

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

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 If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission.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

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

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

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

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

Proposed Amendment Text Reminder:

**Boldface text indicates new matter.**

*[Bracketed text indicates matter being deleted.]*

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

**PROPOSED AMENDMENT**

**10 CSR 10-6.350 Emission Limitations and Emissions Trading of Oxides of Nitrogen.** The commission proposes to delete subsection (1)(F) and amend subsection (3)(A). If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency to replace the current rule in the Missouri State Implementation Plan. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address and phone number listed in the Notice of Public Hearing at the end of this rule. More information concerning this rulemaking can be found

at the Missouri Department of Natural Resources' Environmental Regulatory Agenda website, [www.dnr.mo.gov/regs/index.html](http://www.dnr.mo.gov/regs/index.html).

*PURPOSE: The purpose of this rule is to reduce the emissions of nitrogen oxides (NO<sub>x</sub>) and establish a NO<sub>x</sub> emissions trading program for the state of Missouri. The reductions in NO<sub>x</sub> emissions will reduce the transport of ozone and its precursors within the state of Missouri and to other states as required under the Clean Air Act. The purpose of this rulemaking is to remove the sunset provision from this rule that was put in place to eliminate the requirements of the rule in 2009 for facilities subject to the Clean Air Interstate Rule (CAIR). This rule revision is necessary because of the District of Columbia Circuit Court of Appeals' decision to vacate the U.S. Environmental Protection Agency (EPA) CAIR, pending any appeal. In 2007, a sunset clause for 10 CSR 10-6.350 was created because CAIR was going to take the place of this rule. If CAIR is vacated, the oxides of nitrogen (NO<sub>x</sub>) control rule will be a necessary regulation for fossil fuel-fired electric generating units (EGUs) in the state of Missouri. Control of NO<sub>x</sub> emissions from these sources is necessary to address ozone formation in the state. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is the United States Court of Appeals for the District of Columbia Circuit Case No. 05-1244 decided July 11, 2008, and an EPA letter to the department dated September 2, 2008, requesting this change.*

(1) Applicability.

*[(F) The requirements of sections (3), (4), and (5) of this rule will not apply to the control period beginning in 2009 and any control period thereafter.]*

(3) General Provisions.

(A) NO<sub>x</sub> Emissions Limitations. Beginning May 1, 2004, the following NO<sub>x</sub> emission rates shall apply:

1. EGUs located in the counties of Bollinger, Butler, Cape Girardeau, Carter, Clark, Crawford, Dent, Dunklin, Gasconade, Iron, Lewis, Lincoln, Madison, Marion, Mississippi, Montgomery, New Madrid, Oregon, Pemiscot, Perry, Phelps, Pike, Ralls, Reynolds, Ripley, St. Charles, St. Francois, Ste. Genevieve, Scott, Shannon, Stoddard, Warren, Washington, and Wayne[,] shall limit emissions of NO<sub>x</sub> to the more stringent of a rate of 0.25 lbs NO<sub>x</sub>/million British thermal units [per hour] (mmBtu) of heat input during the control period or any applicable permitted NO<sub>x</sub> limitation under 10 CSR 10-6.060.

2. EGUs located in the City of St. Louis and the counties of Franklin, Jefferson, and St. Louis shall limit emissions of NO<sub>x</sub> to the more stringent rate of 0.18 lbs NO<sub>x</sub>/mmBtu of heat input during the control period, or any applicable permitted NO<sub>x</sub> limitation under 10 CSR 10-6.060. For the purpose of calculating ERCs under subparagraph (3)(B)5.C. of this rule, the regulated NO<sub>x</sub> emission rate (NO<sub>x</sub>ER<sub>p</sub>) for units located in these areas shall be 0.25 lbs NO<sub>x</sub>/mmBtu.

3. EGUs located in the counties of Buchanan, Jackson, Jasper, or Randolph shall limit emissions of NO<sub>x</sub> to the more stringent rate of any applicable permitted NO<sub>x</sub> limitation under 10 CSR 10-6.060 or the less stringent of:

A. 0.35 lbs NO<sub>x</sub>/mmBtu of heat input during the control period; or

B. 0.68 lbs NO<sub>x</sub>/mmBtu of heat input during the control period, provided that the unit is a cyclone EGU and burns tire-derived fuel in a quantity of at least one hundred thousand (100,000) PTEs per year. For installations with multiple cyclone EGUs, compliance with the one hundred thousand (100,000) PTE burned per year may also be based on the average number of PTEs burned per cyclone EGU.

4. EGUs located in any county not identified in paragraph

(3)(A)1., (3)(A)2., or (3)(A)3. of this rule shall limit emissions of NO<sub>x</sub> to the more stringent of a rate of 0.35 lbs NO<sub>x</sub>/mmBtu of heat input during the control period or any applicable permitted NO<sub>x</sub> limitation under 10 CSR 10-6.060.

5. In lieu of complying with the applicable emission limitations in paragraphs (3)(A)1. through (3)(A)4. of this rule, any affected unit may comply through the NO<sub>x</sub> emissions trading program under subsection (3)(B) of this rule.

**AUTHORITY:** section 643.050, RSMo 2000. Original rule filed Feb. 15, 2000, effective Sept. 30, 2000. Amended: Filed Dec. 4, 2002, effective Aug. 30, 2003. Amended: Filed Oct. 2, 2006, effective May 30, 2007. Amended: Filed Oct. 24, 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 on this proposed amendment will begin at 9:00 a.m., February 3, 2009. The public hearing will be held at the Governor Office Building, Room 450, 200 Madison Street, Jefferson City, MO 65101. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176, (573) 751-4817. Interested persons, whether or not heard, may submit a written or email statement of their views until 5:00 p.m., February 10, 2009. Written comments shall be sent to Chief, Operations Section, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to [apcprulespn@dnr.mo.gov](mailto:apcprulespn@dnr.mo.gov).

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

**PROPOSED AMENDMENT**

**10 CSR 10-6.360 Control of NO<sub>x</sub> Emissions From Electric Generating Units and Non-Electric Generating Boilers.** The commission proposes to delete subsection (1)(H) and amend subsection (3)(C). If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency to replace the current rule in the Missouri State Implementation Plan. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address and phone number listed in the Notice of Public Hearing at the end of this rule. More information concerning this rulemaking can be found at the Missouri Department of Natural Resources' Environmental Regulatory Agenda website, [www.dnr.mo.gov/reg/index.html](http://www.dnr.mo.gov/reg/index.html).

**PURPOSE:** This rule reduces emissions of oxides of nitrogen (NO<sub>x</sub>) to ensure compliance with the federal NO<sub>x</sub> control plan to reduce the transport of air pollutants. The rule establishes an emission budget for large electric generating units and non-electric generating boilers. The purpose of this rulemaking is to remove the sunset provision from this rule that was put in place to eliminate the requirements of the rule in 2009 for facilities subject to the Clean Air Interstate Rule (CAIR). This rule revision is necessary because of the District of

*Columbia Circuit Court of Appeals' decision to vacate the Environmental Protection Agency (EPA) CAIR, pending any appeal. In 2007, a sunset clause for 10 CSR 10-6.360 was created because CAIR was going to take the place of this rule. If CAIR is vacated, the oxides of nitrogen (NO<sub>x</sub>) control rule will be a necessary regulation for fossil fuel-fired electric generating units (EGUs), non-electric generating boilers, combined cycle systems, and combustion turbines in the state of Missouri. Control of NO<sub>x</sub> emissions from these sources is necessary to address ozone formation in the state. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is the United States Court of Appeals for District of Columbia Circuit Case No. 05-1244 decided July 11, 2008, and an EPA letter to the department dated September 2, 2008, requesting this change.*

(1) Applicability.

*[(H) The requirements of sections (3), (4) and (5) of this rule will not apply to the control period beginning in 2009 and any control period thereafter.]*

(3) General Provisions.

(C) NO<sub>x</sub> Budget Permits.

1. General NO<sub>x</sub> budget trading program permit requirements.

A. For each NO<sub>x</sub> budget source required to have a federally enforceable permit, such permit shall include a NO<sub>x</sub> budget permit administered by the director.

(I) For NO<sub>x</sub> budget sources required to have a Title V operating permit, the NO<sub>x</sub> budget portion of the Title V permit shall be administered in accordance with the director's Title V operating permits regulations promulgated under 40 CFR 70 or 71, except as provided otherwise by subsection (3)(C) or (H) of this rule.

(II) For NO<sub>x</sub> budget sources required to have a non-Title V permit, the NO<sub>x</sub> budget portion of the non-Title V permit shall be administered in accordance with the director's regulations promulgated to administer non-Title V permits, except as provided otherwise by subsection (3)(C) or (H) of this rule.

B. Each NO<sub>x</sub> budget permit (including a draft or proposed NO<sub>x</sub> budget permit, if applicable) shall contain all applicable NO<sub>x</sub> budget trading program requirements and shall be a complete and segregable portion of the permit under subparagraph (3)(C)1.A. of this rule.

2. Submission of NO<sub>x</sub> budget permit applications.

A. The NO<sub>x</sub> authorized account representative of any NO<sub>x</sub> budget source required to have a federally enforceable permit shall submit to the director a complete NO<sub>x</sub> budget permit application under paragraph (3)(C)3. of this rule by the applicable deadline in subparagraph (3)(C)/3./2.B. of this rule.

B. Application time.

(I) For NO<sub>x</sub> budget sources required to have a Title V operating permit:

(a) For any source, with one (1) or more NO<sub>x</sub> budget units under section (1) of this rule that commence operation before January 1, 2006, the NO<sub>x</sub> authorized account representative shall submit a complete NO<sub>x</sub> budget permit application under paragraph (3)(C)3. of this rule covering such NO<sub>x</sub> budget units to the director at least eighteen (18) months (or such lesser time provided under the director's Title V operating permits regulations for final action on a permit application) before May 1, 2007.

(b) For any source, with any NO<sub>x</sub> budget unit under section (1) of this rule that commences operation on or after January 1, 2006, the NO<sub>x</sub> authorized account representative shall submit a complete NO<sub>x</sub> budget permit application under paragraph (3)(C)3. of this rule covering such NO<sub>x</sub> budget unit to the director at least eighteen (18) months (or such lesser time provided under the director's Title V operating permits regulations for final action on a permit application) before the later of May 1, 2007 or the date on which the NO<sub>x</sub> budget unit commences operation.

(II) For NO<sub>x</sub> budget sources required to have a non-Title V permit:

(a) For any source, with one (1) or more NO<sub>x</sub> budget units under section (1) of this rule that commence operation before January 1, 2006, the NO<sub>x</sub> authorized account representative shall submit a complete NO<sub>x</sub> budget permit application under paragraph (3)(C)3. of this rule covering such NO<sub>x</sub> budget units to the director at least eighteen (18) months (or such lesser time provided under the director's non-Title V permits regulations for final action on a permit application) before May 1, 2007.

(b) For any source, with any NO<sub>x</sub> budget unit under section (1) of this rule that commences operation on or after January 1, 2006, the NO<sub>x</sub> authorized account representative shall submit a complete NO<sub>x</sub> budget permit application under paragraph (3)(C)3. of this rule covering such NO<sub>x</sub> budget unit to the director at least eighteen (18) months (or such lesser time provided under the director's non-Title V permits regulations for final action on a permit application) before the later of May 1, 2007 or the date on which the NO<sub>x</sub> budget unit commences operation.

C. Duty to reapply.

(I) For a NO<sub>x</sub> budget source required to have a Title V operating permit, the NO<sub>x</sub> authorized account representative shall submit a complete NO<sub>x</sub> budget permit application under paragraph (3)(C)3. of this rule for the NO<sub>x</sub> budget source covering the NO<sub>x</sub> budget units at the source in accordance with the director's Title V operating permits regulations addressing operating permit renewal.

(II) For a NO<sub>x</sub> budget source required to have a non-Title V permit, the NO<sub>x</sub> authorized account representative shall submit a complete NO<sub>x</sub> budget permit application under paragraph (3)(C)3. of this rule for the NO<sub>x</sub> budget source covering the NO<sub>x</sub> budget units at the source in accordance with the director's non-Title V permits regulations addressing permit renewal.

3. Information requirements for NO<sub>x</sub> budget permit applications. A complete NO<sub>x</sub> budget permit application shall include the following elements concerning the NO<sub>x</sub> budget source for which the application is submitted, in a format prescribed by the director:

A. Identification of the NO<sub>x</sub> budget source, including plant name and the Office of Regulatory Information Systems (ORIS) or facility code assigned to the source by the Energy Information Administration, if applicable;

B. Identification of each NO<sub>x</sub> budget unit at the NO<sub>x</sub> budget source and whether it is a NO<sub>x</sub> budget unit under section (1) of this rule or under subsection (3)(H) of this rule; and

C. The standard requirements under subsection (3)(A) of this rule.

4. NO<sub>x</sub> budget permit contents.

A. Each NO<sub>x</sub> budget permit (including any draft or proposed NO<sub>x</sub> budget permit, if applicable) will contain, in a format prescribed by the director, all elements required for a complete NO<sub>x</sub> budget permit application under paragraph (3)(C)3. of this rule as approved or adjusted by the director.

B. Each NO<sub>x</sub> budget permit is deemed to incorporate automatically the definitions of terms under section (2) of this rule and, upon recordation by the administrator under subsections (3)(F), (G), or (H) of this rule, every allocation, transfer, or deduction of a NO<sub>x</sub> allowance to or from the compliance accounts of the NO<sub>x</sub> budget units covered by the permit or the overdraft account of the NO<sub>x</sub> budget source covered by the permit.

5. Effective date of initial NO<sub>x</sub> budget permit. The initial NO<sub>x</sub> budget permit covering a NO<sub>x</sub> budget unit for which a complete NO<sub>x</sub> budget permit application is timely submitted under subparagraph (3)(C)2.B. of this rule shall become effective by the later of:

A. May 1, 2007;

B. May 1 of the year in which the NO<sub>x</sub> budget unit commences operation, if the unit commences operation on or before May 1 of that year;

C. The date on which the NO<sub>x</sub> budget unit commences operation, if the unit commences operation during a control period; or

D. May 1 of the year following the year in which the NO<sub>x</sub> budget unit commences operation, if the unit commences operation on or after October 1 of the year.

6. NO<sub>x</sub> budget permit revisions.

A. For a NO<sub>x</sub> budget source with a Title V operating permit, except as provided in subparagraph (3)(C)4.B. of this rule, the director will revise the NO<sub>x</sub> budget permit, as necessary, in accordance with the director's Title V operating permits regulations addressing permit revisions.

B. For a NO<sub>x</sub> budget source with a non-Title V permit, except as provided in subparagraph (3)(C)4.B. of this rule, the director will revise the NO<sub>x</sub> budget permit, as necessary, in accordance with the director's non-Title V permits regulations addressing permit revisions.

*AUTHORITY: section 643.050, RSMo 2000. Original rule filed Feb. 14, 2005, effective Oct. 30, 2005. Amended: Filed Oct. 2, 2006, effective May 30, 2007. Amended: Filed Oct. 24, 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 on this proposed amendment will begin at 9:00 a.m., February 3, 2009. The public hearing will be held at the Governor Office Building, Room 450, 200 Madison Street, Jefferson City, MO 65101. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176, (573) 751-4817. Interested persons, whether or not heard, may submit a written or email statement of their views until 5:00 p.m., February 10, 2009. Written comments shall be sent to Chief, Operations Section, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to apcprulespn@dnr.mo.gov.*

**Title 11—DEPARTMENT OF PUBLIC SAFETY  
Division 45—Missouri Gaming Commission  
Chapter 1—Organization and Administration**

**PROPOSED AMENDMENT**

**11 CSR 45-1.090 Definitions.** The commission is amending subsection (5)(H).

*PURPOSE: This amendment deletes reference to the five hundred dollar (\$500)-loss limit which was repealed during the general election by voter initiative.*

(5) Definitions beginning with E—

(H) Excursion—A two (2)-hour period approved by the commission that an excursion gaming boat shall operate and, if required, cruise, *provided; however, that when circumstances beyond the control of the Class A licensee arise that create an inability to track the five hundred dollar (\$500)-loss limit for any excursion, as provided in 11 CSR 45-6.040, the excursion shall automatically terminate and the following excursion must consist of the remaining time scheduled for the terminated excursion plus the entire time of the immediately following scheduled excursion. This period of time shall include reasonable time for boarding and exiting the boat, which shall be established by the commission based on the licensee's ability to enforce the five hundred dollar (\$500)-loss limit.* The commission may allow patrons to board and exit the

boat at will if the *[licensee can demonstrate that the five hundred dollar (\$500)-loss limit can be enforced and that the] integrity of the admission fee collection process can be maintained. Gaming may be permitted at any time during the excursion. The commission shall approve all schedules of excursion prior to the schedule becoming effective. The provisions of this definition to the contrary notwithstanding, the commission may approve an excursion schedule that includes a single three (3)-hour excursion if it is the last excursion of the gaming day.*

*AUTHORITY: sections 313.004, 313.805, and 313.817, RSMo 2000. Emergency rule filed Sept. 1, 1993, effective Sept. 20, 1993, expired Jan. 17, 1994. Emergency rule filed Jan. 5, 1994, effective Jan. 18, 1994, expired Jan. 30, 1994. Original rule filed Sept. 1, 1993, effective Jan. 31, 1994. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Oct. 29, 2008, effective Nov. 15, 2008, expires May 13, 2009. Amended: Filed Oct. 29, 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 a statement in support of or in opposition to this proposed amendment with the Missouri Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. A public hearing is scheduled for January 6, 2009 at 10:00 a.m., in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.*

## Title 11—DEPARTMENT OF PUBLIC SAFETY Division 45—Missouri Gaming Commission Chapter 5—Conduct of Gaming

### PROPOSED AMENDMENT

**11 CSR 45-5.053 Policies.** The commission is deleting section (5) and renumbering section (6) to section (5).

*PURPOSE: This amendment deletes reference to the five hundred dollar (\$500)-loss limit which was repealed during the general election by voter initiative.*

*[(5) The holder of a Class A license will insure that a person's maximum loss will be no more than five hundred dollars (\$500) during each gambling excursion.]*

*[(6)](5) Wagers may only be made—*

- (A) By a person present on a licensed gambling boat;
- (B) By persons twenty-one (21) years of age or older; and
- (C) At the times allowed by the commission.

*AUTHORITY: sections 313.004, 313.805, [RSMo 1994] and 313.807, RSMo [Supp. 1999] 2000. Original rule filed Feb. 19, 1998, effective Aug. 30, 1998. Amended: Filed May 13, 1998, effective Jan. 30, 1999. Amended: Filed March 1, 2000, effective Sept. 30, 2000. Emergency amendment filed Oct. 29, 2008, effective Nov. 15, 2008, expires May 13, 2009. Amended: Filed Oct. 29, 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 a statement in support of or in opposition to this proposed amendment with the Missouri Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. A public hearing is scheduled for January 6, 2009 at 10:00 a.m., in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.*

## Title 11—DEPARTMENT OF PUBLIC SAFETY Division 45—Missouri Gaming Commission Chapter 5—Conduct of Gaming

### PROPOSED AMENDMENT

**11 CSR 45-5.100 Chip Specifications.** The commission is amending sections (1) and (2).

*PURPOSE: This amendment adds new denominations for value chip specifications and reflects prior changes to the definition of Class A and Class B licensees and to surveillance requirements.*

(1) Value Chips.

(A) Each chip issued by a holder of a Class *[A]* **B** license shall be round in shape, have clearly and permanently impressed, engraved or imprinted on it the name of the riverboat and the specific value of the chip, and at least on one (1) side of the chip, the city or other locality and the state where the establishment is located and the manufacturer's name or a distinctive logo or other mark identifying the manufacturer, except that a holder of a Class *[A]* **B** license may issue gaming chips without a value impressed, engraved or imprinted on it for roulette. Chips with a value contained on them shall be known as value chips and chips without a value contained on them shall be known as nonvalue chips.

(B) Unless otherwise authorized by the commission, value chips may be issued by Class *[A]* **B** licensees in denominations of fifty cents, one, two and one-half, five, *[twenty,]* twenty-five, one hundred, *[and]* five hundred, **one thousand, five thousand, and ten thousand** dollars (50¢, \$1, \$2.50, \$5, *[\$20,]* \$25, \$100, *[and]* \$500, **\$1,000, \$5,000 and \$10,000**). The licensees shall have the discretion to determine the denominations to be utilized on its riverboat and the amount of each denomination necessary for the conduct of gaming operations.

(C) Each denomination of value chip shall have a different primary color from every other denomination of value chip. Unless otherwise approved by the commission, value chips shall fall within the colors set forth in this subsection when the chips are viewed both in daylight and under incandescent light. In conjunction with these primary colors, each holder of a Class *[A]* **B** license shall utilize contrasting secondary colors for the edge spots on each denomination of value chip. Unless otherwise approved by the commission, no holder of a Class *[A]* **B** license shall use a secondary color on a specific denomination of chip identical to the secondary color used by another holder of a Class *[A]* **B** license on that same denomination of value chip. The primary color to be utilized by each holder of a Class *[A]* **B** license for each denomination of value chip shall be—

1.	50¢	Pink
2.	\$ 1	White
3.	\$2.50	Blue
4.	\$ 5	Red
[5.]	\$ 20	Yellow]
[6.]	\$ 25	Green
[7.]	\$100	Black

8.77.	\$500	Fire Orange
8.	\$1,000	Purple
9.	\$5,000	Gray
10.	\$10,000	Yellow

(D) Each denomination of value chip utilized by a holder of a Class [A] B license unless otherwise authorized by the commission, shall—

1. Have its center portion impressed, engraved or imprinted with the value of the chip and the riverboat issuing it and utilize a different shape for each denomination;

2. Be designed so as to be able to determine on surveillance closed circuit [black and white] television the specific denomination of a chip when placed in a stack of chips of other denominations; and

3. Be designed, manufactured and constructed so as to prevent, to the greatest extent possible, the counterfeiting of value chips.

(2) Nonvalue Chips.

(B) Nonvalue chips issued at a roulette table shall only be used for gaming at that table and shall not be used for gaming at any other table in the riverboat, nor shall any holder of a Class [A] B license or its employees allow any riverboat patron to remove nonvalue chips permanently from the table from which they were issued.

(E) Each holder of a Class [A] B license shall have the discretion to permit, limit or prohibit the use of value chips in gaming at roulette provided, however, that it shall be the responsibility of the licensee to keep an accurate account of the wagers being made at roulette with value chips so that the wagers made by one player are not confused with those made by another player at the table.

*AUTHORITY: sections 313.004, 313.805, and 313.817, RSMo 2000. Emergency rule filed Sept. 1, 1993, effective Sept. 20, 1993, expired Jan. 17, 1994. Emergency rule filed Jan. 5, 1994, effective Jan. 18, 1994, expired Jan. 30, 1994. Original rule filed Sept. 1, 1993, effective Jan. 31, 1994. Amended: Filed May 13, 1998, effective Oct. 30, 1998. Amended: Filed April 3, 2001, effective Oct. 30, 2001. Amended: Filed Oct. 29, 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 a statement in support of or in opposition to this proposed amendment with the Missouri Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. A public hearing is scheduled for January 6, 2009 at 10:00 a.m., in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.*

**Title 11—DEPARTMENT OF PUBLIC SAFETY  
Division 45—Missouri Gaming Commission  
Chapter 6—Operation of the Riverboat**

**PROPOSED RESCISSION**

**11 CSR 45-6.040 Five Hundred Dollar-Loss Limit.** This rule established enforcement of five hundred dollar (\$500)-loss limits.

