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SALUS POPULI SUPREMA LEX ESTO

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

ROBIN CARNAHAN

SECRETARY OF STATE

# MISSOURI REGISTER

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James C. Kirkpatrick State Information Center
600 W. Main
Jefferson City, MO 65101
(573) 751-4015

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•

Editors

Curtis W. Treat Sally L. Reid

Associate Editor

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•

Publication Technician

Jacqueline D. White

•

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

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

| **Title** | ***Code of State Regulations*** | **Division** | **Chapter** | **Rule** |
|---|---|---|---|---|
| 1 | CSR | 10- | 1. | 010 |
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They are properly cited by using the full citation , i.e., 1 CSR 10-1.010.

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

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

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

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

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

## Title 9—DEPARTMENT OF MENTAL HEALTH
## Division 10—Director, Department of Mental Health
## Chapter 31—Reimbursement for Services

### EMERGENCY RULE

**9 CSR 10-31.030 Intermediate Care Facility for the Mentally Retarded Federal Reimbursement Allowance**

*PURPOSE: This rule establishes the formula to determine the Federal Reimbursement Allowance for each Intermediate Care Facility for the Mentally Retarded (ICF/MR) operated primarily for the care and treatment of mental retardation/developmental disabilities. This rule applies to both private ICF/MRs and ICF/MR facilities operated by the Department of Mental Health and requires these facilities to pay for the privilege of engaging in the business of providing ICF/MR services to individuals in Missouri.*

*EMERGENCY STATEMENT: During the 94th General Assembly, HCS for SCS for Senate Bill 1081 was passed with an emergency clause providing for an early effective date upon its passage and approval. This legislation was signed into law June 25, 2008. Beginning July 1, 2008, each ICF/MR service provider is required to pay assessments on their net operating revenues for the privilege of providing ICF/MR services in the state. The Department of Mental Health needs to immediately provide guidance to ICF/MR service providers regarding the formula that will be used to determine the Federal Reimbursement Allowance for such facilities. This rule will establish how the Department of Mental Health will obtain funds through an assessment on the private and publicly operated ICF/MRs. These funds will be used to provide needed oversight and services for approximately thirty thousand (30,000) consumers with developmental disabilities. Without an emergency rule there may be confusion regarding how the Federal Reimbursement Allowance will be determined and collected from such facilities and a delay in the Department of Mental Health obtaining such funds to provide services. The Department of Mental Health finds that this emergency rule is necessary to preserve a compelling governmental interest, to ensure state revenue is available, and to promote safety and quality in mental health community programs that are in place on this date. A proposed rule, which covers the same material, is published in this issue of the **Missouri Register**. The scope of this emergency rule is limited to the circumstances creating the emergency and with the protections extended in the **Missouri** and **United States Constitutions**. The Missouri Department of Mental Health believes that this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed July 1, 2008, effective July 11, 2008, expires December 28, 2008.*

(1) The following words and terms, as used in this rule, mean:

(A) Base cost report. MO HealthNet cost report for the second prior fiscal year relative to the State Fiscal Year (SFY) for which the assessment is being calculated. (For example, the SFY 2009 Federal Reimbursement Allowance (FRA) assessment will be determined using the ICF/MR cost report from FY 2007.)

(B) Department. Department of Mental Health.

(C) Director. Director of the Department of Mental Health.

(D) Division. Division of Mental Retardation/Developmental Disabilities, Department of Mental Health.

(E) Engaging in the business of providing residential habilitation care. Accepting payment for ICF/MR services rendered.

(F) Fiscal period. Twelve (12)-month reporting period determined by the State Fiscal Year.

(G) Intermediate Care Facility for the Mentally Retarded (ICF/MR). A private or department facility that admits persons who are mentally retarded or developmentally disabled for residential habilitation and other services pursuant to Chapter 630, RSMo, and that has been certified to meet the conditions of participation under 42 CFR 483, Subpart I.

(H) Intermediate Care Facility for the Mentally Retarded Federal Reimbursement Allowance (ICF/MRFRA). The assessment paid by each ICF/MR.

(I) Net revenues. Gross revenues less bad debts, less charity care, and less contractual allowances.

(J) Trend factor. Centers for Medicare and Medicaid Services (CMS) Prospective Payment System Skilled Nursing Facility Input Price Index (SNF IPI) four (4) quarter moving average. (Source: GLOBAL INSIGHT, INC, 4th Qtr, 2007) (4 Quarter Moving Average Percent Changes in the CMS Prospective Payment System Skilled Nursing Facility Input Price Index (SNF IPI) using Forecast Assumptions, by Expense Category: 1990-2017)

(2) Each ICF/MR operated primarily for the care and treatment of mental retardation/developmental disabilities engaging in the business of providing residential habilitation and other services in Missouri shall pay an ICF/MRFRA. The ICF/MRFRA shall be calculated by the department as follows:

(A) Beginning on July 1, 2008, and each year thereafter, the ICF/MRFRA annual assessment shall be five and forty-nine hundredths percent (5.49%) of the ICF/MR's net revenues determined from the base cost report relative to the State Fiscal Year for which the assessment is being calculated. The cost report shall be trended forward from the second prior year to the current fiscal year by

applying the SNF IPI trend factor for each year under the ICF/MRFRA calculation;

(B) The annual assessment shall be divided into twelve (12) equal amounts and collected over the number of months the assessment is effective. The assessment is made payable to the director of the Department of Revenue to be deposited in the state treasury in the ICF/MRFRA Fund;

(C) If an ICF/MR does not have a base cost report, net revenues shall be estimated as follows:

1. Net revenues shall be determined by computation of the ICF/MR's projected annual patient days multiplied by its interim established per diem rate; and

(D) The ICF/MRFRA assessment for ICF/MRs that merge operation under one (1) MO HealthNet provider number shall be determined as follows:

1. The previously determined ICF/MRFRA assessment for each ICF/MR shall be combined under the active MO HealthNet provider number for the remainder of the State Fiscal Year after the division receives official notification of the merger; and

2. The ICF/MRFRA assessment for subsequent fiscal years shall be based on the combined data for both facilities.

(3) The department shall prepare a notification schedule of the information from each ICF/MR's second prior year cost report and provide each ICF/MR with this schedule.

(A) The schedule shall include:

1. Provider name;
2. Provider number;
3. Fiscal period;
4. Total number of licensed beds;
5. Total bed days;
6. Net revenues; and
7. Total amount of the assessment for the State Fiscal Year for which the assessment is being calculated and monthly assessment amount due each month.

(B) Each ICF/MR required to pay the ICF/MRFRA shall review this information, and if it is not correct, the ICF/MR must notify the department of such within fifteen (15) days of receipt of the notification schedule. If the ICF/MR fails to submit the corrected data within the fifteen (15)-day time period, the ICF/MR shall be barred from submitting corrected data later to have its ICF/MRFRA assessment adjusted.

(4) Payment of ICF/MRFRA Assessment.

(A) Each ICF/MR may request that its ICF/MRFRA be offset against any MO HealthNet payment due. A statement authorizing the offset must be on file with the MO HealthNet Division before any offset may be made relative to the ICF/MRFRA. Any balance due after the offset shall be remitted by the ICF/MR to the department. The remittance shall be made payable to the director of the Department of Revenue. If the remittance is not received before the next MO HealthNet payment cycle, the MO HealthNet Division shall offset the balance due from that check.

(B) If no offset has been authorized by the ICF/MR, the MO HealthNet Division will begin collecting the ICF/MRFRA on the first day of each month. The ICF/MRFRA shall be remitted by the ICF/MR facility to the MO HealthNet Division. The remittance shall be made payable to the director of the Department of Revenue and deposited in the state treasury to the credit of the ICF/MRFRA Fund.

(C) If the ICF/MR is delinquent in the payment of its ICF/MRFRA assessment, the director of the Department of Social Services shall withhold and remit to the Department of Revenue an amount equal to the assessment from any payment made by the MO HealthNet Division to the ICF/MR provider.

*AUTHORITY: section 630.050, RSMo 2000 and section 633.401, HCS for SCS for Senate Bill 1081, 94th General Assembly (signed June 25, 2008). Emergency rule filed July 1, 2008, effective July 11, 2008, expires Dec. 28, 2008. A proposed rule covering the same material is published in this issue of the* ***Missouri Register****.*

## Title 13—DEPARTMENT OF SOCIAL SERVICES
## Division 70—MO HealthNet Division
## Chapter 3—Conditions of Provider Participation, Reimbursement and Procedure of General Applicability

### EMERGENCY AMENDMENT

**13 CSR 70-3.170 Medicaid Managed Care Organization Reimbursement Allowance**. The division is amending the Purpose statement and section (1) and adding a new section (5).

*PURPOSE: This amendment will establish the Medicaid Managed Care Organizations' Reimbursement Allowance for the twelve (12)-month period of July 2008 through June 2009 at five and forty-nine hundredths percent (5.49%). It also changes the name of the state's medical assistance program to MO HealthNet and revises the name of the program's administering agency to MO HealthNet Division to comply with state law. The amendment also updates the name of the Department of Insurance to Department of Insurance, Financial Institutions and Professional Registration.*

*PURPOSE: This rule establishes the formula for determining the Medicaid Managed Care Organizations' Reimbursement Allowance each Medicaid Managed Care Organization is required to pay for the privilege of engaging in the business of providing health benefit services in this state as required by [Senate Bill 189, 93rd General Assembly]* ***sections 208.431 to 208.437, RSMo****.*

*EMERGENCY STATEMENT: The 93rd General Assembly reauthorized the Medicaid Managed Care Organization Reimbursement Allowance (MCORA) through June 30, 2009 by enacting sections 208.431 through 208.437, RSMo. The authorization of the MCORA requires each Medicaid Managed Care Organization to pay for the privilege of engaging in the business of providing health benefit services in this state. Because of the need to preserve state revenue, Senate Bill 4 was deemed necessary for the immediate preservation of the public health, welfare, peace, and safety, and was declared to be an emergency within the meaning of the constitution. The MO HealthNet Division finds that this emergency amendment to establish the MCORA assessment rate for state fiscal year (SFY) 2009 in regulation, as required by state statute, is necessary to preserve a compelling governmental interest of collecting state revenue to provide health care to individuals eligible for the MO HealthNet program and the uninsured. An early effective date is required because the emergency amendment establishes the Medicaid Managed Care Organization Reimbursement Allowance rate for SFY 2009 in order to collect this state revenue with the first MO HealthNet payroll for SFY 2009 to ensure access to medical services for indigent and MO HealthNet participants at providers which have relied on Medicaid payments in meeting those needs. The MO HealthNet Division also finds an immediate danger to public health and welfare of the approximately three hundred ninety thousand (390,000) MO HealthNet individuals receiving healthcare from the Medicaid Managed Care Organizations which requires emergency action. If this emergency amendment is not enacted, there would be significant financial instability to the Medicaid Managed Care Organizations which serve approximately three hundred ninety thousand (390,000) MO HealthNet participants. This financial instability will, in turn, result in an adverse impact on the health and welfare of those MO HealthNet participants in need of medical treatment. On an annual basis the MCORA raises approximately $58,706,812. A proposed amendment, which covers the same material, was published in the April 15, 2008 issue of the* ***Missouri Register****. This emergency amendment limits its scope to the circumstances creating the emergency and*

*complies with the protections extended by the **Missouri** and **United States Constitutions**. The MO HealthNet Division believes this emergency amendment to be fair to all interested parties under the circumstances. This emergency amendment filed June 18, 2008, effective July 1, 2008, expires December 28, 2008.*

(1) Medicaid Managed Care Organization Reimbursement Allowance (MCORA) shall be assessed as described in this section.

(A) Definitions.

1. Medicaid Managed Care Organization (MCO). A health benefit plan, as defined in section 376.1350, RSMo, with a contract under 42 U.S.C. section 1396b(m) to provide health benefit services to *[Missouri MC+]* **MO HealthNet** managed care program eligibility groups.

2. Department. Department of Social Services.

3. Director. Director of the Department of Social Services.

4. Division. *[Division of Medical Services]* **MO HealthNet Division**.

5. Health annual statement. The National Association of Insurance Commissioners (NAIC) annual financial statement filed with the Missouri Department of Insurance**, Financial Institutions and Professional Registration**.

6. Effective July 1, 2005 **through June 30, 2006**, Total Revenues. Total Revenues reported for Title XIX—Medicaid on the NAIC annual statement schedule "Analysis of Operations by Lines of Business." Column No. 8, Line 7.

7. Engaging in the business of providing health benefit services. Accepting payment for health benefit services.

8. Effective July 1, 2006, Total Revenues. Total capitated payments a Medicaid managed care organization receives from the division for providing, or arranging for the provision of, health care services to its members or enrollees.

(B) Beginning July 1, 2005, each Medicaid MCO in this state shall, in addition to all other fees and taxes now required or paid, pay a Medicaid Managed Care Organization Reimbursement Allowance (MCORA) for the privilege of engaging in the business of providing health benefit services in this state. Collection of the MCORA shall begin upon **Centers for Medicare and Medicaid Services (**CMS**)** approval of the changes in Medicaid capitation rates that are effective July 1, 2005.

1. Effective July 1, 2005 **through June 30, 2006**, the Medicaid MCORA owed for existing Medicaid MCOs shall be calculated by multiplying the Medicaid MCORA tax rate by the Total Revenues, as defined above. The most recent available NAIC Health Annual Statement shall be used. The Medicaid MCORA shall be divided by and collected over the number of months for which each Medicaid MCORA is effective. The Medicaid MCORA rates, effective dates, and applicable NAIC Health Annual Statements are set forth in section (2).

A. Exceptions.

(I) If an existing Medicaid MCO's applicable NAIC Health Annual Statement, as set forth in section (2), does not represent a full calendar year worth of revenue due to the Medicaid MCO entering the Medicaid market during the calendar year, the Total Revenues used to determine the Medicaid MCORA shall be the partial year Total Revenues reported on the NAIC Health Annual Statements schedule titled Analysis of Operations by Lines of Business annualized.

(II) If an existing Medicaid MCO did not have Total Revenues reported on the applicable NAIC Health Annual Statement due to the Medicaid MCO not entering the Medicaid market until after the calendar year, the Total Revenue used to determine the Medicaid MCORA shall be the MC+ regional weighted average per member per month net capitation rate in effect during the same calendar year multiplied by the Medicaid MCO's estimated annualized member months based on the most recent complete month.

2. Effective July 1, 2006, the Medicaid MCORA owed for existing Medicaid MCOs shall be calculated by multiplying the Medicaid MCORA tax rate by the prior month Total Revenue, as defined above.

A. Exceptions.

(I) For the month of July 2006, the Medicaid MCORA owed for existing Medicaid MCOs shall be calculated by multiplying the Medicaid MCORA tax rate by the current month Total Revenue, as defined above.

(C) Effective July 1, 2005 **through June 30, 2006**, the Department of Social Services shall prepare a confirmation schedule of the information from each Medicaid MCO's NAIC Health Annual Statement Analysis of Operations by Lines of Business. Effective July 1, 2006, the Department of Social Services shall prepare a confirmation schedule of the Medicaid MCORA calculation. The Department of Social Services shall provide each Medicaid MCO with this schedule.

1. Effective July 1, 2005 **through June 30, 2006**, the schedule shall include:

A. Medicaid MCO name;

B. Medicaid MCO provider number;

C. Calendar year from the NAIC Health Annual Statement; and

D. Total Revenues reported on the Analysis of Operations by Lines of Business schedule.

2. Effective July 1, 2006, the schedule shall include:

A. Medicaid MCO name;

B. Medicaid MCO provider number; and

C. Medicaid MCORA tax rate.

3. Each Medicaid MCO required to pay the Medicaid MCORA shall review the information in the schedule referenced in paragraph (1)(C)1. of this regulation and if necessary, provide the department with correct information. If the information supplied by the department is incorrect, the Medicaid MCO, within fifteen (15) calendar days of receiving the confirmation schedule, must notify the division and explain the corrections. If the division does not receive corrected information within fifteen (15) calendar days, it will be assumed to be correct, unless the Medicaid MCO files a protest in accordance with subsection (1)(E) of this regulation.

(D) Payment of the Medicaid MCORA.

1. Offset. Each Medicaid MCO may request that their Medicaid MCORA be offset against any Missouri Medicaid payment due to that MCO. A statement authorizing the offset must be on file with the division before any offset may be made relative to the Medicaid MCORA by the MCO. Assessments shall be allocated and deducted over the applicable service period. Any balance due after the offset shall be remitted by the Medicaid MCO to the department. The remittance shall be made payable to the director of the Department of Revenue and deposited in the state treasury to the credit of the Medicaid MCORA Fund. If the remittance is not received before the next *[Medicaid]* **MO HealthNet** payment cycle, the division shall offset the balance due from that check.

2. Check. If no offset has been authorized by the Medicaid MCO, the division will begin collecting the Medicaid MCORA on the first day of each month. The Medicaid MCORA shall be remitted by the Medicaid MCO to the department. The remittance shall be made payable to the director of the Department of Revenue and deposited in the state treasury to the credit of the Medicaid MCORA Fund.

3. Failure to pay the Medicaid MCORA. If a Medicaid MCO fails to pay its Medicaid MCORA within thirty (30) days of notice, the Medicaid MCORA shall be delinquent. For any delinquent Medicaid MCORA, the department may compel the payment of such reimbursement allowance in the circuit court having jurisdiction in the county where the main offices of the Medicaid MCO is located. In addition, the director of the Department of Social Services or the director's designee may cancel or refuse to issue, extend, or reinstate a *[Medicaid]* **MO HealthNet** contract agreement to any Medicaid MCO that fails to pay such delinquent reimbursement allowance required unless under appeal. Furthermore, except as otherwise

noted, failure to pay a delinquent reimbursement allowance imposed shall be grounds for denial, suspension, or revocation of a license granted by the Department of Insurance**, Financial Institutions and Professional Registration**. The director of the Department of Insurance**, Financial Institutions and Professional Registration** may deny, suspend, or revoke the license of the Medicaid MCO with a contract under 42 U.S.C. section 1396b(m) that fails to pay a MCO's delinquent reimbursement allowance unless under appeal.

