dec. 16, 2002.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with 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 13—DEPARTMENT OF SOCIAL SERVICES
## Division 70—Division of Medical Services
## Chapter 10—Nursing Home Program

### PROPOSED AMENDMENT

**13 CSR 70-10.015 Prospective Reimbursement Plan for Nursing Facility Services**. The division is amending section (13).

*PURPOSE: This proposed amendment amends the high volume adjustment to allow partial-year cost reports to be combined to comprise a full year and to include hospice days paid by Medicaid in determination of occupancy.*

(13) Adjustments to the Reimbursement Rates. Subject to the limitations prescribed elsewhere in this regulation, a facility's reimbursement rate may be adjusted as described in this section.

(B) Special Per Diem Rate Adjustments. Special per diem rate adjustments may be added to a qualifying facility's rate without regard to the cost component ceiling if specifically provided as described below.

1. Patient care incentive. Each facility with a prospective rate on or after January 1, 1995, shall receive a per diem adjustment equal to ten percent (10%) of the facility's allowable patient care per diem subject to a maximum of one hundred thirty percent (130%) of the patient care median when added to the patient care per diem as determined in subsection (11)(A). This adjustment will not be subject to the cost component ceiling of one hundred twenty percent (120%) for the patient care median.

2. Ancillary incentive. Each facility with a prospective rate on or after January 1, 1995, and which meets one (1) of the following criteria shall receive a per diem adjustment:

A. If the facility's allowable ancillary per diem as determined in subsection (11)(B) is below ninety percent (90%) of the ancillary median, the adjustment is equal to one-half (1/2) of the difference between one hundred twenty percent (120%) and ninety percent (90%) of the ancillary median. The following is an illustration of how the ancillary per diem adjustment is calculated:

| | |
|---|---|
| 120% of median | $6.62 |
| 90% of median | $4.97 |
| Difference | $1.65 |
| 1/2 the difference | 2 |
| Per diem adjustment | $ .83 |

B. If the facility's allowable ancillary per diem as determined in subsection (11)(B) is between ninety percent (90%) and one hundred twenty percent (120%) of the median, the adjustment is equal to one-half (1/2) of the difference between one hundred twenty percent (120%) of the median and the facility's allowable ancillary per diem. The following is an illustration of how the ancillary per diem adjustment is calculated:

| | |
|---|---|
| 90% of median | $4.97 |
| 120% of median | $6.62 |
| Ancillary per diem | $5.21 |
| Difference | $1.41 |
| 1/2 the difference | 2 |
| Per diem adjustment | $ .71 |

3. Multiple component incentive. Each facility with a prospective rate on or after January 1, 1995, and meets the following criteria shall receive a per diem adjustment:

A. If the sum of the facility's patient care per diem and ancillary per diem, as determined in subsections (11)(A) and (B), is greater than or equal to sixty percent (60%) but less than or equal to eighty percent (80%), rounded to four (4) decimal places (.5985 or .8015 would not receive the adjustment), of the facility's total per diem, the adjustment is as follows:

| Percent of Total Per Diem Rate | Incentive |
|---|---|
| < 60% | $0.00 |
| > or = 60% but < 65% | $1.15 |
| > or = 65% but < 70% | $1.30 |
| > or = 70% but < 75% | $1.45 |
| > or = 75% but < or 80% = | $1.60 |

B. A facility shall receive an additional incentive if it receives the adjustment in subparagraph (13)(B)3.A. and the following calculation is greater than seventy-five percent (75%), rounded to four (4) decimal places (.7485 would not receive the adjustment): Medicaid days divided by the licensed nursing facility patient days from the facility's desk audited and/or field audited 1992 cost report. The adjustment is as follows:

| Calculated Percentage | Incentive |
|---|---|
| < 75% | $0.00 |
| > or = 75% but < 80% | $0.15 |
| > or = 80% but < 85% | $0.30 |
| > or = 85% but < 90% | $0.45 |
| > or = 90% but < 95% | $0.60 |
| > or = 95% | $0.75 |

4. 1967 *Life Safety Code* (LSC). Currently certified nursing facilities that must comply with a recent interpretation of paragraph 10-133 of the 1967 LSC which requires corridor walls to extend to the roof deck or achieve equivalency under the Fire Safety Evaluation System (FSES) will be reimbursed the reasonable and necessary cost to meet those standards required for compliance through their reimbursement rate. The reimbursement shall not be effective until the Division of Aging has confirmed that the corrective action to comply with the 1967 LSC or FSES is operational and has reviewed the cost for compliance. Fire sprinkler systems shall be reimbursed over a depreciation life of twenty-five (25) years, and other alternative corrective action will be reimbursed over a depreciable life of fifteen (15) years. The division will use a desk audited and/or field audited cost report with the latest period ending in calendar year 1992 which is on file with the division as of December 31, 1993. This adjustment will be computed based on the documented cost submitted to the division as follows:

A. Depreciation. The cost incurred for the approved corrective action to continue in compliance divided by the depreciable useful life;

B. Interest. The interest cost incurred to finance this project shall be documented by a statement from the lending institution detailing the total interest cost of the loan period. The total interest cost will be divided by the loan period on a straight line basis; and

C. The total of subparagraph (13)(B)4.A. and B. will be divided by twelve (12) and then multiplied by the number of months covered by the 1992 cost report. This amount will be divided by the greater of actual patient days from the 1992 cost report or eighty-five percent (85%) of the licensed bed days from the 1992 cost report.

5. Any facility that had a 1967 LSC adjustment included in their December 31, 1994 reimbursement rate shall have that adjustment added to their January 1, 1995 reimbursement rate.

6. Replacement beds. A facility with a prospective rate in effect on or after January 1, 1995, may request a rate adjustment for replacement beds that resulted in the same number of beds being delicensed with the Division of Aging or the Department of Health. The facility shall provide documentation from the Division of Aging or the Department of Health that verifies the number of beds used for replacement have been delicensed from that facility. The rate adjustment will be calculated as the difference between the capital component per diem (fair rental value (FRV)) prior to the replacement beds being placed in service and the capital component per diem (FRV) including the replacement beds placed in service as calculated in subsection (11)(D) including the replacement beds placed in service. The capital component is calculated for the replacement beds using the asset value per licensed bed as determined using the R. S. Means Construction Index for nursing facility beds adjusted for the Missouri indexes for the date the replacement beds are placed in service.