*PURPOSE: This rule is being rescinded as the five hundred dollar (\$500)-loss limit was repealed during the general election by voter initiative.*

*AUTHORITY: sections 313.004 and 313.805, RSMo 1994. Emergency rule filed Sept. 1, 1993, effective Sept. 20, 1993, expired Jan. 17, 1994. Emergency rule filed Jan. 5, 1994, effective Jan. 18, 1994, expired Jan. 30, 1994. Original rule filed Sept. 1, 1993, effective Jan. 31, 1994. Amended: Filed May 13, 1998, effective Oct. 30, 1998. Emergency rescission filed Oct. 29, 2008, effective Nov. 15, 2008, expires May 13, 2009. Rescinded: Filed Oct. 29, 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: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. A public hearing is scheduled for January 6, 2009 at 10:00 a.m., in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.*

**Title 11—DEPARTMENT OF PUBLIC SAFETY  
Division 45—Missouri Gaming Commission  
Chapter 8—Accounting Records and Procedures; Audits**

**PROPOSED AMENDMENT**

**11 CSR 45-8.120 Handling of Cash at Gaming Tables.** The commission is amending subsections (1)(B) and (1)(C) and deleting subsection (1)(D).

*PURPOSE: This amendment deletes reference to the five hundred dollar (\$500)-loss limit which was repealed during the general election by voter initiative.*

(1) Whenever cash is presented by a patron at a gaming table for exchange of gaming chips, the following procedures and requirements shall be observed:

(B) The cash value amount shall be verbalized by the dealer or box person accepting it in a tone of voice calculated to be heard by the patron and the casino supervisor assigned to that gaming table; and

(C) Immediately after that, the cash shall be taken from the top of the gaming table and placed by the dealer or box person into the drop box attached to the gaming table[; and].

*[(D) All of subsections (1)(A)–(C) shall be consistent with the boat's enforcement of five-hundred (\$500) dollar-loss limits.]*

*AUTHORITY: sections 313.004, 313.805, and 313.817, RSMo [Supp. 1993] 2000. Emergency rule filed Sept. 1, 1993, effective Sept. 20, 1993, expired Jan. 17, 1994. Emergency rule filed Jan. 5, 1994, effective Jan. 18, 1994, expired Jan. 30, 1994. Original rule filed Sept. 1, 1993, effective Jan. 31, 1994. Emergency amendment filed Oct. 29, 2008, effective Nov. 15, 2008, expires May 13, 2009. Amended: Filed Oct. 29, 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 a statement in support of or in opposition to this proposed amendment with the Missouri Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. A public hearing is scheduled for January 6, 2009 at 10:00 a.m., in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.*

**Title 11—DEPARTMENT OF PUBLIC SAFETY  
Division 45—Missouri Gaming Commission  
Chapter 9—Internal Control System**

**PROPOSED AMENDMENT**

**11 CSR 45-9.010 Definition of Licensee.** The commission is amending section (1).

*PURPOSE: This amendment reflects the changes to the definition of Class A and Class B licensees.*

(1) For purposes of this chapter, licensee shall mean the holder of a Class A, Class B, Supplier, Temporary Supplier or Affiliate Supplier license as determined by the commission.

*AUTHORITY: sections 313.004, 313.805, 313.812, and 313.817, RSMo [1994] 2000 and section 313.800, RSMo Supp. 2007. Emergency rule filed Sept. 1, 1993, effective Sept. 20, 1993, expired Jan. 17, 1994. Emergency rule filed Jan. 5, 1994, effective Jan. 18, 1994, expired Jan. 30, 1994. Original rule filed Sept. 1, 1993, effective Jan. 31, 1994. Amended: Filed May 13, 1998, effective Oct. 30, 1998. Amended: Filed Oct. 29, 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 a statement in support of or in opposition to this proposed amendment with the Missouri Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. A public hearing is scheduled for January 6, 2009 at 10:00 a.m., in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.*

**Title 11—DEPARTMENT OF PUBLIC SAFETY  
Division 45—Missouri Gaming Commission  
Chapter 9—Internal Control System**

**PROPOSED AMENDMENT**

**11 CSR 45-9.020 Objectives of an Internal Control System.** The commission is amending section (1) and adding a new subsection (1)(C).

*PURPOSE: This amendment reflects the changes to the definition of Class A and Class B licensees and also clarifies who shall establish internal controls.*

(1) Each licensee **if so directed by the commission** shall establish an internal control system that includes the following:

(B) Accounting control which includes the plan of organization and the procedures and records that are concerned with the safeguarding of assets and the accuracy and reliability of financial records and are consequently designed to provide reasonable assurance that—

1. Transactions are performed only in accordance with management's specific or general authorization;

2. Transactions are recorded adequately to permit preparation of financial statements in conformity with generally accepted accounting principles, to permit proper reporting of adjusted gross receipts and of fees and taxes and to maintain accountability for assets;

3. Access to assets is permitted only in accordance with management's specific authorization;

4. Recorded accountability for assets is compared with actual assets at reasonable intervals and appropriate action is taken with respect to any discrepancies;

5. Functions, duties and responsibilities are appropriately segregated and performed by competent personnel with integrity and an understanding of prescribed procedures.

A. The internal auditor shall report only to the entity or person holding a *[Class A] Class B* license, or other reporting as approved by the commission.

B. Security personnel shall only report to an organizational level above that of gaming operations manager.

C. Surveillance personnel shall only report directly to an organizational level above that of general manager; and

6. Compliance with the statutes and rules is assured.

**(C) Areas determined necessary by the commission.**

*AUTHORITY: sections 313.004, 313.805, 313.812, and 313.817, RSMo [1994] 2000 and section 313.800, RSMo Supp. 2007. Emergency rule filed Sept. 1, 1993, effective Sept. 20, 1993, expired Jan. 17, 1994. Emergency rule filed Jan. 5, 1994, effective Jan. 18, 1994, expired Jan. 30, 1994. Original rule filed Sept. 1, 1993, effective Jan. 31, 1994. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 29, 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 a statement in support of or in opposition to this proposed amendment with the Missouri Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. A public hearing is scheduled for January 6, 2009 at 10:00 a.m., in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.*

**Title 11—DEPARTMENT OF PUBLIC SAFETY  
Division 45—Missouri Gaming Commission  
Chapter 9—Internal Control System**

**PROPOSED AMENDMENT**

**11 CSR 45-9.030 Minimum Internal Control Standards.** The commission is amending sections (1) and (2) and adding new sections (3)–(22).

*PURPOSE: This amendment updates the requirements of the*

*Minimum Internal Control Standards* as incorporated by reference in Chapters B, D, E, H, I, J, N, P, Q, and R and also updates the Table of Contents. This amendment also designates a rule section to each chapter of the *Minimum Internal Control Standards* to allow for better management of the incorporated materials. Each section will list the effective date for that particular chapter as adopted by the commission.

The requirements of Chapters A, C, F, G, K, L, M, O, S and T are not currently being revised and consequently are not open to comment and will retain the effective date of the last revision to that chapter as listed in its corresponding section of this rule.

**PUBLISHER'S NOTE:** The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here. [This incorporated material (Appendix A)] *The Minimum Internal Control Standards* may also be accessed at <http://www.mgc.dps.mo.gov>.

(1) The commission shall adopt and publish minimum standards for internal control procedures that in the commission's opinion satisfy 11 CSR 45-9.020, as set forth in [Appendix A] the *Minimum Internal Control Standards* (MICS), which [has] have been incorporated by reference herein by individual chapters in this rule. [as published by the Missouri Gaming Commission, 3417 Knipp Dr., PO Box 1847, Jefferson City, MO 65102. This rule does not incorporate any subsequent amendments or additions. The minimum internal control standards were published by the commission in 2007 and do not include any later amendments or additions.]

(2) Each licensee shall adopt an internal control system that complies with [Appendix A of this rule] the MICS. The procedures must be approved by the commission. In the event that [Appendix A of this rule is] the MICS are amended, each licensee whose procedures are affected by the amended minimum standards shall, within ten (10) days of the effective date of the amended rule, amend its written system, submit a copy of the written system as amended to the commission and comply with the standards and system as amended. The commission, in its sole and absolute discretion, may extend the time for complying with this rule.

(3) The commission shall adopt and publish minimum standards for internal control procedures that in the commission's opinion satisfy 11 CSR 45-9.020, as set forth in MICS Chapter A-General and Administrative, which has been incorporated by reference herein, as published by the Missouri Gaming Commission, 3417 Knipp Dr., PO Box 1847, Jefferson City, MO 65102. Chapter A does not incorporate any subsequent amendments or additions as adopted by the commission on October 30, 2007.

(4) The commission shall adopt and publish minimum standards for internal control procedures that in the commission's opinion satisfy 11 CSR 45-9.020, as set forth in MICS Chapter B-Key Controls, which has been incorporated by reference herein, as published by the Missouri Gaming Commission, 3417 Knipp Dr., PO Box 1847, Jefferson City, MO 65102. Chapter B does not incorporate any subsequent amendments or additions as adopted by the commission on October 29, 2008.

(5) The commission shall adopt and publish minimum standards for internal control procedures that in the commission's opinion satisfy 11 CSR 45-9.020, as set forth in MICS Chapter C-Rules

of the Game, which has been incorporated by reference herein, as published by the Missouri Gaming Commission, 3417 Knipp Dr., PO Box 1847, Jefferson City, MO 65102. Chapter C does not incorporate any subsequent amendments or additions as adopted by the commission on October 30, 2007.

(6) The commission shall adopt and publish minimum standards for internal control procedures that in the commission's opinion satisfy 11 CSR 45-9.020, as set forth in MICS Chapter D-Table Games (Live Games), which has been incorporated by reference herein, as published by the Missouri Gaming Commission, 3417 Knipp Dr., PO Box 1847, Jefferson City, MO 65102. Chapter D does not incorporate any subsequent amendments or additions as adopted by the commission on October 29, 2008.

(7) The commission shall adopt and publish minimum standards for internal control procedures that in the commission's opinion satisfy 11 CSR 45-9.020, as set forth in MICS Chapter E-Electronic Gaming Devices (EGDs), which has been incorporated by reference herein, as published by the Missouri Gaming Commission, 3417 Knipp Dr., PO Box 1847, Jefferson City, MO 65102. Chapter E does not incorporate any subsequent amendments or additions as adopted by the commission on October 29, 2008.

(8) The commission shall adopt and publish minimum standards for internal control procedures that in the commission's opinion satisfy 11 CSR 45-9.020, as set forth in MICS Chapter F-Poker Rooms, which has been incorporated by reference herein, as published by the Missouri Gaming Commission, 3417 Knipp Dr., PO Box 1847, Jefferson City, MO 65102. Chapter F does not incorporate any subsequent amendments or additions as adopted by the commission on October 30, 2007.

(9) The commission shall adopt and publish minimum standards for internal control procedures that in the commission's opinion satisfy 11 CSR 45-9.020, as set forth in MICS Chapter G-Drops and Counts, which has been incorporated by reference herein, as published by the Missouri Gaming Commission, 3417 Knipp Dr., PO Box 1847, Jefferson City, MO 65102. Chapter G does not incorporate any subsequent amendments or additions as adopted by the commission on October 30, 2007.

(10) The commission shall adopt and publish minimum standards for internal control procedures that in the commission's opinion satisfy 11 CSR 45-9.020, as set forth in MICS Chapter H-Casino Cashiering, which has been incorporated by reference herein, as published by the Missouri Gaming Commission, 3417 Knipp Dr., PO Box 1847, Jefferson City, MO 65102. Chapter H does not incorporate any subsequent amendments or additions as adopted by the commission on October 29, 2008.

(11) The commission shall adopt and publish minimum standards for internal control procedures that in the commission's opinion satisfy 11 CSR 45-9.020, as set forth in MICS Chapter I-Casino Accounting, which has been incorporated by reference herein, as published by the Missouri Gaming Commission, 3417 Knipp Dr., PO Box 1847, Jefferson City, MO 65102. Chapter I does not incorporate any subsequent amendments or additions as adopted by the commission on October 29, 2008.

(12) The commission shall adopt and publish minimum standards for internal control procedures that in the commission's opinion satisfy 11 CSR 45-9.020, as set forth in MICS Chapter J-Admissions, which has been incorporated by reference herein, as published by the Missouri Gaming Commission, 3417 Knipp Dr., PO Box 1847, Jefferson City, MO 65102. Chapter J does not



incorporate any subsequent amendments or additions as adopted by the commission on October 29, 2008.

(13) The commission shall adopt and publish minimum standards for internal control procedures that in the commission's opinion satisfy 11 CSR 45-9.020, as set forth in MICS Chapter K—Currency Transaction Reporting, which has been incorporated by reference herein, as published by the Missouri Gaming Commission, 3417 Knipp Dr., PO Box 1847, Jefferson City, MO 65102. Chapter K does not incorporate any subsequent amendments or additions as adopted by the commission on October 30, 2007.

(14) The commission shall adopt and publish minimum standards for internal control procedures that in the commission's opinion satisfy 11 CSR 45-9.020, as set forth in MICS Chapter L—Internal Audit, which has been incorporated by reference herein, as published by the Missouri Gaming Commission, 3417 Knipp Dr., PO Box 1847, Jefferson City, MO 65102. Chapter L does not incorporate any subsequent amendments or additions as adopted by the commission on October 30, 2007.

(15) The commission shall adopt and publish minimum standards for internal control procedures that in the commission's opinion satisfy 11 CSR 45-9.020, as set forth in MICS Chapter M—Surveillance, which has been incorporated by reference herein, as published by the Missouri Gaming Commission, 3417 Knipp Dr., PO Box 1847, Jefferson City, MO 65102. Chapter M does not incorporate any subsequent amendments or additions as adopted by the commission on May 30, 2000.

(16) The commission shall adopt and publish minimum standards for internal control procedures that in the commission's opinion satisfy 11 CSR 45-9.020, as set forth in MICS Chapter N—Security, which has been incorporated by reference herein, as published by the Missouri Gaming Commission, 3417 Knipp Dr., PO Box 1847, Jefferson City, MO 65102. Chapter N does not incorporate any subsequent amendments or additions as adopted by the commission on October 29, 2008.

(17) The commission shall adopt and publish minimum standards for internal control procedures that in the commission's opinion satisfy 11 CSR 45-9.020, as set forth in MICS Chapter O—Purchasing and Contract Administration, which has been incorporated by reference herein, as published by the Missouri Gaming Commission, 3417 Knipp Dr., PO Box 1847, Jefferson City, MO 65102. Chapter O does not incorporate any subsequent amendments or additions as adopted by the commission on May 30, 2000.

(18) The commission shall adopt and publish minimum standards for internal control procedures that in the commission's opinion satisfy 11 CSR 45-9.020, as set forth in MICS Chapter P—Excluded Persons, which has been incorporated by reference herein, as published by the Missouri Gaming Commission, 3417 Knipp Dr., PO Box 1847, Jefferson City, MO 65102. Chapter P does not incorporate any subsequent amendments or additions as adopted by the commission on October 29, 2008.

(19) The commission shall adopt and publish minimum standards for internal control procedures that in the commission's opinion satisfy 11 CSR 45-9.020, as set forth in MICS Chapter Q—Disassociated Persons, which has been incorporated by reference herein, as published by the Missouri Gaming Commission, 3417 Knipp Dr., PO Box 1847, Jefferson City, MO 65102. Chapter Q does not incorporate any subsequent amendments or additions as adopted by the commission on October 29, 2008.

(20) The commission shall adopt and publish minimum standards for internal control procedures that in the commission's opinion satisfy 11 CSR 45-9.020, as set forth in MICS Chapter R—Forms, which has been incorporated by reference herein, as published by the Missouri Gaming Commission, 3417 Knipp Dr., PO Box 1847, Jefferson City, MO 65102. Chapter R does not incorporate any subsequent amendments or additions as adopted by the commission on October 29, 2008.

(21) The commission shall adopt and publish minimum standards for internal control procedures that in the commission's opinion satisfy 11 CSR 45-9.020, as set forth in MICS Chapter S—Management Information Systems (MIS), which has been incorporated by reference herein, as published by the Missouri Gaming Commission, 3417 Knipp Dr., PO Box 1847, Jefferson City, MO 65102. Chapter S does not incorporate any subsequent amendments or additions as adopted by the commission on October 30, 2005.

(22) The commission shall adopt and publish minimum standards for internal control procedures that in the commission's opinion satisfy 11 CSR 45-9.020, as set forth in MICS Chapter T—Tips, which has been incorporated by reference herein, as published by the Missouri Gaming Commission, 3417 Knipp Dr., PO Box 1847, Jefferson City, MO 65102. Chapter T does not incorporate any subsequent amendments or additions as adopted by the commission on October 30, 2007.

*AUTHORITY: sections 313.004 and 313.805, RSMo 2000 and section 313.800, RSMo Supp. [2006] 2007. Emergency rule filed Sept. 1, 1993, effective Sept. 20, 1993, expired Jan. 17, 1994. Emergency rule filed Jan. 5, 1994, effective Jan. 18, 1994, expired Jan. 30, 1994. Original rule filed Sept. 1, 1993, effective Jan. 31, 1994. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Oct. 29, 2008, effective Nov. 15, 2008, expires May 13, 2009. Amended: Filed Oct. 29, 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 a statement in support of or in opposition to this proposed amendment with the Missouri Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. A public hearing is scheduled for January 6, 2009 at 10:00 a.m., in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.*

**Title 11—DEPARTMENT OF PUBLIC SAFETY  
Division 45—Missouri Gaming Commission  
Chapter 9—Internal Control System**

**PROPOSED AMENDMENT**

**11 CSR 45-9.040 Commission Approval of Internal Control System.** The commission is amending section (1), deleting paragraph (1)(C)1. and renumbering paragraphs (1)(C)2.-25.

*PURPOSE: This amendment deletes reference to the five hundred dollar (\$500)-loss limit which was repealed during the general election*



by voter initiative and also clarifies who will establish internal controls.

(1) Each licensee **if so directed by the commission** shall describe, in a manner that the commission may approve or require, its administrative and accounting procedures in detail in a written system of internal control. Each written system must include a detailed narrative description of the administrative and accounting procedures designed to satisfy the requirements of 11 CSR 45-9.020 and 11 CSR 45-9.030(1). Additionally, this description shall include a separate section for the following:

(C) A detailed, narrative description of the administrative and accounting procedures designed to satisfy the requirements of 11 CSR 45-9.020 and 11 CSR 45-9.030(1). Additionally, this description shall include a separate section for the following:

[1. Procedures to insure that no person shall lose more than five hundred dollars (\$500) during each gambling excursion;]

[2.]1. Procedures to account for the total number and amount of money received from admissions, including free passes or complimentary admission tickets;

[3.]2. Physical characteristics of drop box and tip box;

[4.]3. Transportation of drop and tip boxes to and from gaming tables;

[5.]4. Procedures for table inventories;

[6.]5. Procedures for opening and closing gaming tables;

[7.]6. Procedures for fills and credits;

[8.]7. Procedures for accepting tips or gratuities;

[9.]8. Procedures for transporting chips and tokens to and from gaming tables;

[10.]9. Procedures for shift changes at gaming tables;

[11.]10. Drop bucket characteristics;

[12.]11. Transportation of drop buckets to and from electronic gaming devices;

[13.]12. Procedures for chip and token purchases;

[14.]13. Procedures for hopper fills;

[15.]14. Procedures for transportation of electronic gaming devices;

[16.]15. Procedures for jackpot payout;

[17.]16. Layout and physical characteristics of cashier's cage;

[18.]17. Procedures for accounting controls;

[19.]18. Procedures for exchange of checks submitted by gaming patrons;

[20.]19. Procedures for credit card and debit card transactions;

[21.]20. Procedures for acceptance, accounting for and redemption of patron's cash deposits;

[22.]21. Procedures for control of coupon redemption and other complimentary distribution programs;

[23.]22. Procedures for shoreside facilities, which is defined for purposes of this rule as those facilities based or built upon land;

[24.]23. Procedures for federal cash transactions reporting; and

[25.]24. Procedures for security and accountability of dice and cards; and

**AUTHORITY:** sections 313.004[,] and 313.805, RSMo [1994] 2000 and section 313.800, RSMo Supp. 2007. Emergency rule filed Sept. 1, 1993, effective Sept. 20, 1993, expired Jan. 17, 1994. Emergency rule filed Jan. 5, 1994, effective Jan. 18, 1994, expired Jan. 30, 1994. Original rule filed Sept. 1, 1993, effective Jan. 31, 1994. Amended: Filed June 2, 1995, effective Dec. 30, 1995. Amended: Filed March 18, 1996, effective Oct. 30, 1996. Emergency amendment filed Oct 29, 2008, effective Nov. 15, 2008, expires May 13, 2009. Amended: Filed Oct 29, 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 a statement in support of or in opposition to this proposed amendment with the Missouri Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. A public hearing is scheduled for January 6, 2009 at 10:00 a.m., in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.

**Title 11—DEPARTMENT OF PUBLIC SAFETY  
Division 45—Missouri Gaming Commission  
Chapter 11—Taxation Regulations**

**PROPOSED AMENDMENT**

**11 CSR 45-11.020 Deposit Account—Taxes and Fees.** The commission is amending section (1) and subsections (7)(D)–(F), and replacing the form.

**PURPOSE:** This amendment increases the tax rate as approved during the general election by voter initiative, and updates the form and the commission's mailing address.

(1) As authorized in section 313.822, RSMo, a tax is imposed on the adjusted gross receipts received from gambling games at the rate of [twenty] **twenty-one percent [(20%)] (21%)** (the "gaming tax").

(7) Licensees. Beginning in the first month, second day of operation, each licensee, as a condition of its license, shall deposit daily into the deposit account an amount sufficient to cover the estimated tax and fee liabilities for the previous day.

(D) In the event that the licensee's adjusted gross receipts result in a negative tax due or if overpayment is made, the licensee shall file a [deposit adjustment form, as set forth in Appendix A] **Claim for Refund or Credit Form, included herein**, along with the tax return.

(E) Every [deposit adjustment form] **Claim for Refund or Credit Form** must be in writing under oath and must state the specific grounds upon which the claim is founded. Amended returns are required to be filed for all periods involved within the weekly period defined in 11 CSR 45-11.030.

(F) The [deposit adjustment form] **Claim for Refund or Credit Form shall be made available on the commission's website at [www.mgc.dps.mo.gov](http://www.mgc.dps.mo.gov)** and may be requested by writing to: Missouri Gaming Commission, [11775 Borman Drive, St. Louis, MO 63146] **Post Office Box 1847, Jefferson City, MO 65102-1847.**

Appendix A

[DEPOSIT ADJUSTMENT FORM

This form is submitted by \_\_\_\_\_, a Class A licensee (the "Licensee") in compliance with 11 CSR 45-11.020 to the Missouri Gaming Commission as a request for an adjustment to gaming tax or admission fee deposit liability. The undersigned, an authorized agent for the Licensee, states the following:

(1) The amounts listed below relate to a daily deposit tax or fee adjustment within the one week tax and fee collection period:

Gaming Date: \_\_\_\_\_

Amount Deposited: \_\_\_\_\_

Amount Due for Deposit: \_\_\_\_\_

Amount of Overpayment to be Adjusted Within the Tax Period: \_\_\_\_\_

Proposed Gaming Date for Adjustment: \_\_\_\_\_

Type of Tax or Fee: \_\_\_\_\_

Reason for Adjustment: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(2) This deposit adjustment is being filed in duplicate and amended returns for all periods involved are attached hereto.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name typed)

\_\_\_\_\_  
(Position)

\_\_\_\_\_  
(Company)

State of \_\_\_\_\_ )

County of \_\_\_\_\_ )

ss.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_, 19\_\_

\_\_\_\_\_  
(Notary Public)

SEAL:]



MISSOURI GAMING COMMISSION  
P.O. BOX 1847  
3417 KNIPP DRIVE  
JEFFERSON CITY, MISSOURI 65102

**CLAIM FOR REFUND OR CREDIT FORM**

FOR COMMISSION USE ONLY
DATE RECEIVED
CLAIM NUMBER

CLAIMANT

This form is submitted by \_\_\_\_\_, a Class A licensee ("Licensee"), in compliance with 11 CSR 45-11.110, to the Missouri Gaming Commission ("Commission") as a claim for refund or credit for tax or fee liability. In submitting this form, Licensee states the following:

- The tax or fee, penalty or interest, listed below has been paid by reason other than clerical error or mistake on the part of the Commission:  
 Gaming Date: \_\_\_\_\_ Type of Tax or Fee: \_\_\_\_\_  
 Tax or Fee Amount Paid: \$ \_\_\_\_\_  
 Tax or Fee Amount Due: \$ \_\_\_\_\_  
 Amount of Overpayment: \$ \_\_\_\_\_  
 Reason for overpayment: \_\_\_\_\_  
 \_\_\_\_\_
- This claim for refund or credit is being filed in duplicate and amended returns for all periods involved in the overpayment are attached hereto.
- This claim for refund or credit is being filed within three (3) years from the date of overpayment, as determined under 11 CSR 45-11.110(1).
- Pursuant to 11 CSR 45-11.110(2), Licensee is requesting the following action by the Commission (please check one):  
 Issuance of a credit memorandum in the amount of overpayment, which may be applied in satisfaction of subsequent tax or fee liability.  
 Issuance of a refund on the amount of overpayment. A refund shall only be available if a credit cannot be taken on the next return filed with the Commission.
- Licensee acknowledges that a refund, in accordance with 11 CSR 45-11.110(5)(A), may be made with interest as determined by Section 32.065, RSMo, and that a credit, in accordance with 11 CSR 45-11.110(5)(B), shall be made without interest.

