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SALUS POPULI SUPREMA LEX ESTO

“The welfare of the people shall be the supreme law.”



ROBIN CARNAHAN
SECRETARY OF STATE

MISSOURI
REGISTER

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Documents will be accepted for filing on all regular workdays from 8:00 a.m. until 5:00 p.m. We encourage early filings to facilitate the timely publication of the *Missouri Register*. Orders of Rulemaking appearing in the *Missouri Register* will be published in the *Code of State Regulations* and become effective as listed in the chart above. Advance notice of large volume filings will facilitate their timely publication. We reserve the right to change the schedule due to special circumstances. Please check the latest publication to verify that no changes have been made in this schedule. To review the entire year's schedule, please check out the website at <http://www.sos.mo.gov/adrules/pubsched.asp>

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HOW TO CITE RULES AND RSMo

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

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

Title	Code of State Regulations	Division	Chapter	Rule
1	CSR	10-	1.	010
Department		Agency, Division	General area regulated	Specific area regulated

They are properly cited by using the full citation, i.e., 1 CSR 10-1.010.

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

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

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

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

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

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

EMERGENCY AMENDMENT

2 CSR 30-9.010 Animal Care Facilities Definitions. The director is amending section (1) and subsections (2)(X) and (2)(LL); adding subsections (2)(E), (2)(K), (2)(U), (2)(JJ), (2)(MM), (2)(RR), (2)(SS), (2)(YY), (2)(ZZ), (2)(AAA), and (2)(EEE); and renumbering the affected subsections.

PURPOSE: This amendment establishes provision for changes made in the statutes that were effective April 27, 2011.

EMERGENCY STATEMENT: The Department of Agriculture finds that this emergency amendment is necessary to protect the public welfare and to preserve a compelling governmental interest. This emergency amendment incorporates statutory changes made to sections 273.327 and 273.345, RSMo, as well as the statutory enactment of new sections 273.347 and 1, RSMo, by Senate Bill 161 passed by the 96th General Assembly. Senate Bill 161 put these changes into full force and effect upon its passage and its approval by the governor on April 27, 2011. The emergency clause in Senate Bill 161 enacting these changes states, "In order to improve the immediate health and welfare of dogs in this state and to provide sufficient time for businesses to comply with changes in the law, the repeal and reenactment of sections 273.327 and 273.345, the enactment of sections 273.347

and 1, and the repeal of sections 273.327, 273.345, 273.347, and 1 of section A of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and the repeal and reenactment of sections 273.327 and 273.345, the enactment of sections 273.347 and 1, and the repeal of sections 273.327, 273.345, 273.347, and 1 of section A of this act shall be in full force and effect upon its passage and approval." Senate Bill 161 also references that rules are to be promulgated and specified by the Department of Agriculture to implement this legislation. If such rules were required to go through the normal rulemaking process, such requirement would not be consistent with the emergency nature with which Senate Bill 161 was passed. The scope of this emergency amendment is limited to the circumstances creating this emergency and complies with the protections extended in the *Missouri* and *United States Constitutions*. The Department of Agriculture believes this emergency amendment is fair to all interested persons and parties under the circumstances and will improve the immediate health and welfare of dogs in this state while allowing businesses sufficient time to comply with changes to facility design and construction. This emergency amendment was filed on July 11, 2011, becomes effective July 21, 2011, and expires February 23, 2012.

(1) The terms defined in sections 273.325 and 273.345, RSMo, in addition to other relative terms pertaining to animal care [are incorporated by reference] will be applied for use in 2 CSR 30-9.020 and 2 CSR 30-9.030.

(2) Definitions. As used in 2 CSR 30-9.020 and 2 CSR 30-9.030, the following terms shall mean:

(E) Adequate rest between breeding cycles means, at minimum, ensuring that female dogs are not bred to produce more litters in any given period than what is recommended by a licensed veterinarian as appropriate for the species, age, and health of the dog;

((E))(F) Adopter means a person who is legally competent to enter into a contract and who is adopting or buying a dog or cat from a releasing agency;

((F))(G) Adult animal means any dog or cat that has reached the age of one hundred eighty (180) days or six (6) months or more;

((G))(H) Animal means any dog or cat used or intended for use for research, teaching, testing, breeding, exhibition purposes, or as a pet;

((H))(I) Animal shelter means a facility used to house or contain animals, operated or maintained by an incorporated humane society, animal welfare society, society for the prevention of cruelty to animals, or other not-for-profit organization. An animal shelter is devoted to the welfare, protection, and humane treatment of animals; or a person whose primary purpose is to act as an animal rescue, to collect and care for unwanted animals, or to offer them for adoption is also included in this definition;

((I))(J) Animal welfare official means any licensed veterinarian designated by and under the supervision of the state veterinarian, who administers or assists in the administration of the ACFA, or any appointee of the director and shall include all deputy state veterinarians;

(K) Approved flooring means elevated flooring used for a surface on which an animal stands, approved by the state veterinarian, and listed on the department's website by description of manufacturer and specifications, as revised, except that for any enclosure newly constructed after April 15, 2011, and for all enclosures as of January 1, 2016, flooring meeting the definition of wire strand shall be prohibited and ineligible as approved flooring;

((J))(L) Attending veterinarian means any Doctor of Veterinary Medicine who has a valid license to practice veterinary medicine in

Missouri issued by the Missouri Veterinary Medical Board and who has a written agreement to perform specified services for a licensee;

/(K)/(M) Auction means any person selling any consignment of dog(s) or cat(s) to the highest bidder. This shall include any means, procedure, or practice in which the ownership of a dog or cat is conveyed from one (1) person to another by any type or method of bidding process. Auction sales shall be considered as brokers and must be licensed as dealers under the ACFA;

/(L)/(N) Boarding kennel means a place or establishment, other than a pound or animal shelter where animals, not owned by the proprietor, are sheltered, fed, and watered in return for a consideration. This term shall include all boarding activities regardless of name used, such as but not limited to pet sitters. However, boarding kennel shall not include hobby or show breeders who board intact females for a period of time for the sole purpose of breeding the intact females, and shall not include individuals who temporarily, and not in the normal course of business, board or care for animals owned by other individuals;

/(M)/(O) Business hours means a reasonable number of hours between seven o'clock in the morning and seven o'clock in the evening (7:00 a.m.-7:00 p.m.), Monday through Friday, except legal state holidays, each week of the year, during which inspections may be made;

