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

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 If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission.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

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

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

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

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

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

## Title 2—DEPARTMENT OF AGRICULTURE
## Division 30—Animal Health
## Chapter 9—Animal Care Facilities

## PROPOSED RULE

### 2 CSR 30-9.040 Large Carnivore Act Definitions

*PURPOSE: This rule defines terms used in licensing, operating, and inspecting large carnivore facilities.*

*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 terms defined in sections 578.600 to 578.624, RSMo, in addition to other relative terms pertaining to large carnivores, will be applied for use in 2 CSR 30-9.040 and 2 CSR 30-9.050.

(2) Definitions. As used in 2 CSR 30-9.040 and 2 CSR 30-9.050, the following terms shall mean:

(A) Adequate diet, a diet which is balanced to meet the dietary requirements, both nutritional and caloric, to maintain the health status and meet the needs of the species and age of each animal;

(B) Adequate housing, a facility which provides for sanitary conditions, protection from extreme weather conditions, and proper ventilation and meets the space requirement as defined by the regulations of the United States Department of Agriculture (USDA);

(C) Attending veterinarian, a qualified veterinarian who has a written agreement to perform services for the licensee;

(D) Breeding, to mate adult large carnivores for the purpose of producing offspring;

(E) Circus, an incorporated, class C licensee that is licensed as defined by Title 9, *Code of Federal Regulations*, Part 1, published annually in January, herein incorporated by reference and made a part of this rule, as published by the United States Superintendent of Documents, 732 N Capital Street NW, Washington, DC 20402-0001, phone: toll free (866) 512-1800, DC area (202) 512-1800, website: http://bookstore.gpo.gov, that is temporarily in this state, and that offers skilled performances by lives animals, clowns, and acrobats for public entertainment. This rule does not incorporate any later amendments or additions;

(F) Department, the Missouri Department of Agriculture (MDA);

(G) Director, the Director of Agriculture for Missouri;

(H) Division, the Division of Animal Health of the Missouri Department of Agriculture;

(I) Electronic identification device, an implantable device meeting ISO 11784/11785 standards and containing a fifteen (15)-digit number with an RF frequency of 134.2 Hz.;

(J) Facility, an indoor or outdoor cage, pen, or similar enclosure where a large carnivore is kept;

(K) Facility permit, the authorization obtained from the MDA which allows you to own and/or breed large carnivore(s);

(L) Humane killing, euthanasia must be in compliance with the American Veterinary Medical Association Recommended Methods of Euthanasia, unless a human life is at risk;

(M) Inspector, an individual employed by the Missouri Department of Agriculture or designated by the state veterinarian;

(N) Large carnivore, either of the following:

1. Any of the following large cats of the *Felidae* family that are nonnative to Missouri held in captivity: tiger, lion, jaguar, leopard, snow leopard, clouded leopard, and cheetah, including a hybrid cross with such cat, but excluding any unlisted nonnative cat, or any common domestic or house cat; or

2. A bear of a species that is nonnative to this state and held in captivity;

(O) Licensee, an individual who has been granted a permit under the large carnivore facility regulations;

(P) Livestock, the same meaning as such term is defined in section 267.565, RSMo;

(Q) Movement permit, the authorization obtained from the MDA which allows you to transport large carnivore(s);

(R) Ownership, to possess, keep, or control a large carnivore or supervise or provide for the care and feeding of a large carnivore, including any activity relating to confining, handling, breeding, transporting, or exhibiting the large carnivore;

(S) Qualified veterinarian, a veterinarian licensed to practice veterinary medicine under Chapter 340, RSMo, under the jurisdiction of the Missouri Veterinary Medical Board;

(T) Research facility, a federal research facility as defined by Title

9, *Code of Federal Regulations*, Part 1, published annually in January, herein incorporated by reference and made a part of this rule, as published by the United States Superintendent of Documents, 732 N Capital Street NW, Washington DC, 20402-0001, phone: toll free (866) 512-1800, DC area (202) 512-1800, website: http://bookstore.gpo.gov, or a facility required to be registered by USDA pursuant to Title 9, *Code of Federal Regulations*, Part 1. This rule does not incorporate any later amendments or additions;

(U) State veterinarian, the Director of the Animal Health Division of the Department of Agriculture; and

(V) Transport, to move a large carnivore from one (1) location to another.

*AUTHORITY: section 578.600, RSMo Supp. 2010. Original rule filed June 23, 2011.*

*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 Department of Agriculture, Dr. Taylor H. Woods, State Veterinarian, PO Box 630, 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 2—DEPARTMENT OF AGRICULTURE
## Division 30—Animal Health
## Chapter 9—Animal Care Facilities

## PROPOSED RULE

### 2 CSR 30-9.050 Large Carnivore Act Permit and Standards

*PURPOSE: This rule sets forth the standards and requirements for the permitting and operation of large carnivore facilities.*

*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) Application for Permits and Conditions for Issuing.

(A) Any individual possessing and/or breeding large carnivore(s) shall obtain a permit from the Missouri Department of Agriculture.

1. A permit application form must be completed and submitted to the department.

2. Fee must be paid in full.

3. One (1) permit is required for each facility housing large carnivore(s).

4. The facility must be inspected by an inspector prior to obtaining a permit and annually thereafter.

5. Permit must be renewed on an annual basis prior to the expiration date.

6. Licensee is responsible for renewing license and submitting a renewal form.

7. The permit must be obtained within thirty (30) days prior to acquiring a large carnivore.

(B) The licensee must—

1. Be at least twenty-one (21) years of age;

2. Have not been found guilty, or pled guilty to, a violation of any state or local law prohibiting neglect or mistreatment of any animal or, within the previous ten (10) years, any felony;

3. Inform the local law enforcement agencies that you have obtained a large carnivore permit;

4. Have each large carnivore microchipped, or the procedure supervised, by a licensed veterinarian.

A. The microchip number and a description of the large carnivore must be maintained for the duration of ownership and for five (5) years post transfer of ownership.

B. The microchip record must be maintained for one (1) year after the large carnivore is deceased.

C. The microchip record must be available to the department or designated authority upon request within twenty-four (24) hours; and

5. Maintain health and ownership records of the large carnivore(s) for the life of the large carnivore(s).

A. The records must list the description and microchip number of each large carnivore.

B. The records must document any veterinary services, i.e., physical exams, treatments, euthanasia, etc.

C. The records must document any natural additions.

D. The department must be notified within seven (7) working days of any change in inventory.

E. The records must be available to the department or designated authority upon request within twenty-four (24) hours.

F. The records must be kept for one (1) year after the death or five (5) years after the transfer of ownership of any large carnivore.

(C) The licensee shall pay the facility permit fee to the Department of Agriculture.

1. An initial fee shall be set by the director of agriculture not to exceed two thousand five hundred dollars ($2,500).

A. Breeder and/or exhibition—two thousand five hundred dollars ($2,500) per facility.

B. Non-breeder and/or non-exhibition—five hundred dollars ($500) per facility.

2. An annual renewal fee of five hundred dollars ($500) per facility will be assessed provided the renewal is made prior to lapse of the previous permit.

(D) The licensee must provide the department the following information prior to receiving an initial/renewal permit and must notify the department of any changes within thirty (30) days, unless a shorter time period is noted:

1. Name, address, telephone, and any pertinent contact information of the permit holder and the address where each large carnivore will be kept;

2. Name and address of the attending veterinarian;

3. Microchip identification number, manufacturing information, and name and address of the veterinarian inserting the microchip;

4. Provide proof of liability insurance of not less than two hundred fifty thousand dollars ($250,000);

5. A complete annual inventory of each large carnivore facility which includes:

A. Number of large carnivores according to species;

B. The manufacturer and manufacturer's number of the electronic device implanted in each large carnivore. The name and address of the veterinarian who placed the microchip;

C. The location of each large carnivore. The permit holder must notify the department within ten (10) business days of a change of address or location where the large carnivore is kept;

D. A digital color photograph of each of the large carnivores;

E. The approximate age, sex, color, weight, scars, and any distinguishing marks of each large carnivore; and

F. Any additions or deletions to the group which must reconcile with previous inventory.

(2) The attending veterinarian must agree to the following:
(A) Provide a written summary of the physical examination and documentation of any veterinary services provided to the licensee;
(B) Place a microchip and provide information about the manufacturer;
(C) Provide a Certificate of Veterinary Inspection when required for transport;
(D) Collect the appropriate sample for deoxyribonucleic acid (DNA) registration; and
(E) Sign a veterinary care agreement form.

(3) The licensee must agree to the following:
(A) Notification of any death of the large carnivore to the department within ten (10) working days—
1. Report microchip identification number to the department;
2. Provide a description (age, color, sex, etc.) of the deceased carnivore; and
3. Provide a necropsy report if a necropsy was performed to determine the cause of death;
(B) If a large carnivore escapes or is released, immediately notify law enforcement and the department via telephone and follow up with a written statement explaining the circumstances and action taken within five (5) working days;
(C) Confine the large carnivore(s) in a primary enclosure as required by the department on the licensee's premises. The licensee must not allow any large carnivore(s) outside of the primary enclosure unless the large carnivore is moved pursuant to any of the following:
1. To receive veterinary care from the attending veterinarian;
2. To comply with the directions of the department or law enforcement officials; or
3. To transfer ownership and possession of the large carnivore(s), pending prior approval by the department; and
(D) Must comply with all state regulations and federal regulations as defined by Title 9, *Code of Federal Regulations,* Part 1, published annually in January, herein incorporated by reference and made a part of this rule, as published by the United States Superintendent of Documents, 732 N Capital Street NW, Washington, DC 20402-0001, phone: toll free (866) 512-1800, DC area (202) 512-1800, website: http://bookstore.gpo.gov., regarding housing and transportation. This rule does not incorporate any later amendments or additions.
1. Any person transporting a large carnivore must acquire a Certificate of Veterinary Inspection and a movement permit and be in compliance with state and federal regulations.
2. The facilities and standards of care must be in compliance with United States Department of Agriculture (USDA) standards.

(4) If the licensee is no longer able to care for the large carnivore(s), all of the following apply:
(A) The licensee must notify the department, stating the planned disposition of the large carnivore(s);
(B) The licensee must dispose of the large carnivore(s) by transferring ownership and possession to another permit holder, upon prior approval by the department, or providing for its destruction by euthanasia as required by the department; and
(C) The disposal of the large carnivore must be documented by an employee of the department, law enforcement officer, or attending veterinarian.

(5) The following are not required to obtain a permit for possessing, breeding, or transporting large carnivore(s):
(A) An animal control shelter or animal protection shelter that is providing temporary care to a large carnivore for ninety (90) days or less and has proper facilities to handle the large carnivore;
(B) A law enforcement officer or inspector acting under the "Large Carnivore Act";
(C) A veterinarian temporarily in possession of a large carnivore to provide veterinary care for or humanely euthanize the large carnivore;
(D) A circus;
(E) The University of Missouri-College of Veterinary Medicine; or
(F) A zoological park that is a part of a district created under Chapter 184, RSMo.

*AUTHORITY: section 578.600, RSMo Supp. 2010. Original rule filed June 23, 2011.*

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

*PRIVATE COST: This proposed rule may cost private entities an estimated five hundred dollars ($500) to two thousand five hundred dollars ($2,500) per facility housing large carnivore(s) 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 Department of Agriculture, Dr. Taylor H. Woods, State Veterinarian, PO Box 630, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the* ***Missouri Register****. No public hearing is scheduled.*

## FISCAL NOTE
## PRIVATE COST

**I. Department Title: Agriculture**
**Division Title: Animal Health**
**Chapter Title: Animal Care Facilities**

| **Rule Number and Title:** | 2 CSR 30-9.050<br>Large Carnivore Permit and Standards |
|---|---|
| **Type of Rulemaking:** | Proposed |

## II. SUMMARY OF FISCAL IMPACT

| Estimate of the number of entities by class which would likely be affected by the adoption of the rule: | Classification by types of the business entities which would likely be affected: | Estimate in the aggregate as to the cost of compliance with the rule by the affected entities: |
|---|---|---|
| 1E | Any person possessing, breeding or transporting a large carnivore | $2,500 – breeder and/or exhibition<br><br>$500 – non-breeder and/or non-exhibition<br><br>$500 – annual renewal for all facilities |

## III. WORKSHEET

Initial permit fee:
$2,500 – breeder and/or exhibition
$ 500 – non-breeder and/or non-exhibition

Renewal permit fee:
$500 per facility

## IV. ASSUMPTIONS

The numbers of individuals that own these animals is unknown

The initial permit fee to a facility may be $500 or $2,500 to be in compliance with these regulations and $500 annual renewal fee for each facility.

**Title 2—DEPARTMENT OF AGRICULTURE**
**Division 30—Animal Health**
**Chapter 9—Animal Care Facilities**

## PROPOSED RULE

**2 CSR 30-9.100 Eurasian, Russian, and Captured Feral Swine Facility Act Definitions**

*PURPOSE: This rule defines terms used in licensing, operating, and inspecting feral swine facilities.*

(1) The terms defined in sections 267.010–267.730, RSMo, in addition to other relative terms pertaining to feral swine, will be applied for use in 2 CSR 30-9.100 and 2 CSR 30-9.110.

(2) Definitions. As used in 2 CSR 30-9.100 and 2 CSR 30-9.110, the following terms shall mean:
(A) Adequate diet, a diet which is balanced to meet the dietary requirements, both nutritional and caloric, to maintain the health status and meet the needs of the species and age of each animal;
(B) Attending veterinarian, a qualified veterinarian who has a written agreement to perform services for the licensee;
(C) Department, the Missouri Department of Agriculture (MDA);
(D) Director, the Director of Agriculture for Missouri;
(E) Division, the Division of Animal Health of the Missouri Department of Agriculture;
(F) Facility, an indoor or outdoor cage, pen, or similar enclosure where feral swine are kept;
(G) Facility permit, the authorization obtained from the MDA which allows you to own or breed feral swine;
(H) Feral swine is defined as any of the following:
1. Swine that are free roaming without any identifiable owner;
2. Russian or Eurasian swine; or
3. Javelinas and peccaries;
(I) Humane killing, euthanasia must be in compliance with the American Veterinary Medical Association Recommended Methods of Euthanasia, unless a human life is at risk;
(J) Inspector, an individual employed by the Missouri Department of Agriculture or designated by the state veterinarian;
(K) Licensee, an individual who has been granted a permit under the feral swine facility regulations;
(L) Livestock, the same meaning as such term is defined in section 267.565, RSMo;
(M) Movement permit, the authorization obtained from the MDA which allows you to transport feral swine;
(N) Qualified veterinarian, a veterinarian licensed to practice veterinary medicine under Chapter 340, RSMo, under the jurisdiction of the Missouri Veterinary Medical Board; and
(O) State veterinarian, Director of the Animal Health Division of the Department of Agriculture.

*AUTHORITY: section 270.260, RSMo Supp. 2010. Original rule filed June 23, 2011.*

*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 Department of Agriculture, Dr. Taylor H. Woods, State Veterinarian, PO Box 630, 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 2—DEPARTMENT OF AGRICULTURE**
**Division 30—Animal Health**
**Chapter 9—Animal Care Facilities**

## PROPOSED RULE

**2 CSR 30-9.110 Feral Swine Confinement Permit and Standards**

*PURPOSE: This rule sets forth the standards and requirements for the permitting and operation of feral swine facilities.*

(1) Application for Permits and Conditions for Issuing.
(A) Any individual possessing, breeding, or transporting feral swine shall obtain a permit from the Missouri Department of Agriculture.
1. A facility permit application form must be completed and submitted to the department.
2. Fee must be paid in full.
3. One (1) permit is required for each location containing feral swine.
4. Permit must be renewed on an annual basis prior to the expiration date.
5. Licensee is responsible for renewing license and submitting a renewal form.
6. The permit must be obtained within thirty (30) days prior to acquiring feral swine.
7. The licensee must meet all interstate and intrastate movement requirements (2 CSR 30).
8. The licensee must have brucellosis and pseudorabies testing in accordance with the requirements of a validated and qualified herd.
(B) The licensee must—
1. Be at least twenty-one (21) years of age;
2. Have not been found guilty, or pled guilty to, a violation of any state or local law prohibiting neglect or mistreatment of any animal or, within the previous ten (10) years, any felony;
3 Officially identify each animal and record identification.
A. The identification records must be maintained during ownership—
(I) One (1) year after the animal is deceased; or
(II) Five (5) years after post transfer of ownership to another party or individual.
B. The identification records must be available to the department or designated authority upon request within twenty-four (24) hours; and
4. Maintain health and ownership records of the feral swine.
A. The records must document any veterinary services, i.e., physical exams, treatments, euthanasia, etc.
B. The records must document the name, address, and contact information for any transfer of ownership, i.e., sales and purchases.
C. The records must document any natural additions.
D. The department must be notified within seven (7) working days of any change in inventory, except natural additions.
E. The records must be available to the department or designated authority upon request within twenty-four (24) hours.
F. The records must be kept for one (1) year after the death or five (5) years after the transfer of ownership of any feral swine.
(C) The licensee shall pay the facility permit fee to the Department of Agriculture.
1. An initial fee of two thousand five hundred dollars ($2,500) will be assessed for the first permit.
2. A renewal fee of five hundred dollars ($500)/feral swine permit will be assessed annually provided the renewal is made prior to lapse of the previous permit.
(D) The licensee must provide the department the following information prior to receiving an initial/renewal facility permit and must notify the department of any changes within thirty (30) days, unless a shorter time period is noted:

1. Name, address, telephone number, and any pertinent contact information of the permit holder and the physical address or GPS coordinates of each facility where feral swine are kept;

2. Name and address of the attending veterinarian;

3. A complete annual inventory of feral swine which includes:

A. Number of feral swine (indicate species if warranted);

B. Age and gender of each individual;

C. Official identification of each individual;

D. The location of the feral swine facility. The permit holder must notify the department within ten (10) business days of a change of address or location where the feral swine are kept; and

E. Disposition of any animal no longer on the inventory and any natural or purchased additions, including addresses of individuals from whom feral swine were purchased or to whom feral swine were sold. Any additions or deletions to the group must reconcile with previous inventory.

(2) The attending veterinarian must agree to the following:

(A) Provide a written summary of the physical examination and documentation of any veterinary services provided to the licensee;

(B) Identify all the feral swine with official identification;

(C) Provide a health certificate when required for transport; and

(D) Sign a veterinary care agreement form.

(3) The licensee must agree to the following:

(A) If a feral swine escapes or is released, immediately notify the department via telephone and follow up with a written statement explaining the circumstances and action taken within five (5) working days;

(B) Confine the feral swine in a primary enclosure as required by the department on the licensee's premises. The licensee must not allow any feral swine outside of the primary enclosure unless the feral swine are moved pursuant to any of the following:

1. To receive veterinary care from the attending veterinarian;

2. To comply with the directions of the department or law enforcement officials; or

3. To transfer ownership and possession of the feral swine pending prior approval by the department;

(C) Provide adequate nutrition and water; and

(D) Provide adequate shelter, if needed.

(4) If the licensee is no longer able to care for the feral swine, all of the following apply:

(A) The licensee must notify the department, stating the planned disposition of the feral swine;

(B) The licensee must dispose of the feral swine by transferring ownership and possession to another permit holder, upon prior approval by the department, or providing for its destruction by euthanasia as required by the department; and

(C) The disposal of the feral swine must be documented by an employee of the department, law enforcement officer, or attending veterinarian.

(5) The confinement area shall meet the following requirements:

(A) The facility must be completely enclosed in a building; or

(B) The fencing shall be constructed of twelve (12)-gauge woven wire, at least five feet (5') high, and topped with one (1) strand of electrified wire. An additional two feet (2') of such fencing shall be buried and angled underground toward the enclosure interior. A fence of equivalent or greater strength and design to prevent the escape of hogs may be substituted with written application and approval by the department.

*AUTHORITY: section 270.260, RSMo Supp. 2010. Original rule filed June 23, 2011.*

*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 cost private entities five hundred dollars ($500) to two thousand five hundred dollars ($2,500) 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 Department of Agriculture, Dr. Taylor H. Woods, State Veterinarian, PO Box 630, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

## FISCAL NOTE
## PRIVATE COST

**I. Department Title: Agriculture**
**Division Title: Animal Health**
**Chapter Title: Animal Care Facilities**

| **Rule Number and Title:** | 2 CSR 30-9.110<br>Feral Swine Confinement Permits and Standards |
|---|---|
| **Type of Rulemaking:** | Proposed |

**II. SUMMARY OF FISCAL IMPACT**

| Estimate of the number of entities by class which would likely be affected by the adoption of the rule: | Classification by types of the business entities which would likely be affected: | Estimate in the aggregate as to the cost of compliance with the rule by the affected entities: |
|---|---|---|
| 1E | Any person possessing, or transporting live Russian or European swine or wild-caught swine | $2,500 will be assessed for the first permit;<br><br>$500 annual renewal fee for each facility |

**III. WORKSHEET**

Permit fee - $2,500 for each facility

Renewal fee - $500 for each facility

**IV. ASSUMPTIONS**

The numbers of individuals that own these animals are unknown as well as the number of animals that fall under this category.

Therefore, the cost to private individuals is unknown at this time.

## Title 2—DEPARTMENT OF AGRICULTURE
## Division 80—State Milk Board
## Chapter 2—Grade A Pasteurized Milk Regulations

## PROPOSED RULE

### 2 CSR 80-2.190 State Milk Board Grade A Milk Policies

*PURPOSE: This rule provides for the adoption into regulation of certain policies of the State Milk Board. None of the following regulations should be interpreted to conflict with existing regulations set forth at 2 CSR 80-2 et seq.*

(1) Added Water as Milk Adulterant.

(A) Samples for added water shall be collected and analyzed at least once each six (6) months. Compliance is based on a freeze point of −0.525 degrees centigrade. After five (5) days from the date of notice of the first unsatisfactory sample, a second sample should be collected and analyzed for added water. If the producer's second sample violates the freeze point test, the State Milk Board will automatically suspend the producer's permit. The producer's permit shall remain suspended until the producer's milk passes the freeze point test. A repeat violation of the freeze point test within a six (6)-month period following a permit suspension for added water will result in immediate suspension of the producer's permit. Repeated offenses during the same six (6)-month period may result in permit revocation after a hearing before the State Milk Board. No on-farm inspection for permit reinstatement is required after an added-water violation.

(2) Authentic Freeze Point Procedure.