SIGNATURE

The undersigned declares this claim and any attached information supporting the claim is true, complete, and accurate and hereby acknowledges that, in accordance with Sections 313.812.14(1), and 313.830.4, RSMo, any holder of a Missouri gaming license who knowingly makes a false statement to the Commission, its agents, or employees is subject to discipline, including but not limited to fine, suspension, and revocation.

_____ (NAME)	_____ (SIGNATURE)
_____ (POSITION)	_____ (DATE)

FOR COMMISSION USE ONLY

COMMISSION ACTION

Upon review of this claim and any attached information supporting the claim, the Commission has taken the following action:

\_\_\_\_ Approval Of The Claim In The Following Amounts: Refund/Credit Total: \$ \_\_\_\_\_

\_\_\_\_ Denial Of Claim: A request for a hearing to review a denial may be filed within 30-days from the date of denial. The hearing would be governed by 11 CSR 45-13.

Explanation: \_\_\_\_\_  
 \_\_\_\_\_

_____ (AUTHORIZED SIGNATURE)	_____ (DATE)
---------------------------------	-----------------

**Distribution: Original - MGC Copy - Claimant**

**AUTHORITY:** sections 313.004, 313.805, 313.807, and 313.822, RSMo [1994] 2000 and sections 313.800, 313.820, and 313.835, RSMo [Supp. 1997] Supp. 2007. Emergency rule filed Sept. 1, 1993, effective Sept. 20, 1993, expired Jan. 17, 1994. Emergency rule filed Jan. 5, 1994, effective Jan. 18, 1994, expired Jan. 30, 1994. Original rule filed Sept. 1, 1993, effective Jan. 31, 1994. For intervening history, please consult the *Code of State Regulations*. Emergency amendment filed Oct. 29, 2008, effective Nov. 15, 2008, expires May 13, 2009. Amended: Filed Oct. 29, 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 a statement in support of or in opposition to this proposed amendment with the Missouri Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. A public hearing is scheduled for January 6, 2009 at 10:00 a.m., in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.

**Title 11—DEPARTMENT OF PUBLIC SAFETY  
Division 45—Missouri Gaming Commission  
Chapter 11—Taxation Regulations**

**PROPOSED AMENDMENT**

**11 CSR 45-11.050 Admission Fee.** The commission is amending section (1).

**PURPOSE:** This amendment clarifies the definition for a ticket of admission.

(1) An [admission boat] excursion gambling boat licensee shall pay to the commission an admission fee of two dollars (\$2) for each person embarking on an excursion gambling boat with a ticket of admission and one dollar (\$1) of this shall be paid to the home dock city or county; provided, however, that the licensee may charge any amount deemed necessary for a ticket of admission to any person embarking on an excursion gambling boat.

(A) As used in this chapter "ticket of admission" shall mean a device, mechanism, or procedure approved by the commission which provides a complete and accurate accounting of all patrons embarking on an excursion gambling boat.

**AUTHORITY:** sections 313.004[,] and 313.805, RSMo 2000 and section 313.820, RSMo [Supp. 1993] Supp. 2007. Emergency rule filed Sept. 1, 1993, effective Sept. 20, 1993, expired Jan. 17, 1994. Emergency rule filed Jan. 5, 1994, effective Jan. 18, 1994, expired Jan. 30, 1994. Original rule filed Sept. 1, 1993, effective Jan. 31, 1994. Emergency amendment filed Oct. 29, 2008, effective Nov. 15, 2008, expires May 13, 2009. Amended: Filed Oct. 29, 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 a statement in support of or in opposition to this proposed amendment with the Missouri Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. A public hearing is scheduled for January 6, 2009 at 10:00 a.m., in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.

**Title 12—DEPARTMENT OF REVENUE  
Division 10—Director of Revenue  
Chapter 41—General Tax Provisions**

**PROPOSED AMENDMENT**

**12 CSR 10-41.010 Annual Adjusted Rate of Interest.** The director proposes to amend section (1).

**PURPOSE:** Under the Annual Adjusted Rate of Interest (section 32.065, RSMo), this amendment establishes the 2009 annual adjusted rate of interest to be implemented and applied on taxes remaining unpaid during calendar year 2009.

(1) Pursuant to section 32.065, RSMo, the director of revenue upon official notice of the average predominant prime rate quoted by commercial banks to large businesses, as determined and reported by the Board of Governors of the Federal Reserve System in the Federal Reserve Statistical Release H.15(519) for the month of September of each year has set by administrative order the annual adjusted rate of interest to be paid on unpaid amounts of taxes during the succeeding calendar year as follows:

Calendar Year	Rate of Interest on Unpaid Amounts of Taxes
1995	12%
1996	9%
1997	8%
1998	9%
1999	8%
2000	8%
2001	10%
2002	6%
2003	5%
2004	4%
2005	5%
2006	7%
2007	8%
2008	8%
2009	5%

**AUTHORITY:** section 32.065, RSMo 2000. Emergency rule filed Oct. 13, 1982, effective Oct. 23, 1982, expired Feb. 19, 1983. Original rule filed Nov. 5, 1982, effective Feb. 11, 1983. For intervening history, please consult the *Code of State Regulations*. Emergency amendment filed Oct. 21, 2008, effective Jan. 1, 2009, expires June 29, 2009. Amended: Filed Oct. 21, 2008.

**PUBLIC COST:** This proposed amendment will cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate. This proposed amendment will result in a decrease in the interest rate charged on delinquent taxes. The precise dollar impact on public entities is unknown, however, for interest accrued on tax amounts owed as of or after the effective date of this rule, the cost to the public entities will be three dollars (\$3) per year for every one hundred dollars (\$100) of tax owed.

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate. This proposed amendment will result in a decrease in the interest rate charged on delinquent taxes. The actual number of affected taxpayers is unknown. Because the future amount of past due taxes is unknown, the precise dollar impact on private entities is unknown, however, for interest accrued on tax amounts owed as of or after the effective date of this rule, the savings to the private entity will be three dollars (\$3) per year for every one hundred dollars (\$100) of tax owed.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, Jefferson City, MO 65105-0475. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

**FISCAL NOTE  
PUBLIC COST**

**I. RULE NUMBER**

Rule Number and Name:	12 CSR 10-41.010 Annual Adjusted Rate of Interest
Type of Rulemaking:	Proposed Amendment

**II. SUMMARY OF FISCAL IMPACT**

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Counties	There are no expenditures required by this regulation. Because the amount of interest collected on past due amounts of taxes will decrease, the aggregate impact on public entities will be more than \$500. The future amount past due taxes is unknown, however, the gross amount of delinquent taxes as of June 30, 2008, was \$877,645,346. The decreased interest on that amount as a result of the proposed amendment would be \$26,329,360.38. The precise dollar impact on public entities is also unknown, however, for interest accrued on tax amounts owed as of or after the effective date of this rule, the cost to the public entities will be \$3 per year for every \$100 of tax owed.
Cities	
Special Taxing Districts	

**III. WORKSHEET**

The proposed amendment adjusts the rate of interest for 2009 at 5%, down from 8% in 2008.

**IV. ASSUMPTIONS**

Pursuant to section 32.065, RSMo, the director of revenue is mandated to establish an annual adjusted rate of interest based upon the adjusted prime rate charged by banks during September of that year as set by the Board of Governors of the Federal Reserve rounded to the nearest full percent.

**FISCAL NOTE  
 PRIVATE COST**

**I. RULE NUMBER**

<b>Rule Number and Name:</b>	12 CSR 10-41.010 Annual Adjusted Rate of Interest
<b>Type of Rulemaking:</b>	Proposed Amendment

**II. SUMMARY OF FISCAL IMPACT**

<b>Estimate of the number of entities by class which would likely be affected by adoption of the proposed rule:</b>	<b>Classification by types of the business entities which would likely be affected:</b>	<b>Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:</b>
Any taxpayer with past due tax amounts.	Any taxpayer with past due tax amounts.	Because the amount of interest collected on past due amounts of taxes will be at a decreased rate, the aggregate impact on private entities will be less than \$500. The future amount of past due taxes is unknown, however, the gross amount of delinquent taxes as of June 30, 2008, was \$877,645,346. The decreased interest on that amount as a result of the proposed amendment would be \$26,329,360.38. The precise dollar impact on private entities is also unknown, however, for interest accrued on tax amounts owed as of or after the effective date of this rule, the savings will be \$3 per year for every \$100 of tax owed.

**III. WORKSHEET**

The future amount of past due taxes is unknown. The gross amount of delinquent taxes as of June 30, 2008, was \$877,645,346. The 3% interest decrease on that amount as a



result of the proposed amendment would be \$26,329,360.38. Following is a comparison for the savings to a taxpayer with a past due amount of \$100:

	Current Rule – 8%	Proposed Amendment – 5%
Past due tax amount	\$100.00	\$100.00
Interest amount	8.00	5.00
Total Amount Due	\$108.00	\$105.00

#### IV. ASSUMPTIONS

Pursuant to Section 32.065, RSMo, the director of revenue is mandated to establish an annual adjusted rate of interest based upon the adjusted prime rate charged by banks during September of that year as set by the Board of Governors of the Federal Reserve rounded to the nearest full percent. Because the future amount of past due taxes is unknown, the precise dollar impact on private entities is also unknown, however, for interest accrued on tax amounts owed as of or after the effective date of this rule, the savings to the private entity will be \$3 per year for every \$100 of tax owed.

**Title 13—DEPARTMENT OF SOCIAL SERVICES  
Division 70—MO HealthNet Division  
Chapter 30—Podiatry Program**

**PROPOSED AMENDMENT**

**13 CSR 70-30.010 Podiatric Services Program.** The division is amending section (2).

*PURPOSE:* The purpose of this amendment is to update the incorporated by reference material to December 1, 2008.

(2) Payment will be made for services by podiatrists who have an agreement with the MO HealthNet Division to the extent that those services are covered under the guidelines established by the MO HealthNet Division and shall be included in the MO HealthNet provider manuals **and bulletins**, which are incorporated by reference and made a part of this rule as published by the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109, at its website [www.dss.mo.gov/mhd](http://www.dss.mo.gov/mhd), [July 1, 2008] **December 1, 2008**. This rule does not incorporate any subsequent amendments or additions.

*AUTHORITY:* section 208.201, RSMo Supp. 2007. This rule was previously filed as 13 CSR 40-81.130. Original rule filed Dec. 1, 1978, effective March 11, 1979. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Oct. 31, 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 TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be delivered by regular mail, express or overnight mail, in-person, or by courier within thirty (30) days after publication of this notice in the *Missouri Register*. If to be hand-delivered, comments must be brought to the MO HealthNet Division at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.

**Title 13—DEPARTMENT OF SOCIAL SERVICES  
Division 70—MO HealthNet Division  
Chapter 98—Psychiatric/Psychology/Counseling/Clinical  
Social Work Program**

**PROPOSED AMENDMENT**

**13 CSR 70-98.015 Psychiatric/Psychology/Counseling/Clinical Social Work Program Documentation.** The division is amending section (1).

*PURPOSE:* The purpose of this amendment is to update the incorporated by reference material to December 1, 2008.

(1) Administration. The MO HealthNet psychiatric/psychology/counseling/clinical social work program shall be administered by the Department of Social Services, MO HealthNet Division (MHD). The services covered and not covered, the limitations under which services are covered, and the maximum allowable fees for all covered services shall be determined by MHD and shall be included in the *MO HealthNet Psychology/Counseling Provider Manual* and Section

13.57 of the *Physician's Provider Manual*, which are incorporated by reference in this rule and available through the Department of Social Services, MO HealthNet Division website at [www.dss.mo.gov/mhd](http://www.dss.mo.gov/mhd), [July 1, 2008] **December 1, 2008**. This rule does not incorporate any subsequent amendments or additions. Psychiatric/psychology/counseling/clinical social work services shall include only those which are clearly shown to be medically necessary.

*AUTHORITY:* sections 208.152, 208.153, and 208.201, RSMo Supp. 2007. Original rule filed Nov. 14, 2003, effective June 30, 2004. Amended: Filed Oct. 30, 2007, effective April 30, 2008. Amended: Filed June 2, 2008, effective Nov. 30, 2008. Amended: Filed Oct. 31, 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 TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be delivered by regular mail, express or overnight mail, in person, or by courier within thirty (30) days after publication of this notice in the *Missouri Register*. If to be hand-delivered, comments must be brought to the MO HealthNet Division at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.

**Title 19—DEPARTMENT OF HEALTH AND  
SENIOR SERVICES  
Division 20—Division of Environmental Health and  
Communicable Disease Prevention  
Chapter 3—General Sanitation**

**PROPOSED RESCISSION**

**19 CSR 20-3.070 Fees Charged by Department of Health for Inspection of Existing On-Site Sewage Disposal System Requested by a Lending Institution.** This rule established a fee to be charged by the Department of Health and Senior Services for inspection of an existing on-site sewage disposal system pursuant to a request by a lending institution. This fee is authorized by section 701.051, RSMo.

*PURPOSE:* This rule is being rescinded as it is outdated and no longer consistent with the procedures used pursuant to a request from a lending institution.

*AUTHORITY:* sections 701.046 and 701.051, RSMo 1994. Emergency rule filed April 17, 1995, terminated April 26, 1995. Original rule filed April 17, 1995, effective Dec. 30, 1995. Rescinded: Filed Oct. 22, 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 TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Department of Health and Senior Services, Division of Community and Public Health, Glenda R. Miller, Division Director,

PO Box 570, Jefferson City, MO 65102-0570. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*.

**Title 19—DEPARTMENT OF HEALTH AND  
SENIOR SERVICES**

**Division 20—Division of Community and Public Health  
Chapter 3—General Sanitation**

**PROPOSED RULE**

**19 CSR 20-3.070 Requirements for On-Site Wastewater Treatment System Inspectors/Evaluators**

*PURPOSE:* This rule establishes criteria for inclusion on the lists of those individuals licensed to inspect or evaluate on-site wastewater treatment systems for the purposes of real estate transactions.

*PUBLISHER'S NOTE:* The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) Applicability. The requirements and procedures included in this rule apply to individuals qualified to perform inspections and/or evaluations of existing on-site wastewater treatment systems upon a request from a lending institution, a prospective purchaser, the owner of the property, a real estate agent, or a real estate broker.

(2) Definitions.

(A) "Administrative authority" shall mean the department or local public health agencies, planning and zoning commissions, county building departments, county public works departments, sewer districts, and/or municipalities that have authority to govern on-site wastewater treatment systems.

(B) "Department" shall mean the Missouri Department of Health and Senior Services.

(C) "Lending institution" shall mean a bank, savings and loan association, credit union, consumer credit lender, mortgage banker, or any other association or institution, which makes real estate loans.

(D) "Licensed individual" shall mean any person, including staff of local administrative authorities, licensed by the department, to inspect or evaluate an existing on-site wastewater treatment system for the purposes of a real estate transaction.

(E) "On-site wastewater treatment system (OWTS)" shall mean any system handling, or treatment facility receiving, domestic sewage which discharges three thousand (3,000) gallons per day or less into a subsurface soil absorption system or a single-family residence lagoon.

(F) "Property owner" shall mean the person with the legal right to possession of real estate.

(G) "Requesting party" shall mean a lending institution, a prospective purchaser, the property owner, a real estate agent, or a real estate broker who requests an inspection or evaluation of an OWTS serving a property that is the subject of a real estate transaction.

(3) An individual must be licensed with the department to inspect or evaluate an existing OWTS upon the request from a lending institution, which is providing either a government loan or conventional loan, or from another requesting party in connection with a real estate transaction. If the inspection or evaluation determines that the OWTS does not meet department standards, any new construction,

major modification, or major repair must be conducted according to the standards set forth in sections 701.025 through 701.059, RSMo, and any rules promulgated thereunder or applicable local OWTS ordinance.

(4) As deemed necessary by the department, an inspection or evaluation of an OWTS will include a microbiological test and other examination(s) of the private water supply intended for potable use serving the same property as the OWTS. In addition, the inspection or evaluation will include an inspection of any visible portion of the water supply construction, from the source to the storage vessel, and may include review of the well drilling reports.

(5) If it is necessary to enter any adjoining property in the course of an inspection or evaluation to properly make a determination regarding the OWTS inspection/evaluation, a licensed individual shall notify the owner of the adjoining property and obtain permission before entry is made.

(6) An individual must be licensed with the department to perform inspections and evaluations of existing OWTS for the purposes of a real estate transaction. To be licensed with the department, an individual shall:

(A) Complete a basic installer training course conducted by or approved by the department with a score of seventy percent (70%) or higher;

(B) Complete a licensed inspector training course conducted by or approved by the department with a score of seventy percent (70%) or higher; and

(C) Complete the department's licensing process described in section (7) of this rule.

(7) Department's Licensing Process.

(A) The license shall be issued to only one (1) individual person and not to a company, firm, association, or other group. The license is not transferable.

(B) To obtain a license from the department, an individual must submit a completed application packet to the department for approval. Completed application packets shall be mailed to the Missouri Department of Health and Senior Services, Attention: Fee Receipts, PO Box 570, Jefferson City, MO 65102-0570.

(C) The application packet shall include the following:

1. The completed application form, Mo Form #1 (6-08), Application for Licensure, is incorporated by reference in this rule and is available on the Internet at [www.dhss.mo.gov/Onsite](http://www.dhss.mo.gov/Onsite) or by contacting the department at PO Box 570, Jefferson City, MO 65102-0570, (573) 751-6095. This rule does not incorporate any subsequent amendments or additions;

2. Documentation of the successful completion of both the basic installers training course and licensed inspector training course; and

3. A check or money order made payable to the Missouri Department of Health and Senior Services for the nonrefundable-processing fee of ninety dollars (\$90). The processing fee may be waived for the staff of a local administrative authority that has enacted local ordinances, which include requirements for inspections of existing OWTS that are at least equal to department standards.

(8) Department's Renewal Licensing Process. An individual's license with the department shall expire thirty-six (36) months from the month of issuance unless the license has been revoked or surrendered.

(A) To renew their license with the department, an individual must submit a renewal application packet to the department for approval. Completed application packets shall be mailed to the Missouri Department of Health and Senior Services, Attention: Fee Receipts, PO Box 570, Jefferson City, MO 65102-0570.

(B) The renewal application packet shall include:

1. The completed application form, Mo Form #2 (6-08), Application for Licensure Renewal, is incorporated by reference in this rule and is available on the Internet at [www.dhss.mo.gov/Onsite](http://www.dhss.mo.gov/Onsite) or by contacting the department at PO Box 570, Jefferson City, MO 65102-0570, (573) 751-6095. This rule does not incorporate any subsequent amendments or additions;

2. A check or money order made payable to the Missouri Department of Health and Senior Services for the nonrefundable-processing fee of ninety dollars (\$90). The processing fee may be waived for the staff of a local administrative authority that has enacted local ordinances, which include requirements for inspections of existing OWTS that are at least equal to department standards; and

3. Documentation of the applicant's successful completion, within the previous thirty-six (36) months of the following minimum continuing education:

A. For individuals who are renewing their license for the first time, at least twenty (20) hours of department-approved continuing education units of which at least eight (8) continuing education units shall meet select department criteria; or

B. For individuals who are renewing their license for the second or subsequent time, at least twelve (12) hours of department-approved continuing education units of which at least eight (8) continuing education units shall meet select department criteria.

(C) Individuals submitting a renewal application more than fifteen (15) calendar days after the previous license expires shall pay a late charge of ten dollars (\$10) in addition to the ninety-dollar (\$90) processing fee.

(D) License renewal applications will not be accepted if received by the department more than forty-five (45) calendar days after the previous license expires. Individuals submitting license renewal applications more than forty-five (45) calendar days after the expiration of their license will be required to complete the initial licensing process, including any department training requirements for an initial license.

(9) A fifteen-dollar (\$15) processing fee will be assessed for duplicate and/or replacement license identification cards.

(10) Standards of Practice for Licensed Individuals.

(A) A licensed individual shall:

1. Possess a current license with the department before conducting any inspection or evaluation of an OWTS;

2. Inspect or evaluate only those OWTS for which requests have been made for the purposes of real estate transactions. Investigations of complaints or alleged violations of Chapter 701, RSMo, may only be made by the department or a local administrative authority;

3. As part of an OWTS inspection or evaluation, collect a water sample from a private water supply for microbiological testing and inspect any visible portion of the water supply construction, from the source to the storage vessel;

4. Record their license number on all bids, proposals, contracts, invoices, inspection reports, evaluation reports, and other correspondence with the requesting party or the department;

5. Apply department standards for all inspections and evaluations of OWTS using the correct procedures and forms to complete the inspection or the evaluation. Combining inspection and evaluation procedures or forms is not acceptable;

6. Document inspections and evaluations accurately in writing on department-approved forms;

7. Clearly state any defect(s), if the OWTS is found to be malfunctioning or otherwise not meeting department standards;

8. Retain one (1) copy of the completed documentation of the inspection or evaluation for at least three (3) years and submit a copy to the department, the local administrative authority, if applicable, the requesting party, and the property owner;

9. Submit completed inspection/evaluation reports to the department within thirty (30) calendar days of completion, including water sample results if applicable; and

10. Notify the property owner that he/she is not obligated to contract for repair or re-inspection services with the initial licensed individual if the OWTS has been found to be malfunctioning or otherwise not meeting department standards. However, this paragraph does not preclude the licensed individual from offering these services to the owner.

(11) The department may audit the work of a licensed individual at any time to determine whether the standards of practice, as defined by this rule, are being met. Failure to adhere to department standards may be cause for placement on probation, suspension, or revocation of the license, or for mandatory successful completion of a training course and/or testing as described in section (6) of this rule. The audit may be an unannounced visit to the property inspected or evaluated, or a visit during an inspection or evaluation with or without prior appointment with the licensed individual.

(12) A licensed individual may have his/her license placed on probation, suspended, or revoked if the individual:

(A) Fails an audit or refuses to participate in an audit;

(B) Fails to submit reports, submits false reports, or allows another individual to use his/her license;

(C) Is convicted of a violation of any provisions of sections 701.025 through 701.059, RSMo, or any rules promulgated under these statutes;

(D) Has pled guilty or has been found guilty of an infraction, misdemeanor, or felony involving misrepresentation, fraud, or other crime relating to activities of inspecting, evaluating, installing, repairing, or otherwise associated with an OWTS;

(E) Directs or allows an unlicensed individual to conduct any part of an inspection or evaluation of an OWTS; or

(F) Fails to comply with the standards of practice established in this rule.

(13) The suspension or revocation of an individual's license shall be served in writing by certified mail or personal service to the affected individual or his/her representative. The decision of the department may be appealed to the Administrative Hearing Commission as provided in Chapters 536 and 621, RSMo.

(14) Any individual whose license has been revoked may not reapply for a license for at least one (1) year from date of revocation, must complete the department's training requirements for licensure described in section (6) of this rule, and complete the department's licensing process as described in section (7) of this rule.