/(N)/(P) Carrier means the operator of any airline, aircraft, railroad, motor carrier, shipping line, or other enterprise which is engaged in the business of transporting any animals for hire;

/(O)/(Q) Cat means any live or dead *Felis catus*;

/(P)/(R) Commercial breeder means a person, other than a hobby or show breeder, engaged in the business of breeding animals for sale or for exchange in return for a consideration, and who harbors more than three (3) intact females for the primary purpose of breeding animals for sale. Persons engaged in breeding dogs and cats who harbor three (3) or less intact females shall be exempt from the license requirement;

/(Q)/(S) Commercial kennel means any kennel which performs grooming or training services for animals, and may or may not render boarding services in return for a consideration;

/(R)/(T) Contract kennel means any facility operated by any person or entity other than the state or any political subdivision of the state, for the purpose of impounding or harboring seized, stray, homeless, abandoned, or unwanted animals, on behalf of and pursuant to a contract with the state or any political subdivision;

(U) Covered dog means any individual of the species of the domestic dog, *Canis lupus familiaris*, or resultant hybrids, that is over the age of six (6) months and has intact sexual organs;

/(S)/(V) Dealer means any person who is engaged in the business of buying for resale, selling, or exchanging animals, as a principal or agent, or who holds him/herself out to be so engaged or is otherwise classified as a dealer by the USDA as defined by the regulations of the USDA. A dealer shall purchase animals only from persons in the state who are licensed under the ACFA, or from persons who are exempt from licensure;

/(T)/(W) Director means the director of the Missouri Department of Agriculture;

/(U)/(X) Dog means any live or dead *Canis lupus familiaris*;

/(V)/(Y) Euthanasia means the act of putting an animal to death in a humane manner and shall be accomplished by a method specified as acceptable by the American Veterinary Medical Association Panel on Euthanasia;

/(W)/(Z) Exhibitor means any person (public or private) exhibiting any dog or cat to the public for compensation or for a consideration of any kind whether directly or indirectly. This term excludes pet shops who are exhibiting only the animals for sale to the general public if exhibited only within the licensed facility;

/(X)/(AA) Exotic animals for the purpose of the ACFA means any member of the families *Canidae* or *Felidae* not indigenous to Missouri or any hybrid descendant of any member of the families

Canidae or *Felidae* crossed with any *Canis lupus familiaris* or *Felis catus*;

/(Y)/(BB) Hobby or show breeder means a noncommercial breeder who breeds dogs or cats with the primary purpose of exhibiting or showing dogs or cats, improving the breed or selling the dogs or cats, and having no more than ten (10) intact females. These breeders shall be classified as a hobby or show breeder if they sell only to other breeders or to individuals. Hobby or show breeders are exempt from the licensure and inspection requirements, but must register annually with the director for the purpose of establishing that these persons are hobby or show breeders, at no cost to the hobby or show breeders. A breeder who buys or sells any animal for the primary purpose of resale does not qualify as a hobby or show breeder.

1. Registered hobby or show breeders are those meeting the definition in this subsection.

2. Licensed hobby or show breeders are those meeting the definition in this subsection with the exception of having more than ten (10) intact females. Licensed hobby or show breeders shall be required to pay the same license and per capita fees and meet the same rules, standards, and inspection requirements as the commercial breeders;

/(Z)/(CC) Housing facility means any land, premises, shed, barn, building, trailer, or other structure or area, housing or intended to house animals;

/(AA)/(DD) Impervious surface means a surface that does not permit the absorption of fluids;

/(BB)/(EE) Indoor housing facility means any structure or building with environmental controls, housing or intended to house animals and meeting the following requirements:

1. It must be capable of controlling the temperature within the building or structure within the limits set forth for that species of animal, of maintaining humidity levels of thirty to seventy percent (30-70%) and of rapidly eliminating odors from within the building;

2. It must be an enclosure created by the continuous connection of a roof, floor, and walls (a shed or barn set on top of the ground does not have a continuous connection between the walls and the ground unless a foundation and floor are provided); and

3. It must have at least one (1) door for entry and exit that can be opened and closed (any windows or openings which provide natural light must be covered with a transparent material such as glass or hard plastic);

/(CC)/(FF) Inspector means any person employed by the department who is authorized to perform a function under the ACFA and these rules, or any animal welfare official as defined in this rule;

/(DD)/(GG) Intact female means, with respect to the dog, a female between the ages of six (6) months and ten (10) years that can be bred. With respect to the cat, a female between the ages of six (6) months and eight (8) years that can be bred;

/(EE)/(HH) Intermediate handler means any person engaged in any business in which s/he receives custody of animals through boarding, ownership, or brokering in connection with their transportation in commerce. Intermediate handlers shall be licensed under authority of the ACFA. Persons licensed under the ACFA who are transporting animals only in the normal course of conducting their licensed business shall not be required to be licensed as an intermediate handler, but shall be subject to all transportation regulations and standards;

/(FF)/(II) Licensee means any animal shelter, boarding kennel, commercial breeder, commercial kennel, contract kennel, dealer, intermediate handler, pet shop, and pound or dog pound licensed according to the provisions of the ACFA;

(JJ) Necessary veterinary care means, at minimum, examination at least once yearly by a licensed veterinarian, prompt treatment of any serious illness or injury by a licensed veterinarian, and where needed, humane euthanasia by a licensed veterinarian using lawful techniques deemed acceptable by the American Veterinary Medical Association;

/(GG)/(KK) Outdoor housing facility means any structure, building, land, or premises, housing or intended to house animals, which

does not meet the definition of any other type of housing facility provided in the rules, and in which temperatures cannot be controlled within set limits;

((HH))((LL)) Person means any individual, partnership, firm, joint [stock company] venture, corporation, association, **limited liability company**, trust, estate, receiver, syndicate, or other legal entity;

((MM)) Pet means any species of the domestic dog, *Canis lupus familiaris*, or resultant hybrids, normally maintained in or near the household of the owner thereof;

((III))((NN)) Pet shop means any facility where animals are bought, sold, exchanged, or offered for retail sale to the general public;

((JJ))((OO)) Pound or dog pound means a facility operated by the state or any political subdivision of the state for the purpose of impounding or harboring seized, stray, homeless, abandoned, or unwanted animals;

((KK))((PP)) Primary enclosure means any structure or device used to restrict an animal(s) to a limited amount of space, such as a room, pen, run, cage, compartment, pool, hutch, or tether. In the case of animals restricted by a tether (for example, dogs on chains) it includes the shelter and the area within reach of the tether;