(A) In order to obtain uniformity in establishing an authentic freezing point, the following procedure should be implemented:

1. The producer must request the assistance for the establishment of an authentic freeze point to the State Milk Board in writing;

2. The State Milk Board will notify the servicing sanitarian and fieldman of the request. In the absence of a fieldman, two (2) sanitarians from the State Milk Board or its agent should implement the procedure;

3. On the date of the test, the producer must make sure to—

A. Thoroughly wash, rinse, and sanitize all milk contact surfaces after the morning milking and milk pickup;

B. Maintain all milk contact surfaces in a manner to allow complete drainage, including the pump and all low points in the milking equipment to eliminate any entrapped water;

C. Not allow milk contact surfaces to be sanitized or allow any water to come in contact with any milk contact surfaces after the State Milk Board or its agents have arrived for testing;

D. Not dip inflations between cows or perform any procedure that could allow any water to enter the milk supply; and

E. Prepare for and perform evening milking as normal;

4. At the conclusion of the milking procedure, the producer should not flush the pipeline with water while the pipeline is attached to the bulk tank. This is a prohibited procedure at any time. As soon as the milk has entered the bulk tank and has remained quiescent for at least five (5) minutes, the State Milk Board or its agent should measure the milk, take a sample of the milk, and place it on ice immediately;

5. The producer must follow the procedures outlined in paragraph (2)(A)3. above in order to allow all cleaned and sanitized surfaces to drain overnight;

6. Thirty (30) minutes prior to normal milking time the next morning, the State Milk Board or its agents should measure the milk in the bulk milk tank after a quiescent period of at least five (5) minutes. Next, the State Milk Board or its agents should agitate the milk thoroughly and collect a second sample;

7. The producer should follow the same procedure utilized in the previous milking to ensure that no water is allowed to come in contact with, or obtain entrance into, the milk supply;

8. At the end of the second milking, the State Milk Board or its agent must thoroughly agitate the milk and collect a sample;

9. The State Milk Board or its agent should transport the three (3) milk samples on ice directly to an approved milk testing laboratory. The laboratory should be notified in advance and arrangements should be made to conduct the freeze point test. The sample collected at the end of the first milking and the sample collected prior to the beginning of the second milking should provide a freezing point of a variance not greater than −0.002 degrees centigrade. There may be a slight variance in the two (2) samples as carbon dioxide in milk passes off as a gas between the night and morning milkings. If the variance is greater than −0.002 degrees centigrade, the milk itself was altered between milkings by something other than the release of carbon dioxide. To prevent such an occurrence, the producer should lock the milk house door between these tested milkings; and

10. If the authentic freeze point procedure outlined in this regulation is used, the producer will document the procedure and provide documentation to the State Milk Board. The samples collected immediately after the two (2) milkings will be the official non-water freezing record for the producer. For enforcement purposes, the producer will be allowed a freezing point of −0.005 degrees centigrade less than the results of the lowest number of the two (2) officially tested samples that were collected after the evening and morning milkings. Once established, the authentic freezing point will remain in effect for a producer until the producer's feeding program or herd is substantially changed.

(3) Antibiotic Drug Residue Test.

(A) Whenever an antibiotic drug residue test is found to be positive, the State Milk Board shall immediately suspend the producer's permit.

(4) Appendix N.

(A) Whenever a bulk milk truck tank tests positive for antibiotic drug residue, the State Milk Board shall randomly verify the disposition of at least ten percent (10%) of milk tank truck loads. A memo for record of this verification will be attached to the Appendix N report.

(5) Water for Use in Milk House.

(A) Water sampling procedure for water used in the milk house will be as follows:

1. Three (3) consecutive unsatisfactory water samples shall result in a degrade;

2. Sixty (60) days is the maximum time allowed between the second bad sample collected and degrading sample collection;

3. A producer's permit is considered to be under warning during the interval that the water sample is testing unsafe. A new well or continuous disinfection system of the well should be considered a new water source and would result in a return to regulatory procedure step one above;

4. It is not the duty of the sanitarian to witness, or participate in, the act of chlorination; and

5. A producer who previously has incurred three (3) consecutive bad samples as a Grade A producer must be given thirty (30) days as a manufacturing grade producer in which to obtain a well water sample in compliance with state regulations.

(6) Permit Suspension.

(A) Following an initial inspection or a reinstatement inspection, a new producer or a producer under permit suspension must ship milk within seven (7) calendar days or one hundred sixty-eight (168) hours. If milk is not shipped within the required time, the barn must be re-inspected to maintain sanitary conditions prior to milk marketing.

(B) Producers who incur three (3) permit suspensions within a twelve (12)-month period shall appear before the State Milk Board or its agents for a pre-hearing. If the producer incurs an additional

suspension in the following six (6) months, the producer may request a hearing before the State Milk Board.

(C) Appendix N Violations. A pre-hearing will be held after two (2) violations for antibiotics in a twelve (12)-month period, and a third antibiotics violation in a twelve (12)-month period will result in a permit revocation hearing before the State Milk Board.

(7) Grade A Permits Automatically Degraded After One Hundred Eighty (180) Days of Inactivity.

(A) A Grade A permit issued to a producer that is in degrade status for one hundred eighty (180) consecutive days will be eliminated from the records. A producer that has lost a permit in this manner will need to reapply and comply with existing Grade A standards before obtaining a new permit. All producers issued a new Grade A permit will be placed on accelerated sampling in accordance with the current Grade A Pasteurized Milk Ordinance to establish a quality history.

(8) Milk Procurers.

(A) Milk procurers may pick up Grade A producers being diverted to manufacturing utilization along with producers of the manufacturing market when arrangements can be made for providing samples and other necessary information.

(9) Route Trucks.

(A) When a farm milk truck delivers a load of milk to a plant or receiving location, the truck may start a second route without general washing and sanitizing within one (1) hour from emptying to first milk picked up except when the milk delivered is found to be contaminated with chemicals such as antibiotics.

(10) Access to Dairy Farm.

(A) Dairy farmers shall provide serviceable access to the dairy through a properly maintained road or driveway. Each road or driveway must be reasonably free of ruts, ridges, potholes, overhanging limbs, and any other attributes that will damage or contaminate the entering service vehicles, including milk trucks. It is the dairy farmer's responsibility to clear winter events of ice and snow to assure access for milk collection in accordance with these regulations.

(11) Farm Bulk Milk Collections.

(A) Farm bulk milk collections shall be made at least once every forty-eight (48) hours or every other day. Extended pickups may be granted by individual request to the executive secretary of the State Milk Board with information showing use of milk outside the Grade A market. This regulation is barring an act of God or other emergencies beyond the control of the hauler or producer.

(12) Milking Time Inspections—When Required.

(A) A milking time inspection shall be conducted on a new producer.

(B) A milking time inspection should be conducted when reinstating a producer permit that has been suspended for high bacteria counts, sanitation violations, or antibiotics and/or other adulterants. If it is impractical to conduct a milking time inspection at the time of reinstatement, the milking time inspection must be made within a reasonable amount of time following reinstatement. An inspection following reinstatement after suspension for somatic cell count violations is not required.

(C) Additional milking time inspections should be made in relation to producer problems at the designation of the State Milk Board or its designated representative.

(D) A milking inspection will be made on every producer within a reasonable time frame.

(13) Distributors.

(A) This regulation affects inspection and permitting of distributors.

1. A distributor number is "D" plus the required number of digits in each contractee's permit number series.

2. "Distributor" is defined as an individual or company that handles finished dairy products beyond the responsibility of the dairy plant and prior to delivery to retailers and/or consumers and any milk processing plant-owned branch operation in which a permanent or mobile-milk cooler is operated.

3. Distribution permits shall be issued by the contractee responsible for the area in which the distributor is located.

4. Permanent branch or independent distributing points, such as milk coolers, shall be inspected at least once each six (6) months according to the following current Grade A Pasteurized Milk Ordinance items:

A. Item 2p. Walls and Ceilings – Construction;
B. Item 6p. Toilet-Sewage Disposal Facilities;
C. Item 7p. Water Supply;
D. Item 8p. Handwashing Facilities;
E. Item 15p. Protection from Contamination;
F. Item 17p. Cooling of Milk and Milk Products;
G. Item 20p. Personnel - Cleanliness;
H. Item 21p. Vehicles; and
I. Item 22p. Surroundings.

5. Mobile distributors shall be inspected once every six (6) months and checked for the following current Grade A Pasteurized Milk Ordinance items:

A. Item 15p. Protection from Contamination;
B. Item 17p. Cooling of Milk and Milk Products;
C. Item 20p. Personnel - Cleanliness;
D. Item 21p. Vehicles; and
E. Item 22p. Surroundings.

(14) Sanitizers.

(A) To be acceptable for use as a chemical sanitizer for milk contact surfaces, a product must—

1. Be clearly marked with an Environmental Protection Agency (EPA) registration number on its label;

2. Be clearly marked with instructions on the label, or instructions must be posted in the milk room that it is for use on milk contact surfaces;

3. Include a simple, practical test available to determine the strength of the sanitizing solution; and

4. Comply with the requirements of Appendix F of the current Grade A Pasteurized Milk Ordinance.

(B) The State Milk Board recognizes and accepts the use of certain quaternary ammonium compounds (QAC) as chemical sanitizers for milk contact surfaces provided the QAC meets the preceding requirements of policy 14, part 1-a, b, c, d and 21 CFR 178.1010 with the exception: QAC's are not acceptable sanitizers for sampling equipment. Since chlorhexidine is not listed in 21 CFR 178.1010, it is unacceptable as a sanitizer for dairy equipment, udders, and teats of dairy cows.

(15) Adequate Cooling.

(A) Adequate cooling of Grade A milk as required by the current Grade A Pasteurized Milk Ordinance is adversely affected if the first milking into a farm bulk tank does not touch the agitator making the milk in this instance non-grade A for marketing purposes. The portion of an agitator used for washing (spatter spray) is not acceptable for agitating milk.

(16) Transfer from One Milk Marketing Agency to Another.

(A) When a producer requests a transfer from one milk marketing agency to another, there is a mandatory three (3)-day waiting period after receipt of the transfer requested by the contracted inspection agency excluding weekends and holidays. The three (3)-day period may be waived when agreeable to both marketing agencies.

(17) Barn Plans.

(A) Barn plan review is to be accomplished by the State Milk Board or its agents provided these plans conform to the current Grade A Pasteurized Milk Ordinance and the current State Milk Board Informational Guide for Construction and Reconstruction of Milking Facilities as adopted by the State Milk Board. A copy of approved barn plans must be filed with the State Milk Board office. Barn plans that deviate from these requirements may be submitted to the State Milk Board for review and approval along with recommendation by the local inspection agency regarding recommended approval or disapproval of the plan.

(B) Each approved barn plan must identify all equipment and show dimensions and location including pipe lengths and physical break locations. All location of equipment and dimensions must be clearly shown in accordance with the informational guide. Other facilities to be shown are: vestibule, feed room, toilet rooms, equipment storage, stanchions, operator pit, steps, location cows enter and exit, type of barn, cow holding area, and housing area when part of contingent construction.

(C) The barn plan should show all dimensions drawn to scale as indicated.

(D) The name of the sanitarian/inspector when servicing the facility must be identified.

(E) Identify the preparer of the plan by name and affiliation.

(F) Identify the name and address of the person for whom the plan is developed.

*AUTHORITY: section 196.939, RSMo 2000. Original rule filed June 21, 2011.*

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

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

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the State Milk Board at 1616 Missouri Boulevard, Jefferson City, MO 65109. To be considered comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. A public hearing is scheduled for September 7, 2011 from 10 a.m.–11 a.m. at the State Milk Board Office at the Missouri Department of Agriculture, 1616 Missouri Boulevard, Jefferson City, Missouri 65109.*

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

### PROPOSED AMENDMENT

**10 CSR 10-6.070 New Source Performance Regulations**. The commission proposes to amend subsections (1)(A) and (1)(B). If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency for delegation of enforcement authority. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address listed in the Notice of Public Hearing at the end of this rule. More information concerning this rulemaking can be found at the Missouri Department of Natural Resources' Environmental Regulatory Agenda website, www.dnr.mo.gov/regs/index.html.

*PURPOSE: This rule establishes acceptable design and performance criteria for specified new or modified emission sources. The purpose of this rulemaking is to adopt by reference new emission standards, updates, and clarifications to existing federal rule 40 CFR 60 that were promulgated during calendar year 2010. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is elements of the State/EPA work plan and Title V Operating Permit Program requirements.*

(1) Applicability.

(A) The provisions of 40 CFR *[part]* 60 promulgated as of June 30, *[2009]* **2010**, and *Federal Register* Notices *[74 FR 51408]* **75 FR 54970** and *[74 FR 51977]* **75 FR 55636** promulgated from July 1, *[2009]* **2010**, through December 31, *[2009]* **2010**, shall apply and are hereby incorporated by reference in this rule, as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, DC 20408. This rule does not incorporate any subsequent amendments or additions.

(B) Exceptions to *[the adoption]* **subsection (1)(A) of this rule** are as follows:

1. Sections 60.4, 60.9, and 60.10 of subpart A;
2. Subpart B in its entirety;
3. Those provisions which are not delegable by the United States Environmental Protection Agency (EPA)*[. Examples of these are listed as follows:*

*A. Innovative Technology Waivers (for example, sections 60.47, 60.286, and 60.398);*

*B. Commercial Demonstration Permits (for example, section 60.45(a));*

*C. Alternative or Equivalent Methods (for example, sections 60.8(b)(2), 60.8(b)(3), 60.11(e), 60.114(a), 60.195(b), 60.302(d)(3), 60.482-1(c)(2), 60.484, 60.493(b)(2)(i)(A), 60.496(a)(1), 60.592(c), and 60.623); and*

*D. National Consistency (for example, sections 60.332(a)(3) and 60.335(f)(1))]*; and

4. Incinerators which are subject to Hazardous Waste Management Commission rule 40 CFR 264, subpart O**,** as incorporated in 10 CSR 25-7.264**,** shall not be subjected to the requirements of this rule. The exemptions granted under 40 CFR 264.340(b)**,** as incorporated in 10 CSR 25-7.264**,** are subject to this rule. All other applicable requirements of this chapter shall remain in effect as to the incinerators.

*AUTHORITY: section 643.050, RSMo 2000. Original rule filed Dec. 10, 1979, effective April 11, 1980. For intervening history, please consult the **Code of State Regulations**. Amended: Filed July 1, 2011.*

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

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

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed amendment will begin at 9:00 a.m., September 29, 2011. The public hearing will be held at the Holiday Inn Southeast, Grand Ballroom A, B, and C, 9103 East 39th Street, Kansas City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Interested persons, whether or not heard, may submit a written or email statement of their views until 5:00 p.m., October 6, 2011. Written comments shall be sent to Chief, Air Quality Planning Section, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to apcprulespn@dnr.mo.gov.*

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

## PROPOSED AMENDMENT

**10 CSR 10-6.075 Maximum Achievable Control Technology Regulations**. The commission proposes to amend subsections (1)(A) and (1)(B) and section (3). If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency for delegation of enforcement authority. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address listed in the Notice of Public Hearing at the end of this rule. More information concerning this rulemaking can be found at the Missouri Department of Natural Resources' Environmental Regulatory Agenda website, www.dnr.mo.gov/regs/index.html.

*PURPOSE: This rule establishes emission control technology, performance criteria, and work practices to achieve emission standards for sources that emit or have the potential to emit hazardous air pollutants. The purpose of this rulemaking is to adopt by reference new emission standards, updates, and clarifications to existing federal rule 40 CFR 63 that were promulgated during calendar year 2010. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is elements of the State/EPA work plan and Title V Operating Permit Program requirements.*

(1) Applicability.

(A) The provisions of 40 CFR *[part]* 63 promulgated as of June 30, *[2009]* **2010**, and *Federal Register* Notices *[74 FR 55683 and 74 FR 46495]* **75 FR 41991, 75 FR 51570, 75 FR 54970, 75 FR 55636, and 75 FR 77760** promulgated from July 1, *[2009]* **2010**, through December 31, *[2009]* **2010**, shall apply and are hereby incorporated by reference in this rule, as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, DC 20408. This rule does not incorporate any subsequent amendments or additions.

(B) Exceptions to *[the adoption]* **subsection (1)(A) of this rule** are as follows:

1. Sections 63.13 and 63.15(a)(2) of subpart A; and
2. Those provisions which are not delegable by the United States Environmental Protection Agency (EPA). *[Examples of these include alternative or equivalent methods (for example, sections 63.102(b), 63.150(l)(1) through (l)(4), and 63.177).]*

(3) General Provisions. The following are the Maximum Achievable Control Technology (MACT) 40 CFR *[part]* 63 subparts that are adopted by reference in subsection (1)(A) of this rule. Individual source operations or installations in these categories are subject to this rule based on category specific parameters, as specified in the applicable subpart:

**Subpart Title**

(F) National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry

(G) National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater

(H) National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks

(I) National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks

(L) National Emission Standards for Coke Oven Batteries

(M) National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities

(N) National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks

(O) Ethylene Oxide Emissions Standards for Sterilization Facilities

(Q) National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers

(R) National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)

(S) National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry

(T) National Emission Standards for Halogenated Solvent Cleaning

(U) National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins

(W) National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production

(X) National Emission Standards for Hazardous Air Pollutants From Secondary Lead Smelting

(Y) National Emission Standards for Marine Tank Vessel Loading Operations

(AA) National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants

(BB) National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants

(CC) National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries

(DD) National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations

(EE) National Emission Standards for Magnetic Tape Manufacturing Operations

(GG) National Emission Standards for Aerospace Manufacturing and Rework Facilities

(HH) National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities

(II) National Emission Standards for Shipbuilding & Ship Repair (Surface Coating)

(JJ) National Emission Standards for Wood Furniture Manufacturing Operations

(KK) National Emission Standards for the Printing and Publishing Industry

(LL) National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants

(MM) National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills

(OO) National Emission Standards for Tanks—Level 1

(PP) National Emission Standards for Containers

(QQ) National Emission Standards for Surface Impoundments

(RR) National Emission Standards for Individual Drain Systems

(SS) National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process

(TT) National Emission Standards for Equipment Leaks—Control Level 1

(UU) National Emission Standards for Equipment Leaks—Control Level 2 Standards

(VV) National Emission Standards for Oil-Water Separators and Organic-Water Separators

(WW) National Emission Standards for Storage Vessels (Tanks)—Control Level 2

(XX) National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations

(YY) National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards

(CCC) National Emission Standards for Hazardous Air Pollutants for Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants

(DDD) National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production

(EEE) National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors

(GGG) National Emission Standards for Pharmaceuticals Production

(HHH) National Emission Standards for Hazardous Air Pollutants From Natural Gas Transmission and Storage Facilities

(III) National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production

(JJJ) National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins

(LLL) National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry

(MMM) National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production

(NNN) National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing

(OOO) National Emission Standards for Hazardous Air Pollutant Emissions: Manufacture of Amino/Phenolic Resins

(PPP) National Emission Standards for Hazardous Air Pollutant Emissions for Polyether Polyols Production

(QQQ) National Emission Standards for Hazardous Air Pollutant Emissions for Primary Copper Smelting

(RRR) National Emission Standards for Hazardous Air Pollutants: Secondary Aluminum Production

(TTT) National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting

(UUU) National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units

(VVV) National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works

(XXX) National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Silicomanganese

(AAAA) National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills

(CCCC) National Emission Standards for Hazardous Air Pollutants: Manufacturing of Nutritional Yeast

(DDDD) National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products

(EEEE) National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline)

(FFFF) National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing

(GGGG) National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production

(HHHH) National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production

(IIII) National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light Duty Trucks

(JJJJ) National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating

(KKKK) National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans

(MMMM) National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products

(NNNN) National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances

(OOOO) National Emission Standards for Hazardous Air Pollutants: Printing, Coating, and Dyeing of Fabrics and Other Textiles

(PPPP) National Emission Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products

(QQQQ) National Emission Standards for Hazardous Air Pollutants: Surface Coating of Wood Building Products

(RRRR) National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Furniture

(SSSS) National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Coil

(TTTT) National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations

(UUUU) National Emission Standards for Hazardous Air Pollutants for Cellulose Products Manufacturing

(VVVV) National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing

(WWWW) National Emission Standards for Hazardous Air Pollutants: Reinforced Plastic Composites Production

(XXXX) National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing

(YYYY) National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines

(ZZZZ) National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines

(AAAAA) National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants

(BBBBB) National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing

(CCCCC) National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks

(EEEEE) National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries

(FFFFF) National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing Facilities

(GGGGG) National Emission Standards for Hazardous Air Pollutants: Site Remediation

(HHHHH) National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing

(IIIII) National Emission Standards for Hazardous Air Pollutants: Mercury Emissions From Mercury Cell Chlor-Alkali Plants

(LLLLL) National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing

(MMMMM) National Emission Standards for Hazardous Air Pollutants: Flexible Polyurethane Foam Fabrication Operations

(NNNNN) National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production

(PPPPP) National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/Stands

(QQQQQ) National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities

(RRRRR) National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing

(SSSSS) National Emissions Standards for Hazardous Air Pollutants for Refractory Products Manufacturing

(TTTTT) National Emissions Standards for Hazardous Air Pollutants for Primary Magnesium Refining

(WWWWW) National Emission Standards for Hospital Ethylene Oxide Sterilizers

(YYYYY) National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities

(ZZZZZ) National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources

(BBBBBB) National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities

(CCCCCC) National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities

(DDDDDD) National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production Area Sources

(EEEEEE) National Emission Standards for Hazardous Air

Pollutants for Primary Copper Smelting Area Sources

(FFFFFF) National Emission Standards for Hazardous Air Pollutants for Secondary Copper Smelting Area Sources

(GGGGGG) National Emission Standards for Hazardous Air Pollutants for Primary Nonferrous Metals Area Sources—Zinc, Cadmium, and Beryllium

(HHHHHH) National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources

(LLLLLL) National Emission Standards for Hazardous Air Pollutants for Acrylic and Modacrylic Fibers Production Area Sources

(MMMMMM) National Emission Standards for Hazardous Air Pollutants for Carbon Black Production Area Sources

(NNNNNN) National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources: Chromium Compounds

(OOOOOO) National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production and Fabrication Area Sources

(PPPPPP) National Emission Standards for Hazardous Air Pollutants for Lead Acid Battery Manufacturing Area Sources

(QQQQQQ) National Emission Standards for Hazardous Air Pollutants for Wood Preserving Area Sources

(RRRRRR) National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing Area Sources

(SSSSSS) National Emission Standards for Hazardous Air Pollutants for Glass Manufacturing Area Sources

(TTTTTT) National Emission Standards for Hazardous Air Pollutants for Secondary Nonferrous Metals Processing Area Sources

(VVVVVV) National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources

(WWWWWW) National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Plating and Polishing Operations

(XXXXXX) National Emission Standards for Hazardous Air Pollutants Area Source Standards for Nine Metal Fabrication and Finishing Source Categories

(YYYYYY) National Emission Standards for Hazardous Air Pollutants for Area Sources: Ferroalloys Production Facilities

(ZZZZZZ) National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Aluminum, Copper, and Other Nonferrous Foundries

(AAAAAAA) National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing

(BBBBBBB) National Emission Standards for Hazardous Air Pollutants for Area Sources: Chemical Preparations Industry

(CCCCCCC) National Emission Standards for Hazardous Air Pollutants for Area Sources: Paints and Allied Products Manufacturing

**(DDDDDDD) National Emission Standards for Hazardous Air Pollutants for Area Sources: Prepared Feeds Manufacturing**

*AUTHORITY: section 643.050, RSMo 2000. Original rule filed May 1, 1996, effective Dec. 30, 1996. For intervening history, please consult the **Code of State Regulations**. Amended: Filed July 1, 2011.*

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

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

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed amendment will begin at 9:00 a.m., September 29, 2011. The public hearing will be held at the Holiday Inn Southeast, Grand Ballroom A, B, and C, 9103 East 39th Street, Kansas City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Interested persons, whether or not heard, may submit a written or email statement of their views until 5:00 p.m., October 6, 2011. Written comments shall be sent to Chief, Air Quality Planning Section, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to apcprulespn@dnr.mo.gov.*

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

### PROPOSED AMENDMENT

**10 CSR 10-6.080 Emission Standards for Hazardous Air Pollutants**. The commission proposes to amend subsections (1)(A) and (1)(B). If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency for delegation of enforcement authority. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address listed in the Notice of Public Hearing at the end of this rule. More information concerning this rulemaking can be found at the Missouri Department of Natural Resources' Environmental Regulatory Agenda website, www.dnr.mo.gov/regs/index.html.