(15) An individual may be permanently barred from reapplying for a license if the individual:

(A) Has pled guilty or has been found guilty of an infraction, misdemeanor, or felony involving misrepresentation, fraud, or other crime relating to activities associated with an OWTS; or

(B) Has his/her license revoked a second time within five (5) years.

(16) No person without a valid license may conduct any part of an inspection or evaluation of an OWTS, whether on his/her own or under supervision of a person with a valid license. Persons conducting inspections or evaluations without the required license, or representing themselves as licensed, are considered in violation of section 701.053, RSMo, which is a class A misdemeanor.

*AUTHORITY: section 701.033, RSMo Supp. 2007, and sections 701.046 and 701.051, RSMo 2000. Emergency rule filed April 17, 1995, terminated April 26, 1995. Original rule filed April 17, 1995, effective Dec. 30, 1995. Rescinded and readopted: Filed Oct. 22, 2008.*

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

*PRIVATE COST:* This proposed rule will cost private entities one hundred forty thousand five hundred eighty dollars (\$140,580) in the aggregate for initial licensures; one hundred twenty-five thousand six hundred seventy dollars (\$125,670) in the aggregate for initial licensure renewals; and eighty-three thousand seventy dollars (\$83,070) in the aggregate for second and subsequent licensure renewals.

*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Health and Senior Services, Division of Community and Public Health, Glenda R. Miller, Division Director, PO Box 570, Jefferson City, MO 65102-0570. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.

**FISCAL NOTE  
 PRIVATE COST**

- I. Department Title: 19-Health and Senior Services  
 Division Title: 20-Community and Public Health  
 Chapter Title: 3-General Sanitation**

<b>Rule Number and Title:</b>	19 CSR 20-3.070 Requirements for On-Site Wastewater Treatment System Inspectors/Evaluators.
<b>Type of Rulemaking:</b>	Proposed Rule

**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:
213 individuals seeking initial licensure	Inspectors and Evaluators	\$140,580 in the aggregate
213 eligible for initial renewal	Inspectors and Evaluators	\$125,670 in the aggregate
213 eligible for second and subsequent renewal	Inspectors and Evaluators	\$83,070 in the aggregate

**III. WORKSHEET**

Individuals must be licensed with the department to inspect or evaluate an existing OWTS in connection with a real estate transaction. This is a long-standing and established program. To date, there are 213 inspectors and evaluators licensed with the department; licenses are valid for thirty-six months.

Due to the volume of changes, it was decided to propose a new rule rather than amend the current rule. Upon first review, this proposed rule may appear to adversely impact inspectors and evaluators. However, most licensed inspectors and evaluators have already renewed their licenses for the first time and would, therefore, economically benefit from the reduction in the number of continuing education units, proposed in this new rule, for second and subsequent renewals.

Initially, to become licensed with the department, an individual must successfully complete both basic installer and licensed inspector training courses in addition to paying a license-processing fee.

Initial Licensure

1. Cost for Basic Installer training course is \$250.
2. Cost for Licensed Inspector training course is \$320.

3. Cost for license processing is \$90.
  - A.  $\$250 + \$320 + \$90 = \$660$  cost per individual
  - B.  $213 \text{ inspectors and evaluators} \times \$660 = \$140,580$  in the aggregate

To renew their license for the first time, an individual must successfully complete a minimum of 20 continuing education units (CEU) within the previous thirty-six months in addition to paying a license-processing fee.

#### Initial Licensure Renewal

1. Cost for CEU is \$25
2. Cost for license processing is \$90
  - A.  $20 \text{ CEU's} \times \$25 = \$500$
  - B.  $\$500 + \$90 = \$590$  cost per individual
  - C.  $213 \text{ inspectors and evaluators} \times \$590 = \$125,670$  in the aggregate

To renew their license for the second and subsequent time, an individual must successfully complete a minimum of 12 continuing education units (CEU) within the previous thirty-six months in addition to paying a license-processing fee.

#### Second and Subsequent Licensure Renewal

1. Cost for CEU is \$25
2. Cost for license processing is \$90
  - A.  $12 \text{ CEU's} \times \$25 = \$300$
  - B.  $\$300 + \$90 = \$390$  cost per individual
  - C.  $213 \text{ inspectors and evaluators} \times \$390 = \$83,070$  in the aggregate

#### **IV. ASSUMPTIONS**

1. There are 213 additional individuals seeking initial licensure with the department.
2. All 213 licensed inspectors and evaluators will renew their license for the first renewal period within the next thirty-six months.
3. All 213 licensed inspectors and evaluators will renew their license for the second and subsequent time within the following thirty-six months.
4. Cost of one continuing education unit will be \$25.



**Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES**

**Division 20—Division of [Environmental Health and Communicable Disease Prevention] Community and Public Health**

**Chapter 3—General Sanitation**

**PROPOSED AMENDMENT**

**19 CSR 20-3.080 Requirements for Percolation Testers [or], On-Site Soils Evaluators and Registered On-Site Wastewater Treatment System Installers.** The Department of Health and Senior Services is amending sections (1) through (10) and renumbering the remaining sections accordingly.

*PURPOSE: This amendment adds definitions, modifies the language and location of various requirements for clarification purposes, and reduces the number of continuing educational units necessary for registration renewals.*

*PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of the rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of the reproduction. This note applies only to the reference material. The entire text of the rule is printed here.*

(1) *[The following definitions shall apply to this rule:]*  
**Applicability.** The requirements and procedures included in this rule apply to individuals qualified to perform percolation tests and/or soil morphology evaluations and installers who are seeking inclusion on the department's on-site wastewater treatment systems professionals registry.

**(2) Definitions.**

(A) "Administrative authority[—]" *[The governing body which may include, but is not limited to, county] shall mean the department or local public health [departments] agencies, planning and zoning commissions, county building departments, county public works departments, sewer districts, and/or municipalities [and the Missouri Department of Health and Senior Services which has, as authorized by statute, charter or other form of enabling authority, adopted regulations equal to or greater than sections 701.025 through 701.059, RSMo for] that have authority to govern individual on-site wastewater treatment systems[;].*

(B) "Advanced on-site wastewater treatment system (OWTS) installer[—]" shall mean *[A]an individual registered by the department to install advanced OWTS as listed by the department[;].*

(C) "Basic on-site wastewater treatment system (OWTS) installer" shall mean **an individual registered by the department to install basic OWTS as listed by the department.**

*[(C)](D) "Department[—]" shall mean [T]the Missouri Department of Health and Senior Services[;].*

*[(D)](E) "Installer[—]" shall mean [A]any individual, [(other than a homeowner, who installs a system for their own personal use)], who alters, extends, repairs, or constructs[, ] an OWTS, including but not limited to, excavating[, ] or earthmoving work connected with the construction of an OWTS on behalf of, or under contract with, the property owner[;].*

(F) "Licensed professional engineer" shall mean any person authorized pursuant to the provisions of Chapter 327, RSMo, to practice as a professional engineer in Missouri, as the practice of engineering is defined in section 327.181, RSMo.

*[(E)](G) "On-site soil evaluator[s (OSE)—]" shall mean [(individuals including soil scientists, [as defined by section*

*701.040.1(2), RSMo;] licensed professional engineers, and registered geologists [as defined by section 701.040.1(2), RSMo with ten (10) semester hours of soils course work including three (3) semester hours of course work in soil morphology and interpretations; and] meeting the requirements of this rule[;].*

*[(F)](H) "On-site wastewater treatment system (OWTS)[—]" shall mean [A]any system [defined in section 701.025(8), RSMo as an "on-site sewage disposal system";] handling, or treatment facility receiving, domestic sewage which discharges three thousand (3,000) gallons per day or less into a subsurface soil absorption system or a single-family residence lagoon.*

*[(G) Basic on-site wastewater treatment system (OWTS) installer—An individual registered by the department to install basic OWTS as listed by the department; and]*

(I) "Registered geologist" shall mean any person authorized pursuant to the provisions of Chapter 256, RSMo, to practice as a registered geologist in Missouri, as defined in section 256.453(10), RSMo.

*[(H)](J) "Soil morphology evaluation[—]" shall mean [T]the method of testing or evaluating absorption qualities of the soil by physical examination of the [soils'] soil's color, mottling, texture, structure, topography, and hill-slope position.*

(K) "Soil scientist" shall mean a person that has successfully completed at least fifteen (15) semester credit hours of soils science course work, including at least three (3) hours of course work in soil morphology and interpretations.

*[(2)](3) An individual must be registered [by] with the department to conduct any part of a percolation test or soil morphology evaluation in which results are intended for use in the design [of an OWTS] or [to] installation of an OWTS according to the standards set forth in sections 701.025 through 701.059, RSMo, and 19 CSR 20-3.060.*

(A) Percolation Tests.

*[1. To obtain registration from] To register with the department to conduct [a] percolation tests, an individual shall:*

*[A.]1. Successfully complete a training course conducted by or approved by the department, [. This training course] which shall include, at a minimum, course work, field work, a written examination, and a practical examination; or*

*[B.]2. [Submit documentation that he/she meets] Meet the definition[s] of [OSE] an on-site soil evaluator, licensed professional engineer, or registered geologist; and*

*[C.]3. Complete the department's registration process described in section [(3)] (5) of this rule.*

(B) Soil *[m]Morphology [e]Evaluations. [shall be conducted by individuals meeting the definition of an OSE and meeting the requirements of this rule.*

*1. To obtain registration from] To register with the department to perform soils morphology evaluations, an individual shall:*

*[A. Provide the following information:*

*(I) An original transcript from the school or university attended mailed directly from the registrar to the department in Jefferson City;*

*(II) Course descriptions from the school attended to verify the nature of the course work if requested; and*

*(III) A copy of current applicable professional registration for licensed engineers or registered geologists indicating the registrant is in good standing;]*

**1. Meet the definition of a soil scientist with at least fifteen (15) semester credit hours of soils science course work, including at least three (3) hours of course work in soil morphology and interpretations; or**

**2. Meet the definition of a licensed professional engineer or registered geologist with at least ten (10) semester credit hours of soils science course work, including at least three (3) hours of course work in soil morphology and interpretations; and**

*[B.]3. Complete a written and [a] field test conducted by or*

approved by the department with a score of seventy percent (70%) or higher on *[each]* all sections of each examination; and

*[C.14.* Complete the department's registration process described in section *[(3)](5)* of this rule.

*[(C) Installation of On-site Wastewater Treatment Systems. The installation of any OWTS can only be done by an installer registered with the department,]*

**(4) An individual must be registered with the department**, with the exception of a *[property]* homeowner meeting the requirements of section 701.055, RSMo., to install an OWTS. *[After July 1, 2005, o]Only* installers registered as advanced OWTS installers shall install systems listed by the department as advanced OWTS.

**1.)(A) Basic OWTS Installer.** *[To obtain registration from]* To register with the department as a basic OWTS installer, an individual shall:

*[A.1.* Complete a basic installer training course conducted by or approved by the department with a score of seventy percent (70%) or higher; and

*[B.2.* Complete the department's registration process described in section *[(3)] (5)* of this rule.

**2.)(B) Advanced OWTS Installer.** *[To obtain registration from]* To register with the department as an advanced OWTS installer, an individual shall:

*[A.1.* Possess a basic OWTS installer's registration in good standing;

*[B.2.* Complete an advanced OWTS installer training course conducted by or approved by the department with a score of seventy percent (70%) or higher; and

*[C.3.* Complete the department's registration process described in section *[(3)] (5)* of this rule.

*[(3)](5)* Department's Registration Process.

*(A) [To complete]* To register with the department *[registration process]*, an individual *[shall]*:

1. *Complete an)* must submit a completed application packet *[on a form approved by]* to the department *[and submit proof of professional engineer or registered geologist license if necessary for percolation tester or OSE registration;]* for approval. Completed application packets shall be mailed to the Missouri Department of Health and Senior Services, Attention: Fee Receipts, PO Box 570, Jefferson City, MO 65102-0570.

2. *Pay the registration or registration renewal fee at the time the application is submitted. Payment shall be made in the form of a personal check, certified or cashier's check or money order made payable to the Department of Health and Senior Services. This is a nonrefundable processing fee;*

3. *Pay a late charge of ten dollars (\$10) in addition to the registration renewal fee if an application is submitted more than fifteen (15) days after the previous registration expires. Registration renewal applications will not be accepted if more than forty-five (45) days after the previous registration expires. Individuals submitting registration renewal applications more than forty-five (45) days after expiration of their registration will be required to complete the original registration process, including any department training requirements for original registration; and*

4. *Each renewal application shall include a list of all continuing education units (CEU) completed for the thirty-six (36)-month period prior to the application. The department shall not grant a renewal of the registration unless the applicant provides documentation of successful completion of at least twenty (20) hours of department approved CEU, four (4) hours of which shall be provided by the department, within the thirty-six (36)-month period prior to the application.]*

*[(B) All individuals certified, listed, or registered with the department before August 28, 2004, will receive a registra-*

*tion during the first year of implementation of this rule, valid for not more than thirty-six (36) months which shall be renewable upon completion of the department registration process as described in section (3) and paying a fee not to exceed ninety dollars (\$90). Each registration issued during the first year will be assigned an expiration date by the department.*

*(C) After August 28, 2004, individuals registering for the first time and paying a ninety-dollar (\$90) fee, will receive a registration valid for thirty-six (36) months, unless otherwise suspended, revoked or surrendered, and shall be renewable upon completion of the department registration process described in section (3), and paying a fee not to exceed ninety dollars (\$90).]*

**(B) The application packet shall include the following:**

1. The completed application form, Mo Form #1 (6-08), Application for Registration, which is incorporated by reference in this rule and is available on the Internet at [www.dhss.mo.gov/Onsite](http://www.dhss.mo.gov/Onsite) or by contacting the department at PO Box 570, Jefferson City, MO 65102-0570, (573) 751-6095. This rule does not incorporate any subsequent amendments or additions;

2. For on-site soil evaluators, mail an original transcript from the college or university attended directly from the registrar to the Missouri Department of Health and Senior Services, Attention: Bureau of Environmental Regulation and Licensure, PO Box 570, Jefferson City, MO 65102-0570. If requested, provide course descriptions from the college or university attended to verify the nature of the course work;

3. For percolation testers and on-site soil evaluators, provide proof of licensure as a professional engineer or certificate of registration by the Board of Geologist Registration indicating the registrant is in good standing, if applicable; and

4. A check or money order made payable to the Missouri Department of Health and Senior Services for the nonrefundable-processing fee of ninety dollars (\$90).

**(6) Department's Temporary and Probationary Registration Process.**

*[(D) After August 28, 2004,](A)* Upon completion of the department's registration process described in section (5) of this rule, the department may issue a one (1)-time temporary basic OWTS installer registration, valid for no more than one hundred eighty (180) calendar days for work in a specific county or counties. The temporary basic OWTS registration will be converted to a basic OWTS installer registration upon completion of a *[department approved]* training *[program and completion of the department registration process as described in section (3)]* course conducted by or approved by the department. Failure to complete the training or the department's registration process will result in termination of the individual's temporary basic OWTS installer registration.

*[(E) After August 28, 2004,](B) [t]*The department may issue a probationary basic OWTS installer registration for work in a specific county or counties. This registration will be valid for a specific period of time, as determined by the department, and will be dependent on the registered individual meeting and maintaining specific requirements as established by the department and completing the department's registration process as described in section (5) of this rule.

**(7) Department's Renewal Registration Process.** An individual's registration with the department shall expire thirty-six (36) months from its effective date unless the registration has been revoked or surrendered.

**(A)** To renew his or her registration with the department, an individual must submit a renewal application packet to the department for approval. Completed application packets shall

be mailed to the Missouri Department of Health and Senior Services, Attention: Fee Receipts, PO Box 570, Jefferson City, MO 65102-0570.

(B) The renewal application packet shall include:

1. The completed application form, Mo Form #2A (6-08), Application for Registration Renewal, which is incorporated by reference in this rule and is available on the Internet at [www.dhss.mo.gov/Onsite](http://www.dhss.mo.gov/Onsite) or by contacting the department at PO Box 570, Jefferson City, MO 65102-0570, (573) 751-6095. This rule does not incorporate any subsequent amendments or additions;

2. A check or money order made payable to the Missouri Department of Health and Senior Services for the nonrefundable-processing fee of ninety dollars (\$90); and

3. Documentation of the applicant's successful completion, within the previous thirty-six (36) months, of the following minimum continuing education:

A. For on-site soil evaluators, percolation testers, and basic and advanced OWTS installers who are renewing their registration for the first time, at least twenty (20) hours of department-approved continuing education units of which at least eight (8) continuing education units shall meet select department criteria;

B. For on-site soil evaluators and advanced OWTS installers who are renewing their registration for the second or subsequent time, at least twelve (12) hours of department-approved continuing education units of which at least eight (8) continuing education units shall meet select department criteria related to their OWTS profession; or

C. For basic OWTS installers and percolation testers who are renewing their registration for the second or subsequent time, at least eight (8) hours of department-approved continuing education units.

(C) Individuals submitting a renewal application more than fifteen (15) calendar days after the previous registration expires shall pay a late charge of ten dollars (\$10) in addition to the ninety dollar (\$90) registration-processing fee.

(D) Registration renewal applications will not be accepted if received by the department more than forty-five (45) calendar days after the previous registration expires. Individuals submitting registration renewal applications more than forty-five (45) calendar days after expiration of their registration will be required to complete the initial registration process, including any department training requirements for an initial registration.

(8) A fifteen-dollar (\$15) processing fee will be assessed for duplicate and/or replacement registration identification cards.

[[4]](9) Standards of Practice[—] for Percolation Testers, [OSE] On-Site Soil Evaluators, [or] and OWTS Installers.

(A) A percolation tester or [OSE] on-site soil evaluator shall:

1. Possess a current registration with the department before performing any activities related to a percolation test or soil morphology evaluation;

2. Record their registration number on all bids, proposals, contracts, invoices, percolation test reports, soil morphology evaluation reports, [or] and other correspondence with the [home] property owner [and] or administrative authority;

3. Provide true and accurate information on any application, percolation test report, soil morphology evaluation report, and any other OWTS documentation;

4. Maintain a current address and phone number with the department and submit any address or phone number changes to the department in writing within thirty (30) calendar days of the change taking place;

5. Conduct [P]percolation tests [must be conducted] in accordance with section (2) of 19 CSR 20-3.060; and

6. Conduct [S]site/soil morphology evaluations [completed

by an OSE must comply] in accordance with the standards detailed in sections (2) and (7) of 19 CSR 20-3.060. [including but not limited to the following items:] Specifically, the on-site soil evaluator shall:

A. Evaluate the nine (9) items listed in paragraphs (2)(A)2.[-] through 10. of 19 CSR 20-3.060;

B. Evaluate and classify six (6) site factors listed in subsection (7)(C) of 19 CSR 20-3.060, as suitable, provisionally suitable, or unsuitable according to subsections (7)(E) through (L) of 19 CSR 20-3.060;

C. Include a diagram showing location and extent of the area(s) evaluated;

D. Make recommendations regarding the use [or] and effectiveness of water lowering systems when there is evidence of a high water table; and

E. Based on subsection (7)(M) and Tables 13 and 14 of 19 CSR 20-3.060, for horizons that are not classified as unsuitable, assign a conventional soil loading rate for each horizon and assign an alternative soil loading rate for each horizon [at least] to a depth of at least twelve inches (12") below the likely depth of an alternative system.

(B) A registered basic OWTS installer or a registered advanced OWTS installer shall:

1. Possess a current basic OWTS installer registration or advanced OWTS installer registration with the department before beginning construction of [an on-site wastewater treatment system] any OWTS;

2. Record their registration number on all bids, proposals, contracts, invoices, permit application construction drawings, [or] and other correspondence with the [home] property owner [and] or administrative authority;

3. Provide true and accurate information on any application and any other OWTS documentation;

4. Notify the administrative authority if their involvement as the registered installer with the permit application and OWTS changes;

[4.]5. Begin the construction of an OWTS only after obtaining approval from the administrative authority, unless approval is not required;

[5.]6. Construct the OWTS meeting the construction standards and permit criteria required by sections 701.025[-] through 701.059, RSMo, and any rule adopted thereunder or the more stringent requirements of the administrative authority, if applicable;

[6.]7. Construct the OWTS that has been authorized by the administrative authority for the specific location identified in the application;

[7.]8. Be present at the construction site during construction and supervise all construction activities;

9. Provide required notice and an opportunity for inspection prior to completion of the OWTS installation as required by the administrative authority;

[8.]10. Submit complete and accurate "certification without on-site inspection form," when requested; [and]

11. Not create or increase a health or safety hazard, nuisance condition, or surface water or groundwater contamination when constructing, repairing, modifying, or troubleshooting an OWTS; and

[9.]12. Maintain a current address and phone number with the department and submit any address or phone number changes to the department in writing within thirty (30) calendar days of the change taking place.

[[5]](10) The department may audit the work of a percolation tester, [OSE] on-site soil evaluator, registered basic OWTS installer, or registered advanced OWTS installer at any time to determine whether the standards of practice, as defined by this rule, are being met. Failure to adhere to department standards may be cause for placement on probation, suspension, or revocation of the registration, or

for mandatory successful completion of a training course and/or testing as described in sections *[(2)] (3) and (4) of this rule*. The audit may be an unannounced visit to the property on which the percolation test, soil morphology examination, or *[on-site sewage system] OWTS* installation was conducted, which may include an independent soil percolation test or soil morphology examination, or a visit within the period of a soil percolation test, soil morphology examination, or *[on-site sewage system] OWTS* installation with or without prior appointment with the registered individual.

*[(6)](11)* A percolation tester, *[OSE] on-site soil evaluator*, registered basic OWTS installer, or registered advanced OWTS installer may have their registration placed on probation, suspended, or revoked if the individual:

(A) Fails to maintain any professional license necessary for registration as a percolation tester or *[OSE] on-site soil evaluator*;

(B) Fails an audit or refuses to participate in an audit;

(C) Fails to submit reports, submits false reports, or allows another individual to use his/her *[license] registration*;

(D) Is convicted of a violation of any provisions of sections 701.025 through 701.059, RSMo, or any rules promulgated under these statutes;

(E) Has *[plead] pled* guilty or has been found guilty of an infraction, misdemeanor, or felony involving misrepresentation, fraud, or other crime relating to activities of percolation testing, soil morphology evaluations, installing, repairing, inspecting, or otherwise associated with *[on-site sewage disposal systems] an OWTS*;

(F) Directs or allows an unregistered individual to conduct a percolation test~~,~~ or soil morphology examination;

(G) Directs or allows an unregistered individual to install an *[on-site wastewater treatment system] OWTS* without direct supervision; or

(H) Fails to comply with **the** standards of practice established by this rule.

*[(7)](12)* The suspension or revocation of a percolation tester's *[or OSE's], on-site soil evaluator's, or OWTS installer's* registration shall be served in writing by certified mail or personal service to the affected individual or his/her representative. The decision of the department may be appealed to the Administrative Hearing Commission as provided in Chapters 536 and 621, RSMo.

*[(8)](13)* Any individual whose registration has been revoked may not reapply for registration for at least one (1) year from date of revocation, and must complete the department's training requirements for registration described in sections *[(2)] (3) and (4) of this rule* and complete the department's registration process as described in section *[(3) above] (5) of this rule*.

*[(9)](14)* An individual may be permanently barred from reapplying for registration if *[—] the individual*:

(A) *[The individual h/Has] [plead] pled* guilty or has been found guilty of an infraction, misdemeanor, or felony involving misrepresentation, fraud, or other crime relating to activities associated with an OWTS; or

(B) *[The individual h/Has]* his/her registration revoked a second time within five (5) years.

**(15) No person without a valid registration may conduct any part of a percolation test or soil morphology evaluation for an OWTS, whether on their own or under supervision of a person with a valid registration. Persons conducting percolation tests or soil morphology evaluations without the required registration, or representing themselves as registered, are considered in violation of section 701.053, RSMo, which is a class A misdemeanor.**

*[(10)](16)* No person as defined in section 701.025, RSMo, may authorize, permit, or knowingly allow *[the installation of an on-*

*site wastewater treatment system] a percolation test or soil morphology evaluation for an OWTS* by an unregistered individual **or the installation of an OWTS by an unregistered individual** other than the *[property] homeowner*.