7. Additional beds. A facility with a prospective rate in effect on or after January 1, 1995, may request a rate adjustment for additional beds. The facility must obtain an approved certificate of need or applicable waiver for the additional beds. The rate adjustment will be calculated as the difference between the capital component per diem (FRV) prior to the additional beds being placed in service and the capital component per diem (FRV) including the additional beds as calculated in subsection (11)(D) including the additional beds placed in service. The capital component is calculated for the additional beds using the asset value per licensed bed as determined using the R. S. Means Construction Index for nursing facility beds adjusted for the Missouri indexes for the date the additional beds are placed in service.

8. Extraordinary circumstances. A participating facility which has a prospective rate may request an adjustment to its prospective rate due to extraordinary circumstances. This request must be submitted in writing to the division within one (1) year of the occurrence of the extraordinary circumstance. The request must clearly and specifically identify the conditions for which the rate adjustment is sought. The dollar amount of the requested rate adjustment must be supported by complete, accurate and documented records satisfactory to the division. If the division makes a written request for additional information and the facility does not comply within ninety (90) days of the request for additional information, the division shall consider the request withdrawn. Requests for rate adjustments that have been withdrawn by the facility or are considered withdrawn because of failure to supply requested information may be resubmitted once for the requested rate adjustment. In the case of a rate adjustment request that has been withdrawn and then resubmitted, the effective date shall be the first day of the month in which the resubmitted request was made providing that it was made prior to the tenth day of the month. If the resubmitted request is not filed by the tenth of the month, rate adjustments shall

be effective the first day of the following month. Conditions for an extraordinary circumstance are as follows:

A. When the provider can show that it incurred higher costs due to circumstances beyond its control, the circumstances were not experienced by the nursing home industry in general and the costs have a substantial cost effect;

B. Extraordinary circumstances include:

(I) Natural disasters such as fire, earthquakes and flood that are not covered by insurance and that occur in a federally declared disaster area; and

(II) Vandalism and/or civil disorder that are not covered by insurance; and

C. The rate increase shall be calculated as follows:

(I) The one (1)-time costs, (costs that will not be incurred in future fiscal years):

(a) To determine what portion of the incurred costs will be paid, the division will use the patient occupancy days from latest available quarterly occupancy survey from the Division of Aging for the time period preceding when the extraordinary circumstances occurred; and

(b) The costs directly associated with the extraordinary circumstances will be multiplied by the above percent. This amount will be divided by the paid days for the month the rate adjustment becomes effective per paragraph (13)(B)8. This calculation will equal the amount to be added to the prospective rate for only one (1) month, which will be the month the rate adjustment becomes effective. For this one (1) month only, the ceiling will be waived.

(II) For ongoing costs (costs that will be incurred in future fiscal years): Ongoing annual costs will be divided by the greater of: annualized (calculated for a twelve (12)-month period) total patient days from the latest cost report on file or eighty-five percent (85%) of annualized total bed days. This calculation will equal the amount to be added to the respective cost center, not to exceed the cost component ceiling. The rate adjustment, subject to ceiling limits will be added to the prospective rate.

(III) For capitalized costs, a capital component per diem (FRV) will be calculated as determined in subsection (11)(D). The rate adjustment will be calculated as the difference between the capital component per diem (FRV) prior to the extraordinary circumstances and the capital component per diem (FRV) including the extraordinary circumstances.

9. Quality Assurance Incentive.

A. Each nursing facility with an interim or prospective rate on or after July 1, 2000, shall receive a per-diem adjustment of $3.20. The Quality Assurance Incentive adjustment will be added to the facility's current rate.

B. The Quality Assurance Incentive per-diem increase shall be used to increase the expenditures to a nursing facility's direct patient care costs. Direct patient care costs include all expenses in the patient care cost component (i.e., lines 46 through 69 of Schedule B in the Title XIX Cost Report). Any increases in wages and benefits already codified in a collective bargaining agreement in effect as of July 1, 2000, will not be counted towards the expenditure requirements of the Quality Assurance Incentive as stated above. Nursing facilities with collective bargaining agreements shall provide such agreements to the division.

10. High volume adjustment. Effective for dates of service July 1, 2000, a high volume adjustment shall be granted to qualifying providers. A provider must qualify each July 1, the beginning of each state fiscal year (SFY), for the high volume adjustment and the adjustment will be effective for services rendered during the SFY, July 1 through June 30. For a provider who has a high volume adjustment on June 30, but does not qualify for the high volume adjustment on July 1 of the subsequent SFY, that provider's prospective rate will be reduced by the amount of the high volume adjustment included in the facility's prospective rate in effect June 30.

A. Each facility with a prospective rate on or after July 1, 2000, and which meets all of the following criteria shall receive a per diem adjustment:

(I) Have on file at the division a full twelve (12)-month cost report ending in the third calendar year prior to the state fiscal year in which the adjustment is being determined (i.e., for SFY 2001, the third prior year would be 1998, for SFY 2002, the third prior year would be 1999, etc.);

(II) The Medicaid patient days as determined from the cost report identified in part (13)(B)10.A.(I) exceeds eighty-five percent (85%) of the total patient days for all nursing facility licensed beds;

(III) The allowable cost per patient day as determined by the division from the applicable cost report for the patient care, ancillary and administration cost components, as set forth in paragraphs (11)(A)1., (11)(B)1. and (11)(C)1., exceeds the per diem ceiling for each cost component in effect at the end of the cost report period; and

(IV) State owned or operated facilities shall not be eligible for this adjustment.

B. The adjustment will be equal to ten percent (10%) of the sum of the per diem ceilings for the patient care, ancillary and administration cost components in effect on July 1 of each year. Effective July 1, 2002, the adjustment shall not accumulate from year to year.

C. The division may reconstruct and redefine the qualifying criteria and payment methodology for the high volume adjustment.

D. Second tier high volume adjustment. Effective for dates of service July 1, 2002, a second tier high volume adjustment shall be granted to qualifying providers.