*PURPOSE: This rule establishes emission standards and performance criteria for new or modified sources emitting hazardous air pollutants. The purpose of this rulemaking is to adopt by reference new emission standards, updates, and clarifications to existing federal rule 40 CFR 61 that were promulgated during calendar year 2010. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is elements of the State/EPA work plan and Title V Operating Permit Program requirements.*

(1) Applicability.

(A) The provisions of 40 CFR *[part]* 61 promulgated as of June 30, *[2009]* **2010**, *[with no additional]* **and** *Federal Register* Notice*[s]* **75 FR 55636** promulgated from July 1, *[2009]* **2010**, through December 31, *[2009]* **2010**, shall apply and are hereby incorporated by reference in this rule, as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, DC 20408. This rule does not incorporate any subsequent amendments or additions.

(B) Exceptions to *[the adoption]* **subsection (1)(A) of this rule** are as follows:

1. Sections *[61.4]* **61.04**, 61.16, and 61.17 of subpart A;
2. Subparts B, H, I, K, Q, R, T, and W in their entirety; and
3. Those provisions which are not delegable by the United States Environmental Protection Agency (EPA). *[Examples of these include alternative or equivalent methods (for example, sections 61.12(d)(1), 61.13(h)(1)(ii), 61.112(c), 61.164(a)(2), 61.164(a)(3), and 61.244).]*

*AUTHORITY: section 643.050, RSMo 2000. Original rule filed Dec. 10, 1979, effective April 11, 1980. For intervening history, please consult the **Code of State Regulations**. Amended: Filed July 1, 2011.*

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

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

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed amendment will begin at 9:00 a.m., September 29, 2011. The public hearing will be held at the Holiday Inn Southeast, Grand Ballroom A, B, and C, 9103 East 39th Street, Kansas City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Interested persons, whether or not heard, may submit a written or email statement of their views until 5:00 p.m., October 6, 2011. Written comments shall be sent to Chief, Air Quality Planning Section, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to apcprulespn@dnr.mo.gov.*

## Title 10—DEPARTMENT OF NATURAL RESOURCES
## Division 20—Clean Water Commission
## Chapter 8—Design Guides

## PROPOSED AMENDMENT

**10 CSR 20-8.120 Design of *Gravity* Sewers**. The Missouri Department of Natural Resources (department) is amending the rule title, the purpose statement, and sections (1), (3), (4), and (6)–(10); deleting sections (2) and (5); adding a new section (2); and renumbering as necessary.

*PURPOSE: This amendment will update the rule to current industry practices.*

*PURPOSE: The following criteria have been prepared as a guide for the design of sewers. This rule is to be used with rules 10 CSR 20-8.110[–]* ***through*** *10 CSR 20-8.220 for the planning and design of the complete treatment facility. This rule reflects the minimum requirements of the Missouri Clean Water Commission [as]* ***in*** *regard[s]* ***to*** *adequacy of design, submission of plans, approval of plans***,** *and approval of completed [sewage works.]* ***wastewater treatment facilities and collection systems. It is not reasonable or practical to include all aspects of design in these standards. The design engineer should obtain appropriate reference materials which include but are not limited to: copies of all ASTM International standards pertaining to sewers and appurtenances, design manuals such as Water Environment Federation's Manuals of Practice, and other sewer design manuals containing principles of accepted engineering practice.*** *Deviation from these minimum requirements will be allowed where sufficient documentation is presented to justify the deviation. These criteria are taken largely from* ***the 2004 edition of the*** *Great Lakes-Upper Mississippi River Board of State [Sanitary Engineers]* ***and Provincial Public Health and Environmental Managers' Recommended Standards for*** *[Sewage Works]* ***Wastewater Facilities*** *and are based on the best information presently available. These criteria were originally filed as 10 CSR 20-8.030. It is anticipated that they will be subject to review and revision periodically as additional information and methods appear. [Addenda or supplements to this publication will be furnished to consulting engineers and city engineers. If others desire to receive addenda or supplements, please advise the Clean Water Commission so that names can be added to the mailing list.]*

*[Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.]*

(1) Definitions. Definitions as set forth in the Clean Water Law and 10 CSR 20-2.010 shall apply to those terms when used in this rule, unless the context clearly requires otherwise. Where the terms "shall" and "must" are used, they are to mean a mandatory requirement insofar as approval by the *[agency]* **Missouri Department of Natural Resources (department)** is concerned, unless justification is presented for deviation from the requirements. Other terms, such as "should," "recommend," "preferred," and the like, indicate *[discretionary requirements on the part of the agency and deviations are subject to individual consideration.]* **the preference of the department for consideration by the design engineer.**

**(A) Deviations. Deviations from these rules may be approved by the department when engineering justification satisfactory to the department is provided. Justification must substantially demonstrate in writing and through calculations that a variation(s) from the design rules will result in either at least equivalent or improved effectiveness. Deviations are subject to case-by-case review with individual project consideration.**

*[(2) Exceptions. This rule shall not apply to facilities designed for twenty-two thousand five hundred (22,500) gallons per day (85.4 $m^3$) or less (see 10 CSR 20-8.020 for the requirements for those facilities).]*

**(2) Applicability. This rule shall apply to all facilities with a design flow of one hundred thousand (100,000) gallons (378.5 $m^3$) per day or greater. This rule shall also apply to all facilities with a design flow of twenty-two thousand five hundred (22,500) gallons (85.2 $m^3$) per day or greater until such time as 10 CSR 20-8.020 is amended.**

(3) Approval of Sewers. *[In general, the agency]* **The department** will approve plans for new systems, extensions to new areas**,** or replacement sanitary sewers only when designed upon the separate *[plan]* **basis**, in which rainwater from roofs, streets**,** and other areas and groundwater from foundation drains are excluded.

(4) Design Capacity **and Design Flow**.

**(A)** *[In general, s]*Sewer capacities *[should]* **shall** be designed for the estimated ultimate tributary population, except in considering parts of the systems that can be readily increased in capacity. Similarly, consideration *[should]* **must** be given to the maximum anticipated capacity of institutions, industrial parks, etc. *[Where future relief sewers are programmed, economic analysis of alternatives should accompany initial permit applications. In determining the required capacities of sanitary sewers, the following factors should be considered: maximum hourly domestic sewage flow;]* **An economic analysis of alternatives must be included in the engineering report or facility plan where future relief sewers are planned.**

**1. The following factors must be considered in determining the required capacities of sanitary sewers:**

**A. Design peak hourly flow;**

**B.** *[a]*Additional maximum *[sewage]* **wastewater** or waste flow from industrial plants;

**C.** *[inflow and groundwater]* **Inflow and** infiltration **(I/I)**;

**D.** *[t]*Topography of area;

**E.** *[l]*Location of *[sewage]* **wastewater** treatment *[plant]* **facilities**;

**F.** *[d]*Depth of excavation; and

**G.** *[p]*Pumping requirements.

**2.** The basis of design for all sewer projects shall *[accompany the plan documents]* **be included in the engineering report or facility plan**. More detailed computations may be required by the *[agency]* **department** for critical projects.

**(B) Sewer flows shall be based on the design peak hourly flow in accordance with 10 CSR 20-8.110(4)(C)4. and must be designed to prevent or eliminate sanitary sewer overflows (SSOs).**

*[(5) Design Flow.*

*(A) Per Capita Flow. New sewer systems shall be designed on the basis of an average daily per capita flow of sewage of not less than one hundred (100) gallons per day (.38m$^3$/day). This figure is assumed to cover normal infiltration but an additional allowance should be made where conditions are unfavorable. For existing sewer systems an additional per capita allowance shall be made where the average annual flow exceeds this value and immediate remedial measures are not proposed.*

*(B) Peak Design Flow. Sanitary sewers shall be designed on a peak design flow basis using one (1) of the following methods: the ratio of peak to average daily flow as determined from the quotient of eighteen (18) plus the square root of the population in thousands divided by four (4) plus the square root of population in thousands or values established from an infiltration/inflow study acceptable to the agency. Use of other values for peak design flow will be considered if justified on the basis of extensive documentation.*

*(C) Combined Sewer Interceptors. In addition to the requirements in subsection (5)(B) of this rule, interceptor sewers that will receive combined sewage shall have sufficient additional capacity to insure attainment of the appropriate state and federal water quality standards.]*

*[(6)]***(5)** Details of Design and Construction.

(A) Minimum Size. Gravity *[collector]* sewers conveying raw *[sewage]* **wastewater** shall be no less than eight inches (8") (20 cm) in diameter, except in *[unusual]* circumstances where smaller diameter pipe can be justified.

(B) Depth. *[In general,]* **All** sewers *[should]* **shall** be sufficiently deep so as to receive *[sewage]* **wastewater** from basements and **shall be covered with at least thirty-six inches (36") (91 cm) of soil, other insulation, or material** to prevent freezing and to protect them from superimposed loads. *[Insulation shall be provided for sewers that cannot be placed at a depth sufficient to prevent freezing.]*

**(C) Buoyancy. Buoyancy of sewers shall be considered and flotation of the pipe shall be prevented with appropriate construction where high groundwater conditions are anticipated.**

*[(C)]***(D)** Slope.

1. All sewers shall be *[so]* designed and constructed to give mean velocities, when flowing full, of not less than two feet (2') per second *[(0.61 m/s), based on Kutter's formula using an "n" value of 0.013]* **(0.6 m/s)**. The following are the minimum slopes which should be provided **for sewers forty-two inches (42") (107 cm) or less**; however, slopes greater than *[this are]* **these may be** desirable **for construction, to control sewer gases, or to maintain self-cleansing velocities at all rates of flow within the design limits**:

| Nominal Sewer Size | Minimum Slope in Feet Per 100 Feet (m/100 m) |
|---|---|
| 8 *[in.]* **inch** (20 cm) | 0.40 |
| *[9 inch (23 cm)]* | *[0.33]* |
| 10 *[in.]* **inch** (25 cm) | 0.28 |
| 12 *[in.]* **inch** (30 cm) | 0.22 |
| 14 *[in.]* **inch** (36 cm) | 0.17 |
| 15 *[in.]* **inch** (38 cm) | 0.15 |
| 16 *[in.]* **inch** (41 cm) | 0.14 |
| 18 *[in.]* **inch** (46 cm) | 0.12 |
| 21 *[in.]* **inch** (53 cm) | 0.10 |
| 24 *[in.]* **inch** (61 cm) | 0.08 |
| 27 *[in.]* **inch** (69 cm) | 0.067 |
| 30 *[in.]* **inch** (76 cm) | 0.058 |
| **33 inch (84 cm)** | **0.052** |
| 36 *[in.]* **inch** (91 cm) | 0.046 |
| **39 inch (99 cm)** | **0.041** |
| **42 inch (107 cm)** | **0.037** |

**A. Sewer sizes not included in the above table should be designed and constructed to give mean velocities, when flowing full, of not less than three feet (3') per second (0.9 m/s), based on Manning's formula using an "n" value of 0.013.**

*[2. The pipe diameter and slope shall be selected to obtain the greatest practical velocities to minimize settling problems. Slopes slightly less than those required for the 2.0 feet per second (0.61m/s) velocity when flowing full may be permitted. Decreased slopes will only be considered where the depth of flow will be 0.3 of the diameter or greater and the velocity from partial flow determination will be 0.9 feet per second (27.4 cm/s) or greater based on design average flow. These reduced slopes may result in better flow characteristics at design flow than minimum slope in a larger pipe. Whenever the decreased slopes are selected, the design engineer must furnish with his/her report computations of the anticipated flow velocities of average and daily or weekly peak flow rates. The operating authority of the sewer system will give written assurance to the agency that any additional sewer maintenance required by reduced slopes will be provided.]*

**2. Minimum flow depths. Slopes which are slightly less than the recommended minimum slopes may be permitted. Such decreased slopes may be considered where the depth of flow will be one-third (1/3) of the diameter or greater for design average flow. Whenever decreased slopes are selected, the design engineer must furnish with his/her engineering report or facility plan computations of the anticipated flow velocities of average daily and peak hourly flow rates. The operating authority of the sewer system will give written assurance to the department that any additional sewer maintenance required by reduced slopes will be provided.**

**3. Minimize solids deposition. The pipe diameter and slope shall be selected to obtain the greatest practical velocities to minimize settling problems. Oversize sewers will not be approved to justify using flatter slopes. If the proposed slope is less than the minimum slope of the smallest pipe, which can accommodate the design peak hourly flow, the actual depths and velocities at minimum, average, and design maximum day and peak hourly flow for each design section of the sewer shall be calculated by the design engineer and be included with the plans.**

*[3.]***4. Slope between manholes.** Sewers shall be laid with uniform slope between manholes.

*[4.]***5. High velocity protection.** Where velocities greater than fifteen feet (15') per second (4.6 m/s) are attained, special provision shall be made to protect against displacement by erosion and *[shock]* **impact**.

*[5.]***6. Steep slope protection.** Sewers on twenty percent (20%) slope or greater shall be anchored securely with concrete anchors or equal, spaced as follows:

**A.** *[n]***N**ot over thirty-six feet (36') (11 m) center-to-center on grades twenty percent (20%) and up to thirty-five percent (35%);

**B.** *[n]***N**ot over twenty-four feet (24') (7.3 m) center-to-center on grades thirty-five percent (35%) and up to fifty percent (50%); and

**C.** *[n]***N**ot over sixteen feet (16') (4.9 m) center-to-center on grades fifty percent (50%) and over.

*[(D)]***(E)** Alignment.

**1.** Sewers twenty-four inches (24") (61 cm) or less shall be laid with straight alignment between manholes. *[The]* **Straight** alignment shall be checked by either using a laser beam or lamping.

**2. Curvilinear alignment of sewers larger than twenty-four inches (24") (61 cm) may be considered on a case-by-case basis provided compression joints are specified and ASTM or specific pipe manufacturers' maximum allowable pipe joint deflection limits are not exceeded. Curvilinear sewers shall be limited to simple curves which start and end at manholes. When curvilinear sewers are proposed, the recommended minimum slopes indicated in paragraph (5)(D)1. of this rule must be increased accordingly to provide a minimum velocity of two feet (2') per second (0.6 m/s) when flowing full.**

*[(E)]***(F)** Changes in Pipe Size.

**1.** When a smaller sewer joins a larger one, **a manhole is required according to subparagraph (6)(A)1.B. of this rule.** *[t]***T**he invert of the larger sewer should be lowered sufficiently to maintain the same energy gradient. An approximate method for securing these results is to place the 0.8 depth point of both sewers at the same elevation.

**2.** Sewer extensions should be designed for projected flows**.** *[even w]***W**hen the diameter of the receiving sewer is less than the diameter of the proposed extension **at a manhole, the manhole shall be constructed with special consideration of an appropriate flow channel to minimize turbulence**. The *[agency]* **department** may require a schedule for **construction of** future downstream sewer relief.

*[(F)]***(G)** Materials. Any generally accepted material for sewers will be given consideration**,** but the material selected should be adapted to local conditions, such as character of industrial wastes, possibility of septicity, soil characteristics, exceptionally heavy external loadings, abrasion**, corrosion,** and similar problems.

**1. All sewer pipe and joint materials shall conform to the appropriate ASTM specifications.**

**2. Suitable couplings complying with ASTM specifications shall be used for joining dissimilar materials. The leakage limitations on these joints shall be in accordance with paragraph (5)(I)4. or (5)(I)5. of this rule.**

**3.** All sewers shall be designed to prevent damage from superimposed **live, dead, and frost induced** loads. Proper allowance for loads on the sewer shall be made because of **soil and potential groundwater conditions, as well as** the width and depth of the trench. Where necessary *[to withstand extraordinary superimposed loading]*, special bedding, **haunching, initial backfill,** concrete cradle**,** or **other** special construction *[may]* **shall** be used **to withstand anticipated potential superimposed loading or loss of trench wall stability. See ASTM D2321 or ASTM C12 when appropriate**.

**4. For new pipe or joint materials for which ASTM standards have not been established, the design engineer shall provide complete material and installation specifications developed on the basis of criteria adequately documented and certified in writing by the pipe manufacturer to be satisfactory for the specific detailed plans for approval by the department.**

*[(G)]***(H)** Installation.

1. Standards. Installation specifications shall contain appropriate requirements based on the criteria, standards**,** and requirements established by industry in its technical publications. Requirements shall be set forth in the specifications for the pipe and methods of bedding and backfilling thereof so as not to damage the pipe or its joints, impede cleaning operations**,** and future tapping**,** nor create excessive side fill pressures *[or]* **and** ovalation of the pipe**,** nor seriously impair flow capacity.

2. Trenching.

A. The width of the trench shall be ample to allow the pipe to be laid and jointed properly and to allow the *[backfill]* **bedding and haunching** to be placed and compacted *[as needed]* **to adequately support the pipe**. The trench sides shall be kept as nearly vertical as possible. When wider trenches are *[dug]* **specified**, appropriate bedding class and pipe strength shall be used.

**B. In unsupported and unstable soil, the size and stiffness of the pipe, stiffness of the embedment, insitu soil, and depth of cover shall be considered in determining the minimum trench width necessary to adequately support the pipe.**

*[B.]***C.** Ledge rock, boulders**,** and large stones shall be removed to provide a minimum clearance of four inches (4") (10 cm) below and on each side of all pipe**(s)**.

**D. Dewatering. All water entering the excavations or other parts of the work shall be removed until all the work has been completed. No sanitary sewer that ultimately arrives at existing pumping stations or wastewater treatment facilities shall be used for the disposal of trench water.**

3. Bedding**, haunching, and initial backfill**.

A. **Rigid pipe.** *[Concrete or well-graded granular material (b]***B**edding *[c]***C**lasses A, B, *[or]* C, **or crushed stone,** as described in ASTM C12*[-74 or WPCP MOP No. 9)]***,** shall be used **and carefully compacted** for all rigid pipe provided the proper strength pipe is used with the specified bedding to support the anticipated load **based on the type of soil encountered and potential groundwater conditions**.

*[B. Concrete or well-graded granular material (bedding classes I, II or III as described in ASTM D2321-74) shall be used for all flexible pipe provided the proper strength pipe is used with the specified bedding to support the anticipated load.]*

**B. Ductile iron pipe. Embedment materials for bedding and initial backfill, as described in ASTM A746 for Type 1 through Type 5 laying conditions, shall be used for ductile iron pipe provided the proper strength pipe is used with the specified bedding to support the anticipated load based on the type of soil encountered and potential groundwater conditions.**

**C. Plastic pipe. Embedment materials for bedding, haunching, and initial backfill, Classes I, II, or III, as described in ASTM D2321, shall be used and carefully compacted for all flexible pipe provided the proper strength pipe is used with the specified bedding to support the anticipated load based on the type of soil encountered and potential groundwater conditions.**

**D. Composite pipe. Except as described in ASTM D2680, the bedding, haunching, and initial backfill requirements for composite pipe shall be the same as for plastic pipe.**

4. **Final** *[B]***b**ackfill.

A. **Final** *[B]***b**ackfill shall be of a suitable material removed from excavation except where other material is specified. Debris, frozen material, large clods**,** *[or]* stones, organic matter**,** or other unstable materials shall not be used for **final** backfill within two feet (2') (0.6*[1]* m) of the top of the pipe.

B. **Final** *[B]***b**ackfill shall be placed in **such** a manner as not to disturb the alignment of the pipe.

5. Deflection test.

A. Deflection tests shall be performed on all flexible pipe. The test shall be *[run not less than thirty (30) days]* **conducted**

after **the** final backfill has been *[placed]* **in place at least thirty (30) days to permit stabilization of the soil-pipe system**.

B. No pipe shall extend a deflection of five percent (5%). **If the deflection exceeds five percent (5%), the pipe shall be excavated. Replacement or correction shall be accomplished in accordance with requirements in the department-approved specifications.**

*[C. If the deflection test is to be run using a rigid ball or mandrels, they shall have diameters equal to ninety-five percent (95%) of the inside diameter of the pipe and the tests shall be performed without mechanical pulling devices.]*

**C. The rigid ball or mandrel used for the deflection test shall have a diameter not less than ninety-five percent (95%) of the base inside diameter or average inside diameter of the pipe depending on which is specified in the ASTM specification, including the appendix, to which the pipe is manufactured. The test shall be performed without mechanical pulling devices. A mandrel must have nine (9) or more odd number of flutes or points.**

**6. Video inspection. Video inspection of all new and rehabilitated sewers after installation is recommended.**

*[(H)]***(I)** Joints and Infiltration.

1. Joints. The installation of joints and the materials used shall be included in the specifications. Sewer joints shall be designed to minimize infiltration and to prevent the entrance of roots throughout the life of the system.

**2. Service connections. Service connections to the sewer main shall be watertight and not protrude into the sewer. If a saddle-type connection is used, it shall be a device designed to join with the types of pipe which are to be connected. All materials used to make service connections shall be compatible with each other and with the pipe materials to be joined and shall be corrosion proof.**

*[2.]***3.** Leakage tests. Leakage tests shall be specified. This may include appropriate water or low pressure air testing. *[The leakage outward or inward (exfiltration or infiltration) shall not exceed two hundred (200) gallons per inch of pipe diameter per mile per day (0.19 m$^3$/cm of pipe dia./km/day) for any section of the system. An exfiltration or infiltration test shall be performed with a minimum positive head of two feet (2') (0.61 m). The air test, if used, as a minimum shall conform to the test procedure described in ASTM C-828-76T, entitled Tentative Recommended Practice for Low-Pressure Air Test of Vitrified Clay Pipe Lines. The testing methods selected should take into consideration the range in groundwater elevations projected and the situation during the test. For the purpose of leakage tests, manholes shall be considered pipe of equivalent diameter and shall be tested by an appropriate test method.]* **The testing methods selected should take into consideration the range in groundwater elevations during the test and anticipated during the design life of the sewer.**

**4. Water (hydrostatic) test. The leakage exfiltration or infiltration shall not exceed one hundred (100) gallons per inch of pipe diameter per mile per day (0.38 m$^3$/cm of pipe diameter/km/day) for any section between manholes of the system. An exfiltration or infiltration test shall be performed with a minimum positive head of two feet (2') (0.6 m).**

**5. Air test. The air test shall, as a minimum, conform to the test procedure described in ASTM C828 for clay pipe, ASTM C924 for concrete pipe, and ASTM F1417 for plastic, composite, and ductile iron pipe. All other materials shall have test procedures approved by the department.**

**(J) Alternative Installation Methods (Trenchless Technologies). Trenchless technologies shall be evaluated by the department on a case-by-case basis.**

*[(7)]***(6)** Manholes.

(A) Location.