**(5) Medicaid MCORA Rates for SFY 2009. The Medicaid MCORA rates for SFY 2009 determined by the division, as set forth in (1)(B) above, are as follows:**

**(A) The Medicaid MCORA will be five and forty-nine hundredths percent (5.49%) of the prior month Total Revenue received by each Medicaid MCO. The Medicaid MCORA will be collected each month for SFY 2009 (July 2008 through June 2009). No Medicaid MCORA shall be collected by the Department of Social Services if the federal Centers for Medicare and Medicaid Services (CMS) determines that such reimbursement allowance is not authorized under Title XIX of the Social Security Act.**

*AUTHORITY: sections 208.201, [RSMo 2000 and] 208.431, and 208.435, RSMo Supp. [2006] 2007. Original rule filed June 1, 2005, effective Dec. 30, 2005. For intervening history, please consult the* ***Code of State Regulations****. Amended: Filed March 17, 2008. Emergency amendment filed June 18, 2008, effective July 1, 2008, expires Dec. 28, 2008.*

## Title 13—DEPARTMENT OF SOCIAL SERVICES
## Division 70—MO HealthNet Division
## Chapter 10—Nursing Home Program

### EMERGENCY AMENDMENT

**13 CSR 70-10.030 Prospective Reimbursement Plan for Nonstate-Operated Facilities for ICF/MR Services**. The division is adding subparagraph (4)(A)1.K.

*PURPOSE: This amendment outlines how the Fiscal Year 2009 trend factor will be applied to adjust per diem rates for nonstate-operated ICF/MRs participating in the Medicaid program.*

*EMERGENCY STATEMENT: The Department of Social Services, MO HealthNet Division, by rule and regulation, must define the reasonable costs, manner, extent, quantity, quality, charges, and fees of medical assistance provided. For State Fiscal Year 2009, the appropriation by the General Assembly included additional funds to increase nonstate-operated ICF/MR facilities' reimbursement rates by three percent (3%). The MO HealthNet Division is carrying out the General Assembly's intent by providing for a per diem increase to ICF/MR facility reimbursement rates of three percent (3%). The three percent (3%) increase is necessary to ensure that payments for ICF/MR facility per diem rates are in line with the funds appropriated for that purpose. There are a total of eight (8) nonstate-operated ICF/MR facilities currently enrolled in Missouri Medicaid, all of which will receive a three percent (3%) increase to their reimbursement rates. This emergency amendment will ensure payment for ICF/MR services to approximately eighty-four (84) ICF/MR Missourians throughout State Fiscal Year 2009 in accordance with the appropriation authority. This emergency amendment must be implemented on a timely basis to ensure that quality ICF/MR services continue to be provided to Medicaid patients in ICF/MR facilities for State Fiscal Year 2009 in accordance with the appropriation authority. As a result, the MO HealthNet Division finds an immediate danger to public health, safety, and/or welfare and a compelling governmental interest, which requires emergency action. The Missouri Medical Assistance program has a compelling government interest in providing continued cash flow for ICF/MR services. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended by the* ***Missouri*** *and* ***United States Constitutions****. The MO HealthNet Division believes this emergency amendment is fair to all interested persons and parties under the circumstances. A proposed amendment covering this same material is published in this issue of the* ***Missouri Register****. This emergency amendment was filed June 18, 2008, effective July 1, 2008, expires December 28, 2008.*

(4) Prospective Reimbursement Rate Computation.

(A) Except in accordance with other provisions of this rule, the provisions of this section shall apply to all providers of ICF/MR services certified to participate in Missouri's *[Medicaid]* **MO HealthNet** program.

1. ICF/MR facilities.

A. Except in accordance with other provisions of this rule, the *[Missouri Medical Assistance P]* **MO HealthNet p**rogram shall reimburse providers of these LTC services based on the individual *[Medicaid-recipient]* **MO HealthNet-participant** days of care multiplied by the Title XIX prospective per diem rate less any payments collected from *[recipients]* **participants**. The Title XIX prospective per diem reimbursement rate for the remainder of state Fiscal Year 1987 shall be the facility's per diem reimbursement payment rate in effect on October 31, 1986, as adjusted by updating the facility's allowable base year to its 1985 fiscal year. Each facility's per diem costs as reported on its Fiscal Year 1985 Title XIX cost report will be determined in accordance with the principles set forth in this rule. If a facility has not filed a 1985 fiscal year cost report, the most current cost report on file with the department will be used to set its per diem rate. Facilities with less than a full twelve (12)-month 1985 fiscal year will not have their base year rates updated.

B. For state FY-88 and dates of service beginning July 1, 1987, the negotiated trend factor shall be equal to two percent (2%) to be applied in the following manner: Two percent (2%) of the average per diem rate paid to both state- and nonstate-operated ICF/MR facilities on June 1, 1987, shall be added to each facility's rate.

C. For state FY-89 and dates of service beginning January 1, 1989, the negotiated trend factor shall be equal to one percent (1%) to be applied in the following manner: One percent (1%) of the average per diem rate paid to both state- and nonstate-operated ICF/MR facilities on June 1, 1988 shall be added to each facility's rate.

D. For state FY-91 and dates of service beginning July 1, 1990, the negotiated trend factor shall be equal to one percent (1%) to be applied in the following manner: One percent (1%) of the average per diem rate paid to both state- and nonstate-operated ICF/MR facilities on June 1, 1990, shall be added to each facility's rate.

E. FY-96 negotiated trend factor. All nonstate-operated ICF/MR facilities shall be granted an increase to their per diem rates effective for dates of service beginning January 1, 1996, of six dollars and seven cents ($6.07) per patient day for the negotiated trend factor. This adjustment is equal to four and six-tenths percent (4.6%) of the weighted average per diem rates paid to nonstate-operated ICF/MR facilities on June 1, 1995, of one hundred and thirty-one dollars and ninety-three cents ($131.93).

F. State FY-99 trend factor. All nonstate-operated ICF/MR facilities shall be granted an increase to their per diem rates effective for dates of service beginning July 1, 1998, of four dollars and forty-seven cents ($4.47) per patient day for the trend factor. This adjustment is equal to three percent (3%) of the weighted average per diem rate paid to nonstate-operated ICF/MR facilities on June 30, 1998, of one hundred forty-eight dollars and ninety-nine cents ($148.99).

G. State FY-2000 trend factor. All nonstate-operated ICF/MR facilities shall be granted an increase to their per diem rates effective for dates of service beginning July 1, 1999, of four dollars and sixty-three cents ($4.63) per patient day for the trend factor. This adjustment is equal to three percent (3%) of the weighted average per diem

rate paid to nonstate-operated ICF/MR facilities on April 30, 1999, of one hundred fifty-four dollars and forty-three cents ($154.43). This increase shall only be used for increases for the salaries and fringe benefits for direct care staff and their immediate supervisors.

H. State FY-2001 trend factor. All nonstate-operated ICF/MR facilities shall be granted an increase to their per diem rates effective for dates of service beginning July 1, 2000, of four dollars and eighty-one cents ($4.81) per patient day for the trend factor. This adjustment is equal to three percent (3%) of the weighted average per diem rate paid to nonstate-operated ICF/MR facilities on April 30, 2000, of one hundred sixty dollars and twenty-three cents ($160.23). This increase shall only be used for increases for salaries and fringe benefits for direct care staff and their immediate supervisors.

I. State FY-2007 trend factor. All nonstate-operated ICF/MR facilities shall be granted an increase of seven percent (7%) to their per diem rates effective for dates of service billed for State Fiscal Year 2007 and thereafter. This adjustment is equal to seven percent (7%) of the per diem rate paid to nonstate-operated ICF/MR facilities on June 30, 2006.

J. State FY-2008 trend factor. Effective for dates of service beginning July 1, 2007, all nonstate-operated ICF/MR facilities shall be granted an increase to their per diem rates of two percent (2%) for the trend factor. This adjustment is equal to two percent (2%) of the per diem rate paid to nonstate-operated ICF/MR facilities on June 30, 2007.

**K. State FY-2009 trend factor. Effective for dates of service beginning July 1, 2008, all nonstate-operated ICF/MR facilities shall be granted an increase to their per diem rates of three percent (3%) for the trend factor. This adjustment is equal to three percent (3%) of the per diem rate paid to nonstate-operated ICF/MR facilities on June 30, 2008.**

*AUTHORITY: section[s 208.153,] 208.159, [and 208.201,] RSMo 2000, **and sections 208.153 and 208.201, RSMo Supp. 2007**. This rule was previously filed as 13 CSR 40-81.083. Original rule filed Aug. 13, 1982, effective Nov. 11, 1982. For intervening history, please consult the **Code of State Regulations**. Emergency amendment filed June 18, 2008, effective July 1, 2008, expires Dec. 28, 2008. A proposed amendment covering this same material is published in this issue of the **Missouri Register**.*

## Title 13—DEPARTMENT OF SOCIAL SERVICES
## Division 70—*[Division of Medical Services]* *MO HealthNet Division*
## Chapter 15—Hospital Program

### EMERGENCY AMENDMENT

**13 CSR 70-15.010 Inpatient Hospital Services Reimbursement Plan; Outpatient Hospital Services Reimbursement Methodology**. The division is adding subparagraphs (3)(B)1.O. and P. and amending subsection (15)(B).

*PURPOSE: This amendment provides for the MO HealthNet share of the Federal Reimbursement Allowance (FRA) assessment cost included in the Direct Medicaid payment to be allocated between a hospital's inpatient and outpatient services. This amendment also clarifies the calculation of the estimated MO HealthNet days to be used in determining the Direct Medicaid payment, and updates the trend indices used for inflating prior fiscal year data to the current state fiscal year.*

*EMERGENCY STATEMENT: The Department of Social Services, MO HealthNet Division, by rule and regulation, must define the reasonable costs, manner, extent, quantity, quality, charges, and fees of medical assistance. The Missouri Partnership Plan between the Centers for Medicare and Medicaid Services (CMS) and the Missouri Department of Social Services (DSS), which establishes a process whereby CMS and DSS determine the permissibility of the funding sources used by Missouri to fund its share of the MO HealthNet program, is based on a state fiscal year. This emergency amendment is necessary to incorporate the methodology on which CMS and DSS reached agreement on April 10, 2008, and that CMS requires for compliance beginning July 1, 2008. This emergency amendment will ensure payment to Missouri hospitals providing health care to approximately eight hundred ninety-six thousand (896,000) Missourians eligible for the MO HealthNet program. This emergency amendment must be implemented on a timely basis because it establishes the calculation of the Direct Medicaid payments for State Fiscal Year (SFY) 2009 in regulation in order to make the Direct Medicaid payments beginning with the first MO HealthNet payroll for SFY 2009 to ensure that quality health care continues to be provided to MO HealthNet participants at hospitals that have relied on MO HealthNet payments to meet those patients' needs. As a result, the MO HealthNet Division finds an immediate danger to public health, safety, and/or welfare and a compelling governmental interest which requires emergency action. The MO HealthNet program has a compelling government interest in providing continued cash flow for inpatient hospital services. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended by the **Missouri** and **United States Constitutions**. The MO HealthNet Division believes this emergency amendment is fair to all interested persons and parties under the circumstances. A proposed amendment covering this same material is published in this issue of the **Missouri Register**. Therefore, the division believes this emergency to be fair to all interested persons and parties under the circumstances. This emergency amendment was filed June 18, 2008, effective July 1, 2008, expires December 28, 2008.*

(3) Per Diem Reimbursement Rate Computation. Each hospital shall receive a Medicaid per diem rate based on the following computation.

(B) Trend Indices (TI). Trend indices are determined based on the four (4)-quarter average DRI Index for DRI-Type Hospital Market Basket as published in *Health Care Costs* by DRI/McGraw-Hill for each State Fiscal Year (SFY) 1995 to 1998. Trend indices starting in SFY 1999 will be determined based on CPI Hospital indexed as published in *Health Care Costs* by DRI/McGraw-Hill for each State Fiscal Year (SFY).

1. The TI are—
   A. SFY 1994—4.6%
   B. SFY 1995—4.45%
   C. SFY 1996—4.575%
   D. SFY 1997—4.05%
   E. SFY 1998—3.1%
   F. SFY 1999—3.8%
   G. SFY 2000—4.0%
   H. SFY 2001—4.6%
   I. SFY 2002—4.8%
   J. SFY 2003—5.0%
   K. SFY 2004—6.2%
   L. SFY 2005—6.7%
   M. SFY 2006—5.7%
   N. SFY 2007—5.9%
   **O. SFY 2008—5.5%**
   **P. SFY 2009—5.5%**

2. The TI for SFY 1996 through SFY 1998 are applied as a full percentage to the OC of the per diem rate and for SFY 1999 the OC of the June 30, 1998 rate shall be trended by 1.2% and for SFY 2000 the OC of the June 30, 1999 rate shall be trended by 2.4%. The OC of the June 30, 2000 rate shall be trended by 1.95% for SFY 2001.

3. The per diem rate shall be reduced as necessary to avoid any negative Direct Medicaid Payments computed in accordance with subsection (15)(B).

(15) Direct Medicaid Payments.

(B) Direct Medicaid payment will be computed as follows:

1. The *[Medicaid]* **MO HealthNet** share of the **inpatient** FRA assessment will be calculated by dividing the hospital's **inpatient** Medicaid patient days by **the** total **inpatient** hospital*['s]* patient days **from the hospital's base cost report** to arrive at the **inpatient** Medicaid utilization percentage. This percentage is then multiplied by the **inpatient** FRA assessment for the current SFY to arrive at the increased allowable *[Medicaid]* **MO HealthNet** costs*[;]* **for the inpatient FRA assessment. The MO HealthNet share of the outpatient FRA assessment will be calculated by dividing the hospital's outpatient MO HealthNet charges by the total outpatient hospital charges from the base cost report to arrive at the MO HealthNet utilization percentage. This percentage is then multiplied by the outpatient FRA assessment for the current SFY to arrive at the increased allowable MO HealthNet costs for the outpatient FRA assessment.**

2. The unreimbursed *[Medicaid]* **MO HealthNet** costs are determined by subtracting the hospital's per diem rate from its trended per diem costs. The difference is multiplied by the estimated *[Medicaid]* **MO HealthNet** patient days for the current SFY*[.]* **plus the out-of-state days from the fourth prior year cost report trended to the current SFY. The estimated MO HealthNet patient days for the current SFY shall be the better of the sum of the Fee-for-Service (FFS) days plus managed care days or the days used in the prior SFY's Direct Medicaid payment calculation. The FFS days are determined from a regression analysis of the hospital's FFS days from February 1999 through December of the second prior SFY. The managed care days are based on the FFS days determined from the regression analysis, as follows: The FFS days are factored up by the percentage of FFS days to the total of FFS days plus managed care days from the hospital's fourth prior year cost report. The difference between the FFS days and the FFS days factored up by the FFS days' percentage are the managed care days.**

A. The trended cost per day is calculated by trending the base year costs per day by the trend indices listed in paragraph (3)(B)1., using the rate calculation in subsection (3)(A). In addition to the trend indices applied to inflate base period costs to the current fiscal year, base year costs will be further adjusted by a Missouri Specific Trend. The Missouri Specific Trend will be used to address the fact that costs for Missouri inpatient care of *[Medicaid]* **MO HealthNet** residents have historically exceeded the compounded inflation rates estimated using national hospital indices for a significant number of hospitals. The Missouri Specific Trend will be applied at one and one-half percent (1.5%) per year to the hospital's base year. For example, hospitals with a 1998 base year will receive an additional six percent (6%) trend**,** and hospitals with a 1999 base year will receive an additional four and one-half percent (4.5%) trend.

B. For hospitals that meet the requirements in paragraphs (6)(A)1., (6)(A)2.**,** and (6)(A)4. of this rule (safety net hospitals), the base year cost report may be from the third prior year, the fourth prior year, or the fifth prior year. For hospitals that meet the requirements in paragraphs (6)(A)1. and (6)(A)3. of this rule (first tier Disproportionate Share Hospitals), the base year operating costs may be the third or fourth prior year cost report. The *[Division of Medical Services]* **MO HealthNet Division** shall exercise its sole discretion as to which report is most representative of costs. For all other hospitals, the base year operating costs are based on the fourth prior year cost report. For any hospital that has both a twelve (12)-month cost report and a partial year cost report, its base period cost report for that year will be the twelve (12)-month cost report.

C. The trended cost per day does not include the costs associated with the FRA assessment, the application of minimum utilization, the utilization adjustment**,** and the poison control costs computed in paragraphs (15)(B)1., 3., 4., and 5.;

3. The minimum utilization costs for capital and medical education is calculated by determining the difference in the hospital's cost per day when applying the minimum utilization as identified in paragraph (5)(C)4., and without applying the minimum utilization. The difference in the cost per day is multiplied by the estimated *[Medicaid]* **MO HealthNet** patient days for the SFY;

4. The utilization adjustment cost is determined by estimating the number of *[Medicaid]* **MO HealthNet** inpatient days the hospital will not provide as a result of the *[MC+ Health Plans]* **managed care health plans** limiting inpatient hospital services. These days are multiplied by the hospital's cost per day to determine the total cost associated with these days. This cost is divided by the remaining total patient days from its base period cost report to arrive at the increased cost per day. This increased cost per day is multiplied by the estimated *[Medicaid]* **MO HealthNet** days for the current SFY to arrive at the *[Medicaid]* **MO HealthNet** utilization adjustment;

5. The poison control cost shall reimburse the hospital for the prorated *[Medicaid]* **MO HealthNet** managed care cost. It will be calculated by multiplying the estimated *[Medicaid]* **MO HealthNet** share of the poison control costs by the percentage of *[MC+ recipients]* **managed care participants** to total *[Medicaid recipients]* **MO HealthNet participants**; and

6. Prior to July 1, 2006, the costs for including out-of-state Medicaid days is calculated by subtracting the hospital's per diem rate from its trended per diem cost and multiplying this difference by the out-of-state Medicaid days from the base year cost report. Effective July 1, 2006, the costs for including out-of-state Medicaid days is calculated by subtracting the hospital's per diem rate from its trended per diem cost and multiplying this difference by the out-of-state Medicaid days as determined from the regression analysis performed using the out-of-state days from the fourth, fifth, and sixth prior year cost reports.