((LL))((QQ)) Registrant means any hobby or show breeder who has properly registered with the director according to the provisions of the ACFA;

((RR)) Regular exercise means the type and amount of exercise sufficient to comply with an exercise plan that has been approved by a licensed veterinarian, developed in accordance with regulations regarding exercise promulgated by the Missouri Department of Agriculture, and where such plan affords the dog maximum opportunity for outdoor exercise as weather permits;

((SS)) Retail pet store means a person or retail establishment open to the public where dogs are bought, sold, exchanged, or offered for retail sale directly to the public to be kept as pets, but that does not engage in any breeding of dogs for the purpose of selling any offspring for use as a pet;

((MM))((TT)) Sanitize means to make physically clean and to remove and destroy, to the maximum degree that is practical, agents injurious to health;

((NN))((UU)) Sheltered housing facility means a housing facility which provides the animal with shelter, protection from the elements, and protection from temperature extremes at all times. A sheltered housing facility may consist of runs or pens totally enclosed in a barn or building, or of connecting inside/outside runs or pens with the inside pens in a totally enclosed building;

((OO))((VV)) Standards means the requirements with respect to humane housing, exhibiting, handling care, treatment, temperature, and transportation of animals by animal shelters, boarding kennels, commercial breeders, commercial kennels, contract kennels, dealers, intermediate handlers, exhibitors, pet shops, and pounds or dog pounds as set forth in 2 CSR 30-9;

((PP))((WW)) State means Missouri;

((QQ))((XX)) State veterinarian means the state veterinarian of Missouri;

((YY)) Sufficient food and clean water means access to appropriate nutritious food at least twice a day sufficient to maintain good health, and continuous access to potable water that is not frozen and is generally free of debris, feces, algae, and other contaminants;

((ZZ)) Sufficient housing, including protection from the elements, means the continuous provision of a sanitary facility, the provision of a solid surface on which to lie in a recumbent position, protection from the extremes of weather conditions, proper ventilation, and appropriate space depending on the species of animal as required by regulations of the Missouri Department of Agriculture;

((AAA)) Sufficient space to turn and stretch freely, lie down, and fully extend his or her limbs means having appropriate space depending on the species of animal as required by regulations of the Missouri Department of Agriculture;

((RR))((BBB)) Transporting vehicle means any truck, car, trailer, airplane, ship, or railroad car used for transporting animals;

((SS))((CCC)) USDA means the United States Department of Agriculture; [and]

((TT))((DDD)) Weaned means that an animal has become accustomed to taking solid food and has done so, without nursing, for a period of at least five (5) days[.]; and

((EE)) Wire strand flooring means pliable metallic strands in any length or diameter, mesh or grill-type, with or without a coating, and used for a surface on which an animal stands.

AUTHORITY: sections 273.344 and 273.346, RSMo [1994] 2000. Original rule filed Jan. 13, 1994, effective August 28, 1994. Amended: Filed Oct. 24, 1994, effective May 28, 1995. Emergency amendment filed July 11, 2011, effective July 21, 2011, expires Feb. 23, 2012.

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

EMERGENCY AMENDMENT

2 CSR 30-9.020 Animal Care Facility Rules Governing Licensing, Fees, Reports, Record Keeping, Veterinary Care, Identification, and Holding Period. The director is amending paragraphs (2)(A)1. and (2)(A)3.–(2)(A)9.; adding subsections (1)(V), (1)(W), (2)(E), (8)(C), and (8)(D) and paragraph (8)(I)3.; and renumbering the affected subsections.

PURPOSE: This amendment establishes provision for changes made in the statutes that were effective April 27, 2011.

EMERGENCY STATEMENT: The Department of Agriculture finds that this emergency amendment is necessary to protect the public welfare and to preserve a compelling governmental interest. This emergency amendment incorporates statutory changes made to sections 273.327 and 273.345, RSMo, as well as the statutory enactment of new sections 273.347 and 1, RSMo, by Senate Bill 161 passed by the 96th General Assembly. Senate Bill 161 put these changes into full force and effect upon its passage and its approval by the governor on April 27, 2011. The emergency clause in Senate Bill 161 enacting these changes states, "In order to improve the immediate health and welfare of dogs in this state and to provide sufficient time for businesses to comply with changes in the law, the repeal and reenactment of sections 273.327 and 273.345, the enactment of sections 273.347 and 1, and the repeal of sections 273.327, 273.345, 273.347, and 1 of section A of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and the repeal and reenactment of sections 273.327 and 273.345, the enactment of sections 273.347 and 1, and the repeal of sections 273.327, 273.345, 273.347, and 1 of section A of this act shall be in full force and effect upon its passage and approval." Senate Bill 161 also references that rules are to be promulgated and specified by the Department of Agriculture to implement this legislation. If such rules were required to go through the normal rulemaking process, such requirement would not be consistent with the emergency nature with which Senate Bill 161 was passed. The scope of this emergency amendment is limited to the circumstances creating this emergency and complies with the protections extended in the Missouri and United States Constitutions. The Department of Agriculture believes this emergency amendment is fair to all interested persons and parties under the circumstances and will improve the immediate health and welfare of dogs in this state while allowing businesses sufficient time to comply with changes to facility design and construction. This emergency amendment was filed on July 11, 2011, becomes effective July 21, 2011, and expires February 23, 2012.

(1) Application for License and Conditions of Issuing.

(V) Whenever the state veterinarian or a state animal welfare official finds past violations of sections 273.325 to 273.357, RSMo, have occurred and have not been corrected or addressed, including operating without a valid license under section 273.327, RSMo, the director may request the attorney general or the county prosecuting attorney or circuit attorney to bring an action in circuit court in the county where the violations have occurred for a temporary restraining order, preliminary injunction, permanent injunction, or a remedial order enforceable in a circuit court to correct such violations and, in addition, the court may assess a civil penalty in an amount not to exceed one thousand dollars (\$1,000) for each violation. Each violation shall constitute a separate offense.

(W) A person commits the crime of canine cruelty if such person repeatedly violates sections 273.325 to 273.357, RSMo, so as to pose a substantial risk to the health and welfare of animals in such person's custody or knowingly violates an agreed-to remedial order involving the safety and welfare of animals under this section. The crime of canine cruelty is a class C misdemeanor, unless the person has previously pled guilty or *nolo contendere* to or been found guilty of a violation of this subsection, in which case, each such violation is a class A misdemeanor.