**1.** Manholes shall be installed**—**

**A.** *[a]***A**t the end of each line;

**B.** *[a]***A**t all changes in grade, size**,** or alignment;

**C.** *[a]***A**t all **sewer pipe** intersections;

**D.** *[and a]***A**t distances not greater than four hundred feet (400') (120 m) for sewers fifteen inches (15") (38 cm) or less**;** and

**E. At distances not greater than** five hundred feet (500') (150 m) for sewers *[eighteen]* **sixteen** inches to thirty inches (*[18"]***16**"–30") (46 cm–76 cm)*[, except that distances up to six hundred feet (600') (180 m)]*.

**2. Spacing of manholes greater than five hundred feet (500') (150 m)** may be approved **by the department** in cases where adequate *[modern]* cleaning equipment *[for such spacing is provided]* **can justify such spacing**.

**3.** Greater spacing may be permitted in larger sewers.

**4.** Cleanouts may be used only for special conditions and shall not be substituted for manholes nor installed at the end of laterals greater than one hundred fifty feet (150') (46 m) in length.

(B) Drop Type.

**1.** A drop pipe *[should]* **shall** be provided for a sewer entering a manhole at an elevation of twenty-four inches (24") (61 cm) or more above the manhole invert. Where the difference in elevation between the incoming sewer and the manhole invert is less than twenty-four inches (24") (61 cm), the invert *[should]* **shall** be filleted to prevent solids deposition.

**2.** Drop manholes should be constructed with outside drop connection. Inside drop connections *[(when necessary) shall be secured]* **can be used when the manhole diameter is sufficient to secure the drop pipe** to the interior wall of the manhole and provide **adequate** access for cleaning.

**3. When using precast manholes, drop connections must not enter the manhole at a joint.**

**4.** Due to the unequal earth pressures that would result from the backfilling operation in the vicinity of the manhole, the entire outside drop connection shall be encased in concrete.

(C) Diameter. The minimum *[interior]* diameter of manholes shall be *[forty-two inches (42") (1.07 m) on eight-inch (8") (20 cm) diameter gravity sewer lines and forty-eight inches (48") (1.22 m) on all sewer lines larger than eight inches (8") (20 cm) in diameter]* **forty-eight inches (48") (122 cm)**. Larger diameter manholes are necessary for large diameter sewers in order to maintain structural integrity. A minimum access diameter of *[twenty-two inches (22") (56 cm)]* **twenty-four inches (24") (61 cm)** shall be provided.

(D) Flow Channel.

**1.** The flow channel **straight** through **a** manhole*[s]* should be made to conform **as closely as possible** in shape and slope to that of the **connecting** sewers. **The channel walls should be formed or shaped to the full height of the crown of the outlet sewer in such a manner to not obstruct maintenance, inspection, or flow in the sewers.**

**2. When curved flow channels are specified in manholes, including branch inlets, minimum slopes indicated in paragraph (5)(D)1. of this rule should be increased to maintain acceptable velocities.**

**(E) Bench. A bench shall be provided on each side of any manhole channel when the pipe diameter(s) are less than the manhole diameter. The bench should be sloped no less than a one-half inch per foot (0.5 in/ft) (12.7 mm/m). No pipe shall discharge onto the surface of the bench.**

*[(E)]***(F)** Watertightness.

**1. Manholes shall be watertight.** Manholes shall be of the precast concrete or poured-in-place concrete type. *[Manholes shall be waterproofed on the exterior.]* **Precast manholes shall conform to the design and test methods specified in ASTM C478 and C497.**

**2. Manhole lift holes, grade adjustment rings, precast section joints, and any additional areas potentially subject to infiltration shall be sealed watertight.**

**3.** Inlet and outlet pipes shall be joined to the manhole with a gasketed flexible watertight connection or any watertight connection arrangement that allows differential settlement of the pipe and manhole wall to take place.

**4.** Watertight manhole covers are to be used wherever the manhole tops may be flooded by street runoff or high water. **Bolt-down cover assemblies may be needed on manholes subject to displacement by sewer surcharging.** Locked manhole covers may be desirable in isolated easement locations or where vandalism may be a problem.

**(G) Inspection and Testing. The specifications shall include a requirement for inspection and testing for watertightness or damage prior to placing into service.**

**1. Vacuum testing, if specified for concrete sewer manholes, shall pass two (2) tests. The first vacuum test shall be conducted prior to backfill and shall conform to the test procedures described in ASTM C1244. The second vacuum test shall be performed after backfill and in accordance with the manufacturer's recommendations.**

**2. Exfiltration testing, if specified for concrete sewer manholes, shall conform to the test procedures in ASTM C969.**

**(H) Corrosion Protection for Manholes. Where corrosive conditions due to septicity or other causes are anticipated, corrosion protection on the interior of the manholes shall be provided.**

*[(F)]***(I)** Electrical. Electrical equipment installed or used in manholes shall conform to 10 CSR 20-8.130(4)(C)5.

*[(8)]***(7)** Inverted Siphons. Inverted siphons *[should]* **shall** have not less than two (2) barrels, with a minimum pipe size of six inches (6") (15 cm)**.** *[and]* **They** shall be provided with necessary appurtenances for **maintenance,** convenient flushing**,** and *[maintenance; the manholes]* **cleaning equipment. The inlet and discharge structures** shall have adequate clearances for *[rodding; and in general,]* **cleaning equipment, inspection, and flushing. Design shall provide** sufficient head *[shall be provided]* and **appropriate** pipe sizes *[selected]* to secure velocities of at least *[3.0]* **three** feet **(3')** per second (0.9*[2]* m/s) for **design** average flows. The inlet and outlet details shall be arranged so that the *[normal]* **design average** flow is diverted to one (1) barrel and so that either barrel may be cut out-of-service for cleaning. The vertical alignment should permit cleaning and maintenance.

*[(9)]***(8)** Sewers in Relation to Streams.

(A) Location of Sewers *[on]* **in** Streams.

1. Cover depth. The top of all sewers entering or crossing streams shall be at a sufficient depth below the natural bottom of the stream bed to protect the sewer line. In general, the following cover requirements must be met:

**A.** *[o]***O**ne foot (1') (0.3 m) of cover is required where the sewer is located in rock;

**B.** *[t]***T**hree feet (3') (0.9 m) of cover is required in other material**.** *[(i]***I**n major streams, more than three feet (3') (0.9 m) of cover may be required*[)]*;

**C.** *[i]***I**n paved stream channels, the top of the sewer line should be placed below the bottom of the channel pavement*[.]***; and**

**D.** Less cover will be approved only if the proposed sewer crossing will not interfere with *[the]* future *[improvements]* **modifications** to the stream channel. *[Reasons]* **Justification** for requesting less cover *[should]* **shall** be *[given in the project proposal]* **provided to the department**.

2. Horizontal location. Sewers *[located]* along streams shall be located **sufficiently** outside *[of]* the stream bed *[and sufficiently removed therefrom to provide for future possible stream widening and]* to prevent pollution by siltation during construction **and to minimize possible exposure due to erosion**.

3. Structures. The sewer outfalls, headwalls, manholes, gate-boxes**,** or other structures shall be *[so]* located *[that]* **so** they do not interfere with the free discharge of flood flows of the stream*[s]*.

4. Alignment. Sewers crossing streams should be designed to cross the stream as nearly perpendicular to the stream flow as possible and shall be free from change in grade.

**5.** Sewer systems shall be designed to minimize the number of stream crossings.

(B) Construction.

1. Materials. Sewers entering or crossing streams shall be constructed of *[cast- or]* ductile-iron pipe with mechanical joints**;** *[or shall be so]* otherwise**, they shall be** constructed *[that]* **so** they will remain watertight and free from changes in alignment or grade. Material used to backfill the trench shall be stone, coarse aggregate, washed gravel**,** or other materials which will not **readily erode,** cause siltation**, damage pipe during placement, or corrode the pipe**.

2. Siltation and erosion. Construction methods that will minimize siltation and erosion shall be employed. The design engineer shall include in the project specifications the method(s) to be employed in the construction of sewers in or near streams**. Such methods shall** *[to]* provide adequate control of siltation and erosion **by limiting unnecessary excavation, disturbing or uprooting trees and vegetation, dumping of soil or debris, or pumping silt-laden water into the stream**. Specifications shall require that clean-up, grading, seeding, planting**,** or restoration of all work areas shall begin immediately**.** *[and e]***E**xposed areas shall not remain unprotected for more than seven (7) days.

*[(10)]***(9)** Aerial Crossings.

**(A)** Support shall be provided for all joints in pipes utilized for aerial crossings. The supports shall be designed to prevent frost heave, overturning**,** and settlement.

**(B)** Precautions against freezing, such as insulation and increased slope, shall be provided. Expansion jointing shall be provided between above-ground and below-ground sewers. **Where buried sewers change to aerial sewers, special construction techniques shall be used to minimize frost heaving.**

**(C)** For aerial stream crossings, the impact of flood waters and debris shall be considered. The bottom of the pipe should be placed no lower than the elevation of the fifty (50)-year flood.

**(D) Aerial crossings shall be constructed of ductile-iron pipe with mechanical joints; otherwise, they shall be constructed so that they will remain watertight and free from changes in alignment or grade.**

*[(11)]***(10)** Protection of Water Supplies.

(A) *[Water Supply Interconnections.]* **Cross Connections Prohibited.** There shall be no physical connections between a public or private potable water supply system and a sewer, or appurtenance thereto which would permit the passage of any *[sewage]* **wastewater** or polluted water into the potable supply. No water pipe shall pass through or come in contact with any part of a sewer manhole.

(B) Relation to Water Works Structures.

**1.** While no general statement can be made to cover all conditions, it is *[generally]* recognized that sewers shall meet the requirements of *[10 CSR 60-2.010]* **10 CSR 23-3.010** with respect to minimum distances from public water supply wells or other water supply sources and structures.

**2. All existing waterworks units, such as basins, wells, or other treatment units, within two hundred feet (200') (60 m) of the proposed sewer shall be shown on the engineering plans.**

(C) Relation to Water Mains.

1. Horizontal **and vertical** separation.

**A.** Sewer mains shall be laid at least ten feet (10') (3.0 m) horizontally from any existing or proposed water main. The distances shall be measured edge-to-edge. In cases where it is not practical to maintain a ten-foot (10')*[-]* **(3.0 m)** separation, the *[agency]* **department** may allow deviation on a case-by-case basis, if supported by data from the design engineer. *[This]* **Such a** deviation may

allow installation of the sewer closer to a water main, provided that the water main is in a separate trench or on an undisturbed earth shelf located on one (1) side of the sewer **and** at an elevation *[that]* **so** the bottom of the water main is at least eighteen inches (18") (46 cm) above the top of the sewer.

**B. If it is impossible to obtain proper horizontal and vertical separation as described above for sewers, both the water main and sewer must be constructed of slip-on or mechanical joint pipe or continuously encased and be pressure tested to one hundred fifty pounds per square inch (150 psi) (1034 kPa) to assure watertightness.**

**C. Manholes should be located at least ten feet (10') (3.0 m) horizontally from any existing or proposed water main.**

2. Crossings.

**A.** Sewers crossing water mains shall be laid to provide a minimum vertical distance of eighteen inches (18") (46 cm) between the outside of the water main and the outside of the sewer. This shall be the case where the water main is either above or below the sewer. The crossing shall be arranged so that the sewer joints will be equidistant and as far as possible from the water main joints. *[When]* **Where** a water main crosses under a sewer, adequate structural support shall be provided for the sewer to *[prevent damage to the water main.]* **maintain line and grade.**

**B. When it is impossible to obtain proper horizontal and vertical separation as stipulated above, one (1) of the following methods must be specified:**

**(I) The sewer shall be designed and constructed equal to water pipe and shall be pressure tested to assure watertightness prior to backfilling; or**

**(II) Either the water main or the sewer line may be encased in a watertight carrier pipe which extends ten feet (10') (3.0 m) on both sides of the crossing, measured perpendicular to the water main. The carrier pipe shall be of materials approved by the department for use in water main construction.**

*[3. Special conditions. When it is impossible to obtain proper horizontal and vertical separation as stipulated previously, the sewer shall be designed and constructed equal to water pipe and shall be pressure tested to assure watertightness prior to backfilling.]*

*AUTHORITY: section 644.026, RSMo [Supp. 1993]* ***2000****. Original rule filed Aug. 10, 1978, effective March 11, 1979. Amended: Filed May 17, 1994, effective Dec. 30, 1994. Amended: Filed June 28, 2011.*

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

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

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Natural Resources, Water Protection Program, Emily Carpenter, PO Box 176, Jefferson City, MO 65102 or hand-delivered to the Lewis and Clark State Office Building, 1101 Riverside Drive, Jefferson City, Missouri. Comments may be sent with name and address through email to emily.carpenter@dnr.mo.gov. Public comments must be received by September 14, 2011. The Missouri Clean Water Commission will hold a public hearing on this proposed rule at 9:00 a.m., September 7, 2011, at the Lewis and Clark State Office Building, La Charrette & Nightingale Creek Conference Room, 1101 Riverside Drive, Jefferson City, Missouri 65102.*

## Title 10—DEPARTMENT OF NATURAL RESOURCES
## Division 40—Land Reclamation Commission
## Chapter 5—Prohibitions and Limitations on Mining in Certain Areas and Areas Unsuitable for Mining

## PROPOSED AMENDMENT

**10 CSR 40-5.010 Prohibitions and Limitations on Mining in Certain Areas**. The commission is amending sections (1), (2), and (3) and adding new sections (4), (5), (6), and (7).

*PURPOSE: This proposed amendment is designed to offer increased opportunity for proof of valid existing rights and defines in great detail what the company must prove and how the regulatory authority must decide whether or not the rights asserted are, in fact, valid.*

(1) Definitions. For the purposes of this chapter—

(A) Valid existing rights means—

*[1. Except for haul roads—*

*A. Those property rights in existence on August 3, 1977 that were created by a legally binding conveyance, lease, deed, contract or other document legally binding under Missouri statutes and Missouri case law entitling one to surface mine coal in this state; and*

*B. The person proposing to conduct surface coal mining operations on these lands either—*

*(I) Had on or before August 3, 1977 been validly issued or made a good faith effort to obtain all state and federal permits necessary to conduct surface coal mining operations on those lands; or*

*(II) Can demonstrate to the commission or director that the coal is both needed for, and immediately adjacent to, an on-going surface coal mining operation for which all permits were obtained prior to August 3, 1977;*

*2. For haul roads—*

*A. A recorded right-of-way, recorded easement or a permit for a coal haul road recorded as of August 3, 1977; or*

*B. Any other road in existence as of August 3, 1977;*

*3. That interpretation of the terms of the document relied upon to establish valid existing rights shall be based upon the usage and custom at the time and place where it came into existence and upon a showing by the applicant that the parties to the document actually contemplated a right to conduct the same underground or surface mining activities for which the applicant claims a valid existing right; and*

*4. Not the mere expectation of a right to conduct surface coal mining operations or the right to conduct underground coal mining. Examples of rights which alone do not constitute valid existing rights include, but are not limited to, coal exploration permits or licenses, applications or bids for leases, or where a person has only applied for a state or federal permit;]*

**1. A set of circumstances under which a person may, subject to regulatory authority approval, conduct surface coal mining operations on lands where section 444.890.4, RSMo, and this rule, would otherwise prohibit such operations. Possession of valid existing rights only confers an exception from the prohibitions of section 444.890.4, RSMo, and this rule. A person seeking to exercise valid existing rights must comply with all other pertinent requirements of the law and 10 CSR 40-3–10 CSR 40-8.**

**2. Property rights demonstration. Except as provided in paragraph (1)(A)4. of this definition, a person claiming valid existing rights must demonstrate that a legally binding conveyance, lease, deed, contract, or other document vests that person, or a predecessor in interest, with the right to conduct the**

**type of surface coal mining operations intended. This right must exist at the time that the land came under the protection of section 444.890.4, RSMo, or this rule. Applicable state statutory or case law will govern interpretation of documents relied upon to establish property rights, unless federal law provides otherwise. If no applicable state law exists, custom and generally accepted usage at the time and place that the documents came into existence will govern their interpretation.**

**3. Except as provided in paragraph (1)(A)4. of this definition, a person claiming valid existing rights also must demonstrate compliance with one (1) of the following standards:**

**A. Good faith/all permits standard. All permits and other authorizations required to conduct surface coal mining operations had been obtained, or a good faith effort to obtain all necessary permits and authorizations had been made, before the land came under the protection of section 444.890.4, RSMo, or this rule. At a minimum, an application must have been submitted for any permit required under 10 CSR 40-6; or**

**B. Needed for and adjacent standard. The land is needed for and immediately adjacent to a surface coal mining operation for which all permits and other authorizations required to conduct surface coal mining operations had been obtained, or a good faith attempt to obtain all permits and authorizations had been made, before the land came under the protection of section 444.890.4, RSMo, or this rule. To meet this standard, a person must demonstrate that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of section 444.890.4, RSMo, or this rule. Except for operations in existence before August 3, 1977, or for which a good faith effort to obtain all necessary permits had been made before August 3, 1977, this standard does not apply to lands already under the protection of section 444.890.4, RSMo, or this rule, when the regulatory authority approved the permit for the original operation or when the good faith effort to obtain all necessary permits for the original operation was made. In evaluating whether a person meets this standard, the agency making the determination may consider factors such as—**

**(I) The extent to which coal supply contracts or other legal and business commitments that predate the time that the land came under the protection of section 444.890.4, RSMo, or this rule, depend upon use of that land for surface coal mining operations;**

**(II) The extent to which plans used to obtain financing for the operation before the land came under the protection of section 444.890.4, RSMo, or this rule, rely upon use of that land for surface coal mining operations;**

**(III) The extent to which investments in the operation before the land came under the protection of section 444.890.4, RSMo, or this rule, rely upon use of that land for surface coal mining operations; and**

**(IV) Whether the land lies within the area identified on the life-of-mine map submitted under 10 CSR 40-6.010(5)(E) before the land came under the protection of section 444.890.4, RSMo, or this rule.**

**4. Roads. A person who claims valid existing rights to use or construct a road across the surface of lands protected by section 444.890.4, RSMo, or this rule, must demonstrate that one (1) or more of the following circumstances exist if the road is included within the definition of "surface coal mining operations" in 10 CSR 40-8.010(1)(A)98.:**

**A. The road existed when the land upon which it is located came under the protection of section 444.890.4, RSMo, or this rule, and the person has a legal right to use the road for surface coal mining operations;**

**B. A properly recorded right-of-way or easement for a road in that location existed when the land came under the protection of section 444.890.4, RSMo, or this rule, and, under the document creating the right-of-way or easement, and under subsequent conveyances, the person has a legal right to use or construct a road across the right-of-way or easement for surface coal mining operations;**

**C. A valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of section 444.890.4, RSMo, or this rule; or**

**D. Valid existing rights exist under paragraphs (1)(A)2. and 3. of this definition;**

(B) Significant recreational, timber, economic, or other values incompatible with surface coal mining operations means those values which could be damaged by, and are not capable of existing together with, surface coal mining operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on other affected area. Those values to be evaluated for their importance include:

1. Recreation, including hiking, boating, camping, skiing, or other related outdoor activities;

2. Timber management and silviculture;

3. Agriculture, aquaculture, or production of other natural, processed, or manufactured products which enter commerce; and

4. Scenic, historic, archaeologic, esthetic, fish, wildlife, plants, or cultural interests;

(F) Public building means any structure that is owned by a public agency or used principally for public business, meetings, or other group gatherings;

(G) Community or institutional building means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings, or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental health, or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation, or sewage treatment;

*[(H) Surface coal mining operations which exist on the date of enactment means all surface coal mining operations which were being conducted on September 28, 1979;]*

*[(I)]***(H)** Public park means an area dedicated or designated by any federal, state, or local agency for public recreational use, whether or not this use is limited to certain times or days, including any land leased, reserved, or held open to the public because of that use;

*[(J)]***(I)** Public road means any thoroughfare open to the public which has been and is being used by the public for vehicular travel which has been designated as a public road pursuant to the laws of the jurisdiction in which it is located; which is maintained with public funds in a manner similar to other public roads of the same classification within the jurisdiction and which meets road construction standards for other public roads of the same classification in the local jurisdiction;

*[(K)]***(J)** Cemetery means any area of land where human bodies are interred;

*[(L)]***(K)** Fragile lands means geographic areas containing natural, ecologic, scientific, or esthetic resources that could be damaged or destroyed by surface coal mining operations. Examples of fragile lands include valuable habitats for fish, wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, National Natural Landmark sites, areas where mining may cause flooding, environmental corridors containing a concentration of ecologic and esthetic features, areas of recreational value due to high environmental quality, and buffer zones adjacent to the boundaries of areas where surface coal mining operations are prohibited under section 444.890.4, RSMo, and this rule;

*[(M)]***(L)** Historic lands means historic or cultural districts, places, structures, or objects, including archeological and paleontological sites, National Historic Landmark sites, sites listed on or eligible for listing on a State or National Register of Historic Places, sites having

religious or cultural significance to native Americans or religious groups, or sites for which historic designation is pending;

*[(N)]***(M)** Natural hazard lands means geographic areas in which natural conditions exist which pose or, as a result of surface coal mining operations, may pose a threat to the health, safety, or welfare of people, property, or the environment, including areas subject to landslides, cave-ins, large or encroaching sand dunes, severe wind or soil erosion, frequent flooding, avalanches, and areas of unstable geology; and

*[(O)]***(N)** Substantial legal and financial commitments in a surface coal mining operation means significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction, or storage facilities, and other capital-intensive activities. An example would be an existing mine, not actually producing coal, but in a substantial stage of development prior to production. Costs of acquiring the coal in place or of the right to mine it without an existing mine, as described in the previous example, alone are not sufficient to constitute substantial legal and financial commitments.