*AUTHORITY: sections* ***208.152,*** *208.153, [and] 208.201, [RSMo 2000 and 208.152] and 208.471, RSMo Supp. [2006]* ***2007****. This rule was previously filed as 13 CSR 40-81.050. Original rule filed Feb. 13, 1969, effective Feb. 23, 1969. For intervening history please consult the* ***Code of State Regulations****. Emergency amendment filed June 18, 2008, effective July 1, 2008, expires Dec. 28, 2008. A proposed amendment covering this same material is published in this issue of the* ***Missouri Register****.*

## Title 13—DEPARTMENT OF SOCIAL SERVICES
## Division 70—*[Division of Medical Services]* *MO HealthNet Division*
## Chapter 15—Hospital Program

### EMERGENCY AMENDMENT

**13 CSR 70-15.110 Federal Reimbursement Allowance (FRA)**. The division is amending the division title and subsections (1)(A) and (1)(B) and is adding section (16).

*PURPOSE: This amendment will establish the State Fiscal Year (SFY) 2009 Federal Reimbursement Allowance (FRA) assessment at 5.25% of each hospital's inpatient and outpatient adjusted net revenues for the fiscal year beginning July 1, 2008 and ending June 30, 2009. This amendment will also add a definition for FRA, revise the definitions for base year cost report and contractual allowances, clarify the description of FRA in succeeding state fiscal years, clarify the adjusted net revenues used to determine the FRA assessment on a quartile basis, update division title references to MO HealthNet Division, and update reference to the state's medical assistance program to MO HealthNet.*

*EMERGENCY STATEMENT: The Department of Social Services, MO HealthNet Division, finds that this emergency amendment is necessary to preserve a compelling governmental interest of collecting*

*state revenue in order to provide health care to individuals eligible for the MO HealthNet program and for the uninsured. An early effective date is required because the emergency amendment establishes the Federal Reimbursement Allowance (FRA) assessment rates for State Fiscal Year (SFY) 2009 in regulation in order to collect the state revenue, beginning with the first Medicaid payroll for SFY 2009, to ensure access to hospital services for MO HealthNet participants and indigent patients at hospitals that have relied on MO HealthNet payments to meet those patients' needs. The Missouri Partnership Plan between the Centers for Medicare and Medicaid Services (CMS) and the Missouri Department of Social Services (DSS), which establishes a process whereby CMS and DSS determine the permissibility of the funding source used by Missouri to fund its share of the MO HealthNet program, is based on a state fiscal year. This emergency amendment is necessary to incorporate the methodology that CMS and DSS agreed upon on April 10, 2008, and that CMS requires for compliance beginning July 1, 2008. The MO HealthNet Division also finds an immediate danger to public health and welfare which requires emergency actions. If this emergency amendment is not enacted, there would be significant cash flow shortages causing a financial strain on Missouri hospitals which service almost eight hundred ninety-six thousand (896,000) MO HealthNet participants plus the uninsured. This financial strain, in turn, will result in an adverse impact on the health and welfare of MO HealthNet participants and uninsured individuals in need of medical treatment. The FRA raises approximately $821,699,802 annually. This emergency amendment limits its scope to the circumstances creating the emergency and complies with the protections extended by the* ***Missouri*** *and* ***United States Constitutions****. The MO HealthNet Division believes this emergency amendment to be fair to all interested parties under the circumstances. A proposed amendment covering this same material is published in this issue of the* ***Missouri Register****. This emergency amendment was filed June 18, 2008, effective July 1, 2008, expires December 28, 2008.*

(1) Federal Reimbursement Allowance (FRA). FRA shall be assessed as described in this section.

(A) Definitions.

1. Bad debts—Amounts considered to be uncollectible from accounts and notes receivable that were created or acquired in providing services. Allowable bad debts include the costs of caring for patients who have insurance**,** but their insurance does not cover the particular service procedures or treatment rendered.

2. Base cost report—Desk-reviewed Medicare/Medicaid cost report**.** *[for the latest hospital fiscal year ending during the calendar year. (For example, a provider has a cost report for the nine (9) months ending 9/30/95 and a cost report for the three (3) months ending 12/31/95.)]* **When a hospital has more than one (1) cost report with periods ending in the base year, the cost report covering a full twelve (12)-month period will be used. If none of the cost reports covers a full twelve (12) months, the cost report with the latest period will be used.** If a hospital's base cost report is less than or greater than a twelve (12)-month period, the data shall be adjusted, based on the number of months reflected in the base cost report**,** to a twelve (12)-month period.

3. Charity care—Those charges written off by a hospital based on the hospital's policy to provide health care services free of charge or at a reduced charge because of the indigence or medical indigence of the patient.

4. Contractual allowances—Difference between established rates for covered services and the amount paid by third-party payers under contractual agreements. **The Federal Reimbursement Allowance (FRA) is a cost to the hospital, regardless of how the FRA is remitted to the MO HealthNet Division, and shall not be included in contractual allowances for determining revenues. Any redistributions of MO HealthNet payments by private entities acting at the request of participating health care providers shall not be included in contractual allowances or determining revenues or cost of patient care.**

5. Department—Department of Social Services.

6. Director—Director of the Department of Social Services.

7. Division—*[Division of Medical Services]* **MO HealthNet Division**, Department of Social Services.

8. Engaging in the business of providing inpatient health care—Accepting payment for inpatient services rendered.

**9. Federal Reimbursement Allowance (FRA)—The fee assessed to hospitals for the privilege of engaging in the business of providing inpatient health care in Missouri. The FRA is an allowable cost to the hospital.**

*[9.]***10.** Fiscal period—Twelve (12)-month reporting period determined by each hospital.

*[10.]***11.** Gross hospital service charges—Total charges made by the hospital for inpatient and outpatient hospital services that are covered under 13 CSR 70-15.010.

*[11.]***12.** Hospital—A place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment**,** or care for not fewer than twenty-four (24) hours in any week of three (3) or more nonrelated individuals suffering from illness, disease, injury, deformity**,** or other abnormal physical conditions; or a place devoted primarily to provide for not fewer than twenty-four (24) hours in any week, medical or nursing care for three (3) or more nonrelated individuals. The term hospital does not include convalescent, nursing, shelter**,** or boarding homes as defined in Chapter 198, RSMo.

**13. Hospital revenues subject to FRA assessment effective July 1, 2008—Each hospital's inpatient adjusted net revenues and outpatient adjusted net revenues subject to the FRA assessment will be determined as follows:**

**A. Obtain "Gross Total Charges" from Worksheet G-2, Line 25, Column 3, of the most recent cost report that is available for a hospital. Charges shall exclude revenues for physician services. Charges related to activities subject to the Missouri taxes assessed for outpatient retail pharmacies and nursing facility services shall also be excluded. "Gross Total Charges" will be reduced by the following:**

**(I) "Nursing Facility Charges" from Worksheet C, Part I, Line 35, Column 6.**

**(II) "Swing Bed Nursing Facility Charges" from Worksheet G-2, Line 5, Column 1.**

**(III) "Nursing Facility Ancillary Charges" as determined from the Department of Social Services, MO HealthNet Division, nursing home cost report. (Note: To the extent that the gross hospital charges, as specified in subparagraph (1)(A)13.A. above, include long-term care charges, the charges to be excluded through this step shall include all long-term care ancillary charges including skilled nursing facility, nursing facility, and other long-term care providers based at the hospital that are subject to the state's provider tax on nursing facility services.)**

**(IV) "Distinct Part Ambulatory Surgical Center Charges" from Worksheet G2, Line 22, Column 2.**

**(V) "Ambulance Charges" from Worksheet C, Part I, Line 65, Column 7.**

**(VI) "Home Health Charges" from Worksheet G-2, Line 19, Column 2.**

**(VII) "Total Rural Health Clinic Charges" from Worksheet C, Part I, Column 7, Lines 63.50–63.59.**

**(VIII) "Other Non-Hospital Component Charges" from Worksheet G-2, Lines 6, 8, 21, 21.02, 23, and 24.**

**B. Obtain "Net Revenue" from Worksheet G-3, Line 3, Column 1. The state will ensure this amount is net of bad debts and other uncollectible charges by survey methodology.**

**C. "Adjusted Gross Total Charges" (the result of the computations in subparagraph (1)(A)13.A.) will then be further adjusted by a hospital-specific collection-to-charge ratio determined as follows:**

**(I) Divide "Net Revenue" by "Gross Total Charges."**

**(II) "Adjusted Gross Total Charges" will be multiplied by the result of part (1)(A)13.C.(I) to yield "Adjusted Net Revenue."**

**D. Obtain "Gross Inpatient Charges" from Worksheet G-2, Line 25, Column 1, of the most recent cost report that is available for a hospital.**

**E. Obtain "Gross Outpatient Charges" from Worksheet G-2, Line 25, Column 2, of the most recent cost report that is available for a hospital.**

**F. Total "Adjusted Net Revenue" will be allocated between "Net Inpatient Revenue" and "Net Outpatient Revenue" as follows:**

**(I) "Gross Inpatient Charges" will be divided by "Gross Total Charges."**

**(II) "Adjusted Net Revenue" will then be multiplied by the result to yield "Net Inpatient Revenue."**

**(III) The remainder will be allocated to "Net Outpatient Revenue."**

**G. The trend indices listed in 13 CSR 70-15.010(3)(B) and the Missouri Specific Trend defined in 13 CSR 70-15.010 (15)(B)2.A. will be applied to the apportioned inpatient adjusted net revenue and outpatient adjusted net revenue in order to inflate or trend forward the adjusted net revenues from the base cost report fiscal year to the current state fiscal year to determine the inpatient and outpatient adjusted net revenues subject to the FRA assessment.**

*[12.]***14.** Net operating revenue—Gross charges less bad debts, less charity care, and less contractual allowances times the trend indices listed in 13 CSR 70-15.010(3)(B).

*[13.]***15.** Other operating revenues—The other operating revenue is total other revenue less government appropriations, less donations**,** and less income from investments times the trend indices listed in 13 CSR 70-15.010(3)(B).

(B) Each hospital, except public hospitals which are operated primarily for the care and treatment of mental disorders and any hospital operated by the Department of Health **and Senior Services**, engaging in the business of providing inpatient health care in Missouri shall pay an FRA. The FRA shall be calculated by the Department of Social Services.

1. The FRA shall be sixty-three dollars and sixty-three cents ($63.63) per inpatient hospital day from the 1991 base cost report for Federal Fiscal Year 1994. *[The FRA shall be as described in sections (2), (3) and (4) f]***F**or succeeding periods*[.]***, the FRA shall be as described beginning with section (2) and going forward.**

2. If a hospital does not have a **fourth prior year** base cost report, *[total]* **inpatient and outpatient adjusted** net revenues *[less Medicaid net revenues]* shall be estimated as follows:

A. Hospitals required to pay the FRA shall be divided in quartiles based on total beds;

B. Average **inpatient and outpatient adjusted** net revenues *[less Medicaid net revenues]* shall be individually summed and divided by the total beds in the quartile to yield an average **inpatient and outpatient adjusted** net revenue *[less Medicaid net revenue]* per bed; and

C. Finally, the number of beds for the hospital without the base cost report shall be multiplied by the average **inpatient and outpatient adjusted** net revenue *[less Medicaid net revenue]* per bed.

3. The FRA assessment for hospitals that merge operation under one (1) Medicare and *[Medicaid]* **MO HealthNet** provider number shall be determined as follows:

A. The previously determined FRA assessment for each hospital shall be combined under the active *[Medicaid]* **MO HealthNet** provider number for the remainder of the state fiscal year after the division receives official notification of the merger; and

B. The FRA assessment for subsequent fiscal years shall be based on the combined data for both facilities.

**(16) Federal Reimbursement Allowance (FRA) for State Fiscal Year (SFY) 2009. The FRA assessment for SFY 2009 shall be determined at the rate of five and twenty-five hundredths percent (5.25%) of each hospital's inpatient adjusted net revenues and outpatient adjusted net revenues from the hospital's 2006 Medicare/Medicaid cost report. The FRA assessment rate of 5.25% will be applied individually to the hospital's inpatient adjusted net revenues and outpatient adjusted net revenues. The hospital's total FRA assessment for SFY 2009 is the sum of the assessment determined from its inpatient adjusted net revenue plus the assessment determined for its outpatient adjusted net revenue.**

*AUTHORITY: sections 208.201, 208.453, and 208.455, RSMo [2000] **Supp. 2007**. Emergency rule filed Sept. 21, 1992, effective Oct. 1, 1992, expired Jan. 28, 1993. Emergency rule filed Jan. 15, 1993, effective Jan. 25, 1993, expired May 24, 1993. Original rule filed Sept. 21, 1992, effective June 7, 1993. For intervening history, please consult the **Code of State Regulations**. Emergency amendment filed June 18, 2008, effective July 1, 2008, expires Dec. 28, 2008. A proposed amendment covering this same material is published in this issue of the **Missouri Register**.*

## Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
## Division 100—Insurer Conduct
## Chapter 8—Market Conduct Examination

### EMERGENCY AMENDMENT

**20 CSR 100-8.040 Insurer Record Retention**. The director is deleting subsection (3)(F).

*PURPOSE: This amendment eliminates a duplicative and conflicting subsection within a new rule.*

*EMERGENCY STATEMENT: This emergency amendment eliminates a provision that conflicts with another provision in the rule regarding how long claims records need be retained. This emergency amendment is necessary, and the department finds a compelling governmental interest exists to avoid public and industry confusion regarding which record retention standard applies. A proposed amendment, which covers the same material, is published in this issue of the **Missouri Register**. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the **Missouri** and **United States Constitutions**. The department believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed June 23, 2008, effective July 30, 2008, expires February 26, 2009.*

(3) Records to be Maintained. The following records shall be maintained:

(D) The Missouri complaint records required to be maintained under section 375.936(3), RSMo shall include a complaint log or register in addition to the actual written complaints. The complaint log or register shall show clearly the total number of complaints for a period of not less than the immediately preceding three (3) years, the classification of each complaint by line of insurance, the nature of each complaint, and the disposition of each complaint. The complaint log or register shall also contain a reference to the location of the file to which each complaint corresponds. If the insurer maintains the file in a computer format, the reference in the complaint log or register for locating such documentation shall be an identifier such as the policy number or other code. Such codes shall be provided to the examiners at the time of an examination; **and**

(E) The insurer shall retain declined underwriting files for a period of three (3) years from the date of declination. The term "declined underwriting file" shall mean all written or electronic records concerning a policy for which an application for insurance coverage has been completed and submitted to the insurer or its insurance producer but the insurer has made a determination not to issue a policy or not to add additional coverage when requested. A declined underwriting file shall include an application, any documentation substantiating the decision to decline an issuance of a policy, any binder issued without the insurer issuing a policy, any documentation substantiating the decision not to add additional coverage when requested**,** and, if required by law, any declination notification. Notes regarding requests for quotations which do not result in a completed application for coverage need not be maintained for purposes of this regulation*[; and]***.**

*[(F) The insurer shall retain claim files for a period of three (3) years from the date of the claim determination. These files shall contain all notes and work papers pertaining to the claim in such detail that pertinent events and the dates of these events can be reconstructed. Documentary material which is pertinent to the investigation and/or denial of a claim shall be legibly date stamped with the date of receipt whether it is from an insured, his/her agent, a claimant, the department or any other insurer.]*

*AUTHORITY: sections 374.045 and 375.948, RSMo 2000. Original rule filed Nov. 1, 2007, effective July 30, 2008. Emergency amendment filed June 23, 2008, effective July 30, 2008, expires Feb. 26, 2009. A proposed amendment covering this same material is published in this issue of the* ***Missouri Register****.*

## Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
## Division 300—Market Conduct Examinations
## Chapter 1—Sampling and Error Rates

### EMERGENCY RESCISSION

**20 CSR 300-1.100 Unfair Claims Settlement Rates**. This rule effectuated or aided in the interpretation of section 375.1007, RSMo regarding detection of frequency to indicate a business practice.

*PURPOSE: This rule is being rescinded because as of July 30, 2008, the substance of the rule appears in rule 20 CSR 100-8.020 Sampling and Error Rates.*

*EMERGENCY STATEMENT: The substance of this rescission was promulgated in 20 CSR 100-8.020 Sampling and Error Rates. 20 CSR 100-8.020 Sampling and Error Rates is effective beginning July 30, 2008. This emergency rescission is necessary to promote the compelling governmental interest of avoiding public and industry confusion regarding which of the two (2) nearly identical rules applies beginning July 30, 2008. The scope of this emergency rescission is limited to the conditions creating the emergency and complies with the protections extended in the* ***Missouri*** *and* ***United States Constitutions****. The department believes this emergency rescission is fair to all interested persons and parties under the circumstances. This emergency rescission was filed on June 23, 2008, effective July 30, 2008, expires February 26, 2009.*

*AUTHORITY: sections 374.045, RSMo Supp. 1996 and 375.1000–375.1018, RSMo 1994. This rule was previously filed as 4 CSR 190-10.060(1), (8), and (9). Original rule filed Aug. 5, 1974, effective Aug. 15, 1974. For intervening history, please consult the* ***Code of State Regulations****. Emergency rescission filed June 23, 2008, effective July 30, 2008, expires Feb. 26, 2009. A proposed rescission covering this same material is published in this issue of the* ***Missouri Register****.*

## Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
## Division 300—Market Conduct Examinations
## Chapter 1—Sampling and Error Rates

### EMERGENCY RESCISSION

**20 CSR 300-1.200 Fraudulent or Bad Faith Conduct Rules**. This rule set forth acts or practices which may constitute conducting business fraudulently or constitute not carrying out contracts in good faith within the scope of section 375.445, RSMo 1986 and set forth acts which may constitute misrepresentations and false advertising of insurance policies within the scope of section 375.936(6), RSMo 1986. The acts or practices prohibited by this regulation were not intended to be an exhaustive list of acts or practices prohibited by section 375.445 or 375.936(6), RSMo 1986.