(I) If a nursing facility qualifies for the first tier high volume adjustment, as set forth above in subparagraph (13)(B)10.A., it may qualify for the second tier adjustment if it meets the following criteria:

(a) The Medicaid patient days as determined from the cost report identified in part (13)(B)10.A.(I) exceeds ninety-three percent (93%) of the total patient days for all nursing facility licensed beds;

(b) The allowable cost per patient day as determined by the division from the applicable cost report for the patient care cost component, as set forth in paragraph (11)(A)1., exceeds one hundred twenty percent (120%) of the per diem ceiling for the patient care cost component in effect at the end of the cost report period; and

(c) The allowable cost per patient day as determined by the division from the applicable cost report for the administration cost component, as set forth in paragraph (11)(C)1., is less than one hundred fifty percent (150%) of the per diem ceiling for the administration cost component in effect at the end of the cost report period.

(II) The second tier high volume adjustment will be calculated as a percentage, to be determined by the Department of Social Services, of the sum of the per diem ceilings for the patient care, ancillary and administration cost components in effect on July 1 of each year. The adjustment for state fiscal year 2003 shall be eighteen dollars and fifty-six cents ($18.56) per Medicaid day.

(a) The adjustment shall be distributed based on a quarterly amount, in addition to per diem payments, based on Medicaid days determined from the paid day report from Missouri's fiscal agent for pay cycles during the immediately preceding state fiscal year.

(b) The state share of the second tier high volume adjustment shall come from certified public funds. If the aggregate certified public funds are less than the state match required, the total aggregate second tier high volume adjustment will be adjusted downward accordingly.

(III) A nursing facility must qualify for the adjustment each year to receive the additional quarterly payments.

**E. High volume adjustment for nursing facilities without a full twelve (12)-month cost report. Effective for dates of service on or after January 17, 2003, the full twelve (12)-month cost**

**report requirement set forth in (13)(B)10.A.(I) shall include nursing facilities that have on file at the division two (2) partial year cost reports that when combined cover a full twelve (12)-month period.**

**F. Medicaid hospice days to be included in determination of Medicaid occupancy. Effective for dates of service on or after January 17, 2003, the Medicaid patient days used to determine the Medicaid occupancy requirement set forth in (13)(B)10.A.(II) shall be calculated by adding the days paid for by the Medicaid nursing facility program plus the days paid for by the Medicaid hospice program from the cost report identified in part (13)(B)10.A.(I).**

11. Minimum Rate Adjustment. A minimum rate adjustment shall be granted to qualifying providers, as follows:

A. Effective for dates of service beginning July 1, 2001, the minimum Medicaid reimbursement rate for nursing facility services shall be eighty-five dollars ($85).

*AUTHORITY: sections 208.153, 208.159 and 208.201, RSMo 2000. Emergency rule filed Dec. 21, 1994, effective Jan. 1, 1995, expired April 30, 1995. Emergency rule filed April 21, 1995, effective May 1, 1995, expired Aug. 28, 1995. Original rule filed Dec. 15, 1994, effective July 30, 1995. For intervening history, please consult the* ***Code of State Regulations****. Emergency amendment filed Jan. 3, 2003, effective Jan. 17, 2003, expires July 15, 2003. Amended: Filed Jan. 3, 2003.*

*PUBLIC COST: This proposed amendment is expected to cost state agencies or political subdivisions two hundred two thousand five hundred twelve dollars ($202,512) in the aggregate in SFY 2003. A fiscal note containing details of the estimated cost of compliance 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 in SFY 2003.*

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

# FISCAL NOTE
# PUBLIC COST

## I. RULE NUMBER

| | |
|---|---|
| Rule Number and Name: | 13 CSR 70-10.015 Prospective Reimbursement Plan for Nursing Facility Services |
| Type of Rulemaking: | Proposed Amendment |

## II. SUMMARY OF FISCAL IMPACT

| Affected Agency or Political Subdivision | Estimated Cost of Compliance in the Aggregate |
|---|---|
| Department of Social Services<br>Division of Medical Services | $202,512 |

## III. WORKSHEET

| | |
|---|---|
| Estimated SFY 03 days<br>Jan. 17 – June 30 | 28,205 |
| X Add-On Rate | x $7.18 |
| Estimated SFY 03 impact | $202,512 |

## IV. ASSUMPTIONS

Two additional nursing facilities (NFs) qualify for the high volume adjustment due to the proposed amendment. The NFs estimated Medicaid days for SFY 03 were projected for the five and a half months (5 ½) remaining in SFY 03.

## Title 16—RETIREMENT SYSTEMS
## Division 50—The County Employees' Retirement Fund
## Chapter 2—Membership and Benefits

### PROPOSED AMENDMENT

**16 CSR 50-2.020 Employee Contributions**. The board is amending sections (1)–(3).

*PURPOSE: This amendment amends the payroll contributions required from employees both in counties which are members of the Local Government Employees' Retirement System and those counties which are not members of the Local Government Employees' Retirement System.*

(1) A participant who is not a member of Local Government Employees' Retirement System (LAGERS) is subject to a two percent (2%) monthly payroll deduction beginning with the first payroll period after the participant's entry date**; except that, for each payroll period ending after December 31, 2002, a participant who is not a member of LAGERS and who is hired or rehired by a county on or after February 25, 2002, is subject to a monthly payroll deduction of not less than two percent (2%) and not more than six percent (6%), in accordance with sections 50.1020(6) and 50.1040(2), RSMo and with 16 CSR 50-2.080**. *[This]* **Any** payroll deduction **described in this section** shall constitute the participant's required contribution to the plan and *[after January 1, 2000,]* shall be designated as an employer "pick-up" contribution, as described in section 414(h)(2) of the *Internal Revenue Code*. A participant may not waive this contribution, or terminate this contribution requirement by opting out of the plan.

(2) *[Participants]* **For each payroll period ending after December 31, 2002, participants** who are members of LAGERS **and who are hired or rehired by a county on or after February 25, 2002,** are *[not]* subject to *[any payroll deductions in connection with their participation in the plan]* **a monthly payroll deduction not to exceed four percent (4%), in accordance with sections 50.1020(6) and 50.1040(2), RSMo and 16 CSR 50-2.080**. **Any payroll deduction pursuant to this section shall constitute the participant's required contribution to the plan and shall be designated as an employer "pick-up" contribution, as described in section 414(h)(2) of the *Internal Revenue Code*. A participant may not waive this contribution, or terminate this contribution requirement by opting out of the plan**.