(2) Areas Where Mining is Prohibited or Limited. *[Subject to valid existing rights, no surface coal mining operations shall be conducted after September 28, 1979 unless those operations existed on that date]* **Surface coal mining operations may not be conducted on the following lands unless the permit applicant either has valid existing rights, as determined under section (7) of this rule or qualifies for the exception for existing operations under section (3) of this rule—**

(C) On any publicly- or privately-owned lands which will adversely affect any publicly-owned park or any places included on the National Register of Historic Places, unless approved in the permit and plan and by the federal, state, or local agency with jurisdiction over the park or places;

(D) Within one hundred feet (100'), measured horizontally, of the outside right-of-way line of any public road, except where—

1. Mine access roads or haulage roads join that right-of-way line; or

2. The permit and plan allows the public road to be relocated or **closed or** the area affected to be within one hundred feet (100') of that road after—

A. Public notice and opportunity for a public hearing in accordance with subsection *[(3)(D)]* **(5)(B)** of this rule; and

B. A written finding is made that the interests of the affected public and landowners will be protected;

(E) Within three hundred feet (300'), measured horizontally, from any occupied dwelling *[unless]***. This prohibition does not apply when—**

**1**. *[t]***T**he permit applicant submits with the application a written waiver from the owner of the dwelling, clarifying that the owner and signatory had the legal right to deny mining and knowingly waived that right. The waiver shall act as consent to surface coal mining operations within a closer distance of the dwelling as specified; **or**

**2. The part of the operation to be located closer than three hundred feet (300') to the dwelling is an access or haul road that connects with an existing public road on the side of the public road opposite the dwelling;**

(F) Within three hundred feet (300'), measured horizontally, of any public building, school, church, community or institutional building, or public park; or

(G) Within one hundred feet (100'), measured horizontally, of a cemetery. **This prohibition does not apply if the cemetery is relocated in accordance with all applicable laws and regulations.**

*[(3) Procedures.*

*(A) Upon receipt of a complete application for a surface coal mining and reclamation operation permit, the commission or director shall review the application to determine whether surface coal mining operations are limited or prohibited under section (2) of this rule on the lands which would be disturbed by the proposed operation.*

*(B) On lands not subject to determination—*

*1. Where the proposed operation would be located on any lands listed in subsections (2)(A), (F) or (G) of this rule, the application shall be rejected if the applicant had no valid existing rights for the area on August 3, 1977 or if the operation did not exist on September 28, 1979; and*

*2. If it cannot be determined whether the proposed operation is located within the boundaries of any of the lands in subsection (2)(A) of this rule or closer than the limits provided in subsections (2)(F) and (G) of this rule, a copy of the relevant portions of the permit application will be transmitted to the appropriate federal, state or local governmental agency for a determination or clarification of the relevant boundaries or distances, with a notice to the appropriate agency that it must respond within thirty (30) days of receipt of the request. The National Park Service and the United States Fish and Wildlife Service shall be notified of any request for a determination of valid existing rights pertaining to areas within the boundaries of areas under their jurisdiction and shall have thirty (30) days from receipt of the notification in which to respond. The director, upon request by the appropriate agency, shall grant an extension to the thirty (30)-day period of an additional thirty (30) days. If no response is received within the thirty (30)-day period or within the extended period granted, the regulatory authority may make the necessary determination based on the information it has available.]*

**(3) Exception for Existing Operations. The prohibitions and limitations of section (2) of this rule do not apply to surface coal mining operations for which a valid permit, issued under 10 CSR 40-6, exists when the land comes under the protection of section 444.890.4, RSMo, or this rule. This exception applies only to lands within the permit area as it exists when the land comes under the protection of section 444.890.4, RSMo, or this rule.**

*[(C)]***(4) Procedures for Compatibility Findings for Surface Coal Mining Operations on Federal Lands in National Forests.**

**(A)** Where the proposed operation would include federal lands within the boundaries of any national forest, and the applicant seeks a determination that mining is permissible under subsection (2)(B) of this rule, the applicant, pursuant to 30 CFR 761.*[12]***13**, shall submit a permit application to the regional director of the office for processing under 30 CFR, *[S]***s**ubchapter D.

**(B) The applicant may submit a request to the regional director of the office for a determination before preparing and submitting an application for a permit or boundary revision. The applicant must explain how the proposed operation would not damage the values listed in the definition of "significant recreational, timber, economic, or other values incompatible with surface coal mining operations" in subsection (1)(B). The applicant must include a map and sufficient information about the nature of the proposed operation for the United States secretary of the interior to make adequately documented findings. The regional director of the office may request the applicant to provide any additional information that it determines is needed to make the required findings.**

**(C) When a proposed surface coal mining operation or proposed boundary revision for an existing surface coal mining operation includes federal lands within a national forest, the commission or director may not issue the permit or approve the boundary revision before the United States secretary of the interior makes the findings required by subsection (2)(B) of this rule.**

**(5) Procedures for Relocating or Closing a Public Road or**

**Waiving the Prohibition on Surface Coal Mining Operations Within the Buffer Zone of a Public Road.**

**(A) This section does not apply to—**

**1. Lands for which a person has valid existing rights, as determined under section (7) of this rule;**

**2. Lands within the scope of the exception for existing operations in section (3) of this rule; and**

**3. Access or haul roads that join a public road, as described in paragraph (2)(D)1. of this rule.**

*[(D)]***(B)** Where the proposed mining operation is to be conducted within one hundred feet (100'), measured horizontally, of the outside right-of-way line of any public road *[(except where mine access roads or haulage roads join the right-of-way line)]* or where the applicant proposes to close or relocate any public road, the commission or director or the appropriate public road authority designated by the director shall—

1. Require the applicant to obtain necessary approvals of the public road authority with jurisdiction;

2. Provide public notice in a newspaper of general circulation in the affected locale;

3. Provide **a public comment period and** an opportunity for a public hearing in the locality of the proposed mining operations at which any member of the public may participate for purpose of determining whether the interests of the public and affected landowners will be protected;

4. Publish, if a hearing is requested, a public notice of the location, date**,** and time of the hearing in a newspaper of general circulation in the affected locale two (2) weeks prior to the hearing; and

5. Make a written finding based upon information received **from the public** *[at the public hearing, within thirty (30) days after completion of the hearing,]* as to whether the interests of the public and affected landowners will be protected from the proposed mining operations. **If a hearing was held, make this finding within thirty (30) days after the hearing. If no hearing is held, make this finding within thirty (30) days after the end of the public comment period.**

**(6) Procedures for Waiving the Prohibition on Surface Coal Mining Operations Within the Buffer Zone of an Occupied Dwelling.**

**(A) This section does not apply to—**

**1. Lands for which a person has valid existing rights, as determined under section (7) of this rule;**

**2. Lands within the scope of the exception for existing operations in section (3) of this rule; and**

**3. Access or haul roads that connect with an existing public road on the side of the public road opposite the dwelling, as provided in paragraph (2)(E)2. of this rule.**

*[(E)]***(B)** Where the proposed surface coal mining operations would be conducted within three hundred feet (300'), measured horizontally, of any occupied dwelling, the applicant shall submit with the application a written waiver from the owner of the dwelling, consenting to these operations within a closer distance of the dwelling as specified in the waiver. The waiver must be made knowingly and separate from a lease or deed unless the lease or deed contains an explicit waiver. **The waiver must clarify that the owner and signatory had the legal right to deny mining and knowingly waived that right. The waiver will act as consent to surface coal mining operations within a closer distance of the dwelling as specified.**

**(C) If the permit applicant obtained a valid waiver before August 3, 1977, from the owner of an occupied dwelling to conduct operations within three hundred feet (300') of the dwelling, the permit applicant need not submit a new waiver.**

**(D) If the permit applicant obtains a valid waiver from the owner of an occupied dwelling, that waiver will remain effective against subsequent purchasers who had actual or constructive knowledge of the existing waiver at the time of purchase. A subsequent purchaser will be deemed to have constructive knowledge if the waiver has been properly filed in public property records pursuant to state laws or if surface coal mining operations have entered the three hundred (300)-foot zone before the date of purchase.**

*[(F) Public Parks or Historic Places.*

*1. Where the proposed surface coal mining operation may adversely affect any public park or places included on, or eligible for listing on, the National Register of Historic Places the director shall transmit to the federal, state or local agencies with jurisdiction over the park or historic place a copy of the completed permit application containing the following:*

*A. A request for that agency's approval or disapproval of the operations; and*

*B. A notice to the appropriate agency that it must respond within thirty (30) days from receipt of the request.*

*2. A permit for the operation will not be issued unless jointly approved by all affected agencies.*

*(G) If it is determined that the proposed surface coal mining operation is not prohibited under section 444.890.4, RSMo and this rule, nevertheless, pursuant to appropriate petitions, these lands may be designated as unsuitable for all or certain types of surface coal mining operations pursuant to this rule or 10 CSR 40-5.020.*

*(H) A determination of the commission or director that a person holds or does not hold a valid existing right or that the surface coal mining operations did or did not exist on the date of enactment shall be subject to administrative and judicial review under 10 CSR 40-6.080(1)(B) and (2)(B).]*

**(7) Submission and Processing of Requests for Valid Existing Rights Determinations.**

**(A) Agency Responsible for Valid Existing Rights Determinations. An applicant must request a valid existing rights determination from the director of the office for federal lands protected under subsections (2)(A) and (B) of this rule and for those features on federal lands protected under subsections (2)(C) through (G) of this rule. An applicant must request a valid existing rights determination from the regulatory authority for non-federal lands protected under subsection (2)(A) of this rule and for those features on non-federal lands protected under subsections (2)(C) through (G) of this rule. The regulatory authority must use the federal definition of valid existing rights at 30 CFR 761.5 when making a determination for non-federal lands protected under subsection (2)(A) of this rule and the definition of valid existing rights at subsection (1)(A) of this rule when making a determination for those features protected under subsections (2)(C) through (G) of this rule.**

**(B) Request for a Valid Existing Rights Determination. An applicant must request a valid existing rights determination from the appropriate agency under subsection (7)(A) of this rule if he or she intends to conduct surface coal mining operations on the basis of valid existing rights under section (2) of this rule or wishes to confirm the right to do so. The applicant may submit this request before preparing and submitting an application for a permit or boundary revision for the land. If the regional director of the office is the appropriate agency, the applicant must request the determination in accordance with the requirements of the federal regulations at 30 CFR 761.16. If the regulatory authority is the appropriate agency, the applicant must request the determination in accordance with the requirements of this section.**

**1. Requirements for property rights demonstration. The applicant must provide a property rights demonstration under paragraph (1)(A)2. of this rule if the request relies upon the good faith/all permits standard or the needed for and adjacent standard in paragraph (1)(A)3. of this rule. This demonstration must include the following items:**

A. A legal description of the land to which the request pertains;

B. Complete documentation of the character and extent of the applicant's current interests in the surface and mineral estates of the land to which the request pertains;

C. A complete chain of title for the surface and mineral estates of the land to which the request pertains;

D. A description of the nature and effect of each title instrument that forms the basis for the request, including any provision pertaining to the type or method of mining or mining-related surface disturbances and facilities;

E. A description of the type and extent of surface coal mining operations that the applicant claims the right to conduct, including the method of mining, any mining-related surface activities and facilities, and an explanation of how those operations would be consistent with state property law;

F. Complete documentation of the nature and ownership, as of the date that the land came under the protection of section 444.890.4, RSMo, or this rule, of all property rights for the surface and mineral estates of the land to which the request pertains;

G. Names and addresses of the current owners of the surface and mineral estates of the land to which the request pertains;

H. If the coal interests have been severed from other property interests, documentation that the owners of other property interests in the land to which the request pertains have been notified and provided reasonable opportunity to comment on the validity of the property rights claims; and

I. Any comments received in response to the notification provided under subparagraph (7)(B)1.H. of this rule.

2. Requirements for good faith/all permits standard. If the request relies upon the good faith/all permits standard in subparagraph (1)(A)3.A. of this rule, the applicant must submit the information required under paragraph (7)(B)1. of this rule. Also, the applicant must submit the following information about permits, licenses, and authorizations for surface coal mining operations on the land to which the request pertains:

A. Approval and issuance dates and identification numbers for any permits, licenses, and authorizations that the applicant obtained or that a predecessor in interest obtained before the land came under the protection of section 444.890.4, RSMo, or this rule;

B. Application dates and identification numbers for any permits, licenses, and authorizations that the applicant submitted or a predecessor in interest submitted in an application before the land came under the protection of section 444.890.4, RSMo, or this rule; and

C. An explanation of any other good faith effort that the applicant made or a predecessor in interest made to obtain the necessary permits, licenses, and authorizations as of the date that the land came under the protection of section 444.890.4, RSMo, or this rule.

3. Requirements for needed for and adjacent standard. If the request relies upon the needed for and adjacent standard in subparagraph (1)(A)3.B. of this rule, the applicant must submit the information required under paragraph (7)(B)1. of this rule. In addition, the applicant must explain how and why the land is needed for and immediately adjacent to the operation upon which the request is based, including a demonstration that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of section 444.890.4, RSMo, or this rule.

4. Requirements for standards for mine roads. If the request relies upon one (1) of the standards for roads in subparagraphs (1)(A)4.A. through C. of this rule, the applicant must submit satisfactory documentation that—

A. The road existed when the land upon which it is located came under the protection of section 444.890.4, RSMo, or this rule, and the applicant has a legal right to use the road for surface coal mining operations;

B. A properly recorded right-of-way or easement for a road in that location existed when the land came under the protection of section 444.890.4, RSMo, or this rule, and, under the document creating the right-of-way or easement, and under any subsequent conveyances, the applicant has a legal right to use or construct a road across that right-of-way or easement to conduct surface coal mining operations; or

C. A valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of section 444.890.4, RSMo, or this rule.

(C) Initial Review of Request.

1. The commission or director must conduct an initial review to determine whether the request includes all applicable components of the submission requirements of subsection (7)(B) of this rule. This review pertains only to the completeness of the request, not the legal or technical adequacy of the materials submitted.

2. If the request does not include all applicable components of the submission requirements of subsection (7)(B) of this rule, the commission or director must notify the applicant and establish a reasonable time for submission of the missing information.

3. When the request includes all applicable components of the submission requirements of subsection (7)(B) of this rule, the commission or director must implement the notice and comment requirements of subsection (7)(D) of this rule.

4. If the information that the commission or director requests under paragraph (7)(C)2. of this rule is not provided within the time specified or as subsequently extended, the commission or director must issue a determination that the applicant has not demonstrated valid existing rights, as provided in paragraph (7)(E)4. of this rule.

(D) Notice and Comment Requirements and Procedures.

1. When the completeness requirements of subsection (7)(C) of this rule are satisfied, the commission or director must publish a notice in a newspaper of general circulation in the county in which the land is located. This notice must invite comment on the merits of the request. Alternatively, the commission or director may require that the applicant publish this notice and provide the commission or director with a copy of the published notice. Each notice must include:

A. The location of the land to which the request pertains;

B. A description of the type of surface coal mining operations planned; and

C. A reference to and brief description of the applicable standard(s) under the definition of valid existing rights in subsection (1)(A) of this rule.

(I) If the request relies upon the good faith/all permits standard or the needed for and adjacent standard of the definition of valid existing rights in paragraph (1)(A)3. of this rule, the notice also must include a description of the property rights that are claimed and the basis for the claim.

(II) If the request relies upon the standard of the definition of valid existing rights in subparagraph (1)(A)4.A. of this rule, the notice also must include a description of the basis for the claim that the road existed when the land came under the protection of section 444.890.4, RSMo, or this rule. In addition, the notice must include a description of the basis for the claim that the applicant has a legal right to use that road for surface coal mining operations.

(III) If the request relies upon the standard of the definition of valid existing rights in subparagraph (1)(A)4.B. of this rule, the notice also must include a description of the basis for the claim that a properly recorded right-of-way or easement for

**a road in that location existed when the land came under the protection of section 444.890.4, RSMo, or this rule. In addition, the notice must include a description of the basis for the claim that, under the document creating the right-of-way or easement, and under any subsequent conveyances, the applicant has a legal right to use or construct a road across the right-of-way or easement to conduct surface coal mining operations.**

**(IV) If the request relies upon one or more of the standards in paragraph (1)(A)3., and subparagraphs (1)(A)4.A. and (1)(A)4.B. of the definition of valid existing rights in subsection (1)(A) of this rule, a statement that the commission or director will not make a decision on the merits of the request if, by the close of the comment period under this notice or the notice required by paragraph (7)(D)3. of this rule, a person with a legal interest in the land initiates appropriate legal action in the proper venue to resolve any differences concerning the validity or interpretation of the deed, lease, easement, or other documents that form the basis of the claim.**

**(V) A description of the procedures that the commission or director will follow in processing the request.**

**(VI) The closing date of the comment period, which must be a minimum of thirty (30) days after the publication date of the notice.**

**(VII) A statement that interested persons may obtain a thirty (30)-day extension of the comment period upon request.**

**(VIII) The name and address of the commission or director's office where a copy of the request is available for public inspection and to which comments and requests for extension of the comment period should be sent.**

**2. The commission or director must promptly provide a copy of the notice required under paragraph (7)(D)1. to—**

**A. All reasonably locatable owners of surface and mineral estates in the land included in the request; and**

**B. The owner of the feature causing the land to come under the protection of section 444.890.4, RSMo, or this rule, and, when applicable, the agency with primary jurisdiction over the feature with respect to the values causing the land to come under the protection of section 444.890.4, RSMo, or this rule. For example, both the landowner and the state historic preservation officer must be notified if surface coal mining operations would adversely impact any site listed on the National Register of Historic Places. As another example, both the surface owner and the National Park Service must be notified if the request includes non-federal lands within the authorized boundaries of a unit of the National Park System.**

**3. The letter transmitting the notice required under paragraph (7)(D)2. of this rule must provide a thirty (30)-day comment period, starting from the date of service of the letter, and specify that another thirty (30) days is available upon request. At its discretion, the commission or director may grant additional time for good cause upon request. The commission or director need not necessarily consider comments received after the closing date of the comment period.**

(E) How a Decision Will be Made.

**1. The commission or director must review the materials submitted under subsection (7)(B) of this rule, comments received under subsection (7)(D) of this rule, and any other relevant, reasonably available information to determine whether the record is sufficiently complete and adequate to support a decision on the merits of the request. If not, the commission or director must notify the applicant in writing, explaining the inadequacy of the record and requesting submittal, within a specified reasonable time, of any additional information that the commission or director deems necessary to remedy the inadequacy.**

**2. Once the record is complete and adequate, the commission or director must determine whether the applicant has demonstrated valid existing rights. The decision document must explain how the applicant has or has not satisfied all applicable elements of the definition of valid existing rights in subsection (1)(A) of this rule. It must contain findings of fact and conclusions, and it must specify the reasons for the conclusions.**

**3. Impact of property rights disagreements. This paragraph applies only when the applicant's request relies upon one (1) or more of the standards of the definition of valid existing rights in paragraph (1)(A)3., and subparagraphs (1)(A)4.A. and (1)(A)4.B. of this rule.**

**A. The commission or director must issue a determination that the applicant has not demonstrated valid existing rights if the property rights claims are the subject of pending litigation in a court or administrative body with jurisdiction over the property rights in question. The commission or director will make this determination without prejudice, meaning that the applicant may refile the request once the property rights dispute is finally adjudicated. This paragraph applies only to situations in which legal action has been initiated as of the closing date of the comment period under paragraph (7)(D)1. or (7)(D)3. of this rule.**

**B. If the record indicates disagreement as to the accuracy of the applicant's property rights claims, but this disagreement is not the subject of pending litigation in a court or administrative agency of competent jurisdiction, the commission or director must evaluate the merits of the information in the record and determine whether the applicant has demonstrated that the requisite property rights exist under the definition of valid existing rights in paragraph (1)(A)3., and subparagraphs (1)(A)4.A. and (1)(A)4.B. of this rule, as appropriate. The commission or director must then proceed with the decision process under paragraph (7)(E)2. of this rule.**

**4. The commission or director must issue a determination that the applicant has not demonstrated valid existing rights if the applicant does not submit information that the commission or director requests under paragraph (7)(C)2. or (7)(E)1. of this rule within the time specified or as subsequently extended. The commission or director will make this determination without prejudice, meaning that the applicant may refile a revised request at any time.**

**5. After making a determination, the commission or director must—**

**A. Provide a copy of the determination, together with an explanation of appeal rights and procedures, to the applicant, to the owner or owners of the land to which the determination applies, to the owner of the feature causing the land to come under the protection of section 444.890.4, RSMo, or this rule, and, when applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of section 444.890.4, RSMo, or this rule; and**

**B. Publish notice of the determination in a newspaper of general circulation in the county in which the land is located. Alternatively, the commission or director may require that the applicant publish this notice and provide a copy of the published notice to the commission or director.**

**(F) A determination of the commission or director that a person holds or does not hold a valid existing right or that the surface coal mining operations did or did not exist on the date of enactment shall be subject to administrative and judicial review under 10 CSR 40-6.080(1)(B) and (2)(B).**

**(G) Availability of Records. The commission or director must make a copy of the request subject to notice and comment under subsection (7)(D) of this rule available to the public in the same manner as the commission or director makes permit applications available to the public under 10 CSR 40-6.070(6). In addition, the commission or director must make records associated with that request, and any subsequent determination under subsection (7)(E) of this rule, available to the public in accordance with the requirements and procedures of 10 CSR 40-8.030(3).**

**(8) Regulatory Authority Obligations at Time of Permit Application Review.**

**(A) Upon receipt of an administratively complete application for a surface coal mining and reclamation operation permit, or an administratively complete application for revision of the boundaries of a surface coal mining operation permit, the commission or director shall review the application to determine whether the proposed surface coal mining operation would be located on any lands protected under section 444.890.4, RSMo, or this rule.**

**(B) The commission or director must reject any portion of the application that would locate surface coal mining operations on land protected under section 444.890.4, RSMo, or this rule, unless—**

**1. The site qualifies for the exception for existing operations under section (3) of this rule;**

**2. A person has valid existing rights for the land, as determined under section (7) of this rule;**

**3. The applicant obtains a waiver or exception from the prohibitions of section 444.890.4, RSMo, or this rule, in accordance with sections (4) through (6) of this rule; and**

**4. For lands protected by subsection (2)(C) of this rule, both the commission or director and the agency with jurisdiction over the park or place jointly approve the proposed operation in accordance with subsection (8)(D) of this rule.**

**(C) Location Verification. If the commission or director has difficulty determining whether an application includes land within an area specified in subsection (2)(A) of this rule or within the specified distance from a structure or feature listed in subsection (2)(F) or (G) of this rule, the commission or director shall request that the federal, state, or local governmental agency with jurisdiction over the protected land, structure, or feature verify the location.**

**1. The request for location verification must—**

**A. Include relevant portions of the permit application;**

**B. Provide the agency with thirty (30) days after receipt to respond, with a notice that another thirty (30) days is available upon request; and**

**C. Specify that the commission or director will not necessarily consider a response received after the comment period provided under subparagraph (8)(C)1.B. of this rule.**

**2. If the agency does not respond in a timely manner, the commission or director may make the necessary determination based on available information.**

**(D) Procedures for Joint Approval of Surface Coal Mining Operations that will Adversely Affect Publicly-Owned Parks or Historic Places.**

**1. If the commission or director determines that the proposed surface coal mining operation will adversely affect any publicly-owned park or any place included in the National Register of Historic Places, the director shall request that the federal, state, or local agency with jurisdiction over the park or place either approve or object to the proposed operation. The request must—**

**A. Include a copy of applicable parts of the permit application;**

**B. Provide the agency with thirty (30) days after receipt to respond, with a notice that another thirty (30) days is available upon request; and**

**C. State that failure to interpose an objection within the time specified under subparagraph (8)(D)1.B. of this rule will constitute approval of the proposed operation.**

**2. The commission or director may not issue a permit for a proposed operation subject to paragraph (8)(D)1. of this rule unless all affected agencies jointly approve.**

**3. Paragraphs (8)(D)1. and 2. of this rule do not apply to—**

**A. Lands for which a person has valid existing rights, as determined under section (7) of this rule; and**

**B. Lands within the scope of the exception for existing operations in section (3) of this rule.**

*AUTHORITY: section 444.530, RSMo [Supp. 1999]* ***2000****. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. For intervening history, please consult the* ***Code of State Regulations****. Amended: Filed June 29, 2011.*

*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 Staff Director, Land Reclamation Program, PO Box 176, Jefferson City, MO 65102-0176. 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 10—DEPARTMENT OF NATURAL RESOURCES
## Division 40—Land Reclamation Commission
## Chapter 5—Prohibitions and Limitations on Mining in Certain Areas and Areas Unsuitable for Mining

### PROPOSED AMENDMENT

**10 CSR 40-5.020 State Designation of Areas as Unsuitable for Mining**. The commission is amending section (3) by inserting new language and is renumbering and amending sections (4)–(8).