*PURPOSE: This rule is being rescinded because as of July 30, 2008, the substance of the rule appears in rule 20 CSR 100-8.020 Sampling and Error Rates.*

*EMERGENCY STATEMENT: The substance of this rescission was promulgated in 20 CSR 100-8.020 Sampling and Error Rates. 20 CSR 100-8.020 Sampling and Error Rates is effective beginning July 30, 2008. This emergency rescission is necessary to promote the compelling governmental interest of avoiding public and industry confusion regarding which of the two (2) nearly identical rules applies beginning July 30, 2008. The scope of this emergency rescission is limited to the conditions creating the emergency and complies with the protections extended in the* ***Missouri*** *and* ***United States Constitutions****. The department believes this emergency rescission is fair to all interested persons and parties under the circumstances. This emergency rescission was filed on June 23, 2008, effective July 30, 2008, expires February 26, 2009.*

*AUTHORITY: section 374.045, RSMo Supp. 1996. This rule was previously filed as 4 CSR 190-10.080. Original rule filed Aug. 4, 1986, effective Jan. 1, 1987. Amended: Filed Oct. 1, 1996, effective June 30, 1997. Emergency rescission filed June 23, 2008, effective July 30, 2008, expires Feb. 26, 2009. A proposed rescission covering this same material is published in this issue of the* ***Missouri Register****.*

## Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
## Division 300—Market Conduct Examinations
## Chapter 2—Record Retention for Market Conduct Examinations

### EMERGENCY RESCISSION

**20 CSR 300-2.100 File and Record Documentation for Claims**. This rule effectuated or aided in the interpretation of section 375.936(10), RSMo regarding retaining claim records.

*PURPOSE: This rule is being rescinded because as of July 30, 2008, the substance of the rule appears in rules 20 CSR 100-8.010 Standards of Examination, 20 CSR 100-8.020 Sampling and Error Rates, and 20 CSR 100-8.040 Insurer Record Retention.*

*EMERGENCY STATEMENT: The substance of this rescission was promulgated in 20 CSR 100-8.010 Standards of Examination, 20 CSR 100-8.020 Sampling and Error Rates, and 20 CSR 100-8.040 Insurer Record Retention. The new rules become effective beginning July 30, 2008. This emergency rescission is necessary to promote the compelling governmental interest of avoiding public and industry confusion regarding which rule applies beginning July 30, 2008. The scope of this emergency rescission is limited to the conditions creating the emergency and complies with the protections extended in the **Missouri** and **United States Constitutions**. The department believes this emergency rescission is fair to all interested persons and parties under the circumstances. This emergency rescission was filed on June 23, 2008, effective July 30, 2008, expires February 26, 2009.*

*AUTHORITY: sections 374.045 and 375.930–375.948, RSMo 1986. This rule was previously filed as 4 CSR 190-10.060(2). Original rule filed Aug. 5, 1974, effective Aug. 15, 1974. For intervening history, please consult the **Code of State Regulations**. Emergency rescission filed June 23, 2008, effective July 30, 2008, expires Feb. 26, 2009. A proposed rescission covering this same material is published in this issue of the **Missouri Register**.*

## Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
## Division 300—Market Conduct Examinations
## Chapter 2—Record Retention for Market Conduct Examinations

### EMERGENCY RESCISSION

**20 CSR 300-2.200 Records Required for Purposes of Market Conduct Examinations**. This regulation described the requirements for record keeping for insurance companies and related entities doing business in this state. This regulation was adopted pursuant to the provisions of section 374.045, RSMo 1986 and to implement sections 287.350, 354.190, 354.465, 374.190, 374.210, 375.158, 379.343, and 379.475, RSMo 1986 and sections 144.027, 354.149, 354.717, 375.022, 375.150, 375.151, 375.926, 375.932, 375.938, 375.1002, and 375.1009, RSMo Supp. 1991.

*PURPOSE: This rule is being rescinded because as of July 30, 2008, the substance of the rule appears in rule 20 CSR 100-8.040 Insurer Record Retention.*

*EMERGENCY STATEMENT: The substance of this rescission was promulgated in 20 CSR 199-8.040 Insurer Record Retention. The new rule becomes effective beginning July 30, 2008. This emergency rescission is necessary to promote the compelling governmental interest of avoiding public and industry confusion regarding which rule applies beginning July 30, 2008. The scope of this emergency rescission is limited to the conditions creating the emergency and complies with the protections extended in the **Missouri** and **United States Constitutions**. The department believes this emergency rescission is fair to all interested persons and parties under the circumstances. This emergency rescission was filed on June 23, 2008, effective July 30, 2008, expires February 26, 2009.*

*AUTHORITY: sections 144.027, 287.350, 354.190, 354.465, 354.717, 374.045, 374.190, 374.202, 374.205, 374.210, 375.013, 375.149, 375.150, 375.151, 375.932, 375.938, 375.948, 375.1002, 375.1009, 375.1018, 379.343, 379.475, and 536.016, RSMo 2000 and 375.012, 375.022, and 375.158, RSMo Supp. 2004. This rule was previously filed as 4 CSR 190-11.050. Original rule filed Dec. 20, 1974, effective Dec. 30, 1974. For intervening history, please consult the **Code of State Regulations**. Emergency rescission filed June 23, 2008, effective July 30, 2008, expires Feb. 26, 2009. A proposed rescission covering this same material is published in this issue of the **Missouri Register**.*

The Secretary of State shall publish all executive orders beginning January 1, 2003, pursuant to section 536.035.2, RSMo Supp. 2007.

## EXECUTIVE ORDER
## 08-21

WHEREAS, I have been advised by the Director of the State Emergency Management Agency that the ongoing and forecast severe storm systems have caused, or have the potential to cause, damages associated with tornados, high winds, hail, flooding, and flash-flooding in communities throughout the state of Missouri; and

WHEREAS, the severe weather that began on June 1, 2008, and is continuing, has created a condition of distress and hazard to the safety, welfare, and property of the citizens of the state of Missouri beyond the capabilities of some local and other established agencies; and

WHEREAS, the Missouri Department of Natural Resources is charged by law with protecting and enhancing the quality of Missouri's environment and with enforcing a variety of environmental rules and regulations; and

WHEREAS, in order to respond to the emergency and expedite the cleanup and recovery process, it is necessary to adjust certain environmental rules and regulations on a temporary and short-term basis.

NOW, THEREFORE, I, MATT BLUNT, GOVERNOR OF THE STATE OF MISSOURI, by virtue of the authority vested in me by Chapter 44, RSMo, do hereby issue the following order:

The Director of the Missouri Department of Natural Resources is vested with full discretionary authority to temporarily waive or suspend the operation of any statutory or administrative rule or regulation currently in place under his purview in order to best serve the interests of the public health and safety during the period of the emergency and the subsequent recovery period.

This order shall terminate on July 11, 2008, unless extended in whole or in part.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 20th day of June, 2008.

**Matt Blunt**
**Governor**

**ATTEST:**

**Robin Carnahan**
**Secretary of State**

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

Entirely new rules are printed without any special symbology under the heading of 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 15—Administrative Hearing Commission
## Chapter 1—Organization and Description

### PROPOSED AMENDMENT

**1 CSR 15-1.201 Organization***[; Presiding Commissioner]*. The commission is amending the title of the rule and section (1) and adding section (2).

*PURPOSE: This amendment will allow the position of managing commissioner.*

**(1) Presiding Commissioner.** The Administrative Hearing Commission shall choose one (1) commissioner to be presiding commissioner by majority vote of the commissioners. The presiding commissioner shall serve a term of one (1) year ending June 30, or until a successor is chosen, whichever is later. The presiding commissioner shall have the managerial and budgetary powers and duties *[as]* **that** the commission assigns *[him/her]* by majority vote of the commissioners.

**(2) Managing Commissioner. The Administrative Hearing Commission may choose one (1) commissioner to be managing commissioner by majority vote of the commissioners. The managing commissioner shall serve a term of one (1) year ending December 31, or until a successor is chosen, whichever is later. The managing commissioner shall have the powers and duties that the presiding commissioner assigns.**

*AUTHORITY: sections **536.023.3 and** 621.198, RSMo [1986] **Supp. 2007**. Original rule filed Aug. 5, 1991, effective Feb. 6, 1992. Amended: Filed July 2, 2008.*

*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: A public hearing is scheduled for 8:30 a.m. on September 3, 2008, at the Administrative Hearing Commission's official residence—Room 640, Harry S Truman State Office Building, 301 West High Street, Jefferson City, Missouri. Anyone may file a statement in support of or in opposition to this proposed amendment with the Administrative Hearing Commission, John J. Kopp, Presiding Commissioner, PO Box 1557, Jefferson City, MO 65102. To be considered, comments must be received no later than 5:00 p.m. on September 2, 2008.*

## Title 1—OFFICE OF ADMINISTRATION
## Division 15—Administrative Hearing Commission
## Chapter 1—Organization and Description

### PROPOSED AMENDMENT

**1 CSR 15-1.207 Information, Submissions or Requests**. The commission is amending section (2).

*PURPOSE: This amendment will inform the public to file Sunshine Law requests with the managing commissioner.*

(2) Any person seeking access to records under Chapter 610, RSMo, also known as the Sunshine Law or Open Records Law, shall proceed as indicated in section (1) of this rule and direct the request to the commission's *[staff director]* **managing commissioner**.

*AUTHORITY: sections **536.023.3 and** 621.198, RSMo [1986] **Supp. 2007**. Original rule filed Aug. 5, 1991, effective Feb. 6, 1992. Amended: Filed July 2, 2008.*

*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: A public hearing is scheduled for 8:30 a.m. on September 3, 2008, at the Administrative Hearing Commission's official residence—Room 640, Harry S Truman State Office Building, 301 West*

*High Street, Jefferson City, Missouri. Anyone may file a statement in support of or in opposition to this proposed amendment with the Administrative Hearing Commission, John J. Kopp, Presiding Commissioner, PO Box 1557, Jefferson City, MO 65102. To be considered, comments must be received no later than 5:00 p.m. on September 2, 2008.*

### Title 1—OFFICE OF ADMINISTRATION
### Division 15—Administrative Hearing Commission
### Chapter 3—Procedure For All Contested Cases Under Statutory Jurisdiction

### PROPOSED AMENDMENT

**1 CSR 15-3.320** *[Stays or Suspensions of Any Action from which Petitioner Is Appealing]* ***Stay of Action under Review***. The commission is amending the title of the rule and sections (3), (4), and (7) and adding a new section (8).

*PURPOSE: This amendment clarifies the limits on the commission's power to stay or suspend an action that is subject to its review.*

(3) Specific Cases.

(C) Franchise Cases under Sections 407.822.1 and 407.1031.1, RSMo. The commission's notice of hearing shall contain a stay of the action from which the petitioner seeks relief. **The stay shall dissolve only as set forth in section (7) and not section (8) of this rule.**

(4) The commission, upon either party's request, shall hold or, on its own initiative, may hold an evidentiary hearing on whether to issue *[or dissolve]* a stay order, except as provided in subsections (3)(B) **and (3)(C)** of this rule.

(7) The commission's stay order shall remain effective until the commission finally disposes of the case unless the commission orders otherwise. **The commission shall not order otherwise as to a case under subsection (3)(C) of this rule.**

**(8) The commission, upon either party's request, shall hold or, on its own initiative, may hold an evidentiary hearing on whether to dissolve a stay order, except as provided in subsection (3)(C) of this rule.**

*AUTHORITY: section* ***621.035, RSMo 2000 and section*** *621.198, RSMo Supp. [2002]* ***2007****. Original rule filed Aug. 5, 1991, effective Feb. 6, 1992. Amended: Filed Jan. 11, 2001, effective July 30, 2001. Amended: Filed June 3, 2002, effective Nov. 30, 2002. Amended: Filed June 16, 2003, effective Nov. 30, 2003. Amended: Filed July 2, 2008.*

*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: A public hearing is scheduled for 8:30 a.m. on September 3, 2008, at the Administrative Hearing Commission's official residence—Room 640, Harry S Truman State Office Building, 301 West High Street, Jefferson City, Missouri. Anyone may file a statement in support of or in opposition to this proposed amendment with the Administrative Hearing Commission, John J. Kopp, Presiding Commissioner, PO Box 1557, Jefferson City, MO 65102. To be considered, comments must be received no later than 5:00 p.m. on September 2, 2008.*

### Title 1—OFFICE OF ADMINISTRATION
### Division 15—Administrative Hearing Commission
### Chapter 3—Procedure for All Contested Cases Under Statutory Jurisdiction

### PROPOSED AMENDMENT

**1 CSR 15-3.350 Complaints**. The commission is amending subsection (2)(D).

*PURPOSE: This amendment maintains the filing fee authorized under section 621.053, RSMo Supp. 2007.*

(2) Specific Cases. In addition to the other requirements of this rule—

(D) In a case arising pursuant to Chapter 407, RSMo, including cases relating to the protest of an action taken by a motor vehicle, motorcycle**,** or all-terrain vehicle manufacturer, distributor**,** or representative pursuant to a franchise agreement, the petition shall include a filing fee *[equal to the filing fee of the circuit court of Cole County. The provisions of this subsection (2)(D) of this regulation shall expire on January 1, 2009]* **in the amount of one hundred five dollars ($105)**.

*AUTHORITY: section[s] 621.035, RSMo 2000 and* ***sections*** *621.053 and 621.198, RSMo Supp. [2006]* ***2007****. Original rule filed Aug. 5, 1991, effective Feb. 6, 1992. For intervening history, please consult the* ***Code of State Regulations****. Amended: Filed July 2, 2008.*

*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 one thousand two hundred sixty dollars ($1,260) per year over the life of the rule.*

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing is scheduled for 8:30 a.m. on September 3, 2008, at the Administrative Hearing Commission's official residence—Room 640, Harry S Truman State Office Building, 301 West High Street, Jefferson City, Missouri. Anyone may file a statement in support of or in opposition to this proposed amendment with the Administrative Hearing Commission, John J. Kopp, Presiding Commissioner, PO Box 1557, Jefferson City, MO 65102. To be considered, comments must be received no later than 5:00 p.m. on September 2, 2008.*

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

**I. Department Title:** Office of Administration
**Division Title:** Administrative Hearing Commission
**Chapter Title:** Procedure for All Contested Cases under Statutory Jurisdiction

| | |
|---|---|
| **Rule Number and Title:** | 1 CSR 15-3.350, Complaints |
| **Type of Rulemaking:** | Proposed Amendment |

## II. SUMMARY OF FISCAL IMPACT

| **Estimate of the number of entities by class which would likely be affected by the adoption of the rule:** | **Classification by types of the business entities which would likely be affected:** | **Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:** |
|---|---|---|
| Ten/year | Vehicle Franchisees | $1,050/year |
| Two/year | Tobacco Sellers and Distributors | $ 210/year |

## III. WORKSHEET

| Persons paying filing fee | | x | filing fee amount | = fiscal impact |
|---|---|---|---|---|
| Vehicle Franchisees | 10 | | | |
| + Tobacco Sellers and Distributors | 2 | | | |
| Total | 12 | x | $105 | = $1,260/year |

## IV. ASSUMPTIONS

In 2001, the General Assembly authorized the Administrative Hearing Commission (AHC) to set, by rule, a filing fee equal to the filing fee of the circuit court of Cole County for cases arising pursuant to chapter 407, RSMo. Section 621.053, RSMo Supp. 2007. Two types of cases arise pursuant to chapter 407, RSMo.

The first type is an appeal by a motor vehicle, motorcycle, or all-terrain vehicle franchisee who is the subject of certain actions by a franchisor. Since 2001, the AHC has not received more than four such cases in any six-month period. This fiscal note generously assumes ten cases per year over the life of the rule. The filing fee of the circuit court of Cole County is $105. At that rate, ten cases will cost all entities filing such cases $1,050/year in the aggregate over the life of the rule.

The second type is an appeal by persons adversely affected by a decision under section 407.931, related to unlawful practices in the provision of tobacco. The AHC has had two such cases per year for the last two years. This fiscal note generously assumes two cases/year, and therefore projects $210/year fiscal impact to such entities in the aggregate over the life of the rule.

## Title 1—OFFICE OF ADMINISTRATION
## Division 15—Administrative Hearing Commission
## Chapter 3—Procedure For All Contested Cases Under Statutory Jurisdiction

### PROPOSED AMENDMENT

**1 CSR 15-3.380 Answers and Other Responsive Pleadings**. The commission is amending section (5).

*PURPOSE: This amendment clarifies the timing for filing a responsive pleading to an amended complaint.*

(5) The respondent shall file an answer to an amended complaint within **the latest of:**

**(A)** *[t]***T**en (10) days after service of the amended complaint**;** or

**(B)** *[within t]***T**he time remaining for filing answer to the original complaint*[, whichever is longer, unless the commission orders otherwise.]*; **or**

**(C) Ten (10) days after the date of an order granting leave to file the amended complaint.**

*AUTHORITY: section[s] 621.035, RSMo 2000 and **section** 621.198, RSMo Supp. [2004] **2007**. Original rule filed Aug. 5, 1991, effective Feb. 6, 1992. For intervening history, please consult the **Code of State Regulations**. Amended: Filed July 2, 2008.*

*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: A public hearing is scheduled for 8:30 a.m. on September 3, 2008, at the Administrative Hearing Commission's official residence—Room 640, Harry S Truman State Office Building, 301 West High Street, Jefferson City, Missouri. Anyone may file a statement in support of or in opposition to this proposed amendment with the Administrative Hearing Commission, John J. Kopp, Presiding Commissioner, PO Box 1557, Jefferson City, MO 65102. To be considered, comments must be received no later than 5:00 p.m. on September 2, 2008.*

## Title 1—OFFICE OF ADMINISTRATION
## Division 15—Administrative Hearing Commission
## Chapter 3—Procedure For All Contested Cases Under Statutory Jurisdiction

### PROPOSED AMENDMENT

**1 CSR 15-3.390 Intervention**. The commission is adding section (3).

*PURPOSE: This amendment provides an answer to an intervenor-petitioner's pleading.*

**(3) When the commission grants a motion to intervene as petitioner, a responsive pleading to the complaint shall be due, and shall be otherwise governed, as set forth in rule 1 CSR 15-3.380.**

*AUTHORITY: section[s] 621.035, RSMo 2000 and **section** 621.198, RSMo Supp. [2005] **2007**. Original rule filed Aug. 5, 1991, effective Feb. 6, 1992. Amended: Filed June 3, 2002, effective Nov. 30, 2002. Amended: **Filed** May 30, 2006, effective Nov. 30, 2006. Amended: Filed July 2, 2008.*

*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: A public hearing is scheduled for 8:30 a.m. on September 3, 2008, at the Administrative Hearing Commission's official residence—Room 640, Harry S Truman State Office Building, 301 West High Street, Jefferson City, Missouri. Anyone may file a statement in support of or in opposition to this proposed amendment with the Administrative Hearing Commission, John J. Kopp, Presiding Commissioner, PO Box 1557, Jefferson City, MO 65102. To be considered, comments must be received no later than 5:00 p.m. on September 2, 2008.*

## Title 1—OFFICE OF ADMINISTRATION
## Division 15—Administrative Hearing Commission
## Chapter 3—Procedure for All Contested Cases Under Statutory Jurisdiction

### PROPOSED RULE

**1 CSR 15-3.431 Voluntary Dismissal, Settlement, and Consent Orders**

*PURPOSE: This rule sets out the procedures for disposing of a case without a decision by the commission, including a motion to dismiss, settlement agreement, agreed settlement, and consent order.*

(1) Voluntary Dismissal. Petitioner may voluntarily dismiss the complaint by filing a notice of dismissal stating that petitioner dismisses the complaint. A notice of dismissal dismisses the complaint and is effective as of the date on which petitioner files it, without any action by the commission. Petitioner may dismiss the complaint without prejudice, subject to statutory time limits for refiling—

(A) Before the filing of a motion for decision without hearing under 1 CSR 15-3.446 or the introduction of evidence at the hearing, whichever is earlier, without the commission's leave; or

(B) After the filing of a motion for decision without hearing under 1 CSR 15-3.446 or the introduction of evidence at the hearing, whichever is earlier, only with leave of the commission or with written consent of respondent. The commission shall grant leave freely when justice so requires.

