Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 60—*[Public] Safe* Drinking Water *[Program] Commission*
Chapter 4—Contaminant Levels and Monitoring

PROPOSED AMENDMENT

10 CSR 60-4.090 Maximum Contaminant Levels and Monitoring Requirements for Disinfection By-Products. The commission is amending section (1) and subsections (3)(B), (3)(F), and (4)(D) of this rule.

PURPOSE: This amendment adopts without variance new federal requirements for the regulation of disinfectants and disinfection by-products.

(1) Applicability. This rule applies to community water systems and nontransient noncommunity water systems that add a chemical disinfectant to the water in any part of the drinking water treatment process or provide water that contains a chemical disinfectant and to water treatment plants proposed for construction or major modification as indicated in this section. The rule has different requirements and compliance dates, based on system size and type of source water.

(A) Community water systems serving **ten thousand (**10,000**)** or more people and using surface water or ground water under the direct influence of surface water (GWUDISW) must continue complying with the maximum contaminant level (MCL) of 0.10 for total trihalomethanes (TTHM) and section (3) of this rule until December 31, 2001. Beginning January 1, 2002, these systems and nontransient noncommunity water systems serving **ten thousand (**10,000**)** or more people and using surface water or GWUDISW must comply with sections *[(4)–(5)]* **(3)–(4)** of this rule and the MCLs of 0.080 for TTHM, 0.060 for haloacetic acids five (HAA5), 0.010 for bromate, and 1.0 for chlorite.

(B) Community water systems and nontransient noncommunity water systems serving less than **ten thousand (**10,000**)** people and using surface water or GWUDISW. Beginning January 1, 2004, these systems must comply with sections *[(4)–(5)]* **(3)–(4)** of this rule and the MCLs of 0.080 for TTHM, 0.060 for HAA5, 0.010 for bromate, and 1.0 for chlorite.

(C) Community water systems and nontransient noncommunity water systems using ground water. Beginning January 1, 2004, these systems must comply with sections *[(4)–(5)]* **(3)–(4)** of this rule and the MCLs of 0.080 for TTHM, 0.060 for HAA5, 0.010 for bromate, and 1.0 for chlorite.

Table 1. Compliance with Disinfection By-Product Requirements

Who must comply	When	MCLs (mg/l)	Compliance Requirements
Community water systems serving 10,000 or more people and using surface water or groundwater under the direct influence of surface water (GWUDISW)	Oct. 11, 1981 to Dec. 31, 2001	TTHM 0.10	Section (2)
Community water systems and nontransient noncommunity water systems serving 10,000 or more people and using surface water or GWUDISW	Jan. 1, 2002	TTHM 0.080 HAA5 0.060 Bromate 0.010 Chlorite 1.0	Sections (3) and (4)
Community water systems and nontransient noncommunity water systems serving less than 10,000 people and using surface water or GWUDISW	Jan. 1, 2004	TTHM 0.080 HAA5 0.060 Bromate 0.010 Chlorite 1.0	Sections (3) and (4)
Community water systems and nontransient noncommunity water systems using groundwater	Jan. 1, 2004	TTHM 0.080 HAA5 0.060 Bromate 0.010 Chlorite 1.0	Sections (3) and (4)

(D) *[A system that is installing granular activated carbon (GAC) or membrane technology to comply with this rule may apply to the department for an extension of up to twenty-four (24) months past December 16, 2001 but not beyond December 31, 2003. In granting the extension, the department will set a schedule for compliance and may specify any interim measures that the system must take. Failure to meet the schedule or interim treatment requirements constitutes a violation of the drinking water regulations.]* **Stage 2 Disinfectants/Disinfection By-Products—Locational Running Annual Average (LRAA) Compliance. The MCLs of 0.080 mg/L for TTHM and 0.060 mg/L for HAA5 must be complied with as a locational running annual average at each monitoring location beginning with the date specified for Stage 2 compliance in 10 CSR 60-4.094(1)(C).**

(3) Monitoring Requirements and Plan.

(B) Monitoring Requirements for Disinfection By-Products.

1. TTHMs and HAA5.

A. Routine monitoring. Systems must monitor at the frequency indicated in Table 2.

Table 2. Routine Monitoring Frequency for TTHM and HAA5

Surface water or GWUDISW system serving at least 10,000 people.	Four (4) water samples per quarter per treatment plant.	At least 25 percent of all samples collected each quarter at locations representing maximum residence time. Remaining samples taken at locations representative of at least average residence time in the distribution system and representing the entire distribution system, taking into account number of persons served, different sources of water, and different treatment methods.[1]
Surface water or GWUDISW system serving from 500 to 9,999 people.	One (1) water sample per quarter per treatment plant.	Locations representing maximum residence time.[1]
Surface water or GWUDISW system serving fewer than 500 people.	One (1) sample per year per treatment plant during month of warmest water temperature.	Locations representing maximum residence time.[1] If the sample (or average of annual samples, if more than one sample is taken) exceeds MCL, system must increase monitoring to one sample per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until system meets reduced monitoring criteria in subsection (3)(C) of this rule.
System using only ground water not under the direct influence of surface water using chemical disinfectant and serving at least 10,000 people.	One (1) water sample per quarter per treatment plant.[2]	Locations representing maximum residence time.[1]
System using only ground water not under the direct influence of surface water using chemical disinfectant and serving fewer than 10,000 persons.	One (1) sample per year per treatment plant[2] during month of warmest water temperature.	Locations representing maximum residence time.[1] If the sample (or average of annual samples, if more than one sample is taken) exceeds MCL, the system must increase monitoring to one sample per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until system meets the criteria in subsection (3)(C) of this rule for reduced monitoring.

[1]If a system elects to sample more frequently than the minimum required, at least 25 percent of all samples collected each quarter (including those taken in excess of the required frequency) must be taken at locations that represent the maximum residence time of the water in the distribution system. The remaining samples must be taken at locations representative of at least average residence time in the distribution system.

[2]Multiple wells drawing water from a single aquifer may be considered one (1) treatment plant for determining the minimum number of samples required, with department approval.

B. Systems may reduce monitoring except as otherwise provided, in accordance with Table 3.

Table 3. Reduced Monitoring Frequency TTHM and HAA5

If you are a ...	You may reduce monitoring if you have monitored at least once a year and your...	To this level
Surface water or GWUDISW system serving at least 10,000 persons which has a source water annual average total organic carbon (TOC) level, before any treatment, ≤4.0 mg/*[/]*L.	TTHM annual average ≤0.040 mg/*[/]*L and HAA5 annual average ≤0.030 mg/*[/]*L.	One (1) sample per treatment plant per quarter at distribution system location reflecting maximum residence time.
Surface water or GWUDISW system serving from 500 to 9,999 persons which has a source water annual average TOC level, before any treatment, ≤4.0 mg/*[/]*L.	TTHM annual average ≤0.040 mg/*[/]*L and HAA5 annual average ≤0.030 mg/*[/]*L.	One (1) sample per treatment plant per year at distribution system location reflecting maximum residence time during month of warmest water temperature. NOTE: Any surface water or GWUDISW system serving fewer than 500 persons may not reduce its monitoring to less than one (1) sample per treatment plant per year.
System using only ground water not under direct influence of surface water using chemical disinfectant and serving at least 10,000 persons.	TTHM annual average ≤0.040 mg/*[/]*L and HAA5 annual average ≤0.030 mg/*[/]*L.	One (1) sample per treatment plant per year at distribution system location reflecting maximum residence time during month of warmest water temperature.
System using only ground water not under direct influence of surface water using chemical disinfectant and serving fewer than 10,000 persons.	TTHM annual average ≤0.040 mg/*[/]*L and HAA5 annual average ≤0.030 mg/*[/]*L for two (2) consecutive years OR TTHM annual average ≤0.20 mg/*[/]*L and HAA5 annual average ≤0.015 mg/*[/]*L for one (1) year.	One (1) sample per treatment plant every three (3) years at distribution system location reflecting maximum residence time during month of warmest water temperature, with the three (3)-year cycle beginning on January 1 following quarter in which system qualifies for reduced monitoring.

C. Monitoring requirements for source water TOC. In order to qualify for reduced monitoring for TTHM and HAA5 under subparagraph (3)(B)1.B. of this rule, surface water and ground water under the direct influence of surface water (GWUDISW) systems not monitoring under the provisions of subsection (3)(D) of this rule must take monthly TOC samples every thirty (30) days at a location prior to any treatment, beginning April 1, 2008, or earlier, if specified by the department. In addition to meeting other criteria for reduced monitoring in subparagraph (3)(B)1.B. of this rule, the source water TOC running annual average must be less than or equal to 4.0 mg/l (based on the most recent four (4) quarters of monitoring) on a continuing basis at each treatment plant to reduce or remain on reduced monitoring for TTHM and HAA5. Once qualified for reduced monitoring for TTHM and HAA5 under subparagraph (3)(B)1.B. of this rule, a system may reduce source water TOC monitoring to quarterly TOC samples taken every ninety (90) days at a location prior to any treatment.

*[C.]***D.** Systems on a reduced monitoring schedule may remain on that reduced schedule as long as the average of all samples taken in the year (for systems which must monitor quarterly) or the result of the sample (for systems which must monitor no more frequently than annually) is no more than 0.060 mg/*[/]*L for TTHMs and 0.045 mg/*[/]*L for HAA5. Systems that do not meet these levels must resume monitoring at the frequency identified in Table 2: Routine Monitoring in the quarter immediately following the quarter in which the system exceeds 0.060 mg/l for TTHMs and 0.045 mg/l for HAA5. For systems using only ground water not under the direct influence of surface water and serving fewer than ten thousand (10,000) persons, if either the TTHM annual average is greater than 0.080 mg/*[/]*L or the HAA5 annual average is greater than 0.060 mg/*[/]*L, the system must go to increased monitoring. Systems on increased monitoring may return to routine monitoring if after at least one (1) year of monitoring their TTHM annual average is less than or equal to 0.060 mg/L and HAA5 annual average is less than or equal to 0.045 mg/*[/]*L, respectively.

*[D.]***E.** The department may return a system to routine monitoring at the department's discretion.

2. Chlorite. Community and nontransient noncommunity water systems using chlorine dioxide, for disinfection or oxidation, must conduct monitoring for chlorite.

A. Routine monitoring.

(I) Daily monitoring. Systems must take daily samples at the entrance to the distribution system. For any daily sample that exceeds the chlorite MCL, the system must take additional samples in the distribution system the following day at the following locations: near the first customer; at a location representative of average residence time; and at a location reflecting maximum residence time in the distribution system, in addition to the sample required at the entrance to the distribution system.

(II) Monthly monitoring. Systems must take a three (3)-sample set each month in the distribution system. The system must take one (1) sample at each of the following locations: near the first customer; at a location representative of average residence time; and at a location reflecting maximum residence time in the distribution system. Any additional routine sampling must be conducted in the same manner (as three (3)-sample sets, at the specified locations). The system may use the results of additional monitoring conducted

under subparagraph (3)(B)2.B. to meet the requirement for monthly monitoring.

B. Additional monitoring. On each day following a routine sample monitoring result that exceeds the chlorite MCL at the entrance to the distribution system, the system is required to take three (3) chlorite distribution system samples at the following locations: as close to the first customer as possible, in a location representative of average residence time, and as close to the end of the distribution system as possible (reflecting maximum residence time in the distribution system).

C. Reduced monitoring.

(I) Chlorite monitoring at the entrance to the distribution system required by *[item]* **part** (3)(B)2.A.(I) of this rule may not be reduced.

(II) Chlorite monitoring in the distribution system required by *[item]* **part** (3)(B)2.A.(II) of this rule may be reduced to one (1) three (3)-sample set per quarter after one (1) year of monitoring where no individual chlorite sample taken in the distribution system under *[item]* **part** (3)(B)2.A.(II) of this rule has exceeded the chlorite MCL and the system has not been required to conduct monitoring under subparagraph (3)(B)2.B. of this rule. The system may remain on the reduced monitoring schedule until either any of the three (3) individual chlorite samples taken quarterly in the distribution system under *[item]* **part** (3)(B)2.A.(II) of this rule exceeds the chlorite MCL or the system is required to conduct monitoring under subparagraph (3)(B)2.B. of this rule, at which time the system must revert to routine monitoring.

3. Bromate.

A. Routine monitoring. Community and nontransient noncommunity systems using ozone for disinfection or oxidation must take one (1) sample per month for each treatment plant in the system using ozone. Systems must take samples monthly at the entrance to the distribution system while the ozonation system is operating under normal conditions.

B. Reduced monitoring.

(I) Through March 31, 2009, *[S]***s**ystems required to analyze for bromate may reduce monitoring from monthly to once per quarter, if the system**'s** *[demonstrates that the average source water bromide concentration is]* **average source water bromide concentration is** less than 0.05 mg/***[/]*****L** based *[up]*on representative monthly bromide measurements for one (1) year. The system may remain on reduced bromate monitoring until the running annual average source water bromide concentration, computed quarterly, is equal to or greater than 0.05 mg/***[/]*****L** based *[up]*on representative monthly measurements. If the running annual average source water bromide concentration is greater than or equal to 0.05 mg/***[/]*****L**, the system must resume routine monitoring **required by subparagraph (3)(B)3.A. of this rule in the following month**.

(II) Beginning April 1, 2009, systems may no longer use the provisions of the preceding part (3)(B)3.B.(I) to qualify for reduced monitoring. A system required to analyze for bromate may reduce monitoring from monthly to quarterly, if the system's running annual average bromate concentration is less than or equal to 0.0025 mg/L based on monthly bromate measurements under subparagraph (3)(B)3.A. of this rule for the most recent four (4) quarters, with samples analyzed using Method 317.0 Revision 2.0, 326.0, or 321.8. If a system has qualified for reduced bromate monitoring under part (3)(B)3.B.(I), that system may remain on reduced monitoring as long as the running annual average of quarterly bromate samples is $\leq$0.0025 mg/L based on samples analyzed using Method 317.0 Revision 2.0, 326.0, or 321.8. If the running annual average bromate concentration is $>$0.0025 mg/L, the system must resume routine monitoring required by subparagraph (3)(B)3.A. of this rule.

(4) Compliance Requirements.

(D) Disinfection By-Product Precursors (DBPP).

1. Systems using surface water or ground water under the direct influence of surface water and using conventional filtration treatment must operate with enhanced coagulation or enhanced softening to achieve the TOC percent removal levels specified in this rule unless the system meets at least one (1) of the alternative compliance criteria listed here. These systems must still comply with monitoring requirements in sections (3)–(4) of this rule. The alternative compliance criteria for enhanced coagulation and enhanced softening are:

A. The system's source water TOC level, measured according to 10 CSR 60-5.010, is less than 2.0 mg/***[/]*****L**, calculated quarterly as a running annual average;

B. The system's treated water TOC level, measured according to 10 CSR 60-5.010, is less than 2.0 mg/***[/]*****L**, calculated quarterly as a running annual average;

C. The system's source water TOC level, measured according to 10 CSR 60-5.010, is less than 4.0 mg/***[/]*****L**, calculated quarterly as a running annual average; the source water alkalinity, measured according to 10 CSR 60-5.010, is greater than sixty (60) mg/***[/]*****L** (as $CaCO_3$), calculated quarterly as a running annual average; and either the TTHM and HAA5 running annual averages are no greater than 0.040 mg/***[/]*****L** and 0.030 mg/***[/]*****L**, respectively; or prior to the effective date for compliance with this rule, the system has made a clear and irrevocable financial commitment not later than the effective date for compliance with this rule to use *[of]* technologies that will limit the levels of TTHMs and HAA5 to no more than 0.040 mg/***[/]*****L** and 0.030 mg/***[/]*****L**, respectively. Systems must submit evidence of a clear and irrevocable financial commitment, in addition to a schedule containing milestones and periodic progress reports for installation and operation of appropriate technologies, to the department for approval not later than the effective date for compliance with this rule. These technologies must be installed and operating not later than June 30, 2005. Failure to install and operate these technologies by the date in the approved schedule will constitute a violation;

D. The TTHM and HAA5 running annual averages are no greater than 0.040 mg/***[/]*****L** and 0.030 mg/***[/]*****L**, respectively, and the system uses only chlorine for primary disinfection and maintenance of a residual in the distribution system;

E. The system's source water SUVA, prior to any treatment and measured monthly according to 10 CSR 60-5.010, is less than or equal to 2.0 ***[/]*****L**/mg-m, calculated quarterly as a running annual average. SUVA refers to Specific Ultraviolet Absorption at two hundred fifty-four nanometers (254 nm), an indicator of the humic content of water. It is a calculated parameter obtained by dividing a sample's ultraviolet absorption at a wavelength of 254 nm (UV_{254}) (in $m^{=1}$) by its concentration of dissolved organic carbon (DOC) (in mg/***[/]*****L**); and

F. The system's finished water SUVA, measured monthly according to 10 CSR 60-5.010, is less than or equal to 2.0 ***[/]*****L**/mg-m, calculated quarterly as a running annual average.

2. Additional alternative compliance criteria for softening systems. Systems practicing enhanced softening that cannot achieve the Step 1 TOC removals may use the alternative compliance criteria listed here in lieu of complying with paragraph (4)(D)3. of this rule. Systems must still comply with monitoring requirements in sections (3)–(4) of this rule.

A. Softening that results in lowering the treated water alkalinity to less than sixty (60) mg/l***[/]*****L** (as $CaCO_3$), measured monthly according to 10 CSR 60-5.010 and calculated quarterly as a running annual average.

B. Softening that results in removing at least ten (10) mg/***[/]*****L** of magnesium hardness (as $CaCO_3$), measured monthly **according to 10 CSR 60-5.010** and calculated quarterly as an annual running average.