(3) Contributions Required from Part-Time Employees *[in Non-LAGERS Counties]*. Participants *[in non-LAGERS counties]* have two (2) options with regard to the prior service earned while they are still qualifying for entry into the plan. A participant must make his or her election to either forego or purchase this prior service as outlined in subsections (A) and (B) upon their entry into the plan at the first available entry date. Such participant may either—

(B) *[Purchase]* **A participant who is a member of LAGERS and who is hired by a county on or after February 25, 2002, may purchase prior service earned on or after January 1, 2003 at the rate of four percent (4%) times the total compensation earned during this prior service period. A participant who is a member of LAGERS is not required to purchase prior service earned on or before December 31, 2002. A participant who is not a member of LAGERS and who is hired by a county on or after February 25, 2002, may purchase prior service earned on or after January 1, 2003 at the rate of six percent (6%), and service earned before January 1, 2003 at the rate of two percent (2%), times the total compensation earned during this prior service period. Any other participant who is not a member of LAGERS may purchase** the prior service at the rate of two percent (2%) times the total compensation earned during this prior service period. Participants selecting this option may purchase the prior service with a lump-sum contribution or through *[monthly]* **periodic** payroll deductions**, in accordance with such procedures as established by the board,** in addition to the regular *[monthly]* **periodic** payroll deduction. If the participant elects to purchase the prior service with an additional payroll deduction, then the deduction shall not extend longer than the period of prior service being purchased.

*AUTHORITY: section 50.1032, RSMo [Supp. 1999] **2000**. Original rule filed Oct. 11, 1995, effective May 30, 1996. Amended: Filed July 29, 1997, effective Jan. 30, 1998. Amended: Filed June 1, 1999, effective Nov. 30, 1999. Rescinded and readopted: Filed Sept. 29, 2000, effective March 30, 2001. Amended: Filed Dec. 10, 2002.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the County Employees' Retirement Fund, PO Box 2271, 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 16—RETIREMENT SYSTEMS
## Division 50—The County Employees' Retirement Fund
## Chapter 2—Membership and Benefits

### PROPOSED AMENDMENT

**16 CSR 50-2.040 Separation from Service Before Retirement**. The board is amending section (3).

*PURPOSE: This amendment clarifies the effect of a separation from service on a participant's benefit.*

(3) Members who terminate employment and then resume employment with an employer within thirty (30) days will not forfeit their prior service**,** *[and]* will not be required to receive a refund of their payroll contributions **and will not be deemed to have been rehired**.

*AUTHORITY: section 50.1032, RSMo [Supp. 1999] **2000**. Original rule filed Oct. 11, 1995, effective May 30, 1996. Amended: Filed Sept. 17, 1998, effective March 30, 1999. Rescinded and readopted: Filed Sept. 29, 2000, effective March 30, 2001. Amended: Filed Dec. 10, 2002.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the County Employees' Retirement Fund, PO Box 2271, 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 16—RETIREMENT SYSTEMS
## Division 50—The County Employees' Retirement Fund
## Chapter 2—Membership and Benefits

### PROPOSED AMENDMENT

**16 CSR 50-2.080 Source of Pension Funds**. The broad is amending sections (1) and (2) and adding a new section (4).

*PURPOSE: This amendment amends the source of funds available to the plan.*

(1) The source of contributions to this plan (if required) for a plan year shall be the funds described in sections 50.1020, 50.1190, 50.1200 and 150.150, RSMo that have been accumulated during the plan year. Such funds shall be held in a separate account until the board determines, in accordance with the advice of the actuary, the amount of such funds that must be contributed to this plan for a plan year to maintain its actuarial sufficiency. The board shall ensure that sufficient amounts shall be contributed so that this plan is funded in a manner consistent with the provisions of the *Internal Revenue Code* and such other laws and regulations as shall be applicable. The remainder of funds accumulated in the separate account during a plan year shall **first be used to pay expenses of the defined contribution plan established in sections 50.1210 to 50.1260, RSMo and then any remaining amounts shall** be contributed to the defined contribution plan established in sections 50.1210 to 50.1260, RSMo.

(2) Any gains arising from the death of participants prior to retirement or forfeiture upon separation from service shall not be utilized to increase the benefits to the remaining participants*[, but shall be retained in the trust fund]*. **Any such forfeitures that derive from a county's contribution (and not from a payroll deduction) made pursuant to section 50.1020(6), RSMo shall remain in the trust fund, and the amount of such forfeited county contribution shall be used to reduce future contributions for the county which made such contribution. Any such gains or forfeitures that derive from any other source shall be retained in the trust fund.**

**(4) Each county, except counties of the first classification with a charter form of government and any city not within a county, shall deposit in the plan each payroll period ending after December 31, 2002, an amount equal to four percent (4%) of the compensation paid in such payroll period to each employee hired or rehired by that county on or after February 25, 2002. Such deposit shall be paid out of the county funds or, at the county's election, in whole or in part through payroll deduction as described in section 50.1040(2), RSMo. Any county that elects to pay the deposit described herein, in whole or in part, through payroll deduction as described in section 50.1040(2), RSMo, shall provide the board written notice of such election at least thirty (30) days before January 1 of the year for which such election is to be effective. Such election shall remain effective until revoked by the county in writing to the board at least thirty (30) days before January 1 of the year for which such election is to be revoked. Any election or revocation of the election described herein shall become effective on the January 1 following thirty (30) days' written notice from the county to the board of such election or revocation.**

*AUTHORITY: section 50.1032, RSMo [Supp. 1999] 2000. Original rule filed Sept. 29, 2000, effective March 30, 2001. Amended: Filed Dec. 10, 2002.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the County Employees' Retirement Fund, PO Box 2271, 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 16—RETIREMENT SYSTEMS
## Division 50—The County Employees' Retirement Fund
## Chapter 2—Membership and Benefits

### PROPOSED AMENDMENT

**16 CSR 50-2.090 Normal Retirement Benefit**. The board is amending section (4).

*PURPOSE: This amendment amends the definition of LAGERS participant in section (4).*