(2) Settlement. Settlement means the parties' agreed resolution of any issue in the complaint including a contested case under section 621.045, RSMo. The parties may settle all or any part of the complaint without any action by the commission, where such settlement is permitted by law. If the parties' settlement disposes of the entire complaint—

(A) Petitioner may file a notice of dismissal under section (1) of this rule; or

(B) The parties may jointly file a motion for consent order under section (3) of this rule; or

(C) Respondent may file a motion for involuntary dismissal under rule 1 CSR 15-3.436.

(3) Consent Orders.

(A) Generally. A consent order is the commission's dismissal, or recommended dismissal, and memorialization that all parties have agreed to dispose of the case without the commission's decision or recommended decision, except in cases under section 620.149, RSMo or contested cases under section 621.045, RSMo.

(B) Cases Under Section 620.149, RSMo and Contested Cases Under Section 621.045, RSMo. A consent order in a case under section 620.149, RSMo or a contested case under section 621.045, RSMo requires a decision by the commission. A motion for consent order in such a case is subject to rule 1 CSR 15-3.446.

*AUTHORITY: sections 536.073.3 and 621.035, RSMo 2000 and section 621.198, RSMo Supp. 2007. Original rule filed July 2, 2008.*

*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 OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing is scheduled for 8:30 a.m. on September 3, 2008, at the Administrative Hearing Commission's official residence—Room 640, Harry S Truman State Office Building, 301 West High Street, Jefferson City, Missouri. Anyone may file a statement in support of or in opposition to this proposed rule with the Administrative Hearing Commission, John J. Kopp, Presiding Commissioner, PO Box 1557, Jefferson City, MO 65102. To be considered, comments must be received no later than 5:00 p.m. on September 2, 2008.*

## Title 1—OFFICE OF ADMINISTRATION
## Division 15—Administrative Hearing Commission
## Chapter 3—Procedure for All Contested Cases Under Statutory Jurisdiction

## PROPOSED RULE

### 1 CSR 15-3.436 Involuntary Dismissal

*PURPOSE: This rule provides for motions to dismiss by someone other than petitioner.*

(1) Involuntary dismissal means a disposition, or recommended disposition, against petitioner that does not reach the merits of the complaint. The commission may order involuntary dismissal on its own motion. Grounds for involuntary dismissal include:

(A) Lack of jurisdiction;

(B) Mootness; and

(C) Grounds for a sanction as set forth in rule 1 CSR 15-3.425.

(2) Respondent may file a motion for involuntary dismissal on all or any part of the complaint except that, unless the commission grants leave otherwise, respondent shall not file a motion for involuntary dismissal—

(A) In any case in which any legal authority, other than the commission, sets any maximum time for conducting a hearing on the merits of the complaint; and

(B) In any case less than forty-five (45) days before the hearing.

(3) The commission may grant a motion for involuntary dismissal based on a preponderance of admissible evidence. Admissible evidence includes an allegation in the complaint, stipulation, discovery response of the petitioner, affidavit, or other evidence admissible under the law. In response to a motion for involuntary dismissal, petitioner shall not rely solely on the allegations in the complaint unless the motion relies solely on the allegations in the complaint.

(4) If a motion for involuntary dismissal relies on matters other than allegations in the complaint and stipulations, the commission shall either—

(A) Treat the motion for involuntary dismissal as a motion for summary decision under rule 1 CSR 15-3.446; or

(B) Convene an evidentiary hearing on the motion.

(5) On any motion under this rule, the commission may allow such written argument as it deems helpful and may rule on the motion without oral argument.

*AUTHORITY: sections 536.073.3 and 621.035, RSMo 2000 and section 621.198, RSMo Supp. 2007. Original rule filed July 2, 2008.*

*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 OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing is scheduled for 8:30 a.m. on September 3, 2008, at the Administrative Hearing Commission's official residence—Room 640, Harry S Truman State Office Building, 301 West High Street, Jefferson City, Missouri. Anyone may file a statement in support of or in opposition to this proposed rule with the Administrative Hearing Commission, John J. Kopp, Presiding Commissioner, PO Box 1557, Jefferson City, MO 65102. To be considered, comments must be received no later than 5:00 p.m. on September 2, 2008.*

## Title 1—OFFICE OF ADMINISTRATION
## Division 15—Administrative Hearing Commission
## Chapter 3—Procedure for All Contested Cases Under Statutory Jurisdiction

## PROPOSED RESCISSION

**1 CSR 15-3.440 Disposing of a Case Without a Hearing on the Complaint**. This rule provided for disposition by agreed settlement, stipulation, and consent order; motion to dismiss; relief in the nature of judgment on the pleadings and summary judgment as required by section 536.073.3, RSMo 2000; and other procedures.

*PURPOSE: The commission is rescinding this rule because the commission is replacing it with new rules that will simplify procedures for disposition or recommended disposition of cases by agreed settlement, stipulation, consent order, motion to dismiss, and relief in the nature of judgment on the pleadings and summary judgment as required by statute.*

*AUTHORITY: section 536.073, RSMo 2000 and section 621.198, RSMo Supp. 2003. Original rule filed June 3, 2002, effective Nov. 30, 2002. Amended: Filed June 1, 2004, effective Nov. 30, 2004. Rescinded: Filed July 2, 2008.*

*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 OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing is scheduled for 8:30 a.m. on September 3, 2008, at the Administrative Hearing Commission's official residence—Room 640, Harry S Truman State Office Building, 301 West High Street, Jefferson City, Missouri. Anyone may file a statement in support of or in opposition to this proposed rescission with the*

*Administrative Hearing Commission, John J. Kopp, Presiding Commissioner, PO Box 1557, Jefferson City, MO 65102. To be considered, comments must be received no later than 5:00 p.m. on September 2, 2008.*

## Title 1—OFFICE OF ADMINISTRATION
## Division 15—Administrative Hearing Commission
## Chapter 3—Procedure for All Contested Cases Under Statutory Jurisdiction

### PROPOSED RULE

**1 CSR 15-3.446 Decision on the Complaint without a Hearing**

*PURPOSE: This rule provides for disposition by stipulation, consent order, and relief in the nature of judgment on the pleadings and relief in the nature of summary and other procedures.*

(1) Generally. Decision without hearing means a disposition, or recommended disposition, of the complaint on the merits. It includes a decision on the pleadings, summary decision, and consent order in cases under section 621.045, RSMo. The commission may grant a motion for decision without hearing in favor of any party, including a party who did not file the motion. On any motion under this rule, the commission may allow such written argument as it deems helpful and may rule on the motion without oral argument.

(2) Any party may file a motion for a decision without hearing on all or any part of the complaint except that, unless the commission grants leave otherwise, no party shall file a motion for decision without hearing—

(A) In any case in which any legal authority, other than the commission, sets any maximum time for conducting a hearing on the merits of the complaint.

(B) In any case, less than forty-five (45) days before the hearing.

(3) Decision on the Pleadings. A decision on the pleadings is a decision without hearing based solely on the complaint and the answer. The commission may grant a motion for decision on the pleadings if a party's pleading, taken as true, entitles another party to a favorable decision. Petitioner shall not file a motion for decision on the pleadings before the time for filing a responsive pleading has expired, except with the consent of all other parties.

(4) Consent Orders in Cases Under Section 620.149, RSMo and Contested Cases Under Section 621.045, RSMo. A motion for a consent order shall contain stipulated facts necessary to support the relief sought under the cited legal authority. Parties seeking a consent order under this section shall jointly file a motion that includes substantially the following language:

> The parties stipulate that (*party*) committed the following conduct:
> (*Conduct*).
>
> (*Party*) admits that such conduct is cause for (*the relief sought*) under the following legal authority:
>
> (*Legal Authority*).
>
> Therefore, the parties agree to (*the relief sought*).

(5) Summary Decision. Summary decision is a motion for decision without hearing that relies on matters outside the pleadings and is not filed jointly by all parties.

(A) The commission may grant a motion for summary decision if a party establishes facts that entitle any party to a favorable decision and no party genuinely disputes such facts.

(B) Parties may establish a fact, or raise a dispute as to such facts, by admissible evidence. Admissible evidence includes a stipulation, pleading of the adverse party, discovery response of the adverse party, affidavit, or other evidence admissible under the law. A party shall not rely solely on its own pleading to establish any fact, or to raise a genuine issue as to any fact. A party may meet the requirements for the content of a motion, or for a response to a motion, under section (5) of this rule by complying with Missouri Supreme Court Rule of Civil Procedure 74.04.

(C) Petitioner shall not file a motion for summary decision before the time for filing a responsive pleading has expired, except with the consent of all other parties.

*AUTHORITY: sections 536.073.3 and 621.035, RSMo 2000 and section 621.198, RSMo Supp. 2007. Original rule filed July 2, 2008.*

*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 OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing is scheduled for 8:30 a.m. on September 3, 2008, at the Administrative Hearing Commission's official residence—Room 640, Harry S Truman State Office Building, 301 West High Street, Jefferson City, Missouri. Anyone may file a statement in support of or in opposition to this proposed rule with the Administrative Hearing Commission, John J. Kopp, Presiding Commissioner, PO Box 1557, Jefferson City, MO 65102. To be considered, comments must be received no later than 5:00 p.m. on September 2, 2008.*

## Title 1—OFFICE OF ADMINISTRATION
## Division 15—Administrative Hearing Commission
## Chapter 3—Procedure For All Contested Cases Under Statutory Jurisdiction

### PROPOSED AMENDMENT

**1 CSR 15-3.490 Hearings on Complaints; Default**. The commission is amending section (4) of this rule.

*PURPOSE: The commission is amending this rule to clarify its language.*

(4) Expedited Hearings and Continuances. The commission may expedite or continue the hearing date upon notice to the parties except as otherwise provided by law. Any party may file a motion for an expedited hearing or a continuance. The motion shall:

(C) State whether any party objects to the *[extension]* **motion** or that efforts to contact the parties have been futile.

*AUTHORITY: sections **536.073.3 and** 621.035, RSMo 2000 and **section** 621.198, RSMo Supp. [2004] **2007**. Original rule filed Aug. 5, 1991, effective Feb. 6, 1992. For intervening history, please consult the **Code of State Regulations**. Amended: Filed July 2, 2008.*

*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: A public hearing is scheduled for 8:30 a.m. on September 3, 2008, at the Administrative Hearing Commission's official residence—Room 640, Harry S Truman State Office Building, 301 West High Street, Jefferson City, Missouri. Anyone may file a statement in support of or in opposition to this proposed amendment with the Administrative Hearing Commission, John J. Kopp, Presiding Commissioner, PO Box 1557, Jefferson City, MO 65102. To be considered, comments must be received no later than 5:00 p.m. on September 2, 2008.*

## Title 2—DEPARTMENT OF AGRICULTURE
## Division 30—Animal Health
## Chapter 10—Food Safety and Meat Inspection

### PROPOSED AMENDMENT

**2 CSR 30-10.010 Inspection of Meat and Poultry**. The director of agriculture is amending section (2).

*PURPOSE: This amendment updates the addition of the **Code of Federal Regulations** that is incorporated as reference in this section.*

(2) The standards used to inspect Missouri meat and poultry slaughter and processing shall be those shown in Part 300 to end of Title 9, the *Code of Federal Regulations* (January **1,** *[2007]* **2008**, herein incorporated by reference and made a part of this rule as published by the United States Superintendent of Documents, 732 N Capitol Street NW, Washington, DC 20402-0001, phone: toll-free (866) 512-1800; DC area (202) 512-1800, *[email]* **website** http://bookstore.gpo.gov. This rule does not incorporate any subsequent amendments or additions.

*AUTHORITY: section 265.020, RSMo 2000. Original rule filed Sept. 14, 2000, effective March 30, 2001. Amended: Filed Nov. 10, 2004, effective May 30, 2005. Amended: Filed Feb. 6, 2006, effective Aug. 30, 2006. Amended: Filed March 1, 2007, effective Sept. 30, 2007. Amended: Filed June 27, 2008.*

*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 not cost private entities more than five hundred ($500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Agriculture, Taylor H. Woods, D.V.M., Acting State Veterinarian, PO Box 630, Jefferson City, MO 65102, by facsimile at (573) 751-6919 or via email at Taylor.Woods@mda.mo.gov. Comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

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

### PROPOSED AMENDMENT

**4 CSR 240-20.065 Net Metering**. The commission is amending the purpose, sections (1)–(4), deleting sections (5) and (8), adding a new section (5), and amending and renumbering sections (6) and (7).

*PURPOSE: This amendment is proposed to implement changes in federal and state law and update certain references to apply to current editions.*

*PURPOSE: This rule implements the [Consumer Clean Energy Act] **Net Metering and Easy Connection Act** (section [386.887] **386.890**, RSMo Supp. [2002] **2007**) and establishes standards for interconnection of qualified net metering units (generating capacity of one hundred kilowatts (100 kW) or less) with [retail] **distribution systems of** electric [power suppliers] **utilities**.*

(1) Definitions.

**(A) Avoided fuel cost means the current annual average cost of fuel for the electric utility as calculated from information contained in the most recent annual report submitted to the commission pursuant to 4 CSR 240-3.165. Annual average cost of fuel will be calculated from information on the Steam-Electric Generating Plant Statistics Sheets of the annual report. This annual average cost of fuel shall be identified in the net metering tariffs on file with the commission and shall be updated annually within thirty (30) days after the electric utility's annual report is submitted.**

*[(A)]***(B)** Commission means the Public Service Commission of the state of Missouri.

*[(B)]***(C)** Customer-generator means *[a consumer of electric energy who purchases electric energy from a retail electric power supplier and is the owner of a qualified net metering unit]* **the owner or operator of a qualified electric energy generation unit that meets all of the following criteria**:

**1. Is powered by a renewable energy resource;**

**2. Is an electrical generating system with a capacity of not more than one hundred kilowatts (100 kW);**

**3. Is located on premises that are owned, operated, leased, or otherwise controlled by the customer-generator;**

**4. Is interconnected and operates in parallel phase and synchronization with an electric utility and has been approved for interconnection by said electric utility;**

**5. Is intended primarily to offset part or all of the customer-generator's own electrical energy requirements;**

**6. Meets all applicable safety, performance, interconnection, and reliability standards established by the National Electrical Code, the National Electrical Safety Code, the Institute of Electrical and Electronics Engineers, Underwriters Laboratories, the Federal Energy Regulatory Commission, and any local governing authorities; and**

**7. Contains a mechanism that automatically disables the unit and interrupts the flow of electricity back onto the electric utility's electrical lines in the event that service to the customer-generator is interrupted.**

*[(C)]***(D)** *[Local d]***D**istribution system means facilities for the distribution of electric energy to the ultimate consumer thereof.

*[(D) Qualified net metering unit means an electric generation unit which—*

*1. Is owned by a customer-generator;*

*2. Is a hydrogen fuel cell or is powered by sun, wind or biomass;*

*3. Has an electrical generating system with a capacity of not more than one hundred kilowatts (100 kW);*

*4. Is located on premises that are owned, operated, leased or otherwise controlled by the customer-generator;*

*5. Is interconnected with, and operates in parallel and in synchronization with a retail electric power supplier; and*

*6. Is intended primarily to offset part or all of the customer-generator's own electric power requirements.*

*(E) Retail electric power supplier means any entity that sells electric energy to the ultimate consumer thereof.*

*(F) Value of electric energy means the total resulting from the application of the appropriate rates, which may be time-of-use rates at the option of the retail electric power supplier, to the quantity of electric energy delivered to the retail electric power supplier from a qualified net metering unit or to the quantity of electric energy sold to a customer-generator.]*

**(E) Electric utility means every electrical corporation as defined in section 386.020(15), RSMo 2000, subject to commission regulation pursuant to Chapter 393, RSMo 2000.**

**(F) Net metering means using metering equipment sufficient to measure the difference between the electrical energy supplied to a customer-generator by an electric utility and the electrical energy supplied by the customer-generator to the electric utility over the applicable billing period.**

**(G) Renewable energy resources means electrical energy produced from wind, solar thermal sources, hydroelectric sources, photovoltaic cells and panels, fuel cells using hydrogen produced by one (1) of the above-named electrical energy sources, and other sources of energy that become available after August 28, 2007, and are certified as renewable by the Missouri Department of Natural Resources.**

(2) Applicability.