3. Enhanced coagulation and enhanced softening performance requirements.

A. Systems must achieve the percent reduction of TOC specified in Table 4 between the source water and the combined filter effluent, unless the department approves a system's request for alternate minimum TOC removal (Step 2) requirements. Systems may

begin monitoring to determine whether Step 1 TOC removals can be met twelve (12) months prior to the compliance date for the system. This monitoring is not required and failure to monitor during this period is not a violation. However, any system that does not monitor during this period, and then determines in the first twelve (12) months after the compliance date that it is not able to meet the Step 1 requirements and must therefore apply for alternate minimum TOC removal (Step 2) requirements, is not eligible for retroactive approval of alternate minimum TOC removal (Step 2) requirements and is in violation. Systems may apply for alternate minimum TOC removal (Step 2) requirements any time after the compliance date. For systems required to meet Step 1 TOC removals, if the value calculated under part (4)(D)4.A.(IV) of this rule is less than 1.00, the system is in violation of the treatment technique requirements and must notify the public pursuant to 10 CSR 60-8.010 in addition to reporting to the department pursuant to 10 CSR 60-7.010.

B. Required Step 1 TOC reductions, indicated in the following table, are based upon specified source water parameters measured in accordance with 10 CSR 60-5.010. Systems practicing softening are required to meet the Step 1 TOC reductions in the far right column (Source water alkalinity >120 mg/**///L**) for the specified source water TOC

Table 4: Required Step 1 TOC Reduction

Step 1 Required Removal of TOC by Enhanced Coagulation and Enhanced Softening for Surface Water and GWUDISW Systems Using Conventional Treatment[1,2]			
	Source water alkalinity, mg///L as $CaCO_3$		
Source water TOC, mg///L	0–60	>60–120	>120[3]
>2.0–4.0	35.0%	25.0%	15.0%
>4.0–8.0	45.0%	35.0%	25.0%
>8.0	50.0%	40.0%	30.0%

[1]Systems meeting at least one **(1)** of the conditions in paragraph (4)(D)1. of this rule are not required to operate with enhanced coagulation.

[2]Softening systems meeting one **(1)** of the alternative compliance criteria in paragraph (4)(D)1. of this rule are not required to operate with enhanced softening.

[3]Systems practicing softening must meet the TOC removal requirements in this column.

C. Conventional treatment systems using surface water or ground water under the direct influence of surface water that cannot achieve the Step 1 TOC removals due to water quality parameters or operational constraints must apply to the department, within three (3) months of failure to achieve the Step 1 TOC removals, for approval of alternative minimum TOC removal (Step 2) requirements submitted by the system. If the department approves the alternative minimum TOC removal (Step 2) requirements, the department may make those requirements retroactive for the purposes of determining compliance. Until the department approves the alternate minimum TOC removal (Step 2) requirements, the system must meet the Step 1 TOC removals.

D. Alternate minimum TOC removal (Step 2) requirements. Applications made to the department by enhanced coagulation systems for approval of alternative minimum TOC removal (Step 2) requirements under subparagraph (4)(D)3.C. of this rule must include, as a minimum, results of bench- or pilot-scale testing conducted under this subparagraph (4)(D)3.D. and used to determine the alternate enhanced coagulation level.

(I) Alternate enhanced coagulation level is defined as coagulation at a coagulant dose and pH as determined by the method described here such that an incremental addition of ten (10) mg/**///L** of alum (or equivalent amount of ferric salt) results in a TOC removal of less than or equal to 0.3 mg/**///L**. The percent removal of TOC at this point on the "TOC removal versus coagulant dose" curve is then defined as the minimum TOC removal required for the system. Once approved by the department, this minimum requirement supersedes the minimum TOC removal required by Table 4 of this rule. This requirement will be effective until such time as the department approves a new value based on the results of a new bench- and pilot-scale test. Failure to achieve department-set alternative minimum TOC removal levels is a violation.

(II) Bench- or pilot-scale testing of enhanced coagulation must be conducted by using representative water samples and adding 10 mg/**///L** increments of alum (or equivalent amounts of ferric salt) until the pH is reduced to a level less than or equal to the enhanced coagulation Step 2 target pH shown in Table 5.

Table 5: Enhanced Coagulation Step 2 Target pH

Alkalinity (mg///L as $CaCO_3$)	Target pH
0–60	5.5
>60–120	6.3
>120–240	7.0
>240	7.5

(III) For waters with alkalinities of less than sixty (60) mg/**///L** for which addition of small amounts of alum or equivalent addition of iron coagulant drives the pH below 5.5 before significant TOC removal occurs, the system must add necessary chemicals to maintain the pH between 5.3 and 5.7 in samples until the TOC removal of 0.3 mg/**///L** per 10 mg/**///L** alum added (or equivalent addition of iron coagulant) is reached.

(IV) The system may operate at any coagulant dose or pH necessary (consistent with other regulatory requirements) to achieve the minimum TOC percent removal approved under subsection (3)(C) of this rule.

(V) If the TOC removal is consistently less than 0.3 mg/**///L** of TOC per 10 mg/**///L** of incremental alum dose at all dosages of alum (or equivalent addition of iron coagulant), the water is deemed to contain TOC not amenable to enhanced coagulation. The system may then apply to the department for a waiver of enhanced coagulation requirements.

4. Compliance calculations.

A. Systems using surface water or ground water under the direct influence of surface water, other than those identified in paragraphs (4)(D)1. or 2. of this rule, must comply with requirements contained in subparagraph (4)(D)3.B. of this rule. Systems must calculate compliance quarterly, beginning after the system has collected twelve (12) months of data, by determining an annual average using the following method:

(I) Determine actual monthly TOC percent removal, equal to: (1 – (treated water TOC/source water TOC)) × 100;

(II) Determine the required monthly TOC percent removal;

(III) Divide the value in part (4)(D)4.A.(I) by the value in part (4)(D)4.A(II); and

(IV) Add together the results of part (4)(D)4.A.(III) for the last twelve (12) months and divide by twelve (12). If the value calculated is less than 1.00, the system is not in compliance with the TOC percent removal requirements.

B. Systems may use the following provisions in lieu of the calculations in subparagraph (4)(D)4.A. of this rule to determine compliance with TOC percent removal requirements:

(I) In any month that the system's treated or source water TOC level, measured according to 10 CSR 60-5.010, is less than 2.0 mg/**///L**, the system may assign a monthly value of 1.0 (in lieu of the value calculated in part (4)(D)4.A.(III) of this rule);

(II) In any month that a system practicing softening removes at least 10 mg/**///L** of magnesium hardness (as $CaCO_3$), the system may assign a monthly value of 1.0 (in lieu of the value calculated in part (4)(D)4.A.(III) of this rule);

(III) In any month that the system's source water SUVA, prior to any treatment and measured according to 10 CSR 60-5.010, is less than or equal to 2.0 *[/]***L**/mg-m, the system may assign a monthly value of 1.0 (in lieu of the value calculated in part (4)(D)4.A.(III) of this rule);

(IV) In any month that the system's finished water SUVA, measured according to 10 CSR 60-5.010, is less than or equal to 2.0 *[/]***L**/mg-m, the system may assign a monthly value of 1.0 (in lieu of the value calculated in part (4)(D)4.A.(III) of this rule); and

(V) In any month that a system practicing enhanced softening lowers alkalinity below sixty (60) mg/*[/]***L** (as $CaCO_3$), the system may assign a monthly value of 1.0 (in lieu of the value calculated in part (4)(D)4.A.(III) of this rule).

C. Systems using conventional treatment and surface water or ground water under the direct influence of surface water may also comply with the requirements of this rule by meeting the criteria in paragraph (4)(D)1. or 2. of this rule.

*AUTHORITY: section 640.100, RSMo Supp. [2002] **2008**. Original rule filed April 14, 1981, effective Oct. 11, 1981. Amended: Filed Feb. 1, 1996, effective Oct. 30, 1996. Amended: Filed Dec. 15, 1999, effective Sept. 1, 2000. Amended: Filed March 17, 2003, effective Nov. 30, 2003. Amended: Filed Feb. 27, 2009.*

PUBLIC COST: This proposed amendment will cost state agencies and political subdivisions less than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will cost private entities less than five hundred dollars ($500) in the aggregate.

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this rulemaking at 10 a.m. on May 19, 2009, at the Truman State Office Building, 301 West High Street, Jefferson City, Missouri. Anyone may submit comments in support of or in opposition to this proposed amendment. In preparing your comments, please include the regulatory citation and the **Missouri Register** page number. Please explain why you agree or disagree with the proposed change, and include alternative options or language. The commission is also accepting written comments on this rulemaking. Written comments must be postmarked or received by May 19, 2009. Written comments must be mailed or faxed to: Ms. Linda McCarty, MDNR Public Drinking Water Branch, PO Box 176, Jefferson City, MO 65102-0176. The fax number is (573) 751-3110.*

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 60—Safe Drinking Water Commission
Chapter 4—Contaminant Levels and Monitoring

PROPOSED RULE

10 CSR 60-4.092 Initial Distribution System Evaluation

PURPOSE: This rule incorporates by reference the Stage 2 Disinfectants/Disinfection By-Products Rule initial distribution system evaluation requirements found in 40 CFR part 141 subpart U, July 1, 2007.

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) The regulations set forth in 40 CFR part 141 subpart U, July 1, 2007, are incorporated by reference, subject to the clarification in section (2) of this rule. The *Code of Federal Regulations* is published by the U.S. Government and is available by calling toll-free (866) 512-1800 or going to http://bookstore.gpo.gov. The address is: U.S. Government Printing Office, U.S. Superintendent of Documents, Washington, DC 20402-0001. This does not include later amendments or additions.

(2) Clarifications to the Incorporation by Reference.

(A) Missouri Department of Natural Resources shall be substituted for U.S. Environmental Protection Agency, EPA, the state, or primacy agency wherever those terms appear in the incorporated subpart.

(B) "Director" shall be substituted for administrator wherever that term appears in the incorporated subpart.

AUTHORITY: section 640.100, RSMo Supp. 2008. Original rule filed Feb. 27, 2009.

PUBLIC COST: This proposed rule is anticipated to cost state agencies and political subdivisions less than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule is anticipated to cost private entities less than five hundred dollars ($500) in the aggregate.

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PROPOSED RULE

10 CSR 60-4.094 Stage 2 Disinfectants/Disinfection By-Products

*PURPOSE: This rule establishes monitoring and other requirements for achieving compliance with maximum contaminant levels based on locational running annual averages for certain disinfection by-products and for achieving compliance with maximum residual disinfectant levels for chlorine and chloramine for certain consecutive systems. This rule incorporates the requirements of subpart V of 40 CFR part 141, Stage 2 Disinfectants/Disinfection By-Products, published in the January 4, 2006 **Federal Register**.*

(1) Stage 2 Disinfectants/Disinfection By-Products (D/DBP) Rule General Requirements.

(A) The requirements of this rule constitute national primary drinking water regulations. This rule establishes monitoring and other requirements for achieving compliance with maximum contaminant levels based on locational running annual averages (LRAA) for total trihalomethanes (TTHM) and haloacetic acids five (HAA5), and for achieving compliance with maximum residual disinfectant residuals for chlorine and chloramine for certain consecutive systems.

(B) Applicability. This rule applies to community water systems and nontransient noncommunity water systems that use a primary or residual disinfectant other than ultraviolet light or deliver water that has been treated with a primary or residual disinfectant other than ultraviolet light.

(C) Compliance Schedules.

1. Systems must comply with the requirements in this rule on the following schedule. The department may grant up to an additional twenty-four (24) months beyond the deadlines specified below for compliance with maximum contaminant levels (MCL) and operational evaluation levels if capital improvements are required to comply with an MCL.

A. Systems that are not part of a combined distribution system and systems that serve the largest population in the combined distribution system.

(I) Systems serving ≥ 100,000 population must comply with this rule by April 1, 2012.

(II) Systems serving 50,000–99,999 population must comply with this rule by October 1, 2012.

(III) Systems serving 10,000–49,999 population must comply with this rule by October 1, 2013.

(IV) Systems serving <10,000 population must comply with this rule by October 1, 2013 if no *Cryptosporidium* monitoring is required under 10 CSR 60-4.052(2)(A)4. or October 1, 2014, if *Cryptosporidium* monitoring is required under 10 CSR 60-4.052(2)(A)4.

B. Other systems that are part of a combined distribution system. Consecutive system or wholesale system must comply with this rule at the same time as the system with the earliest compliance date in the combined distribution system.

2. Monitoring frequency is specified in paragraph (2)(A)2. of this rule.

A. If you are required to conduct quarterly monitoring, you must begin monitoring in the first full calendar quarter that includes the applicable compliance date in paragraph (1)(C)1. of this rule.

B. If you are required to conduct monitoring at a frequency that is less than quarterly, you must begin monitoring in the calendar month recommended in the Initial Distribution System Evaluation (IDSE) report prepared under Standard Monitoring or the System Specific studies in 40 CFR part 141 subpart U, incorporated by reference in 10 CSR 60-4.092, or the calendar month identified in the monitoring plan developed under section (3) of this rule no later than twelve (12) months after the compliance date in this table.

3. If you are required to conduct quarterly monitoring, you must make compliance calculations at the end of the fourth calendar quarter that follows the compliance date and at the end of each subsequent quarter (or earlier if the LRAA calculated based on fewer than four (4) quarters of data would cause the MCL to be exceeded regardless of the monitoring results of subsequent quarters). If you are required to conduct monitoring at a frequency that is less than quarterly, you must make compliance calculations beginning with the first compliance sample taken after the compliance date.

4. For the purpose of the schedule in paragraph (1)(C)1. of this rule, the department may determine that the combined distribution system does not include certain consecutive systems based on factors such as receiving water from a wholesale system only on an emergency basis or receiving only a small percentage and small volume of water from a wholesale system. The department may also determine that the combined distribution system does not include certain wholesale systems based on factors such as delivering water to a consecutive system only on an emergency basis or delivering only a small percentage and small volume of water to a consecutive system.

(D) Monitoring and Compliance.

1. Systems required to monitor quarterly. To comply with MCLs in section 10 CSR 60-4.090(1)(D) you must calculate LRAAs for TTHM and HAA5 using monitoring results collected under this rule and determine that each LRAA does not exceed the MCL. If you fail to complete four (4) consecutive quarters of monitoring, you must calculate compliance with the MCL based on the average of the available data from the most recent four (4) quarters. If you take more than one (1) sample per quarter at a monitoring location, you must average all samples taken in the quarter at that location to determine a quarterly average to be used in the LRAA calculation.

2. Systems required to monitor yearly or less frequently. To determine compliance with the Stage 2 D/DBP MCLs in subsection 10 CSR 60-4.090(1)(D), you must determine that each sample taken is less than the MCL. If any sample exceeds the MCL, you must comply with the requirements of section (6) of this rule. If no sample exceeds the MCL, the sample result for each monitoring location is considered the LRAA for that monitoring location.

(E) Violation. You are in violation of the monitoring requirements for each quarter that a monitoring result would be used in calculating an LRAA if you fail to monitor.

(2) Routine Monitoring.

(A) Monitoring.

1. If you submitted an IDSE report, you must begin monitoring at the locations and months you have recommended in your IDSE report submitted under the monitoring location recommendations and chart in 40 CFR part 141 subpart U, which is incorporated by reference in 10 CSR 60-4.092, following the schedule in subsection (1)(C) of this rule, unless the department requires other locations or additional locations after its review. If you submitted a 40/30 certification or qualified for a very small system waiver under 40 CFR part 141 subpart U, which is incorporated by reference in 10 CSR 60-4.092, or you are a nontransient noncommunity water system serving less than ten thousand (10,000) population, you must monitor at the location(s) and dates identified in your monitoring plan under 10 CSR 60-4.090(3)(A)3., updated as required by section (3) of this rule.

2. You must monitor at no fewer than the number of locations identified in the following table.

Stage 2 D/DBP Routine Monitoring

Source water type	Population size category	Monitoring Frequency[1]	Distribution system monitoring location total per monitoring period [2]
Surface water system or ground water under the direct influence of surface water:	< 500	Per year	2
	500–3,300	Per quarter	2
	3,301–9,999	Per quarter	2
	10,000–49,999	Per quarter	4
	50,000–249,999	Per quarter	8
	250,000–999,999	Per quarter	12
	1,000,000–4,999,999	Per quarter	16
	≥ 5,000,000	Per quarter	20
Ground water:	< 500	Per year	2
	500–9,999	Per year	2
	10,000–99,999	Per quarter	4
	100,000–499,999	Per quarter	6
	≥ 500,000	Per quarter	8

[1] All systems must monitor during month of highest DBP concentrations.
[2] Systems on quarterly monitoring must take dual sample sets every 90 days at each monitoring location, except for surface water systems or ground water under the direct influence of surface water serving 500–3,300. Systems on annual monitoring and surface water systems or ground water under the direct influence of surface water serving 500–3,300 are required to take individual TTHM and HAA5 samples (instead of a dual sample set) at the location with the highest TTHM and HAA5 concentrations, respectively. Only one (1) location with a dual sample set per monitoring period is needed if the highest TTHM and HAA5 concentrations occur at the same location (and month, if monitored annually).

3. If you are an undisinfected system that begins using a disinfectant other than ultraviolet (UV) light after the dates in 40 CFR subpart U for complying with the Initial Distribution System Evaluation requirements, you must consult with the department to identify compliance monitoring locations for this rule. You must then develop a monitoring plan under section (3) of this rule that includes those monitoring locations.

(B) Analytical methods. You must use an approved method listed in 10 CSR 60-5.010 for TTHM and HAA5 analyses. Analyses must be conducted by laboratories that have received certification by Environmental Protection Agency (EPA) or the department as specified in 10 CSR 60-5.010.

(3) Stage 2 D/DBP Rule Monitoring Plan.

(A) Developing and implementing a monitoring plan.

1. You must develop and implement a monitoring plan to be kept on file for department and public review. The monitoring plan must contain the following elements and be complete no later than the date you conduct your initial monitoring under this rule:

A. Monitoring locations;

B. Monitoring dates;

C. Compliance calculation procedures; and

D. Monitoring plans for any other systems in the combined distribution system if the department has reduced monitoring requirements.

2. If you were not required to submit an IDSE report under either Standard Monitoring or System Specific Studies in 40 CFR subpart U, and you do not have sufficient Stage 1 D/DBP rule monitoring locations to identify the required number of Stage 2 D/DBP rule compliance monitoring locations indicated in the Monitoring Location Recommendations table in 40 CFR subpart U, you must identify additional locations by alternating selection of locations representing high TTHM levels and high HAA5 levels until the required number of compliance monitoring locations have been identified. You must also provide the rationale for identifying the locations as having high levels of TTHM or HAA5. If you have more Stage 1 D/DBP rule monitoring locations than required for Stage 2 D/DBP rule compliance monitoring, detailed in the Monitoring Location Recommendations table in 40 CFR part 141 subpart U, you must identify which locations you will use for Stage 2 D/DBP rule compliance monitoring by alternating selection of locations representing high TTHM levels and high HAA5 levels until the required number of Stage 2 D/DBP rule compliance monitoring locations have been identified.