(4) LAGERS Participant Defined. Generally, a participant is considered a member of LAGERS with respect to a period of creditable service (including prior service) if he or she has been exempt from making the mandatory two percent (2%) contribution on account of his or her membership in LAGERS**; except that, each payroll period ending after December 31, 2002, participants who are members of LAGERS and who are hired or rehired by a county on or after February 25, 2002, are subject to a monthly payroll deduction not to exceed four percent (4%), but not the additional mandatory two percent (2%) contribution that potentially subjects a participant who is not a member of LAGERS to a monthly payroll deduction not to exceed six percent (6%)**. Accordingly, the formula set forth in section (3) shall be used to determine a participant's benefit for such period of creditable service. If a participant ceases to qualify for active membership or ceases to be an active member in LAGERS, the formula described in section (2) shall be used to determine the participant's benefit for the creditable service earned during periods when the participant ceased to so qualify or ceased to be an active member in LAGERS. If a participant receives a refund of contributions from LAGERS, pursuant to section 70.690, RSMo, then the formula described in section (3) shall be used to determine the participant's benefit, if the participant makes an additional contribution to the plan. The amount of such additional contribution shall be equal to two percent (2%) of the participant's compensation for the period in which he or she was a LAGERS participant (plus any interest and penalties assessed by the board). The amount may be paid in one lump sum, or by payroll deduction.

*AUTHORITY: section 50.1032, RSMo [Supp. 1999] 2000. Original rule filed Sept. 29, 2000, effective March 30, 2001. Amended: Filed Dec. 10, 2002.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the County Employees' Retirement Fund, PO Box 2271, 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 16—RETIREMENT SYSTEMS
## Division 50—The County Employees' Retirement Fund
## Chapter 3—Creditable Service

### PROPOSED AMENDMENT

**16 CSR 50-3.010 Creditable Service**. The board is amending subsection (2)(E).

*PURPOSE: This amendment clarifies what constitutes creditable service under the plan, and how such service may be purchased, in subsection (2)(E).*

(2) Excluded Service. Unless the participant purchases such service in accordance with section (3), a participant's creditable service shall not include:

(E) Service after a participant's entry date, if the required *[two percent (2%)]* contribution**, determined in accordance with 16 CSR 50-2.020,** is not withheld from the participant's pay **or otherwise paid by the county** for any reason; or

*AUTHORITY: section 50.1032, RSMo [Supp. 1999] 2000. Original rule filed Oct. 11, 1995, effective May 30, 1996. Rescinded and readopted: Filed Sept. 29, 2000, effective March 30, 2001. Amended: Filed Dec. 10, 2002.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the County Employees' Retirement Fund, PO Box 2271, 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 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
## Division 60—Missouri Health Facilities Review Committee
## Chapter 50—Certificate of Need Program

### PROPOSED RESCISSION

**19 CSR 60-50.300 Definitions for the Certificate of Need Process**. This rule defined the terms used in the Certificate of Need (CON) review process.

*PURPOSE: This rule is rescinded because the Missouri CON Rulebook has been rewritten to implement the sunset provisions of sections 197.305, 197.317 and 197.318, RSMo.*

*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 filed Dec. 16, 2002, effective Jan. 1, 2003, expires June 29, 2003. Rescinded: Filed Dec. 16, 2002.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support or in opposition to this proposed rescission 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 February 17, 2003. A public hearing has been scheduled for February 17, 2003, at 10:00 a.m. at the Certificate of Need Program Office located at 915G Leslie Blvd., Jefferson City, Missouri.*

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

### PROPOSED RULE

**19 CSR 60-50.300 Definitions for the Certificate of Need Process**

*PURPOSE: This rule defines the terms used in the Certificate of Need (CON) review process.*

(1) Applicant means all owner(s) and operator(s) of any new institutional health service.

(2) By or on behalf of a health care facility includes any expenditures made by the facility itself as well as capital expenditures made by other persons that assist the facility in offering services to its patients/residents.

(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.

(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 ÷ b) × 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, 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 ÷ (a + b)) × 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 (c); and

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

(4) Construction of a new hospital means the establishment of a newly-licensed facility at a specific location under the Hospital Licensing Law, section 197.020.2, RSMo, as the result of building, renovation, modernization, and/or conversion of any structure not licensed as a hospital.

(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 sections 197.318.8–10, RSMo, long-term care renovation and modernization, or the replacement of any major medical equipment as defined in section (14) of this rule which holds a Certificate of Need (CON) previously granted by the Missouri Health Facilities Review Committee (Committee). Applications for replacement of major medical equipment not previously approved by the Committee should apply for a full review.

(6) Full review means the complete analytical period for applications as described in 19 CSR 60-50.420 and 19 CSR 60-50.430 for the development of health care facilities and acquisition of major medical equipment.

(7) Generally accepted accounting principles pertaining to capital expenditures include, but are not limited to:

(A) Expenditures related to acquisition or construction of capital assets;

(B) Capital assets are investments in property, plant and equipment used for the production of other goods and services approved by the Committee; and

(C) Land is not considered a capital asset until actually converted for that purpose with commencement of aboveground construction approved by the Committee.

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

(9) Health care facility expenditure includes the capital value of new construction or renovation costs, architectural/engineering fees, equipment not in the construction contract, land acquisition costs, consultants'/legal fees, interest during construction, predevelopment costs as defined in section 197.305(13), RSMo, in excess of one hundred fifty thousand dollars ($150,000), any existing land and building converted to medical use for the first time, and any other capitalizable costs as listed on the "Proposed Project Budget" form MO 580-1863.

(10) Health maintenance organizations means entities as defined in section 354.400(10), RSMo, except for activities directly related to the provision of insurance only.

(11) Interested party means any licensed health care provider or other affected person who has expressed an interest in the CON process or a CON application.

(12) Long-Term Acute Care (LTAC) hospital 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 1 of section 198.012, RSMo; or

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

(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 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.

(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.

(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.

(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.

(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.

(19) Service area means:

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

(B) A geographic region appropriate for any other proposed service, documented by the applicant and approved by the Committee.

(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 website at 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, expires June 29, 2003. Rescinded and readopted: Filed Dec. 16, 2002.*

*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 or in opposition to this proposed rule 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 February 17, 2003. A public hearing has been scheduled for February 17, 2003, at 10:00 a.m. at the Certificate of Need Program Office located at 915G Leslie Blvd., Jefferson City, Missouri.*

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

### PROPOSED RESCISSION

**19 CSR 60-50.400 Letter of Intent Process**. This rule delineated the process for submitting a Letter of Intent to begin the Certificate of Need (CON) review process and outlined the projects subject to CON review.