*PURPOSE: This proposed amendment is designed to offer increased opportunity for proof of valid existing rights and defines in great detail what the company must prove and how the regulatory authority must decide whether or not the rights asserted are, in fact, valid.*

**(3) Applicability to Lands Designated as Unsuitable by Congress. Pursuant to appropriate petitions, lands listed under 10 CSR 40-5.010(2) are subject to designation as unsuitable for all or certain types of surface coal mining operations under this rule.**

*[(3)]***(4)** **Exploration on Land Designated as Unsuitable for Surface Coal Mining Operations.** Designation of any areas as unsuitable for all or certain types of surface coal mining operations does not prohibit coal exploration operations in the area, if conducted in accordance with the law and 10 CSR 40-3–10 CSR 40-8, and other applicable federal and state requirements. Exploration operations on any lands designated unsuitable for surface coal mining operations must be approved under 10 CSR 40-6.020 to insure that exploration does not interfere with any value for which the area has been designated **unsuitable** for surface coal mining.

*[(4)]***(5)** Procedures—Petitions.

(A) Right to Petition. Any person having an interest which is, or may be, adversely affected has the right to petition the commission and director to have an area designated as unsuitable for surface coal mining operations or to have an existing designation terminated. The petition shall be filed with the director.

(B) Designation. The only information that a petitioner need provide is—

1. The location and size of the area and a United States Geological Survey (USGS) topographic map outlining the perimeter of the petitioned area covered by the petition;

2. Specific allegations of facts and supporting evidence which would tend to establish that the area is unsuitable for all or certain types of surface coal mining operations;

3. A description of how mining of the area has affected or may adversely affect people, land, air, water, or other resources;

4. The petitioner's name, address, telephone number, and notarized signature;

5. Identification of the petitioner's interest which is or may be adversely affected; and

6. Other supplementary information which is readily available.

(C) Termination. The only information that a petitioner need provide is—

1. The location and size of the area and a USGS topographic map outlining the perimeter of the petitioned area covered by the petition;

2. Allegations of facts, with supporting evidence, not contained in the record of the proceeding in which the area was designated unsuitable, which would tend to establish the statements or allegations, and which statements or allegations indicate that the designation should be terminated based on—

A. The nature or abundance of the protected resource or condition or other basis of the designation if the designation was based on criteria found in subsection (1)(B) of this rule;

B. Reclamation now being technologically and economically feasible, if the designation was based on the criteria found in subsection (1)(A) of this rule; or

C. The resources or condition not being affected by surface coal mining operations or, in the case of land use plans, not being incompatible with surface coal mining operations during and after mining, if the designation was based on the criteria found in subsection (1)(B) of this rule;

3. The petitioner's name, address, telephone number, and notarized signature;

4. Identification of the petitioner's interest which is or may be adversely affected by the continuation of the designation; and

5. Other supplementary information which is readily available.

*[(5)]***(6)** Procedures—Initial Processing, Record-*[k]***K**eeping, and Notification Requirements.

(A) Initial Processing.

1. Within thirty (30) days of receipt of a petition, the director shall notify the petitioner by certified mail whether or not the petition is complete under subsection *[(4)]***(5)**(B) or (C) of this rule.

2. The director shall determine whether any identified coal resources exist in the area covered by the petition, without requiring any showing from the petitioner. If the director finds there are not any identified coal resources in that area, s/he shall return the petition to the petitioner with a statement of findings.

3. The director may reject petitions for designations or terminations of designations which are frivolous. Once the requirements of section *[(4)]***(5)** of this rule are met, no party shall bear any burden of proof, but each accepted petition shall be considered and acted upon by the commission and director pursuant to the procedures of sections *[(4)–(10)]***(5)–(11)** of this rule.

4. When considering a petition for an area which was previously and unsuccessfully proposed for designation, the director shall determine if the new petition presents new allegations of facts. If the petition does not contain new allegations of facts, the director shall not consider the petition and shall return the petition to the petitioner, with a statement of his/her findings and a reference to the record of the previous designation proceedings where the facts were considered.

5. If the director determines that the petition is incomplete or frivolous, s/he shall return the petition to the petitioner, with a written statement of the reasons for the determination and the categories of information needed to make the petition complete.

6. The director shall notify the person who submits a petition of any application for a permit received which proposes to include any area covered by the petition.

7. Any petition received after the close of the public comment period on a permit application relating to the same mine plan area shall not prevent the commission or director from issuing a decision on that permit application. The commission or director may return any petition received after that to the petitioner with a statement why the commission or director cannot consider the petition. For the purposes of this section, close of the public comment period shall mean at the close of any informal conference held under 10 CSR 40-6.070(5) or, if no conference is requested, at the close of the period for filing written comments and objections under 10 CSR 40-6.070(3) and (4).

(B) Public Notice.

1. Within three (3) weeks after the determination that a petition is completed, the director shall circulate copies of the petition to, and request submissions of relevant information from, other interested governmental agencies, the petitioner, intervenors, persons with an ownership interest of record in the property, and other persons known to the director to have an interest in the property.

2. Within three (3) weeks after the determination that a petition is complete, the director shall notify the general public of the receipt of the petition and request submissions of relevant information by a newspaper advertisement placed once a week for two (2) consecutive weeks in the locale of the area covered by the petition, in the newspaper of largest circulation in the state, and in any official state register of public notices.

(C) Until three (3) days before the commission holds a hearing under section (7) of this rule, any person may intervene in the proceeding by filing allegations of facts, supporting evidence, a short statement identifying the petition to which the allegations pertain, and the intervenor's name, address, and telephone number.

(D) Beginning immediately after a complete petition is filed, the director shall compile and maintain a record consisting of all documents relating to the petition filed with or prepared by the commission. The director shall make the record available for public inspection, free of charge and copying, at reasonable cost, during all normal business hours at a central location of the county or multicounty area in which the land petitioned is located and at the main office of the director.

*[(6)]***(7)** Procedures—Hearing Requirements.

(A) Within ten (10) months after receipt of a complete petition, the commission shall hold a public hearing in the locality of the area covered by the petition. If all petitioners and intervenors agree, the hearing need not be held. The hearing shall be legislative and fact-finding in nature, without cross-examination of witnesses. The commission shall make a verbatim transcript of the hearing.

(B) Hearing Notices.

1. The director shall give notice of the date, time, and location of the hearing to—

A. Local, state, and federal agencies which may have an interest in the decision on the petition;

B. The petitioner and the intervenors; and

C. Any person with an ownership or other interest known to the director in the area covered by the petition.

2. Notice of the hearing shall be sent by certified mail and postmarked not less than thirty (30) days before the scheduled date of the hearing.

(C) The director shall notify the general public of the date, time, and location of the hearing by placing a newspaper advertisement once a week for two (2) consecutive weeks in the locale of the area covered by the petition and once during the week prior to the scheduled date of the public hearing. The consecutive weekly advertisement must begin between four and five (4–5) weeks before the scheduled date of the public hearing.

(D) The commission may consolidate in a single hearing the hearings required for each of several petitions which relate to areas in the same locale.

(E) Prior to designating any land areas as unsuitable for surface coal mining operations, the commission will prepare a detailed statement using existing and available information on the potential coal resources of the area, the demand for coal resources**,** and the impact of this designation on the environment, the economy**,** and the supply of coal.

(F) In the event that all petitioners and intervenors stipulate agreement prior to the hearing, the petition may be withdrawn from consideration.

***[(7)]*****(8)** Procedures—Decision.

(A) In reaching its decision, the commission shall use—

1. Information contained in the data base and inventory system;
2. Information provided by other governmental agencies;
3. The detailed statement prepared under subsection ***[(6)]*****(7)**(E) of this rule; and
4. Any other relevant information submitted during the comment period.

(B) A final written decision shall be issued by the commission, including a statement of reasons, within sixty (60) days of completion of the public hearing or, if no public hearing is held, then within twelve (12) months after receipt of the complete petition. The director shall simultaneously send the decision by certified mail to the petitioner, every other party to the proceeding and to the regional director of the office for the region in which the state is located.

(C) The decision of the commission with respect to a petition, or the failure of the commission to act within the time limits set forth in this section, are subject to judicial review.

***[(8)]*****(9)** Data Base and Inventory System Requirements.

(A) The director shall develop a data base and inventory system which will permit evaluation of whether reclamation is feasible in areas covered by petitions.

(B) The director shall include in the system information relevant to the criteria in section (1) of this rule, including, but not limited to, information received from the United States Fish and Wildlife Service, the state historic preservation officer**,** and the agency administering Section 127 of the Clean Air Act (42 USC Section 7470).

(C) The director shall add to the data base and inventory system the following information:

1. On potential coal resources of the state, demand for those resources, the environment, the economy**,** and the supply of coal sufficient to enable the commission to prepare the statements required by subsection ***[(6)]*****(7)**(E) of this rule; and
2. That which becomes available from petitions, publications, experiments, permit applications, mining and reclamation operations**,** and other sources.

***[(9)]*****(10)** Public Information. The director shall—

(A) Make the information and data base system developed under section ***[(8)]*****(9)** of this rule available to the public for inspection free of charge and for copying at reasonable cost; and

(B) Provide information to the public on the petition procedures necessary to have an area designated as unsuitable for all or certain types of surface coal mining operations or to have designations terminated and describe how the inventory and data base system can be used.

***[(10)]*****(11)** Responsibility for Implementation.

(A) Permits will not be issued which are inconsistent with designations made pursuant to 10 CSR 40-5.010 or this rule.

(B) The director shall maintain a map of areas designated as unsuitable for all or certain types of surface coal mining operations.

(C) The director shall make available to any person any information within his/her control regarding designations, including mineral and elemental content which is potentially toxic in the environment but excepting proprietary information on the chemical and physical properties of the coal.

*AUTHORITY: section 444.530, RSMo* ***[1986]*** ***2000****. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. Amended: Filed April 14, 1980, effective Aug. 11, 1980. Amended: Filed Sept. 15, 1988, effective Jan. 15, 1989. Amended: Filed June 29, 2011.*

*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 Staff Director, Land Reclamation Program, PO Box 176, Jefferson City, MO 65102-0176. To be considered, comments must be received within thirty (30) days after publication of this notice in the* ***Missouri Register****. No public hearing is scheduled.*

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

## PROPOSED RULE

**13 CSR 70-3.210 Electronic Retention of Records**

*PURPOSE: This rule advises MO HealthNet providers of the opportunity to store records on an electronic medium to save resources when storing records.*

(1) Records required to be maintained by the Department of Social Services may be maintained in an electronic medium. Records means any books, papers, journals, charts, treatment histories, medical histories, tests and laboratory results, photographs, X rays, and any other recordings of data or information made by or caused to be made by a provider relating in any way to services provided to MO HealthNet participants and payments charged or received.

(2) Upon transfer of an original paper record to an electronic medium, the enrolled provider may destroy the original paper record after assuring that all information contained in the original record, including signatures, handwritten notations, or pictures, is contained in the durable medium.

(3) If the provider does not retain the original paper record, or if there was no original paper record, a duplicate or back-up system sufficient to permit reconstruction of the electronic records shall be established at a separate location.

(4) Nothing in this regulation shall be construed as requiring the utilization of any particular method of record retention by an enrolled provider. Records may be retained in any form that can be made available for review at the same site at which the service was provided or at the provider's address of record with the Department of Social Services. Copies of records must be provided upon request of the Department of Social Services, Department of Health and Senior Services, and/or Department of Mental Health or its authorized agents, regardless of the media in which they are kept. Failure to make these records available at the same site at which the services were rendered or at the provider's address of record with the

Department of Social Services, or failure to provide copies when and as requested, or failure to keep and make available records which document the services and payments as required in 13 CSR 70-3.030 shall constitute a violation of this section and shall be a reason for sanction.

*AUTHORITY: section 208.201, RSMo Supp. 2010. Original rule filed July 1, 2011.*

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

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

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

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

## PROPOSED RULE

### 13 CSR 70-3.220 Electronic Health Record Incentive Program

*PURPOSE: The Health Information Technology and Clinical Health Act (HITECH) offers incentive payments to encourage eligible professionals and hospitals to adopt certified Electronic Health Records (EHRs). This rule establishes the basis on which eligible hospitals and professionals participating in the MO HealthNet Program will be eligible to receive payments when they successfully demonstrate that they have adopted, implemented, or upgraded to certified EHR technology in the first year and meaningfully use certified electronic health record technology in subsequent years.*

(1) Definitions. Patient volume shall be calculated as outlined in 42 CFR 495.302–495.306.

(2) Eligible Providers. To qualify for Medicaid incentive payments during the first year, eligible professionals and hospitals must complete registration and attestation requirements, meet volume thresholds for Medicaid patients, and show that they have adopted, implemented, or upgraded to certified electronic health record (EHR) technology. In subsequent years, payments require demonstration of meaningful use of certified EHR technology. To be deemed an "eligible professional or hospital" for the electronic health record incentive program, a professional or hospital must satisfy the following criteria:

(A) The eligible professional or hospital must be currently enrolled as a MO HealthNet provider, either in the fee for service program or a managed care organization which has a contract with the state of Missouri;

(B) The provider must be one (1) of the following:

1. An eligible professional, listed as—

A. A physician;

B. A dentist;

C. A certified nurse midwife;

D. A nurse practitioner; or

E. A physician assistant practicing in a federally-qualified health center or rural health clinic when a physician assistant is the primary provider, director, or owner of the site;

2. An acute care hospital, defined as a health care facility where the average length of stay is twenty-five (25) days or fewer, which has a Centers for Medicare and Medicaid Services (CMS) certification number with the last four digits in the series 0001–0879 or 1300–1399; or

3. A children's hospital, defined as a separately certified children's hospital, either freestanding or a hospital-within-hospital, that predominately treats individuals under twenty-one (21) years of age and has a CMS certification number with the last four digits in the series 3300–3399;

(C) For the year for which the provider is applying for an incentive payment—

1. An eligible professional must have at least thirty percent (30%) of the professional's patient volume covered by Medicaid, except that—

A. A pediatrician must have at least twenty percent (20%) Medicaid patient volume;

B. A professional practicing at an federally-qualified health center or rural health clinic must have at least fifty percent (50%) of patient encounters in a federally-qualified health center or rural health clinic, with a minimum thirty percent (30%) patients who are medically needy, defined as those furnished uncompensated care, or services either at no cost or at a reduced cost based on a sliding scale or ability to pay, or patients covered by the MO HealthNet program or the state's Children's Health Insurance Program (CHIP); and

C. Professionals have the option to base their volume on either—

(I) Their individual Medicaid patient encounters as a percentage of their total individual encounters; or

(II) The practice's total Medicaid encounters as a percentage of the practice's total patient encounters;

2. An acute care hospital must have ten percent (10%) Medicaid patient volume; and

3. A children's hospital is presumed to meet the Medicaid patient volume requirement;

(D) Application and Agreement. Any eligible provider who wants to participate in the Missouri electronic health record incentive program must declare the intent to participate by electronically registering with the Centers for Medicare and Medicaid Services (CMS) using the Medicare and Medicaid electronic health record incentive program registration and attestation website. CMS will notify the Department of Social Services of an eligible provider's registration for the Medicaid incentive payment program.

1. The department will maintain a website and secure portal with instructions for submitting documentation of patient volume, certified technology, and other information required to apply for the Medicaid EHR incentive at the website, http://mo.arraincentive.com.

2. The applicant shall use the website to—

A. Attest to the applicant's qualifications to receive the incentive payment; and

B. Submit an electronic copy of a signed attestation form.

3. The department may request any missing or additional information from the provider. If missing or additional information is required, the department will notify the provider by electronic mail of the specific information needed. If the provider fails to submit the required information, the department will determine the registration incomplete and application will remain in an incomplete status until the required information is submitted.

4. The department may request additional information from sources other than the provider to validate the provider's attestation submitted as a result of this rule;

(E) Record Retention. Providers must retain records to support their eligibility for the incentive payment for a minimum of six (6) years. The department will select providers for audit after issuance of an incentive payment. Incentive payment recipients shall cooperate with the department by providing proof of—

1. Eligibility for the incentive program;
2. Medicaid patient volume thresholds;
3. Purchase of certified electronic health record technology; and
4. Meaningful use of electronic health record technology;

(F) Patient Consent Form. Providers must retain records to support the disclosure of patient health information to all treating providers; and

(G) Administrative Appeal. Any eligible provider or any provider that claims to be an eligible provider and who has been subject to adverse actions related to the electronic health record incentive program may seek review of the department's action pursuant to section 621.055, RSMo. Appealable issues include:

1. Provider eligibility determination;
2. Medicaid patient volume thresholds;
3. Incentive payment amounts; or
4. Demonstration of adopting, implementing, upgrading, and meaningful use of technology.

(3) The department will make an incentive payment to a provider as a result of this rule in accordance with the requirements of 42 CFR 495.308–495.312. A provider who has received an incentive payment as a result of this rule must continue to meet the eligibility standards for that payment through the entire payment year. If the department finds that a provider is deficient, the department may take any of the following actions:

(A) Suspend an incentive payment until the provider has removed the deficiency to the satisfaction of the department;

(B) Require full repayment of all or a portion of an incentive payment; or

(C) Terminate participation in the MO HealthNet electronic health record incentive program.

*AUTHORITY: section 208.201, RSMo Supp. 2010. Original rule filed July 1, 2011.*

*PUBLIC COST: This proposed rule is estimated to cost sixty (60) million dollars in federal funds.*

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of 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.*

# FISCAL NOTE
# PUBLIC COST

I. **Department Title:** Title 13 - Department of Social Services
**Division Title:** Division 70 - MO HealthNet Division
**Chapter Title:** Chapter 3 – Electronic Health Record Incentive Program

| **Rule Number and Name:** | 13 CSR 70-3.220 Electronic Health Record Incentive Program |
|---|---|
| **Type of Rulemaking:** | Proposed Rule |

## II. SUMMARY OF FISCAL IMPACT

| Affected Agency or Political Subdivision | Estimated Cost of Compliance in the Aggregate |
|---|---|
| Department of Social Services, MO HealthNet Division | **SFY 2011 = $0**<br>**SFY 2012 = $60 million, state share = $0** |
| | |

## III. WORKSHEET

| | |
|---|---|
| Estimated Cost for SFY 2012 | $60,000,000 |
| Total State Share | $ 0 |

## IV. ASSUMPTIONS

**Estimated Cost for SFY 2012** – Estimates are based on assumptions about the number of professionals and hospitals in the state that will qualify for the incentive payments and the projected timing of their applications. It is estimated that 550 eligible professionals and 50 eligible hospitals will apply for incentives during SFY 2012. They are projected to receive payments of approximately $10 million and $50 million, respectively, for a total of $60 million. Additional information about the assumptions is included below.

Eligible professionals include doctors of medicine or osteopathy, nurse practitioners, certified nurse-midwives, dentists, and physician assistants who work at a PA-led FQHC or RHC. Most eligible professionals must have 30% Medicaid patient volume to qualify and may receive up to $63,750 over six years (spanning 2011 through 2021). Payments for the first year of participation are up to $21,250 for adoption, implementation or upgrade to certified EHR technology. In subsequent years payments are up to $8500 annually if professionals demonstrate meaningful use of their EHR technology. Based upon analysis of claims data, it is estimated that 1100 professionals would meet the patient volume requirements and that half of those will apply for incentives in SFY 2012.

Eligible hospitals include acute care hospitals, children's hospitals, cancer hospitals and critical access hospitals. Most hospitals must have 10% Medicaid patient volume to qualify and incentive payments are based on a formula outlined by CMS. Most are expected to receive on average total incentive payments of $2 million. Payments will be made over three years on the following schedule: 50% in the first year, 35% in the second, and 15% in the third. As with professionals, hospitals must demonstrate meaningful use of their EHR technology to receive payments after the first year. In consultation with the hospital association, it is estimated that 80 to 90 hospitals will meet patient volume requirements and that up to 50 will apply for incentives in SFY 2012.

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

## PROPOSED AMENDMENT

**13 CSR 70-10.016 Global Per Diem Adjustments to Nursing Facility and HIV Nursing Facility Reimbursement Rates**. The division is adding paragraph (3)(A)15.

*PURPOSE: This amendment provides for a per diem increase to nursing facility and HIV nursing facility reimbursement rates by granting a trend adjustment resulting in an increase of six dollars ($6.00) effective for dates of service beginning October 1, 2011. The state match for this rate increase is the nursing facility reimbursement allowance. This rate increase assumes the federal provider tax assessment limit increases from five and one-half percent (5.5%) to six percent (6%). The rate increase is subject to approval by the Centers for Medicare and Medicaid Services (CMS).*

(3) Adjustments to the Reimbursement Rates. Subject to the limitations prescribed in 13 CSR 70-10.015, a nursing facility's reimbursement rate may be adjusted as described in this section. Subject to the limitations prescribed in 13 CSR 70-10.080, an HIV nursing facility's reimbursement rate may be adjusted as described in this section.

(A) Global Per Diem Rate Adjustments. A facility with either an interim rate or a prospective rate may qualify for the global per diem rate adjustments. Global per diem rate adjustments shall be added to the specified cost component ceiling.

1. FY-96 negotiated trend factor—

A. Facilities with either an interim rate or prospective rate in effect on October 1, 1995, shall be granted an increase to their per diem effective October 1, 1995, of four and six-tenths percent (4.6%) of the cost determined in paragraphs (11)(A)1., (11)(B)1., (11)(C)1., and the property insurance and property taxes detailed in subsection (11)(D) of 13 CSR 70-10.015; or

B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. of 13 CSR 70-10.015 that is in effect on October 1, 1995, shall have their increase determined by subsection (3)(S) of 13 CSR 70-10.015.

2. FY-97 negotiated trend factor—

A. Facilities with either an interim rate or prospective rate in effect on October 1, 1996, shall be granted an increase to their per diem effective October 1, 1996, of three and seven-tenths percent (3.7%) of the cost determined in paragraphs (11)(A)1., (11)(B)1., (11)(C)1., and the property insurance and property taxes detailed in subsection (11)(D) of 13 CSR 70-10.015; or

B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. of 13 CSR 70-10.015 that is in effect on October 1, 1995, shall have their increase determined by subsection (3)(S) of 13 CSR 70-10.015.

3. Nursing Facility Reimbursement Allowance (NFRA). Effective October 1, 1996, all facilities with either an interim rate or a prospective rate shall have its per diem adjusted to include the current NFRA as an allowable cost in its reimbursement rate calculation.

4. Minimum wage adjustment. All facilities with either an interim rate or a prospective rate in effect on November 1, 1996, shall be granted an increase to their per diem effective November 1, 1996, of two dollars and forty-five cents ($2.45) to allow for the change in minimum wage. Utilizing Fiscal Year 1995 cost report data, the total industry hours reported for each payroll category was multiplied by the fifty-cent (50¢) increase, divided by the patient days for the facilities reporting hours for that payroll category and factored up by eight and sixty-seven hundredths percent (8.67%) to account for the related increase to payroll taxes. This calculation excludes the director of nursing, the administrator, and assistant administrator.

5. Minimum wage adjustment. All facilities with either an interim rate or a prospective rate in effect on September 1, 1997, shall be granted an increase to their per diem effective September 1, 1997, of one dollar and ninety-eight cents ($1.98) to allow for the change in minimum wage. Utilizing Fiscal Year 1995 cost report data, the total industry hours reported for each payroll category was multiplied by the forty-cent (40¢) increase, divided by the patient days for the facilities reporting hours for that payroll category and factored up by eight and sixty-seven hundredths percent (8.67%) to account for the related increase to payroll taxes. This calculation excludes the director of nursing, the administrator, and assistant administrator.