(B) If you are a surface water system or ground water under the direct influence of surface water system serving greater than three thousand three hundred (>3,300) people, you must submit a copy of your monitoring plan to the department prior to the date you conduct your initial monitoring under this rule, unless your IDSE report submitted under 40 CFR part 141 subpart U contains all the information required by section (3) of this rule.

(C) You may revise your monitoring plan to reflect changes in treatment, distribution system operations and layout (including new service areas), or other factors that may affect TTHM or HAA5 formation, or for department-approved reasons, after consultation with the department regarding the need for changes and the appropriateness of changes. If you change monitoring locations, you must replace existing compliance monitoring locations with the lowest LRAA with new locations that reflect the current distribution system locations with expected high TTHM or HAA5 levels. The department may also require modifications in your monitoring plan. If you are a surface water system or ground water under the direct influence of surface water system serving greater than three thousand three hundred (3,300) people, you must submit a copy of your modified monitoring plan to the department prior to the date you are required to comply with the revised monitoring plan.

(4) Reduced Monitoring.

(A) You may reduce monitoring to the level specified in this subsection (4)(A) any time the LRAA is ≤0.040 mg/L for TTHM and ≤0.030 mg/L for HAA5 at all monitoring locations. You may only use data collected under the provisions of this rule or the Stage 1 D/DBP rule to qualify for reduced monitoring. In addition, the source water annual average total organic carbon (TOC) level, before any treatment, must be ≤4.0 mg/L at each treatment plant treating surface water or ground water under the direct influence of surface water, based on monitoring conducted under either 10 CSR 60-4.090(3)(B)1.C. or 10 CSR 60-4.090(3)(D).

Stage 2 D/DBP Reduced Monitoring

Source water type	Population size category	Monitoring Frequency[1]	Distribution system monitoring location per monitoring period
Surface water system or ground water under the direct influence of surface water:	<500	.....	Monitoring may not be reduced.
	500–3,300	Per year	1 TTHM and 1 HAA5 sample: one at the location and during the quarter with the highest TTHM single measurement; one at the location and during the quarter with the highest HAA5 single measurement; and 1 dual sample set per year if the highest TTHM and HAA5 measurements occurred at the same location and quarter.
	3,301–9,999	Per year	2 dual sample sets: one at the location and during the quarter with the highest TTHM single measurement; and one at the location and during the quarter with the highest HAA5 single measurement.
	10,000–49,999	Per quarter	2 dual sample sets at the locations with the highest TTHM and highest HAA5 LRAAs.
	50,000–249,999	Per quarter	4 dual sample sets—at the locations with the two highest TTHM and two highest HAA5 LRAAs.
	250,000–999,999	Per quarter	6 dual sample sets—at the locations with the three highest TTHM and three highest HAA5 LRAAs.
	1,000,000–4,999,999	Per quarter	8 dual sample sets—at the locations with the four highest TTHM and four highest HAA5 LRAAs.
	≥5,000,000	Per quarter	10 dual sample sets—at the locations with the five highest TTHM and five highest HAA5 LRAAs.
Ground water:	<500	Every third year	1 TTHM and 1 HAA5 sample: one at the location and during the quarter with the highest TTHM single measurement; one at the location and during the quarter with the highest HAA5 single measurement; and 1 dual sample set per year if the highest TTHM and HAA5 measurements occurred at the same location and quarter.
	500-9,999	Per year	1 TTHM and 1 HAA5 sample: one at the location and during the quarter with the highest TTHM single measurement; one at the location and during the quarter with the highest HAA5 single measurement; and 1 dual sample set per year if the highest TTHM and HAA5 measurements occurred at the same location and quarter.

	10,000-99,999	Per year	2 dual sample sets: one at the location and during the quarter with the highest TTHM single measurement; and one at the location and during the quarter with the highest HAA5 single measurement.
	100,000-499,999	Per quarter	2 dual sample sets; at the locations with the highest TTHM and highest HAA5 LRAAs.
	≥500,000	Per quarter	4 dual sample sets at the locations with the two highest TTHM and two highest HAA5 LRAAs.

[1] Systems on quarterly monitoring must take dual sample sets every 90 days.

(B) You may remain on reduced monitoring as long as the TTHM LRAA ≤0.040 mg/L and the HAA5 LRAA ≤0.030 mg/L at each monitoring location (for systems with quarterly reduced monitoring) or each TTHM sample ≤0.060 mg/L and each HAA5 sample ≤0.045 mg/L (for systems with annual or less frequent monitoring). In addition, the source water annual average TOC level, before any treatment, must be ≤4.0 mg/L at each treatment plant treating surface water or ground water under the direct influence of surface water, based on monitoring conducted under either 10 CSR 60-4.090(3)(B)1.C. or 10 CSR 60-4.090(3)(D).

(C) If the LRAA based on quarterly monitoring at any monitoring location exceeds either 0.040 mg/L for TTHM or 0.030 mg/L for HAA5 or if the annual (or less frequent) sample at any location exceeds either 0.060 mg/L for TTHM or 0.045 mg/L for HAA5, or if the source water annual average TOC level, before any treatment, >4.0 mg/L at any treatment plant treating surface water or ground water under the direct influence of surface water, you must resume routine monitoring under section 10 CSR 60-4.094(2) or begin increased monitoring if section 10 CSR 60-4.094(6) applies.

(D) The department may return your system to routine monitoring at the department's discretion.

(5) Additional Requirements for Consecutive Systems. If you are a consecutive system that does not add a disinfectant but delivers water that has been treated with a primary or residual disinfectant other than ultraviolet light, you must comply with analytical and monitoring requirements for chlorine and chloramines in 10 CSR 60-5.010 and 10 CSR 60-4.055(4)(E) and the compliance requirements in 10 CSR 60-4.090(4)(C)1. beginning April 1, 2009, unless required earlier by the department, and report monitoring results under 10 CSR 60-7.010(6)(C).

(6) Conditions Requiring Increased Monitoring.

(A) If you are required to monitor at a particular location annually or less frequently than annually under section (2) or (4) of this rule, you must increase monitoring to dual sample sets once per quarter (taken every ninety (90) days) at all locations if a TTHM sample is >0.080 mg/L or an HAA5 sample is >0.060 mg/L at any location.

(B) You are in violation of the MCL when the LRAA exceeds the Stage 2 D/DBP rule MCLs in subsection 10 CSR 60-4.090(1)(D), calculated based on four (4) consecutive quarters of monitoring (or the LRAA calculated based on fewer than four (4) quarters of data if the MCL would be exceeded regardless of the monitoring results of subsequent quarters). You are in violation of the monitoring requirements for each quarter that a monitoring result would be used in calculating an LRAA if you fail to monitor.

(C) You may return to routine monitoring once you have conducted increased monitoring for at least four (4) consecutive quarters and the LRAA for every monitoring location is ≤0.060 mg/L for TTHM and ≤0.045 mg/L for HAA5.

(7) Operational Evaluation Levels.

(A) You have exceeded the operational evaluation level at any monitoring location where the sum of the two (2) previous quarters of TTHM results plus twice the current quarter's TTHM result, divided by four (4) to determine an average, exceeds 0.080 mg/L, or where the sum of the two (2) previous quarters of HAA5 results plus twice the current quarter's HAA5 result, divided by four (4) to determine an average, exceeds 0.060 mg/L.

(B) If Operational Evaluation Levels are Exceeded.

1. If you exceed the operational evaluation level, you must conduct an operational evaluation and submit a written report of the evaluation to the department no later than ninety (90) days after being notified of the analytical result that causes you to exceed the operational evaluation level. The written report must be made available to the public upon request.

2. Your operational evaluation must include an examination of system treatment and distribution operational practices, including storage tank operations, excess storage capacity, distribution system flushing, changes in sources or source water quality, and treatment changes or problems that may contribute to TTHM and HAA5 formation and what steps could be considered to minimize future exceedences.

A. You may request and the department may allow you to limit the scope of your evaluation if you are able to identify the cause of the operational evaluation level exceedance.

B. Your request to limit the scope of the evaluation does not extend the schedule in paragraph (7)(B)1. of this rule for submitting the written report. The department must approve this limited scope of evaluation in writing, and you must keep that approval with the completed report.

(8) Requirements for Remaining on Reduced TTHM and HAA5 Monitoring Based on Stage 1 D/DBP Rule Results. You may remain on reduced monitoring after the dates identified in subsection (1)(C) of this rule for compliance with this rule only if you qualify for a 40/30 certification under 40 CFR part 141 subpart U or have received a very small system waiver under 40 CFR part 141 subpart U, plus you meet the reduced monitoring criteria in subsection (4)(A) of this rule, and you do not change or add monitoring locations from those used for compliance monitoring under the Stage 1 D/DBP rule. If your monitoring locations under this rule differ from your monitoring locations under the Stage 1 D/DBP rule, you may not remain on reduced monitoring after the dates identified in subsection (1)(C) for compliance with this rule.

(9) Requirements for Remaining on Increased TTHM and HAA5 Monitoring Based on Stage 1 D/DBP Rule Results. If you were on increased monitoring under 10 CSR 60-4.090(3)(B)1., you must remain on increased monitoring until you qualify for a return to routine monitoring under subsection (6)(C) of this rule. You must conduct increased monitoring under section (6) of this rule at the monitoring locations in the monitoring plan developed under section (3) of this rule beginning at the date identified in subsection (1)(C) of this rule for compliance with this rule and remain on increased monitoring until you qualify for a return to routine monitoring under subsection (6)(C) of this rule.

(10) Stage 2 D/DBP Reporting and Record-Keeping Requirements.

(A) Reporting requirements are found in 10 CSR 60-7.010, Reporting Requirements.

(B) Record-keeping requirements are found in 10 CSR 60-9.010, Requirements for Maintaining Public Water System Records.

AUTHORITY: section 640.100, RSMo Supp. 2008. Original rule filed Feb. 27, 2009.

PUBLIC COST: This rule is anticipated to cost the Missouri Department of Natural Resources approximately five hundred twenty-two thousand, eight hundred sixty-eight dollars ($522,868) annually for the duration of the rule and six hundred ninety (690) publicly-owned public water systems that add a disinfectant or provide water containing a disinfectant approximately twenty thousand seven hundred dollars ($20,700) annually for the duration of the rule and $12,890,580 in one (1)-time costs.

PRIVATE COST: This rule is anticipated to cost two hundred eighty-two (282) privately-owned public water systems that add a disinfectant or provide water containing a disinfectant approximately eight thousand four hundred sixty dollars ($8,460) annually for the duration of the rule and $5,265,204 in one (1)-time costs.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this rulemaking at 10 a.m. on May 19, 2009, at the Truman State Office Building, 301 West High Street, Jefferson City, Missouri. Anyone may submit comments in support of or in opposition to this proposed rule. In preparing your comments, please include the regulatory citation and the ***Missouri Register*** *page number. Please explain why you agree or disagree with the proposed change, and include alternative options or language. The commission is also accepting written comments on this rulemaking. Written comments must be postmarked or received by May 19, 2009. Written comments must be mailed or faxed to: Ms. Linda McCarty, MDNR Public Drinking Water Branch, PO Box 176, Jefferson City, MO 65102-0176. The fax number is (573) 751-3110.*

FISCAL NOTE
PUBLIC COST

I. Department Title: Department of Natural Resources
Division Title: Public Drinking Water Program
Chapter Title: Contaminant Levels and Monitoring

Rule Number and Name:	10 CSR 60-4.094 **Stage 2 Disinfectants/Disinfection By-Products**
Type of Rulemaking:	Proposed Rule

II. Summary of Fiscal Impact

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Natural Resources	$522,868 annually for the duration of the rule
Publicly-owned public water systems that add a disinfectant or provide water containing a disinfectant.	$12,890,580 in one-time costs and $20,700 annually for the duration of the rule

III. Worksheet

MDNR Costs:
4564 TTHM samples x $37.74 per sample = $172,245.36
4564 HAA5 samples x $27.41 per sample = $125,099.24
4.0 FTEs x $63,881 = $255,524

Public Water System Costs:
Sample Collection = 690 systems x 2 hours x $15 = $20,700 annually for the duration of the rule
Develop monitoring plans = 690 systems x 10 hours x $15 = $103,500 (one-time cost)
Conduct Operational Evaluations = 690 systems x 30% x 16 hours x $15 = $49,680 (one-time cost)
Capital and O&M Costs = $17.94 million x 71% public systems = $12,737,400 (one-time cost)

IV. Assumptions

1. All but three of Missouri's public water systems use the MDNR laboratory for chemical analysis. The lab's unit cost per sample includes equipment costs, supplies, personal service and fringe. Currently the per sample cost is $47.74 for trihalomethanes and $27.41 for haloacetic acids.

2. MDNR Regional Office technical staff will need to provide technical assistance and training for operators on new regulatory requirements and treatment techniques (estimate 4000 hours).

3. MDNR Public Drinking Water Branch staff will have to schedule monitoring, track sample kits, store and review data, track compliance, follow-up on compliance activities for systems with monitoring or MCL violations, and provide general technical assistance to public water systems and regional office staff (estimate 4000 hours).

4. MDNR average FTE cost including salary, fringe benefits, and equipment and expense for FY09 is approximately $63,881 for the Environmental Specialist III classification. The average work hours for an FTE is estimated at 2000 hours.

5. Each system will incur labor costs to collect the required DBP samples. The number of samples and frequency of sampling vary based on system size and the source of water. The total estimated number of TTHM and HAA5 samples per year is 4564. The samples are taken in dual sets. The average number of samples per system is seven. The estimated time it would take to collect samples is two hours at $15 per hour.

6. Missouri has a total of 972 community and nontransient noncommunity systems that add a disinfectant to their water or serve water that contains a disinfectant. Seventy-one percent of this total (690 systems) are publicly owned. Each system will be required to prepare a monitoring plan. It will take an average of 10 hours per system to develop a plan at a labor cost of $15 per hour.

7. The Stage 2 D/DBP rule requires systems that exceed Operational Evaluation Levels to examine their operational practices to identify ways to reduce DBP concentrations in distribution systems. An Operational Evaluation Level is exceeded when the sum of the two previous quarters of TTHM results plus two times the current quarter's TTHM results divided by four exceeds 80 ug/L, or where the sum of the previous two quarters results for HAA5 plus two times the current quarter's results for HAA5 exceeds 60 ug/L. Systems that exceed Operational Evaluation Levels must submit a written report to the state no later than 90 days after being notified of the analytical results. MDNR has been doing special monitoring in the consecutive systems (they have not been required to monitor for DBPs under previous rules) to prepare them for the Stage 2 D/DBP rule as well as the Stage 1 D/DBP rule compliance monitoring. Based on the current data the department estimates that approximately 30% of these systems will trigger Operational Evaluation Levels. The estimated time to perform an evaluation is 16 hours at a labor rate of $15 per hour.

8. By far, the largest expense to Missouri's public water system will be the capital costs of installing new DBP control technologies and operational and maintenance costs. Most of Missouri's water systems are currently meeting the Stage 1 D/DBP standards with compliance based on a running annual average. However, the compliance calculation in the Stage 2 D/DBP rule will be based on a locational running annual average (LRAA). Many of Missouri's systems will need to change their distribution system disinfectant from free chlorine to chloramines to be able to comply with the LRAA. Others will need to modify treatment in order to enhance their coagulation step to remove DBP precursors more effectively. Others may use alternative disinfectants like chlorine dioxide or ozone. Others may use activated carbon to absorb DBPs after they are formed in the treatment plant. Others may use membranes to remove precursors instead of enhancing coagulation. EPA did a cost analysis in the final Stage 2 D/DBP rule, published in the federal register on January 4, 2006, Volume 71, Number 2. EPA predicts that approximately 11% of surface water systems and 3% of groundwater systems will make changes their treatment technologies (Table VI.D-6 on page 455). Table VI.D-7 on page 456 summarizes EPA's national cost estimates for the Stage 2 D/DBP rule. EPA estimates the total initial capital cost will be $840 million and the operation and maintenance costs to be $57 million. Using a per capita calculation using Missouri's population of 5.8 million people and the national population of 304 million, Missouri's water system cost would be approximately 2% of the national cost. Another way to calculate the cost is to compare the number of water systems in Missouri to those nationally. EPA's website has inventory data that shows there are 158,802 public water systems in the United States. Of that total 106,400 are community and nontransient noncommunity systems. There are currently 1723 community and nontransient noncommunity systems in Missouri, which also equates to approximately 2% of the national total. Taking 2% of the national costs would equate to $17.94 million for Missouri.

FISCAL NOTE
PRIVATE COST

I. Department Title: **Department of Natural Resources**
Division Title: **Public Drinking Water Program**
Chapter Title: **Contaminant Levels and Monitoring**

Rule Number and Name:	10 CSR 60-4.094 **Stage 2 Disinfectants/Disinfection By-Products**
Type of Rulemaking:	Proposed Rule

II. Summary of Fiscal Impact

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
282 public water systems are privately owned and add a disinfectant or provide water containing a disinfectant	$8,460 annually for the duration of the rule $5,265,204 in one-time costs

III. Worksheet

Sample Collection = 282 systems x 2 hours x $15 = $8,460 (annually for the duration of the rule)

Develop monitoring plans = 282 systems x 10 hours x $15 = $42,300 (one-time costs)

Conduct Operational Evaluations = 282 systems x 30% x 16hours x $15 = $20,304 (one-time costs)

Capital and O&M Costs = $17.94 million x 29% private systems = $5,202,600 (one-time costs)

IV. Assumptions

1. Each system will incur labor costs to collect the required DBP samples. The number of samples and frequency of sampling vary based on system size and the source of water. The total estimated number of TTHM and HAA5 samples per year is 4564. The samples are taken in dual sets. The average number of samples per system is seven. The estimated time it would take to collect samples is two hours at $15 per hour.