*PURPOSE: This rule is rescinded because the Missouri CON Rulebook has been rewritten to implement the sunset provisions of sections 197.305, 197.317 and 197.318, RSMo.*

*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, expires June 29, 2003. Rescinded: Filed Dec. 16, 2002.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support or in opposition to this proposed rescission 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 February 17, 2003. A public hearing has been scheduled for February 17, 2003, at 10:00 a.m. at the Certificate of Need Program Office located at 915G Leslie Blvd., Jefferson City, Missouri.*

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

### PROPOSED RULE

**19 CSR 60-50.400 Letter of Intent Process**

*PURPOSE: This rule delineates the process for submitting a Letter of Intent to begin the Certificate of Need (CON) review process and 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, a LOI is valid for six (6) months;

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

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

(2) Once filed, 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 a LOI for 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 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 Six Quarter Survey of Hospital and Nursing Home (or Residential Care Facility) Licensed Bed 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 CONP staff, as an agent of the Missouri Health Facilities Review Committee (Committee), will review LOIs according to the following provisions:

(A) Major medical equipment is reviewed as an expenditure on the basis of cost, regardless of owners or operators, or location (mobile or stationary);

(B) The CONP staff shall test the LOI for applicability in accordance with statutory provisions for expenditure minimums, exemptions, and exceptions;

(C) If the test verifies that a statutory exception or exemption is met on a proposed project, or is below all applicable expenditure minimums, the Committee chair may issue a Non-Applicability CON letter indicating the application review process is complete; otherwise, the CONP staff shall add the proposal to a list of Non-Applicability proposals to be considered at the next regularly scheduled Committee meeting;

(D) If an exception or exemption is not met, and if the proposal is above any applicable expenditure minimum, then a CON application will be required for the proposed project;

(E) A Non-Applicability CON letter will be valid subject to the following conditions:

1. Any change in the project scope, including change in type of service, cost, operator, ownership, or site, could void the effectiveness of the letter and require a new review; and

2. Final audited project costs must be provided on a Periodic Progress Report (Form MO 580-1871);

(F) A CON application must be made if:

1. The project involves the development of a new hospital costing one 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 one 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 four hundred thousand dollars ($400,000) or more;

4. The project involves the acquisition of any equipment or beds in a long-term acute 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 six hundred thousand dollars ($600,000) or more; or

6. The project involves either additional 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, 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 LTAC 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 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.

(6) Nonsubstantive projects are waived from review by the authority of section 197.330.1(8), RSMo, and any projects seeking such a determination shall submit information through the LOI process; those meeting the nonsubstantive definition shall be posted for review on the CON website at least twenty (20) days in advance of the Committee meeting when they are scheduled to be confirmed by the Committee.

(7) The most current version of forms MO 580-2351, MO 580-2352, and MO 580-1871 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.

*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, expires June 29, 2003. Rescinded and readopted: Filed Dec. 16, 2002.*

*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 or in opposition to this proposed rule 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 February 17, 2003. A public hearing has been scheduled for February 17, 2003, at 10:00 a.m. at the Certificate of Need Program Office located at 915G Leslie Blvd., Jefferson City, Missouri.*

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

### PROPOSED RESCISSION

**19 CSR 60-50.410 Letter of Intent Package**. This rule provided the information requirements and the details of how to complete the Letter of Intent package to begin the Certificate of Need (CON) review process.

*PURPOSE: This rule is rescinded because the Missouri CON Rulebook has been rewritten to implement the sunset provisions of sections 197.305, 197.317 and 197.318, 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, expires June 29, 2003. Rescinded: Filed Dec. 16, 2002.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support or in opposition to this proposed rescission 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 February 17, 2003. A public hearing has been scheduled for February 17, 2003, at 10:00 a.m. at the Certificate of Need Program Office located at 915G Leslie Blvd., Jefferson City, Missouri.*

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

### PROPOSED RULE

**19 CSR 60-50.410 Letter of Intent Package**

*PURPOSE: This rule 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.*

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

(A) Project Information: sufficient information to identify the intended service, such as construction, renovation, new or replacement equipment, and address or plat map identifying a specific site rather than a general area (county designation alone is not sufficient);

(B) Applicant Identification: the full legal name of all owner(s) and operator(s) which compose the applicant(s) who, singly or jointly, propose to develop, offer, lease or operate a new institutional health service within Missouri; provide the corporate entity, not individual names, of the corporate board of directors or the facility administrator;

(C) Type of Review: the applicant shall indicate if the review is for a full review, expedited review or a non-applicability review;

(D) Project Description: information which provides details of the number of beds to be added, deleted, or replaced, square footage of new construction and/or renovation, services affected and equipment

to be acquired. If a replacement project, information which provides details of the facilities or equipment to be replaced, including name, location, distance from the current site, and its final disposition;

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

(F) Authorized Contact Person Identification: the full name, title, address (including association), telephone number, e-mail, and fax number; and

(G) Applicability: Item 7 of the LOI must be filled out by applicants requesting a non-applicability review to provide the reason and rationale for the exemption or exception being sought.

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

(A) Proposed Expenditures (Form MO 580-2375) including information which details all methods and assumptions used to estimate project costs;

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

(C) In addition to the above information, for exceptions or exemptions, documentation of other provisions in compliance with the Certificate of Need (CON) statute, as described in sections (3) through (6) below of this rule.

(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.

(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.

(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.

(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 website at 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, expires June 29, 2003. Rescinded and readopted: Filed Dec. 16, 2002.*

*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 or in opposition to this proposed rule 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 February 17, 2003. A public hearing has been scheduled for February 17, 2003, at 10:00 a.m. at the Certificate of Need Program Office located at 915G Leslie Blvd., Jefferson City, Missouri.*

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

### PROPOSED RESCISSION

**19 CSR 60-50.420 Application Process**. This rule delineated the process for submitting a Certificate of Need (CON) application for a CON review.