*[(A)]* This rule applies to *[retail]* electric *[power suppliers]* **utilities** and customer-generators.

(3) *[Retail]* Electric *[Power Supplier]* **Utility** Obligations.

*[(A) Each retail electric power supplier shall develop a tariff or rate schedule applicable to net metering customer-generators that shall—*

*1. Be made available to qualifying customer- generators upon request; and*

*2. Shall be posted with any other tariffs or rate schedules on the retail electric power supplier's website.*

*(B) Each retail electric power supplier shall provide net metering service on a first-come, first-served basis, until the total rated generating capacity used by customer-generators is equal to or in excess of the lesser of ten thousand kilowatts (10,000 kW) or one-tenth of one percent (0.1%) of the capacity necessary to meet the retail electric power supplier's aggregate customer peak demand for the preceding calendar year.*

*(C) Each retail electric power supplier shall notify the commission when total generating capacity of customer-generators is equal to or in excess of the lesser of ten thousand kilowatts (10,000 kW) or one-tenth of one percent (0.1%) of the capacity necessary to meet the retail electric power supplier's aggregate customer peak demand for the preceding calendar year.*

*(D) Each retail electric power supplier shall maintain and make available to the public, records of the total generating capacity of customer-generators, the type of generating systems and the energy sources used.*

*(E) The retail electric power supplier's tariff, tariff rider, or rate schedule used to provide service to the customer-generator shall be identical in rate structure, all retail rate components, and any monthly charges, to the tariff or rate schedule provisions to which the same customer would be assigned if that customer were not a customer-generator.*

*1. Time-of-use rates, which may be applied at the option of the retail electric power supplier, shall be the time-of-use rates applicable to the customer-generator's assigned rate classification, absent the output of the net metering unit.*

*(F) No retail electric power supplier's tariff or rate schedule for net metering shall require customer-generators to—*

*1. Perform or pay for additional tests or analysis beyond those required to determine the effect of the operation of the net metering system on the local distribution system; or*

*2. Purchase additional liability insurance beyond that required by section (4) of this rule.]*

**(A) Net metering shall be available to customer-generators on a first-come, first-served basis until the total rated generating capacity of net metering systems equals five percent (5%) of the electric utility's Missouri jurisdictional single-hour peak load during the previous year. The commission may increase the total rated generating capacity of net metering systems to an amount above five percent (5%). However, in a given calendar year, no electric utility shall be required to approve any application for interconnection if the total rated generating capacity of all applications for interconnection already approved to date by said electric utility in said calendar year equals or exceeds one percent (1%) of said electric utility's single-hour peak load for the previous calendar year.**

**(B) A tariff or contract shall be offered that is identical in electrical energy rates, rate structure, and monthly charges to the contract or tariff that the customer would be assigned if the customer were not an eligible customer-generator but shall not charge the customer-generator any additional standby, capacity, interconnection, or other fee or charge that would not otherwise be charged if the customer were not an eligible customer-generator.**

**(C) The availability of the net metering program shall be disclosed annually to each of its customers with the method and manner of disclosure being at the discretion of the electric utility.**

**(D) For any cause of action relating to any damages to property or person caused by the generation unit of a customer-generator or the interconnection thereof, the electric utility shall have no liability absent clear and convincing evidence of fault on the part of the supplier.**

**(E) Any costs incurred under this rule by an electric utility not recovered directly from the customer-generator, as identified in (5)(F), shall be recoverable in that electric utility's rate structure.**

**(F) No fee, charge, or other requirement not specifically identified in this rule shall be imposed unless the fee, charge, or other requirement would apply to similarly situated customers who are not customer-generators.**

(4) Customer-Generator Liability Insurance Obligation.

(A) *[The c]***C**ustomer-generator **systems greater than ten kilowatts (10kW)** shall carry no less than one hundred thousand dollars ($100,000) of liability insurance that provides for coverage of all risk of liability for personal injuries (including death) and damage to property arising out of or caused by the operation of the net metering unit. Insurance may be in the form of an existing policy or an endorsement on an existing policy.

**(B) Customer-generator systems ten kilowatts (10kW) or less shall not be required to carry liability insurance.**

*[(5) Determination of Net Value of Energy.*

*(A) Each retail electric power supplier shall calculate the net value of energy for a customer-generator in the following manner—*

*1. The retail electric power supplier shall individually measure both—*

*A. The electric energy delivered by the customer-generator to the retail electric power supplier; and*

*B. The electric energy provided by the retail electric power supplier to the customer-generator during each billing period by using metering capable of such function—either by a single meter capable of registering the flow of electricity in two (2) directions, or by using two (2) meters. The customer-generator is responsible for the costs of the metering described in this subsection beyond those a retail electric*

*power supplier would incur in providing electric service to a customer in the same rate class as the customer-generator but who is not a customer-generator.*

*2. If the value of the electric energy supplied by the retail electric power supplier exceeds the value of the electric energy delivered by the customer-generator to the retail electric power supplier during a billing period, then the customer-generator shall be billed for the net value of the electric energy supplied by the retail electric power supplier in accordance with the rates, terms and conditions established by the retail electric power supplier for customer-generators.*

*3. If the value of the electric energy delivered by the customer-generator to the retail electric power supplier exceeds the value of the electric energy supplied by the retail electric power supplier, then the customer-generator—*

*A. Shall be billed for the appropriate customer charges for that billing period; and*

*B. Shall be credited for the net value of the electric energy delivered to the retail electric power supplier during the billing period, calculated using the retail electric power supplier's avoided cost (time of use or non-time of use), with this credit appearing on the customer-generator's bill no later than the following billing period.*

*(B) The retail electric power supplier, at its own expense, may install additional special metering (e.g. load research meter) to monitor the flow of electricity in each direction, not to include meters needed to comply with subsection (5)(A) of this rule.]*

**(5) Qualified Electric Customer-Generator Obligations.**

**(A) Each qualified electric energy generation unit used by a customer-generator shall meet all applicable safety, performance, interconnection, and reliability standards established by any local code authorities, the National Electrical Code, the National Electrical Safety Code, the Institute of Electrical and Electronics Engineers (IEEE), and Underwriters Laboratories (UL) for distributed generation; including, but not limited to IEEE 1547 and UL 1741.**

**(B) The electric utility may require that a customer-generator's system contain a switch, circuit breaker, fuse, or other easily accessible device or feature located in immediate proximity to the customer-generator's metering equipment that would allow an electric utility worker the ability to manually and instantly disconnect the unit from the electric utility's distribution system.**

**(C) No consumer shall connect or operate an electric generation unit in parallel phase and synchronization with any electric utility without written approval by said electric utility that all of the requirements under subsection (7)(B) of this rule have been met. For a customer-generator who violates this provision, an electric utility may immediately and without notice disconnect the electric facilities of said customer-generator and terminate said customer-generator's electric service.**

**(D) A customer-generator's facility shall be equipped with sufficient metering equipment that can measure the net amount of electrical energy produced and consumed by the customer-generator. If the customer-generator's existing meter equipment does not meet these requirements or if it is necessary for the electric utility to install additional distribution equipment to accommodate the customer-generator's facility, the customer-generator shall reimburse the electric utility for the costs to purchase and install the necessary additional equipment. At the request of the customer-generator, such costs may be initially paid for by the electric utility, and any amount up to the total costs and a reasonable interest charge may be recovered from the customer-generator over the course of up to twelve (12) billing cycles. Any subsequent meter testing, maintenance or meter equipment change necessitated by the customer-generator shall be paid for by the customer-generator.**

**(E) Each customer-generator shall, at least once every year, conduct a test to confirm that the net metering unit automatically ceases to energize the output (interconnection equipment output voltage goes to zero (0)) within two (2) seconds of being disconnected from the electric utility's system. Disconnecting the net metering unit from the electric utility's electric system at the visible disconnect switch and measuring the time required for the unit to cease to energize the output shall satisfy this test.**

**(F) The customer-generator shall maintain a record of the results of these tests and, upon request, shall provide a copy of the test results to the electric utility.**

**1. If the customer-generator is unable to provide a copy of the test results upon request, the electric utility shall notify the customer-generator by mail that the customer-generator has thirty (30) days from the date the customer-generator receives the request to provide the results of a test to the electric utility;**

**2. If the customer-generator's equipment ever fails this test, the customer-generator shall immediately disconnect the net metering unit;**

**3. If the customer-generator does not provide the results of a test to the electric utility within thirty (30) days of receiving a request from the electric utility or the results of the test provided to the electric utility show that the unit is not functioning correctly, the electric utility may immediately disconnect the net metering unit; and**

**4. The net metering unit shall not be reconnected to the electric utility's electrical system by the customer-generator until the net metering unit is repaired and operating in a normal and safe manner.**

**(6) Determination of Net Electrical Energy. Net electrical energy measurement shall be calculated in the following manner:**

**(A) For a customer-generator, a electric utility shall measure the net electrical energy produced or consumed during the billing period in accordance with normal metering practices for customers in the same rate class, either by employing a single, bidirectional meter that measures the amount of electrical energy produced and consumed, or by employing multiple meters that separately measure the customer-generator's consumption and production of electricity;**

**(B) If the electricity supplied by the electric utility exceeds the electricity generated by the customer-generator during a billing period, the customer-generator shall be billed for the net electricity supplied by the supplier in accordance with normal practices for customers in the same rate class;**

**(C) If the electricity generated by the customer-generator exceeds the electricity supplied by the electric utility during a billing period, the customer-generator shall be billed for the appropriate customer charges for that billing period in accordance with section (3) of this rule and shall be credited an amount at least equal to the avoided fuel cost of the excess kilowatt-hours generated during the billing period, with this credit applied to the following billing period.**

**(D) Any credits granted by this subsection shall expire without any compensation at the earlier of either twelve (12) months after their issuance, or when the customer-generator disconnects service or terminates the net metering relationship with the electric utility.**

*[(6)]***(7)** Interconnection Agreement.

(A) Each customer-generator and *[retail]* electric *[power supplier]* **utility** shall enter into the interconnection agreement included herein.

**(B) Applications by a customer-generator for interconnection of a qualified electric energy generation unit to the distribution system shall be accompanied by the plan for the customer-generator's electrical generating system including, but not limited to, a wiring diagram and specifications for the generating unit, and**

**shall be reviewed and responded to by the electric utility within thirty (30) days of receipt for systems ten kilowatts (10 kW) or less and within ninety (90) days of receipt for all other systems. Prior to the interconnection of the qualified generation unit to the electric utility's system, the customer-generator will furnish the electric utility a certification from a qualified professional electrician or engineer that the installation meets the requirements of subsections (5)(A) and (5)(B). If the application for interconnection is approved by the electric utility and the customer-generator does not complete the interconnection within one (1) year after receipt of notice of the approval, the approval shall expire and the customer-generator shall be responsible for filing a new application.**

**(C) Upon the change in ownership of a qualified electric energy generation unit, the new customer-generator shall be responsible for filing a new application.**

*[(7)]***(8)** *[Retail]* Electric *[Power Supplier]* **Utility** Reporting Requirements.

*[(A)]* Each **year prior to April 15, every** *[retail]* electric *[power supplier]* **utility** shall*[—]***:**

**(A) Submit an annual net metering report to the commission and make said report available to a consumer of the electric utility upon request, including the following information for the previous calendar year:**

**1. The total number of customer-generator facilities connected to its distribution system;**

**2. The total estimated generating capacity of customer-generators that are connected to its distribution system; and**

**3. The total estimated net kilowatt-hours received from customer-generators; and**

*[1.]***(B)** Supply **to** the *[commission staff with]* **manager of the energy department of the commission** a copy of the standard information regarding net metering and interconnection requirements provided to customers or posted on the *[retail]* electric *[power supplier's]* **utility's** website**.** *[; and]*

*[2. Supply the commission staff with a description of additional requirements, if these additional requirements are applicable to all net metering customers and not specific to individual interconnection situations, beyond those needed to meet the specific requirements outlined in section C of the interconnection agreement included herein.]*

*[(8) Customer-Generator Testing Requirements.*

*(A) Each customer-generator shall, at least once every year, conduct a test to confirm that the net metering unit automatically ceases to energize the output (interconnection equipment output voltage goes to zero) within two (2) seconds of being disconnected from the retail electric power supplier's system. Disconnecting the net metering unit from the retail electric power supplier's electric system at the visible disconnect switch and measuring the time required for the unit to cease to energize the output shall satisfy this test.*

*(B) The customer-generator shall maintain a record of the results of these tests and, upon request, shall provide a copy of the test results to the retail electric supplier.*

*1. If the customer-generator is unable to provide a copy of the test results upon request, the retail electric power supplier shall notify the customer-generator by mail that the customer-generator has thirty (30) days from the date the customer-generator receives the request to provide the results of a test to the retail electric power supplier.*

*2. If the customer-generator's equipment ever fails this test, the customer-generator shall immediately disconnect the net metering unit.*

*3. If the customer-generator does not provide the results of a test to the retail electric power supplier within thirty (30) days of receiving a request from the retail electric power supplier or the results of the test provided to the retail electric power supplier show that the unit is not functioning correctly, the retail electric power supplier may immediately disconnect the net metering unit.*

*4. The net metering unit shall not be reconnected to the retail electric power supplier's electrical system by the customer-generator until the net metering unit is repaired and operating in a normal and safe manner.]*

**INTERCONNECTION APPLICATION/AGREEMENT FOR NET METERING SYSTEMS WITH CAPACITY OF *ONE HUNDRED KILOWATTS (*100 kW*)* OR LESS**

**For Customers Applying for Interconnection:**

If you are interested in applying for interconnection to [Utility Name]'s electrical system, you should first contact [Utility Name] and ask for information related to interconnection of parallel generation equipment to [Utility Name]'s system and you should understand this information before proceeding with this Application.

If you wish to apply for interconnection to [Utility Name]'s electrical system, please complete sections A, B, C, and D, and attach the plans and specifications**, including, but not limited to,** describing the net metering, parallel generation, and interconnection facilities (hereinafter collectively referred to as the "Customer-Generator's System") and submit them to [Utility Name] at:

[Utility Mailing Address]

**The company** *[You]* will *[be]* provide*[d]* **notice of** *[with an]* approval or denial *[of this Application]* **within thirty (30) days of receipt by [Utility Name] for Customer-Generators of ten kilowatts (10kW) or less and** within ninety (90) days of receipt by [Utility Name] **for Customer-Generators of greater than ten kilowatts (10kW)**. If this Application is denied, you will be provided with the reason(s) for the denial. If this Application is approved and signed by both you and [Utility Name], it shall become a binding contract and shall govern your relationship with [Utility Name].

**For Customers Who Have Received Approval of Customer-Generator System Plans and Specifications:**

After receiving approval of your Application, it will be necessary to construct the Customer-Generator System in compliance with the plans and specifications described in the Application, complete sections E and F of this Application, and forward this Application to [Utility Name] for review and completion of section G at:

[Utility Mailing Address]

**Prior to the interconnection of the qualified generation unit to [Utility Name] system, the customer-generator will furnish [Utility name] a certification from a qualified professional electrician or engineer that the installation meets the plans and specification described in the application. If the application for interconnection is approved by [Utility Name] and the customer-generator does not complete the interconnection within one (1) year after receipt of notice of the approval, the approval shall expire and the customer-generator shall be responsible for filing a new application.**

[Utility Name] will complete the utility portion of section G and, upon receipt of a completed Application/Agreement form and payment of any applicable fees, *[permit]* **schedule a date for** interconnection of the Customer-Generator System to [Utility Name]'s electrical system within fifteen (15) days of receipt by [Utility Name] if electric service already exists to the premises, unless the Customer-Generator and [Utility Name] agree to a later date. Similarly, upon receipt of a completed Application/Agreement form and payment of any applicable fees, if electric service does not exist to the premises, [Utility Name] will *[permit]* **schedule a date for** interconnection of the Customer-Generator System to [Utility Name]'s electrical system no later than fifteen (15) days after service is established to the premises, unless the Customer-Generator and [Utility Name] agree to a later date.

**For Customers Who Are Assuming Ownership or Operational Control of an Existing Customer-Generator System:**

If no changes are being made to the existing Customer-Generator System, complete sections A, D and F of this Application/Agreement and forward to [Utility Name] at:

[Utility Mailing Address]

[Utility Name] will review the new Application/Agreement and shall approve such, within fifteen (15) days of receipt by [Utility Name] if the new Customer-Generator has satisfactorily completed Application/Agreement, and no changes are being proposed to the existing Customer-Generator System. There are no fees or charges for the Customer-Generator who is assuming ownership or operational control of an existing Customer-Generator System if no modifications are being proposed to that System.

**A. Customer-Generator's Information**

Name: _____

Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Service/Street Address (if different from above): _____

City: _____ State: _____ Zip Code: _____

Daytime Phone: _____ Fax: _____ E-Mail: _____

Emergency Contact Phone: _____

[Utility Name] Account No. (from Utility Bill): _____

**B. Customer-Generator's System Information**

Manufacturer Name Plate (if applicable) AC Power Rating: _____ kW Voltage: _____ Volts

System Type: __ Solar __ Wind __ Biomass __ Fuel __ Cell __ **Thermal** __ **Photovoltaic** __ Other (describe) _____

Service/Street Address: _____

Inverter/Interconnection Equipment Manufacturer: _____

Inverter/Interconnection Equipment Model No.: _____

Are Required System Plans**,** ***[&]*** Specifications **& Writing Diagram** Attached? Yes__ No __

Inverter/Interconnection Equipment Location (describe): _____

_____

Outdoor Manual/Utility Accessible & Lockable Disconnect Switch Location (describe):

_____

Existing Electrical Service Capacity: _____ Amperes Voltage: _____ Volts

Service Character: Single Phase __ Three Phase __

**C. Installation Information/Hardware and Installation Compliance**

Person or Company Installing: _____

Contractor's License No. (if applicable): _____

Approximate Installation Date: _____

Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Daytime Phone: _____ Fax: _____ E-Mail: _____

Person or Agency Who Will Inspect/Certify Installation: _____

The Customer-Generator's proposed System hardware complies with all applicable National Electrical Safety Code (NESC), National Electric Code (NEC), Institute of Electrical and Electronics Engineers (IEEE) and Underwriters Laboratories (UL) requirements for electrical equipment and their installation. As applicable to System type, these requirements include, but are not limited to, UL 1741 and IEEE *[929-2000]* **1547**. The proposed installation complies with all applicable local electrical codes and all reasonable safety requirements of [Utility Name]. The proposed System has a lockable, visible disconnect device, accessible at all times to [Utility Name] personnel. The System is only required to include one lockable, visible disconnect device, accessible to [Utility Name]. If the interconnection equipment is equipped with a visible, lockable, and accessible disconnect, no redundant device is needed to meet this requirement. The Customer-Generator's proposed System has functioning controls to prevent voltage flicker, DC injection, overvoltage, undervoltage, overfrequency, underfrequency, and overcurrent, and to provide for System synchronization to [Utility Name]'s electrical system. The proposed System does have an anti-islanding function that prevents the generator from continuing to supply power when [Utility Name]'s electric system is not energized or operating normally. If the proposed System is designed to provide uninterruptible power to critical loads, either through energy storage or back-up generation, the proposed System includes a parallel blocking scheme for this backup source that prevents any backflow of power to [Utility Name]'s electrical system when the electrical system is not energized or not operating normally.