2. Missouri has a total of 972 community and nontransient noncommunity systems that add a disinfectant to their water or serve water that contains a disinfectant. Of this total, 29% are privately owned systems (282 systems). Each system will be required to prepare a monitoring plan. It will take an average of 10 hours per system to develop a plan at a labor cost of $15 per hour.

3. The Stage 2 D/DBP rule requires systems that exceed Operational Evaluation Levels to examine their operational practices to identify ways to reduce DBP concentrations in distribution systems. An Operational Evaluation Level is exceeded when the sum of the two previous quarters of TTHM results plus two times the current quarter's TTHM results divided by four exceeds 80 ug/L, or where the sum of the previous two quarters results for HAA5 plus two times the current quarter's results for HAA5 exceeds 60 ug/L. Systems that exceed Operational Evaluation Levels must submit a written report to the state no later than 90 days after being notified of the analytical results. The department

has been doing special monitoring in the consecutive systems (they have not been required to monitor for DBPs under previous rules) to prepare them for the Stage 2 D/DBP rule as well as the Stage 1 D/DBP rule compliance monitoring. Based on the current data the department estimates that approximately 30% of the systems will trigger Operational Evaluation Levels. The estimated time to perform an evaluation is 16 hours at a labor rate of $15 per hour.

4. By far, the largest expense to Missouri's privately-owned public water systems will be the capital costs of installing new DBP control technologies and operation and maintenance costs. Most of Missouri's water systems are currently meeting the Stage 1 D/DBP standards with compliance based on a running annual average. However, the compliance calculation in the Stage 2 D/DBP rule will be based on a locational running annual average (LRAA). Many of Missouri's systems will need to change their distribution system disinfectant from free chlorine to chloramines to be able to comply with the LRAA. Others will need to modify treatment in order to enhance their coagulation step to remove DBP precursors more effectively. Others may use alternative disinfectants like chlorine dioxide or ozone. Others may use activated carbon to absorb DBPs after they are formed in the treatment plant. Others may use membranes to remove precursors instead of enhancing coagulation. EPA did a cost analysis in the final Stage 2 D/DBP rule, published in the federal register on January 4, 2006, Volume 71, Number 2. EPA predicts that approximately 11% of surface water systems and 3% of groundwater systems will make changes their treatment technologies (Table VI.D-6 on page 455). Table VI.D-7 on page 456 summarizes EPA's national cost estimates for the Stage 2 D/DBP rule. EPA estimates the total initial capital cost will be $840 million and the operation and maintenance costs to be $57 million. Using a per capita calculation using Missouri's population of 5.8 million people and the national population of 304 million, Missouri's water system cost would be approximately 2% of the national cost. Another way to calculate the cost is to compare the number of water systems in Missouri to those nationally. EPA's website has inventory data that shows there are 158,802 public water systems in the United States. Of that total 106,400 are community and nontransient noncommunity systems. There are currently 1,723 community and nontransient noncommunity systems in Missouri, which also equates to approximately 2% of the national total. Taking 2% of the national costs would equate to $17.94 million for Missouri.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 60—Safe Drinking Water Commission
Chapter 5—Laboratory and Analytical Requirements

PROPOSED AMENDMENT

10 CSR 60-5.010 Acceptable and Alternate Procedures for Analyses. The commission is amending sections (5) and (8).

PURPOSE: This amendment updates the incorporation by reference of analytical methods and detection limits from the July 1, 2003 ***Code of Federal Regulations*** *to the July 1, 2008* ***Code of Federal Regulations****.*

(5) Disinfection By-Products, Residual Disinfectant Concentrations, and Disinfection By-Product Precursors. Unless substitute methods are approved by the department, analysis shall be conducted in accordance with the disinfection by-product, residual disinfectant concentration, and disinfection by-product precursor analytical methods in 40 CFR 141.74(a)(2) and 40 CFR 141.131 of the July 1, *[2003]* **2008** *Code of Federal Regulations*, which are incorporated by reference. **This does not include later amendments or additions. The *Code of Federal Regulations* is published by the U.S. Government Printing Office, 732 North Capitol Street NW, Washington, DC 20401 and is available by calling toll-free (866) 512-1800 or going to http://bookstore.gpo.gov.**

(8) Detection Limits.

(A) Detection limits for inorganic contaminants in 40 CFR 141.23(a)(4)(i) of the July 1, *[2003]* **2008** *Code of Federal Regulations* are incorporated by reference. **This does not include later amendments or additions. The *Code of Federal Regulations* is published by the U.S. Government Printing Office, 732 North Capitol Street NW, Washington, DC 20401 and is available by calling toll-free (866) 512-1800 or going to http://bookstore.gpo.gov.**

(B) Practical Quantitation Levels (PQL) for lead and copper in 40 CFR 141.89(a)(1)(ii)(A) and (B) of the July 1, *[2003]* **2008** *Code of Federal Regulations* are incorporated by reference. **This does not include later amendments or additions. The *Code of Federal Regulations* is published by the U.S. Government Printing Office, 732 North Capitol Street NW, Washington, DC 20401 and is available by calling toll-free (866) 512-1800 or going to http://bookstore.gpo.gov.**

(C) Detection limit for volatile organic contaminants in 40 CFR 141.24(f)(7) of the July 1, *[2003]* **2008** *Code of Federal Regulations* are incorporated by reference. **This does not include later amendments or additions. The *Code of Federal Regulations* is published by the U.S. Government Printing Office, 732 North Capitol Street NW, Washington, DC 20401 and is available by calling toll-free (866) 512-1800 or going to http://bookstore.gpo.gov.**

(D) Detection limits for synthetic organic contaminants in 40 CFR 141.24(h)(13)(ii) and 141.24(h)(18) of the July 1, *[2003]* **2008** *Code of Federal Regulations* are incorporated by reference. **This does not include later amendments or additions. The *Code of Federal Regulations* is published by the U.S. Government Printing Office, 732 North Capitol Street NW, Washington, DC 20401 and is available by calling toll-free (866) 512-1800 or going to http://bookstore.gpo.gov.**

(E) Detection limits for radiological contaminants in 40 CFR 141.25(c) of the July 1, *[2003]* **2008** *Code of Federal Regulations* are incorporated by reference. **This does not include later amendments or additions. The *Code of Federal Regulations* is published by the U.S. Government Printing Office, 732 North Capitol Street NW, Washington, DC 20401 and is available by calling toll-free (866) 512-1800 or going to http://bookstore.gpo.gov.**

(F) Detection limits for disinfection by-products in 40 CFR 141.64 of the July 1, 2008 *Code of Federal Regulations* are incorporated by reference. This does not include later amendments or additions. The *Code of Federal Regulations* is published by the U.S. Government Printing Office, 732 North Capitol Street NW, Washington, DC 20401 and is available by calling toll-free (866) 512-1800 or going to http://bookstore.gpo.gov.

AUTHORITY: section[s] 640.100, RSMo Supp. [2003] ***2008*** *and* ***section*** *640.125.1, RSMo 2000. Original rule filed May 4, 1979, effective Sept. 14, 1979. For intervening history, please consult the* ***Code of State Regulations****. Amended: Filed Feb. 27, 2009.*

PUBLIC COST: This proposed amendment will cost state agencies and other political subdivisions less than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will cost private entities less than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this rulemaking at 10 a.m. on May 19, 2009, at the Truman State Office Building, 301 West High Street, Jefferson City, Missouri. Anyone may submit comments in support of or in opposition to this proposed amendment. In preparing your comments, please include the regulatory citation and the ***Missouri Register*** *page number. Please explain why you agree or disagree with the proposed change, and include alternative options or language. The commission is also accepting written comments on this rulemaking. Written comments must be postmarked or received by May 19, 2009. Written comments must be mailed or faxed to: Ms. Linda McCarty, MDNR Public Drinking Water Branch, PO Box 176, Jefferson City, MO 65102-0176. The fax number is (573) 751-3110.*

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 60—*[Public] Safe* Drinking Water *[Program] Commission*
Chapter 7—Reporting

PROPOSED AMENDMENT

10 CSR 60-7.010 Reporting Requirements. The commission is adding a new section (8) and renumbering subsequent sections.

PURPOSE: This amendment adopts without variance the reporting requirements in the Stage 2 Disinfectants/Disinfection By-Products Rule found in 40 CFR 141.629, July 1, 2007.

(8) Stage 2 Disinfectants/Disinfection By-Products (D/DBP) Rule Reporting and Record-Keeping Requirements.

(A) Reporting.

1. You must report the following information for each monitoring location to the department within ten (10) days of the end of any quarter in which monitoring is required:

A. Number of samples taken during the last quarter;

B. Date and results of each sample taken during the last quarter;

C. Arithmetic average of quarterly results for the last four (4) quarters for each monitoring location (LRAA), beginning at the end of the fourth calendar quarter that follows the compliance date and at the end of each subsequent quarter. If the LRAA calculated based on fewer than four (4) quarters of data would cause the maximum contaminant level (MCL) to be exceeded regardless of the monitoring results of subsequent quarters, you must report this information to the department as part of the first report due following the compliance date or anytime thereafter that this determination is made. If you are required to conduct monitoring at a frequency that is less than quarterly, you must make compliance calculations beginning with the first compliance sample taken after the compliance date, unless you are required to conduct increased monitoring under section 10 CSR 60-4.094(6);

D. Whether based on 10 CSR 60-4.090(1)(D) and this rule, the MCL was violated at any monitoring location; and

E. Any operational evaluation levels that were exceeded during the quarter and, if so, the location and date, and the calculated total trihalomethanes (TTHM) and haloacetic acids 5 (HAA5) levels.

2. If you are a surface water system or ground water under the direct influence of surface water system seeking to qualify for or remain on reduced TTHM/HAA5 monitoring, you must report the following source water total organic carbon (TOC) information for each treatment plant that treats surface water or ground water under the direct influence of surface water to the department within ten (10) days of the end of any quarter in which monitoring is required:

A. The number of source water TOC samples taken each month during last quarter;

B. The date and result of each sample taken during last quarter;

C. The quarterly average of monthly samples taken during last quarter or the result of the quarterly sample;

D. The running annual average (RAA) of quarterly averages from the past four (4) quarters; and

E. Whether the RAA exceeded 4.0 mg/L.

3. The department may choose to perform calculations and determine whether the MCL was exceeded or the system is eligible for reduced monitoring in lieu of having the system report that information.

*[(8)]***(9)** Each system, upon discovering that a waterborne disease outbreak potentially attributable to that water system has occurred, must report that occurrence to the department as soon as possible but no later than by the end of the next business day. If the system is notified by the department or the Department of Health **and Senior Services** of an outbreak, the reporting requirement of this section is waived.

*[(9)]***(10)** A supplier of water shall submit proof to the department that public notification has been made within ten (10) days of the date that the notice was to have been made for initial public notice and any repeat notices. The supplier of water shall provide a certification he/she has fully complied with the public notification regulations, and shall provide a representative copy of each type of notice distributed, published, posted, and made available to the persons served by the system and to the media.

*AUTHORITY: section 640.100, RSMo Supp. [2002] **2008**. Original rule filed May 4, 1979, effective Sept. 14, 1979. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Feb. 27, 2009.*

PUBLIC COST: This proposed amendment is anticipated to cost publicly-owned public water systems approximately one thousand nine hundred twenty dollars ($1,920) annually for the duration of the rule.

PRIVATE COST: This proposed amendment is anticipated to cost one privately-owned public water system approximately six hundred forty dollars ($640) annually for the duration of the rule.

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this rulemaking at 10 a.m. on May 19, 2009, at the Truman State Office Building, 301 West High Street, Jefferson City, Missouri. Anyone may submit comments in support of or in opposition to this proposed amendment. In preparing your comments, please include the regulatory citation and the **Missouri Register** page number. Please explain why you agree or disagree with the proposed change, and include alternative options or language. The commission is also accepting written comments on this rulemaking. Written comments must be postmarked or received by May 19, 2009. Written comments must be mailed or faxed to: Ms. Linda McCarty, MDNR Public Drinking Water Branch, PO Box 176, Jefferson City, MO 65102-0176. The fax number is (573) 751-3110.*

FISCAL NOTE
PUBLIC COST

I. Department Title: **Department of Natural Resources**
Division Title: **Public Drinking Water Program**
Chapter Title: **Reporting**

Rule Number and Name:	10 CSR 60-7.010 Reporting Requirements
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Publicly-owned public water systems that conduct their own chemical monitoring and reporting	Annualized Aggregate Cost = $1,920

III. Worksheet

8 hours per quarter X 4 quarters X $20 per hours X 3 publicly owned systems = $1,920

IV. Assumptions

1. There are three publicly-owned public water systems with a total of five treatment plants who as a matter of routine conduct their own chemical monitoring and reporting. MDNR assumes they will continue to do so.

2. MDNR assumes the new reporting requirements in this rule will require an operator about eight hours per calendar quarter, for a total hour commitment of 32 hours per year.

3. MDNR assumes that the average wage paid to a water system operator by the three systems affected by this rulemaking is $20.00 per hour.

FISCAL NOTE
PRIVATE COST

I. Department Title: **Department of Natural Resources**
Division Title: **Public Drinking Water Program**
Chapter Title: **Reporting**

Rule Number and Name:	10 CSR 60-7.010 Reporting Requirements
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:	Estimated cost of compliance with the rule by the affected entities expressed as an annual cost:
1	Privately-owned public water system that conducts its own chemical monitoring and reporting	$640 annually for the duration of the rule

III. Worksheet

1 privately owned system X 8 hours per quarter X $20 per hour X 4 quarters = $640

IV. Assumptions

1. There is one privately-owned public water systems with a total of five treatment plants that as a matter of routine conduct their own chemical monitoring and reporting. MDNR assumes the system will continue to do so.

2. MDNR assumes the new reporting requirements in this rule will require an operator about eight hours per calendar quarter, for a total hour commitment of 32 hours per year.

3. MDNR assumes that the average wage paid to a water system operator by the three systems affected by this rulemaking is $20.00 per hour.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 60—*[Public] Safe* Drinking Water *[Program]*
Commission
Chapter 8—Public Notification

PROPOSED AMENDMENT

10 CSR 60-8.010 Public Notification of Conditions Affecting a Public Water Supply. The commission is amending sections (7), (8), and (9).

PURPOSE: This amendment adopts new public notice requirements required by the Long-Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR) published in 71 FR 653 (January 5, 2006). The requirements are adopted from the federal rules without variance. For clarity, the amendment reorganizes three (3) existing sections dealing with special notices but does not change in any way the requirements in those sections. The only change to the requirements in the rule is the insertion of the federal LT2ESWTR requirements.

(7) *[Special Notice for the Availability of Unregulated Contaminant Monitoring Results.*

(A) Timing of the Special Notice. The owner or operator of a community water system or non-transient non-community water system required to monitor for unregulated contaminants under Environmental Protection Agency's (EPA's) Unregulated Contaminant Monitoring Rule must notify persons served by the system of the availability of the results of such sampling no later than twelve (12) months after the monitoring results are known.

(B) Form and Manner of Special Notice. The form and manner of the public notice shall follow the requirements for a Tier 3 public notice. The notice shall also identify a person and provide the telephone number to contact for information on the monitoring results.] **Reserved.**

(8) *[Special Notice for the Exceedance of the Secondary Maximum Contaminant Level (SMCL) for Fluoride.*

(A) Timing of the Special Notice. Community water systems that exceed the fluoride SMCL of 2 mg/L determined by the last single sample taken in accordance with 10 CSR 60-4.030, but do not exceed the MCL of 4 mg/L for fluoride must provide the public notice in subsection (8)(C) of this rule to persons served. Public notice must be provided as soon as practical but no later than twelve (12) months from the day the water system learns of the exceedance. A copy of the notice must also be provided to all new billing units and customers at the time service begins and to the state public health officer. The public water system must repeat the notice at least annually for as long as the SMCL is exceeded. If the public notice is posted, the notice must remain in place for as long as the SMCL is exceeded, but in no case less than seven (7) days (even if the exceedance is eliminated). On a case-by-case basis, the department may require an initial notice sooner than twelve (12) months and repeat notices more frequently than annually.

(B) Form and Manner of the Special Notice. The form and manner of the public notice (including repeat notices) must follow the requirements for a Tier 3 public notice in subsection (4)(C) and paragraphs (4)(D)1. and (4)(D)3.

(C) Mandatory Language. The notice must contain the following language, including language necessary to fill in the blanks:

"This is an alert about your drinking water and a cosmetic dental problem that might affect children under nine years of age. At low levels, fluoride can help prevent cavities, but children drinking water containing more than 2 milligrams per liter (mg/L) of fluoride may develop cosmetic discoloration of their permanent teeth (dental fluorosis). The drinking water provided by your community water system {name} has a fluoride concentration of {insert value} mg/L.

"Dental fluorosis, in its moderate or severe forms, may result in a brown staining and/or pitting of the permanent teeth. This problem occurs only in developing teeth, before they erupt from the gums. Children under nine should be provided with alternative sources of drinking water or water that has been treated to remove the fluoride to avoid the possibility of staining and pitting of their permanent teeth. You may also want to contact your dentist about proper use by young children of fluoride-containing products. Older children and adults may safely drink the water.

"Drinking water containing more than 4 mg/L of fluoride (the maximum contaminant level for fluoride) can increase your risk of developing bone disease. Your drinking water does not contain more than 4 mg/L of fluoride, but we're required to notify you when we discover that the fluoride levels in your drinking water exceed 2 mg/L because of this cosmetic dental problem.

"For more information, please call {name of community water system} at {phone number}. Some home water treatment units are also available to remove fluoride from drinking water. To learn more about available home water treatment units, you may call NSF International at 1-877-8-NSF-HELP."] **Reserved.**

(9) Special **Public** Notices**.** *[for Nitrate Exceedances Above the MCL by Non-Community Water Systems.]*

(A) Special Notice for the Availability of Unregulated Contaminant Monitoring Results.

1. Timing of the special notice. The owner or operator of a community water system or nontransient noncommunity water system required to monitor for unregulated contaminants under Environmental Protection Agency's (EPA's) Unregulated Contaminant Monitoring Rule must notify persons served by the system of the availability of the results of such sampling no later than twelve (12) months after the monitoring results are known.