1. The attorney general or the county prosecuting attorney or circuit attorney may bring an action under sections 273.325 to 273.357, RSMo, in circuit court in the county where the crime has occurred for criminal punishment.

2. No action under this section shall prevent or preclude action taken under section 578.012, RSMo, or under subsection 3 of section 273.329, RSMo.

(2) License Fees.

(A) In addition to the application for a license or license renewal, each person shall submit to the director the annual license fee and provisional license fee (if required) prescribed in this section, which shows the method used to calculate the appropriate fee. The license fee shall be computed in accordance with the following and based upon the previous year's business:

1. Animal shelter—One hundred dollars (\$100), plus the annual animal shelter per capita fee for every animal sold, traded, bartered, brokered, adopted out, or given away, up to a maximum of *[five hundred dollars (\$500)] two thousand five hundred dollars (\$2,500)*;

2. Pound/dog pound—No fee, but must meet the standards in 2 CSR 30-9;

3. Commercial kennel—One hundred dollars (\$100), plus the annual commercial kennel per capita fee for each board day, up to a maximum of *[five hundred dollars (\$500)] two thousand five hundred dollars (\$2,500)*;

4. Boarding kennel—One hundred dollars (\$100), plus the annual boarding kennel per capita fee for each board day, up to a maximum of *[five hundred dollars (\$500)] two thousand five hundred dollars (\$2,500)*;

5. Commercial breeder—One hundred dollars (\$100), plus the annual commercial breeder per capita fee for every animal sold, traded, bartered, brokered, or given away, up to a maximum of *[five hundred dollars (\$500)] two thousand five hundred dollars (\$2,500)*;

6. Contract kennel—One hundred dollars (\$100), plus the annual contract kennel per capita fee for every animal sold, traded, bartered, brokered, adopted out, or given away, up to a maximum of *[five hundred dollars (\$500)] two thousand five hundred dollars (\$2,500)*;

7. Dealer (also auction sale operator or broker)—One hundred dollars (\$100), plus the annual dealer per capita fee for every animal sold, traded, bartered, brokered, or given away, up to a maximum of *[five hundred dollars (\$500)] two thousand five hundred dollars (\$2,500)*;

8. Pet shop—One hundred dollars (\$100), plus the annual pet shop per capita fee for every animal sold, traded, bartered, brokered, or given away, up to a maximum of *[five hundred dollars (\$500)] two thousand five hundred dollars (\$2,500)*;

9. Intermediate handler—One hundred dollars (\$100), plus a per capita fee for each board day and each animal purchased or brokered and transported up to a maximum of *[five hundred dollars (\$500)] two thousand five hundred dollars (\$2,500)*. Animals which are transported only will be considered as carrier-transported and not subject to a per capita fee;

10. Voluntary licensee (persons/facilities not required to be licensed by definition of the law but desire to obtain a license anyway)—One hundred dollars (\$100); and

11. Hobby or show breeder—Exempt from fees and inspection requirements but must register annually and certify status.

(E) Operation Bark Alert. Each licensee subject to sections 273.325 to 273.357, RSMo, shall pay an additional annual fee of twenty-five dollars (\$25) to be used by the Department of Agriculture for the purpose of administering Operation Bark Alert or any successor program.

(8) Attending Veterinarian and Adequate Veterinary Care.

(C) Each licensee subject to the provisions of section 273.345, RSMo, shall establish and maintain programs of veterinary care that include:

1. Examination at least once yearly by a licensed veterinarian, and upon detection of any affliction, a comprehensive examination, diagnosis, and appropriate treatment. Provided however, at the discretion of the attending veterinarian, any subsequent treatment may be carried out by somebody other than the attending veterinarian. Individual health certification for each covered dog must be recorded on forms furnished by the state veterinarian;

2. Consultation on sound breeding practices, including a written and signed recommendation on reproductive health that accounts for species, age, and health of the breeding dogs under care of the licensee;

3. Review of disease prevention techniques, vaccination protocols, parasite protocols, nutrition, and guidance on preventative care. Approval of these practices must be certified by the attending veterinarian and included with the written program of veterinary care; and

4. Approval of an exercise plan developed in accordance with regulations regarding exercise prescribed in these rules and where such plan affords the dog maximum opportunity for outdoor exercise as weather permits.

(D) Each licensee subject to the provisions of section 273.345, RSMo, shall ensure that animals with serious illness or injury receive prompt treatment by a licensed veterinarian.

[(C)](E) If the state veterinarian or his/her designee finds that an animal or group of animals is suffering from a contagious, communicable, or infectious disease or exposure to a disease, a quarantine to the premises may be issued until the animals are—

1. Recovered and no longer capable of transmitting the disease;
2. Isolated;
3. Humanely euthanized and properly disposed of;
4. Tested, vaccinated, or otherwise treated; or
5. Otherwise released by the state veterinarian.

A. Animals under quarantine shall not be removed from the premises without written consent of the state veterinarian, nor shall any other animals be allowed to enter the premises.

B. A quarantine issued by the state veterinarian shall remain in effect until released in writing by the state veterinarian.

[(D)](F) Animals with obvious signs of disease or injury shall not be sold (except on the advice of the attending veterinarian and with the knowledge and consent of the purchaser), abandoned, or disposed of in an inhumane manner.

[(E)](G) A person licensed or registered under the ACFA shall not

knowingly sell or ship a diseased animal, except on the advice of their attending veterinarian and with the knowledge and consent of the purchaser.

(11) Records.

(I) Disposition of Records.

1. No licensee, for a period of one (1) year, shall destroy or dispose of, without the consent in writing of the director, any books, records, documents, or other papers required to be kept and maintained under the ACFA and this rule.

2. Unless otherwise specified, the records required to be kept and maintained under this rule shall be held for one (1) year after an animal is euthanized or disposed of and for any period in excess of one (1) year as necessary to comply with any applicable federal, state, or local laws. Whenever the director notifies the licensee in writing that specified records shall be retained pending completion of an investigation or proceeding under the ACFA, the licensee shall hold those records until their disposition is authorized by the director.

3. Any person subject to the provisions of section 273.345, RSMo, shall maintain all veterinary records and sales records for the most recent previous two (2) years. These records shall be made available to the state veterinarian, a state or local animal welfare official, or a law enforcement agent upon request.

AUTHORITY: sections 273.344 and 273.346, RSMo 2000. Original rule filed Jan. 13, 1994, effective August 28, 1994. For intervening history, please consult the Code of State Regulations. Emergency amendment filed July 11, 2011, effective July 21, 2011, expires Feb. 23, 2012.