6. FY-98 negotiated trend factor—

A. Facilities with either an interim rate or prospective rate in effect on October 1, 1997, shall be granted an increase to their per diem effective October 1, 1997, of three and four-tenths percent (3.4%) of the cost determined in paragraphs (11)(A)1., (11)(B)1., (11)(C)1., and the property insurance and property taxes detailed in subsection (11)(D) of 13 CSR 70-10.015 for nursing facilities and 13 CSR 70-10.080 for HIV nursing facilities; or

B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. of 13 CSR 70-10.015 that is in effect on October 1, 1995, shall have their increase determined by subsection (3)(S) of 13 CSR 70-10.015.

7. FY-99 negotiated trend factor—

A. Facilities with either an interim rate or prospective rate in effect on October 1, 1998, shall be granted an increase to their per diem effective October 1, 1998, of two and one-tenth percent (2.1%) of the cost determined in paragraphs (11)(A)1., (11)(B)1., (11)(C)1., the property insurance and property taxes detailed in subsection (11)(D) of 13 CSR 70-10.015 for nursing facilities and 13 CSR 70-10.080 for HIV nursing facilities, and the minimum wage adjustments detailed in paragraphs (3)(A)4. and (3)(A)5. of this regulation; or

B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. of 13 CSR 70-10.015 that is in effect on October 1, 1998, shall have their increase determined by subsection (3)(S) of 13 CSR 70-10.015.

8. FY-2000 negotiated trend factor—

A. Facilities with either an interim rate or prospective rate in effect on July 1, 1999, shall be granted an increase to their per diem effective July 1, 1999, of one and ninety-four hundredths percent (1.94%) of the cost determined in subsections (11)(A), (11)(B), (11)(C), the property insurance and property taxes detailed in subsection (11)(D) of 13 CSR 70-10.015 for nursing facilities and 13 CSR 70-10.080 for HIV nursing facilities, and the minimum wage adjustments detailed in paragraphs (3)(A)4. and (3)(A)5. of this regulation; or

B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. of 13 CSR 70-10.015 that is in effect on July 1, 1999, shall have their increase determined by subsection (3)(S) of 13 CSR 70-10.015.

9. FY-2004 nursing facility operations adjustment—

A. Facilities with either an interim rate or prospective rate in effect on July 1, 2003, shall be granted an increase to their per diem effective for dates of service beginning July 1, 2003, through June 30, 2004, of four dollars and thirty-two cents ($4.32) for the cost of nursing facility operations. Effective for dates of service beginning July 1, 2004, the per diem adjustment shall be reduced to three dollars and seventy-eight cents ($3.78).

B. The operations adjustment shall be added to the facility's current rate as of June 30, 2003, and is effective for payment dates after August 1, 2003.

10. FY-2007 quality improvement adjustment—

A. Facilities with either an interim rate or prospective rate in effect on July 1, 2006, shall be granted an increase to their per diem effective for dates of service beginning July 1, 2006, of three dollars and seventeen cents ($3.17) to improve the quality of life for nursing facility residents.

B. The quality improvement adjustment shall be added to the facility's current rate as of June 30, 2006, and is effective for dates of service beginning July 1, 2006, and after.

11. FY-2007 trend adjustment.

A. Facilities with either an interim rate or a prospective rate in effect on February 1, 2007, shall be granted an increase to their per diem rate effective for dates of service beginning February 1, 2007, of three dollars and zero cents ($3.00) to allow for a trend adjustment to ensure quality nursing facility services.

B. The trend adjustment shall be added to the facility's reimbursement rate as of January 31, 2007, and is effective for dates of service beginning February 1, 2007, for payment dates after March 1, 2007.

12. FY-2008 trend adjustment.

A. Facilities with either an interim rate or a prospective rate in effect on July 1, 2007, shall be granted an increase to their per diem rate effective for dates of service beginning July 1, 2007, of six dollars and zero cents ($6.00) to allow for a trend adjustment to ensure quality nursing facility services.

B. The trend adjustment shall be added to the facility's current rate as of June 30, 2007, and is effective for dates of service beginning July 1, 2007.

13. FY-2009 trend adjustment.

A. Facilities with either an interim rate or a prospective rate in effect on July 1, 2008, shall be granted an increase to their per diem rate effective for dates of service beginning July 1, 2008, of six dollars and zero cents ($6.00) to allow for a trend adjustment to ensure quality nursing facility services.

B. The trend adjustment shall be added to the facility's current rate as of June 30, 2008, and is effective for dates of service beginning July 1, 2008.

14. FY-2010 trend adjustment.

A. Facilities with either an interim rate or a prospective rate in effect on July 1, 2009, shall be granted an increase to their per diem rate effective for dates of service beginning July 1, 2009, of five dollars and fifty cents ($5.50) to allow for a trend adjustment to ensure quality nursing facility services.

B. The trend adjustment shall be added to the facility's current rate as of June 30, 2009, and is effective for dates of service beginning July 1, 2009.

**15. FY-2012 trend adjustment.**

**A. Facilities with either an interim rate or a prospective rate in effect on October 1, 2011, shall be granted an increase to their per diem rate effective for dates of service beginning October 1, 2011, of six dollars and zero cents ($6.00) to allow for a trend adjustment to ensure quality nursing facility services.**

**B. The trend adjustment shall be added to the facility's current rate as of September 30, 2011, and is effective for dates of service beginning October 1, 2011.**

**C. This increase is contingent upon the federal assessment rate limit increasing to six percent (6%) and is subject to approval by the Centers for Medicare and Medicaid Services.**

*AUTHORITY: section 208.159, RSMo 2000 and sections 208.153 and 208.201, RSMo Supp. [2008] **2010**. Original rule filed July 1, 2008, effective Jan. 30, 2009. Emergency rule filed October 3, 2008, effective October 13, 2008, expired April 10, 2009. Emergency amendment filed Nov. 9, 2009, effective Nov. 19, 2009, expired Jan. 30, 2010. Amended: Filed July 1, 2009, effective Jan. 30, 2010. Amended: Filed July 1, 2011.*

*PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions approximately $40,672,639 for SFY 2012.*

*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 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.*

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

**I. Department Title:** Title 13 - Department of Social Services
**Division Title:** Division 70 - MO HealthNet Division
**Chapter Title:** Chapter 10 - Nursing Home Program

| | |
|---|---|
| **Rule Number and Name:** | 13 CSR 70-10.016 Global Per Diem Adjustments to Nursing Facility and HIV Nursing Facility Reimbursement Rates |
| **Type of Rulemaking:** | Proposed Amendment |

**II. SUMMARY OF FISCAL IMPACT**

| Affected Agency or Political Subdivision | Estimated Cost of Compliance in the Aggregate |
|---|---|
| Department of Social Services<br>MO HealthNet Division | Estimated cost for SFY 2012:<br>$40,672,639 |

**III. WORKSHEET**

| Description | NFRA Add-On Increase | Effect on Hospice in NF | Total Impact |
|---|---|---|---|
| Estimated Paid Days: SFY 2012 | 8,421,375 | 649,462 | |
| Effective 10/1: Oct-June = 9/12 months | 9/12 | 9/12 | |
| Estimated Paid Days Impacted SFY 2012 | 6,316,031 | 487,097 | |
| x NFRA Per Diem Rate Increase | $6.00 | $5.70 | |
| Total Estimated Impact: SFY 2012 | $ 37,896,186 | $2.776,453 | $40,672,639 |
| State Share (NFRA fund) | $13,851,056 | $1,014,794 | $14,865,850 |
| Federal Share (63.45%) | $24,045,130 | $1,761,659 | $25,806,789 |

**IV. ASSUMPTIONS**

**Estimated Paid Days:**

Nursing Facility:
The estimated paid days for SFY 2012 are based on the actual Medicaid days paid for nursing facility services during SFY 2011, increased by 1% for 2012.

Hospice:
The estimated paid days for SFY 2012 for hospice are based on the actual hospice days provided in nursing facilities from January 2010 through December 2010.

**Effect on Hospice:**

Hospice providers are reimbursed 95% of the nursing facility per diem for hospice participants residing in a nursing facility. The total increase to the nursing facility per diem is $6.00. The increase to hospice reimbursement rates resulting from this amendment is $5.70 ($6.00 x 95%).

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

**PROPOSED AMENDMENT**

**13 CSR 70-10.110 Nursing Facility Reimbursement Allowance**. The division is adding subsection (N) to section (2).

*PURPOSE: This amendment provides for a change in the Nursing Facility Reimbursement Allowance rate to eleven dollars and seventy cents ($11.70) effective October 1, 2011. This amendment assumes the federal allowable assessment rate will increase from five and one-half percent (5.5%) to six percent (6%) on October 1, 2011.*

(2) NFRA Rates. The NFRA rates determined by the division, as set forth in (1)(B) above, are as follows:

(L) Effective July 1, 2009, the NFRA will be nine dollars and seven cents ($9.07) per patient occupancy day. The applicable quarterly survey shall be as defined in subsection (2)(K); *[and]*

(M) Effective January 1, 2010, the NFRA will be nine dollars and twenty-seven cents ($9.27) per patient occupancy day. The applicable quarterly survey shall be as defined in subsection (2)(K)*[.]***; and**

**(N) Effective October 1, 2011, the NFRA will be eleven dollars and seventy cents ($11.70) per patient occupancy day. The applicable quarterly survey shall be as defined in subsection (2)(K).**

*AUTHORITY: sections 198.401, 198.403, 198.406, 198.409, 198.412, 198.416, 198.418, 198.421, 198.424, 198.427, 198.431, 198.433, 198.436, and 208.159, RSMo 2000 and sections 198.439, 208.153, and 208.201, RSMo Supp. [2009]* ***2010****. Emergency rule filed Dec. 21, 1994, effective Jan. 1, 1995, expired April 30, 1995. Emergency rule filed April 21, 1995, effective May 1, 1995, expired Aug. 28, 1995. Original rule filed Dec. 15, 1994, effective July 30, 1995. For intervening history, please consult* ***the Code of State Regulations****. Amended: Filed July 1, 2011.*

*PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions approximately $16,392,935 for SFY 2012.*

*PRIVATE COST: This proposed amendment will result in a net cost to private entities of approximately $11,725,701 for SFY 2012 (total increase in NFRA of $26,992,812 less the increased reimbursement due to NFRA being an allowable cost of $15,267,741 yields a net impact of $11,725,701).*

*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.*

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

**I. Department Title: Department of Social Services**
**Division Title: MO HealthNet Division**
**Chapter Title: Nursing Home Program**

| | |
|---|---|
| **Rule Number and Name:** | 13 CSR 70-10.110 Nursing Facility Reimbursement Allowance |
| **Type of Rulemaking:** | Proposed Amendment |

**II. SUMMARY OF FISCAL IMPACT**

| Affected Agency or Political Subdivision | Estimated Cost of Compliance in the Aggregate |
|---|---|
| Department of Social Services<br>MO HealthNet Division | Estimated cost for SFY 2012:<br>$16,392,935 |

**III. WORKSHEET**

| Description | NFRA Add-On Increase | Effect on Hospice in NF | Total Impact |
|---|---|---|---|
| Estimated Paid Days: SFY 2012 | 8,377,361 | 649,462 | |
| Effective 10/1: Oct-June = 9/12 months | 9/12 | 9/12 | |
| Estimated Paid Days Impacted SFY 2012 | 6,283,021 | 487,097 | |
| x NFRA Per Diem Rate Increase | $2.43 | $2.31 | |
| Total Estimated Impact: SFY 2012 | $ 15,267,741 | $1.125,194 | $16,392,935 |
| State Share (NFRA fund) | $5,580,359 | $411,258 | $5,991,617 |
| Federal Share (63.45%) | $9,687,382 | $713,936 | $10,401,318 |

**IV. ASSUMPTIONS**

This proposed NFRA rate change will change the reimbursement rates for nursing facilities since the NFRA is an allowable cost for reimbursement under 13 CSR 70-10.016.

**Estimated Paid Days:**

Nursing Facility:

The estimated paid days for SFY 2012 are based on the actual Medicaid days paid for nursing facility services during SFY 2010, increased by 0.5% for 2011 and by an additional 0.5% for 2012.

Hospice:

The estimated paid days for SFY 2012 for hospice are based on the actual hospice days provided in nursing facilities from January 2010 through December 2010.

**NFRA Add-On Increase:**

An increase in the NFRA assessment of $2.43 from $9.27 to $11.70 effective October 1, 2011 has an impact to nursing facilities under 13 CSR 70-10.015. The NFRA assessment is an allowable cost for reimbursement and is accounted for as an add-on to the per diem rate under 13 CSR 70-10.015; therefore, the cost has been included in this fiscal note.

**Effect on Hospice:**

Hospice providers are reimbursed 95% of the nursing facility per diem for hospice participants residing in a nursing facility. The total increase to the nursing facility per diem is $2.43. The increase to hospice reimbursement rates resulting from this amendment is $2.31 ($2.43 x 95%).

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

**I. Department Title:** Department of Social Services
**Division Title:** MO HealthNet Division
**Chapter Title:** Nursing Facility Program

| **Rule Number and Title:** | 13 CSR 70-10.110 Nursing Facility Reimbursement Allowance |
|---|---|
| **Type of Rulemaking:** | Proposed Amendment |

**II. SUMMARY OF FISCAL IMPACT**

| Estimate of the number of entities by class which would likely be affected by the adoption of the rule: | Classification by types of the business entities which would likely be affected: | Estimate in the aggregate as to the cost of compliance with the rule by the affected entities: |
|---|---|---|
| 520 | Nursing Facilities | Annual estimated cost for SFY 2012: $11,725,071 |

**III. WORKSHEET**

SFY 2012:

| | |
|---|---|
| Estimated Assessment Days: SFY 2012 | 14,810,870 |
| Effective October 1, 2011, nine months or three-fourths of year | 3/4 |
| Estimated Assessment Days for proposed | 11,108,153 |
| | |
| $9.27 NFRA Rate | |
| Estimated Assessment Days: | 11,108,153 |
| x NFRA Rate | $ 9.27 |
| Total Estimated Impact | $ 102,972,578 |
| | |
| $11.70 NFRA Rate | |
| Estimated Assessment Days: | 11,108,153 |
| x NFRA Rate | $11.70 |
| Total Estimated Impact | $ 129,965,390 |
| | |
| Total Difference SFY 2012 October 2011 - June 2012 | $ 26,992,812 |
| | |
| Less: Increase in Nursing Facility Rate due to NFRA being an Allowable Cost (per 13 CSR 70-10.015) (See Public Cost Fiscal Note for additional detail) | ($ 15,267,741) |
| | |
| Net Impact to Private Entities | $ 11,725,071 |

**IV. ASSUMPTIONS**

Effective October 1, 2011 the Nursing Facility Reimbursement Allowance (NFRA) rate changes from nine dollars and twenty-seven cents ($9.27) to eleven dollars and seventy cents ($11.70) resulting in an increase of $2.43. The determination of the number of assessment days for SFY 2012 is in the current regulation. Three-fourths of the annual number of assessment days is used since the effective date is October 1, 2011 which is nine months of

the fiscal year. These days were multiplied by the NFRA rate in effect of $9.27 which would occur if the proposed amendment was not implemented. The same number of days was multiplied by the proposed NFRA rate of $11.70. The difference between the total impact for the $9.27 and $11.70 NFRA rates is the total impact.

The nursing facility reimbursement regulation, 13 CSR 70-10.015, allows NFRA as an allowable, reimbursable cost. To account for the NFRA being an allowable cost, the current NFRA rate is included as part of the nursing facility's total reimbursement rate. With this NFRA rate increase of $2.43, nursing facilities will be given a corresponding reimbursement rate increase of the same amount. This increased reimbursement will reduce the impact of the NFRA increase for nursing facilities by the same amount as computed in the Public Cost Fiscal Note.

After SFY 2012 these amounts (the increased NFRA collections and increased reimbursement) will become part of the core budget and continue annually until amended.

## Title 13—DEPARTMENT OF SOCIAL SERVICES
## Division 70—MO HealthNet Division
## Chapter 15—Hospital Program

## PROPOSED AMENDMENT

**13 CSR 70-15.110 Federal Reimbursement Allowance (FRA)**. The division is amending section (1) and adding section (20).

*PURPOSE: This amendment provides for the State Fiscal Year (SFY) 2012 trend factor to be applied to the inpatient and outpatient adjusted net revenues determined from the FRA fiscal year cost report and establishes the FRA assessment effective for dates of service beginning October 1, 2011, of five and ninety-five hundredths percent (5.95%) of each hospital's inpatient and outpatient adjusted net revenues as determined from its base year cost report. The FRA assessment rate must be below the rate established by federal law. This amendment assumes the federal allowable assessment rate will increase from five and one-half percent (5.5%) to six percent (6%) on October 1, 2011.*

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

(A) Definitions.

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

2. Base cost report—Desk-reviewed Medicare/Medicaid cost report. When a hospital has more than one (1) cost report with periods ending in the base year, the cost report covering a full twelve (12)-month period will be used. If none of the cost reports covers a full twelve (12) months, the cost report with the latest period will be used. If a hospital's base cost report is less than or greater than a twelve (12)-month period, the data shall be adjusted, based on the number of months reflected in the base cost report, to a twelve (12)-month period.

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

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

5. Department—Department of Social Services.

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

7. Division—MO HealthNet Division, Department of Social Services.

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

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

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

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

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

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

A. Obtain "Gross Total Charges" from Worksheet G-2, Line 25, Column 3, of the third prior year cost report (i.e., FRA fiscal year cost report) for the hospital. Charges shall exclude revenues for physician services. Charges related to activities subject to the Missouri taxes assessed for outpatient retail pharmacies and nursing facility services shall also be excluded. "Gross Total Charges" will be reduced by the following:

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

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

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

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

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

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

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

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

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

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

(I) Divide "Net Revenue" by "Gross Total Charges*[.]*"**; and**

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

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

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

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

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

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

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

G. The trend indices listed below will be applied to the apportioned inpatient adjusted net revenue and outpatient adjusted

net revenue in order to inflate or trend forward the adjusted net revenues from the FRA fiscal year cost report to the current state fiscal year to determine the inpatient and outpatient adjusted net revenues subject to the FRA assessment.

(I) SFY 2009 = 5.50%
(II) SFY 2009 Missouri Specific Trend = 1.50%
(III) SFY 2010 = 3.90%
(IV) SFY 2010 Missouri Specific Trend = 1.50%
(V) SFY 2011 = 3.20%
**(VI) SFY 2012 = 5.33%**

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

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

**(20) Beginning October 1, 2011, the FRA assessment shall be determined at the rate of five and ninety-five hundredths percent (5.95%) of each hospital's inpatient adjusted net revenues and outpatient adjusted net revenues as set forth in paragraph (1)(A)13. The FRA assessment rate of five and ninety-five hundredths percent (5.95%) will be applied individually to the hospital's inpatient adjusted net revenues and outpatient adjusted net revenues. The hospital's total FRA assessment is the sum of the assessment determined from its inpatient adjusted net revenue plus the assessment determined for its outpatient adjusted net revenue.**

*AUTHORITY: sections 208.201* ***and*** *208.453, RSMo Supp. 2010 and section[s and] 208.455, RSMo 2000. Emergency rule filed Sept. 21, 1992, effective Oct. 1, 1992, expired Jan. 28, 1993. Emergency rule filed Jan. 15, 1993, effective Jan. 25, 1993, expired May 24, 1993. Original rule filed Sept. 21, 1992, effective June 7, 1993. For intervening history, please consult the* ***Code of State Regulations****. Amended: Filed July 1, 2011.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in SFY 2012, which period covers the anticipated aggregate public cost of the amended rule.*

*PRIVATE COST: This proposed amendment is expected to cost private entities $775,650,003 for SFY 2012.*

*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.*

## FISCAL NOTE
## PRIVATE COST

**I. Department Title:** Title 13 - Department of Social Services
**Division Title:** Division 70 - MO HealthNet Division
**Chapter Title:** Chapter 15 – Hospital Program

| **Rule Number and Title:** | 13 CSR 70-15.110 Federal Reimbursement Allowance (FRA) |
|---|---|
| **Type of Rulemaking:** | Proposed Amendment |

## II. SUMMARY OF FISCAL IMPACT

| Estimate of the number of entities by class which would likely be affected by the adoption of the rule: | Classification by types of the business entities which would likely be affected: | Estimate in the aggregate as to the cost of compliance with the rule by the affected entities: |
|---|---|---|
| **147** | **Hospitals** | **Estimated cost for SFY 2012 $775.7 million** |

## III. WORKSHEET

| | No. of Facilities | Trended Inpatient Revenues | Trended Outpatient Revenues | Total |
|---|---|---|---|---|
| Private Facilities | 102 | $6,169,450,785 | $4,864,572,969 | $11,034,023,754 |
| FRA Assessment Rate | | 5.95% | 5.95% | 5.95% |
| | | $367,082,322 | $289,442,092 | $656,524,413 |
| Public Facilities | 45 | $1,092,774,345 | $909,336,406 | $2,002,110,752 |
| FRA Assessment Rate | | 5.95% | 5.95% | 5.95% |
| | | $65,020,074 | $54,105,516 | $119,125,590 |
| Total Assessment | 147 | $432,102,395 | $343,547,608 | $775,650,003 |

## IV. ASSUMPTIONS

This fiscal note reflects the total assessment to be collected for the 9 months during SFY 2012 and is an increase of approximately $87.5 million over SFY 2011 (9 months).

The fiscal note is based on establishing the FRA assessment rate at 5.95% effective for dates of service beginning October 1, 2011. The FRA assessment rate of 5.95% is levied upon Missouri hospitals' trended, inpatient and outpatient net adjusted revenue in accordance with the Missouri Partnership Plan.

As indicated above, 45 of the total 147 hospitals are owned or controlled by the state, counties, cities, or hospital districts.

## Title 13—DEPARTMENT OF SOCIAL SERVICES
## Division 70—MO HealthNet Division
## Chapter 15—Hospital Program

### PROPOSED AMENDMENT

**13 CSR 70-15.160 Prospective Outpatient Hospital Services Reimbursement Methodology**. The division is amending section (1).

*PURPOSE: This amendment provides for a change in MO HealthNet reimbursement of certain outpatient radiology procedures for all MO HealthNet enrolled hospitals. This amendment is implementing a cost containment budget action recommended for FY 2012 to address the rising costs of radiology procedures.*

(1) Prospective Outpatient Hospital Services Reimbursement Percentage for Hospitals Located Within Missouri.

(C) Outpatient Hospital Services Reimbursement Limited by Rule.

1. Effective for dates of service September 1, 1985, and annually updated, certain clinical diagnostic laboratory procedures will be reimbursed from a Medicaid fee schedule which shall not exceed a national fee limitation.

**2. Effective for service dates beginning October 1, 2011, and annually updated, the technical component of outpatient radiology procedures will be reimbursed from a Medicaid fee schedule. Fee schedule amounts will be based on a percentage of Medicare's fee schedule. The fee schedule for the technical component of outpatient radiology procedures will be published on the MO HealthNet website at www.dss.mo.gov/mhd beginning October 1, 2011.**

*[2.]***3.** Services of hospital-based physicians and certified registered nurse anesthetists shall be billed on a CMS-1500 professional claim form and reimbursed from a Medicaid fee schedule or the billed charge, if less. The CMS-1500 professional claim form is incorporated by reference and made a part of this rule as published by the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109, at its website at www.dss.mo.gov/mhd, November 1, 2010. This rule does not incorporate any subsequent amendments or additions.