2. Form and manner of special notice. The form and manner of the public notice shall follow the requirements for a Tier 3 public notice. The notice shall also identify a person and provide the telephone number to contact for information on the monitoring results.

(B) Special Notice for the Exceedance of the Secondary Maximum Contaminant Level (SMCL) for Fluoride.

1. Timing of the special notice. Community water systems that exceed the fluoride SMCL of 2 mg/L determined by the last single sample taken in accordance with 10 CSR 60-4.030, but do not exceed the MCL of 4 mg/L for fluoride, must provide the public notice in paragraph (9)(B)3. of this rule to persons served. Public notice must be provided as soon as practical, but no later than twelve (12) months from the day the water system learns of the exceedance. A copy of the notice must also be provided to all new billing units and customers at the time service begins and to the state public health officer. The public water system must repeat the notice at least annually for as long as the SMCL is exceeded. If the public notice is posted, the notice must remain in place for as long as the SMCL is exceeded, but in no case less than seven (7) days (even if the exceedance is eliminated). On a case-by-case basis, the department may require an initial notice sooner than twelve (12) months and repeat notices more frequently than annually.

2. Form and manner of the special notice. The form and manner of the public notice (including repeat notices) must follow the requirements for a Tier 3 public notice in subsection (4)(C) and paragraphs (4)(D)1. and (4)(D)3. of this rule

3. Mandatory language. The notice must contain the following language, including language necessary to fill in the blanks:

"This is an alert about your drinking water and a cosmetic dental problem that might affect children under nine (9) years of age. At low levels, fluoride can help prevent cavities, but children drinking water containing more than two (2) milligrams per liter (mg/L) of fluoride may develop cosmetic discoloration of their permanent teeth (dental fluorosis). The drinking water provided by your community water system {name} has a fluoride concentration of {insert value} mg/L.

"Dental fluorosis, in its moderate or severe forms, may result in a brown staining and/or pitting of the permanent teeth. This problem occurs only in developing teeth, before they erupt from the gums. Children under nine (9) should be provided with alternative sources of drinking water or water that has been treated to remove the fluoride to avoid the possibility of staining and pitting of their permanent teeth. You may also want to contact your dentist about proper use by young children of fluoride-containing products. Older children and adults may safely drink the water.

"Drinking water containing more than four (4) mg/L of fluoride (the maximum contaminant level for fluoride) can increase your risk of developing bone disease. Your drinking water does not contain more than four (4) mg/L of fluoride, but we are required to notify you when we discover that the fluoride levels in your drinking water exceed two (2) mg/L because of this cosmetic dental problem.

"For more information, please call {name of community water system} at {phone number}. Some home water treatment units are also available to remove fluoride from drinking water. To learn more about available home water treatment units, you may call NSF International at 1-877-8-NSF-HELP."

(C) Special Notice for Nitrate Exceedances Above the MCL by Noncommunity Water Systems.

*[(A)]***1.** The owner or operator of a noncommunity water system granted permission by the department to exceed the nitrate MCL shall provide notice to persons served according to the requirements for a Tier 1 notice.

*[(B)]***2.** The owner or operator shall provide continuous posting of the fact that nitrate levels exceed **ten (**10**)** mg/L and the potential health effects of exposure, according to the requirements for Tier 1 notice delivery under section (2) and the content requirements under section (5) of this rule.

(D) Special notice for repeated failure to conduct monitoring of the source water for *Cryptosporidium* and for failure to determine bin classification or mean *Cryptosporidium* level.

1. The owner or operator of a community or noncommunity water system that is required to monitor source water under 10 CSR 60-4.052(2) must notify persons served by the water system that monitoring has not been completed as specified no later than thirty (30) days after the system has failed to collect any three (3) months of monitoring as specified in 10 CSR 60-4.052(2)(C). The notice must be repeated as specified in 10 CSR 60-8.010(3).

2. Special notice for failure to determine bin classification or mean *Cryptosporidium* level. The owner or operator of a community or noncommunity water system that is required to determine a bin classification under 10 CSR 60-4.052(10) must notify persons served by the water system that the determination has not been made as required no later than thirty (30) days after the system has failed to report the determination as specified in 10 CSR 60-4.052(10)(E). The notice must be repeated as specified in 10 CSR 60-8.010(3). The notice is not required if the system is complying with a department-approved schedule to address the violation.

3. Form and manner of the special notice. The form and manner of the public notice must follow the requirements for a Tier 2 public notice prescribed in subsection (3)(C) of this rule. The public notice must be presented as required in section (3) of this rule.

4. Mandatory language that must be contained in the special notice. The notice must contain the following language, including the language necessary to fill in the blanks.

A. The special notice for repeated failure to conduct monitoring must contain the following language:

"We are required to monitor the source of your drinking water for *Cryptosporidium*. Results of the monitoring are to be used to determine whether water treatment at the {treatment plant name} is sufficient to adequately remove *Cryptosporidium* from your drinking water. We are required to complete this monitoring and make this determination by {required bin determination date}. We did not monitor or test or did not complete all monitoring or testing on schedule and, therefore, we may not be able to determine by the required date what treatment modifications, if any, must be made to ensure adequate *Cryptosporidium* removal. Missing this deadline may, in turn, jeopardize our ability to have the required treatment modifications, if any, completed by the deadline required, {date}. For more information, please call {name of water system contact} of {name of water system} at {phone number}."

B. The special notice for failure to determine bin classification or mean *Cryptosporidium* level must contain the following language:

"We are required to monitor the source of your drinking water for *Cryptosporidium* in order to determine by {date} whether water treatment at the {treatment plant name} is sufficient to adequately remove *Cryptosporidium* from your drinking water. We have not made this determination by the required date. Our failure to do this may jeopardize our ability to have the required treatment modifications, if any, completed by the required deadline of {date}. For more information, please call {name of water system contact} of {name of water system} at {phone number}."

C. Each special notice must also include a description of what the system is doing to correct the violation and when the system expects to return to compliance or resolve the situation.

*AUTHORITY: section 640.100, RSMo Supp. [2002] **2008**. Original rule filed May 4, 1979, effective Sept. 14, 1979. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Feb. 27, 2009.*

PUBLIC COST: This proposed amendment is anticipated to cost publicly-owned public water systems using surface water or ground water under the influence of surface water approximately twenty-four thousand dollars ($24,000) in the aggregate.

PRIVATE COST: This proposed amendment is anticipated to cost one (1) privately-owned public water system using surface water or ground water under the influence of surface water approximately six thousand dollars ($6,000) in the aggregate.

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this rulemaking at 10 a.m. on May 19, 2009, at the Truman State Office Building, 301 West High Street, Jefferson City, Missouri. Anyone may submit comments in support of or in opposition to this proposed amendment. In preparing your comments, please include the regulatory citation and the **Missouri Register** page number. Please explain why you agree or disagree with the proposed change, and include alternative options or language. The commission is also accepting written comments on this rulemaking. Written comments must be postmarked or received by May 19, 2009. Written comments must be mailed or faxed to: Ms. Linda McCarty, MDNR Public Drinking Water Branch, PO Box 176, Jefferson City, MO 65102-0176. The fax number is (573) 751-3110.*

FISCAL NOTE
PUBLIC COST

I. Department Title: **Department of Natural Resources**
Division Title: **Public Drinking Water Program**
Chapter Title: **Public Notification**

Rule Number and Name:	10 CSR 60-8.010 Public Notification of Conditions Affecting a Public Water Supply
Type of Rulemaking:	Proposed Amendment

II. Summary of Fiscal Impact

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
4 publicly-owned public water systems using surface water or groundwater under the direct influence of surface water	$24,000

III. Worksheet

4 systems x 3000 service connections x $1 per public notice x 2 monitoring periods = $24,000

IV. Assumptions

1. Eighty-nine public water systems use surface water as their source of supply and will be required to monitor for *Cryptosporidium* and *E. coli* due to the changes to the surface water treatment rules. MDNR assumes based on prior experience with monitoring requirements that a maximum of five systems may violate the monitoring requirements for three months. This violation requires a special Tier 2 public notice under subsection (9)(B) of this rule.

2. Of the 89 systems, 83% are publicly owned (and are political subdivisions) and 17% are privately owned. Therefore, MDNR calculates that four publicly-owned surface water systems will to have to do the special Tier 2 public notice.

3. Tier 2 public notice requires direct delivery of the public notice to each service connection. MDNR assumes each delivered public notice will cost a system an average of $1.00 to deliver, an average of 3000 connections per system, and two rounds of notices required.

FISCAL NOTE
PRIVATE COST

I. Department Title: **Department of Natural Resources**
Division Title: **Public Drinking Water Program**
Chapter Title: **Public Notification**

Rule Number and Name:	10 CSR 60-8.010 Public Notification of Conditions Affecting a Public Water Supply
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:
1	Privately-owned public water system using surface water as its source of supply	$6,000

III. Worksheet

1 privately-owned system x 3000 connections x $1 per public notice x 2 monitoring periods = $6,000.

IV. Assumptions

1. Eighty-nine public water systems use surface water as their source of supply and will be required to monitor for *Cryptosporidium* and *E. coli* due to the changes to the surface water treatment rules. MDNR assumes based on prior experience with monitoring requirements that a maximum of five systems may violate the monitoring requirements for three months. This violation requires a special Tier 2 public notice under subsection (9)(B) of this rule.

2. Of the 89 systems, 83% are publicly owned (and are political subdivisions) and 17% are privately owned. Therefore, MDNR calculates that one privately-owned surface water system will to have to do the special Tier 2 public notice.

3. Tier 2 public notice requires direct delivery of the public notice to each service connection. MDNR assumes each delivered public notice will cost a system an average of $1.00 to deliver, an average of 3000 connections per system, and two rounds of notices required

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 60—*[Public] Safe* Drinking Water *[Program]*
Commission
Chapter 8—Public Notification

PROPOSED AMENDMENT

10 CSR 60-8.030 Consumer Confidence Reports. The commission is amending paragraph (1)(B)2. and parts (2)(D)3.D.II. and III.

PURPOSE: This amendment adopts without variance consumer confidence report requirements included in the Stage 2 Disinfectants/Disinfection By-Product Rule as published in the July 1, 2007 ***Code of Federal Regulations*** *and corrects a cross reference.*

(1) Applicability, Definitions, and General Requirements.

(B) The definitions in 10 CSR 60-2.015 apply to this rule with the following exceptions:

1. For the purpose of this rule, customers are defined as billing units or service connections to which water is delivered by a community water system; and

2. For the purpose of this rule, detected means*[—]* at or above the levels prescribed by 10 CSR 60-5.010*[(6)]***(8)** for organic, inorganic, and radioactive contaminants **and disinfection by-products**.

(2) Content of the Reports.

(D) Information on Detected Contaminants.

1. Subsection (2)(D) specifies the requirements for information to be included in each report for contaminants subject to mandatory monitoring (except *Cryptosporidium*). It applies to—

A. Contaminants subject to an MCL, action level, maximum residual disinfectant level, or treatment technique (regulated contaminants);

B. Contaminants for which monitoring is required by 10 CSR 60-4.110 (unregulated contaminants); and

C. Disinfection by-products or microbial contaminants for which monitoring is required by 40 CFR 141.142 and 141.143, except as provided under paragraph (2)(E)1. of this rule, and which are detected in the finished water.

2. The data relating to these contaminants must be displayed in one (1) table or in several adjacent tables. Any additional monitoring results which a community water system chooses to include in its report must be displayed separately.

3. The data must be derived from data collected to comply with the Environmental Protection Agency and department monitoring and analytical requirements during the previous calendar year except that—

A. Where a system is allowed to monitor for regulated contaminants less often than once a year, the table(s) must include the date and results of the most recent sampling and the report must include a brief statement indicating that the data presented in the report are from the most recent testing done in accordance with the regulations. The system may use the following language or similar language for their statement: "The state has reduced monitoring requirements for certain contaminants to less often than once per year because the concentrations of these contaminants are not expected to vary significantly from year-to-year. Some of our data (e.g., for organic contaminants), though representative, is more than one **(1)** year old." No data older than five (5) years need be included.

B. Results of monitoring in compliance with 40 CFR 141.142 and 141.143 need only be included for five (5) years from the date of last sample or until any of the detected contaminants becomes regulated and subject to routine monitoring requirements, whichever comes first.

4. For detected regulated contaminants (listed in Appendix A**,** *[to this rule]* **included herein**), the table(s) must contain—

A. The MCL for that contaminant expressed as a number equal to or greater than 1.0 (as provided in Appendix A**,** *[to this rule]* **included herein**);

B. The MCLG for that contaminant expressed in the same units as the MCL;

C. If there is no MCL for a detected contaminant, the table must indicate that there is a treatment technique, or specify the action level applicable to that contaminant, and the report must include the definitions for treatment technique and/or action level, as appropriate, specified in paragraph (2)(C)3. of this rule;

D. For contaminants subject to an MCL, except turbidity and total coliforms, the highest contaminant level used to determine compliance with 10 CSR 60-4.030; 10 CSR 60-4.040; 10 CSR 60-4.060; 10 CSR 60-4.090; 10 CSR 60-4.100 and the range of detected levels, as follows (when rounding of results to determine compliance with the MCL is allowed by the regulations, rounding should be done prior to multiplying the results by the factor listed in Appendix A**,** *[to this rule]* **included herein**):

(I) When compliance with the MCL is determined annually or less frequently—*[T]***t**he highest detected level at any sampling point and the range of detected levels expressed in the same units as the MCL;

(II) When compliance with the MCL is determined by calculating a running annual average of all samples taken at a *[sampling point]* **monitoring location**—the highest average of any of the *[sampling points]* **monitoring locations** and the range of all *[sampling points]* **monitoring locations** expressed in the same units as the MCL**. For the MCLs for total trihalomethanes (TTHM) and haloacetic acids 5 (HAA5) in 10 CSR 60-4.090(1)(D), systems must include the highest locational running annual average for TTHM and HAA5 and the range of individual sample results for all monitoring locations expressed in the same units as the MCL. If more than one (1) location exceeds the TTHM or HAA5 MCL, the system must include the locational running annual averages for all locations that exceed the MCL**; and

(III) When compliance with the MCL is determined on a system-wide basis by calculating a running annual average of all samples at all *[sampling points]* **monitoring locations**—the average and range of detection expressed in the same units as the MCL**. The system is required to include individual sample results for the Initial Distribution System Evaluation (IDSE) conducted under 10 CSR 60-4.092 when determining the range of TTHM and HAA5 results to be reported in the annual consumer confidence report for the calendar year that the IDSE samples were taken**;

E. For turbidity, the highest single measurement and the lowest monthly percentage of samples meeting the turbidity limits specified in 10 CSR 60-4.050.

(I) The report should include an explanation of the reasons for measuring turbidity, such as: "Turbidity is a measure of the cloudiness of water. We monitor turbidity because it is a good indicator of the effectiveness of our filtration system."

(II) If an explanation of the reasons for measuring turbidity is included, it does not have to be included in the table but may be added as a footnote or narrative associated with the table;

F. For lead and copper, the ninetieth percentile value of the most recent round of sampling, the number of sampling sites exceeding the action level in that round, and the most recent source water results;

G. For total coliform.

(I) The highest monthly number of positive compliance samples for systems collecting fewer than forty (40) samples per month; or

(II) The highest monthly percentage of positive compliance samples for systems collecting at least forty (40) samples per month;

H. For fecal coliform or *E. coli*, the total number of positive compliance samples; and

I. The likely source(s) of detected regulated contaminants to the best of the operator's knowledge. Specific information regarding contaminants may be available in sanitary surveys and source water assessments, and should be used when available to the operator. If

the operator lacks specific information on the likely source, the report must include one (1) or more of the typical sources for that contaminant which are most applicable to the system. The typical sources for a given contaminant are listed in Appendix B**,** *[to this rule]* **included herein**.

5. If a community water system distributes water to its customers from multiple hydraulically independent distribution systems that are fed by different raw water sources, the table should contain a separate column for each service area and the report should identify each separate distribution system. Alternatively, systems could produce separate reports tailored to include data for each service area.

6. The table(s) must clearly identify any data indicating violations of MCLs or treatment techniques and the report must contain a clear and readily understandable explanation of the violation including: the length of the violation, the potential adverse health effects, and actions taken by the system to address the violation. To describe the potential health effects, the system must use the relevant language of Appendix C**,** *[to this rule]* **included herein**.

7. For detected unregulated contaminants for which monitoring is required (except *Cryptosporidium*), the table(s) must contain the average and range at which the contaminant was detected. When detects of unregulated contaminants are reported, the report may include a brief explanation of the reasons for monitoring for unregulated contaminants using language such as: "Unregulated contaminants are those for which EPA has not established drinking water standards. The purpose of unregulated contaminant monitoring is to assist EPA in determining the occurrence of unregulated contaminants in drinking water and whether future regulation is warranted. Information on all the contaminants that were monitored for, whether regulated or unregulated, can be obtained from this water system or the Department of Natural Resources."

*AUTHORITY: section[s] 640.100, RSMo Supp. [2002] **2008** and **section** 640.125.1**, RSMo 2000**. Original rule filed July 1, 1999, effective March 30, 2000. Amended: Filed [Filed] March 17, 2003, effective Nov. 30, 2003. Amended: Filed Feb. 27, 2009.*

PUBLIC COST: This proposed amendment is anticipated to cost the Missouri Department of Natural Resources one thousand nine hundred fifty-five dollars ($1,955) in the aggregate and twelve (12) publicly-owned community public water systems approximately one thousand eighty dollars ($1,080) in annual costs for the duration of the rule.

PRIVATE COST: This proposed amendment is anticipated to cost eight (8) privately-owned public water systems approximately seven hundred twenty dollars ($720) in annual costs for the duration of the rule.