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

2 CSR 30-9.030 Animal Care Facilities Minimum Standards of Operation and Transportation. The director is amending subsections (1)(F), (2)(B), (2)(D), and (2)(E) and renumbering the affected subsections.

PURPOSE: This amendment establishes provision for changes made in the statutes that were effective April 27, 2011.

EMERGENCY STATEMENT: The Department of Agriculture finds that this emergency amendment is necessary to protect the public welfare and to preserve a compelling governmental interest. This emergency amendment incorporates statutory changes made to sections 273.327 and 273.345, RSMo, as well as the statutory enactment of new sections 273.347 and 1, RSMo, by Senate Bill 161 passed by the 96th General Assembly. Senate Bill 161 put these changes into full force and effect upon its passage and its approval by the governor on April 27, 2011. The emergency clause in Senate Bill 161 enacting these changes states, "In order to improve the immediate health and welfare of dogs in this state and to provide sufficient time for businesses to comply with changes in the law, the repeal and reenactment of sections 273.327 and 273.345, the enactment of sections 273.347 and 1, and the repeal of sections 273.327, 273.345, 273.347, and 1 of section A of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and the repeal and reenactment of sections 273.327 and 273.345, the enactment of sections 273.347 and 1, and the repeal of sections 273.327, 273.345, 273.347, and 1 of section A of this act shall be in full force and effect upon its passage and approval." Senate Bill 161 also references that rules are to be promulgated and specified by the Department of Agriculture to implement this legislation. If such rules were required to go through the normal rulemaking process, such requirement would not be consistent with the emer-

gency nature with which Senate Bill 161 was passed. The scope of this emergency amendment is limited to the circumstances creating this emergency and complies with the protections extended in the Missouri and United States Constitutions. The Department of Agriculture believes this emergency amendment is fair to all interested persons and parties under the circumstances and will improve the immediate health and welfare of dogs in this state while allowing businesses sufficient time to comply with changes to facility design and construction. This emergency amendment was filed on July 11, 2011, becomes effective July 21, 2011, and expires February 23, 2012.

(1) Facilities and Operating Standards.

(F) Primary Enclosures. Primary enclosures for animals must meet the following minimum requirements:

1. General requirements.

A. Primary enclosures must be designed and constructed of suitable materials so that they are structurally sound. The primary enclosure must be kept in good repair.

B. Primary enclosures must be constructed and maintained so that they—

(I) Have no sharp points or edges that could injure the animals;

(II) Protect the animals from injury;

(III) Contain the animals securely;

(IV) Keep other animals from entering the enclosure;

(V) Enable the animals to remain dry and clean;

(VI) Provide shelter and protection from extreme temperatures and weather conditions that may be uncomfortable or hazardous to the animals;

(VII) Provide sufficient shade to shelter all the animals housed in the primary enclosure at one time;

(VIII) Provide all the animals with easy and convenient access to clean food and water;

(IX) Enable all surfaces in contact with the animals to be readily cleaned and sanitized in accordance with this rule, or be replaceable when worn or soiled;

(X) Have floors that are constructed in a manner that protects the animals' feet and legs from injury and that, if *[mesh or slatted] elevated* construction, it must be constructed of materials strong enough to prevent sagging and with a mesh small enough that will not allow the animals' feet to pass through any openings in the floor. If the floor of the primary enclosure is constructed of *[wire] elevated flooring*, a solid resting surface(s) that, in the aggregate, is large enough to hold all the occupants of the primary enclosure at the same time comfortably must be provided; and

(XI) Provide sufficient space to allow each animal to turn about freely, to stand, sit, and lie in a comfortable, normal position, and to walk in a normal manner.

C. Any primary enclosure subject to the provisions of section 273.345, RSMo, newly constructed after April 15, 2011, and for all enclosures as of January 1, 2016, shall meet the following standards for elevated flooring:

(I) Wire strand flooring shall be prohibited;

(II) Bare metal flooring shall be prohibited;

(III) Slatted flooring must be flat, no less than three and one-half inches (3.5") in width, and no more than one-half inch (.5") in spacing between, and constructed of materials strong enough to prevent sagging. Any premanufactured slatted flooring must be described by manufacturer and specifications, listed on the approved flooring list maintained by the state veterinarian, and posted on the department's website, as revised;

(IV) Plastic flooring must be constructed of materials strong enough to prevent sagging and with openings that will not allow the animals' feet to pass through any openings in the floor. Any premanufactured flooring must be described by manufacturer and specifications, listed on the approved flooring list maintained by the state veterinarian, and posted on the department's website, as revised;

(V) Expanded metal flooring coated with a flexible plastic surface must be constructed of materials strong enough to prevent sagging and with openings that will not allow the animals' feet to pass through any openings in the floor. Any pre-manufactured flooring must be described by manufacturer and specifications, listed on the approved flooring list maintained by the state veterinarian, and posted on the department's website, as revised.

2. Additional requirements for cats.

A. Space. Each cat, including weaned kittens, that is housed in any primary enclosure must be provided minimum vertical space and floor space as follows:

(I) Each primary enclosure housing cats must be at least twenty-four inches (24") high or sixty point ninety-six centimeters (60.96 cm). Temporary housing such as queening cages may be reduced to a height of eighteen inches (18") or forty-five point seventy-two centimeters (45.72 cm) to reduce injury to kittens;

(II) Cats up to and including eight point eight (8.8) pounds or four (4) kilograms, must be provided with at least three point zero (3.0) square feet or zero point twenty-eight (0.28) square meters;

(III) Cats over eight point eight (8.8) pounds or four (4) kilograms must be provided with at least four point zero (4.0) square feet or zero point thirty-seven (0.37) square meters;

(IV) Each queen with nursing kittens must be provided with an additional amount of floor space, based on her breed and behavioral characteristics, and in accordance with generally accepted husbandry practices. If the additional amount of floor space for each nursing kitten is equivalent to less than five percent (5%) of the minimum requirement for the queen, the housing must be approved by the state veterinarian; and

(V) The minimum floor space required by this section is exclusive of any food or water pans. The litter pan may be considered part of the floor space if properly cleaned and sanitized.

B. Compatibility. All cats housed in the same primary enclosure must be compatible, as determined by observation. Not more than twelve (12) adult nonconditioned cats may be housed in the same primary enclosure. Queens in heat may not be housed in the same primary enclosure with sexually mature males, except for breeding. Except when maintained in breeding colonies, queens with litters may not be housed in the same primary enclosure with other adult cats, and kittens under four (4) months of age may not be housed in the same primary enclosure with adult cats, other than the dam or foster dam. Cats with a vicious or aggressive disposition must be housed separately.