*PURPOSE: This rule is rescinded because the Missouri CON Rulebook has been rewritten to implement the sunset provisions of sections 197.305, 197.317 and 197.318, 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, expires June 29, 2003. Rescinded: Filed Dec. 16, 2002.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support or in opposition to this proposed rescission 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 February 17, 2003. A public hearing has been scheduled for February 17, 2003, at 10:00 a.m. at the Certificate of Need Program Office located at 915G Leslie Blvd., Jefferson City, Missouri.*

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

### PROPOSED RULE

**19 CSR 60-50.420 Review Process**

*PURPOSE: This rule delineates the process for submitting a Certificate of Need (CON) application for a CON review.*

(1) The Certificate of Need (CON) filing deadlines are as follows:

(A) For full applications, at least seventy-one (71) days prior to each Missouri Health Facilities Review Committee (Committee) meeting;

(B) For expedited equipment replacement applications, expedited long-term care (LTC) facility renovation or modernization applications, and expedited LTC bed expansions and replacements pursuant to section 197.318.8 through 197.318.10, RSMo, the tenth day of each month, or the next business day thereafter if that day is a holiday or weekend;

(C) For non-applicability reviews, the Letter of Intent (LOI) filing may occur at any time.

(2) A CON application filing that does not substantially conform with the LOI, including any change in owner(s), operator(s), scope of services, or location, shall not be considered a CON application and shall be subject to the following provisions:

(A) The Certificate of Need Program (CONP) staff shall return any nonconforming submission; or

(B) The Committee may issue an automatic denial unless the applicant withdraws the attempted application.

(3) All filings must occur at the principal office of the Committee during regular business hours. The CONP staff, as an agent of the 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. 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 Office of Public Information, Department of Health and Senior Services; and

2. The schedule shall be published on the CON website.

(B) For non-applicability reviews, the listing of non-applicability letters to be confirmed shall be published on the CON website at least twenty (20) days prior to each scheduled meeting of the Committee where confirmation is to take place.

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

(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.

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

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

(A) For full CON applications, the CONP staff shall send the analysis twenty (20) days in advance of the first 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 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 Committee meeting where the written analysis by the CONP staff can be sent to the Committee and the applicant at least seven (7) days in advance.

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

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

(10) In addition to using the Community Need Criteria and Standards as guidelines, the 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. For intervening history, please consult the* ***Code of State Regulations****. Emergency rescission and rule filed Dec. 16, 2002, effective Jan. 1, 2003, expires June 29, 2003. Rescinded and readopted: Filed Dec. 16, 2002.*

*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 or in opposition to this proposed rule 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 February 17, 2003. A public hearing has been scheduled for February 17, 2003, at 10:00 a.m. at the Certificate of Need Program Office located at 915G Leslie Blvd., Jefferson City, Missouri.*

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

### PROPOSED RESCISSION

**19 CSR 60-50.430 Application Package**. This rule provided the information requirements and the application format of how to complete a Certificate of Need (CON) application for a CON review.

*PURPOSE: This rule is rescinded because the Missouri CON Rulebook has been rewritten to implement the sunset provisions of sections 197.305, 197.317 and 197.318, 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, expires June 29, 2003. Rescinded: Filed Dec. 16, 2002.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support or in opposition to this proposed rescission 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 February 17, 2003. A public hearing has been scheduled for February 17, 2003, at 10:00 a.m. at the Certificate of Need Program Office located at 915G Leslie Blvd., Jefferson City, Missouri.*

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

## PROPOSED RULE

### 19 CSR 60-50.430 Application Package

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

(1) A Certificate of Need (CON) application package shall be accompanied by an application fee which shall be a nonrefundable minimum amount of one thousand dollars ($1,000) or one-tenth of one percent (0.1%), which may be rounded up to the nearest dollar, of the total project cost, whichever is greater, made payable to the "Missouri Health Facilities Review Committee."

(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:

(A) The CON Applicant's Completeness Checklists and Table of Contents should be used as follows:

1. Include at the front of the application;
2. Check the appropriate "done" boxes to assure completeness of the application;
3. Number all pages of the application sequentially and indicate the page numbers in the appropriate blanks;
4. Check the appropriate "n/a" box if an item in the Review Criteria is "not applicable" to the proposal; and
5. Restate (preferably in bold type) and answer all items in the Review Criteria.

(B) The application package should use one 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 Acute Care (LTAC) Beds Application (use Form MO 580-2502);
4. New or Additional Equipment Application (Form MO 580-2503);
5. Expedited LTC Bed Replacement/Expansion Application (Form MO 580-2504);
6. Expedited LTC Renovation/Modernization Application (Form MO 580-2505); or
7. Expedited Equipment Replacement Application (Form MO 580-2506).

(C) The application should be formatted into dividers using the following outline:

1. Divider I. Application Summary;
2. Divider II. Proposal Description;
3. Divider III. Community Need Criteria and Standards; and
4. Divider IV. Financial Feasibility (only if required for full applications).

(D) Support Information should be included at the end of each divider section to which it pertains, and should be referenced in the divider narrative. For applicants anticipating having multiple applications in a year, master file copies of such things as maps, population data (if applicable), board memberships, IRS Form 990, or audited financial statements may be submitted once, and then referred to in subsequent applications, as long as the information remains current.

(E) The application package should document the need or meet the additional information requirements in 19 CSR 60-50.450(4)–(6) for the proposal by addressing the applicable Community Need Criteria and Standards using the standards in 19 CSR 60-50.440 through 19 CSR 60-50.460 plus providing additional documentation to substantiate why any proposed alternative Criteria and Standards should be used.

(3) An Application Summary shall be composed of the completed forms in the following order:

(A) Applicant Identification and Certification (Form MO 580-1861). Additional specific information about board membership may be requested, if needed;

(B) A completed Representative Registration (Form MO 580-1869) for the contact person and any others as required by section 197.326(1), RSMo; and

(C) A detailed Proposed Project Budget (Form MO 580-1863), with an attachment which details how each line item was determined including all methods and assumptions used.