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this rulemaking at 10 a.m. on May 19, 2009, at the Truman State Office Building, 301 West High Street, Jefferson City, Missouri. Anyone may submit comments in support of or in opposition to this proposed amendment. In preparing your comments, please include the regulatory citation and the **Missouri Register** page number. Please explain why you agree or disagree with the proposed change, and include alternative options or language. The commission is also accepting written comments on this rulemaking. Written comments must be postmarked or received by May 19, 2009. Written comments must be mailed or faxed to: Ms. Linda McCarty, MDNR Public Drinking Water Branch, PO Box 176, Jefferson City, MO 65102-0176. The fax number is (573) 751-3110.*

FISCAL NOTE
PUBLIC COST

I. Department Title: **Department of Natural Resources**
Division Title: **Public Drinking Water Program**
Chapter Title: **Public Notification**

Rule Number and Name:	10 CSR 60-8.030 Consumer Confidence Reports
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Missouri Department of Natural Resources	$1,955 (one-time cost)
Publicly-owned community water systems	$1,080 (annual costs for the duration of the rule)

III. Worksheet

MDNR contract costs: (20 hours x $74 per hour) + (5 hours x $95 per hour) = $1,955

Community water system costs: 12 publicly-owned systems x 6 hours x $15 per hour = $1,080

IV. Assumptions

1. To upgrade the MDNR Consumer Confidence Report builder, the assumption is made that it will require 20 hours of computer programming work from the contractor at $74 per hour. Also, the assumption is made that it will require 5 hours of work by the contractor's SDWIS expert at $95 per hour.

2. MDNR assumes that 12 publicly-owned community water systems will spend 6 extra hours per year adding the IDSE and RAA data to their existing annual Consumer Confidence Reports.

FISCAL NOTE
PRIVATE COST

I. Department Title: **Department of Natural Resources**
Division Title: **Public Drinking Water Program**
Chapter Title: **Public Notification**

Rule Number and Name:	10 CSR 60-8.030 Consumer Confidence Reports
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:
8	Privately-owned community public water systems	$720 in annual costs for the duration of the rule

III. Worksheet

$15 per hour x 6 hours annually x 8 systems = $720

IV. Assumptions

The assumption is 8 privately-owned community water systems will spend 6 extra hours adding the IDSE and RAA data to their existing annual CCRs at a cost of approximately $15 per hour. The hourly cost is based on an average wage for water system operators.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 60—*[Public] Safe* Drinking Water *[Program] Commission*
Chapter 9—Record Maintenance

PROPOSED AMENDMENT

10 CSR 60-9.010 Requirements for Maintaining Public Water System Records. The commission is amending subsection (1)(A) and adding subsection (1)(G) and section (3).

PURPOSE: This amendment adopts without variance new federal wording included in the Stage 2 Disinfectants/Disinfection By-Product Rule and Long-Term 2 Enhanced Surface Water Treatment Rule as published in the July 1, 2007 ***Code of Federal Regulations****.*

(1) All suppliers of water to a public water system must retain records on their premises or at a convenient location near their premises as follows:

(A) Records of *[bacteriological]* **microbiological analyses, turbidity analyses,** and operational analyses must be retained for a minimum of five (5) years. Records of chemical analyses must be retained for a minimum of ten (10) years. Actual laboratory reports used in the previous analyses must be retained for the appropriate period given previously. In lieu of an original report or copy, laboratory data may be transferred to tabular summaries provided the following information is included: the date, address, place**,** and time of sampling; identification of the sample (that is, a routine distribution system sample, check sample, raw or other special purpose water sample); date of analysis; laboratory and person responsible for performing analysis; analytical method used and the results of the analysis;

(E) Original records of all sampling data and analyses, reports, surveys, letters, evaluations, schedules, state determinations**,** and any other information required by 10 CSR 60-5.010, 10 CSR 60-5.020, 10 CSR 60-7.020, and 10 CSR 60-15.010–10 CSR 60-15.090 must be retained for no fewer than twelve (12) years; *[and]*

(F) Copies of public notices issued pursuant to 10 CSR 60-8.010 and certifications issued to the department pursuant to 10 CSR 60-7.010(9) shall be kept for at least three (3) years after issuance*[.]***; and**

(G) Copies of monitoring plans shall be kept for the same period of time as the records of analyses taken under the plan are required to be kept under subsection (1)(A) of this rule, except as specified elsewhere in 10 CSR 60.

(3) Additional Record-Keeping Requirements under the Long-Term 2 Enhanced Surface Water Treatment Rule.

(A) Systems must keep results from the initial round of source water monitoring under 10 CSR 60-4.052(2)(A) and the second round of source water monitoring under 10 CSR 60-4.052(2)(B) until three (3) years after bin classification under 10 CSR 60-4.052(10).

(B) Systems must keep any notification to the department that they will not conduct source water monitoring due to meeting the criteria of 10 CSR 60-4.052(2)(D) for three (3) years.

(C) Systems must keep the results of treatment monitoring associated with microbial toolbox options under 10 CSR 60-4.052(14)–(18) for three (3) years.

AUTHORITY: section 640.100, RSMo Supp. [2002] ***2008****. Original rule filed May 4, 1979, effective Sept. 14, 1979. Amended: Filed Aug. 4, 1992, effective May 6, 1993. Amended: Filed March 17, 2003, effective Nov. 30, 2003. Amended: Filed Feb. 27, 2009.*

PUBLIC COST: This proposed amendment is anticipated to cost state agencies and political subdivisions less than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment is anticipated to cost private entities less than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this rulemaking at 10 a.m. on May 19, 2009, at the Truman State Office Building, 301 West High Street, Jefferson City, Missouri. Anyone may submit comments in support of or opposition to this proposed amendment. In preparing your comments, please include the regulatory citation and the ***Missouri Register*** *page number. Please explain why you agree or disagree with the proposed change, and include alternative options or language. The commission is also accepting written comments on this rulemaking. Written comments must be postmarked or received by May 19, 2009. Written comments must be mailed or faxed to: Ms. Linda McCarty, MDNR Public Drinking Water Branch, PO Box 176, Jefferson City, MO 65102-0176. The fax number is (573) 751-3110.*

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

PROPOSED AMENDMENT

13 CSR 70-3.180 Medical Pre-Certification Process. The division is amending the purpose and sections (1)–(3) and (7).

PURPOSE: This amendment changes the name of Missouri's medical assistance program to MO HealthNet, revises the name of the administering agency to MO HealthNet Division, changes program recipients to participants, and updates the division's website address and incorporated by reference material.

PURPOSE: This rule establishes the medical pre-certification process of the [Missouri Medical Assistance] ***MO HealthNet*** *Program for certain covered diagnostic and ancillary procedures and services prior to provision of the procedure or service as a condition of reimbursement. This rule shall only apply to those diagnostic and ancillary procedures or services that are listed in the provider manuals, provider bulletins, or clinical edits criteria which are incorporated by reference and made a part of this rule. The medical pre-certification process serves as a utilization management tool, allowing payment for services that are medically necessary, appropriate, and cost-effective without compromising the quality of care provided to [Missouri medical assistance recipients]* ***MO HealthNet participants****.*

(1) Providers are required to seek pre-certification for certain specified services listed in the provider manuals, provider bulletins, or clinical edits criteria before delivery of the services. This rule shall apply to diagnostic and ancillary procedures and services listed in the provider manuals, provider bulletins, or clinical edits*[,]* criteria when ordered by a healthcare provider unless provided in an inpatient hospital or emergency room setting. This pre-certification process shall not include primary services performed directly by the provider. In addition to services and procedures that are available through the traditional medical assistance program, expanded services are available to children twenty (20) years of age and under through the Healthy Children and Youth (HCY) Program. Some expanded services also require pre-certification. Certain services require pre-certification only when provided in a specific place or when they exceed certain limits. These limitations are explained in detail in subsections 13(3) and 14(4) of the applicable provider manuals, provider bulletins, or clinical edits criteria, which are incorporated by reference and made a part of this rule as published by the Department of Social Services, *[Division of Medical Services]* **MO HealthNet Division**, 615 Howerton Court, Jefferson City, MO 65109, at its website at

[www.dss.mo.gov/dms, August 1, 2006] **www.dss.mo.gov/mhd, April 1, 2009**. The rule does not incorporate any subsequent amendments or additions. This rule shall only apply to those diagnostic and ancillary procedures or services that are listed in the provider manuals, provider bulletins**,** *[on]* **or** clinical edits criteria which are incorporated by reference and made a part of this rule.

(2) All requests for pre-certification must be initiated by an enrolled medical assistance provider and approved by the *[Division of Medical Services]* **MO HealthNet Division**. A covered service for which pre-certification is requested must meet medical criteria established by the *[Division of Medical Services']* **MO HealthNet Division's** medical consultants or medical advisory groups in order to be approved.

(3) An approved pre-certification request does not guarantee payment. The provider must be enrolled and verify *[recipient]* **participant** eligibility on the date of service.

(7) If a pre-certification request is denied, the medical assistance *[recipient]* **participant** will receive a letter which outlines the reason for the denial and the procedure for appeal. The *[medical assistance recipient]* **MO HealthNet participant** must contact the *[Recipient]* **Participant** Services Unit within ninety (90) days of the date of the denial letter if they wish to request a hearing. After ninety (90) days a request to appeal the pre-certification decision is denied.

*AUTHORITY: sections 208.153 and 208.201, RSMo [2000] **Supp. 2008**. Original rule filed July 3, 2006, effective Feb. 28, 2007. Amended: Filed March 2, 2009.*

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 15—ELECTED OFFICIALS
Division 60—Attorney General
Chapter 15—Unauthorized Alien Workers

PROPOSED RULE

15 CSR 60-15.010 Definitions

PURPOSE: This rule defines terms used in section 285.525, RSMo Supp. 2008.

(1) The terms used in Title 15, Division 60, Chapter 15 of the *Code of State Regulations* bear the same meaning in the rules pertaining to unauthorized alien workers as they do in section 285.525, RSMo Supp. 2008, as amended from time-to-time.

(2) The following definitions further clarify terms used in section 285.525, RSMo Supp. 2008, and Title 15, Division 60, Chapter 15 of the *Code of State Regulations*:

(A) "Business Entity"—in addition to the definition as used in section 285.525(1), RSMo Supp. 2008, business entities include limited liability corporations (LLCs);

(B) "Identity Information"—includes a copy of a passport or two (2) of the following: birth certificate, driver license, or Social Security card; OR an E-verify case verification number and/or dated verification report received from the federal government; and

(C) "State-administered or subsidized tax credit, tax abatement, or loan"—includes credits provided under section 99.845.4–.12, RSMo 2000.

AUTHORITY: section 285.540, RSMo Supp. 2008. Emergency rule filed March 2, 2009, effective March 12, 2009, expires Sept. 7, 2009. Original rule filed March 2, 2009.

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Attorney General's Office, PO Box 899, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 15—ELECTED OFFICIALS
Division 60—Attorney General
Chapter 15—Unauthorized Alien Workers

PROPOSED RULE

15 CSR 60-15.020 Form of Affidavit

PURPOSE: This rule prescribes the form of affidavit to be submitted by business entities or employers who fall under the provisions of section 285.530, RSMo Supp. 2008.

(1) As a condition for the award of any contract or grant in excess of five thousand dollars ($5,000) by the state or by any political subdivision of the state to a business entity, or for any business entity receiving a state-administered or subsidized tax credit, tax abatement, or loan from the state, the business entity shall submit an affidavit containing the following:

(A) A statement that the business entity has enrolled in, and is currently participating in, E-verify, a federal work authorization program, or any other equivalent electronic verification of work authorization program operated by the United States Department of Homeland Security under the Immigration Reform and Control Act of 1986 (IRCA);

(B) A statement that the business entity does not knowingly employ any person who is an unauthorized alien in conjunction with the contracted services; and

(C) A notarized signature of the registered agent, legal representative of the business entity, or a corporate officer, including, but not limited to, the human resources director of the business entity or their equivalent.

(2) Within ninety (90) days of the effective date of this regulation, any business entity having a contract or grant in excess of five thousand dollars ($5,000) from the state, a political subdivision, municipality, or county shall submit an affidavit to the state or appropriate

political subdivision, municipality, or county in the form set forth above in section (1).

(3) Within ninety (90) days of the effective date of this regulation, any business entity receiving a state-administered or subsidized tax credit, tax abatement, or loan from the state shall submit an affidavit to the state in the form set forth above in section (1).

(4) Employers shall retain a copy of the dated verification report received from the federal government.

AUTHORITY: section 285.540, RSMo Supp. 2008. Emergency rule filed March 2, 2009, effective March 12, 2009, expires Sept. 7, 2009. Original rule filed March 2, 2009.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Attorney General's Office, PO Box 899, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 15—ELECTED OFFICIALS
Division 60—Attorney General
Chapter 15—Unauthorized Alien Workers

PROPOSED RULE

15 CSR 60-15.030 Complaints

PURPOSE: This rule prescribes procedures for filing complaints that a business entity or employer has knowingly employed, hired for employment, or continued to employ an unauthorized alien to perform work in Missouri in violation of section 285.530, RSMo Supp. 2008.

(1) State officials, business entities, or any state resident may file a complaint with the Missouri Attorney General's Office that a business entity or employer has knowingly employed, hired for employment, or continued to employ an unauthorized alien to perform work in Missouri in violation of section 285.530, RSMo Supp. 2008.

(2) Persons wishing to file a complaint may request a complaint form from the Missouri Attorney General's Office, PO Box 899, Jefferson City, MO 65102 or may download and print off the form from the Missouri Attorney General's website at www.ago.mo.gov.

(3) A complaint form must be completed in its entirety, and the person submitting a complaint must—

(A) Provide information about the business entity or employer alleged to be violating the statute;

(B) Provide their contact information;

(C) Verify that they are either: a Missouri resident, a state official or a registered agent, corporate officer, or legal representative of the business entity;

(D) A detailed description of the violation;

(E) A declaration under the penalty of perjury that the complaint is true and correct to the best of their knowledge and belief; and

(F) A notarized signature.

(4) Complaints cannot allege a violation solely or primarily on the basis of national origin, ethnicity, or race.

(5) Completed complaint forms should be returned to the Missouri Attorney General's Office, PO Box 899, Jefferson City, MO 65102.

AUTHORITY: section 285.540, RSMo Supp. 2008. Emergency rule filed March 2, 2009, effective March 12, 2009, expires Sept. 7, 2009. Original rule filed March 2, 2009.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Attorney General's Office, PO Box 899, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 15—ELECTED OFFICIALS
Division 60—Attorney General
Chapter 15—Unauthorized Alien Workers

PROPOSED RULE

15 CSR 60-15.040 Investigation of Complaints

PURPOSE: This rule describes the process related to investigating valid complaints authorized by section 285.535, RSMo Supp. 2008.

(1) Upon the receipt of a valid complaint, the Missouri Attorney General's Office shall, within fifteen (15) days, send a request by certified mail to the business entity requesting identity information regarding person(s) alleged to be unauthorized alien(s).

(2) Identity information to be provided includes copies of the following:

(A) A passport; or

(B) Two (2) of the following: birth certificate, driver license, and Social Security card; or

(C) E-verify case verification number and/or dated verification report received from the federal government.

(3) The business entity shall provide the identity information within fifteen (15) days of the receipt of the request. If the business entity fails to do so, the attorney general shall direct the applicable state agency, political subdivision, and municipal or county governing body to suspend any licenses or permits of the business entity unless the business entity submits as evidence, through its legal representative as noted in section (4) below, one (1) of the following within the fifteen (15)-day period:

(A) The business entity has terminated the individual, or is attempting to terminate the individual and is being challenged in court; or

(B) The business entity, after acquiring additional information from the employee, has requested a secondary or additional verification by the federal government of the employee's authorization.

(4) If a business entity fails to comply with the provisions of section 285.535.5(a), RSMo, he may ask the court to direct any applicable state agency, political subdivision, and municipal or county governing

body to suspend any business permits or license of the business entity until the entity complies with section (6).

(5) If a business entity fails to comply with the provisions of section 285.535.5(b), RSMo, the attorney general may ask the court to direct any applicable state agency, political subdivision, and municipal or county governing body to suspend for fourteen (14) days any business permits or license of the business entity. The licenses or permits may be reinstated for entities who comply with section (6) at the end of the fourteen (14)-day period.

(6) Upon the first violation of subsection 1 of section 285.530, RSMo, by any business entity awarded a contract or grant by the state, a political subdivision, municipality, or county or any business entity receiving a state-administered tax credit, tax abatement, or loan or loan guarantee from the state shall be deemed in breach of contract and the state, political subdivision, municipality, or county may terminate the contract. Upon such termination the state, political subdivision, municipality, or county may withhold up to twenty-five percent (25%) of the total amount due to the business entity.

(7) Upon receipt of notice of such termination of a contract or grant or a violation of subsection 1 of section 285.530, RSMo, by the recipient of a state-administered tax credit, tax abatement, or loan or loan guarantee from the state, the attorney general shall suspend or debar the business entity from doing business with any state, political subdivision, municipality, or county for a period of three (3) years.

(8) The attorney general shall maintain on his website a list of all business entities suspended or debarred under this section.

(9) A person authorized to act of behalf of an employer shall submit a sworn affidavit to the Missouri Attorney General, PO Box 899, Jefferson City, MO 65102, stating the violation has ended and provide—

(A) Evidence of the specific measures taken to end the violation, which shall, at a minimum, include a notarized affidavit describing the events surrounding the termination of employment from the human resources director or other officer of the business entity whose duties include terminating the employment of employees, etc.;

(B) The name, address, and all identifying information available to the business entity concerning the unauthorized alien(s) related to the complaint; and

(C) Evidence that the business entity has enrolled in, and is currently participating in, E-verify, a federal work authorization program, or any other equivalent electronic verification of work authorization program operated by the United States Department of Homeland Security under the Immigration Reform and Control Act of 1986 (IRCA).

AUTHORITY: section 285.540, RSMo Supp. 2008. Emergency rule filed March 2, 2009, effective March 12, 2009, expires Sept. 7, 2009. Original rule filed March 2, 2009.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Attorney General's Office, PO Box 899, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 15—ELECTED OFFICIALS
Division 60—Attorney General
Chapter 15—Unauthorized Alien Workers

PROPOSED RULE

15 CSR 60-15.050 Notification by Federal Government that Individual is Not Authorized to Work

PURPOSE: This rule describes the process to be utilized when the federal government notifies the Missouri Attorney General's Office that an individual is not authorized to work and the duties required of the employer by section 285.535, RSMo Supp. 2008.

(1) Upon notification from the federal government to the Missouri Attorney General's Office that an individual is not authorized to work, and the employer participates in a federal work authorization program, the Missouri Attorney General's Office shall notify the employer to comply with section 285.535.6, RSMo Supp. 2008.