C. Litter. In all primary enclosures, a receptacle containing sufficient clean litter must be provided to contain excreta and body wastes.

D. Resting surfaces. Each primary enclosure housing cats must contain a resting surface(s) that, in the aggregate, are large enough to hold all the occupants of the primary enclosure at the same time comfortably. The resting surfaces must be elevated, impervious to moisture and be able to be easily cleaned and sanitized or easily replaced when soiled or worn.

(I) Low resting surfaces that do not allow the space under them to be comfortably occupied by the animal will be counted as part of the floor space. Floor space under low resting surfaces shall not be counted as floor space to meet the minimum space requirements.

(II) Elevated resting surfaces will not be required for short-term housing facilities such as boarding kennels, commercial kennels, contract kennels, pet shops, and pounds or dog pounds,; however, elevated resting surfaces may be properly installed to increase floor space to that required in this rule; and

3. Additional requirements for dogs.

A. Space.

(I) Each dog housed in a primary enclosure (including weaned puppies) must be provided a minimum amount of floor space, calculated as follows: Find the mathematical square of the sum

of the length of the dog in inches (measured from the tip of its nose to the base of its tail) plus six inches (6"); then divide the product by one hundred forty-four (144). The calculation is: (length of dog in inches plus six (6)) times (length of dog in inches plus six (6)) equals required floor space in square inches. Required floor space in inches divided by one hundred forty-four (144) equals required floor space in square feet.

(II) Each bitch with nursing puppies must be provided with an additional amount of floor space, based on her breed and behavioral characteristics, and in accordance with generally accepted husbandry practices as determined by the attending veterinarian. If the additional amount of floor space for each nursing puppy is less than five percent (5%) of the minimum requirement for the bitch, this housing must be approved by the state veterinarian.

(III) The interior height of a primary enclosure must be at least six inches (6") higher than the head of the tallest dog in the enclosure when it is in a normal standing position.

(IV) Dogs on tethers.

(a) Dogs may be kept on tethers only in outside housing facilities that meet the requirements of this rule, and then only when the tether meets the requirements of this paragraph. The tether must be attached to the front of the dog's shelter structure or to a post in front of the shelter structure and must be at least three (3) times the length of the dog, as measured from the tip of its nose to the base of its tail. The tether must allow the dog convenient access to the shelter structure and to food and water containers. The tether must be of the type and strength commonly used for the size dog involved and must be attached to the dog by a well-fitted collar that will not cause trauma or injury to the dog. Collars made of materials such as wire, flat chains, chains with sharp edges, or chains with rusty or nonuniform links are prohibited. The tether must be attached so that the dog cannot become entangled with other objects or come into physical contact with other dogs in the outside housing facility, and so the dog can roam to the full range of the tether.

(b) Dog housing areas where dogs are on tethers must be enclosed by a perimeter fence that is of sufficient height to keep unwanted animals out. Fences less than six feet (6') high must be approved by the state veterinarian. The fence must be constructed so that it protects the dogs by preventing animals the size of dogs, skunks, and raccoons from going through it or under it and having contact with the dogs inside.

B. Compatibility. All dogs housed in the same primary enclosure must be compatible, as determined by observation. Not more than twelve (12) adult nonconditioned dogs may be housed in the same primary enclosure. Bitches in heat may not be housed in the same primary enclosure with sexually mature males, except for breeding. Except when maintained in breeding colonies, bitches with litters may not be housed in the same primary enclosure with other adult dogs, and puppies under four (4) months of age may not be housed in the same primary enclosure with adult dogs, other than their dam or foster dam. Dogs with a vicious or aggressive disposition must be housed separately.

C. Additional space requirements for dogs subject to the provisions of section 273.345, RSMo, shall be based upon the minimum amount of floor space as calculated from part (1)(F)3.A.(I) of this rule and multiplied by factor or added to the total living area as prescribed in this rule.

(I) From January 1, 2012, through December 31, 2015, for any enclosure existing prior to April 15, 2011, the minimum allowable space shall be calculated as follows:

(a) Dogs housed singly. Any dogs housed singly must have their minimum amount of floor space as calculated from part (1)(F)3.A.(I) of this rule (minimum amount of floor space) and multiplied by a factor of four (4).

(b) Dogs housed as a pair. Any dogs housed as a pair must have their minimum amount of floor space as calculated from part (1)(F)3.A.(I) of this rule (minimum amount of floor space) and multiplied by a factor of two (2).

(c) **Dogs housed in groups larger than a pair.** Any dogs housed in groups larger than a pair shall have the largest two dogs calculated from part (1)(F)3.A.(I) of this rule (minimum amount of floor space) and multiplied by a factor of two (2), with each additional dog being provided additional space at one hundred percent (100%) of the same formula. No more than four (4) adult dogs may be housed in the same primary enclosure.

Common examples under part (1)(F)3.C.(I)

	Single	Pair	Group of 3	Group of 4
18 inch dog	16 sq ft	16 sq ft	20 sq ft	24 sq ft
30 inch dog	36 sq ft	36 sq ft	45 sq ft	54 sq ft
42 inch dog	64 sq ft	64 sq ft	80 sq ft	96 sq ft

(II) For any enclosure newly constructed after April 15, 2011, and for all enclosures as of January 1, 2016, the minimum allowable space shall be calculated as follows:

(a) **Dogs housed singly.** Any dogs housed singly must have their minimum amount of floor space as calculated from part (1)(F)3.A.(I) of this rule (minimum amount of floor space) and multiplied by a factor of six (6).

(b) **Dogs housed as a pair.** Any dogs housed as a pair must have their minimum amount of floor space as calculated from part (1)(F)3.A.(I) of this rule (minimum amount of floor space) and multiplied by a factor of three (3).

(c) **Dogs housed in groups larger than a pair.** Any dogs housed in groups larger than a pair shall have the largest two dogs calculated from part (1)(F)3.A.(I) of this rule (minimum amount of floor space) and multiplied by a factor of three (3), with each additional dog being provided additional space at one hundred percent (100%) of the same formula. No more than four (4) adult dogs may be housed in the same primary enclosure.