*AUTHORITY: sections 701.033, RSMo Supp. [2004] 2007 and section 701.040, RSMo 2000. Emergency rule filed April 17, 1995, terminated April 26, 1995. Original rule filed April 17, 1995, effective Dec. 30, 1995. Emergency amendment filed Sept. 2, 2004, effective Sept. 12, 2004, expired March 10, 2005. Rescinded and readopted: Filed Sept. 2, 2004, effective Feb. 28, 2005. Amended: Filed Oct. 22, 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 generate a savings in the aggregate of eighty-four thousand dollars (\$84,000) for On-site Soil Evaluators and Advanced Installers and a savings of one hundred eleven thousand dollars (\$111,000) for Percolation Testers and Basic Installers.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Health and Senior Services, Division of Community and Public Health, Glenda R. Miller, Division Director, PO Box 570, Jefferson City, MO 65102-0570. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

**FISCAL NOTE  
 PRIVATE COST**

- I. Department Title: 19-Health and Senior Services  
 Division Title: 20-Community and Public Health  
 Chapter Title: 3-General Sanitation**

<b>Rule Number and Title:</b>	19 CSR 20-3.080 Requirements for Percolation Testers, On-Site Soils Evaluators and Registered On-Site Wastewater Treatment System Installers.
<b>Type of Rulemaking:</b>	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:
420 eligible for 2 <sup>nd</sup> renewal in 2010	Onsite Soil Evaluators and Advanced Installers	A cost savings of \$84,000
370 eligible for 2 <sup>nd</sup> renewal in 2010	Percolation Testers and Basic Installers	A cost savings of \$111,000

**III. WORKSHEET**

Registration, with the department, is valid for thirty-six months. Currently, as part of the renewal process, all eligible individuals are required to complete 20 continuing education units (CEU's).

1. During 2007, 420 onsite soil evaluators and advanced installers renewed their registration for the first time.
2. In 2010, those same eligible individuals who renew for the second time will only be required to have completed 12 CEU's; a reduction of 8 CEU's.
  - A.  $20 \text{ CEU's} - 12 \text{ CEU's} = 8 \text{ CEU's}$
  - B.  $8 \text{ CEU's} \times \$25 = \$200 \text{ cost savings per individual}$
  - C.  $420 \text{ Onsite Soil Evaluators and Advanced Installers} \times \$200 = \$84,000 \text{ cost savings}$
3. During 2007, 370 percolation testers and basic installers renewed their registration for the first time.

4. In 2010, those same eligible individuals who renew for the second time will only be required to have completed 8 CEU's; a reduction of 12 CEU's.

A.  $20 \text{ CEU's} - 8 \text{ CEU's} = 12 \text{ CEU's}$

B.  $12 \text{ CEU's} \times \$25 = \$300 \text{ cost savings per individual}$

C.  $370 \text{ Percolation Testers and Basic Installers} \times \$300 = \$111,000 \text{ cost savings}$

#### **IV. ASSUMPTIONS**

1. It is anticipated that comparable numbers of registered professionals will be eligible for second or later renewal as of 2010.
2. Cost of one continuing education unit will be \$25.

**Title 19—DEPARTMENT OF HEALTH AND  
SENIOR SERVICES  
Division 30—Division of Regulation and Licensure  
Chapter 20—Hospitals**

**PROPOSED AMENDMENT**

**19 CSR 30-20.096 Nursing Services in Hospitals.** The department is amending sections (8), (20), (27), (30), and (31), adding new sections (23), (24), (25), (26), (28), and (30) and renumbering thereafter.

*PURPOSE:* This amendment provides guidelines for a systematic approach to ensure safe and adequate nurse staffing levels.

(8) Policies shall be developed regarding the use of overtime. The policies shall be based on the following standards:

(E) Subsection (8)(D) is not applicable if overtime is permitted under subsections (8)(A), (B), and (C).;

(F) Nurses required to work more than twelve (12) consecutive hours under subsections (8)(A), (B), or (C) shall be provided the option to have at least ten (10) consecutive hours of uninterrupted off-duty time immediately following the worked time.;

(G) **The nursing service shall maintain and make available upon request to the department a list of qualified nurses, nurse registries, and per diem nurses that may be called upon to provide replacement staff in the event of sickness, vacations, vacancies, disasters, and other absences of direct care nursing staff.**

(20) All nursing personnel shall be oriented to the hospital, nursing services, their position classification *[and]*, the use of overtime, **and the nursing service regulation 19 CSR 30-20.096.** The orientation shall be of sufficient length and content to prepare nursing personnel for their specified duties and responsibilities. Competency shall be validated prior to assuming independent performance in actual patient situations.

(23) Every hospital shall develop, implement, and submit to the department by April 1, 2009, and annually thereafter at the start of the hospital's fiscal year, a written hospital-wide staffing plan for nursing services. Every hospital shall have a process that ensures the consideration of input from direct care nursing staff from each unit within the hospital.

(24) The hospital-wide staffing plan for nursing services shall:

(A) Include the number, skill mix, and qualifications of direct care nursing staff needed for each unit of the hospital;

(B) Be based on the expected nursing care required by the unit population and individual needs of each patient. The expected unit population and individual nursing care needs of each patient shall be the major consideration in determining the number and skill mix of direct care nursing staff needed;

(C) Identify relevant factors in each hospital unit including, but not limited to, the number of patients in a unit; intensity of care required; skill and experience of care givers including registered nurses, licensed practical nurses, ancillary personnel, and other members of the patient care team consistent with the level of authority and responsibility delegated under state licensure; admission, discharge, and transfers; nonpatient care duties; geography of a unit; and the availability of technological support; and

(D) Provide for documentation of the actual staffing plan.

(25) Every hospital shall establish nursing sensitive indicators and monitor outcomes of these indicators to evaluate the adequacy of the hospital-wide staffing plan for nursing services. At least one (1) of each of the following three (3) types of outcomes shall be used to evaluate the adequacy of the staffing plan:

(A) Patient outcomes such as patient falls, adverse drug events, injuries to patients, skin breakdown, infection rates, length of stay, or patient readmissions;

(B) Operational outcomes such as work-related injury or illness, vacancy and turnover rates, nursing care hours per patient day, on-call use, or overtime rates; and

(C) Validated patient complaints related to staffing levels.

(26) **The hospital shall, in consultation with its direct care nursing staff, monitor and evaluate the hospital-wide staffing plan and nursing sensitive outcomes for effectiveness on a continual basis and revise the plan annually and as necessary.**

*[(23)](27)* Each facility shall develop and utilize a methodology which ensures *[adequate nurse staffing that will meet the needs of the patients. At a minimum, on duty at all times there shall be a sufficient number of registered professional nurses to provide patient care requiring the judgment and skills of a registered professional nurse and to supervise the activities of all nursing personnel]* **it is staffed with sufficient numbers and skill mix of appropriately qualified direct care nursing staff in each unit to meet the unit population and individualized care needs of the patients. Each unit shall document actual staffing and patient census during every shift.**

(28) At a minimum, there shall be a sufficient number of registered professional nurses on duty at all times to provide patient care requiring the judgment and skills of a registered professional nurse and to supervise the activities of all nursing personnel.

*[(24)](29)* There shall be sufficient licensed and ancillary nursing personnel on duty on each nursing unit to meet the needs of each patient in accordance with accepted standards of nursing practice.

(30) **Each nursing unit shall post in a visible location on the nursing unit or make available to the patient(s) or patient's authorized representative a copy of the unit's hospital-wide staffing plan for nursing services and documentation of actual daily staffing levels.**

*[(25)](31)* Patient care assignments shall be consistent with the qualifications of the nursing personnel and the identified patient needs. **Nurses included in the count of direct care nursing staff in a unit of a hospital for purposes of compliance with the hospital-wide staffing plan shall have appropriate licensing, training, and orientation to ensure that the nurses are capable of providing competent nursing care to the patients in the unit. Hospitals shall also verify that nurses included in the count are capable of providing competent nursing care to the patients in the unit. Nurses included in the count shall spend a minimum of seventy-five percent (75%) of their time providing direct patient care.**

*[(26)](32)* Documentation in the patient's medical record shall reflect use of the nursing process in the delivery of care throughout the patient's hospitalization.

*[(27)](33)* A registered professional nurse shall assess the patient's needs for nursing care in all settings where nursing care is provided. A nursing assessment shall be completed within twenty-four (24) hours of admission as an inpatient. The registered professional nurse may be assisted in the process by other qualified nursing staff members.

*[(28)](34)* Patient education and discharge needs shall be addressed and appropriately documented in the medical records.

*[(29)](35)* The necessary types and quantities of supplies and equipment shall be available to meet the current needs of each patient.



Reference materials pertinent to patient care shall be readily accessible.

*AUTHORITY: sections 192.006 and 197.080, RSMo 2000 and section 197.154, RSMo Supp. 2007. This rule previously filed as 19 CSR 30-20.021(3)(E). Original rule filed June 27, 2007, effective Feb. 29, 2008. Amended: Filed Oct. 22, 2008.*

*PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions approximately forty-eight thousand, two hundred thirty-three dollars (\$48,233) in the aggregate.*

*PRIVATE COST: This proposed amendment will cost private entities approximately one hundred seventy-four thousand, five hundred dollars (\$174,500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Kimberly O'Brien, Director of the Division of Regulation and Licensure, PO Box 570, Jefferson City, MO 65102-0570. To be considered, comments must be received within thirty (30) days after the publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

**FISCAL NOTE  
 PUBLIC COST**

**I. RULE NUMBER**

Rule Number and Name:	19 CSR 30 – 20.096 Nursing Services
Type of Rulemaking:	Proposed Rule

**II. SUMMARY OF FISCAL IMPACT**

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Health and Senior Services	\$14,233
34 State licensed hospitals operated by counties, cities or hospital districts	\$34,000
Total	\$48,233

**III. WORKSHEET**

State licensed hospitals 151  
 State licensed hospitals operated by counties, cities or hospital districts 34

**Hospitals:**

Methodology/policy revision/education: 34 hospitals X \$1,000 per hospital = \$34,000

**Department of Health and Senior Services:**

151 state licensed hospitals X 3 hours of review X \$31.42 hourly rate of review staff (includes fringe) = \$14,233 annually

**IV. ASSUMPTIONS**

The Department of Health and Senior Services worked with the Missouri Hospital Association and the members of the Technical Advisory Committee on quality of patient care and nursing practices to determine the estimated costs for this proposed rule.

Licensed hospitals are currently required under 19 CSR 20-20.096 to ensure adequate staffing, it was assumed that most of the cost to meet the requirements specified in this amendment to the existing rule are already being incurred. All licensed hospitals would incur a one time cost for the following:

- Revision of the staffing methodology to include the staffing variables included in the amendment;
- Revision of nursing policies and procedures to meet the requirements of the rule; and
- Education of the nursing staff on the changes caused by the amendment.

The cost for facilities to make the above listed revisions and educate their staff was estimated at \$1,000 per facility. The estimate is based upon weighing the cost of updating a policy for the varying size of hospitals and number of staff employed. Federal and state hospitals not licensed in Missouri would be exempt from this rule.

**FISCAL NOTE****PRIVATE COST****I. RULE NUMBER**

Rule Number and Name:	19 CSR 30 – 20.096 Nursing Services
Type of Rulemaking:	Proposed Rule

**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:
151	State-licensed hospitals	\$ 151,000
47	Unaccredited hospitals	\$ 23,500
		Total: \$ 174,500

**III. WORKSHEET**

Total hospitals	162
State licensed hospitals	151
Unaccredited hospitals	47

Methodology/policy revision/education: 151 hospitals X \$1,000 per hospital = \$151,000

Nursing sensitive indicator review/monitoring creation: 47 unaccredited hospitals X \$500 per hospital = \$23,500

**IV. ASSUMPTIONS**

Since licensed hospitals are currently required under 19 CSR 20-20.096 to ensure adequate staffing, it was assumed that most of the cost to meet the requirements specified in this amendment to the existing rule are already being incurred. All licensed hospitals would incur a one time cost for the following:

- revision of the staffing methodology to include the staffing variables included in the amendment;
- revision of nursing policies and procedures to meet the requirements of the rule; and
- education of the nursing staff on the changes caused by the amendment.

This would cost private hospitals an estimated average of \$1,000 per facility. In addition, there are 47 hospitals that are not accredited by the Joint Commission. These facilities would be required to create a mechanism to review and monitor three nursing sensitive indicators. Many of the proposed patient and operational outcomes listed in the rule are already collected by hospitals, so the additional cost to these unaccredited facilities would be minimal. The estimated average cost for these facilities would be \$500 per facility. The estimate is based upon weighing the cost of updating a policy for the varying size of hospitals and number of staff employed. Federal and state hospitals not licensed in Missouri would be exempt from this rule.

**Title 19—DEPARTMENT OF HEALTH  
AND SENIOR SERVICES  
Division 30—Division of [Health Standards] Regulation  
and Licensure  
Chapter 26—Home Health Agencies**

**PROPOSED AMENDMENT**

**19 CSR 30-26.010 Home Health Licensure Rule.** The department is amending sections (1) and (2) and updating the forms included in the rule.

*PURPOSE:* This amendment 1) specifies requirements for training regarding Alzheimer's disease and related dementias for home health employees and independent contractors providing direct patient care, 2) removes exception to requirements for all licensed home health agencies to meet the Medicare Conditions of Participation for Home Health Agencies, 3) requires a licensed home health agency to establish a business location with established business hours, 4) specifies the need for reciprocal agreements with bordering states, 5) denies license renewal if unable to verify compliance through clinical record review and home visits, and 6) amends the waiting period for reapplication following revocation or denial of home health licensure.

(1) State Licensure Requirements.

(A) *[In all Missouri licensed home health agencies which only provide physical therapy and/or speech therapy and/or occupational therapy and/or medical social work services and which do not have Medicare certification as a provider, the agency shall—*

1. *Not be required to provide skilled nursing services; and*

2. *Provide the initial evaluation visit be made by a physician, registered nurse, physical therapist or speech therapist.*

(B) *In all Missouri licensed home health agencies which only provide physical therapy and/or speech therapy and/or occupational therapy and/or medical social work services and which do not have Medicare certification as a provider, the professional staff shall—*

1. *Be supervised by a physician, registered nurse, physical therapist or speech therapist;*

2. *Include all client medications and changes in client medications on the plan of care or plan of treatment to be reviewed by the physician; and*

3. *Include all client diet information and changes in client diet information on the plan of care or plan of treatment to be reviewed by the physician.]*

*[(C) Except as specifically provided above, this] This rule incorporates by reference 42 CFR 484, Medicare Conditions of Participation: Home Health Agencies, for Missouri licensed home health agencies. Missouri licensed home health agencies shall strictly meet the currently applicable Medicare Conditions of Participation and surveys performed for state licensure will be conducted per Medicare standards.*

**(B) Licensed home health agencies shall provide dementia-specific training about Alzheimer's disease and related dementias to their employees and those persons working as independent contractors who provide direct care to or may have daily contact with residents, patients, clients, or consumers with Alzheimer's disease or related dementias.**

**1. The training required for persons providing direct care shall address the following areas, at a minimum:**

**A. An overview of Alzheimer's disease and related dementias;**

**B. Communicating with persons with dementia;**

**C. Behavior management;**

**D. Promoting independence in activities of daily living;**

**and**

**E. Understanding and dealing with family issues.**

**2. Employees or independent contractors who do not provide direct care for, but may have daily contact with, persons with Alzheimer's disease or related dementias shall receive dementia-specific training that includes, at a minimum:**

**A. An overview of Alzheimer's disease and related dementias; and**

**B. Communicating with persons with dementia.**

**3. Dementia-specific training about Alzheimer's disease and related dementias shall be incorporated into orientation for new employees with direct patient contact and independent contractors with direct patient contact. The training shall be presented by an instructor who is qualified by education, experience, and knowledge in the current standards of practice regarding individuals with Alzheimer's disease and other related dementias. The training shall be provided annually and updated as needed.**

(2) State Licensure Management.

(B) Initial Application Procedure for Home Health Agencies.

*[1. Upon initial request the Department of Health (DOH) will determine which type of entity the applicant is requesting application for and mail the appropriate licensure application packet.]*

*[2.]1. The applicant shall provide the [DOH] Department of Health and Senior Services (department) with a completed application for home health license, included herein, copy of registration with secretary of state, a completed State Disclosure of Ownership and Control Interest Statement form, included herein, and sufficient evidence that the home health agency has established appropriate policies and procedures for providing home health services according to sections 197.400 to [197.477] 197.478, RSMo. The licensure fee must accompany the application and is nonrefundable. [An on-site licensure survey will be conducted prior to issuing a license.]*

**2. The applicant shall establish a business location (not in a private residence) with established business hours.**

*[A.]3. [An out-of-state] A Medicare-certified home health agency of a bordering state, sharing a reciprocal agreement with Missouri, wishing to [see] serve Missouri residents, must [make an application for licensure to the Department of Health (DOH) and establish a branch office in Missouri. The completed application must be submitted with the license fee. A copy of their home health agency license in their home state, a copy (if Medicare certified) of their history with Medicare which can be supplied as a letter or copy of previous certification survey, notification of home state licensure agency of expansion into Missouri and proof of registration with secretary of state in all applicable states.] complete the application process for initial licensure and establish a business location as described in 19 CSR 30-26.010(2)(B)2. A valid Missouri license must be maintained at all times in order for the home health agency to serve Missouri residents. The area served in Missouri [by a bordering state agency] must be contiguous to the area served by the agency in the bordering state.*

(C) Annual Renewal Process.

1. A license shall be renewed annually upon approval of the department when the following conditions have been met:

A. The application for renewal is accompanied by a six hundred dollar (\$600) nonrefundable license fee;

B. The home health agency is in compliance with the requirements established under the provisions of sections 197.400 to [197.477] 197.478, RSMo, as evidenced by a survey inspection by the department. **No license shall be renewed unless the department has been able to verify compliance through clinical record review and home visits.** In lieu of department survey, such survey as provided in section 197.415.4, RSMo; *[and]*

C. The application is accompanied by a statement of any changes in the information previously filed with the department

under section 497.410, RSMo, and the effective date for that change from the information previously filed./.; and

D. Proof of registration with secretary of state's office in Missouri.

2. The agency shall submit the Application for Home Health Agency License, **included herein**, and licensure fee prior to the license expiration date. If the license fee is not paid by the expiration date, the department may begin the revocation process.

(E) Inspection Process.

1. The home health agency management shall allow representatives of the *[Department of Health (DOH)] department* to survey the home health agency to determine eligibility for licensing and/or renewal of license. On-site surveys may be unannounced.

*[2. A branch office of an out-of-state agency shall be subject to an unannounced on-site licensure survey.]*

*[3.]2.* After completion of each department survey, a written report of the findings with respect to compliance or noncompliance with the provisions of sections 197.400 to *[197.477] 197.478*, RSMo, and the standards established thereunder, as well as a list of deficiencies found shall be prepared.

A. A copy of the deficiency list shall be sent to the home health agency within fifteen (15) business days following the survey inspection.

B. The agency management or designee shall have ten (10) calendar days following receipt of the written survey report to provide the *[DOH] department* with a written plan for correcting the cited deficiencies.

C. Upon receipt of the required plan of correction for achieving license compliance, the *[DOH] department* shall review the plan to determine the appropriateness of the corrective action and respond to the agency. If the plan is not acceptable, the *[DOH] department* shall notify the management or designee and indicate the reasons why the plan was not acceptable. A revised plan of correction shall be provided to the *[DOH] department*.

D. If an agency does not acknowledge the deficiencies, the agency must, within ten (10) calendar days, request in writing a resurvey by the *[DOH] department*. If, after the resurvey, the home health agency still does not agree with the findings of the department, it may seek a review of the findings of the department by the Administrative Hearing Commission. A copy of the letter requesting the review must be sent to the *[DOH] department*.

E. Upon expiration of the completion date for correction of deficiencies specified in the approved plan of correction, the *[DOH] department* shall determine if the required corrective measures have been acceptably accomplished. The *[DOH] department* shall document that the corrective action has been satisfactorily completed. If the *[DOH] department* finds the home health agency still fails to comply with sections of 197.400 to *[197.477] 197.478*, RSMo, the *[DOH] department* may rewrite the deficiencies and request another plan of correction or may take action to suspend or revoke the license.

(F) Refusal to Issue/Suspension/Revocation of License. The department shall refuse to issue or shall suspend or shall revoke the license of any home health agency for failure to comply with any provision of sections 197.400 to *[197.477] 197.478*, RSMo, or with any rule or standard of the department adopted under the provisions of sections 197.400 to *[197.477] 197.478*, RSMo, or for obtaining the license by means of fraud, misrepresentation, or concealment of material facts.

1. Any home health agency which has been refused a license or which has had its license revoked or suspended by the department may seek a review of the department's action by the Administrative Hearing Commission. A copy of the letter requesting the review must be sent to the *[DOH] department*.

2. The *[Department of Health] department* will not consider application for home health licensure for a period of *[six (6)] twelve (12)* months after revocation or denial of the agency's license.

(G) Voluntary Termination.

1. To voluntarily terminate a home health agency license, the agency must submit to the *[DOH] department*, in writing, on agency letterhead the following information:

A. A request for termination of their state license (include license number);

B. State the effective date of termination;

C. State disposition of active caseload; and

D. Location of medical record storage.

2. The agency must enclose the original voided license with the voluntary termination letter.

(H) Complaint Procedure. The *[DOH] department* may accept complaints by phone or in writing.

1. Any person wishing to make a complaint against a home health agency licensed under the provisions of sections 197.400 to *[197.477] 197.478*, RSMo, may file the complaint in writing with the department setting forth the details and facts supporting the complaints.

2. The *[DOH] department* may also accept complaints regarding a licensed home health agency by phone and may document that the complaint was received.

3. The nature of the complaint will determine if an investigation is appropriate or if referral of the complaint to another agency is needed.

4. An on-site visit may be made by a *[DOH] department* representative and deficiencies may be written.

5. The process for documentation of complaints will be determined by the *[DOH] department*.

6. The agency must comply with paragraph (2)(E)3. in response to deficiencies written as a result of a complaint investigation.



MISSOURI DEPARTMENT OF HEALTH AND SENIOR SERVICES  
BUREAU OF HOME CARE AND REHABILITATIVE STANDARDS  
**APPLICATION FOR HOME HEALTH AGENCY LICENSE**

In accordance with the requirements of the Missouri Home Health Agency Licensing Law (Chapter 197, RSMo Cumulative Supp. 1983) Regulations and Codes, application is hereby made for a license to conduct and maintain a Home Health Agency (See Missouri Home Health Agency Licensing Law "Definitions", Section 197.400.)

**THIS INFORMATION, WITHOUT FURTHER VERIFICATION, WILL BE PROVIDED TO BOTH MEDICARE AND MEDICAID OFFICES AND TO UPDATE THE STATE HOME HEALTH DIRECTORY.**

NAME OF AGENCY		TELEPHONE NO.
ADDRESS (STREET, CITY, STATE, ZIP)		COUNTY
HOME HEALTH AGENCY ADMINISTRATOR	SUPERVISORY NURSE	ADMINISTRATOR'S EMAIL ADDRESS

**OWNERSHIP AND MANAGEMENT (CHECK ONLY ONE)**

<p><b>GOVERNMENTAL</b></p> <input type="checkbox"/> COUNTY <input type="checkbox"/> CITY-COUNTY <input type="checkbox"/> CITY <input type="checkbox"/> DISTRICT	<p><b>NON-GOVERNMENTAL</b></p> <p><b>NON-PROFIT</b></p> <input type="checkbox"/> CORPORATION <input type="checkbox"/> OTHER (EXPLAIN) _____ _____	<p><b>PROPRIETARY</b></p> <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> CORPORATION _____	
<input type="checkbox"/> FREESTANDING AGENCY	<input type="checkbox"/> HOSPITAL-BASED AGENCY	<input type="checkbox"/> SNF/ICF BASED AGENCY	<input type="checkbox"/> REHABILITATION FACILITY-BASED AGENCY

CHIEF OFFICER OF GOVERNING BODY \_\_\_\_\_

LEGAL NAME OF OPERATING CORPORATION \_\_\_\_\_

IF OPERATED BY MANAGEMENT CONSULTANT, NAME OF FIRM \_\_\_\_\_

**GEOGRAPHIC AREA COVERED BY AGENCY OPERATION**

LIST COUNTY(IES). \_\_\_\_\_

**PROFESSIONAL SERVICES** (Indicate ALL services offered by agency)

Place a "1" in the block for each service provided by AGENCY STAFF or by contract with an individual. If services are provided UNDER ARRANGEMENT with another agency, place a "2" in the block.