(2) The employer shall, through its legal representative as noted in section (3) below, submit evidence of one (1) of the following within thirty (30) days:

(A) The business entity has terminated the employment of the individual or is attempting to terminate the employment of the individual and is being challenged in court; or

(B) The business entity, after acquiring additional information from the employee, has requested a secondary or additional verification by the federal government of the employee's authorization.

(3) The legal representative of the business entity shall submit a sworn affidavit to the Missouri Attorney General, PO Box 899, Jefferson City, MO 65102, stating the violation has ended and provide—

(A) Evidence of the specific measures taken to end the violation, which shall, at a minimum, include a notarized affidavit describing the events surrounding the termination of employment from the human resources director or other officer of the business entity whose duties include terminating the employment of employees, etc.;

(B) The name, address, and all identifying information available to the business entity concerning the unauthorized alien(s) related to the complaint; and

(C) Evidence that the business entity has enrolled in, and is currently participating in, E-verify, a federal work authorization program, or any other equivalent electronic verification of work authorization program operated by the United States Department of Homeland Security under the Immigration Reform and Control Act of 1986 (IRCA).

AUTHORITY: section 285.540, RSMo Supp. 2008. Emergency rule filed March 2, 2009, effective March 12, 2009, expires Sept. 7, 2009. Original rule filed March 2, 2009.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Attorney General's Office, PO Box 899, 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.*

This section will contain the final text of the rules proposed by agencies. The order of rulemaking is required to contain a citation to the legal authority upon which the order of rulemaking is based; reference to the date and page or pages where the notice of proposed rulemaking was published in the *Missouri Register*; an explanation of any change between the text of the rule as contained in the notice of proposed rulemaking and the text of the rule as finally adopted, together with the reason for any such change; and the full text of any section or subsection of the rule as adopted which has been changed from that contained in the notice of proposed rulemaking. The effective date of the rule shall be not less than thirty (30) days after the date of publication of the revision to the *Code of State Regulations*.

The agency is also required to make a brief summary of the general nature and extent of comments submitted in support of or opposition to the proposed rule and a concise summary of the testimony presented at the hearing, if any, held in connection with the rulemaking, together with a concise summary of the agency's findings with respect to the merits of any such testimony or comments which are opposed in whole or in part to the proposed rule. The ninety (90)-day period during which an agency shall file its order of rulemaking for publication in the *Missouri Register* begins either: 1) after the hearing on the proposed rulemaking is held; or 2) at the end of the time for submission of comments to the agency. During this period, the agency shall file with the secretary of state the order of rulemaking, either putting the proposed rule into effect, with or without further changes, or withdrawing the proposed rule.

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

ORDER OF RULEMAKING

By the authority vested in the State Board of Education under section 161.092, RSMo Supp. 2008 and section 304.060, RSMo 2000, the board amends a rule as follows:

5 CSR 30-261.025 Minimum Requirements for School Bus Chassis and Body **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on November 3, 2008 (33 MoReg 1946). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

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

ORDER OF RULEMAKING

By the authority vested in the director of revenue under section 32.065, RSMo 2000, the director amends a rule as follows:

12 CSR 10-41.010 Annual Adjusted Rate of Interest **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 1, 2008 (33 MoReg 2326–2330). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 12—DEPARTMENT OF REVENUE
Division 30—State Tax Commission
Chapter 3—Local Assessment of Property and Appeals From Local Boards of Equalization

ORDER OF RULEMAKING

By the authority vested in the State Tax Commission under section 138.430, RSMo Supp. 2008, the commission amends a rule as follows:

12 CSR 30-3.010 Appeals From the Local Board of Equalization **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on November 17, 2008 (33 MoReg 2235). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 40—Family Support Division
Chapter 2—Income Maintenance

ORDER OF RULEMAKING

By the authority vested in the Family Support Division under section 207.020, RSMo 2000 and section 208.040.5, RSMo Supp. 2008, the division adopts a rule as follows:

13 CSR 40-2.390 Transitional Employment Benefit **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on November 3, 2008 (33 MoReg 2021–2022). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 20—Division of Community and Public Health
Chapter 3—General Sanitation

ORDER OF RULEMAKING

By the authority vested in the Department of Health and Senior Services under sections 701.046 and 701.051, RSMo 2000, the department rescinds a rule as follows:

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 **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on December 1, 2008 (33 MoReg 2331–2332). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 20—Division of Community and Public Health
Chapter 3—General Sanitation

ORDER OF RULEMAKING

By the authority vested in the Department of Health and Senior Services under section 701.033, RSMo Supp. 2008, and sections 701.046 and 701.051, RSMo 2000, the department adopts a rule as follows:

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

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on December 1, 2008 (33 MoReg 2332–2336). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 20—Division of Community and Public Health
Chapter 3—General Sanitation

ORDER OF RULEMAKING

By the authority vested in the Department of Health and Senior Services under section 701.033, RSMo Supp. 2008 and section 701.040, RSMo 2000, the department amends a rule as follows:

19 CSR 20-3.080 Requirements for Percolation Testers, On-Site Soils Evaluators and Registered On-Site Wastewater Treatment System Installers **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 1, 2008 (33 MoReg 2337–2342). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 100—Insurer Conduct
Chapter 1—Improper or Unfair Claims Settlement Practices

ORDER OF RULEMAKING

By the authority vested in the Department of Insurance, Financial Institutions and Professional Registration under section 376.1007, RSMo 2000 and sections 374.045, 376.383, and 376.384, RSMo Supp. 2008, the director adopts a rule as follows.

20 CSR 100-1.060 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on October 15, 2008 (33 MoReg 1877–1879). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed rule was held November 18, 2008, and the public comment period ended November 25, 2008. At the public hearing, department staff explained the new rule and the director received comments from Coventry Health Care of Kansas, Inc., United Health Group, CVS Caremark, Pharmaceutical Care Management Association (PCMA), America's Health Insurance Plans (AHIP), Signature Medical Group, Medco Health Solutions, Inc. (Medco), Express Scripts, and Missouri State Medical Association (MSMA).

COMMENT #1: CVS Caremark, the Pharmaceutical Care Management Association (PCMA), United Health Group, America's Health Insurance Plans (AHIP), Coventry Health Care of Kansas, Inc. (Coventry), Medco Health Solutions, Inc. (Medco), and Express Scripts all commented on the proposed language in 20 CSR 100-1.060(4)(A). CVS Caremark, PCMA, Medco, and Express Scripts all expressed concern that the proposed language would require payment of a claim within ten (10) days of receipt contrary to section 376.383, RSMo. AHIP and Coventry Health Care of Kansas, Inc. both expressed concern that the regulation was inconsistent with the language of section 376.383, RSMo, requiring a health carrier to "1) Send an acknowledgment of the date of receipt; or 2) Send notice of the status of the claim that includes a request for additional information" within ten (10) days of receiving a claim. United Health Group appeared to find the language confusing and sought clarification.
RESPONSE AND EXPLANATION OF CHANGE: Although the director does not believe the current language of the proposed regulation requires payment of a claim within ten (10) days as suggested, it is clear from the comments that some clarification of the language would be appropriate. Accordingly, the director will modify the proposed rule to clarify that all of the actions listed in 20 CSR 100-1.060(4)(A) are in the alternative.

COMMENT #2: United Health Group commented that the definition of "Request for additional information" is more restrictive than section 376.383.10, RSMo, in that the information requested may be needed to determine a company's liability but may not be specific to the claim or episode of care or may not be in the patient's medical or billing record, as defined by the proposed 20 CSR 100-1.060(2)(M)1. and 4. As such, United Health Group requested that the provisions in 20 CSR 100-1.060(2)(M)1. and 4. be removed.
RESPONSE AND EXPLANATION OF CHANGE: The director agrees and will modify the rule accordingly.

COMMENT #3: United Health Group requested that the phrase "or indirectly" be removed from the definition of "third-party contractor"

in 20 CSR 100-1.060(2)(P). Coventry Health Care of Kansas, Inc. expressed a similar concern. The concern expressed by United Health Group was that the proposed language might be interpreted to make it responsible for the actions of a provider's contractor. United Health Group suggests the following change to the current language of the proposed rule: "'Third-party contractor' shall mean an entity or person directly contracted with the health carrier to receive or process claims for reimbursement of health care services on behalf of the health carrier."
RESPONSE AND EXPLANATION OF CHANGE: While it was not the intent of the proposed language to make health carriers responsible for the actions of providers' contractors, the director appreciates United Health Group's concern. Therefore, the language of the definition in the proposed regulation will be modified to more closely conform to the definition contained in section 376.383, RSMo.

COMMENT #4: United Health Group suggested that the director add language to 20 CSR 100-1.060(4)(B) to clarify that it must be able to identify the claimant as an insured before it accepts the claim and sends an acknowledgement of the claim. It suggested rewording this subsection to read as follows:

> If notice of the claim was received and accepted as an electronically filed claim, the health carrier shall issue confirmation of receipt of the claim within one (1) working day of its receipt to the claimant or third-party contractor that submitted the claim electronically.

RESPONSE AND EXPLANATION OF CHANGE: The director appreciates this comment. Nothing in the authorizing statutes requires that a claim be "accepted" in order to be "received." However, the proposed rule will be modified to make the language consistent with the definition of "confirmation of receipt" found in 20 CSR 100-1.060(2)(C). Additionally, subparagraph 20 CSR 100-1.060(3)(B)3. will be removed since it seems to be redundant with this paragraph.

COMMENT #5: United Health Group suggested that the director should add language to 20 CSR 100-1.060(4)(D) to clarify that providers are not always the ones who submit claims; that they often submit claims through third-party contractors. It suggested rewording this subsection to read as follows: All denials, suspensions, or requests for additional information shall be communicated in writing to the claimant or third-party contractor and shall include specific reasons why the action was taken or why the information is needed.
RESPONSE: The director appreciates this comment, but feels that United Health Group misunderstood the meaning of the defined term, "third-party contractor." Under section 376.383.1(9), RSMo, and this proposed rule, a "third-party contractor" is a person or entity "contracted with the health carrier to receive or process claims." Consequently, the suggested change will not be made.

COMMENT #6: United Health Group suggested that to keep the language of the rule consistent, 20 CSR 100-1.060(5)(A)1. be modified as follows: "… The interest shall be payable by the health carrier to the health care provider, individual insured, enrollee, or other entity submitting the claim…."
RESPONSE AND EXPLANATION OF CHANGE: The director agrees and will modify the rule accordingly.

COMMENT #7: America's Health Insurance Plans (AHIP) and Coventry Health Care of Kansas, Inc. commented that the reference to non-electronic claims in the proposed rule's definition of claim in subsection 20 CSR 100-1.060(2)(B) should be removed, as section 376.384.2, RSMo, states that paper claims submitted by providers shall not be subject to the provisions of section 376.383, RSMo.
RESPONSE AND EXPLANATION OF CHANGE: The director agrees with these comments to the extent they relate to provider submitted claims and will modify the definition of "claim" set forth in 20 CSR 100-1.060(2)(B) accordingly.

COMMENT #8: America's Health Insurance Plans (AHIP) commented that the requirement for a carrier to submit two (2) separate requests for additional information to the claimant before suspending or denying a claim is inconsistent with section 376.383, RSMo. It requests that this requirement be removed from 20 CSR 100-1.060(5).
RESPONSE: The director appreciates AHIP's comment, but believes AHIP has misunderstood the meaning of this section of the proposed regulation. The language in section (5) that AHIP cites in its comment relates only to claims that are suspended or denied due to lack of information. Section 375.1007(3), RSMo, requires companies to adopt and implement reasonable standards for the prompt investigation and settlement of claims arising under its policies. Section 376.383.2, RSMo, further clarifies what constitutes a reasonable investigation for the purposes of health care claims by limiting to two (2) the number of requests for additional information that a health carrier is required to make – the initial request and a final request. The language in section (5) of the proposed regulation merely embodies the statutory requirements of sections 375.1007(3) and 376.383.2, RSMo. Therefore, no change will be made to this portion of the proposed rule in response to this comment.

COMMENT #9: America's Health Insurance Plans (AHIP) commented that that the proposed rules do not take into account the requirements outlined in section 376.427, RSMo, governing claims payment when an assignment of benefits has been made. As such, AHIP proposed the following language be added to the regulation to exclude situations that are governed by section 376.427, RSMo: Notwithstanding any other provisions to the contrary, this rule shall not be construed to apply to any claim that is subject to section 376.427, RSMo.
RESPONSE: The director appreciates this comment; however, no changes will be made in response. The rules of statutory construction require that statutes be read in harmony so as to give effect to each. Nothing in section 376.427, RSMo, excludes claims subject to it from sections 376.383 and 376.384, RSMo, and vice versa. All health carriers, as defined by section 376.1350, RSMo, are bound by sections 376.383 and 376.384, RSMo. The director believes that all of the statutes in question can be applied without conflict; however, in the event a conflict were found, the provisions of sections 376.383 and 376.384, RSMo, would prevail since these statutes were enacted more recently than section 376.427, RSMo.

COMMENT #10: Coventry Health Care of Kansas, Inc. commented that the definition of "date of receipt," found in 20 CSR 100-1.060(2)(F) is confusing. By using the postmark date as the date of receipt by the carrier, Coventry Health Care of Kansas, Inc. argues that the rule improperly adds days against the health carrier's timeliness requirements, as there may be several days between the postmark date and the date the carrier actually receives the correspondence.
RESPONSE AND EXPLANATION OF CHANGE: The director agrees with this comment and will modify the rule accordingly.

COMMENT #11: Coventry Health Care of Kansas, Inc. commented that the definition of "reason for denial," as set forth in 20 CSR 100-1.060(2)(L) is incomplete and overly restrictive because it limits the reason for denial to specific contract provision(s). Coventry Health Care of Kansas, Inc. contends that this limitation would prevent a carrier from administratively denying a claim if a provider submits a duplicate claim or from denying a claim for a product or service that is not intended to be covered by the carrier, nor specifically listed as a covered service within the contract. The result of such a requirement would require a health carrier to create a specific exclusion provision for all possible products or services, or administrative scenarios, which are not intended to be covered.
RESPONSE AND EXPLANATION OF CHANGE: The director agrees with this comment and will remove the definition of "reason for denial."

COMMENT #12: Signature Medical Group commended the director for the language proposed in subsection 20 CSR 100-1.060(2)(M), in that it will limit the scope of requests to that information which is reasonably relevant to the claims adjudication process; and will prevent abusive conduct regarding these requests. Signature Medical Group commended the director for language proposed in subsection 20 CSR 100-1.060(4)(A), in that it will clarify the requirements of section 376.383, RSMo, as they relate to the health carrier's duties upon receipt of a claim.
RESPONSE: The director thanks Signature Medical Group for this comment. While some changes have been made to this language in response to previous comments, the director believes the provision will still fulfill the goals espoused by this comment.

COMMENT #13: Signature Medical Group commended the director for language proposed in subsection 20 CSR 100-1.060(4)(A), in that it will clarify the requirements of section 376.383, RSMo, as they relate to the health carrier's duties upon receipt of a claim.
RESPONSE: The director thanks Signature Medical Group for this comment. While some changes have been made to this language in response to previous comments, the director believes the provision will still fulfill the goals espoused by this comment.

COMMENT #14: Signature Medical Group suggested that the rule make reference in 20 CSR 100-1.060(5)(A) to the statutory penalty set forth in section 376.383.6, RSMo, for those claims on which the health carrier has notified the claimant, in writing, that the claim has been suspended or denied. Missouri State Medical Association (MSMA) made a similar comment regarding the provisions of the proposed rule and section 376.383.6, RSMo.
RESPONSE: The director appreciates this comment; however, no changes were made to the rule in response. It is the director's understanding that section 376.383.6, RSMo, provides a private cause of action enforceable by providers through the court system and is outside the purview of this regulation.

COMMENT #15: Signature Medical Group requested that the director further define the relevant correspondence it seeks when reviewing a complaint against a health carrier as set forth in 20 CSR 100-1.060(5)(C) in order to make the review process more efficient for the claimant/provider and the director.
RESPONSE: The director appreciates this comment; however, no changes were made to the rule in response. The director cannot determine in advance what correspondence might be relevant to any particular complaint. It depends on the health care provider to make such a determination on a case-by-case basis, consistent with the language of the statute and this regulation.

COMMENT #16: Missouri State Medical Association (MSMA) supported the proposed rule, stating that the clarifications to sections 376.383 and 376.384, RSMo, proposed by the director will facilitate compliance and enforcement of the law and its intent; however, MSMA requested that the director revise the definition of claim to address problems experienced when providers submit a multi-line claim that includes several claims for several separate services.
RESPONSE: The director appreciates this comment; however, no changes were made to the rule in response. It is the director's understanding that section 376.383, RSMo, allows each line of a multi-line claim to separately be paid, denied, or additional information requested. This is envisioned in the language of the regulation as currently drafted.

COMMENT #17: Joint Committee on Administrative Rules Staff commented that the authority section misidentifies section 375.045, RSMo, as an authorizing statute.
RESPONSE AND EXPLANATION OF CHANGE: The director agrees with this comment and has modified the authority section accordingly.