Common examples under part (1)(F)3.C.(II)

	Single	Pair	Group of 3	Group of 4
18 inch dog	24 sq ft	24 sq ft	28 sq ft	32 sq ft
30 inch dog	54 sq ft	54 sq ft	63 sq ft	72 sq ft
42 inch dog	96 sq ft	96 sq ft	112 sq ft	128 sq ft

(III) **Exemptions.**

(a) **Covered dogs subject to the provisions of section 273.345, RSMo,** may be exempted from the space requirements of this rule for the purpose of documented treatment for veterinary purposes, provided that they meet space requirements under part (1)(F)3.A.(I) of this rule.

(b) **Female covered dogs subject to the provisions of section 273.345, RSMo,** may be exempted from the space requirements of this rule when they are within two (2) weeks of their whelping date and eight (8) weeks post parturition, provided that they meet space requirements under part (1)(F)3.A.(II) of this rule.

(2) **Animal Health and Husbandry Standards.**

(B) **Exercise for Dogs.**

1. Animal shelters, boarding kennels, commercial kennels, commercial breeders, dealers, exhibitors, and voluntary licensees must develop, document, and follow an appropriate plan to provide dogs with an opportunity for exercise. **Except as prescribed by rule, any covered dog subject to the provisions of section 273.345, RSMo, must be provided constant and unfettered access to an attached outdoor run.** In addition, the plan must be approved and signed by the licensee and the attending veterinarian. The plan must include written standard procedures to be followed in providing the opportunity for exercise. The plan must be made available to the state veterinarian or his/her designated representative upon request. The plan, at a minimum, must comply with each of the following:

A. **Dogs housed individually.** Dogs over twelve (12) weeks of

age, except bitches with litters, housed, held, or maintained by any animal shelter, boarding kennel, commercial kennel, commercial breeder, dealer, exhibitor, or voluntary licensee must be provided the opportunity for exercise regularly if they are kept in individual cages, pens, or runs that provide less than two (2) times the required floor space for that dog, as prescribed in this rule.

B. **Dogs housed in groups.** Dogs over twelve (12) weeks of age housed, held, or maintained in groups by any dealer or exhibitor do not require additional opportunity for exercise regularly if they are maintained in cages, pens, or runs that provide in total at least one hundred percent (100%) of the required space for each dog if maintained separately. These animals may be maintained in compatible groups unless—

(I) In the opinion of the attending veterinarian, this housing would adversely affect the health or well-being of the dogs(s); or

(II) Any dog exhibits aggressive or vicious behavior.

2. **Methods and period of providing exercise opportunity.**

A. The frequency, method, and duration of the opportunity for exercise shall be determined by the attending veterinarian **and, for each covered dog subject to the provisions of section 273.345, RSMo, must afford the dog maximum opportunity for outdoor exercise as weather permits.**

B. Licensees, in developing their plan, should consider providing positive physical contact with humans that encourages exercise through play or other similar activities. If a dog is housed, held, or maintained at a facility without sensory contact with another dog, it must be provided with positive physical contact with humans at least daily.

C. The opportunity for exercise may be provided in a number of ways, such as—

(I) Group housing in cages, pens, or runs that provide at least one hundred percent (100%) of the required space for each dog if maintained separately under the minimum floor space requirements of this rule;

(II) Maintaining individually housed dogs in cages, pens, or runs that provide at least twice the minimum amount of floor space required by this rule;

(III) Providing access to a run or open area at the frequency and duration prescribed by the attending veterinarian; or

(IV) Other similar activities.

D. Forced exercise methods or devices such as swimming, treadmills, or carousel-type devices are unacceptable for meeting the requirements of this section.

3. **Exemptions.**

A. **Covered dogs subject to the provisions of section 273.345, RSMo, may be exempted from the requirement of constant and unfettered access to outdoor exercise for the purpose of documented treatment for veterinary purposes.**

B. **Female covered dogs subject to the provisions of section 273.345, RSMo, may be exempted from the requirement of constant and unfettered access to outdoor exercise when they are within two (2) weeks of their whelping date and eight (8) weeks post parturition.**

C. If, in the opinion of the attending veterinarian, it is inappropriate for certain dogs to exercise because of their health, condition, or well-being, the licensee may be exempted from meeting the requirements of this section for those specific dogs. This exemption must be documented by the attending veterinarian and, unless the basis for exemption is a permanent condition, must be reviewed and signed at least every thirty (30) days by the attending veterinarian.

(D) **Watering.**

1. **Each licensee subject to the provisions of section 273.345, RSMo, shall provide continuous access to potable water that is not frozen and is generally free of debris, feces, algae, and other contaminants.**

2. If potable water is not continually available to the animals, it must be offered to the animals as often as necessary to ensure their health and well-being, but not less than once each eight (8) hours for

at least one (1) hour each time, unless restricted by the attending veterinarian.

3. Water receptacles must be kept clean and sanitized in accordance with this rule and before being used to water a different animal or social grouping of animals.

(E) Cleaning, Sanitization, Housekeeping, and Pest Control.

1. Cleaning of primary enclosures.

A. Excreta and food waste must be removed from primary enclosures daily and from under primary enclosures as often as necessary to prevent an excessive accumulation of feces and food waste, to prevent soiling of the animals contained in the primary enclosures, and to reduce disease hazards, insects, pests, and odors.

B. When steam or water is used to clean the primary enclosure, whether by hosing, flushing, or other methods, animals must be removed unless the enclosure is large enough to ensure the animals would not be harmed, wetted, or distressed in the process.

C. Standing water must be removed from the primary enclosure and adjacent areas.

D. Animals in other primary enclosures must be protected from being contaminated with water and other wastes during the cleaning.

E. The pans under primary enclosures with *[grill-type] elevated* floors and the ground areas under raised runs *[with wire or slatted floors]* must be cleaned as often as necessary to prevent accumulation of feces and food waste and to reduce disease hazards, pests, insects, and odors.

F. **Any person required to have a license under sections 273.325 to 273.357, RSMo, who houses animals in stacked cages without an impervious barrier between the levels of such cages, except when cleaning such cages, is guilty of a class A misdemeanor.**

2. Sanitization of primary enclosures and food and water receptacles.

A. Used primary enclosures and food and water receptacles must be cleaned and sanitized in accordance with this section before they can be used to house, feed, or water another animal, or social grouping of animals.

B. Used primary enclosures and food and water receptacles for animals must be sanitized at least once every two (2) weeks using one (1) of the methods prescribed in this section, and more often if necessary to prevent accumulation of dirt, debris, food waste, excreta, and other disease hazards.