<input type="checkbox"/> NURSING CARE	<input type="checkbox"/> MEDICAL SOCIAL SERVICES
<input type="checkbox"/> PHYSICAL THERAPY	<input type="checkbox"/> HOME HEALTH AIDE SERVICE
<input type="checkbox"/> OCCUPATIONAL THERAPY	<input type="checkbox"/> OTHER (SPECIFY) _____
<input type="checkbox"/> SPEECH THERAPY	_____

<p><b>DIRECT PROFESSIONAL SERVICE</b> (Indicate your agency's direct service) (Choose only one)</p> <input type="checkbox"/> NURSING CARE <input type="checkbox"/> PHYSICAL THERAPY <input type="checkbox"/> OCCUPATIONAL THERAPY <input type="checkbox"/> SPEECH THERAPY	<p><input type="checkbox"/> MEDICAL SOCIAL SERVICES</p> <p><input type="checkbox"/> HOME HEALTH AIDE SERVICE</p> <p><input type="checkbox"/> OTHER (SPECIFY) _____</p>	<p><b>MEDICARE/MEDICAID PARTICIPATION</b></p> <p>Is this agency Medicare certified? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If yes, list Medicare provider number _____</p> <p>Is this agency Medicaid certified? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If yes, list Medicaid provider number _____</p>
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Number of Employees on the Agency Staff (Full-Time Equivalents). If service is provided by non-employees enter "BY MANAGEMENT."

A. REGISTERED PROFESSIONAL NURSES	C. QUALIFIED PHYSICAL THERAPISTS	E. QUALIFIED SPEECH PATHOLOGIST OR AUDIOLOGIST
B. LPN/LICENSED VOCATIONAL NURSES	D. QUALIFIED OCCUPATIONAL THERAPISTS	F. HOME HEALTH AIDES
		G. ALL OTHERS



**BRANCH LOCATIONS** (Identify each approved branch location. All branches must operate under the parent name. Continue on bottom of page if additional room is needed.)

<b>Address:</b> _____ _____ _____	<b>Address:</b> _____ _____ _____	<b>Address:</b> _____ _____ _____
Telephone No. _____	Telephone No. _____	Telephone No. _____
Supervising Nurse: _____	Supervising Nurse: _____	Supervising Nurse: _____

**SUBUNIT LOCATIONS** (Identify each subunit location, license number and Medicare provider number.)

_____ _____ _____	_____ _____ _____	_____ _____ _____
Telephone No. _____	Telephone No. _____	Telephone No. _____
Administrator: _____	Administrator: _____	Administrator: _____
Lic. No.: _____ Provider No.: _____	Lic. No.: _____ Provider No.: _____	Lic. No.: _____ Provider No.: _____

**CERTIFICATION**

\_\_\_\_\_ and \_\_\_\_\_  
PRESIDENT OF BOARD OF TRUSTEES, OWNER OR ONE PARTNER OF PARTNERSHIP HOME HEALTH AGENCY ADMINISTRATOR

being duly sworn by me on their oath, deposes and says that they have read the foregoing application and that the statements contained therein are correct and true and of their knowledge; and further gives assurance of the ability and intention of the \_\_\_\_\_ Home Health Agency to comply with the  
EXACT LEGAL NAME

regulations promulgated under the Missouri Home Health Agency Licensing Law (Chapter 197, Rsmo. Cumulative 1983).

It is further certified that the \_\_\_\_\_ will comply with all recommendations  
NAME OF AGENCY

for correction and/or improvements as contained in the most recent Licensing Survey Report prepared by the Department of Health and Senior Services and submitted to said Home Health Agency.

**SIGNATURES**

PRESIDENT OF BOARD OF TRUSTEES, OWNER OR ONE PARTNER OF PARTNERSHIP

\_\_\_\_\_

HOME HEALTH AGENCY ADMINISTRATOR

\_\_\_\_\_

MISSOURI DEPARTMENT OF HEALTH AND SENIOR SERVICES

BUREAU OF HOME CARE AND REHABILITATIVE STANDARDS

**STATE DISCLOSURE OF OWNERSHIP AND CONTROL INTEREST STATEMENT**

**I. Identifying Information**

Name of Entity	D/B/A	Provider No.	Telephone No.
Street Address	City, State, County		Zip Code

II. Answer the following questions by checking "Yes" or "No". If any of the questions are answered "Yes", list names and addresses of individuals or corporations under Remarks. Identify each item number to be continued.

A. Are there any individuals or organizations having a direct or indirect ownership or control interest of 5 percent or more in the institution, organizations, or agency that have been convicted of a criminal offense related to the involvement of such persons, or organizations in any of the programs established by Titles XVII, XIX, or XX?  Yes  No

B. Are there any directors, officers, agents, or managing employees of the institution, agency or organization who have ever been convicted of a criminal offense related to their involvement in such programs established by Titles XVII, XIX, or XX?  Yes  No

III. (a) List names, addresses for individuals, or the EIN for organizations having direct or indirect ownership or a controlling interest in the entity. List any additional names and addresses under "Remarks". If more than one individual is reported and any of these persons are related to each other, this must be reported under Remarks.

Name	Address	EIN

(b) Type of Entity:  Sole Proprietorship  Partnership  Corporation  
 Unincorporated Associations  Other (Specify)

(c) If the disclosing entity is a corporation, list names, addresses of the Directors, and EINs for corporations under Remarks.

(d) Are any owners of the disclosing entity also owners of other facilities? (Example, sole proprietor, partnership or members of Board of Directors.) If yes, list names, addresses of individuals and provider numbers.  Yes  No

Name	Address	Provider Number

IV. (a) Has there been a change in ownership or control within the last year?  Yes  No  
 If yes, give date \_\_\_\_\_ (c) Do you anticipate filing for bankruptcy within the year?  Yes  No  
 If yes, give date \_\_\_\_\_  
 (b) Do you anticipate any change of ownership or control within the year?  Yes  No  
 If yes, give date \_\_\_\_\_

V. Is this facility operated by a management company, or leased in whole or part by another organizations?  Yes  No  
 If yes, give date of change in operations \_\_\_\_\_

VI. Has there been a change in Administrator, Director of Nursing or Medical Director within the last year?  Yes  No

VII. (a) Is this facility chain affiliated? (if yes, list name, address of Corporation, and EIN)  Yes  No

Name	EIN#
Address	

WHOEVER KNOWINGLY AND WILLFULLY MAKES OR CAUSES TO BE MADE A FALSE STATEMENT OR REPRESENTATION OF THIS STATEMENT, MAY BE PROSECUTED UNDER APPLICABLE FEDERAL OR STATE LAWS, IN ADDITION, KNOWINGLY AND WILLFULLY FAILING TO FULLY AND ACCURATELY DISCLOSE THE INFORMATION REQUESTED MAY RESULT IN DENIAL OF A REQUEST TO PARTICIPATE OR WHERE THE ENTITY ALREADY PARTICIPATES, A TERMINATION OF ITS AGREEMENT OR CONTRACT WITH THE STATE AGENCY, OR SECRETARY, AS APPROPRIATE.

Name of Authorized Representative (Typed)	Title
Signature	Date

Remarks

*AUTHORITY: section 197.445, RSMo [1997] 2000 and section 660.050, RSMo Supp. 2007. Original rule filed Aug. 17, 1998, effective Jan. 30, 1999. Amended: Filed Oct. 22, 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 cost private entities fifty-seven thousand one hundred twenty-six dollars (\$57,126) in the first year and forty-three thousand five hundred twelve dollars (\$43,512) annually thereafter.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Health and Senior Services, Division of Regulation and Licensure, Section of Health Standards & Licensure, Dean Linneman, Section Administrator, PO Box 570, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

**FISCAL NOTE  
PRIVATE COST**

**I. RULE NUMBER**

Rule Number and Name:	19 CSR 30 – 26.010 Home Health Licensure Rule
Type of Rulemaking:	Proposed Rule

**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:
2	Licensed Home Health Agencies	\$57,126 initial \$43,512 annually thereafter

**III. WORKSHEET** Start up cost for home health agency to relocate from private residence to business location would consist of the following:

Start Up Cost include:

2 Computers - \$1153.00  
 Computer Supplies - \$63.00  
 Equipment/Furniture - \$1046.00  
 Clerical Office Supplies - \$751.00  
 Permits - \$254.00  
 Printing (Business Cards, Letterhead etc.) \$169.00  
 Rent & Deposit - \$1900.00  
 Software/fees/support - \$1245.00  
 Tables, Smoke Alarms, Fire Extinguisher - \$226.00

Monthly Cost include:

Rent, Trash and Water - \$715.00  
 Utilities – \$75.00  
 Phone and Internet (2 Lines and 1 Fax Line) - \$225.00  
 Alarm System - \$125.00  
 Copier Lease - \$180.00  
 Office Expenses (incidentals, paper products) - \$113.00  
 Office Supplies - \$380.00

The start up cost for 1 agency would be \$6,807.00 x 2 = \$13,614

The monthly cost for 1 agency is \$1,813 x 12 months = \$21,756

Therefore the annual cost for 2 agencies would be \$43,512

The total cost for 2 agencies to set up their agency in a business location and to operate for 12 months would be \$57,126.00

#### IV. ASSUMPTIONS

The Department's records indicate two of the one hundred ninety-four licensed home health agencies have business locations in personal residences. The amendment to 19 CSR 30-26.010 Home Health Licensure Rule would require these two home health agencies to establish business locations elsewhere. In addition, this amendment would no longer allow new agencies seeking licensure to operate the business in their private residence.

This proposed rule was developed through recommendations and consultations with the Home Health Advisory Council (created by HB 51 during the 1983 legislative session). This council is made up of one representative of the Department, three Missouri citizens who have no affiliation with any home health agency, and five members who represent home health agencies from each of the following categories:

- (1) Public sponsored home health agency
- (2) Institutional sponsored home health agency
- (3) Voluntary nonprofit home health agency
- (4) Private nonprofit home health agency
- (5) For profit home health agency

In 1999 the bureau established a policy prohibiting the Health Facility Nursing Consultants, (surveyors) to conduct the surveys in a private residence due to safety and liability concerns. Henceforth, this practice doesn't allow surveyors to assure licensure regulations are being met regarding safeguarding of the clinical record against loss or unauthorized use and compliance with patient's rights of confidentiality of their clinical record. This practice also created the need for the surveyor to call ahead to the agency announcing the survey, so as to arrange for a business location to meet to complete the survey. The survey process takes several days including a review of patient's clinical records. According to the State Operations Manual all home health surveys are to be unannounced.

The information used to create this fiscal note came from an agency located in St. Louis that recently became licensed in 2007. The 2 agencies this amendment will affect are currently operating out of their residence in St. Louis and serve the same geographic area.

**Title 19—DEPARTMENT OF HEALTH AND  
SENIOR SERVICES**  
**Division 30—Division of Regulation and Licensure**  
**Chapter 70—Lead Abatement and Assessment Licensure,  
Training Accreditation**

**PROPOSED RULE**

**19 CSR 30-70.650 Administrative Penalties**

*PURPOSE: This rule establishes the procedures for issuance and methods for calculation of administrative penalties by the department.*

*PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material, which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in the rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.*

(1) **Applicability.** This rule applies to any licensed lead professional who violates the provisions of 19 CSR 30-70.630 Lead Abatement Work Practice Standards.

(2) **Definitions.**

(A) **Adjustments:** Those factors related to a violator or violation, which are not reflected in the gravity-based assessment but which distinguish legitimate differences between separate violations of the same provision.

(B) **Compliance:** A regulated entity or individual's meeting or conformity with applicable regulations, notifications and licensure requirements, and laws.

(C) **Department:** Shall refer to the Director of the Missouri Department of Health and Senior Services or a designee of the Director of the Missouri Department of Health and Senior Services.

(D) **Enforcement:** A formal action taken against the regulated entity or individual for violating applicable regulations, notifications and licensure requirements, and laws. Such actions include, but are not limited to, Notice of Violation (NOV), warning letters, administrative penalties, cease and desist order, and/or licensure restriction, revocation, suspension, and/or denial.

(E) **Gravity-based assessment:** The degree of seriousness of a violation taking into consideration the risk to public health and/or the environment posed by the violation and considering the extent of deviation from sections 701.300-701.338, RSMo.

(F) **Identified offense:** A violation meeting the requirements specified in subsection (3)(B) of this rule in which administrative penalties may be assessed by the department.

(G) **Lead abatement project:** The replacement, encapsulation, enclosure, or removal of a lead-bearing substance on a particular component within a particular location, which will remove or remediate the lead hazard(s) for at least twenty (20) years.

(H) **Multiple violation penalty:** The sum of individual administrative penalties assessed when two (2) or more violations are included in the same complaint or enforcement action.

(I) **Multi-day penalty:** The sum of each day's administrative penalties assessed when the same violation has occurred on or continued for two (2) or more consecutive or nonconsecutive days.

(J) **Multi-day violation:** A violation, which has occurred on or continued for two (2) or more consecutive or nonconsecutive days.

(K) **Noncompliance:** Deviation from or failure to meet applicable regulations, notifications and licensure requirements, and laws. Noncompliance can range from a single incident to chronic conduct. Noncompliance may result in a negative impact to public health and/or the environment.

(L) **Notice of Violation (NOV):** The formal written documentation that reflects the deviation from or failure of the lead abatement contractor, supervisor, or worker to meet applicable regulations, notifications and licensure requirements, and laws. A notice of violation shall include the corrective action(s) to be performed to achieve compliance.

(M) **Notification:** A required package of information submitted to the department by the lead supervisor at least ten (10) days prior to the onset of a lead abatement project. The notification shall include a completed Lead Abatement Project Notification form, as required by the department; full payment of the notification fee prior to starting the lead abatement project; and disclosure of any potential lead hazards to the owners and tenants of a dwelling by the Missouri licensed risk assessor who conducted the initial risk assessment (occupant protection plan). The Lead Abatement Project Notification form, MO 580-2365 (1-05), is incorporated by reference in this rule and is available on the web at [www.dhss.mo.gov/](http://www.dhss.mo.gov/) or by contacting the department at PO Box 570, Jefferson City, MO 65102-0570, (573) 751-6111. This rule does not incorporate any subsequent amendments or additions.

(N) **Violation:** The deviation from or failure of the licensed lead professional to meet applicable regulations, notifications and licensure requirements, and laws which require corrective action(s).

(3) **General Provisions.**

(A) Pursuant to section 701.317, RSMo, and in addition to any other remedy provided by law, upon determination by the department that any provision of sections 701.300-701.338, RSMo, or a standard, limitation, order, rule, or regulation promulgated pursuant thereto, or a term or condition of any license has been violated, the department may issue an order assessing an administrative penalty upon the violator.

(B) An administrative penalty shall not be imposed until the department has issued a notice of violation pursuant to section 701.311, RSMo, to the violator regarding the same type of violation within the calendar year.

(C) An order assessing an administrative penalty shall state that an administrative penalty is being assessed under section 701.317, RSMo, the manner of collection and rights of appeal.

(D) An order assessing an administrative penalty shall describe the nature of the violation(s), the amount of the administrative penalty being assessed, and the basis of the penalty calculation.

(E) An order assessing an administrative penalty shall be served upon the licensee through the United States Postal Service certified mail, return receipt requested. An order assessing an administrative penalty shall be considered served if the licensee verifies receipt. A refusal to accept an order assessing an administrative penalty, or a rejection of certified mail, constitutes service of the order.

(F) The department may at any time withdraw without prejudice any administrative penalty order.

(4) **Calculation of Penalties.** The calculation of administrative penalties may include any of the following four (4) factors: gravity-based assessment, multiple violation penalties, multi-day penalties, and adjustments.

(A) **Gravity-Based Assessment.** The gravity-based assessment is determined by evaluating the potential for harm posed by the violation and the extent to which the violation deviates from the requirements of the law, associated rules, or licenses.

1. **Potential for or actual harm.** The potential for harm posed by a violation is based on the risk to public health, safety, or the environment, and the degree that the violation undermines the purposes of, or procedures for, implementing the law, associated rules, or licenses.

A. The risk of exposure is dependent on both the likelihood that humans or the environment may be exposed to lead hazards and the degree of potential exposure. Penalties will reflect the probability that the violation either did result in or could have resulted in a

release of lead contamination in the environment, and the harm, which either did or would have happened, if the release had in fact occurred.

(I) Acute.

(a) The violation poses or may pose an immediate or imminent risk to public health and/or the environment; or

(b) Is a violation specified in the Department of Health and Senior Services Lead Abatement Work Practice Standards Enforcement Manual as acute noncompliance. The manual is incorporated by reference in this rule as published January 15, 2009 by the Department of Health and Senior Services and is available on the web at [www.dhss.mo.gov/](http://www.dhss.mo.gov/) or by contacting the department at PO Box 570, Jefferson City, MO 65102-0570, (573) 751-6111. This rule does not incorporate any subsequent amendments or additions.

(II) Significant.

(a) The violation poses or may pose a considerable risk to public health and/or the environment;

(b) The violation has or may have a substantial adverse effect on the purposes of or procedures for implementing sections 701.300-701.338, RSMo; or

(c) Is a violation specified in the Department of Health and Senior Services Lead Abatement Work Practice Standards Enforcement Manual as significant noncompliance. The manual is incorporated by reference in this rule as published January 15, 2009 by the Department of Health and Senior Services and is available on the web at [www.dhss.mo.gov/](http://www.dhss.mo.gov/) or by contacting the department at PO Box 570, Jefferson City, MO 65102-0570, (573) 751-6111. This rule does not incorporate any subsequent amendments or additions.

B. Violations which may or may not pose a potential threat to public health or the environment, but which have an adverse effect upon the purposes of, or procedures for, implementing the law, associated rules, or licenses, may warrant the assessment of penalties.

(I) Minor.

(a) The violation poses a low or minimal risk to public health and/or the environment;

(b) The violation has or may have an adverse effect on the purposes of or procedures for implementing sections 701.300-701.338, RSMo; or

(c) Is a violation specified in the Department of Health and Senior Services Lead Abatement Work Practice Standards Enforcement Manual as minor noncompliance. The manual is incorporated by reference in this rule as published January 15, 2009 by the Department of Health and Senior Services and is available on the web at [www.dhss.mo.gov/](http://www.dhss.mo.gov/) or by contacting the department at PO Box 570, Jefferson City, MO 65102-0570, (573) 751-6111. This rule does not incorporate any subsequent amendments or additions.

2. Extent of deviation. The extent of deviation may range from slight to total disregard of the requirements of the law, associated rules or licenses. The extent of deviation shall be evaluated according to the degree of severity.

3. Gravity-based penalty assessment. Administrative penalties will be assessed based on significance, acuity, and extent of deviation. The penalty range selected may be adapted to the circumstances of a particular violation.

(B) Penalties for Multiple Violations. Penalties for multiple violations may be determined when a violation is independent of or substantially different from any other violation. The department may order a separate administrative penalty for that violation as set forth in this rule.

(C) Penalties for Multi-Day Violations. Penalties for multi-day violations may be determined when the department has concluded that a violation(s) has continued or occurred for more than one (1) day. Each day shall be a separate offense.

(D) Adjustments. The department may adjust the penalty after consideration of the following:

1. Good faith efforts to comply. The department may decrease a penalty amount if the violator has adequately documented good faith efforts taken prior to a compliance inspection and the discovery

of the violation;

2. The amount of control the violator had over the events constituting the violation;

3. The foreseeability of the events constituting the violation;

4. Whether the violator took reasonable precautions against the events constituting the violation; and

5. History of noncompliance.

(E) Payment. Administrative penalties shall be made payable to the Missouri Department of Health and Senior Services in the form of a cashier's check or money order and mailed to the Missouri Department of Health and Senior Services, Attention: Fee Receipts Unit, PO Box 570, Jefferson City, MO 65102. The department may negotiate a delayed payment schedule, installment plan, or penalty reduction with stipulated penalties.

(5) Penalties Assessed.

(A) Acute.

1. Failure to notify the department prior to the onset of a lead abatement project shall result in a fine of two hundred fifty dollars (\$250) imposed against the lead abatement contractor for the first identified offense, five hundred dollars (\$500) for the second identified offense, and thereafter, fines shall be doubled for each identified offense.

2. All other acute violations shall result in an administrative penalty of two hundred fifty dollars (\$250) imposed against the regulated entity or individual for the first identified offense, five hundred dollars (\$500) for the second identified offense, and thereafter, administrative penalties shall be doubled for each identified offense.

(B) Significant. Significant violations shall result in administrative penalties ranging from one hundred dollars (\$100) to two hundred fifty dollars (\$250) imposed against the regulated entity or individual for the first identified offense, two hundred dollars (\$200) to five hundred dollars (\$500) for the second identified offense, and thereafter, administrative penalties shall be doubled for each identified offense.

(C) Minor. Minor violations shall result in administrative penalties ranging from twenty-five dollars (\$25) to one hundred dollars (\$100) imposed against the regulated entity or individual for the first identified offense, fifty dollars (\$50) to two hundred dollars (\$200) for the second identified offense, and thereafter, administrative penalties shall be doubled for each identified offense.

(6) Suspended or Revoked License Penalties. Any lead inspector, risk assessor, lead abatement supervisor, lead abatement worker, project designer, or lead abatement contractor who engages in a lead abatement project while such person's license, issued under section 701.312, RSMo, is under suspension or revocation is guilty of a class D felony.

(7) Other Penalties. Except as otherwise provided, violation of the provisions of sections 701.309, 701.311, and 701.316, RSMo, can be referred by the department for prosecution.

(8) Proceeds From Administrative Penalties. The penalties collected pursuant to section 701.317(7), RSMo, shall be deposited in the "Missouri Lead Abatement Loan Fund" as established in section 701.337, RSMo. Such penalties shall not be considered charitable contributions for tax purposes.

(9) This rule may be used as guidance in assessing civil and criminal penalties.

*AUTHORITY: sections 701.311, 701.317, and 701.337, RSMo Supp. 2007. Original rule filed on Oct. 22, 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 TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with Glenda R. Miller, Division Director, Missouri Department of Health and Senior Services; Division of Community and Public Health; PO Box 570, Jefferson City, MO 65102-0570. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

**Title 20—DEPARTMENT OF INSURANCE,  
FINANCIAL INSTITUTIONS AND PROFESSIONAL  
REGISTRATION**

**Division 200—[Financial Examination] Insurance  
Solvency and Company Regulation**

**Chapter 1—Financial Solvency and Accounting Standards**

**PROPOSED AMENDMENT**

**20 CSR 200-1.116 Actuarial Opinion and Memorandum Regulation.** The director is amending the purpose and sections (1), (2), (3), (4), (5), (6), and (7).

*PURPOSE: The purpose of this amendment is to make the department's rule consistent with the current version of the model actuarial opinion and memorandum regulation of the National Association of Insurance Commissioners.*

*PURPOSE: This rule prescribes[—]: a) [guidelines and standards] requirements for statements of actuarial opinion which are to be submitted in accordance with sections 376.370[,] and 376.380, RSMo, and 20 CSR 200-1.115 and for memoranda in support thereof; b) [guidelines and standards for statements of actuarial opinion which are to be submitted when a company is exempt from 20 CSR 200-1.115(2)] guidance as to the meaning of "adequacy of reserves"; and c) rules applicable to the appointment of an appointed actuary.*

(1) Scope.