Signed (Installer): _____ Date: _____

Name (Print): _____

**D. Additional Terms and Conditions**

In addition to abiding by [Utility Name]'s other applicable rules and regulations, the Customer-Generator understands and agrees to the following specific terms and conditions:

**1) Operation/Disconnection**

If it appears to [Utility Name], at any time, in the reasonable exercise of its judgment, that operation of the Customer-Generator's System is adversely affecting safety, power quality or reliability of [Utility Name]'s electrical system, [Utility Name] may immediately disconnect and lock-out the Customer-Generator's System from [Utility Name]'s electrical system. The Customer-Generator shall permit [Utility Name]'s employees and inspectors reasonable access to inspect, test, and examine the Customer-Generator's System.

**2) Liability**

**Liability insurance is not required for Customer-Generators of ten kilowatts (10 kW) or less. For generators greater that ten kilowatts (10kW),** ***[T]*****t**he Customer-Generator agrees to carry no less than $100,000 of liability insurance that provides for coverage of all risk of liability for personal injuries (including death) and damage to property arising out of or caused by the operation of the Customer-Generator's System. Insurance may be in the form of an existing policy or an endorsement on an existing policy.

*[3) Interconnection Costs*

*The Customer-Generator shall, at the Customer-Generator's cost and expense, install, operate, maintain, repair, and inspect, and shall be fully responsible for the Customer-Generator's System. The Customer-Generator further agrees to pay or reimburse to [Utility Name] all of [Utility Name]'s Interconnection Costs. Interconnection Costs are the reasonable costs incurred by [Utility Name] for: (1) additional tests or analyses of the effects of the operation of the Customer-Generator's System on [Utility Name]'s local distribution system, (2) additional metering, and (3) any necessary controls. These Interconnection Costs must be related to the installation of the physical facilities necessary to permit interconnected operation of the Customer-Generator's System with [Utility Name]'s system and shall only include those costs, or corresponding costs, which would not have been incurred by [Utility Name] in*

*providing service to the Customer-Generator solely as a consumer of electric energy from [Utility Name] pursuant to [Utility Name]'s standard cost of service policies in effect at the time the Customer-Generator's System is first interconnected with [Utility Name]'s system. Upon request, [Utility Name] shall provide the Customer-Generator with a not-to-exceed cost statement for interconnection with [Utility Name]'s based upon the plans and specifications provided by the Customer-Generator to [Utility Name].]*

**3) Metering and Distribution Costs**

**A customer-generator's facility shall be equipped with sufficient metering equipment that can measure the net amount of electrical energy produced or consumed by the customer-generator. If the customer-generator's existing meter equipment does not meet these requirements or if it is necessary for [Utility Name] to install additional distribution equipment to accommodate the customer-generator's facility, the customer-generator shall reimburse [Utility Name] for the costs to purchase and install the necessary additional equipment. At the request of the customer-generator, such costs may be initially paid for by [Utility Name], and any amount up to the total costs and a reasonable interest charge may be recovered from the customer-generator over the course of up to twelve (12) billing cycles. Any subsequent meter testing, maintenance or meter equipment change necessitated by the customer-generator shall be paid for by the customer-generator.**

**4) Energy Pricing and Billing**

*[Section 386.887, RSMo Supp. 2002 sets forth the valuation and billing of electric energy provided by [Utility Name] to the Customer-Generator and to [Utility Name] from Customer-Generator.]* The *[value of the]* **net** electric energy delivered to the Customer-Generator shall be billed in accordance with rate schedule(s) Utility's Applicable Rate Schedules]. The value of the electric energy delivered by the Customer-Generator to [Utility Name] shall be credited in accordance with rate schedule(s) [Utility's Applicable Rate Schedules].

**Net electrical energy measurement shall be calculated in the following manner:**

**(a) For a customer-generator, a retail electric supplier shall measure the net electrical energy produced or consumed during the billing period in accordance with normal metering practices for customers in the same rate class, either by employing a single, bidirectional meter that measures the amount of electrical energy produced and consumed, or by employing multiple meters that separately measure the customer-generator's consumption and production of electricity;**

**(b) If the electricity supplied by the supplier exceeds the electricity generated by the customer-generator during a billing period, the customer-generator shall be billed for the net electricity supplied by the supplier in accordance with normal practices for customers in the same rate class;**

**(c) If the electricity generated by the customer-generator exceeds the electricity supplied by the supplier during a billing period, the customer-generator shall be billed for the appropriate customer charges for that billing period and shall be credited an amount at least equal to the avoided fuel cost of the excess kilowatt-hours generated during the billing period, with this credit applied to the following billing period.**

**(d) Any credits granted by this subsection shall expire without any compensation at the earlier of either twelve (12) months after their issuance, or when the customer-generator disconnects service or terminates the net metering relationship with the supplier.**

**5) Terms and Termination Rights**

This Agreement becomes effective when signed by both the Customer-Generator and [Utility Name], and shall continue in effect until terminated. After fulfillment of any applicable initial tariff or rate schedule term, the Customer-Generator may terminate this Agreement at any time by giving [Utility Name] at least thirty (30) days prior written notice. In such event, the Customer-Generator shall, no later than the date of termination of Agreement, completely disconnect the Customer-Generator's System from parallel operation

with [Utility Name]'s system. Either party may terminate this Agreement by giving the other party at least thirty (30) days prior written notice that the other party is in default of any of the terms and conditions of this Agreement, so long as the notice specifies the basis for termination, and there is an opportunity to cure the default. This Agreement may also be terminated at any time by mutual agreement of the Customer-Generator and [Utility Name]. This agreement may also be terminated, by approval of the Commission, if there is a change in statute that is determined to be applicable to this contract and necessitates its termination.

**6) Transfer of Ownership**

If operational control of the Customer-Generator's System transfers to any other party than the Customer-Generator, a new Application/Agreement must be completed by the person or persons taking over operational control of the existing Customer-Generator System. [Utility Name] shall be notified no less than thirty (30) days before the Customer-Generator anticipates transfer of operational control of the Customer-Generator's System. The person or persons taking over operational control of Customer-Generator's System must file a new Application/Agreement, and must receive authorization from [Utility Name], before the existing Customer-Generator System can remain interconnected with [Utility Name]'s electrical system. The new Application/Agreement will only need to be completed to the extent necessary to affirm that the new person or persons having operational control of the existing Customer-Generator System completely understand the provisions of this Application/Agreement and agree to them. If no changes are being made to the Customer-Generator's System, completing sections A, D and F of this Application/Agreement will satisfy this requirement. If no changes are being proposed to the Customer-Generator System, [Utility Name] will assess no charges or fees for this transfer. [Utility Name] will review the new Application/Agreement and shall approve such, within fifteen (15) days if the new Customer-Generator has satisfactorily completed the Application/Agreement, and no changes are being proposed to the existing Customer-Generator System. [Utility Name] will then complete section G and forward a copy of the completed Application/Agreement back to the new Customer-Generator, thereby notifying the new Customer-Generator that the new Customer-Generator is authorized to operate the existing Customer-Generator System in parallel with [Utility Name]'s electrical system. If any changes are planned to be made to the existing Customer-Generator System that in any way may degrade or significantly alter that System's output characteristics, then the Customer-Generator shall submit to [Utility Name] a new Application/Agreement for the entire Customer-Generator System and all portions of the Application/Agreement must be completed.

**7) Dispute Resolution**

If any disagreements between the Customer-Generator and [Utility Name] arise that cannot be resolved through normal negotiations between them, the disagreements may be brought to the Missouri Public Service Commission by either party, through an informal or formal complaint. Procedures for filing and processing these complaints are described in 4 CSR 240-2.070. The complaint procedures described in 4 CSR 240-2.070 apply only to retail electric power suppliers to the extent that they are regulated by the Missouri Public Service Commission.

**8) Testing Requirement**

**IEEE 1547 requires periodic testing of all interconnection related protective functions.** The Customer-Generator must, at least once every year, conduct a test to confirm that the Customer-Generator's net metering unit automatically ceases to energize the output (interconnection equipment output voltage goes to zero) within two (2) seconds of being disconnected from [Utility Name]'s electrical system. Disconnecting the net metering unit from [Utility Name]'s electrical system at the visible disconnect switch and measuring the time required for the unit to cease to energize the output shall satisfy this test. The Customer-Generator shall maintain a record of the results of these tests and, upon request by [Utility Name], shall provide a copy of the test results to [Utility Name]. If the Customer-Generator is unable to provide a copy of the test results upon request, [Utility Name] shall notify the Customer-Generator by mail that

Customer-Generator has thirty (30) days from the date the Customer-Generator receives the request to provide to [Utility Name], the results of a test. If the Customer-Generator's equipment ever fails this test, the Customer-Generator shall immediately disconnect the Customer-Generator's System from [Utility Name]'s system. If the Customer-Generator does not provide results of a test to [Utility Name] within thirty (30) days of receiving a request from [Utility Name] or the results of the test provided to [Utility Name] show that the Customer-Generator's net metering unit is not functioning correctly, [Utility Name] may immediately disconnect the Customer-Generator's System from [Utility Name]'s system. The Customer-Generator's System shall not be reconnected to [Utility Name]'s electrical system by the customer-generator until the Customer-Generator's System is repaired and operating in a normal and safe manner.

I have read, understand, and accept the provisions of Section D, subsections 1 through 8 of this Application/Agreement.

Signed (Customer-Generator): _____ Date: _____

**E. Electrical Inspection**

The Customer-Generator System referenced above satisfies all requirements noted in Section C.
Inspector Name (print): _____
Inspector Certification: *[I am a]* Licensed Engineer in Missouri ___ *[or I am a]* Licensed Electrician in Missouri ___ License No._____
Signed (Inspector): _____ Date: _____

**F. Customer-Generator Acknowledgement**

I am aware of the Customer-Generator System installed on my premises and I have been given warranty information and/or an operational manual for that system. Also, I have been provided with a copy of [Utility Name]'s parallel generation tariff or rate schedule (as applicable) and interconnection requirements. I am familiar with the operation of the Customer-Generator System.

I agree to abide by the terms of this Application/Agreement and I agree to operate and maintain the Customer-Generator System in accordance with the manufacturer's recommended practices as well as [Utility Name]'s interconnection standards. If, at any time and for any reason, I believe that the Customer-Generator System is operating in an unusual manner that may result in any disturbances on [Utility Name]'s electrical system, I shall disconnect the Customer-Generator System and not reconnect it to [Utility Name]'s electrical system until the Customer-Generator System is operating normally after repair or inspection. Further, I agree to notify [Utility Name] no less than thirty (30) days prior to modification of the components or design of the Customer-Generator System that in any way may degrade or significantly alter that System's output characteristics. I acknowledge that any such modifications will require submission of a new Application/ Agreement to [Utility Name].

I agree not to operate the Customer-Generator System in parallel with [Utility Name]'s electrical system until this Application/Agreement has been approved by [Utility Name].

Signed (Customer-Generator): _____ Date: _____

**G. Utility Application Approval (*completed by* [Utility Name])**

[Utility Name] does not, by approval of this Application/Agreement, assume any responsibility or liability for damage to property or physical injury to persons due to malfunction of the Customer-Generator's System or the Customer-Generator's negligence.
This Application is approved by [Utility Name] on this _____day of _____(month), _____(year).
[Utility Name] Representative Name (print): _____
Signed [Utility Name] Representative: _____

*AUTHORITY: section[s] 386.250, RSMo 2000 [and 386.887, RSMo Supp. 2002]. Original rule filed March 11, 2003, effective Aug. 30, 2003. Amended: Filed June 17, 2008.*

*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 comments in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Colleen M. Dale, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, written comments must be received at the commission's offices on or before September 2, 2008, and should include a reference to Commission Case No. EX-2008-0280. If comments are submitted via a paper filing, an original and eight (8) copies of the comments are required. Comments may also be submitted via a filing using the commission's electronic filing and information system at <http://www.psc.mo.gov/efis.asp>. A public hearing regarding this proposed amendment is scheduled for September 2, 2008, at 1:00 pm in Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed amendment, and may be asked to respond to commission questions.*

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

## Title 9—DEPARTMENT OF MENTAL HEALTH
## Division 10—Director, Department of Mental Health
## Chapter 31—Reimbursement for Services

## PROPOSED RULE

### 9 CSR 10-31.030 Intermediate Care Facility for the Mentally Retarded Federal Reimbursement Allowance

*PURPOSE: This rule establishes the formula to determine the Federal Reimbursement Allowance for each Intermediate Care Facility for the Mentally Retarded (ICF/MR) operated primarily for the care and treatment of mental retardation/developmental disabilities. This rule applies to both private ICF/MRs and ICF/MR facilities operated by the Department of Mental Health and requires these facilities to pay for the privilege of engaging in the business of providing ICF/MR services to individuals in Missouri.*

(1) The following words and terms, as used in this rule, mean:

(A) Base cost report. MO HealthNet cost report for the second prior fiscal year relative to the State Fiscal Year (SFY) for which the assessment is being calculated. (For example, the SFY 2009 Federal Reimbursement Allowance (FRA) assessment will be determined using the ICF/MR cost report from FY 2007.)

(B) Department. Department of Mental Health.

(C) Director. Director of the Department of Mental Health.

(D) Division. Division of Mental Retardation/Developmental Disabilities, Department of Mental Health.

(E) Engaging in the business of providing residential habilitation care. Accepting payment for ICF/MR services rendered.

(F) Fiscal period. Twelve (12)-month reporting period determined by the State Fiscal Year.

(G) Intermediate Care Facility for the Mentally Retarded (ICF/MR). A private or department facility that admits persons who are mentally retarded or developmentally disabled for residential habilitation and other services pursuant to Chapter 630, RSMo, and that has been certified to meet the conditions of participation under 42 CFR 483, Subpart I.

(H) Intermediate Care Facility for the Mentally Retarded Federal Reimbursement Allowance (ICF/MRFRA). The assessment paid by each ICF/MR.

(I) Net revenues. Gross revenues less bad debts, less charity care, and less contractual allowances.

(J) Trend factor. Centers for Medicare and Medicaid Services (CMS) Prospective Payment System Skilled Nursing Facility Input Price Index (SNF IPI) four (4) quarter moving average. (Source: GLOBAL INSIGHT, INC, 4th Qtr, 2007) (4 Quarter Moving Average Percent Changes in the CMS Prospective Payment System Skilled Nursing Facility Input Price Index (SNF IPI) using Forecast Assumptions, by Expense Category: 1990-2017)

(2) Each ICF/MR operated primarily for the care and treatment of mental retardation/developmental disabilities engaging in the business of providing residential habilitation and other services in Missouri shall pay an ICF/MRFRA. The ICF/MRFRA shall be calculated by the department as follows:

(A) Beginning on July 1, 2008, and each year thereafter, the ICF/MRFRA annual assessment shall be five and forty-nine hundredths percent (5.49%) of the ICF/MR's net revenues determined from the base cost report relative to the State Fiscal Year for which the assessment is being calculated. The cost report shall be trended forward from the second prior year to the current fiscal year by applying the SNF IPI trend factor for each year under the ICF/MRFRA calculation;

(B) The annual assessment shall be divided into twelve (12) equal amounts and collected over the number of months the assessment is effective. The assessment is made payable to the director of the Department of Revenue to be deposited in the state treasury in the ICF/MRFRA Fund;

(C) If an ICF/MR does not have a base cost report, net revenues shall be estimated as follows:

1. Net revenues shall be determined by computation of the ICF/MR's projected annual patient days multiplied by its interim established per diem rate; and

(D) The ICF/MRFRA assessment for ICF/MRs that merge operation under one (1) MO HealthNet provider number shall be determined as follows:

1. The previously determined ICF/MRFRA assessment for each ICF/MR shall be combined under the active MO HealthNet provider number for the remainder of the State Fiscal Year after the division receives official notification of the merger; and

2. The ICF/MRFRA assessment for subsequent fiscal years shall be based on the combined data for both facilities.

(3) The department shall prepare a notification schedule of the information from each ICF/MR's second prior year cost report and provide each ICF/MR with this schedule.

(A) The schedule shall include:

1. Provider name;
2. Provider number;
3. Fiscal period;
4. Total number of licensed beds;
5. Total bed days;
6. Net revenues; and
7. Total amount of the assessment for the State Fiscal Year for which the assessment is being calculated and monthly assessment amount due each month.

(B) Each ICF/MR required to pay the ICF/MRFRA shall review this information, and if it is not correct, the ICF/MR must notify the department of such within fifteen (15) days of receipt of the notification schedule. If the ICF/MR fails to submit the corrected data within the fifteen (15)-day time period, the ICF/MR shall be barred from submitting corrected data later to have its ICF/MRFRA assessment adjusted.

(4) Payment of ICF/MRFRA Assessment.