C. Hard surfaces of primary enclosures and food and water receptacles must be sanitized using one (1) of the following methods:

(I) Live steam under pressure;

(II) Washing with hot water (at least one hundred eighty degrees Fahrenheit (180 °F) or eighty-two point two degrees Celsius (82.2 °C)) and soap or detergent, as with a mechanical cage washer; or

(III) Washing all soiled surfaces with appropriate detergent solutions and disinfectants, or by using a combination detergent/disinfectant product that accomplishes the same purpose, with a thorough cleaning of the surfaces to remove organic material, so as to remove all organic material and mineral build-up, and to provide sanitization followed by a clean water rinse.

D. Pens, runs, and outdoor housing areas using material that cannot be sanitized using the methods previously stated, such as gravel, sand, grass, earth, or absorbent bedding, must be sanitized by removing the contaminated material as necessary to prevent odors, diseases, pests, insects, and vermin infestation.

3. Housekeeping for premises. Premises where housing facilities are located, including buildings and surrounding grounds, must be kept clean and in good repair to protect the animals from injury, to facilitate the husbandry practices required in this rule and to reduce or eliminate breeding and living areas from rodents and other pests and vermin. Premises must be kept free of accumulations of trash, junk, waste products, and discarded matter. Weeds, grasses, and bushes must be controlled so as to facilitate cleaning of the

premises and pest control, and to protect the health and well-being of the animals.

4. Pest control. An effective program for the control of insects, external parasites affecting dogs and cats and birds and mammals that are pests, must be established and maintained so as to promote the health and well-being of the animals and reduce contamination by pests in animal areas.

AUTHORITY: sections 273.344 and 273.346, RSMo 2000. Original rule filed Jan. 13, 1994, effective August 28, 1994. Amended: Filed Nov. 30, 1995, effective July 30, 1996. Emergency amendment filed July 11, 2011, effective July 21, 2011, expires Feb. 23, 2012.

Title 10—DEPARTMENT OF NATURAL RESOURCES Division 20—Clean Water Commission Chapter 6—Permits

EMERGENCY AMENDMENT

10 CSR 20-6.010 Construction and Operating Permits. The division is amending subsection (1)(B).

PURPOSE: This emergency amendment modifies the current exemption for the application of pesticides from the permitting regulations. The application of pesticides must be consistent with federal and state requirements. The removal of this exemption will allow the Department of Natural Resources to issue National Pollution Discharge Elimination System (NPDES) permits when required.

EMERGENCY STATEMENT: This amendment provides consistency between the Missouri Code of State Regulations and the U.S. Environmental Protection Agency's (EPA) administration of the National Pollutant Discharge Elimination System (NPDES). Federal NPDES program delegation from EPA requires states to administer permitting requirements in a manner consistent with and no less stringent than the federal guidelines for permitting. In 2009, U.S. Sixth Circuit Court of Appeals' decision (National Cotton Council v. EPA) vacated an EPA 2006 aquatic pesticide rule which had exempted pesticide applications from NPDES permits. The court also granted a two (2)-year stay of the decision to allow time for EPA to develop permit guidance along with a draft permit and requirements for use by both EPA and states. EPA had expected to have a final permit by the end of 2010; however, it was not until April 1, 2011, that EPA finally released a pre-publication version of the final pesticide general permit thereby allowing states to move forward. EPA continues to work to finalize this permit prior to the court-imposed deadline of October 31, 2011. While EPA's permit and guidance is not yet final, the department has chosen to move forward in modifying the exemption at subsection (1)(B) for pesticide application to ensure that it can meet the court's October 31 deadline. After that date, discharges to waters of the U.S. from the application of pesticides will require NPDES permits. If the state's exemption is not modified as of that date, Missouri's permitting program will not be consistent with EPA's program delegation, and pesticide applicators in Missouri may be required to obtain permits through EPA. An amendment to the rule is necessary to prevent an action by EPA that preempts the state's permitting authority. Modifying the exemption allows the department to issue permits that comply with the new federal general pesticides permit regarding pesticide applications either directly to water to control pests or over or near waters where a portion of the pesticides would be deposited into water. The state has a compelling interest in administering a permitting program and is taking steps to preserve that authority. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United State Constitutions. The Clean Water Commission believes this emergency amendment is fair to all interested persons and parties under the circumstances.

The commission further finds a compelling governmental interest requiring this emergency action because of the importance of issuing permits that are in compliance with EPA's permitting requirements and with the department's obligation under its federally-delegated NPDES authority. This emergency amendment was filed July 14, 2011, becomes effective October 31, 2011, and expires April 27, 2012.

(1) Permits—General.

(B) The following are exempt from permit regulations:

1. Nonpoint source discharges;
2. Service connections to wastewater sewer systems;
3. Internal plumbing and piping or other water diversion or retention structures within a manufacturing or industrial plant or mine, which are an integral part of the industrial or manufacturing process or building or mining operation. An operating permit or general permit shall be required~~/,~~ if the piping, plumbing, or structures result in a discharge to waters of the state;
4. Routine maintenance or repairs of any existing sewer system, wastewater treatment facility, or other water contaminant or point source;
5. Single family residences;
6. The discharge of water from an environmental emergency cleanup site under the direction of, or the direct control of, the Missouri Department of Natural Resources or the Environmental Protection Agency (EPA), provided the discharge shall not violate any condition of 10 CSR 20-7.031 Water Quality Standards;
7. Water used in constructing and maintaining a drinking water well and distribution system for public and private use, geologic test holes, exploration drill holes, ground water monitoring wells, and heat pump wells;
8. Small scale pilot projects or demonstration projects for beneficial use, that do not exceed a period of one (1) year, may be exempted by written project approval from the permitting authority. The department may extend the permit exemption for up to one (1) additional year. A permit application shall be submitted at least ninety (90) days prior to the end of the demonstration period if the facility intends to continue operation, unless otherwise exempted under this rule or Chapter 6; and
9. The application of pesticides in order to control pests (e.g., any insect, rodent, nematode, fungus, weed, etc.) in a manner that is consistent with the requirements of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Missouri Pesticide Use Act **unless such application is made directly into or onto waters of the state, in which case the applicator shall obtain a permit.**

AUTHORITY: sections 640.710 and 644.026, RSMo 2000. Original rule filed June 6, 1974, effective June 16, 1974. For intervening history, please consult the Code of State Regulations. Emergency amendment filed July 14, 2011, effective Oct. 31, 2011, expires April 27, 2012. A proposed amendment covering this same material is published in this issue of the Missouri Register.