*[(A)] This rule shall apply to all life insurance companies and fraternal benefit societies doing business in this state and to all life insurance companies and fraternal benefit societies which are authorized to reinsure life insurance, annuities, or accident and health insurance business in this state. **This regulation shall be applied in a manner that allows the appointed actuary to utilize his or her professional judgment in performing the asset analysis and developing the actuarial opinion and supporting memoranda, consistent with relevant actuarial standards of practice. However, the director shall have the authority to specify methods of actuarial analysis and actuarial assumptions when, in the director's judgment, these specifications are necessary for an acceptable opinion to be rendered relative to the adequacy of reserves and related items.** This rule shall be applicable to all annual statements filed with the director after the effective date of this rule. *[Except with respect to companies which are exempt pursuant to section (4) of this rule, a] A statement of opinion on the adequacy of the reserves and related actuarial items based on an asset adequacy analysis in accordance with section [(6)] (4) of this rule, and a [supporting] memorandum in support thereof in accordance with section [(7)] (5) of this rule, shall be required each year. [Any company so exempted must file a statement of actuarial opinion pursuant to section (5) of this rule.]**

*[(B)] Notwithstanding subsection (1)(A), the director may require any company otherwise exempt pursuant to this rule to submit a statement of actuarial opinion and to prepare a supporting memorandum in accordance with sections (6) and (7) of this rule if, in the opinion of the director, an asset*

*adequacy analysis is necessary with respect to the company.]*

(2) Definitions.

(A) "Actuarial opinion" means[—]

*[1. With respect to section (6), (7) or (8),] the opinion of an appointed actuary regarding the adequacy of the reserves and related actuarial items based on an asset adequacy [test] analysis in accordance with section [(6)] (4) of this rule and with [presently accepted] applicable Actuarial Standards of Practice.[]; and]*

*[2. With respect to section (5), the opinion of an appointed actuary regarding the calculation of reserves and related items, in accordance with section (5) of this rule and with those presently accepted Actuarial Standards which specifically relate to this opinion.]*

(B) "Actuarial Standards Board"[—] means the board established by the American Academy of Actuaries to develop and promulgate standards of actuarial practice.

(C) "Annual statement"[—] means that statement required by sections 375.041 and 376.350, RSMo, to be filed by the company with the director annually.

(D) "Appointed actuary"[—] means an[y] individual who is appointed or retained in accordance with the requirements set forth in subsection (3)(C) of this rule to provide the actuarial opinion and supporting memorandum as required by 20 CSR 200-1.115 and section 376.380, RSMo.

(E) "Asset adequacy analysis"[—] means an analysis that meets the standards and other requirements referred to in subsection (3)(D) of this rule. *[It may take many forms, including, but not limited to, cash flow testing, sensitivity testing or applications of risk theory.]*

(F) "Company"[—] means a life insurance company, fraternal benefit society, or reinsurer subject to the provisions of this rule.

(G) "Director"[—] means the [insurance director of this state] director of the Missouri Department of Insurance, Financial Institutions and Professional Registration.

*[(H)] Noninvestment grade bonds—are those designated as classes 3, 4, 5 or 6 by the National Association of Insurance Commissioners (NAIC) Securities Valuation Office.]*

*[(I)](H) "Qualified actuary"[—] means an[y] individual who meets the requirements set forth in subsection (3)(B) of this rule.*

(3) General Requirements.

(A) Submission of Statement of Actuarial Opinion.

*1. There is to be included on or attached to page 1 of the annual statement for each year beginning with the year in which this rule becomes effective the statement of an appointed actuary, entitled "Statement of Actuarial Opinion," setting forth an opinion relating to reserves and related actuarial items held in support of policies and contracts, in accordance with section [(6)] (4) of this rule; provided, however, that any company exempted pursuant to section (4) of this rule from submitting a statement of actuarial opinion in accordance with section (6) of this rule shall include on or attach to page 1 of the annual statement a statement of actuarial opinion rendered by an appointed actuary in accordance with section (5) of this rule.]*

*[2. If in the previous year a company provided a statement of actuarial opinion in accordance with section (5) of this rule, and in the current year fails the exemption criteria of paragraphs (4)(C)1., 2. or 5. to again provide an actuarial opinion in accordance with section (5), the statement of actuarial opinion in accordance with section (6) shall not be required until August 1 following the date of the annual statement. In this instance, the company shall provide a statement of actuarial opinion in accordance with section (5) with appropriate qualification noting the intent to subsequently provide a statement of actuarial opinion in accordance with section (6).]*



3. In the case of a statement of actuarial opinion required to be submitted by a foreign or alien company, the director may accept the statement of actuarial opinion filed by the company with the insurance supervisory regulator of another state if the director determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.]

[4.]2. Upon written request by the company, the director may grant an extension of the date for submission of the statement of actuarial opinion.

(B) Qualified actuary. A “qualified actuary” is an individual who—

1. Is a member [in good standing] of the American Academy of Actuaries;

2. Is qualified to sign statements of actuarial opinion for life and health insurance company annual statements in accordance with the American Academy of Actuaries qualification standards for actuaries signing those statements;

3. Is familiar with the valuation requirements applicable to life and health insurance companies;

4. Has not been found by the director (or, if so found, has subsequently been reinstated as a qualified actuary), following appropriate notice and hearing to have[—]:

A. Violated any provision of, or any obligation imposed by, the insurance law or other law in the course of his/her dealings as a qualified actuary;

B. Been found guilty of fraudulent or dishonest practices;

C. Demonstrated his/her incompetency, lack of cooperation, or untrustworthiness to act as a qualified actuary;

D. Submitted to the director during the past five (5) years, pursuant to this rule, an actuarial opinion or memorandum that the director rejected because it did not meet the provisions of this rule including standards set by the Actuarial Standards Board; or

E. Resigned or been removed as an actuary within the past five (5) years as a result of acts or omissions indicated in any adverse report on examination or as a result of failure to adhere to generally acceptable actuarial standards; and

5. Has not failed to notify the director of any action taken by any director of [another] any other state similar to that under paragraph (3)(B)4.

(D) Standards for Asset Adequacy Analysis. The asset adequacy analysis required by this rule[—]:

1. Shall conform to the Standards of Practice as promulgated from[—] time-to-time by the Actuarial Standards Board and on any additional standards under this rule, which standards are to form the basis of the statement of actuarial opinion in accordance with [section (6) of] this rule; and

2. Shall be based on methods of analysis as are deemed appropriate for [those] such purposes by the Actuarial Standards Board.

(E) Liabilities to Be Covered.

1. Under authority of 20 CSR 200-1.115 and sections 376.370 and 376.380, RSMo, the statement of actuarial opinion shall apply to all in force business on the statement date, **whether directly issued or assumed**, regardless of when or where issued, for example, reserves of Exhibits 8, 9, and 10, and claim liabilities in Exhibit 11, Part [I] 1 and equivalent items in the separate account statement(s).

2. If the appointed actuary determines as the result of asset adequacy analysis that a reserve should be held in addition to the aggregate reserve held by the company and calculated in accordance with methods set forth in sections 376.370 and 376.380, RSMo, the company shall establish [an] the additional reserve.

[3. For years ending prior to December 31, 1994, the company, in lieu of establishing the full amount of the additional reserve in the annual statement for that year, may set up an additional reserve in an amount not less than the following:

A. December 31, 1992—The additional reserve divided by three (3); and

B. December 31, 1993—Two (2) times the additional reserve divided by three (3).

[4.]3. Additional reserves established under paragraph (3)(E)2. [or 3.] and deemed not necessary in subsequent years may be released. Any amounts released must be disclosed in the actuarial opinion for the applicable year. The release of these reserves would not be deemed an adoption of a lower standard of valuation.

[(4) Required Opinions.

(A) General. In accordance with 20 CSR 200-1.115 and sections 376.370 and 376.380, RSMo, every company doing business in this state shall annually submit the opinion of an appointed actuary as provided for by this rule. The type of opinion submitted shall be determined by the provisions set forth in this section and shall be in accordance with the applicable provisions in this rule.

(B) Company Categories. For purposes of this rule, companies shall be classified as follows based on the admitted assets as of the end of the calendar year for which the actuarial opinion is applicable:

1. Category A shall consist of those companies whose admitted assets do not exceed twenty (20) million dollars;

2. Category B shall consist of those companies whose admitted assets exceed twenty (20) million dollars but do not exceed one hundred (100) million dollars;

3. Category C shall consist of those companies whose admitted assets exceed one hundred (100) million dollars but do not exceed five hundred (500) million dollars; and

4. Category D shall consist of those companies whose admitted assets exceed five hundred (500) million dollars.

(C) Exemption Eligibility Tests.

1. Any Category A company that, for any year beginning with the year in which this rule becomes effective, meets all of the following criteria shall be eligible for exemption from submission of a statement of actuarial opinion in accordance with section (6) of this rule for the year in which these criteria are met. The ratio in subparagraphs (4)(C)1.A.–C. shall be calculated as follows based on amounts as of the end of the calendar year for which the actuarial opinion is applicable:

A. The ratio of the sum of capital and surplus to the sum of cash and invested assets is at least equal to one-tenth (.10);

B. The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is less than three-tenths (.30);

C. The ratio of the book value of the noninvestment grade bonds to the sum of capital and surplus is less than one-half (.50); and

D. The examiner team for the NAIC has not designated the company as a first priority company in any of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or a second priority company in each of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or the company has resolved the first or second priority status to the satisfaction of the director of the state of domicile and the director has so notified the chair of the NAIC Life and Health Actuarial Task Force and the NAIC Support and Services Office.

2. Any Category B company that, for any year beginning with the year in which this rule becomes effective, meets all of the following criteria shall be eligible for exemption from submission of a statement of actuarial opinion in accordance with section (6) of this rule for the year in which these criteria are met. The ratios in subparagraphs (4)(C)2.A.–C.

shall be calculated as follows based on amounts as of the end of the calendar year for which the actuarial opinion is applicable:

A. The ratio of sum of capital and surplus to the sum of cash and invested assets is at least equal to seven-hundredths (.07);

B. The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is less than four-tenths (.40);

C. The ratio of the book value of the noninvestment grade bonds to the sum of capital and surplus is less than one-half (.50); and

D. The examiner team for the NAIC has not designated the company as a first priority company in any of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or a second priority company in each of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or the company has resolved the first or second priority status to the satisfaction of the director of the state of domicile and the director has so notified the chair of the NAIC Life and Health Actuarial Task Force and the NAIC Support and Services Office.

3. Any Category A or Category B company that meets all of the criteria set forth in paragraph (4)(C)1. or 2., whichever is applicable, is exempted from submission of a statement of actuarial opinion in accordance with section (6) of this rule unless the director specifically indicates to the company that the exemption is not to be taken.

4. Any Category A or Category B company that, for any year beginning with the year in which this rule becomes effective, is not exempted under paragraph (4)(C)3. shall be required to submit a statement of actuarial opinion in accordance with section (6) of this rule for the year for which it is not exempt.

5. Any Category C company that, after submitting an opinion in accordance with section (6) of this rule, meets all of the following criteria shall not be required, unless required in accordance with paragraph (4)(C)6. to submit a statement of actuarial opinion in accordance with section (6) of this rule more frequently than every third year. Any Category C company which fails to meet all of the following criteria for any year shall submit a statement of actuarial opinion in accordance with section (6) of this rule for that year. The ratios in (4)(C)5.A.–C. shall be calculated as follows based on amounts as of the end of the calendar year for which the actuarial opinion is applicable:

A. The ratio of the sum of capital and surplus to the sum of cash and invested assets is at least equal to five-hundredths (.05);

B. The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is less than one-half (.50);

C. The ratio of the book value of the noninvestment grade bonds to the sum of the capital and surplus is less than one-half (.50); and

D. The examiner team for the NAIC has not designated the company as a first priority company in any of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or a second priority company in each of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or the company has resolved the first or second priority status to the satisfaction of the director of the state of domicile and the director has so notified the chair of the NAIC Life and Health Actuarial Task Force and the NAIC Support and Services Office.

6. Any company which is not required by this section to submit a statement of actuarial opinion in accordance with section (6) of this rule for any year shall submit a statement of actuarial opinion in accordance with section (5) of this rule for that year unless as provided for by subsection (1)(B) of this rule the director requires a statement of actuarial opinion in accordance with section (6) of this rule.

(D) Large Companies. Every Category D company shall submit a statement of actuarial opinion in accordance with section (6) of this rule for each year beginning with the year in which this rule becomes effective.

(5) Statement of Actuarial Opinion Not Including an Asset Adequacy Analysis.

(A) General Description. The statement of actuarial opinion required by this section shall consist of a paragraph identifying the appointed actuary and his/her qualifications; a regulatory authority paragraph stating that the company is exempt pursuant to this rule from submitting a statement of actuarial opinion based on an asset adequacy analysis and that the opinion, which is not based on an asset adequacy analysis, is rendered in accordance with section (5) of this rule; a scope paragraph identifying the subjects on which the opinion is to be expressed and describing the scope of the appointed actuary's work; and an opinion paragraph expressing the appointed actuary's opinion as required by 20 CSR 200-1.115 and sections 376.370 and 376.380, RSMo.

(B) Recommended Language. The following language provided is that which in typical circumstances would be included in a statement of actuarial opinion in accordance with this section. The language may be modified as needed to meet the circumstances of a particular case, but the appointed actuary should use language which clearly expresses his/her professional judgment. However, in any event the opinion shall retain all pertinent aspects of the language provided in section (5):

1. The opening paragraph should indicate the appointed actuary's relationship to the company. For a company actuary, the opening paragraph of the actuarial opinion should read as follows: "I, (name of actuary), am (title) of (name of company) and a member of the American Academy of Actuaries. I was appointed by, or by the authority of, the board of directors of this insurer to render this opinion as stated in the letter to the director dated (insert date). I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health companies." For a consulting actuary, the opening paragraph of the actuarial opinion should contain a sentence such as: "I, (name and title of actuary), a member of the American Academy of Actuaries, am associated with the firm of (insert name of consulting firm). I have been appointed by, or by the authority of, the board of directors of (name of company) to render this opinion as stated in the letter to the director dated (insert date). I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies.";

2. The regulatory authority paragraph should include a statement such as the following: "This company is exempt pursuant to regulation (insert designation) of the (name of state) insurance department from submitting a statement of actuarial opinion based on an asset adequacy analysis. This opinion, which is not based on an asset adequacy analysis, is rendered in accordance with section (5) of the regulation.";

3. The scope paragraph should contain a sentence such as the following: "I have examined the actuarial assumptions and actuarial methods used in determining reserves and

related actuarial items listed here, as shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31, (. . . )." The paragraph should list items and amounts with respect to which the appointed actuary is expressing an opinion. The list should include, but not be necessarily limited to:

A. Aggregate reserve and deposit funds for policies and contracts included in Exhibit 8;

B. Aggregate reserve and deposit funds for policies and contracts included in Exhibit 9;

C. Deposit funds, premiums, dividend and coupon accumulations, and supplementary contracts not involving life contingencies included in Exhibit 10; and

D. Policy and contract claims-liability end of current year included in Exhibit 11, Part I;

4. If the appointed actuary has examined the underlying records, the scope paragraph should also include the following: "My examination included a review of the actuarial assumptions and actuarial methods and of the underlying basic records and tests of the actuarial calculations as I considered necessary.";

5. If the appointed actuary has not examined the underlying records, but has relied upon listings and summaries of policies in force prepared by the company or a third party, the scope paragraph should include a sentence such as one of the following:

A. "I have relied upon listings and summaries of policies and contracts and other liabilities in force prepared by (name and title of company officer certifying in-force records) as certified in the attached statement. (See accompanying affidavit by a company officer.) In other respects my examination included review of the actuarial assumptions and actuarial methods and tests of the actuarial calculations as I considered necessary"; or

B. "I have relied upon (name of accounting firm) for the substantial accuracy of the in-force records inventory and information concerning other liabilities, as certified in the attached statement. In other respects my examination included review of the actuarial assumptions and actuarial methods and tests of the actuarial calculations as I considered necessary." The statement of the person certifying shall follow the form indicated by paragraph (5)(B)10.;

6. The opinion paragraph should include the following: "In my opinion the amounts carried in the balance sheet on account of the actuarial items identified here:

A. "Are computed in accordance with presently accepted actuarial standards consistently applied and are fairly stated in accordance with sound actuarial principles;

B. "Are based on actuarial assumptions which produce reserves at least as great as those called for in any contract provision as to reserve basis and method, and are in accordance with all other contract provisions;

C. "Meet the requirements of the insurance law and regulations of the state of (state of domicile) and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed;

D. "Are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end with an exception as noted here; and

E. "Include provision for all actuarial reserves and related statement items which ought to be established. The actuarial methods, considerations and analyses used informing my opinion conform to the appropriate Compliance Guidelines as promulgated by the Actuarial Standards Board, which guidelines form the basis of this statement of opinion.";

7. The concluding paragraph should document the eligibility for the company to provide an opinion as provided by section (5). It shall include the following: "This opinion is provided in accordance with section (5). As such it does not include an opinion regarding the adequacy of reserves and related actuarial items when considered in light of the assets which support them. Eligibility for section (5) is confirmed as follows:

A. "The ratio of the sum of capital and surplus to the sum of cash and invested assets is (insert amount), which equals or exceeds the applicable criterion based on the admitted assets of the company;

B. "The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is (insert amount), which is less than the applicable criterion based on the admitted assets of the company;

C. "The ratio of the book value of the noninvestment grade bonds to the sum of capital and surplus is (insert amount), which is less than the applicable criterion of one-half (.50);

D. "To my knowledge, the NAIC examiner team has not designated the company as a first priority company in any of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or a second priority company in each of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable or the company has resolved the first or second priority status to the satisfaction of the insurance supervisory regulatory official of the state of domicile.; and

E. "To my knowledge there is not a specific request from any director requiring an asset adequacy analysis opinion."

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(Signature of Appointed Actuary)

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(Address of Appointed Actuary)

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(Telephone Number of Appointed Actuary)

8. If there has been any change in the actuarial assumptions from those previously employed, that change should be described in the annual statement or in a paragraph of the statement of actuarial opinion, and the reference in subparagraph (5)(B)6.D. to be consistent should read as follows: ". . . with the exception of the change described on Page (..) of the annual statement (or in the preceding paragraph)." The adoption for new issues or new claims or other new liabilities of an actuarial assumption which differs from a corresponding assumption used for prior new issues or new claims or other new liabilities is not a change in actuarial assumptions within the meaning of this paragraph;

9. If the appointed actuary is unable to form an opinion, s/he shall refuse to issue a statement of actuarial opinion. If the appointed actuary's opinion is adverse or qualified, s/he shall issue an adverse or qualified actuarial opinion explicitly stating the reason(s) for this opinion. This statement should follow the scope paragraph and precede the opinion paragraph; and

10. If the appointed actuary does not express an opinion as to the accuracy and completeness of the listings and summaries of policies in force, there should be attached to the opinion, the statement of a company officer or accounting firm who prepared the underlying data similar to the following: "I (name of officer), (title) of (name and address of company or accounting firm), affirm that the listings and

summaries of policies and contracts in force as of December 31, (\_\_\_\_), prepared for and submitted to (name of appointed actuary), were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete.”

(Signature of the Officer of the Company or Accounting Firm)

(Address of the Officer of the Company or Accounting Firm)

(Telephone Number of the Officer of the Company or Accounting Firm)

[(6)](4) Statement of Actuarial Opinion Based On an Asset Adequacy Analysis.

(A) General Description. The statement of actuarial opinion submitted in accordance with this section shall consist of [—]:

1. A paragraph identifying the appointed actuary and his/her qualifications (see paragraph [(6)](4)(B)1.);

2. A scope paragraph identifying the subjects on which an opinion is to be expressed and describing the scope of the appointed actuary’s work, including a tabulation delineating the reserves and related actuarial items which have been analyzed for asset adequacy and the method of analysis, (see paragraph [(6)](4)(B)2.) and identifying the reserves and related actuarial items covered by the opinion which have not been so analyzed;

3. A reliance paragraph describing those areas, if any, where the appointed actuary has deferred to other experts in developing data, procedures, or assumptions (for example, anticipated cash flows from currently owned assets, including variation in cash flows according to economic scenarios (see paragraph [(6)](4)(B)3.) supported by a statement of each expert in the form prescribed by subsection [(6)](4)(E);

4. An opinion paragraph expressing the appointed actuary’s opinion with respect to the adequacy of the supporting assets to mature the liabilities (see paragraph [(6)](4)(B)6.); and

5. One (1) or more additional paragraphs will be needed in individual company cases as follows:

A. If the appointed actuary considers it necessary to state a qualification of his/her opinion;

*[B. If the appointed actuary must disclose the method of aggregation for reserves of different products or lines of business for asset adequacy analysis;*

*C. If the appointed actuary must disclose reliance upon any portion of the assets supporting the Interest Maintenance Reserve (IMR) and the Asset Valuation Reserve (AVR) or other mandatory or voluntary statement reserves for asset adequacy analysis;]*

*[D.]B. If the appointed actuary must disclose an inconsistency in the method of analysis or basis of asset allocation used at the prior opinion date with that used for this opinion;*

*[E.]C. If the appointed actuary must disclose whether additional reserves of the prior opinion date are released as of this opinion date and the extent of the release; and*

*[F.]D. If the appointed actuary chooses to add a paragraph briefly describing the assumptions which form the basis for the actuarial opinion.*

(B) Recommended Language. The following paragraphs are to be included in the statement of actuarial opinion in accordance with this section. Language is that which in typical circumstances should be included in a statement of actuarial opinion. The language may be modified as needed to meet the circumstances of a particular case, but the appointed actuary should use language which clearly expresses his/her professional judgment. However, in any event the opinion

shall retain all pertinent aspects of the language provided in this section[:].