20 CSR 100-1.060 Standards for Prompt, Fair, and Equitable Settlements under Health Benefit Plans

(2) Definitions. As used in sections 376.383 and 376.384, RSMo, and in the regulations promulgated pursuant thereto—

(A) "Acknowledgment of the date of receipt" shall mean a written notice, whether made in electronic or nonelectronic format, to the claimant by the health carrier or its third-party contractor that it received a claim and setting forth the date on which the claim was received;

(B) "Claim" shall mean a written request or demand by a claimant for the payment of health care services provided, whether made in an electronic format by a provider or in an electronic or nonelectronic format by an insured or enrollee;

(C) "Confirmation of receipt" shall mean a written notice, made in electronic or nonelectronic format, to the health care provider by the health carrier or its third-party contractor that it received an electronically-filed claim. A confirmation of receipt may also constitute an acknowledgement of the date of receipt if it meets the requirements of subsection (A) of this section;

(D) "Date of claim payment" shall mean the date the health carrier or its third-party contractor mails or sends the payment as indicated by the date of—

1. The postmark, if a claim payment is delivered by the U.S. Postal Service;

2. The electronic transmission, if the payment is made electronically;

3. The delivery of the claim payment by a courier; or

4. The receipt by the claimant, if the claim payment is made other than as provided in paragraphs (2)(D)1. through (2)(D)3., above;

(E) "Date of denial" shall mean the date when the health carrier or its third-party contractor mails or electronically sends a denial;

(F) "Date of receipt" shall mean the date upon which the health carrier or its third-party contractor first receives a claim or other information relevant and pertinent to the claim, indicated by the date of—

1. Presumed receipt in subsection (3)(B), below, if a claim is delivered in that manner;

2. The electronic transmission, if the claim is delivered electronically; or

3. The date stamped by the health carrier or its third-party contractor, if the claim is delivered in a manner other than those described above;

(G) "Deny" or "denial" shall mean the health carrier or its third-party contractor mails or sends an electronic or written notice to the claimant refusing to reimburse all or part of the claim, which includes each reason for the denial;

(H) "Health benefit plan" shall mean health benefit plan as defined in section 376.1350, RSMo;

(I) "Notification of claim" shall mean any notification to a carrier or its third-party contractor, by a claimant, which reasonably apprises the health carrier of the facts pertinent to a claim;

(J) "Pay" or "payment" shall mean the health carrier or its third-party contractor mails or sends electronic or written notice including remuneration to the claimant that reimburses all or part of the claim;

(K) "Processing days" shall mean the number of days the health carrier or its third-party contractor has the claim in its possession. Processing days shall not include days in which the health carrier is waiting for a response to a reasonable request for additional necessary information;

(L) "Request for additional information" shall mean when the health carrier or its third-party contractor requests, in writing, whether made in electronic or nonelectronic format, additional necessary information from the claimant to determine if all or part of the claim will be reimbursed. Such a request must meet the following requirements:

1. It shall describe with specificity the clinical and other information to be included in the response; and

2. It shall be relevant and necessary for the resolution of the claim;

(M) "Suspension date" shall mean the date the health carrier or its third-party contractor mails or sends electronic written notice that the claim is suspended;

(N) "Third-party contractor" shall mean an entity or person contracted with the health carrier to receive or process claims for reimbursement of health care services; and

(O) "Working days" shall mean the number of consecutive days not counting weekends or federal holidays.

(3) Communications Between Entities Subject to This Rule.

(A) An entity subject to this rule may deliver written communication as follows:

1. By U.S. mail, first-class delivery; by U.S. mail, return receipt requested; or by overnight mail, and maintain a copy of the receipt or signature card acknowledging receipt of delivery;

2. Electronically and maintain proof of the electronically submitted communication;

3. If the entity accepts facsimile transmissions for the type of communication being sent, then fax the communication and maintain proof of the facsimile transmission; or

4. Hand delivery of the communication and maintain a copy of the signed receipt acknowledging the hand delivery.

(B) Communication is presumed to be received as follows:

1. On the date shown by a date stamp showing the actual date received, if the sender used U.S. mail, first-class delivery; or

2. On the date the delivery receipt is signed, if the sender used an overnight delivery service or the U.S. mail, return receipt requested, or if the sender hand delivered the communication.

(4) Standards for Prompt, Fair, and Equitable Settlements under Health Benefit Plans.

(A) Every health carrier or third-party contractor, upon receiving notification of a claim from a claimant, shall, within ten (10) working days, do one (1) or more of the following—

1. Send an acknowledgment of the date of receipt;

2. Send written notice of status of the claim, whether made in electronic or nonelectronic format, with a request for additional information and from whom it is requested, such as the claimant, the patient, or another health care provider;

3. Pay the total amount of the claim in accordance with the contract between the health carrier and the health care provider or the health carrier and the insured or enrollee;

4. Pay the portion of the claim for which the health carrier acknowledges liability in accordance with the contract between the health carrier and the health care provider or the health carrier and the insured or enrollee, suspend the remainder of the claim, and send a request for additional information;

5. Pay the portion of the claim for which the health carrier acknowledges liability in accordance with the contract between the health carrier and the health care provider or the health carrier and the insured or enrollee, and deny a portion of the claim and specify each reason for the denial; or

6. Deny the claim in its entirety and specify each reason for such denial.

(B) If notice of the claim was received as an electronically filed claim, the health carrier or its third-party contractor shall issue confirmation of receipt of the claim within one (1) working day of its receipt to the claimant that submitted the claim electronically.

(C) If additional information is requested, an appropriate reply shall be made within fifteen (15) processing days of receiving any additional claim information from the person from whom the information was requested. An appropriate reply shall mean payment of all or the undisputed portion of the claim, denial of the claim, suspension of the claim, or a final request for additional information.

(D) All denials, suspensions, or requests for additional information shall be communicated in writing to the claimant and shall include specific reasons why the action was taken or why the information is needed.

(5) Health carriers must conduct a reasonable investigation before denying or suspending a claim in whole or in part. Health carriers shall not suspend or deny claims for the lack of information until it has requested the pertinent additional information on two (2) separate occasions.

(A) Claims.

1. If a claim or portion of a claim remains unpaid after forty-five (45) days after notification of the claim, interest shall accrue beginning from the forty-fifth day after the date of receipt of the claim at a rate equal to one percent (1%) per month of the unpaid balance of the claim until the claim is paid. The interest shall be payable by the health carrier to the health care provider, individual insured, enrollee, or other entity submitting the claim. If the health carrier denies or suspends a claim that is subsequently determined to be the liability of the health carrier, the health carrier will be responsible for the interest from the forty-fifth day of the original date of notification of the claim until the claim is actually paid.

2. Any improperly denied claims that are subsequently determined to be payable shall have interest calculated from the forty-fifth day after the date of receipt of the claim.

3. The health carrier may wait until the claimant's aggregate interest payments reach five dollars ($5) before making interest payment to the claimant.

(B) Duties of the Health Carrier.

1. When a health carrier pays or denies a claim, it shall explain in sufficient detail how each item or service was reimbursed. Specifically, if the health carrier has a contract rate with the health care provider, the health carrier shall indicate which items or services are included in the reimbursement and which items are not included in the reimbursement.

2. Pursuant to the requirements of 20 CSR 100-8.040, health carriers shall maintain and legibly date stamp all documentary material related to the pertinent events of a claim. Pertinent events shall include, but not be limited to, the date of the notification of claim, date of claim payment, date of denial, suspension date, reason for denial or suspension, amount paid, amount denied, amount suspended, date additional information is requested, the nature of the specific additional information requested, and the date such additional information was received.

3. After notification of a claim, if any information on the claim that affects the amount of benefits payable is changed or omitted in the processing of the claim, including any electronic edits, the health carrier or its third-party contractor shall notify the claimant of the modification in writing with specificity.

4. Any contractual agreement between the health carrier and any of its third-party contractors that receives or processes claims, obtains the service of a health care provider to provide health care services, or issues verifications or pre-authorizations may not be construed to limit the health carrier's authority or responsibility to comply with all applicable statutory and regulatory requirements of this rule or of sections 376.383 and 376.384, RSMo.

5. Contracts between health care providers, health carriers, and their respective third-party contractors shall not extend the statutory or regulatory time frames set forth in this rule or in sections 376.383 and 376.384, RSMo.

(C) Complaints Against Health Carriers. Every complaint made by a health care provider to the director shall include: the health care provider's name, address, and daytime phone number; the health carrier's name; the date of service and date(s) the claim was filed with the health carrier; all relevant correspondence between the health care provider and the health carrier, including requests from the health carrier for additional information; a copy of the confirmation of receipt or acknowledgment of the date of receipt of the claim from the health carrier or its third-party contractor, if available; and additional information which the health care provider believes would be of assistance in the department's review.

AUTHORITY: section 376.1007, RSMo 2000 and sections 374.045, 376.383, and 376.384, RSMo Supp. 2008. Original rule filed Sept. 5, 2008.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 100—Insurer Conduct
Chapter 1—Improper or Unfair Claims Settlement Practices

ORDER OF RULEMAKING

By the authority vested in the Department of Insurance, Financial Institutions and Professional Registration under section 376.1007, RSMo 2000 and sections 374.045, 376.383, and 376.384, RSMo Supp. 2008, the director adopts a rule as follows.

20 CSR 100-1.070 is adopted.

A notice of the proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on October 15, 2008 (33 MoReg 1879–1881). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed rule was held November 18, 2008, and the public comment period ended November 25, 2008. At the public hearing, department staff explained the new rule and the director received comments from National Counsel for Prescription Drug Programs (NCPDP), Express Scripts, Medco Health Solutions, Inc. (Medco), and America's Health Insurance Plans (AHIP)

COMMENT #1: National Counsel for Prescription Drug Programs (NCPDP), Express Scripts, and Medco Health Solutions, Inc. (Medco) all commented with concerns regarding the proposed regulation's application to prescription drug cards. NCPDP commented that is has established a standard format for prescription drug cards as well as for combination cards that include both prescription and medical services coverage. Although the proposed rule does not directly affect pharmacy cards, NCPDP expressed concern that the rule may result in confusion and extra expense across a broad spectrum of the industry's members if these cards must be altered to comply with the proposed rule. Express Scripts expressed a similar concern that requiring pharmacy or prescription drug cards to comply with this proposed rule and deviate from the standards already established by the NCPDP would raise administrative costs for pharmacy benefit managers, its clients, and ultimately consumers. Express Scripts stated that pharmacy benefit managers (PBM) rarely re-issue cards, and that the information being required on the cards, according to this rule, may not be available or necessary to the PBM in administering the pharmacy benefit. As such, Express Scripts requested that the director amend the proposed rule to require pharmacy benefit cards to be issued with language consistent with the NCPDP guidelines. Medco also recommended that the director adopt the established standards for prescription drug program identification cards set forth and described in the NCPDP guidelines. Because most, if not all of the states use the NCPDP standard identification card, requiring changes to the information only on cards issued in Missouri would put an undue financial burden on national companies that participate in the Missouri pharmacy benefit market place.

RESPONSE AND EXPLANATION OF CHANGE: Based on the information presented by NCPDP and contained in its Health Care Identification Card – Pharmacy and/or Combination ID Card Implementation Guide, the rule will be modified to exempt from its requirements identification cards that relate solely to the provision of prescription drug benefits.

COMMENT #2: America's Health Insurance Plans (AHIP), commented that it is working with the Council for Affordable Quality Healthcare (CAQH) and other stakeholders in the health care system on a national level on a planned proof of concept that would provide uniform web portal(s) where providers can interface to a critical mass of health plans in an effort to promote quality interactions between plans, providers, and other stakeholders and to reduce costs and frustrations associated with healthcare delivery and administration. As such, AHIP encourages the director to take into account its work being done with respect to simplifying access to patient eligibility and benefit information through the CAQH and its partnership with key provider organizations. AHIP expressed concern as to whether the proposed rule would achieve the intended goals and whether it would result in increased costs, in that health carriers would be required to produce and issue millions of redesigned identification cards. AHIP expressed concern that the cost of this redesign and reissuance of cards would ultimately increase the cost of healthcare for consumers. It also requested clarification regarding the impetus and statutory authority for the proposed regulation and offered to enter into dialogue with the director to determine whether there are more cost-effective and efficient alternatives to achieve the director's objectives. Based on these reasons, AHIP requests that the director withdraw this proposed regulation.

RESPONSE AND EXPLANATION OF CHANGE: The director appreciates the comments and concerns raised by AHIP. It is the director's understanding that similar requirements for health carriers' identification cards exist in other states. As such, health carriers are already bound by the requirement that some information be included on the identification cards indicating whether the plan is a self-funded plan or whether it is a plan regulated by the state department of insurance. Furthermore, the intent of subsection (3)(C) of the rule was to give health carriers approximately one (1) year to modify their systems before they would be required to issue identification cards in compliance with the rule. The director will modify subsection (3)(C) to help clarify this issue. In response to AHIP's question of statutory authority, section 376.384.6, RSMo, requires the director to develop a method by which health care providers may submit complaints to the department relating to carriers' practices which may violate the provisions of sections 376.383 and 376.384, RSMo. The director, pursuant to section 376.384.8, RSMo, also has authority to promulgate rules for the implementation of those laws. Furthermore, sections 376.936(6) and 375.1007(1), RSMo, require health carriers to accurately represent to their insureds the benefits, advantages, conditions, or terms of any policy and to provide relevant facts or policy provisions relating to coverages at issue. The purpose of this rule is to implement those laws by providing a means by which the provider can readily identify whether the acts of the carrier fall under the jurisdiction of the department. For further clarification, the term "DOI" in 20 CSR 100-1.070(3)(A)3. will be changed to indicate "fully insured."

COMMENT #3: Joint Committee on Administrative Rules Staff commented that the authority section misidentifies section 375.045, RSMo, as an authorizing statute.

RESPONSE AND EXPLANATION OF CHANGE: The director agrees with this comment and has modified the authority section accordingly.

20 CSR 100-1.070 Identification Cards Issued by Health Carriers

(1) Applicability.

(A) This rule applies to all health carriers offering or providing a plan of health insurance, health benefits, or health services to individuals and groups.

(B) The provisions of this rule shall not apply to identification cards issued to individuals or groups that relate solely to the provision of prescription drug benefits.

(2) Definitions. As used in this section—

(A) "Health benefit plan" shall mean health benefit plan as defined in section 376.1350(18), RSMo; and

(B) "Health carrier" shall mean health carrier as defined in section 376.1350(22), RSMo.

(3) Identification Cards.

(A) An identification card or similar document issued to insureds or enrollees shall include the following information:

1. The name of the enrollee or insured;

2. The first date on which the enrollee or insured became eligible for benefits under the plan or a toll-free number that a health care provider may use to obtain such information; and

3. Indicate that the health benefit plan offered by the health carrier is regulated by the Department of Insurance, Financial Institutions and Professional Registration by placing "Fully Insured" on the front.

(B) Nothing shall prohibit the issuer of a health benefit plan from using an identification card containing a magnetic strip or other technological component enabling the electronic transmission of information, provided that the information required in this section is printed on the card.

(C) The requirements of this section shall apply as follows:

1. Beginning on March 1, 2010, for all new health benefit plans issued on or after March 1, 2010; and

2. On the first plan anniversary after March 1, 2010, for all health benefit plans already in effect on March 1, 2010.

AUTHORITY: section 376.1007, RSMo 2000 and sections 374.045, 376.383, and 376.384, RSMo Supp. 2008. Original rule filed Sept. 5, 2008.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 200—Insurance Solvency and Company Regulation
Chapter 1—Financial Solvency and Accounting Standards

ORDER OF RULEMAKING

By the authority vested in the director of the Missouri Department of Insurance, Financial Institutions and Professional Registration under section 374.045, RSMo Supp. 2008 and sections 376.370 and 376.380, RSMo 2000, the director amends a rule as follows:

20 CSR 200-1.116 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 1, 2008 (33 MoReg 2358–2369). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing was held on January 6, 2009, and the comment period ended at 5:00 p.m. on January 13, 2009. The Department of Insurance, Financial Institutions and Professional Registration received two (2) written comments on the proposed amendment.

COMMENT #1: David Monaghan with American Family Insurance Group and Bryan Cox with the American Council of Life Insurers suggested a renumbering of the asset adequacy analysis exhibits in paragraph (4)(B)2. of the proposed amendment to reflect changes in the corresponding exhibits in the *Blue Book of Financial Statements*.
RESPONSE: The numbered exhibits have been eliminated in favor of a note directing the use of the appropriate exhibits, pages, and lines of the insurer's annual statement filed with the director.

COMMENT #2: Bryan Cox with the American Council of Life Insurers suggested 1) the insertion of subsection (C) between paragraph (3)(B)5. and subsection (3)(D); 2) that the sub-bullet points following subparagraph (4)(B)6.E. be clarified as modifying all of paragraph (4)(B)6.; and 3) that paragraph (5)(E)2. not be shown as deleted.
RESPONSE AND EXPLANATION OF CHANGE: 1) Subsection (3)(C) was not modified or deleted in the proposed order of rulemaking but was merely not published to save space and, accordingly, need not be republished here although it will continue to appear in the *Code of State Regulations* (CSR); 2) the small roman numerals have been removed from the sub-bullets, so that they no longer appear to refer only to subparagraph (4)(B)6.E.; and 3) the language of paragraph (5)(E)2. has been included in the amendment.

20 CSR 200-1.116 Actuarial Opinion and Memorandum Regulation

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

(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 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 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 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: "I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, as shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31, 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 (c)	Formula Reserves (1)	Additional Actuarial Reserves (a) (2)	Analysis Method (b)	Other Amount (3)	Total Amount (1)+(2)+(3) (4)
TOTAL RESERVES	_____	_____		_____	_____
IMR (Page _____ Line _____)	_____				
AVR (Page _____ Line _____)	_____ (d)				

(a) The additional actuarial reserves are the reserves established under paragraph (3)(E)2.
(b) 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) Statement Items should describe lines of business subjected to asset adequacy analysis and contain appropriate references to the exhibits, pages, and lines of the insurer's annual statement filed with the director to which the amounts listed reconcile.
(d) 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: "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." A statement of reliance on other experts should be accompanied by a statement by each of these experts in the form prescribed by subsection (4)(E).

4. If the appointed actuary has examined the underlying asset and liability records, the reliance paragraph should include 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, the reliance paragraph should include a sentence such as: "In forming my opinion on (specify types of reserves), I relied upon 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 review of the actuarial assumptions and actuarial methods and tests of the calculations I considered necessary." This section shall be accompanied by a statement by each person relied upon in the form prescribed by subsection (4)(E).

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

"The reserves and related items, when considered in light of the assets held by the company with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on 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.)

"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.

"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

"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.

_____
(Signature of Appointed Actuary)

_____
(Address of Appointed Actuary)

_____
(Telephone Number of Appointed Actuary)

_____
(Date)"

(5) Description of Actuarial Memorandum Including an Asset Adequacy Analysis and Regulator Asset Adequacy Issues Summary.

(E) Use of Assets Supporting the Interest Maintenance Reserve and the Asset Valuation Reserve. An appropriate allocation of assets in the amount of the interest maintenance reserve (IMR), whether positive or negative, 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. 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.