(A) Each ICF/MR may request that its ICF/MRFRA be offset against any MO HealthNet payment due. A statement authorizing the offset must be on file with the MO HealthNet Division before any offset may be made relative to the ICF/MRFRA. Any balance due after the offset shall be remitted by the ICF/MR to the department. The remittance shall be made payable to the director of the Department of Revenue. If the remittance is not received before the next MO HealthNet payment cycle, the MO HealthNet Division shall offset the balance due from that check.

(B) If no offset has been authorized by the ICF/MR, the MO HealthNet Division will begin collecting the ICF/MRFRA on the first day of each month. The ICF/MRFRA shall be remitted by the ICF/MR facility to the MO HealthNet Division. The remittance shall be made payable to the director of the Department of Revenue and deposited in the state treasury to the credit of the ICF/MRFRA Fund.

(C) If the ICF/MR is delinquent in the payment of its ICF/MRFRA assessment, the director of the Department of Social Services shall withhold and remit to the Department of Revenue an amount equal to the assessment from any payment made by the MO HealthNet Division to the ICF/MR provider.

*AUTHORITY: section 630.050, RSMo 2000 and section 633.401, HCS for SCS for Senate Bill 1081, 94th General Assembly (signed June 25, 2008). Emergency rule filed July 1, 2008, effective July 11, 2008, expires Dec. 28, 2008. Original rule filed July 1, 2008.*

*PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate in SFY 2009.*

*PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars ($500) in SFY 2009.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Office of the Director, Department of Mental Health, 1706 East Elm Street, Jefferson City, MO 65101. 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 Department of Mental Health, 1706 East Elm Street, Jefferson City, MO 65101. No public hearing is scheduled.*

## Title 10—DEPARTMENT OF NATURAL RESOURCES
## Division 23—Division of Geology and Land Survey
## Chapter 2—Well Drillers and Pump Installers Permitting

### PROPOSED AMENDMENT

**10 CSR 23-2.010 Fee Structure**. The division is amending sections (1), (2), (3), (4), (5), and (10).

*PURPOSE: The purpose of this amendment is to increase the maximum fee levels used in permitting well installation, heat pump installation, monitoring well installation, pump installation contractors and in certification and/or registration of wells and for examinations relating to the permitting process.*

(1) Each well installation, heat pump installation, monitoring well installation, monitoring-test hole installation, and pump installation contractor will pay a yearly permit fee of no more than *[one hundred dollars ($100)]* **one hundred fifty dollars ($150)** for each type of permit issued. Each drilling machine or pump service rig will be charged a yearly fee of no more than *[twenty dollars ($20)]* **fifty dollars ($50)** each.

(2) Well certification fees will be paid by the well owner and collected and submitted by the well installation or pump installation contractor and will be sent to the division by the contractor within sixty (60) days of completion. This fee will be no more than *[thirty-five dollars ($35)]* **one hundred twenty-five dollars ($125)** per well.

(3) Well registration fees will be paid by the well owner and collected and submitted by the well installation, heat pump installation, monitoring well installation, monitoring-test hole installation**,** or pump installation contractor within sixty (60) days of completion. Registration report forms are required for plugging of wells, raising of casing, lining of wells, deepening of wells, major repairs and alteration to wells**,** and drilling of jetted wells unless exempted. Concerning the plugging of mineral exploratory wells, the company or person for whom the well is drilled must pay the fee and submit a registration report form. When work performed on a well fits the registration report criteria, and that work is performed by the well owner, the well owner is required to submit the appropriate report form and fee. This fee will be no more than *[fifteen dollars ($15)]* **one hundred dollars ($100)** per well. Documentation for holes drilled and plugged under the requirements of 10 CSR 23-6.010–10 CSR 23-6.060 must be **submitted** on a registration report form.

(4) Monitoring well certification fees will be paid by the owner or *[geohydrology]* **primary** contractor**,** *[and]* collected within sixty (60) days of completion, **and** submitted to the division by the monitoring well installation contractor. This fee will be no more than *[seventy-five dollars ($75)]* **one hundred seventy-five dollars ($175)** per well.

(5) Open-loop and closed-loop heat pump well certification fees will be paid by the owner and collected and submitted by the heat pump installation contractor to the division within sixty (60) days of completion. This fee will be determined by the ton rating of the heat pump machine as shown in the following. When more than one (1) heat pump machine is hooked together, the cumulative total of the ton rating will be used to determine the fee. The fee will be no more than*[—]***:**

| | |
|---|---|
| (A) One to fifty (1–50) ton heat pump unit | *[$75]* **$150** |
| (B) Over fifty (50) ton heat pump unit | *[$150]* **$250**. |

(10) Testing fees will be no more than as listed—

| | |
|---|---|
| (A) General Test | *[$40]* **$50** |
| (B) Well Driller Contractor Test | *[$40]* **$50** |
| (C) Pump Contractor Test | *[$40]* **$50** |
| (D) Heat Pump Contractor Test | *[$40]* **$50** |
| (E) Monitoring Well Contractor Test | *[$40]* **$50** |
| (F) Monitoring-Test Hole Contractor Test | *[$40]* **$50** |
| (G) Retakes (for each test) | *[$40]* **$50**. |

*AUTHORITY: sections 256.606, 256.614, 256.623**,** and 256.626, RSMo [1994] **2000**. Emergency rule filed July 2, 1986, effective July 12, 1986, expired November 2, 1986. Original rule filed July 2, 1986, effective October 27, 1986. For intervening history, please consult the **Code of State Regulations**. Amended: Filed June 24, 2008.*

*PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions eight thousand nine hundred thirty-seven dollars ($8,937) annually.*

*PRIVATE COST: This proposed amendment will cost private entities five hundred twenty thousand two hundred eighty-three dollars ($520,283) annually.*

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Natural Resources, Division of Environmental Quality, Sheri Fry, PO Box 250, Rolla, MO 65402 or via email at sheri.fry@dnr.mo.gov. To be considered, comments must be received by close of business on September 5, 2008. A public hearing is scheduled for September 2, 2008 at the Department of Natural Resources' Division of Geology and Land Survey Multi-Purpose Building, 111 Fairgrounds Road, Rolla, MO 65402. The public hearing will begin at 9:00 a.m.*

**FISCAL NOTE**

**PUBLIC COST**

## I. RULE NUMBER

| | |
|---|---|
| Rule Number and Name: | 10 CSR 23-2.010 Fee Structure |
| Type of Rulemaking: | Amendment |

## II. SUMMARY OF FISCAL IMPACT

| Affected Agency or Political Subdivision | Estimated Cost of Compliance in the Aggregate | |
|---|---|---|
| Department of Natural Resources – Cost of Implementation | Forms Management: Approximately **$1000** in the aggregate to compensate for any forms that will have to be discarded or recycled when new fees become effective. Also there will be some costs of notification to regulated entities when rule becomes effective. These costs are expected to be incurred in the first year of the rule and are thus included in the annualized cost of the rule, for the first year only. | |
| Any state agencies (including DNR), any local government or other political subdivisions that would require a permit to do regulated well construction work or has a monitoring, heat pump or water well installed on their property. | Water Well Reports<br>Monitoring Well Reports<br>Heat Pump Reports (1-50 Ton)<br>Heat Pump Reports (over 50 Tons)<br>Abandonment and Reconstruction Reports<br>Permits (contractors)<br>Permits (vehicles)<br>Testing Fees<br>Late Fees (NA)<br>**TOTAL** | $2,565<br>$ 425<br>$ 38<br>$ 50<br>$1,505<br>$2,500<br>$ 330<br>$ 25<br>**$7,937** |
| **Grand Total Public Entity Costs (Annualized)** | | **$8,937** |

III. Worksheet

Proposed Fees listed in the proposed amendment are maximums. Actual fees charged are determined by the Well Installation Board Annually based on the requirements of the program as outlined in the statute. The mean of the difference in the proposed maximum fee and current maximum fee multiplied by the number of units received is b used as the annualized aggregate cost of the amendment to rule. In actuality, the first five to seven years of the rule less per year where the last several years will be more per year.

| | Proposed Maximum | - Current Maximum | = | Divided by 2 | = Mean of the difference or annualized cost per unit |
|---|---|---|---|---|---|
| Water Well Reports | $125 | $ 35 | $ 90 | /2 | $45 |
| Monitoring Well Reports | $125 | $ 75 | $ 50 | /2 | $25 |
| Heat Pump Reports (1-50 Ton) | $150 | $ 75 | $ 75 | /2 | $38 |
| Heat Pump Reports (> 50 Ton) | $250 | $150 | $100 | /2 | $50 |
| *Abandonment and Reconstruction Reports | $100 | $15 | $ 85 | /2 | $43 |
| Permits (contractors) | $150 | $100 | $ 50 | /2 | $25 |
| Permits (vehicles) | $ 50 | $ 20 | $ 30 | /2 | $15 |
| Testing Fees | $ 50 | $ 40 | $ 10 | /2 | $ 5 |
| Late Fees 10/mo up to | $240 | $240 | -0- | /2 | -0- |

* We do not charge at this time for these records, although the current maximum is $15. We hope to encourage proper plugging of abandoned wells. We may charge for them in the future especially for the records on reconstruction of wells or plugging of abandoned monitoring wells and maybe others as time goes on. Therefore, the formula is somewhat skewed for this type of record. The actual annualized cost per unit should be somewhat lower.

| Type of Revenue | X | Average number of Units Per year Paid for by Public Entities (see Assumptions) | X | Annualized Cost per unit to Public Entities | = | Total Annualized Cost per type of Revenue |
|---|---|---|---|---|---|---|
| Water Well Reports | | 57 | | $45 | | $2,565 |
| Monitoring Well Reports | | 17 | | $25 | | $ 425 |
| Heat Pump Reports (1-50 Ton) | | 1 | | $38 | | $ 38 |
| Heat Pump Reports (over 50 Tons) | | 1 | | $50 | | $ 50 |
| Abandonment and Reconstruction Reports | | 35 | | $43 | | $1,505 |
| Permits (contractors) | | 100 | | $25 | | $2,500 |
| Permits (vehicles) | | 22 | | $15 | | $ 330 |
| Testing Fees | | 5 | | $ 5 | | $ 25 |

Late Fees (There is no difference in the rule for these fees, therefore no additional costs are realized.)

**Total Annualized Cost to Public Entities. $7,937**
**The cost to DNR to implement this amendment in the first year. $1,000**
**Amendment's Public Entity Total Cost first Year: $8,937**

**Aggregate Cost to Public Entities over the life of the amendment to the rule: (Total Annualized Cost to Public Entities or $7,937 X 15 yrs) + (DNR cost to implement the amendment during the first year, or $1,000) = $120,055.**

**The current rule, without this amendment brings in approximately $650,000 per year. Public Entities pay approximately 2% of this cost, or $13,000 per year. New rule as amended will result in Public Entity costs of approximately $22,000 annually ($13,000 + $9,000).**

**New Rule as amended will result in aggregate costs of approximately $330,000 over the 15 year life of the rule ($22,000 x 15 years).**

IV. Assumptions

1. There are approximately 5700 water well reports received each year. Of these approximately 1% is paid for by Public Entities.
2. There are approximately 1700 monitoring well reports received each year. Of these approximately 1% is paid for by Public Entities.
3. There are approximately 75 Heat pump system reports received each year for systems that are > 50 ton. Of these approximately 5% are paid for by Public Entities.
4. There are approximately 100 Heat pump system reports received each year that are 50 ton or less. Of these approximately 1% are paid for by Public Entities
5. There are approximately 3500 Abandonment and reconstruction reports received each year. Of these approximately 1% are submitted by Public Entities.
6. There are approximately 2100 different permits issued or renewed each year. Approximately 5% of those are permitted contractors that are employed by Public Entities.
7. We administer approximately 250 proficiency tests per year. Of these approximately 2% are taken by public employees.
8. There are approximately 1125 vehicles permitted or renewed each year. Approximately 2% of these are owned by Public Entities. There is no fee increase proposed for these revenues and they are part of the overall $650,000 collected annually.
9. The program collects approximately $60,000 per year in late document fees. These fees are paid by drilling contractors. About 1% of these fees are paid by public entities.
10. The life of this rule is 15 years.

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

**I. RULE NUMBER**

| | |
|---|---|
| Rule Number and Name | 10 CSR 23-2.010 Fee Structure |
| Type of Rulemaking | Amendment |

**II. SUMMARY OF FISCAL IMPACT**

| Estimate of the number of entities by class which would likely be affected by the adoption of the 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: |
|---|---|---|
| 643 | Various businesses that have water wells drilled | $ 28,935 |
| 5,000 | Homeowners who have wells drilled will pay Certification Fees | $225,000 |
| 1600 | Businesses that have monitoring wells drilled | $ 40,000 |
| 83 | Private Citizens who have monitoring wells drilled | $ 2,075 |
| 90 | Businesses that have heat pump systems installed (over 50 ton) | $ 4,500 |
| 9 | Private Citizens who have heat pump systems installed (over 50 ton) | $ 450 |
| 50 | Businesses that have heat pump systems installed (1- 50 ton) | $ 1,900 |
| 21 | Private Citizens who have heat pump systems installed (1- 50 ton) | $ 798 |
| 1000 | Businesses that have wells reconstructed or abandoned | $ 43,000 |
| 2465 | Private Citizens who have wells reconstructed or abandoned | $105,995 |
| 1995 | Drilling and Pump Businesses that require new or renewed drilling or pump permits | $ 49,875 |
| 1102 | Drilling and Pump Businesses that require new or renewed permits for vehicles. | $ 16,530 |
| 245 | Drilling and Pump Businesses that have employees that need to pass tests for new permits | $ 1,225 |
| TOTAL ANNUALIZED COST | All Entities | $520,283 |

III. Worksheet

Proposed Fees listed in the proposed amendment are maximums. Actual fees charged are determined by the Well Installation Board Annually based on the requirements of the program as outlined in the statute. The mean of the difference in the proposed maximum fee and current maximum fee multiplied by the number of units received is being used as the annualized aggregate cost of the amendment to rule. In actuality, the first five to seven years of the rule will be less per year where the last several years will be more per year.

| | Proposed Maximum | - Current Maximum | = | Divided by 2 | = Mean of the difference or annualized cost per unit |
|---|---|---|---|---|---|
| Water Well Reports | $125 | $ 35 | $ 90 | /2 | $45 |
| Monitoring Well Reports | $125 | $ 75 | $ 50 | /2 | $25 |
| Heat Pump Reports (1-50 Ton) | $150 | $ 75 | $ 75 | /2 | $38 |
| Heat Pump Reports (> 50 Ton) | $250 | $150 | $100 | /2 | $50 |
| *Abandonment and Reconstruction Reports | $100 | $15 | $ 85 | /2 | $43 |
| Permits (contractors) | $150 | $100 | $ 50 | /2 | $25 |
| Permits (vehicles) | $ 50 | $ 20 | $ 30 | /2 | $15 |
| Testing Fees | $ 50 | $ 40 | $ 10 | /2 | $ 5 |
| Late Fees 10/mo up to | $240 | $240 | -0- | /2 | -0- |

* We do not charge at this time for these records, although the current maximum is $15. We hope to encourage proper plugging of abandoned wells. We may charge for them in the future especially for the records on reconstruction of wells or plugging of abandoned monitoring wells and maybe others as time goes on. Therefore, the formula is somewhat skewed for this type of record. The actual annualized cost per unit should be somewhat lower.

| Type of Revenue | X | Average number of Units Per year Paid for by Private Entities (see Assumptions) | X | Annualized Cost per unit to Private Entities | = | Total Annualized Cost per type of Revenue |
|---|---|---|---|---|---|---|
| Water Well Reports | | 5,643 | | $45 | | $253,935 |
| Monitoring Well Reports | | 1,683 | | $25 | | $ 42,075 |
| Heat Pump Reports (1-50 Ton) | | 71 | | $38 | | $ 2,698 |
| Heat Pump Reports (over 50 Tons) | | 99 | | $50 | | $ 4,950 |
| Abandonment and Reconstruction Reports | | 3,465 | | $43 | | $148,995 |
| Permits (contractors) | | 1,995 | | $25 | | $ 49,875 |
| Permits (vehicles) | | 1,102 | | $15 | | $ 16,530 |
| Testing Fees | | 245 | | $ 5 | | $ 1,225 |

Late Fees (There is no difference in the rule for these fees, therefore no additional annualized costs are realized.)

**Total Annualized Cost to Private Entities. $520,283**

**Aggregate Cost to Private Entities over the life of the amendment to the rule: (Total Annualized Cost to Private Entities or $520,283 X 15 yrs) = $7,804,245.**

**The current rule, without this amendment brings in approximately $650,000 per year. Private Entities pay approximately 98% of this cost, or $637,000 per year. New rule as amended will result in Private Entity costs of approximately $1,157,283 annually ($520,283 + $637,000).**

**New Rule as amended will result in aggregate costs of approximately $17,359,245 over the 15 year life of the rule ($1,157,283 x 15 years).**

IV. Assumptions

1. There are approximately 5700 water well reports received each year. Of these approximately 99% is paid for by Private Entities (643 businesses and 5000 homeowners).
2. There are approximately 1700 monitoring well reports received each year. Of these approximately 99% is paid for by Private Entities.(Most if not all of those are businesses)
3. There are approximately 75 Heat pump system reports received each year for systems that are > 50 ton. Of these approximately 95% are paid for by Private Entities. (most large systems are businesses)
4. There are approximately 100 Heat pump system reports received each year that are 50 ton or less. Of these approximately 99% are paid for by Private Entities (about ½ of these are businesses the rest are homeowners)
5. There are approximately 3500 Abandonment and reconstruction reports received each year. Of these approximately 99% are submitted by Private Entities. (~465 are businesses, 3000 are homeowners)
6. There are approximately 2100 different permits issued or renewed each year. Approximately 95% of those are permitted contractors that are employed by Private business entities.
7. We administer approximately 250 proficiency tests per year. Of these approximately 98% are taken by Private business employees.
8. There are approximately 1125 vehicles permitted or renewed each year. Approximately 98% of these are owned by Private business entities.
9. The program collects approximately $60,000 per year in late document fees. These fees are paid by drilling contractors. About 99% of these fees are paid by private entities (drilling and pump companies). There is no fee increase proposed for these revenues and they are part of the overall $650,000 collected annually.
10. The life of this rule is 15 years.