1. The opening paragraph should generally indicate the appointed actuary’s relationship to the company and his/her qualifications to sign the opinion. For a company actuary, the opening paragraph of the actuarial opinion should *[read as follows]* **include a statement such as:** “I, (name), am (title) of (insurance company name) and a member of the American Academy of Actuaries. I was appointed by, or by the authority of, the board of directors of *[this]* said insurer to render this opinion as stated in the letter to the director dated (insert date). I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies.” For a consulting actuary, the opening paragraph should contain a *[sentence]* **statement** such as: “I, (name), a member of the American Academy of Actuaries, am associated with the firm of (name of consulting firm). I have been appointed by, or by the authority of, the board of directors of (name of company) to render this opinion as stated in the letter to the director dated (insert date)[,]. I meet the Academy qualification standards for rendering this opinion and am familiar with the valuation requirements, relating to life and health companies.”[:];

2. The scope paragraph should include a statement such as *[the following]*: “I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed *[here]* below, as shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31, *[19(\_\_\_\_)] 20(\_\_\_\_)*. Tabulated as follows are those reserves and related actuarial items which have been subjected to asset adequacy analysis.”[:]

**Reserves And Liabilities  
Asset Adequacy Tested Amounts**

Statement Item	Formula Reserves (1)	Additional Actuarial Reserves (a) (2)	Analysis Method (b)	Other Amount (3)	Total Amount (1)+(2)+(3) (4)
Exhibit 8					
A Life Insurance					
B Annuities					
C Supplementary Contracts Involving Life Contingencies					
D Accidental Death Benefit					
E Disability—Active					
F Disability—Disabled					
G Miscellaneous					
Total (Exhibit 8 Item 1, Page 3)	_____	_____		_____	_____
Exhibit 9					
A Active Life Reserve					
B Claim Reserve					
Total (Exhibit 9 Item 2, Page 3)	_____	_____		_____	_____
Exhibit 10					
1 Premiums and Other Deposit Funds					
1.1 Policyholder Premiums (Page 3, Line 10.1)					
1.2 Guaranteed Interest Contracts (Page 3, Line 10.2)					
1.3 Other Contract Deposit Funds (Page 3, Line 10.3)					
2 Supplementary Contracts Not Involving Life Contingencies (Page 3, Line 3)					
3 Dividend and Coupon Accumulations (Page 3, Line 5)					
Total Exhibit 10	_____	_____		_____	_____
Exhibit 11 Part 1					
1 Life (Page 3, Line 4.1)					
2 Health (Page 3, Line 4.2)					
Total Exhibit 11, Part 1	_____	_____		_____	_____
Separate Accounts (Page 3, Line 27)	_____	_____		_____	_____
TOTAL RESERVES	_____	_____		_____	_____
IMR (Page _____ Line _____)	_____	_____		_____	_____
AVR (Page _____ Line _____)	_____	_____ (c)		_____	_____

(a) *[\*Note:]* The additional actuarial reserves are the reserves established under paragraph/s/ (3)(E)2. *[or 3.]*

(b) *[\*Note:]* The appointed actuary should indicate the method of analysis, determined in accordance with the standards for asset adequacy analysis referred to in subsection (3)(D) of this regulation, by means of symbols which should be defined in footnotes to the table.*["]*

(c) **Allocated amount of Asset Valuation Reserve (AVR).**

3. If the appointed actuary has relied on other experts to develop certain portions of the analysis, the reliance paragraph should include a statement such as *[the following]*:

*[A.]* "I have relied on (name), (title) for (for example, anticipated cash flows from currently owned assets, including variations in cash flows according to economic scenarios) and, as certified in the attached statement, *[. . .]* **I have reviewed the information relied upon for reasonableness.**"; or

*[B.]* "I have relied on personnel as cited in the supporting memorandum for certain critical aspects of the analysis in reference to the accompanying statement." This A statement of reliance on other experts should be accompanied by a statement by each of these experts *[of]* in the form prescribed by subsection *[(6)](4)(E)*;

4. If the appointed actuary has examined the underlying asset and liability records, the reliance paragraph should *[also]* include *[the following]* a statement such as: "My examination included a review of the actuarial assumptions and actuarial methods and of the underlying basic asset and liability records and tests of the actuarial calculations as I considered necessary. **I also reconciled the underlying basic asset and liability records to (exhibits and schedules listed as applicable) of the company's current annual statement.**"

5. If the appointed actuary has not examined the underlying records, but has relied upon data (e.g., listings and summaries of policies in force or asset records), prepared by the company *[or a third party, or a combination of these]*, the reliance paragraph should include a sentence such as: "**In forming my opinion on (specify types of reserves), I [have] relied upon [listings and summaries (of policies and contracts, of asset records)] data prepared by (name and title of company officer certifying in-force records or other data) as certified in the attached statements. I also reconciled that data to (exhibits and schedules to be listed as applicable) of the company's current annual statement.** In other respects, my examination included *[a]* review of the actuarial assumptions and actuarial methods and tests of the *[actuarial]* calculations *[as]* I considered necessary." *[or "I have relied upon (name of accounting firm) for the substantial accuracy of the in-force records inventory and information concerning other liabilities, as certified in the attached statement. In other respects my examination included review of the actuarial assumptions and actuarial methods and tests of the actuarial calculations as I considered necessary."*] This section *[must]* shall be accompanied by a statement by each person relied upon *[of]* in the form prescribed by subsection *[(6)](4)(E)*; and

6. The opinion paragraph should include *[the following]* a statement such as: "In my opinion the reserves and related actuarial values concerning the statement items identified *[here]* above:

A. "Are computed in accordance with presently accepted actuarial standards consistently applied and are fairly stated, in accordance with sound actuarial principles;

B. "Are based on actuarial assumptions which produce reserves at least as great as those called for in any contract provision as to reserve basis and method, and are in accordance with all other contract provisions;

C. "Meet the requirements of the insurance law and regulation of the state of (state of domicile) and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed;

D. "Are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end (with any exceptions noted here);

E. "Include provision for all actuarial reserves and related statement items which ought to be established. (i) The reserves and related items, when considered in light of the assets held by the company with respect to *[these]* such reserves and related actuarial items including, but not limited to, the investment earnings on *[these]* the assets, and the considerations anticipated to be received

and retained under the policies and contracts, make adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the company. **(At the discretion of the director, this language may be omitted for an opinion filed on behalf of a company doing business only in this state and in no other state.)** (ii) The actuarial methods, considerations, and analyses used in forming my opinion conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis of this statement of opinion. (iii) "This opinion is updated annually as required by statute. To the best of my knowledge, there have been no material changes from the applicable date of the annual statement to the date of the rendering of this opinion which should be considered in reviewing this opinion."; or (iv) "The following material change(s) which occurred between the date of the statement for which this opinion is applicable and the date of this opinion should be considered in reviewing this opinion: (Describe the change(s).)" (Note: Choose one of the preceding two (2) paragraphs, whichever is applicable.) "The impact of unanticipated events subsequent to the date of this opinion is beyond the scope of this opinion. The analysis of asset adequacy portion of this opinion should be viewed recognizing that the company's future experience may not follow all the assumptions used in the analysis."

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*(Signature of Appointed Actuary)*

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*(Address of Appointed Actuary)*

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*(Telephone Number of Appointed Actuary)*

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*(Date)*

(C) Assumptions for New Issues. The adoption for new issues or new claims or other new liabilities of an actuarial assumption which differs from a corresponding assumption used for prior new issues or new claims or other new liabilities is not a change in actuarial assumptions within the meaning of this section.

(D) Adverse Opinions. If the appointed actuary is unable to form an opinion, then s/he shall refuse to issue a statement of actuarial opinion. If the appointed actuary's opinion is adverse or qualified, then s/he shall issue an adverse or qualified actuarial opinion explicitly stating the reason(s) for that opinion. This statement should follow the scope paragraph and precede the opinion paragraph.

(E) Reliance on *[Data]* Information Furnished by Other Persons. If the appointed actuary *[does not express an opinion as to the accuracy and completeness of the listings and summaries of policies in force or asset oriented information, or both, there shall be attached to the opinion the statement of a company officer or accounting firm who prepared the underlying data similar to the following:* "I (name of officer), (title), of (name of company or accounting firm), affirm that the listings and summaries of policies and contracts in force as of December 31, (\_\_\_), and other liabilities prepared for and submitted to (name of appointed actuary) were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete."

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*(Signature of the Officer of the Company or Accounting Firm)*

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*(Address of the Officer of the Company or Accounting Firm)*

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*(Telephone Number of the Officer of the Company or  
Accounting Firm)*

Or “I, (name of officer), (title) of (name of company, accounting firm or security analyst), affirm that the listings, summaries and analyses relating to data prepared for and submitted to (name of appointed actuary) in support of the asset-oriented aspects of the opinion were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete.”

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*(Signature of the Officer of the Company, Accounting  
Firm or the Security Analyst)*

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*(Address of the Officer of the Company, Accounting  
Firm or the Security Analyst)*

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*(Telephone Number of the Officer of the Company,  
Accounting Firm or the Security Analyst, or both)*

relies on the certification of others on matters concerning the accuracy or completeness of any data underlying the actuarial opinion, or the appropriateness of any other information used by the appointed actuary in forming the actuarial opinion, the actuarial opinion should so indicate the persons the actuary is relying upon and a precise identification of the items subject to reliance. In addition, the persons on whom the appointed actuary relies shall provide a certification that precisely identifies the items on which the person is providing information and a statement as to the accuracy, completeness, or reasonableness, as applicable, of the items. This certification shall include the signature, title, company, address, and telephone number of the person rendering the certification, as well as the date on which it is signed.

**(F) Alternate Option.**

1. Section 376.380.4(4)(d), RSMo 2000, gives the director broad authority to accept the valuation of a foreign insurer when that valuation meets the requirements applicable to a company domiciled in this state in the aggregate. As an alternative to the requirements of subparagraph (4)(B)6.C., the director may make one (1) or more of the following additional approaches available to the opining actuary:

A. A statement that the reserves “meet the requirements of the insurance laws and regulations of the state of (state of domicile) and the formal written standards and conditions of this state for filing an opinion based on the law of the state of domicile.” If the director chooses to allow this alternative, a formal written list of standards and conditions shall be made available. If a company chooses to use this alternative, the standards and conditions in effect on July 1 of a calendar year shall apply to statements for that calendar year, and they shall remain in effect until they are revised or revoked. If no list is available, this alternative is not available;

B. A statement that the reserves “meet the requirements of the insurance laws and regulations of the state of (state of domicile) and I have verified that the company’s request to file an opinion based on the law of the state of domicile has been approved and that any conditions required by the director for approval of that request have been met.” If the director chooses to allow this alternative, a formal written statement of such allowance shall be issued no later than March 31 of the year it is first effective. It shall remain valid until rescinded or modified by the director. The rescission or modifications shall be issued no later than March 31 of the year they are first effective.

Subsequent to that statement being issued, if a company chooses to use this alternative, the company shall file a request to do so, along with justification for its use, no later than April 30 of the year of the opinion to be filed. The request shall be deemed approved on October 1 of that year if the director has not denied the request by that date; and/or

C. A statement that the reserves “meet the requirements of the insurance laws and regulations of the state of (state of domicile) and I have submitted the required comparison as specified by this state.”

(I) If the director chooses to allow this alternative, a formal written list of products (to be added to the table in Part (II) below) for which the required comparison shall be provided will be published. If a company chooses to use this alternative, the list in effect on July 1 of a calendar year shall apply to statements for that calendar year, and it shall remain in effect until it is revised or revoked. If no list is available, this alternative is not available.

(II) If a company desires to use this alternative, the appointed actuary shall provide a comparison of the gross nationwide reserves held to the gross nationwide reserves that would be held under National Association of Insurance Commissioners (NAIC) codification standards. Gross nationwide reserves are the total reserves calculated for the total company in force business directly sold and assumed, indifferent to the state in which the risk resides, without reduction for reinsurance ceded. The information provided shall be at least:

<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>	<b>(5)</b>
<b>Product Type</b>	<b>Death Benefit or Account Value</b>	<b>Reserves Held</b>	<b>Codification Reserves</b>	<b>Codification Standard</b>

**(III) The information listed shall include all products identified by either the state of filing or any other states subscribing to this alternative.**

**(IV) If there is no codification standard for the type of product or risk in force or if the codification standard does not directly address the type of product or risk in force, the appointed actuary shall provide detailed disclosure of the specific method and assumptions used in determining the reserves held.**

**(V) The comparison provided by the company is to be kept confidential to the same extent and under the same conditions as the actuarial memorandum.**

**2. Notwithstanding the above, the director may reject an opinion based on the laws and regulations of the state of domicile and require an opinion based on the laws of this state. If a company is unable to provide the opinion within sixty (60) days of the request or such other period of time determined by the director after consultation with the company, the director may contract with an independent actuary at the company's expense to prepare and file the opinion.**

**[(7)](5) Description of Actuarial Memorandum Including an Asset Adequacy Analysis and Regulator Asset Adequacy Issues Summary.**

**(A) General.**

1. In accordance with 20 CSR 200-1.115 and sections 376.370 and 376.380, RSMo, the appointed actuary shall prepare a memorandum to the company describing the analysis done in support of his/her opinion regarding the reserves *[under a section (6) opinion]*. The memorandum shall be made available for examination by the director upon his/her request but shall be returned to the company after *[the]* such examination and shall not be considered a record of the insurance department or subject to automatic filing with the director.

2. In preparing the memorandum, the appointed actuary may rely on, and include as a part of his/her own memorandum, memoranda prepared and signed by other actuaries who are qualified within the meaning of subsection (3)(B) of this rule, with respect to the areas covered in *[those]* such memoranda, and so state in *[the]* their memoranda.

3. If the director requests a memorandum and no memorandum exists or if the director finds that the analysis described in the memorandum fails to meet the standards of the Actuarial Standards Board or the standards and requirements of this rule, the director may designate a qualified actuary to review the opinion and prepare the supporting memorandum as is required for review. The reasonable and necessary expense of the independent review shall be paid by the company but shall be directed and controlled by the director.

4. The reviewing actuary shall have the same status as an examiner for purposes of obtaining data from the company and the work papers and documentation of the reviewing actuary shall be retained by the director; provided, however, that any information provided by the company to the reviewing actuary and included in the work papers shall be considered as material provided by the company to the director and shall be kept confidential to the same extent as is prescribed by law with respect to other material provided by the company to the director pursuant to the statute governing this rule. The

reviewing actuary shall not be an employee of a consulting firm involved with the preparation of any prior memorandum or opinion for the insurer pursuant to this rule for any one (1) of the current year or the preceding three (3) years.

**5. In accordance with 20 CSR 200-1.115 and section 376.380, RSMo, the appointed actuary shall prepare a regulatory asset adequacy issues summary, the contents of which are specified in subsection (5)(C). The regulatory asset adequacy issues summary will be submitted no later than March 15 of the year following the year for which a statement of actuarial opinion based on asset adequacy is required. The regulatory asset adequacy issues summary is to be kept confidential to the same extent and under the same conditions as the actuarial memorandum.**

(B) Details of the Memorandum Section Documenting Asset Adequacy Analysis *[(section (6))]*. When an actuarial opinion *[under section (6)]* is provided, the memorandum shall demonstrate that the analysis has been done in accordance with the standards for asset adequacy referred to in subsection (3)(D) of this rule and any additional standards under this rule. It shall specify—

1. For reserves—

A. Product descriptions including market description, underwriting, and other aspects of a risk profile and the specific risks the appointed actuary deems significant;

B. Source of liability in force;

C. Reserve method and basis;

D. Investment reserves; *[and]*

E. Reinsurance arrangements;

**F. Identification of any explicit or implied guarantees made by the general account in support of benefits provided through a separate account or under a separate account policy or contract and the methods used by the appointed actuary to provide for the guarantees in the asset adequacy analysis; and**

**G. Documentation of assumptions to test reserves for the following:**

**(I) Lapse rates (both base and excess);**

**(II) Interest crediting rate strategy;**

**(III) Mortality;**

**(IV) Policyholder dividend strategy;**

**(V) Competitor or market interest rate;**

**(VI) Annuitization rates;**

**(VII) Commissions and expenses; and**

**(VIII) Morbidity;**

2. For assets—

A. Portfolio descriptions, including a risk profile disclosing the quality, distribution, and types of assets;

B. Investment and disinvestment assumptions;

C. Source of asset data; *[and]*

D. Asset valuation bases; **and**

**E. Documentation of assumptions made for:**

**(I) Default costs;**

**(II) Bond call function;**

**(III) Mortgage prepayment function;**

**(IV) Determining market value for assets sold due to disinvestment strategy; and**



(V) Determining yield on assets acquired through the investment strategy. The documentation of the assumptions shall be such that an actuary reviewing the actuarial memorandum could form a conclusion as to the reasonableness of the assumptions;

3. For the [A]analysis basis—

A. Methodology;

B. Rationale for inclusion/exclusion of different blocks of business and how pertinent risks were analyzed;

C. Rationale for degree of rigor in analyzing different blocks of business (include in the rationale the level of materiality that was used in determining how rigorously to analyze different blocks of business);

D. Criteria for determining asset adequacy (include in the criteria the precise basis for determining if assets are adequate to cover reserves under moderately adverse conditions or other conditions as specified in relevant actuarial standards of practice); and

E. [Effect] Whether the impact of federal income taxes was considered, and the method of treating reinsurance [and other relevant factors] in the asset adequacy analysis;

4. Summary of material changes in methods, procedures, or assumptions from prior year's asset adequacy analysis;

[4.]5. Summary of results; and

[5.]6. Conclusion(s).

(C) Details of the Regulatory Asset Adequacy Issues Summary.

1. The regulatory asset adequacy issues summary shall include:

A. Descriptions of the scenarios tested (including whether those scenarios are stochastic or deterministic) and the sensitivity testing done relative to those scenarios. If negative ending surplus results under certain tests in the aggregate, the actuary should describe those tests and the amount of additional reserve as of the valuation date which, if held, would eliminate the negative aggregate surplus values. Ending surplus values shall be determined by either extending the projection period until the in force and associated assets and liabilities at the end of the projection period are immaterial or by adjusting the surplus amount at the end of the projection period by an amount that appropriately estimates the value that can reasonably be expected to arise from the assets and liabilities remaining in force;

B. The extent to which the appointed actuary uses assumptions in the asset adequacy analysis that are materially different than the assumptions used in the previous asset adequacy analysis;

C. The amount of reserves and the identity of the product lines that had been subjected to asset adequacy analysis in the prior opinion but were not subject to analysis for the current opinion;

D. Comments on any interim results that may be of significant concern to the appointed actuary;

E. The methods used by the actuary to recognize the impact of reinsurance on the company's cash flows, including both assets and liabilities, under each of the scenarios tested; and

F. Whether the actuary has been satisfied that all options whether explicit or embedded, in any asset or liability (including, but not limited to, those affecting cash flows embedded in fixed income securities) and equity-like features in any investments have been appropriately considered in the asset adequacy analysis.

2. The regulatory asset adequacy issues summary shall contain the name of the company for which the regulatory asset adequacy issues summary is being supplied and shall be signed and dated by the appointed actuary rendering the actuarial opinion.

[(C)](D) Conformity to Standards of Practice. The memorandum shall include a statement: "Actuarial methods, considerations and analyses used in the preparation of this memorandum conform to the appropriate Standards of Practice as promulgated by the Actuarial

Standards Board, which standards form the basis for this memorandum."

[(8) Additional Considerations for Analysis.

(A) Aggregation. For the asset adequacy analysis for the statement of actuarial opinion provided in accordance with section (6) of this rule, reserves and assets may be aggregated by either of the following methods:

1. Aggregate the reserves and related actuarial items, and the supporting assets, for different products or lines of business, before analyzing the adequacy of the combined assets to mature the combined liabilities. The appointed actuary must be satisfied that the assets held in support of the reserves and related actuarial items so aggregated are managed in such a manner that the cash flows from the aggregated assets are available to help mature the liabilities from the blocks of business that have been aggregated; or

2. Aggregate the results of asset adequacy analysis of one (1) or more products or lines of business, the reserves for which prove through analysis to be redundant, with the results of one (1) or more products or lines of business, the reserves for which prove through analysis to be deficient. The appointed actuary must be satisfied that the asset adequacy results for the various products or lines of business for which the results are so aggregated—

A. Are developed using consistent economic scenarios; or

B. Are subject to mutually independent risks, that is, the likelihood of events impacting the adequacy of the assets supporting the redundant reserves is completely unrelated to the likelihood of events impacting the adequacy of the assets supporting the deficient reserves. In the event of any aggregation, the actuary must disclose in his/her opinion that reserves were aggregated on the basis of the method described in paragraph (8)(A)1., or subparagraphs (8)(A)2.A. or B., whichever is applicable, and describe the aggregation in the supporting memorandum.

(B) Selection of Assets for Analysis. The appointed actuary shall analyze only those assets held in support of the reserves which are the subject for specific analysis, called specified reserves. A particular asset or portion of an asset supporting a group of specified reserves cannot support any other group of specified reserves. An asset may be allocated over several groups of specified reserves. The annual statement value of the assets held in support of the reserves shall not exceed the annual statement value of the specified reserves, except as provided in subsection (8)(C). If the method of asset allocation is not consistent from year-to-year, the extent of its inconsistency should be described in the supporting memorandum.]

[(C)](E) Use of Assets Supporting the Interest Maintenance Reserve and the Asset Valuation Reserve[:].

[1.] An appropriate allocation of assets in the amount of the interest maintenance reserve (IMR), whether positive or negative, [must] shall be used in any asset adequacy analysis. Analysis of risks regarding asset default may include an appropriate allocation of assets supporting the asset valuation reserve (AVR); these AVR assets may not be applied for any other risks with respect to reserve adequacy. Analysis of these and other risks may include assets supporting other mandatory or voluntary reserves available to the extent not used for risk analysis and reserve support.

[2. The amount of the assets used for the AVR must be disclosed in the Table of Reserves and Liabilities of the opinion and in the memorandum. The method used for selecting particular assets or allocated portions of assets must be disclosed in the memorandum.

(D) Required Interest Scenarios. For the purpose of performing the asset adequacy analysis required by this rule,

the qualified actuary is expected to follow standards adopted by the Actuarial Standards Board; nevertheless, the appointed actuary must consider in the analysis the effect of at least the following interest rate scenarios:

1. Level with no deviation;
2. Uniformly increasing over ten (10) years at one-half percent (.5%) per year and then level;
3. Uniformly increasing at one percent (1%) per year over five (5) years and then uniformly decreasing at one percent (1%) per year to the original level at the end of ten (10) years and then level;
4. An immediate increase of three percent (3%) and then level;
5. Uniformly decreasing over ten (10) years at one-half percent (.5%) per year and then level;
6. Uniformly decreasing at one percent (1%) per year over five (5) years and then uniformly increasing at one percent (1%) per year to the original level at the end of ten (10) years and then level; and
7. An immediate decrease of three percent (3%) and then level. For these and other scenarios which may be used, projected interest rates for a five (5)-year Treasury Note need not be reduced beyond the point where the five (5)-year Treasury Note yield would be at fifty percent (50%) of its initial level. The beginning interest rates may be based on interest rates for new investments as of the valuation date similar to recent investments allocated to support the product being tested or be based on an outside index, such as Treasury yields, of assets of the appropriate length on a date close to the valuation date. Whatever method is used to determine the beginning yield curve and associated interest rates should be specifically defined. The beginning yield curve and associated interest rates should be consistent for all interest rate scenarios.]

[(E)](F) Documentation. The appointed actuary shall retain on file, for at least seven (7) years, sufficient documentation so that it will be possible to determine the procedures followed, the analyses performed, the bases for assumptions and the results obtained.

**AUTHORITY:** sections 376.370, [RSMo 1986] and 376.380, RSMo [Supp. 1993] 2000 and section 374.045, SB 788, Second Regular Session, 94th General Assembly, 2008. Original rule filed Dec. 28, 1992, effective Sept. 9, 1993. Amended: Filed Oct. 30, 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 cost private entities, as a group, between zero dollars (\$0) and sixty-five thousand dollars (\$65,000) 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 Andy Heitmann, Department of Insurance, Financial Institutions and Professional Registration, PO Box 690, Jefferson City, MO 65102. To be considered, comments must be received within seven (7) days after the public hearing. The public hearing is scheduled for January 6, 2009 at 10:00 a.m. in the Central Conference Room of the Department of Insurance, Financial Institutions and Professional Registration, 301 West High Street, Room 530, Jefferson City, Missouri.

**SPECIAL NEEDS:** If you have any special needs addressed by the Americans with Disabilities Act, please notify us at (573) 751-6798 or (573) 751-2619 at least five (5) working days prior to the hearing.

**FISCAL NOTE  
 PRIVATE COST**

**I. RULE NUMBER**

Rule Number and Name:	20 CSR 200-1.116 Actuarial Opinion and Memorandum Regulation
Type of Rulemaking:	Proposed Amendment

**II. SUMMARY OF FISCAL IMPACT**

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities as a group:
57	Number of Missouri life insurance companies and health maintenance organizations	\$0 – 65,000 annually

**III. WORKSHEET**

Number of Missouri domestic life insurance companies and health maintenance organizations (HMOs) is 57. These business entities were surveyed to find their estimates as to the likely costs of the proposed amendment.

**IV. ASSUMPTIONS**

The proposed amendment does not have a sunset clause. Accordingly, the fiscal impact of the proposed rule cannot be estimated on an aggregate basis. An estimate of the annual fiscal impact is provided instead.

The current rule directly affects all domestic life insurance companies and HMOs. The principal effect of the proposed amendment will be to require certain smaller insurance companies and HMOs to retain the services of an actuary to perform an asset adequacy test, whereas the current rule contains an exemption from such requirement for such companies and HMOs. The reason for the range in estimated fiscal impact is that certain of such companies and HMOs may nonetheless be exempted from the asset adequacy test based on geographic region in which they do business while others of such companies have already been required to undergo asset adequacy testing by specific order of the department and consequently may or may not be affected by the proposed amendment's general requirement for the same testing.