(4) The Proposal Description shall include documents which:

(A) Provide a complete detailed description and scope of the project, and identify all the institutional services or programs which will be directly affected by this proposal;

(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 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, Department of Health and Senior Services, for long-term care projects and 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 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

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. Information requests should be made to CHIME 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 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 (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 (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 information, or consultants' reports, to document the size and validity of any proposed user-defined "geographic service area";

(D) Identify specific community problems or unmet needs which the proposed or expanded service is designed to remedy or meet;

(E) Provide historical utilization for each existing service affected by the proposal for each of the past three (3) years;

(F) Provide utilization projections through at least three (3) years beyond the completion of the project for all proposed and existing services directly affected by the project;

(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

(H) Provide the current and proposed number of licensed beds by type for projects which would result in a change in the licensed bed complement of the LTC facility.

(5) Document that consumer needs and preferences have been included in planning this project. Describe how consumers have had an opportunity to provide input into this specific project, and include in this section all petitions, letters of acknowledgement, support or opposition received.

(6) The most current version of forms MO 580-2501, MO 580-2502, MO 580-2503, MO 580-2504, MO 580-2505, MO 580-1861, MO 580-1869 and MO 580-1863 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.

*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, expires June 29, 2003. Rescinded and readopted: Filed Dec. 16, 2002.*

*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 or in opposition to this proposed rule 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 February 17, 2003. A public hearing has been scheduled for February 17, 2003, at 10:00 a.m. at the Certificate of Need Program Office located at 915G Leslie Blvd., Jefferson City, Missouri.*

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

### PROPOSED RESCISSION

**19 CSR 60-50.450 Criteria and Standards for Long-Term Care**. This rule outlined the criteria and standards against which a project involving a long-term care facility would be evaluated in a Certificate of Need (CON) review.

*PURPOSE: This rule is rescinded because the Missouri CON Rulebook has been rewritten to implement the sunset provisions of sections 197.305, 197.317 and 197.318, 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, expires June 29, 2003. Rescinded: Filed Dec. 16, 2002.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support or in opposition to this proposed rescission 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 February 17, 2003. A public hearing has been scheduled for February 17, 2003, at 10:00 a.m. at the Certificate of Need Program Office located at 915G Leslie Blvd., Jefferson City, Missouri.*

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

### PROPOSED RULE

**19 CSR 60-50.450 Criteria and Standards for Long-Term Care**

*PURPOSE: This rule outlines the criteria and standards against which a project involving a long-term care facility would be evaluated in a Certificate of Need (CON) review.*

(1) 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 acute care (LTAC) 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 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 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 of Hospital and Nursing Home ICF/SNF Beds as provided by the Certificate of Need Program (CONP) which includes licensed beds, Certificate of Need (CON)-approved beds, and non-applicability beds;

(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 of Residential Care Facility Beds as provided by the CONP which includes licensed beds and CON-approved beds, and non-applicability beds; and

(C) Approval for LTAC beds, as described in 42 CFR, section 412.23(e), will be based on a service area need determined to be one (1) bed per one thousand (1,000) population minus the current supply of LTAC beds shown in the inventory of LTAC beds as provided by the Certificate of Need Program which includes licensed beds and CON-approved beds.

(3) The minimum annual average utilization for all other long-term care beds 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 Health Standards and Licensure (DHSL), Department of Health and Senior Services, Six-Quarter Survey of Hospital and Nursing Home (or Residential Care Facility) Licensed and Available Bed Utilization and certified through a written finding by the DHSL.

(4) Replacement Chapter 198, RSMo, beds qualify 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.

(5) LTC bed expansions involving a Chapter 198, RSMo, facility qualify for 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.

(6) An exception to the 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).

(7) Any newly-licensed Chapter 198, RSMo, facility established as a result of the Alzheimer's and dementia demonstration projects pursuant to Chapter 198, RSMo, or aging-in-place pilot projects pursuant to Chapter 198, RSMo, as implemented by the DHSL, may be licensed by the DHSL until the completion of each project. If a demonstration or pilot project receives a successful evaluation from the DHSL and a qualified Missouri school or university, and meets the DHSL standards for licensure, this will ensure continued licensure without a new CON.

(8) For LTC renovation or modernization projects which do not include increasing the number of beds, the applicant should document the following, if applicable:

(A) The proposed project is needed to comply with current facility code requirements of local, state or federal governments;

(B) The proposed project is needed to meet requirements for licensure, certification or accreditation, which if not undertaken, could result in a loss of accreditation or certification;

(C) Operational efficiencies will be attained through reconfiguration of space and functions;

(D) The methodologies used for determining need;

(E) The rationale for the reallocation of space and functions; and

(F) The benefits to the facility because of its age or condition.

(9) The most current version of Form MO 580-2352 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 form from the CONP website at 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, expires June 29, 2003. Rescinded and readopted: Filed Dec. 16, 2002.*

*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 or in opposition to this proposed rule 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 February 17, 2003. A public hearing has been scheduled for February 17, 2003, at 10:00 a.m. at the Certificate of Need Program Office located at 915G Leslie Blvd., Jefferson City, Missouri.*

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

### PROPOSED RESCISSION

**19 CSR 60-50.700 Post-Decision Activity**. This rule described 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.

*PURPOSE: This rule is rescinded because the Missouri CON Rulebook has been rewritten to implement the sunset provisions of sections 197.305, 197.317 and 197.318, RSMo.*

*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, expires June 29, 2003. Rescinded: Filed Dec. 16, 2002.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support or in opposition to this proposed rescission 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 February 17, 2003. A public hearing has been scheduled for February 17, 2003, at 10:00 a.m. at the Certificate of Need Program Office located at 915G Leslie Blvd., Jefferson City, Missouri.*

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

### PROPOSED RULE

**19 CSR 60-50.700 Post-Decision Activity**

*PURPOSE: This rule describes 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). 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 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 Certificate of Need Program (CONP) staff on behalf of the 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.

(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 above-ground 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.

(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 Committee meeting, the CONP shall notify the applicant in writing of the possible forfeiture, the reasons for it, and its placement on the Committee agenda for action; and

(B) After receipt of the notice of possible forfeiture, the applicant may submit information to the 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.

(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.

(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.

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

(9) At any time during the process from Letter of Intent to project completion, the applicant is responsible for notifying the 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).

(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.

*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, expires June 29, 2003. Rescinded and readopted: Filed Dec. 16, 2002.*

*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 or in opposition to this proposed rule 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 February 17, 2003. A public hearing has been scheduled for February 17, 2003, at 10:00 a.m. at the Certificate of Need Program Office located at 915G Leslie Blvd., Jefferson City, Missouri.*