*[3.]***4.** Outpatient hospital services provided for those recipients having available Medicare benefits shall be reimbursed by Medicaid to the extent of the deductible and coinsurance as imposed under Title XVIII.

*[4.]***5.** Effective for payment dates beginning October 1, 2010, reimbursement of Medicare/Medicaid crossover claims (crossover claims) for Medicare Part B and Medicare Advantage/Part C outpatient hospital services with dates of service on or after January 1, 2010, except for public hospitals operated by the Department of Mental Health (DMH), shall be determined as follows:

A. Crossover claims for Medicare Part B outpatient hospital services in which Medicare was the primary payer and the MO HealthNet Division (MHD) is the payer of last resort for cost-sharing (i.e., coinsurance, copay, and/or deductibles) must meet the following criteria to be eligible for MHD reimbursement:

(I) The crossover claim must be related to Medicare Part B outpatient hospital services that were provided to MO HealthNet participants also having Medicare Part B coverage; and

(II) The crossover claim must contain approved outpatient hospital services which MHD is billed for cost-sharing; and

(III) The Other Payer paid amount field on the claim must contain the actual amount paid by Medicare. The MO HealthNet provider is responsible for accurate and valid reporting of crossover claims submitted to MHD for payment regardless of how the claim is submitted. Providers submitting crossover claims for Medicare Part B outpatient hospital services to MHD must be able to provide documentation that supports the information on the claim upon request. The documentation must match the information on the Medicare Part B plan's remittance advice. Any amounts paid by MHD that are determined to be based on inaccurate data will be subject to recoupment;

B. Crossover claims for Medicare Advantage/Part C (Medicare Advantage) outpatient hospital services in which a Medicare Advantage plan was the primary payer and MHD is the payer of last resort for cost-sharing (i.e., coinsurance, copay, and/or deductibles) must meet the following criteria to be eligible for MHD reimbursement:

(I) The crossover claim must be related to Medicare Advantage outpatient hospital services that were provided to MO HealthNet participants who also are either a Qualified Medicare Beneficiary (QMB Only) or Qualified Medicare Beneficiary Plus (QMB Plus); and

(II) The crossover claim must be submitted as a Medicare UB-04 Part C Professional Crossover claim through the MHD online Internet billing system; and

(III) The crossover claim must contain approved outpatient hospital services which MHD is billed for cost-sharing; and

(IV) The Other Payer paid amount field on the claim must contain the actual amount paid by the Medicare Advantage plan. The MO HealthNet provider is responsible for accurate and valid reporting of crossover claims submitted to MHD for payment. Providers submitting crossover claims for Medicare Advantage outpatient hospital services to MHD must be able to provide documentation that supports the information on the claim upon request. The documentation must match the information on the Medicare Advantage plan's remittance advice. Any amounts paid by MHD that are determined to be based on inaccurate data will be subject to recoupment;

C. MHD reimbursement for approved outpatient hospital services. MHD will reimburse seventy-five percent (75%) of the allowable cost-sharing amount; and

D. MHD will continue to reimburse one hundred percent (100%) of the allowable cost-sharing amounts for outpatient services provided by public hospitals operated by DMH as set forth above in paragraph (1)(C)*[3.]***4.**

*AUTHORITY: sections [208.010,] 208.152, 208.153,* ***and*** *208.201, [and 208.471,] RSMo Supp. 2010. Emergency rule filed June 20, 2002, effective July 1, 2002, expired Feb. 27, 2003. Original rule filed June 14, 2002, effective Jan. 30, 2003. For intervening history, please consult the* ***Code of State Regulations****. Amended: Filed July 1, 2011.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate for SFY 2012. However, there is an estimated cost savings of forty-one million dollars ($41 million) in SFY 12 and fifty-four million seven hundred thousand dollars ($54.7 million) annually thereafter.*

*PRIVATE COST: The estimated cost to hospitals is forty-one million dollars ($41 million) in SFY 12 and fifty-four million seven hundred thousand dollars ($54.7 million) annually thereafter.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of 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.*

# FISCAL NOTE
# PUBLIC COST

**I. Department Title:** Title 13 - Department of Social Services
**Division Title:** Division 70 - MO HealthNet Division
**Chapter Title:** Chapter 15 – Hospital Program

| **Rule Number and Name:** | 13 CSR 70-15.160 Prospective Outpatient Hospital Services Reimbursement Methodology |
|---|---|
| **Type of Rulemaking:** | Proposed Amendment |

## II. SUMMARY OF FISCAL IMPACT

| Affected Agency or Political Subdivision | Estimated Cost of Compliance in the Aggregate |
|---|---|
| Department of Social Services, MO HealthNet Division | Estimated cost savings for SFY 12 = $41 million; state share $15 million. Estimated cost savings annually thereafter = $54.7 million; state share = $20 million. |

## III. WORKSHEET

**Cost Savings for SFY 12:**

| | |
|---|---|
| Annual Estimated Cost Savings | $54,700,000 |
| Divided by 12 to Determine Monthly Amount | 12 |
| Monthly Estimated Cost Savings | $ 4,558,333 |
| Multiplied by 9 Months of savings in SFY 12 | 9 |
| SFY 12 Estimated Cost Savings | $ 41,025,000 |
| x SFY 2012 state share percentage | 36.55% |
| Estimated State Share Cost Savings | $14,994,638 |

**Cost Savings for SFY 13 forward:**

| | |
|---|---|
| Annual Estimated Cost Savings | $54,700,000 |
| x SFY 2012 state share percentage | 36.55% |
| Estimated State Share Cost Savings | $19,992,850 |

## IV. ASSUMPTIONS

The annual estimated cost savings was based on an analysis of the outpatient hospital radiology expenditures paid during SFY 2010 compared to 100% of the technical component on the Medicare fee schedule for independent testing facilities.

# FISCAL NOTE
# PRIVATE COST

**I. Department Title:** Department of Social Services
**Division Title:** Division 70 - MO HealthNet Division
**Chapter Title:** Chapter 15 – Hospital Program

| **Rule Number and Title:** | 13 CSR 70-15.160 Prospective Outpatient Hospital Services Reimbursement Methodology |
|---|---|
| **Type of Rulemaking:** | Proposed Amendment |

## II. SUMMARY OF FISCAL IMPACT

| Estimate of the number of entities by class which would likely be affected by the adoption of the rule: | Classification by types of the business entities which would likely be affected: | Estimate in the aggregate as to the cost of compliance with the rule by the affected entities: |
|---|---|---|
| 360 | Hospitals enrolled in MO HealthNet | Estimated cost for SFY 12 = $41 million. The estimated cost annually thereafter = $54.7 million. |

## III. WORKSHEET

**Number of Entities:**

Total hospitals enrolled in MO HealthNet providing outpatient radiology services 360

**Cost for SFY 12:**

| | |
|---|---|
| Annual Estimated Cost | $54,700,000 |
| Divided by 12 to Determine Monthly Amount | 12 |
| Monthly Estimated Cost | $ 4,558,333 |
| Multiplied by 9 Months of cost in SFY 12 | 9 |
| SFY 12 Estimated Cost | $ 41,025,000 |

**Cost for SFY 13 forward:**

Annual Estimated Cost $54,700,000

## IV. ASSUMPTIONS

The number of entities impacted represents hospitals enrolled in MO HealthNet that submitted claims for outpatient radiology services during SFY 2010 which includes out-of-state hospitals.

The annual estimated cost to hospitals was based on an analysis of the outpatient hospital radiology expenditures paid during SFY 2010 compared to 100% of the technical component on the Medicare fee schedule for independent testing facilities.

**Title 13—DEPARTMENT OF SOCIAL SERVICES**
**Division 70—MO HealthNet Division**
**Chapter 26—Federally-Qualified Health Center Services**

**PROPOSED AMENDMENT**

**13 CSR 70-26.010 MO HealthNet Program Benefits for Federally-Qualified Health Center Services**. The division is amending sections (2), (3), and (5).

*PURPOSE: This amendment clarifies Federally-Qualified Health Center (FQHC) Medicaid cost report filing deadlines, lists other documentation to be included in a cost report filing, provides detailed examples of nonallowable costs for FQHCs, excludes electronic health records (EHR) grants and incentive payments and medical home payments from revenue offsets, and formalizes deadlines for provider responses to cost report audit information requests and settlements.*

(2) General Principles.

(B) Reasonable costs shall be determined by the MO HealthNet Division based on desk reviews of the applicable cost reports and *[shall]* **may** be subject to adjustment based on field audits. Reasonable costs shall not exceed the Medicare cost principles set forth in 42 CFR Part 413.

(D) *[FQHCs must use the Medicare cost report forms and abide by Medicare cost principles, limitations and/or screens as though the FQHC was certified for Medicare participation as a federally funded health clinic (FFHC).]* **An FQHC shall submit a cost report in the manner prescribed by the state MO HealthNet agency. The cost report and cost report instructions are incorporated by reference and made a part of this rule as published by the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109, August 1, 2011. This rule does not incorporate any subsequent amendments or additions. The cost report shall be submitted within five (5) months after the close of the FQHC's reporting period. A single extension, not to exceed thirty (30) days, may be granted upon the request of the FQHC and the approval of the MO HealthNet Division when the provider's operation is significantly affected due to extraordinary circumstances over which the provider had no control, such as fire or flood. The request must be in writing and postmarked prior to the first day of the sixth month following the FQHC's fiscal year end.**

(E) **An** FQHC*[s which are not certified for participation as an FFHC must provide an independent audit annually to the MO HealthNet Division which is also consistent with the principles and procedures applied by Medicare in satisfying its audit responsibilities.]* **cost report shall be submitted and certified by an officer or administrator of the provider. Failure to file a cost report within the prescribed period, except as expressly extended in writing by the state agency, may result in the imposition of sanctions as described in 13 CSR 70-3.030.**

**(F) Authenticated copies of agreements and other significant documents related to the provider's operation and provision of care to MO HealthNet participants must be included with the cost report at the time of filing unless current and accurate copies have already been filed with the division. Material which must be submitted includes, but is not limited to, the following as applicable:**

**1. Audited financial statements prepared by an independent accountant and submitted to the MO HealthNet Division when available, including explanatory notes, disclosure statements, and management letter;**

**2. Contracts or agreements involving the purchase of facilities or equipment during the cost reporting period if requested by the division, the department, or its agents;**

**3. Contracts or agreements with related parties;**

**4. Schedule A detailing all grants, gifts, donations, and income from endowments, including amounts, restrictions, and use;**

**5. Explanations of grants, gifts, donations, or endowments for which related expenses have not been offset on Worksheet 1-B of the MO HealthNet Division FQHC cost report. If subsequently requested by the division or its contracted agents, documentation of related expenditures will also be submitted;**

**6. Leases or rental agreements, or both, related to the activities of the provider;**

**7. Management contracts; and**

**8. Working trial balance actually used to prepare the cost report with line number tracing notations or similar identifications.**

(3) Nonallowable Costs. Any costs which exceed those determined in accordance with the Medicare cost reimbursement principles set forth in 42 CFR Part 413 are not allowable in the determination of a provider's total reimbursement. 42 CFR Part 413 (Revised as of October 1, *[2007]* **2010**), incorporated by reference in this rule, is published by the U.S. Government Printing Office; for sale by the Superintendent of Documents, U.S. Government Printing Office; Internet: bookstore.gpo.gov; telephone toll free 1-866-512-1800; Washington, DC area 202*[/]*-512-1800; fax 202*[/]*-512-2250; mail: Stop SSOP, Washington, DC 20401-0001. The rule does not incorporate any subsequent amendments or additions. In addition, the following items specifically are excluded in the determination of a provider's total reimbursement:

(A) Grants, gifts, and income from endowments will be deducted from total operating costs, with the following exceptions:

1. Grants awarded by federal government agencies, such as the Health Resources and Services Administration and Public Health Service, directly to an FQHC;

2. Grants received from the Missouri Primary Care Association (MPCA) in accordance with contractual agreements between the MO HealthNet Division and MPCA; *[and]*

3. *[Payments]* **Grants to FQHCs** for **covered services provided to** uninsured *[primary care from the St. Louis Regional DSH Funding Authority (RDFA).]* **patients resulting in uninsured FQHC charges that are included on Worksheet 2 of the MO HealthNet Division FQHC cost report;**

**4. Grants or incentive payments, either paid directly to FQHCs or assigned to FQHCs by their performing providers, for the meaningful use of electronic health records (EHR) systems; and**

**5. Payments to FQHCs for participation in MO HealthNet Division Medical Home initiatives.**

(C) Bad debts, charity**,** and courtesy allowances; *[and]*

(D) Return on equity capital*[.]***;**

**(E) Attorney fees related to litigation involving state, local, or federal governmental entities, and attorney fees which are not related to the provision of FQHC services;**

**(F) Late charges and penalties; and**

**(G) Research costs.**

(5) Final Settlement.

(A) An annual desk review will be completed following submission of the *[Medicare cost report for Freestanding Federally-Qualified Health Centers (Centers for Medicare and Medicaid Services – CMS-222-92) and supplemental MO HealthNet schedules]* **FQHC's Medicaid cost report**. The MO HealthNet Division will make an additional payment to the FQHC when the allowable reported MO HealthNet costs exceed interim payments made for the cost-reporting period. The FQHC must reimburse the division when its allowable reported MO HealthNet costs for the reporting period are less than interim payments.

(B) The annual desk review *[will]* **may** be subject to adjustment based on the results of a field audit which may be conducted by the

division or its contracted agents.

**(C) Cost reports must be fully, clearly, and accurately completed. If any additional information, documentation, or clarification requested by the division or its contracted agents is not provided within fourteen (14) days of the date of receipt of the division's request, payments may be withheld from the facility until the information is submitted.**

**(D) The division will notify an FQHC by letter of a cost report settlement after completion of the division's cost report desk review. The FQHC shall review the notification letter and attachments and shall respond with an acceptance of the settlement within fifteen (15) calendar days from receipt of the cost report settlement letter. If the FQHC believes revisions to the division's desk review and cost settlement are necessary before it can accept a cost settlement, it must submit additional, amended, or corrected data within the fifteen (15)-day deadline. Data received from the FQHC after the fifteen (15)-day deadline will not be considered by the division for desk review and cost settlement revisions unless the FQHC requests and receives, prior to the end of the fifteen (15)-day deadline, an extension for submitting additional information. If the fifteen (15)-day deadline passes without a response from the provider, the division will proceed with the cost report settlement as stated in the division's notification letter, and the cost report settlement shall be deemed final. The division will not accept an amended cost report or any other additional information to revise the cost report after the finalization of the cost report settlement.**

*AUTHORITY: sections 208.153 and 208.201, RSMo Supp. [2007]* ***2010****. Emergency rule filed June 4, 1990, effective July 1, 1990, expired Oct. 28, 1990. Original rule filed June 4, 1990, effective Nov. 30, 1990. For intervening history, please consult the* ***Code of State Regulations****. Amended: Filed June 17, 2011.*

*PUBLIC COST: This proposed amendment is expected to cost state agencies $3,737,981 in the aggregate for state fiscal years 2014 through 2020.*

*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 received 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.*

# FISCAL NOTE
# PUBLIC COST

I. **Department Title:** Title 13 - Department of Social Services
**Division Title:** Division 70 - MO HealthNet Division
**Chapter Title:** Chapter 26 – Federally-Qualified Health Center Services

| **Rule Number and Name:** | 13 CSR 70-26.010 MO HealthNet Program Benefits for Federally-Qualified Health Center Services |
|---|---|
| **Type of Rulemaking:** | Proposed Amendment |

## II. SUMMARY OF FISCAL IMPACT

| Affected Agency or Political Subdivision | Estimated Cost of Compliance in the Aggregate |
|---|---|
| Department of Social Services, MO HealthNet Division | **SFY 2012 – SFY 2013 = $0**<br>**SFY 2014 – SFY 2020 = $3.7 million** |
| | |
| | |

## III. WORKSHEET

**Estimated Cost for SFY 14:**

| | |
|---|---|
| Potential 1st year EHR incentive per eligible professional in an FQHC | $ 21,250 |
| Number of eligible professionals who start qualifying for EHR incentives in SFY 2012 (1/2 of total eligible professionals) | 75 |
| FQHC Medicaid cost percentage | 39.09 % |
| Total Estimated Cost for SFY 2014 | $ 622,997 |

**Estimated Cost for SFY 15:**

| | |
|---|---|
| Estimated potential 1st year EHR incentive cost for the other half of eligible professionals in FQHCs who start qualifying for incentives in SFY 2013 | $ 622,997 |
| Annual EHR incentive per eligible professional after the 1st year of incentive payments for eligible professionals who qualify for incentives starting in SFY 2012 | $ 8,500 |
| Number of eligible professionals in FQHCs who start qualifying for EHR incentives in SFY 2012 | 75 |
| FQHC Medicaid cost percentage | 39.09 % |
| Estimated cost for eligible professionals who start qualifying for EHR incentives in SFY 2012 | $ 249,199 |

| | | |
|---|---|---|
| Total Estimated Cost for SFY 2015 | $ | 872,196 |

**Estimated Annual Cost for SFY 16 through SFY 19:**

| | | |
|---|---|---|
| Annual EHR incentive per eligible professional after the 1st year of incentive payments | $ | 8,500 |
| Number of eligible professionals in FQHCs | | 150 |
| FQHC Medicaid cost percentage | | 39.09 % |
| Total Estimated Annual Cost for SFYs 2016 – 2019 | $ | 498,398 |

**Estimated Cost for SFY 20:**

| | | |
|---|---|---|
| Annual EHR incentive per eligible professional after the 1st year of incentive payments | $ | 8,500 |
| Number of eligible professionals in FQHCs who qualify for EHR incentives beginning in SFY 2013: | | 75 |
| FQHC Medicaid cost percentage | | 39.09 % |
| Total Estimated Cost for SFY 2020 | $ | 249,199 |

## IV. ASSUMPTIONS

**Estimated Costs for all SFYs:**

**Amount of EHR incentive** – The maximum total Medicaid EHR incentive an eligible professional working in an FQHC may receive is $63,750 over 6 years. In the first year that EHR is adopted and implemented, an eligible professional may receive one-third of the total EHR incentive, or $21,250. The assumption is eligible professionals in FQHCs receive 1/3 of their Medicaid EHR incentives in the 1st year of payment.

**Estimated eligible professionals** – MO HealthNet estimates 150 eligible professionals in FQHCs will be eligible for EHR incentive payments. One-half (75) of the eligible professionals will start receiving EHR incentives in SFY 2012; the other half will start receiving the incentive payments in SFY 2013. All 150 estimated eligible professionals are assumed to remain eligible for EHR incentive payments after the 1st year of payment.

**Medicare versus Medicaid incentives** – Eligible professionals may choose to receive EHR incentive payments from either Medicare or Medicaid. Since the total Medicaid EHR incentives per eligible professional are greater than the Medicare EHR incentives, the assumption is that all 150 eligible professionals in FQHCs will choose the Medicaid EHR incentives.

**Assigning payments** – EHR incentive payments are paid to eligible professionals. Eligible professionals working in FQHCs may assign their EHR incentives to FQHCs. The assumption is that all 150 eligible professionals in FQHCs will assign their EHR incentive payments to their FQHCs.

**Medicaid FQHC costs** – Based on a review of the most recently settled MO HealthNet FQHC cost reports, the average FQHC Medicaid cost is 39.09% of total FQHC costs. The impact of not offsetting EHR incentive payments from FQHC total costs is assumed to be 39.09% of the EHR incentive payments.

**Estimated Costs for SFY 12 and SFY 13:**

Since MO HealthNet FQHC cost reports take at least 2 years to settle, the EHR incentive payments in SFY 2012 will not start affecting MO HealthNet expenditures until SFY 2014. SFY 2013 incentive payments will not start affecting MO HealthNet expenditures until SFY 2015.

**Estimated Cost for SFY 14:**

**Amount of EHR incentive** -- $21,250, or 1/3 of the total Medicaid EHR incentive per eligible professional working in an FQHC, which an eligible professional may receive in the 1st year of EHR incentive payment.

**Estimated eligible professionals** – 75, or ½ of the 150 total eligible professionals in FQHCs who will qualify for EHR incentive payments.

**Total Estimated Cost** -- $21,250 EHR incentive, multiplied by 75 eligible professionals, multiplied by the 39.09% FQHC Medicaid cost percentage, equals $622,997.

**Cost report year** – EHR incentives paid in SFY 2012 will impact FY 2012 MO HealthNet FQHC cost reports, which will not be settled until SFY 2014.

**Estimated Cost for SFY 15:**

**Amount of EHR incentive** –

- For eligible professionals who qualify starting in SFY 2012, the annual EHR incentive in subsequent years is $8,500 [(63,750 – 21,250) / 5 years] per eligible professional.

- For eligible professionals who qualify starting in SFY 2013, the EHR incentive is $21,250 for the 1st year of incentive payment.

**Estimated eligible professionals** –

- 75 (one half of 150) eligible professionals working in FQHCs qualify for EHR incentives starting in SFY 2012.

- The other 75 eligible professionals in FQHCs qualify for EHR incentive payments starting in SFY 2013.

**Total Estimated Costs –**

- $622,997 for the eligible professionals who qualify for EHR incentive payments starting in SFY 2013.
- $249,199 for the eligible professionals who qualify for EHR incentives starting in SFY 2012.

**Cost report year** – EHR incentives paid in SFY 2013 will impact FY 2013 MO HealthNet FQHC cost reports, which will not be settled until SFY 2015.

**Estimated Annual Cost for SFY 16 through SFY 19:**

**Amount of EHR incentive** – SFY 2014 through SFY 2017 are after the 1st Medicaid EHR incentive payment year for the eligible professionals in FQHCs. Their annual incentives are $8,500 per eligible professional [(63,750 – 21,250) / 5 years]. For the eligible professionals who qualify for EHR incentives starting in SFY 2012, the final incentive payments occur in SFY 2017.

**Estimated eligible professionals** – 150 eligible professionals working in FQHCs will receive annual EHR incentive payments during SFY 2014 through SFY 2017.

**Total Estimated Annual Costs –** $498,398 for SFY 2016 through SFY 2019. In SFY 2019, half of this amount ($249,199) is the cost for eligible professionals receiving their final EHR incentive payments in SFY 2017.

**Cost report years** – EHR incentives paid in SFY 2014 through SFY 2017 will impact MO HealthNet FQHC cost reports for FY 2014 through 2017, which will not be settled until 2 years after the year of incentive payment.

**Estimated Cost for SFY 20:**

**Amount of EHR incentive –** $8,500 per eligible professional.

**Estimated eligible professionals** – 75 eligible professionals who started receiving EHR incentive payments in SFY 2013 will receive their final incentive payments in SFY 2018.

**Total Annual Cost –** $249,199 for the 75 eligible professionals receiving their final EHR incentive payments in SFY 2018.

**Cost report year** – EHR incentives paid in SFY 2018 will impact FY 2018 MO HealthNet FQHC cost reports, which will not be settled until SFY 2020.